SIXTY-NINTH REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1979, THROUGH DECEMBER 31, 1979

SIXTY-NINTH REPORT

OF THE

NORTH CAROLINA UTILITIES COMMISSION ORDERS AND DECISIONS

Issued from

January 1, 1979, through December 31, 1979

Robert K. Koger, Chairman

Ben E. Roney,* Commissioner

Dr. Leigh H. Hammond, Commissioner

Sarah Lindsay Tate, Commissioner

Dr. Robert Fischbach,** Commissioner

John W. Winters, Commissioner

Edward B. Hipp, Commissioner

A. Hartwell Campbell,*** Commissioner

Douglas P. Leary,**** Commissioner

NORTH CAROLINA UTILITIES COMMISSION

Office of the Chief Clerk

Mrs. Sandra J. Webster
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.

* Ben E. Roney, term expired June 30, 1979
** Dr. Robert Fischbach, appointed Director of the Public Staff, effective September 13, 1979
*** A. Hartwell Campbell, appointed July 1, 1979
**** Douglas P. Leary, appointed October 24, 1979, effective January 1, 1980

LETTER OF TRANSMITTAL

December 31, 1979

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, 1979, we hereby present for your consideration the report of the Commission's decisions for the twelve-month period beginning January 1, 1979, and ending December 31, 1979.

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

Robert K. Koger, Chairman

Dr. Leigh H. Hammond, Commissioner

Sarah Lindsay Tate, Commissioner

John W. Winters, Commissioner

Edward B. Hipp, Commissioner

A. Hartwell Campbell, Commissioner

Sandra J. Webster, Chief Clerk

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DOCKET NO. M-100, Sub 28
DOCKET NO. M-100, Sub 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Natural Gas Utility Seasonal Customer Deposit Requirements	) ORDER AMENDING REVISED) BILLING AND DISCONNECT RULES) FOR RESIDENTIAL NATURAL) GAS CUSTOMERS

BY THE COMMISSION: On September 7, 1978, the Commission issued an Order in Docket No. M-100, Subs 28 and 61, modifying Commission Rules R12-4 and R12-10 as they applied to the practices of natural gas utilities in North Carolina. Among other things, the September 7, 1978, Order established the following schedule for the billing of residential customers of natural gas utilities.

Day	Standard Procedure
1	Service begins.
30	Meter Read.
35	Bill Mailed.
55	Reminder notice mailed.
60	Meter read for second month's service.
65	Bill mailed, showing charge for second month and arrears separately; if arrears is shown on bill, notice mailed stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT BUSINESS OFFICE IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENTS IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."
75	Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
76	Field representative visits home to collect arrears or terminate service. Customer has immediate recourse to local office for reconnect action.

Subsequent to the issuance of the Commission's Order, several of the natural gas utilities affected by the revised schedule requested that the Commission consider deleting the "Reminder Notice Requirement" at day 55 of the revised schedule. The utilities anticipated potential customer dissatisfaction with the procedure since a customer's bill would not be past due until day 60 of the schedule and also cited the additional cost to all customers of sending the reminder notices.

After consideration of the request that the reminder notice at day 55 of the revised schedule be deleted, the Commission concludes that the mailing of a reminder notice before a customer's bill is past due is a potential cause of customer dissatisfaction and confusion, and that this

requirement can reasonably be deleted from the revised billing schedule for residential natural gas customers.

IT IS, THEREFORE, ORDERED as follows:

1. That the reminder notice requirement at day 55 of the revised billing procedure for residential natural gas companies be, and is hereby, deleted from the schedule. The approved schedule now in effect is as follows:

Day	Standard Procedure
1	Service begins.
30	Meter Read.
35	Bill Mailed.
60	Meter read for second month's service.
65	Bill mailed, showing charge for second month and arrears separately; if arrears is shown on bill, notice mailed stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT BUSINESS OFFICE IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENTS IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."
75	Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
76	Field representative visits home to collect arrears or terminate service. Customer has immediate recourse to local office for reconnect action.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. M-100, SUB 28
DOCKET NO. M-100, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Natural Gas Utility Seasonal)
Customer Deposit Requirements) AMENDED ORDER

BY THE COMMISSION: On February 23, 1979, the Commission issued an "Order Amending Revised Billing and Disconnect Rules for Residential Natural Gas Customers" which amends Rule R12-10(f) billing procedures for gas companies. The Commission is of the opinion that a further amendment to that Order is necessary in order to properly reflect the fact that the billing procedure for gas and electric companies are different and to properly codify the rules.

IT IS, THEREFORE, ORDERED that Rule R12-10(f) be amended to incorporate a subsection (f)(1) for electric utilities and (f)(2) for gas utilities as shown in Exhibit A attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sharon C. Credle, Deputy Clerk

EXHIBIT A

(f)(1) Each electric utility operating under the jurisdiction of the North Carolina Utilities Commission shall immediately revise, where necessary, its billing procedures to conform to the following schedules:

A. Customers with "credit good"

Day	Standard Procedure
1	Meter Read.
5	Bill Mailed.
31	Meter Read.
35	Second bill mailed, showing 1-month prior account balance and current bill.
61	Meter Read.
65	Third bill mailed with a reminder notice.
72	Local office efforts to contact delinquent customers.
79	Disconnect notices reviewed in local offices before mailing to customers. Seven days allowed to make credit arrangements.
89	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
91	Meter read and the field representative makes the effort to notify the customer, receive payment, make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the local office for reconnect action.

B. Customers with credit "not good" will have delinquency started on the 35th day rather than the 65th day. The billing schedule will then be approximately as follows:

Day	Standard Procedure
1	Meter Read.
5	Bill Mailed.
31	Meter Read.

35 Second bill mailed, showing 1-month prior account balance, current bill, and with a reminder notice.

49 Disconnect notices reviewed in local offices before mailing to customers. Seven days allowed to make credit arrangements.

59 Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.

61 Meter read and the field representative makes the effort to notify the customers, receive payment, make satisfactory credit arrangements, agree to defer action because of death or illness or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the local office for reconnect action.

(2) Each gas utility operating under the jurisdiction of the North Carolina Utilities Commission shall immediately revise, where necessary, its billing procedures to conform to the following schedule:

Day	Standard Procedure
1	Service Begins.
30	Meter Read.
35	Bill Mailed.
60	Meter read for second month's service.
65	Bill mailed, showing charge for second month and arrears separately; if arrears is shown on bill, notice mailed stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT BUSINESS OFFICE IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENT IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."
75	Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
76	Field representative visits home to collect arrears or terminate service. Customer has immediate recourse to local office for reconnect action.

(g) Each gas utility operating under the jurisdiction of the North Carolina Utilities Commission shall revise its billing procedures to conform to the following schedule with respect to all customers.

Day	Standard Procedure
1	Service Begins.
30	Meter Read.
35	Bill Mailed.
60	Meter read for second month's service.

65 Bill mailed, showing charge for second month and arrears separately; if arrears is shown on bill, notice mailed stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT BUSINESS OFFICE IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENT IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."

75 Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.

76 Field representative visits home to collect arrears or terminate service. Customer has immediate recourse to local office for reconnect action.

DOCKET NO. M-100, SUB 28
DOCKET NO. M-100, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Natural Gas Utility Seasonal) FURTHER AMENDED ORDER
Customer Deposit Requirements)

BY THE COMMISSION: On March 7, 1979, the Commission issued an Amended Order codifying separate disconnection procedures for electric and gas companies.

Commission Rules R12-10(f)(1) for electric utilities and R12-10(f)(2) for gas utilities set forth in Exhibit A to the Amended Order show standard billing procedures by "Day." The Commission is of the opinion that the word "Day" as it appears in that Order should be replaced by the words "Approximate Calendar Date."

IT IS, THEREFORE, ORDERED that Rule R12-10(f) be amended to incorporate a subsection (f)(1) for electric utilities and (f)(2) for gas utilities as shown in Exhibit A attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

EXHIBIT A

(f)(1) Each electric utility operating under the jurisdiction of the North Carolina Utilities Commission shall immediately revise, where necessary, its billing procedures to conform to the following schedules:

A. Customers with "credit good"

Approximate Calendar Date	Standard Procedure
1	Meter Read.
5	Bill Mailed.
31	Meter Read.
35	Second bill mailed, showing 1-month prior account balance and current bill.
61	Meter Read.
65	Third bill mailed with a reminder notice.
72	Local office efforts to contact delinquent customers.
79	Disconnect notices reviewed in local offices before mailing to customers. Seven days allowed to make credit arrangements.
89	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
91	Meter read and the field representative makes the effort to notify the customer, receive payment, make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the local office for reconnect action.

B. Customers with credit "not good" will have delinquency started on the 35th day rather than the 65th day. The billing schedule will then be approximately as follows:

Approximate Calendar Date	Standard Procedure
1	Meter Read.
5	Bill Mailed.
31	Meter Read.
35	Second bill mailed, showing 1-month prior account balance, current bill, and with a reminder notice.
49	Disconnect notices reviewed in local offices before mailing to customers. Seven days allowed to make credit arrangements.
59	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
61	Meter read and the field representative makes the effort to notify the customers, receive payment, make satisfactory credit

arrangements, agree to defer action because of death or illness or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the local office for reconnect action.

(2) Each gas utility operating under the jurisdiction of the North Carolina Utilities Commission shall immediately revise, where necessary, its billing procedures to conform to the following schedule:

Approximate Calendar Date	Standard Procedure
1	Service Begins.
30	Meter Read.
35	Bill Mailed.
60	Meter read for second month's service.
65	Bill mailed, showing charge for second month and arrears separately; if arrears is shown on bill, notice mailed stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT BUSINESS OFFICE IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENT IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."
75	Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
76	Field representative visits home to collect arrears or terminate service. Customer has immediate recourse to local office for reconnect action.

DOCKET NO. M-100, SUB 28
DOCKET NO. M-100, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Natural Gas and Electric) ORDER REVISING SERVICE
Utility Seasonal Customer) TERMINATION RULES FOR
Deposit Requirements and) RESIDENTIAL ELECTRIC AND
Termination Procedures) NATURAL GAS CUSTOMERS

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 9, 1979, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Leigh H. Hammond, Sarah Lindsay Tate, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Respondents:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27402
For: Piedmont Natural Gas Company, Inc., United Cities Gas Company, and Pennsylvania and Southern Gas Company

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

George W. Ferguson, Jr., Attorney at Law, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

Edward S. Finley, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Nantahala Power and Light Company

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, Box 2129, Fayetteville, North Carolina 28302
For: North Carolina Natural Gas Corporation

Fred D. Poisson, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

Edgar M. Roach, Jr., Hunton and Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virgnina 23212
For: Virginia Electric and Power Company

For the Intervenors, Charlotte Squires, et al.:

Richard M. Klein, Legal Services of North Carolina, Inc., P.O. Box 6505, Raleigh, North Carolina 27628

Amy L. Cox, Robert H. Gage, Catawba Valley Legal Services, Inc., 403 S. King Street, Morganton, North Carolina 28655

Paul E. Meyer, Central Carolina Legal Services, Inc., P.O. Box 3467, Greensboro, North Carolina 27402

For the Attorney General:

David Gordon, Associate Attorney General, P.O. Box 629, Dobbs Building, Raleigh, North Carolina
For: The Using and Consuming Public

For the Public Staff:

Stephen G. Kozey, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On July 20, 1979, the Commission issued an Order in this docket entitled "Order Instituting Public Hearing to Consider Service Termination Procedures Under the Public Utility Regulatory Policies Act." The Public Utility Regulatory Policies Act of 1978 (hereinafter PURPA or the Act) is an integral part of the National Energy Act which was signed into law by President Carter on November 9, 1978. Pursuant to the requirements of PURPA, each State Regulatory Authority in this country must consider, during a statutorily mandated time period, whether to adopt uniform Federal standards governing procedures for termination of service to electric and natural gas customers. The PURPA service termination standards are set forth in sections 113(b) and 303(b) of said Act.

By its Order dated July 20, 1979, the Commission set the matter for hearing on October 9, 1979, and made the Public Staff and all electric and natural gas companies in North Carolina parties of record in this proceeding. The parties were given 45 days to file proposed rules, comments, and memoranda of law with respect to the PURPA service termination procedures. On September 14, 1979, the Attorney General of the State of North Carolina filed a Notice of Intervention. By Commission Order issued on October 2, 1979, Petitioners Charlotte Squires, Alfess Harvey, Blanche Littleton, Lloyd Williford, Bobbie Green, and members of the Blue Ridge Community Action Nutrition Program, Lake James Site, were permitted to intervene in this docket as parties of record. On October 4, 1979, counsel for and on behalf of the Intervenors, Charlotte Squires, et al., filed a Motion whereby the Commission was requested to adopt an emergency service termination rule in accordance with the proposed emergency rule which was attached to said Motion.

The matter subsequently came on for hearing at the appointed time and place. All parties were present and represented by counsel. The Commission received testimony from the following members of the public with respect to the problems generally experienced during the winter heating season by the elderly, the handicapped, and individuals living on low or fixed incomes: Cora Harris, Blanche Lyons, Daisy Brown, and Linda Pennington. The following public witnesses also testified as representatives of certain

organizations: Joseph Reinckens, Raleigh Chapter of the American Association of Retired Persons; Edward Willis, Chairperson of the Round Table of Senior Citizens; Sam Reed, President of the Durham Chapter of the National Council of Senior Citizens; Kay Reibold, Supervisor of the Urban Center for Wake County Opportunities, Inc.; Bill Towe, Research and Information Supervisor for the North Carolina State Economic Opportunity Office; and William R. Brooks, Weatherization Coordinator for the North Carolina Division of Energy. The Intervenors, Charlotte Squires, et al., offered testimony by Dr. Raymond Wheeler, M.D., an expert witness in the area of internal medicine with a specialty in the health problems of low-income people, and W. Moulton Avery, founder and Executive Director of the Carolina Wilderness Institute. The Public Staff presented the testimony of J. Craig Stevens, Director of the Consumer Services Division of the Public Staff. Testimony was offered by the following individuals on behalf of certain of the Respondent utilities: William P. Fritsche, Jr., Assistant Controller for Virginia Electric and Power Company; David R. Nevil, Manager of Rate Development and Administration for Carolina Power & Light Company; and Lewis W. Deal, Manager of Business Office Administration for Duke Power Company.

The basic positions taken in this matter by the parties are wide-ranging. For instance, the Intervenors, Charlotte Squires, et al., have proposed the adoption of an emergency rule which would embody a complete moratorium on service terminations between November 1 and March 31, for any customer able to show an inability to pay for electric or natural gas service during such time period. The Intervenors further assert that the rule which they have proposed in this docket is consistent with the PURPA standards governing procedures for termination of electric and natural gas service. Public Staff proposals include adoption of the PURPA service termination standards and a revision of Commission Rule R12-10 so as to require actual customer contact and notice of termination (either by telephone or by visit to the customer's premises) by a utility prior to any disconnection of service. The Public Staff has also stated that while it has not recommended the establishment of a moratorium on terminations such as the one proposed herein by the Intervenors, it does not oppose such a proposal. The Attorney General has indicated support for and concurrence with the specific proposals made in this docket by the Public Staff. The electric and natural gas utilities have basically taken the unified position that the existing Commission rules and internal company policies and procedures are entirely adequate to protect customers from unwarranted service terminations, thereby forestalling any need for adoption of either the PURPA standards or for revision of Commission Rule R12-10.

Based upon all of the foregoing and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. That PURPA requires this Commission to consider whether to adopt the standard governing procedures for termination of electric service which is set forth in section 113(b)(4) of said Act. Such procedures are specifically described as follows in section 115(g) of PURPA:

> (g) PROCEDURES FOR TERMINATION OF ELECTRIC SERVICE. - The procedures for termination of service referred to in section 113(b)(4) are procedures prescribed by the State regulatory authority (with respect to electric utilities for which it has ratemaking authority) or by the nonregulated electric utility which provide that -
>
> (1) no electric service to an electric consumer may be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such consumer and such consumer has a reasonable opportunity to dispute the reasons for such termination, and
>
> (2) during any period when termination of service to an electric consumer would be especially dangerous to health as determined by the State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or nonregulated electric utility, and such consumer establishes that -
>
> (A) he is unable to pay for such service in accordance with the requirements of the utility's billing, or
>
> (B) he is able to pay for such service but only in installments,
>
> such service may not be terminated.
>
> Such procedures shall take into account the need to include reasonable provisions for elderly and handicapped consumers.

2. That pursuant to section 303 of PURPA, this Commission is also required to consider whether to adopt the standard governing procedures for termination of natural gas service which is set forth in section 303(b)(1) of PURPA. These procedures, which are specifically described in section 304(a) of PURPA, are identical to those set forth in Finding of Fact No. 1 above.

3. That no electric or natural gas service to an electric or natural gas customer should be terminated unless reasonable prior notice (including notice of rights and remedies) is given to such customer and such customer has a reasonable opportunity to dispute the reasons for such proposed termination.

4. That termination of service to an electric or natural gas customer could be especially dangerous to health during the period of time extending between November 1 and March 31, particularly to the elderly (individuals 65 years of age or older), the handicapped, and individuals residing in low-income or poverty-level households.

5. That procedures for termination of electric and natural gas service should take into account the need to include reasonable provisions for elderly and handicapped customers.

6. That an electric or natural gas utility should not terminate the service of a customer whose account is in arrears due to the nonpayment of a delinquent account without first offering that customer the opportunity to enter into a reasonable installment agreement designed to bring the customer's account into balance not later than six months from the date of any such agreement.

7. That between November 1 and March 31, service to an elderly or handicapped electric or natural gas customer should not be terminated as the result of a delinquent account without the express approval of this Commission if such customer is able to establish (a) that he is unable to pay for such service in full or in accordance with a reasonable installment plan and (b) that his household is certified as being eligible to receive assistance under either the Energy Crisis Assistance Program or other similar programs. This policy of limited service terminations should be established on an experimental basis.

8. That adoption of the standards governing procedures for termination of electric and natural gas service as set forth in sections 113(b)(4) and 303(b)(1) of PURPA (and more fully described in sections 115(g) and 304(a) of said Act) would be appropriate and consistent with the applicable laws of the State of North Carolina.

Whereupon, the Commission reaches the following

CONCLUSIONS

Pursuant to the statutorily mandated obligations imposed by the Public Utility Regulatory Policies Act of 1978, this Commission has undertaken an active consideration of the PURPA standards which govern procedures for termination of electric and natural gas service. A daylong public hearing was held in this matter by the Commission on October 9, 1979. During that proceeding, the Commission was particularly impressed by the sincerity which was obviously inherent in all of the testimony presented by the parties. The Commission certainly believes that the regulated electric and natural gas utilities in North Carolina have historically endeavored to work with their customers in an attempt to minimize the number of service terminations resulting from nonpayment of delinquent accounts, particularly when termination might involve a potential danger to health. Nevertheless, a careful consideration of the entire record in this case leads the Commission to conclude that it should expeditiously proceed to revise its present Rule R12-10 concerning disconnection of residential electric and natural gas service in accordance with Exhibits A and B which are attached hereto and made a part hereof.

These revised service termination procedures are, in the opinion of the Commission, in complete conformity with the PURPA standards governing procedures for termination of electric and natural gas service. Furthermore, these revised procedures are felt to be appropriately responsive to the concerns which were forcefully expressed at the hearing by all of the witnesses who were either presented or assisted by counsel for the Public Staff and the Intervenors. Such procedures expressly ensure that all regulated electric and natural gas utilities in North Carolina must provide their customers with due process prior to taking any final action designed to terminate service for nonpayment of a delinquent account. The due process requirement embodied in the revised rules hereby adopted by the Commission includes both reasonable prior written notice of any proposed termination of service (at least 10 days' notice thereof) and also a reasonable opportunity to dispute the reasons which may underlie such termination.

Futhermore, the revised rules as set forth in Exhibits A and B provide that the notice of any proposed termination must, at an minimum, contain the following information:

(1) A clear explanation of the reasons which underlie the proposed termination.

(2) The date of the proposed termination.

(3) A statement advising the customer that electric or natural gas service will not be terminated if, prior to the proposed termination date, the customer agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement.

(4) Statements advising the customer that he should first contact the local utility office with any questions he may have regarding his bill and that in cases of dispute, a proposed termination action may thereafter be appealed informally to the Commission by contacting the Consumer Services Division of the Public Staff.

(5) A statement advising the customer that he may desire to call his local social service agency to determine what federal, state, or private assistance may be available.

In addition, between November 1 and March 31, the revised rules provide (on an experimental basis) for the establishment of a limited termination policy on electric and natural gas disconnections in those instances where the customer is able to establish (a) that a member of his household is either elderly or handicapped, or both; (b) that he is unable to pay for such service in full or in accordance with a reasonable installment agreement; and (c) that his household is certified as being eligible to receive assistance under the Energy Crisis Assistance Program or other similar programs. This policy of limited

service terminations during the winter heating season will, in the opinion of the Commission, afford health protection to those citizens of North Carolina who are most in need of protection and help during the coldest and most dangerous part of the year; i.e., those elderly and handicapped individuals who reside in low-income or poverty-level households.

The revised rules also offer other forms of protection to electric and natural gas customers whose service may be subject to termination. For instance, a utility must now attempt, in good faith, to personally contact a customer and any designated third party representative, either by telephone or by visit to the customer's premises, at least 24 hours prior to any actual termination of service. The purpose of this contact will be to attempt to personally inform the customer and his designated representative that termination of service is imminent, and to fully explain all alternatives to termination which may be available to the customer under the revised rules of the Commission. In addition, the revised rules also continue the requirement that immediately prior to any actual termination of service, the utility's representative must attempt to make personal contact with the customer on the premises so that the customer may then have an opportunity, if possible, to prevent such termination. If personal contact cannot then be made by the utility's representative, a notice must be left in a conspicuous place indicating that service has in fact been terminated. This notice must also specify that the customer may have immediate recourse to the utility's local office in order to arrange for reconnection of service.

The Commission's revised rules governing service termination procedures also require each regulated electric and natural gas utility in this State to institute a third party notice program which would be similar to the program now being offered by Virginia Electric and Power Company (Vepco) in North Carolina. Such program is designed to offer electric and natural gas customers the opportunity to designate a third party to receive a copy of any proposed termination notice which may be mailed to the customer. The Commission strongly believes that this program will be effective in affording additional protection to those customers who choose to use it, hopefully individuals such as those elderly or handicapped persons who might be unable to act effectively to prevent termination of service even after receiving proper notice thereof.

Other significant features of the revised rules also provide for an informal appeals procedure whereby a customer whose electric or natural gas service is subject to termination may, if unable to satisfactorily resolve his dispute with the utility, file an informal appeal with the Commission by contacting the Consumer Services Division of the Public Staff. The revised rules further provide that residential electric and gas service may not be terminated

after 4:00 p.m. on Fridays or on weekends and holidays, a policy which is presently being followed by Duke Power Company and other electric and natural gas utilities in North Carolina. Each electric and gas utility in this State is also required, pursuant to the revised rules, to establish an internal procedure whereby such utility will endeavor to identify by a special code the account of any customer whose household is known to have an individual residing therein who is either chronically or seriously ill, handicapped, or on a life support system. This procedure will enable the utility to identify that account for careful handling should service to such account become subject to termination as a result of nonpayment of a delinquent bill.

It should also be emphasized that the revised rules adopted by the Commission encourage each electric and natural gas utility to exercise reasonable discretion in waiving or extending the times provided in such rules, particularly when such waiver or extension would result in the prevention of undue hardship in those instances where termination of service could be especially dangerous to health or where the customer or a member of the customer's household is elderly or handicapped.

Accordingly, a careful consideration of the entire record in this proceeding leads the Commission to conclude that the revised service termination procedures set forth in the rules attached hereto as Exhibits A and B are clearly responsive to the critical problems presently being faced by all electric and natural gas customers in this State. Furthermore, the Commission strongly believes that such revised termination procedures will afford particular protection to the elderly and handicapped individuals who reside in low-income households, especially during the winter heating season when such individuals may be in dire need of special consideration. Nevertheless, the Commission does not believe that there presently exists in this State a potential for serious service termination problems and abuses which would warrant adoption of a total moratorium on electric and natural gas service terminations between November 1 and March 31, as urged by the Intervenors. Rather, the Commission is of the opinion that the regulated electric and natural gas utilities in North Carolina have historically endeavored to work with their customers in a good faith attempt to minimize the number of service terminations resulting from nonpayment of delinquent accounts, particularly when termination might involve a potential danger to health. Therefore, the Commission has concluded that it will not adopt the emergency rule proposed in this docket by the Intervenors. Such total moratorium approach is simply not thought to be warranted under the instant factual circumstances, considering the extensive nature of the revised termination procedures now being formally adopted by the Commission and also the potential for abuse which a total moratorium on service terminations might perhaps foster.

The Commission further notes that it has a deep commitment to all of the ratepayers of North Carolina to ensure that their rates are kept as low as possible while, at the same time, ensuring that such ratepayers receive adequate, efficient, and reasonable electric and natural gas service. For all of the reasons stated above, the Commission feels compelled to adopt the revised procedures for termination of electric and natural gas service discussed herein rather than the total moratorium approach urged by the Intervenors. Furthermore, the Commission is of the opinion, and certainly believes, that the revised rules governing service termination procedures attached hereto as Exhibits A and B satisfy the requirements, the spirit, and the intent of PURPA, while also establishing equitable termination procedures on behalf of all electric and natural gas customers residing in North Carolina.

In addition, the Commission will request the Public Staff to carefully monitor the effectiveness of the revised rules set forth in Exhibits A and B. The basic purpose of such monitoring process will be to ensure, as far as possible, that the benefits which are anticipated to result from the operation of such revised service termination procedures will actually be realized by the customers affected thereby. Furthermore, such monitoring process will also serve to ensure that the revised termination procedures do not result in either customer abuse or economic subsidization by other electric and natural gas utility customers.

IT IS, THEREFORE, ORDERED as follows:

1. That, with respect to all regulated natural gas utilities in North Carolina, Commission Rule R12-10 entitled "Disconnection of Residential Customer's Natural Gas Service" is hereby revised as set forth in Exhibit A attached to this Order and made a part hereof.

2. That, with respect to all regulated electric utilities in North Carolina, Commission Rule R12-10 as it formerly pertained to disconnection of residential customer's electric service is hereby revised and renumbered as Rule R12-11 in conformity with Exhibit B attached hereto and made a part hereof.

3. That Commission Rules R12-10 and R12-11, as hereby revised and adopted, shall become effective December 1, 1979.

4. That a policy of limited terminations of electric and natural gas service between November 1 and March 31, for elderly and/or handicapped individuals residing in low-income households (as set forth in the revised rules attached hereto as Exhibits A and B) shall be implemented on an experimental basis subject to further modification by the Commission.

5. That each electric and natural gas utility subject to this Order shall, within 20 days from the date of this Order, file a statement with the Commission indicating the steps which have been taken by such utility to comply with the revised procedures for termination of service set forth in Rules R12-10 and R12-11 attached hereto as Exhibits A and B, respectively.

6. That each electric and natural gas utility subject to this Order shall henceforth file monthly reports with the Commission indicating (a) the number of service disconnections made by the utility during such month for all customer classes as a result of the nonpayment of a delinquent account and (b) the number of customers who utilized the provisions of the revised rules during such month to prevent disconnection of utility service. These monthly reports shall be filed with the Commission not later than the 20th day of each month, documenting therein the information listed above for the preceding calendar month. Such reports shall be monitored by the Public Staff in order to ensure the effective operation of the revised service termination rules attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

EXHIBIT A

Rule R12-10. Disconnection of residential customer's natural gas service. - (a) The date after which the bill is due, or the past due after date, shall be disclosed in the bill and shall not be less than twenty-five (25) days after the billing date. Payment within this twenty-five day period will either maintain or count toward establishment of the customer's credit with the utility.

(b) For purposes of this rule, payment shall be defined as delivery of the amount due to a company business office during regular business hours by 5:00 p.m. on the twenty-fifth (25th) day, unless such day is a Saturday, Sunday, or legal holiday in which event the last day for payment runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Those natural gas customers from whom deposits are required under the provisions of Commission Rules R12-2 or R12-3 and who receive their largest bills seasonally (such as customers who use natural gas for heating) may be considered seasonal customers in determining the amount of deposit under Rule R12-4. The deposits collectible from such customers shall not exceed one-third of the estimated charge for service for the season involved. For purposes of this provision the heating season shall be the calendar months October through March.

(d) Each gas utility shall file tariffs with the Commission to impose charges not to exceed five dollars ($5.00) for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

(e) Each gas utility, through its meter reader or local office, is authorized to collect payment by cash or check for bills past due and in arrears, and for current bills once the meter reader has left the local office with a list of customers whose service is to be disconnected, unless the day on which the meter reader has left the local office with such list is prior to the third day preceding the past due date of the current bill of any customer whose service is to be disconnected, in which case the utility is authorized only to collect payment for bills past due and in arrears.

"Current bill" is defined as a bill rendered but not past due. "Bill in arrears" is defined as a bill rendered and past due.

(f) Each gas utility operating under the jurisdiction of the North Carolina Utilities Commission shall revise its billing procedures to conform to the following schedule with respect to all customers.

Approximate Calendar Date	Standard Procedure
1	Service Begins.
30	Meter Read.
35	Bill Mailed.
60	Meter read for second month's service.
65	Bill marked showing charge for second month's service and arrears separately; if arrears is shown on bill, notice enclosed in conformity with subsection (h) of this rule also stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT BUSINESS OFFICE IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENTS IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."
75	Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
76	Field representative visits home to collect arrears or terminate service. Customer has immediate recourse to local office for reconnect action.

(g) No disconnects will be made prior to their being personally reviewed and ordered by a supervisor.

(h) Gas service to a residential customer shall not be terminated for nonpayment of a delinquent account until the utility has given such customer at least 10 days' written notice that his service is subject to termination. This notice of proposed termination shall, at a minimum, contain the following information:

(1) A clear explanation of the reasons which underlie the proposed termination.

(2) The date of the proposed termination, which shall not be less than 10 days from the date of issuance of such notice.

(3) A statement advising the customer that gas service will not be terminated if, prior to the proposed termination date, the customer agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for gas usage which is reasonably projected to occur during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage.

(4) Statements advising the customer that he should first contact the local utility office with any questions he may have regarding his bill and that in cases of dispute, a proposed termination action may thereafter be appealed informally to the Commission either by calling the Consumer Services Division of the Public Staff - North Carolina Utilities Commission at (919) 733-4271 or by appearing in person or by writing the Consumer Services Division, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602.

(5) A statement advising the customer that he may desire to call his local social service agency to determine what federal, state, or private assistance may be available.

(6) With respect to bills rendered between November 1 and March 31 of every year and in conformity with the policy considerations expressed by Congress in the Public Utility Regulatory Policies Act (PURPA) of 1978, the notice of proposed termination shall also contain a statement that no termination shall take place without the express approval of the

Commission if the customer can establish all of the following:

(a) That a member of the customer's household is either certifiably handicapped or elderly (65 years of age or older), or both.
(b) That the customer is unable to pay for such service in full or in accordance with subsection (h)(3) of this rule.
(c) That the household is certified by the local social service office which administers the Energy Crisis Assistance Program or other similar programs as being eligible (whether funds are then available or not) to receive assistance under such programs.

(i) Personal Contact Prior to Termination.

(1) At least 24 hours prior to a proposed service termination, the utility shall, in good faith, attempt to contact a customer to whom a written disconnect notice has been mailed (as well as any third party who may have been designated by the customer to receive notice pursuant to subsection (j) of this rule), either by telephone or by visit to the customer's premises. The purpose of this personal contact shall be to attempt to personally inform the customer and his designated representative that termination of service is imminent, and to fully explain all alternatives to termination which may be available to the customer under this rule.

(2) Immediately prior to the actual termination of service, the utility's representative shall attempt to personally contact the customer on the premises. At that time, the utility's representative shall either receive payment from the customer, make satisfactory credit arrangements, agree to postpone termination during the period November 1 to March 31 if the customer qualifies for postponement under subsection (h)(6) of this rule, or, in the absence of any of the arrangements or circumstances listed above, terminate service. If personal contact cannot be made by the utility, a notice indicating that service has been terminated shall be left in a conspicuous place at the residence where such service was terminated. Such notice shall specify that the customer may have immediate recourse to the utility's local office in order to arrange for reconnection of service.

(3) The utility shall fully document its efforts under this subsection to personally contact the customer and any designated third party representative.

(j) Each gas utility shall offer its residential customers the opportunity to designate a third party to receive a copy of any proposed termination notice which may be mailed to the customer. Each residential customer shall be given notification of this option at the time service is initiated and at least once annually thereafter. Notice of the availability of this option shall be given in writing, either by mailing a copy of such notice as a bill insert or by means of a separate mailing, to all residential customers. Such notice shall clearly indicate that this duplicate notification process will not obligate the third party to pay the customer's bill.

(k) Informal Appeal of Termination Action.

(1) Any residential customer may informally appeal the decision of a utility to terminate service by notifying the Consumer Services Division of the Public Staff - North Carolina Utilities Commission. Such notification may be made by the customer either in person, in writing, or by telephone.

(2) Upon receipt of any such appeal, the Consumer Services Division of the Public Staff shall immediately notify the utility that such an informal appeal has been filed. If service has not been terminated as of the time an appeal is filed, the utility shall not terminate the customer's service without securing express approval from the Commission or its designated representative. If service has already been terminated by the time the customer files his appeal with the Public Staff, the Commission may order the utility to restore service upon such terms as are deemed just and reasonable pending resolution of the appeal.

(3) If the matter cannot be resolved informally, the customer shall then have the right to file a formal complaint with the Commission pursuant to Rule R1-9 and to request a hearing thereon.

(l) Residential gas service shall not be terminated after 4:00 p.m. on Fridays or on weekends and holidays. If a disconnection occurs, the customer shall have immediate recourse to the utility's local office regardless of the time of day.

(m) Each gas utility shall establish an internal procedure whereby the utility will endeavor to identify by a special code a customer whose household is known to have an

individual residing therein who is either chronically or seriously ill, handicapped, or on a life support system. The purpose of assigning such code shall be to identify that account for careful handling whenever service to such account becomes subject to termination as a result of nonpayment of a delinquent bill.

(n) Nothing in this rule shall preclude a natural gas utility from exercising reasonable discretion in waiving or extending the times provided herein pertaining to termination of service, particularly when such waiver or extension would result in the prevention of undue hardship in those cases where termination of service would be especially dangerous to health or where the customer or a member of the customer's household is elderly or handicapped.

EXHIBIT B

Rule R12-11. Disconnection of residential customer's electric service. - (a) The date after which the bill is due, or the past due after date, shall be disclosed on the bill and shall not be less than twenty-five (25) days after the billing date. Payment within this twenty-five day period will either maintain or count toward improvement of the customer's credit code classification. Payment of a bill after the specified due date could result in the lowering of a customer's credit code relating to one which permits the utility to disconnect on an earlier date.

(b) For purposes of this rule, payment shall be defined as delivery of the amount due to a company business office during regular business hours by 5:00 p.m. on the twenty-fifth (25th) day, unless such day is a Saturday, Sunday, or legal holiday in which event the last day for payment runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Those electric customers from whom deposits are required under the provisions of Commission Rules R12-2 or R12-3 and who receive their largest bills seasonally (such as customers who use electricity for heating) may be considered seasonal customers in determining the amount of deposit under Rule R12-4. The deposits collectible from such customers shall not exceed one-half (1/2) of the estimated charge for service for the season involved. For purposes of this provision the heating season shall be the calendar months October through March.

(d) Each electric utility shall file tariffs with the Commission to impose charges not to exceed five dollars ($5.00) for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

(e) Each electric utility, through its meter reader or local office, is authorized to collect payment by cash or

check for bills past due and in arrears, and for current bills once the meter reader has left the local office with a list of customers whose service is to be disconnected, unless the day on which the meter reader has left the local office with such list is prior to the third day preceding the past due date of the current bill of any customer whose service is to be disconnected, in which case the utility is authorized only to collect payment for bills past due and in arrears.

"Current bill" is defined as a bill rendered but not past due. "Bill in arrears" is defined as a bill rendered and past due.

(f) Each electric utility operating under the jurisdiction of the North Carolina Utilities Commission shall immediately revise, where necessary, its billing procedures to conform to the following schedules:

A. Customers with "credit good"

Approximate Calendar Date	Standard Procedure
1	Meter Read.
5	Bill Mailed.
31	Meter Read.
35	Second bill mailed, showing 1-month prior account balance and current bill.
61	Meter Read.
65	Third bill mailed with a reminder notice.
79	Disconnect notices prepared in conformity with subsection (1) of this rule are reviewed in local offices before mailing to customers. Seven days allowed to make credit arrangements.
89	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
91	Meter read and the field representative makes the effort to notify the customer, receive payment, make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the local office for reconnect action.

B. Customers with credit "not good" will have delinquency started on the 35th rather than the 65th day. The billing schedule will then be approximately as follows:

Approximate Calendar Date	Standard Procedure
1	Meter Read.
5	Bill Mailed.
31	Meter Read.
35	Second bill mailed, showing 1-month prior account balance, current bill, and with a reminder notice.
49	Disconnect notices prepared in conformity with subsection (1) of this rule are reviewed in local offices before mailing to customers. Seven days allowed to make credit arrangements.
59	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
61	Meter read and the field representative makes the effort to notify the customers, receive payment, make satisfactory credit arrangements, agree to defer action because of death or illness or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the local office for reconnect action.

(g) The delinquency procedures for these customers will be as described above. This procedure ensures that no disconnect proceeding will be instituted prior to issuance of a second month's bill.

(h) No disconnects will be made prior to their being personally reviewed and ordered by a supervisor.

(i) The disconnect notice to the customer will state that the local office can be contacted within a 7-day period to discuss credit arrangements if payment of the bill is not possible.

(j) Each electric utility shall submit its system of residential customer credit code classification to the Commission for approval. With regard further to the classifications "credit good" and "credit not good," no customer shall be classified at a level below "credit not good."

(k) Following approval by the Commission, each electric utility using a system of credit codes to classify its customers shall advise each customer of the method by which the code operates, the customer's present classification in the credit code, and at any time when a customer's classification changes.

(1) Electric service to a residential customer shall not be terminated for nonpayment of a delinquent account until the utility has given such customer at least 10 days' written notice that his service is subject to termination. This notice of proposed termination shall, at a minimum, contain the following information:

(1) A clear explanation of the reasons which underlie the proposed termination.

(2) The date of the proposed termination, which shall not be less than 10 days from the date of issuance of such notice.

(3) A statement advising the customer that electric service will not be terminated if, prior to the proposed termination date, the customer agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for electric usage which is reasonably projected to occur during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage.

(4) Statements advising the customer that he should first contact the local utility office with any questions he may have regarding his bill and that in cases of dispute, a proposed termination action may thereafter be appealed informally to the Commission either by calling the Consumer Services Division of the Public Staff - North Carolina Utilities Commission at (919) 733-4271 or by appearing in person or by writing the Consumer Services Division, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602.

(5) A statement advising the customer that he may desire to call his local social service agency to determine what federal, state, or private assistance may be available.

(6) With respect to bills rendered between November 1 and March 31 of every year and in conformity with the policy considerations expressed by Congress in the Public Utility Regulatory Policies Act (PURPA) of 1978, the notice of proposed termination shall also contain a statement that no termination shall take place without the express approval of the

Commission if the customer can establish all of the following:

(a) That a member of the customer's household is either handicapped or elderly (65 years of age or older), or both.
(b) That the customer is unable to pay for such service in full or in accordance with subsection (l)(3) of this rule.
(c) That the household is certified by the local social service office which administers the Energy Crisis Assistance Program or other similar programs as being eligible (whether funds are then available or not) to receive assistance under such programs.

(m) Personal Contact Prior to Termination.

(1) At least 24 hours prior to a proposed service termination, the utility shall, in good faith, attempt to contact a customer to whom a written disconnect notice has been mailed (as well as any third party who may have been designated by the customer to receive notice pursuant to subsection (n) of this rule), either by telephone or by visit to the customer's premises. The purpose of this personal contact shall be to attempt to personally inform the customer and his designated representative that termination of service is imminent, and to fully explain all alternatives to termination which may be available to the customer under this rule.

(2) Immediately prior to the actual termination of service, the utility's representative shall attempt to personally contact the customer on the premises. At that time, the utility's representative shall either receive payment from the customer, make satisfactory credit arrangements, agree to postpone termination during the period November 1 to March 31, if the customer qualifies for postponement under subsection (l)(6) of this rule, or, in the absence of any of the arrangements or circumstances listed above, terminate service. If personal contact cannot be made by the utility, a notice indicating that service has been terminated shall be left in a conspicuous place at the residence where such service was terminated. Such notice shall specify that the customer may have immediate recourse to the utility's local office in order to arrange for reconnection of service.

(3) The utility shall fully document its efforts under this subsection to personally contact the customer and any designated third party representative.

(n) Each electric utility shall offer its residential customers the opportunity to designate a third party to receive a copy of any proposed termination notice which may be mailed to the customer. Each residential customer shall be given notification of this option at the time service is initiated and at least once annually thereafter. Notice of the availability of this option shall be given in writing, either by mailing a copy of such notice as a bill insert or by means of a separate mailing, to all residential customers. Such notice shall clearly indicate that this duplicate notification process will not obligate the third party to pay the customer's bill.

(o) Informal Appeal of Termination Action.

(1) Any residential customer may informally appeal the decision of a utility to terminate service by notifying the Consumer Services Division of the Public Staff - North Carolina Utilities Commission. Such notification may be made by the customer either in person, in writing, or by telephone.

(2) Upon receipt of any such appeal, the Consumer Services Division of the Public Staff shall immediately notify the utility that such an informal appeal has been filed. If service has not been terminated as of the time an appeal is filed, the utility shall not terminate the customer's service without securing express approval from the Commission or its designated representative. If service has already been terminated by the time the customer files his appeal with the Public Staff, the Commission may order the utility to restore service upon such terms as are deemed just and reasonable pending resolution of the appeal.

(3) If the matter cannot be resolved informally, the customer shall then have the right to file a formal complaint with the Commission pursuant to Rule R1-9 and to request a hearing thereon.

(p) Residential electric service shall not be terminated after 4:00 p.m. on Fridays or on weekends and holidays. If a disconnection occurs, the customer shall have immediate recourse to the utility's local office regardless of the time of day.

(q) Each electric utility shall establish an internal procedure whereby the utility will endeavor to identify by a special code a customer whose household is known to have an

individual residing therein who is either chronically or seriously ill, handicapped, or on a life support system. The purpose of assigning such code shall be to identify that account for careful handling whenever service to such account becomes subject to termination as a result of nonpayment of a delinquent bill.

(r) Nothing in this rule shall preclude an electric utility from exercising reasonable discretion in waiving or extending the times provided herein pertaining to termination of service, particularly when such waiver or extension would result in the prevention of undue hardship in those cases where termination of service would be especially dangerous to health or where the customer or a member of the customer's household is elderly or handicapped.

DOCKET NO. M-100, SUB 28
DOCKET NO. M-100, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Natural Gas and Electric Utility Seasonal Customer Deposit Requirements and Termination Procedures	) ORDER OF) CLARIFICATION)

BY THE COMMISSION: On November 14, 1979, the Commission issued an Order in this docket entitled "Order Revising Service Termination Rules for Residential Electric and Natural Gas Customers." The Commission is of the opinion that Rules R12-10(h)(3) and R12-11(1)(3) should now be amended for purposes of clarification to explicitly state that a customer whose utility service becomes subject to termination due to nonpayment of a delinquent account shall have the opportunity to enter into a reasonable installment agreement as provided in said rules, but only if the customer is able to establish that he is then unable to pay his account in full. In addition, the Commission is of the further opinion that Rules R12-10(f) and R12-11(f) should also be amended for purposes of clarification by replacing the words "Approximate Calendar Date" as they appear in said rules with the words "Approximate Billing Cycle Day."

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R12-10(h)(3) be, and the same is hereby, amended to read as follows:

"(3) A statement advising the customer that gas service will not be terminated if, prior to the proposed termination date, the customer is able to establish that he is unable to pay his account in full and he agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from

the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for gas usage which is reasonably projected to occur during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage."

2. That Rule R12-11(1)(3) be, and the same is hereby, amended to read as follows:

"(3) A statement advising the customer that electric service will not be terminated if, prior to the proposed termination date, the customer is able to establish that he is unable to pay his account in full and he agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for electric usage which is reasonably projected to occur during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage."

3. That Rules R12-10(f) and R12-11(f) be, and the same are hereby, further amended by replacing the words "Approximate Calendar Date" as they appear in said rules with the words "Approximate Billing Cycle Day."

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. M-100, SUB 28
DOCKET NO. M-100, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Natural Gas Utility Seasonal) ORDER CLARIFYING
Customer Deposit Requirements) RULE R12-4

BY THE COMMISSION: On September 7, 1978, the Commission issued an Order in these dockets whereby it modified Commission Rule R12-4 with regard to natural gas customer deposit requirements. The Commission did not then intend to otherwise modify Rule R12-4 as it pertains to all other public utilities operating in this State. However, in reviewing the actual format of Rule R12-4 as modified by the above-referenced Commission Order, the Commission has

concluded that clarification of the form of such rule is necessary and desirable to prevent any possible confusion as to the actual content and scope thereof.

IT IS, THEREFORE, ORDERED that Rule R12-4 be, and the same is hereby, modified for purposes of clarification to read as follows:

"Rule R12-4. Deposit; amount; receipt; interest.- (a) No utility shall require a cash deposit to establish or reestablish service in an amount in excess of two-twelfths of the estimated charge for the service for the ensuing twelve months; and, in the case of seasonal service, in an amount in excess of one-half of the estimated charge for the service for the season involved (except that in the case of seasonal natural gas customers, the cash deposit may not be in an amount in excess of one-third of the estimated charge for the service for the season involved). Each utility, upon request, shall furnish a copy of these Rules to the applicant for service or customer from whom a deposit is required, and such copy shall contain the name, address, and telephone number of the Commission.

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

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

(d) Nothing in this rule shall preclude a natural gas utility from exercising reasonable discretion in waiving or extending the deposit requirement to prevent undue hardship to an applicant or customer."

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of December, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. M-100, SUB 78

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Cost-Based Rates, Load Management, and Conservation Oriented End-Use Activities	)	ORDER REQUIRING IMPLEMENTATION OF LOAD MANAGEMENT ACTIVITIES AND PREPARATION FOR FUTURE IMPLEMENTATION OF A COMPREHENSIVE RESIDENTIAL ENERGY CONSERVATION SERVICES PROGRAM

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on July 25-26, 1978, and September 6-7, 1978

BEFORE: Chairman Robert K. Koger, Presiding; Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Respondents:

John T. Bode, Bode, Bode, Call & Bruckel, Attorneys at Law, P.O. Box 391, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

W. Edward Poe, Jr., Duke Power Company, P.O. Box 2178, Charlotte, North Carolina 28242
For: Duke Power Company

Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212
For: Virginia Electric and Power Company

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27402
For: Piedmont Natural Gas Company

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, Box 2129, Fayetteville, North Carolina 28302
For: North Carolina Natural Gas Corporation

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, Box 1406, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

For the Intervenors:

David H. Permar, Hatch, Little & Bunn, Attorneys at Law, P.O. Box 527, Raleigh, North Carolina 27602
For: North Carolina Oil Jobbers Association

Mark E. Sullivan, Huggard & Sullivan, Attorneys at Law, P.O. Box 1501, Raleigh, North Carolina 27609
For: League of Women Voters of North Carolina, Joseph LeConte Chapter of the Sierra Club, Conservation Council of North Carolina, and Carolina Environmental Study Group

J. Ward Purrington, General Counsel, Control General Corporation, 1606 Medfield Road, Raleigh, North Carolina 27607
For: Control General Corporation

John N. Fountain & Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Air Products and Chemicals, Inc.

Henry Burgwyn, Frank Crawley, and Dennis P. Myers, Attorney General's Office, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Public Staff:

Paul L. Lassiter and Jerry B. Pruitt, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: The General Statutes of North Carolina (G.S. 62-2) declare that it is the policy of the State of North Carolina "to promote adequate, economical and efficient utility service to all of the citizens and residents of the State." Under Article 3 of Chapter 62, the Utilities Commission is vested with authority to regulate public utilities in a manner consistent with that policy. The present state of the economy, the energy supply problems, and the rising price of energy make this endeavor increasingly important.

The three specific problems presently confronting the Commission in this area of regulation are: (1) the need to conserve scarce resources; (2) equity among rate classes in the structure of gas and electric utility rates; and (3) economy of operation of the electric and gas utilities providing service in North Carolina.

In 1975 the General Assembly enacted G.S. 62-155 which reinforced the Commission's responsibility to investigate methods to conserve energy through the more efficient utilization of all resources. In accordance with this directive, the Commission entered into a cooperative agreement with the Department of Energy (DOE) on September 21, 1977, to conduct pilot demonstration projects on actual implementation of comprehensive utility conservation service programs, cost-based natural gas rates, and utility load management programs. Since the signing of the cooperative agreement, work has progressed with the Commission, the Public Staff, the Research Triangle Institute (RTI), ICF, Incorporated, Duke Power Company (Duke), North Carolina Natural Gas Corporation (N.C.N.G.), Public Service Company of North Carolina, Inc. (Public Service), and Piedmont Natural Gas Company, Inc. (Piedmont), participating.

On June 6, 1978, the Commission issued an Order setting two separate hearings to be held in this docket. The first hearing was scheduled to begin on Tuesday, July 25, 1978, to deal with electric utility load management programs. The second hearing was scheduled to begin on Wednesday, September 6, 1978, to deal with comprehensive conservation programs for natural gas and electric utilities. Duke Power Company, Carolina Power & Light Company (CP&L), Virginia Electric and Power Company (Vepco), North Carolina Natural Gas Corporation, Public Service Company of North Carolina, Inc., and Piedmont Natural Gas Company, Inc., were made parties and respondents in the proceeding by the Order.

The Commission received Notices of Intervention from the Public Staff and from the Attorney General of North Carolina. The Interventions of the Public Staff and the Attorney General were recognized pursuant to Commission Rule R1-19(e).

The Commission also received Petitions of Intervention from the following parties: North Carolina Oil Jobbers Association, League of Women Voters of North Carolina, Joseph LeConte Chapter of the Sierra Club, Conservation Council of North Carolina, Carolina Environmental Study Group, Control General Corporation, and Air Products and Chemicals, Inc. The Commission allowed these Interventions by appropriate Orders.

The first hearing was held as scheduled beginning on July 25, 1978. The Public Staff presented the testimony and exhibits of the following witnesses: Taylor H. Bingham, an economist with the Research Triangle Institute; Dr. Robert M. Spann, a principal of ICF, Incorporated; and Bruce R. Oliver, Senior Associate of ICF, Incorporated. The testimony of these three witnesses dealt with the potential for load management through utility control of electric hot water heaters and through interruptible service for large commercial customers. Their conclusions were that the utility load factor could be improved by 1.2 percentage

points and electricity prices could be 1.4% to 3.42% lower than would otherwise be the case.

Two public witnesses testified at the hearing. The first was Thomas Watson, who appeared on behalf of the Cain Encoder Company. He testified that his company has developed a simple, economical, and accurate device for reading meters and helping with load management programs. The second public witness was Joseph Reinckens.

Carolina Power & Light Company offered the testimony of Norris L. Edge, Assistant Manager of Rates and Service Practices of CP&L, who stated that CP&L is currently in the process of investigating the potential for interruptible service. He also testified that CP&L currently has a 225-customer experiment whereby the company controls the customer's water heating and air conditioning load. Mr. Edge concluded by saying that CP&L favors the implementation of any reasonable load management plan that would be in the best interest of its customers.

Duke Power Company presented the testimony of Donald H. Denton, Jr., Vice President-Marketing of Duke Power Company. Mr. Denton testified to the load management programs that Duke has in progress, including an investigation of programs for residential water heating, air conditioning, and heating systems.

Virginia Electric and Power Company presented the testimony of Robert S. Gay, Executive Manager-Rates and Regulations, and Edmond P. Wickham, Jr., Director of Load Management Applications of Virginia Electric and Power Company. Mr. Gay testified that Vepco has been exploring possible load management programs including time-of-day rates. He further stated that Vepco is presently negotiating a potential interruptible rate with a customer with an 80,000 Kw load. Mr. Wickham testified further concerning Vepco's time-of-day experiment and Vepco's offer of a time control water heater rate schedule on a voluntary basis.

W. Lester Teal, Jr., President of Control General Corporation, testified that his company is involved in the development, manufacture, and sale of load management equipment in the North Carolina territory served by CP&L, Duke, and Vepco. He testified that Control General Corporation and its competitors will respond to the utilities and their customers in developing equipment to properly control the use of energy.

Air Products and Chemicals, Inc., presented the testimony of Edmund Perreault, who spoke in behalf of interruptible rates for industrial customers. He stated that offering interruptible rates would be beneficial to certain industrial customers and to the utility as a means of increasing load factor.

The League of Women Voters of North Carolina, the Joseph LeConte Chapter of the Sierra Club, the Conservation Council of North Carolina, and the North Carolina Environmental Study Group presented Dr. G. George Reeves, Jesse L. Riley, Christopher D. Turner, and Betty Doak as a panel. Dr. Reeves discussed his experience using a cool storage air conditioner and its theoretical advantages in reducing system peak. Mr. Riley stated that the government should consider placing mandatory standards on the amount of energy and peak demand an individual or a business may consume. Mr. Turner testified that the Commission should give more consideration to using the media to inform the public of the electric load situation so each customer could take appropriate action to lower demand. Ms. Doak stated that the League of Women Voters favors the beneficial use of load management techniques and feels that solar energy is commercially feasible.

After having received the above recited testimony, the first hearing was closed. Parties were given notice that phase two of the proceedings would be held beginning on September 6, 1978.

The hearing on phase two of this proceeding began on September 6, 1978, as scheduled. The Public Staff presented the testimony and exhibits of the following witnesses: Dr. Colin Blaydon, a principal of ICF, Incorporated, and professor at Duke University; Taylor H. Bingham, an economist with the Research Triangle Institute; Steve Seeber, an Associate with ICF, Incorporated; and Linda Daniels, an Associate with ICF, Incorporated. These witnesses testified concerning the preparation and results of the Public Staff's report in this docket. They stated that the State of North Carolina could benefit greatly from a residential energy conservation program. It was estimated that if every homeowner took proper conservation measures the average annual residential gas consumption could be reduced by as much as 47.4% and residential electric heating consumption could be reduced by 17%. The Public Staff's report recommended: (1) the use of energy audits of residences to determine effective energy-saving devices or actions by the homeowner; (2) program standards; (3) standards for materials used in home construction and retrofit work; (4) a way to identify contractors qualified to perform work; and (5) ways to provide homeowners with financing for conservation related expenditures and improvements.

The Public Staff also offered four additional witnesses as follows: Gordon H. Gill, Energy Conservation Specialist with the Conservation Division of the California Energy Resources Conservation and Development Commission; Joseph E. Rizzuto, Principal Energy Efficiency Analyst of the New York State Department of Public Service; Shirley Anderson, New York State Public Service Commission; and Cynthia Oliphant, Kentucky Public Service Commission. These witnesses

testified concerning conservation programs in their respective states.

Brian M. Flattery, Director of the North Carolina Energy Division, reviewed the actions of the Energy Division to date. He described the Class B energy audits performed by the Energy Division as well as other conservation programs. He also briefly mentioned actions in other states towards energy conservation.

Four public witnesses testified at the second hearing. William M. Bussiere stated that the need for residential conservation is great but that potentials for conservation in the industrial and commercial sectors should be further explored. Brad Stuart, a member of the North Carolina Alternate Energy Task Force, testified that the Commission should explore the encouragement of industrial co-generation facilities and should closely scrutinize the present use of declining block rates for industrial customers. Fred L. Stephens testified that he would like to see the registration or certification of buildings with respect to energy efficiency. Corwin Humbert, member of the Committee for Solar and Appropriate Technology, testified that he had constructed a solar greenhouse as a means of reducing his energy consumption and suggested that other uses of solar power be explored.

North Carolina Natural Gas Company presented a panel of three witnesses: Calvin B. Wells, Senior Vice President of North Carolina Natural Gas Corporation; B.C. Winkler, Assistant Vice President and Director of Residential and Commercial Sales; and Robert T. Watkins, Vice President-Marketing. These witnesses stated that North Carolina Natural Gas Company is presently performing energy audits for its customers at no charge. In addition, they stated that N.C.N.G. has a very successful program for providing financing to customers wishing to install insulation.

Duke Power Company presented as its witness Donald H. Denton, Jr., Vice President-Marketing of Duke. Mr. Denton testified that Duke has instituted load management and conservation programs and presently has under evaluation several programs with potential for both load management and energy conservation, including the control of residential water heating, air conditioning, and heating systems. Mr. Denton also testified concerning Duke's Energy Efficient Structure (EES) Program.

Carolina Power & Light Company presented Norris L. Edge, Assistant Manager of Rates and Service Practices of CP&L, who stated that CP&L has been actively engaged in conservation programs since the 1950s and has a number of programs currently in this area. Mr. Edge also described CP&L's "Common Sense Programs" for existing buildings.

Horace G. Little, Manager of Marketing Services, testified for Virginia Electric and Power Company. He stated that

Vepco is developing a program for energy audits of residences designed to identify the areas in the home where energy may be wasted and to suggest energy-saving methods or devices for those areas. Further, he stated that Vepco has instituted a program of energy audits for commercial and industrial customers. He listed a number of brochures that Vepco has distributed to its customers on methods to save energy.

The North Carolina Oil Jobbers Association presented as its witness Gerald P. Matthews, Technical Director of the North Carolina Oil Jobbers Association. Mr. Matthews stated that the oil jobbers were concerned about conservation and about helping their residential customers conserve fuel oil. Mr. Matthews testified that the Oil Jobbers Association conducts classes for its members on the following: (1) achievement of high combustion efficiency; (2) curtailment of standing flue losses; (3) reclamation of flue heat; (4) improvement in heat distribution design; and (5) insulation application. It was his opinion that the individual oil jobbers would be willing and able to conduct energy audits for their customers. He stated, however, that there were over 800 oil jobbers in the State and that the energy audits would have to be done by the individual oil jobbers.

The Conservation Council of North Carolina, League of Women Voters of North Carolina, the Joseph LeConte Chapter of the Sierra Club, and the Carolina Environmental Study Group presented four witnesses: David H. Martin, Dr. G. George Reeves, Thomas Gunter, and Dr. Lavon Page. Mr. Martin testified that the Public Staff's report did not place enough emphasis on solar power nor did it explore possible conservation activities in the commercial and industrial sectors. (The Public Staff stated that it plans to report on conservation in the commercial and industrial sector in the second phase of its report in accordance with the terms of a contract with DOE) Dr. Reeves advocated investigating marginal cost pricing of electricity to curtail usage. Mr. Gunter presented a study he had performed entitled "An Energy Policy Option for North Carolina." Dr. Page testified that the Public Staff and the Utilities Commission should urgently begin serious investigation into specific alternate energy strategies for North Carolina instead of placing dependence on building large and expensive nuclear power plants.

The parties were given notice that memoranda or briefs would be due 20 days after the mailing of transcripts, and the hearing was closed.

On November 20, 1978, the Public Staff filed a Proposed Order in this docket. During December 1978, Duke, CP&L, and Vepco filed comments to the Public Staff Proposed Order.

FUTURE IMPLEMENTATION OF A COMPREHENSIVE RESIDENTIAL CONSERVATION SERVICES PROGRAM

Since the close of these hearings, the United States Congress has passed, and the President has signed into law, the National Energy Conservation Policy Act (NECPA). The Commission takes judicial notice of the provisions of this Act as they affect matters herein. This Act mandates numerous specific actions and strongly encourages the states to pursue a residential energy conservation program under specific guidelines. Within 150 days of enactment, the Secretary of Energy will promulgate rules and regulations for the implementation of such programs. Not later than 180 days thereafter, each governor or authorized state agency may submit a proposed residential energy conservation plan. Each nonregulated utility is required to submit its own plan unless it has been included in a statewide plan.

The Act requires that the rules promulgated under this Act:

> ...shall identify the suggested measures for residential buildings, by climatic region and by categories determined by the Secretary on the basis of type of construction and any other factors which the Secretary may deem appropriate...(Sec. 212(b)(1)).

Further, the rules will include standards which the Secretary determines necessary for:

1. General safety and effectiveness of any residential energy conservation measure;

2. Installation of any residential energy conservation measure;

3. Maintenance of fair and reasonable prices and rates of interest in conjunction with the purchase and installation of residential energy conservation measures;

4. The avoidance of unfair, deceptive, or anticompetitive acts or practices; and

5. Preparation of the lists of suppliers, contractors, and lending institutions, which are required by the Act, and procedures concerning removal of persons from such lists (Sec. 212(b)(2)).

Title II of NECPA establishes Federal policy with respect to residential energy conservation, and large electric and gas utilities - and, therefore, state commissions - are required to play a central role in carrying out this policy. Electric utilities selling more than 750 million kilowatt-hours annually, other than for resale, are covered by this Act, provided they serve residential customers. Gas utilities selling more than 10 billion cubic feet of natural gas for purposes other than resale are also covered by

Title II of NECPA.

Each covered utility is required by Title II of NECPA to:

1. Inform all its residential customers of suggested conservation measures, including costs and savings;

2. Distribute a list of qualified suppliers, installers, and financiers;

3. Offer to conduct an on-site (Class A) home energy audit;

4. Offer to arrange the installation and financing of conservation measures selected by the customer.

The conservation measures that must be covered by a utility program include the following:

1. Caulking and weatherstripping of doors and windows;

2. Furnace efficiency modifications including:

   a. Replacement burners, furnaces, or boilers, or any combination thereof which, as determined by the Secretary, substantially increases the energy efficiency of the heating system,

   b. Devices for modifying flue openings which will increase the energy efficiency of the heating system, and

   c. Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

3. Clock thermostats;

4. Ceiling, attic, wall, and floor insulation;

5. Water heater insulation;

6. Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed window and door materials;

7. Devices associated with load management techniques;

8. Devices to utilize solar energy or wind power for any residential energy conservation purpose, including heating of water, space heating, or cooling; and

9. Such other measures as the Secretary may by rule identify (Sec. 210(11)).

As a general rule, utilities themselves may not supply, install, or finance these conservation measures. Specific exceptions to this general prohibition are allowed, however, for existing programs, for small loans, and for certain measures (Nos. 2, 3, and 7, above). Moreover, DOE may waive this prohibition upon petition of a covered utility (Sec. 216).

Although the legal requirement to promulgate a utility program is imposed directly upon the covered utilities, the governor of each state (or any state agency specifically authorized under state law to do so) is given the option of developing and administering a statewide Residential Conservation Service (RCS) plan, subject to rules to be prescribed by DOE. All covered regulated utilities must be included in such a state plan and "nonregulated utilities" (public and cooperative systems not subject to state or TVA rate-making authority) may be included, in the interest of a unified effort. The Act does not, however, otherwise extend state regulatory authority over nonregulated utilities.

The governor is also allowed discretionary authority to submit a plan for home heating suppliers, such as fuel oil dealers, although there is no Federal requirement to carry out such a program, and the governor may waive any of the RCS provisions that strain the resources of small home heating suppliers (Sections 212(c)(3) and 217).

Another aspect of this program that directly affects state commissions is utility cost accounting, and the Act is very specific with respect to certain aspects of utility costs, which must be separately recorded and charged as follows:

1. The costs of providing conservation information, excluding the home energy audit, must be treated as current operating expenses.

2. The costs of conservation materials and installation must be charged to the individual customer for whom such activity is performed (even in those instances when utility financing of such measures is allowed).

3. The costs of RCS "project manager" activities, including the costs of the home energy audit and post-installation inspection, may be either treated as current operating expenses or charged directly to the customer for whom the activity was performed, in the discretion of the state commission (or nonregulated utility).

4. All other costs, including interest costs in those instances where utility financing of conservation measures is allowed, may be treated as a current operating expense, if the state commission formally determines that lower energy rates would result, due to reduced energy demand.

On a related point, any costs directly charged to the individual customer must be separately stated on the utility

bill, and the utilitiy may not terminate service to such customer for failure to pay such charges (Section 215(c) and (e)).

Under NECPA, then, each state commission must:

1. Officially acknowledge to DOE its rate-making authority with respect to the utilities listed by DOE as being covered by the Act.

2. Administer the RCS program, if so designated by the governor or state law, for all covered regulated utilities in the state.

3. Approve the reasonable costs incurred by covered regulated utilities in complying with RCS requirements, irrespective of which state agency administers the program.

4. Determine the proper allocation of "project manager" costs and (where utilities actually finance conservation measures) interest costs.

The Act requires DOE to directly assume responsibility for the RCS programs of all covered regulated utilities in a state, if a state either does not have an approved state plan or inadequately carries out an approved plan (Sec. 219).

In addition to these overall guidelines for state plans, the National Energy Conservation Policy Act includes other specific sections that directly affect regulated utilities. These include sections on Requirements for State Residential Energy Conservation Plans for Regulated Utilities; Utility Programs; Supply, Installation, and Financing by Public Utilities; and Product Standards.

The evidence taken during these hearings clearly shows that the people of North Carolina could benefit from a comprehensive residential conservation services program. Such a program should be available to all residential consumers, beginning with single family residences. Such a program can be most effectively and efficiently implemented by the electric and gas utilities under guidelines adopted by this Commission. Statewide coverage will require the cooperation of nonregulated entities supplying fuel or utility services and the involvement of a state agency such as the Energy Division.

It was estimated that if every homeowner installed conservation measures up to a level that gave him the greatest possible net saving then the average annual residential gas consumption could be reduced by as much as 47 Dt or 47.4% and that statewide usage could fall by 11,444,000 Dt, which is 17% of total current gas consumption. Further, potential energy savings for an average electrically heated home could be 1,996 Kwh per year

or 17% of annual heating consumption, and statewide savings could reach 663,500,000 Kwh.

Given the high potential energy savings and the increasing cost of producing and purchasing fuels, it is prudent to pursue establishment of a comprehensive residential energy conservation program which could produce these savings. Since regulated utilities are major distributors of fuels and the only entities regulated by the Commission, such a program must necessarily begin with these utilities.

The Public Staff testimony regarding the options involved in establishing a comprehensive residential energy conservation services program addressed seven major issues: program parameters, energy audits, marketing, contractor participation, material certification, inspection, and financing. Among the Public Staff's recommendations were:

1. That all residential structures be included in the program, beginning with single family residences.

2. That floor, wall, and ceiling insulation and storm windows be addressed by the program.

3. That a standard based on fixed measures which are derived from a heat loss analysis be set. The standard should vary by climatic region, fuel type, and certain house characteristics. Further, it should promote the most conservation that is consistent with an optimal customer investment level, as judged by the present value of the investment.

4. That retrofitting the home to meet that standard be a condition for receiving a utility's assistance in contractor arrangements and in financing.

5. If an audit program is conducted by the utilities, it should be at no direct charge but with costs recovered through the residential rates. Noncustomers should be offered audits but be charged directly for the service.

6. That the audits use a simple book of options and savings estimates.

7. That the analysis and results be presented at the time of the audit and the customer be offered a financing package.

8. That the utilities be encouraged to use the full range of marketing tools which they have found to be effective with their customers.

9. That contractor identification for the program be based only on current state licensing laws.

10. That the customer be provided a listing of licensed contractors and be allowed to exercise his own choice.

11. That the feasibility of an approved materials list be examined by the Department of Insurance.

12. That the above list be based on the current North Carolina Department of Insurance standards, which include manufacturers' evidence of products' quality and independent laboratory testing and the results of Federal agency efforts in standard setting.

13. That supplemental inspection by utilities be permitted.

14. That contractors should not be removed from the list distributed by utilities, but information on verified complaints should be made available to customers on request.

15. That the utilities assist customers in applying for and obtaining loans.

16. That the loans be provided through a joint service offered by the utility and the banks. Utilities should also be allowed to offer financing at rates which they set.

17. That the bank loans be billed directly by the bank to the customer.

18. That the maximum interest rate proposed to be charged by each bank be fixed for all customers of that bank who are participating in the program.

The North Carolina Utilities Commission and the Energy Division of the North Carolina Department of Commerce are presently in the process of actively developing a unified State Residential Conservation Service Program pursuant to Title II of NECPA. Final rules and regulations under said Act are currently being promulgated by the Department of Energy. Therefore, all electric and gas utilities subject to the provisions of this Order should begin to take immediate action in formulating individual utility programs in conformity with Section 215 of the Act. Since the ultimate design and content of both the RCS plan to be developed by the State of North Carolina and the individual utility programs to be formulated by the regulated utilities pursuant to such plan will depend upon the actual content and requirements specified in the final rules and regulations to be promulgated by the Secretary of Energy, it is, therefore, concluded that this docket should be held open to enable the Commission to hereafter receive further evidence, if found to be necessary, on the requirements and implications of NECPA before implementation of a final plan thereunder. It is further noted that the Commission will, during any future deliberations which may hereafter be held in conjunction with this docket, give careful and active consideration to the extensive testimony which has previously been offered in this matter by and on behalf of the Respondents, the Intervenors, and the Public Staff.

THE USE OF PHYSICAL LOAD MANAGEMENT TECHNIQUES BY ELECTRIC UTILITIES

Initial studies indicate that under certain carefully planned programs the long-term savings in generation plant investment costs resulting from physical load management will more than offset the cost of control equipment required to implement the programs. These studies also indicate that with proper planning physical load control will have little or no effect on the individual customer's lifestyle or operations; however, there is too little data currently available to precisely estimate customer acceptance rates, changes in customer consumption patterns, effects on utility system operations, and resulting net benefits. Consequently, gradual implementation of physical load management programs by the electric utilities at this time is a prudent method for gathering data on which to base future decisions.

Dr. Robert M. Spann, ICF, Incorporated, testified on behalf of the Public Staff that the ability to level daily and annual load curves and to reduce peak demands offers electric utilities the potential of reducing their reliance on generating units with high fuel cost and/or lowering capital requirements. In this regard electric load management is a method which might reduce growth in peak demands and/or level load curves allowing a substitution of investment in load control devices for investment in new generation facilities. Witness Spann testified that review of the operating characteristics of Duke Power Company and Carolina Power & Light Company indicated that prime consideration should be given to load management options which would reduce both summer and winter peaks (the systems have almost equal seasonal peaks) and which would actually reduce peaks rather than simply shift the time of occurrence.

Witness Spann indicated that several load management options were considered. These included advertising, incentive rate structures to encourage the customer to install and utilize load management equipment, time-of-day or weather-sensitive pricing strategies, and direct utility control of load. Many of the advertising and incentive rate proposals are being studied. The time-of-day and weather-sensitive pricing strategies involve significant investment in metering facilities, and without these metering capabilities there is a potential for the customer to cheat by disconnecting or bypassing control devices once installed. For these reasons, programs involving utility controlled load management equipment were given the most attention. The testimony considers two programs which appear most closely to meet all requirements. The first is utility control of certain industrial loads. As presented, the utility would be allowed to control specific customer loads via radio signals. In exchange, the customer would receive a discount based on Kw of controlled load. Under the program, these different interruption plans are offered:

(1) a four-hour interruptible rate with no more than 200 hours of interruption per year, (2) an eight-hour interruptible rate with no more than 400 hours of interruption per year, and (3) a 13-hour interruptible rate with no more than 600 hours of interruption per year. The second program involves utility control of residential water heating load. In exchange for a flat monthly discount, the customer would allow the utility to use radio control to interrupt water heating service. The maximum length of a single interruption and the maximum total number of hours of interruption in one day would be four. Both programs would be voluntary. These programs were chosen because they allow the most flexibility of operation and appear to have the highest potential benefit-cost ratios. The witness indicated that other programs could and should receive future consideration when the cost-benefit ratios appear favorable.

Witness Spann indicated that several other utilities have load management programs that include interruptible industrial rates or residential water heating control. Taylor Bingham, Research Triangle Institute, also testifying for the Public Staff, indicated that customers with water heaters of storage capacities of 66 gallons or larger would not experience an unbearable drop in hot water temperature under the load management program and would be expected to accept the option if the credit is in the $1.50 per month range. Further, it is anticipated that many customers installing new water heaters (new homes or replacements) would opt for larger capacity units in order to take advantage of the discount. With respect to interruptible rates for industrial customers, witness Bingham indicated that many utilities offer interruptible rates to large industrial customers. Since CP&L's and Duke's system loads are not dominated by a few large industrial customers, it will be necessary to interrupt smaller loads on larger numbers of customers. This appears feasible by utilizing the new improvements in communication techniques. Mr. Bingham stated that surveys made by both Duke and CP&L indicated some immediate interest in interruptible industrial rates.

Witness Spann performed studies, using Mr. Bingham's acceptance estimates, results of implementation in other states, and the utilities' survey on industrial interest in interruptible rates, to estimate the possible impact of these load management programs on the Duke and CP&L systems and to develop possible rate incentives to be applied under the programs. Dr. Spann pointed out that the estimates could increase or decrease depending on the assumptions utilized. Under the assumptions and judgments used by Dr. Spann, the reduction in peak demand (1990) resulting from the interruptible industrial rates would be 510 Mw for Duke and 110 Kw for CP&L. The residential water heating program would reduce the 1990 peak demand by 175 Mw for Duke and 75 Mw for CP&L. The reduction in 1990 peak demand resulting

from a combination of the two programs is 558 Mw for Duke and 156 Mw for CP&L.

Witness Spann utilized estimates of reduction in system peak and increases in load factor as inputs into a capacity planning and production costing model to calculate the effect of each load management option on the present value of revenue requirements (including cost of utility-owned control equipment). These revenue requirements were then used to develop a discount to be applied to the load management rates. This method allocates all of the cost savings due to load management directly to the customers whose loads were being controlled. The cost estimates were made under a variety of assumptions including allowing and not allowing changes in the capacity expansion plan. The resulting estimates of possible discounts varied widely as shown below:

	Duke	CP&L
	(Kw/Month)	(Kw/Month)
Industrial		
Four-Hour Interruption	$0.83 to $11.59	$2.08 to $4.22
Eight-Hour Interruption	2.20 to 7.36	2.73 to 7.76
Thirteen-Hour Interruption (Twelve-Hour for CP&L)	2.21 to 7.41	3.74 to 9.24
Residential		
Electric Water Heating	$0.36 to $4.04/Customer/Month to $0.26 to $3.46/Customer/Month	

From review of these estimates, witness Spann developed the following tentative set of discounts (same for both companies):

Control Program	Monthly Discounts
Four-Hour Interruption	$1.75 per Kw
Eight-Hour Interruption	$2.50 per Kw
Thirteen-Hour Interruption	$3.00 per Kw
Electric Water Heater Control	$1.50 per Customer

Utilizing the present value estimates of load management equipment cost and anticipated peak demand reduction, witness Spann developed an effective unit cost resulting from load management. His estimates ranged from $0.50 per Kw to $123.24 per Kw. When these unit costs were compared to the present cost of combustion turbines of $150 to $175 per Kw, it was determined that it was cheaper to invest in load management than to invest in new capacity.

As stated previously, the estimates of the effects of the load management programs presented by witness Spann were made in order to develop the proposed rates. Witness Spann indicated that these estimates should not be considered the most likely results of load management but that they were based on reasonable assumptions and should give some indication of the effects of the programs. In all cases, the witness stated that his estimates could be either low or high and the exact impact of the load management rate

offerings cannot be determined until the rates are actually implemented. Dr. Spann indicated that the annual investment in load control equipment would be fairly small (about $2 million for Duke and $1 million for CP&L) because the program would be implemented on a gradual basis. These investments only amount to about 0.5% of each company's rate base. Thus, if the estimates of the impact of load management prove to be totally incorrect, the utility's economic exposure would be very small.

Witness Spann indicated the load management programs discussed would initially be small-scale programs building up to a larger scale in later years. In early years, only a few customers would be participating in the programs and, thus, data could be gathered which could influence the implementation of the programs in succeeding years. In this way, gradual implementation provides many of the advantages of experimentation. The utility could gain the information from gradual implementation necessary to make adjustments to capacity expansion plans. Experiments would require approximately one year to run and one year to evaluate. This would delay implementation by two years with possible corresponding delays in long-term capacity expansion plan revisions. Finally, customers may react less positively to short-term experiments than to implementation programs resulting in understatements of the impact of load management. For these reasons, the witness proposed gradual implementation of the two load management programs discussed and briefly outlined a possible implementation plan. He proposed that residential water heating control initially be offered in one or two urban areas (transmitters can serve more customers in a more densely populated area). As time passes, the program could be extended to other areas. A similar plan was presented for interruptible industrial rates. In this case, it was proposed that the offering initially be made in areas with the greatest concentration of industrial customers willing to accept interruption.

Witness Spann indicated that there would be a need to publicize the rate offerings. Also, it would be necessary for customer representatives to work closely with customers to fully explain the programs. The witness indicated that builders should be contacted so that larger water heaters could be installed in new homes to give the homeowners the ability to utilize the rate.

Norris L. Edge, testifying for Carolina Power & Light Company, stated that his company recognizes the potential advantages of load management. Witness Edge testified that CP&L is engaged in load management activities on a local and national level and is currently investigating and experimenting in the areas of pricing (time-of-day and interruptible rates), load control by use of remote equipment (residential water heating control) and bidirectional communication systems. Finally, witness Edge indicated that it is in the customers' and company's best interest to implement reasonable load management plans and

that the proposals discussed have merit. Witness Edge stated that the widespread implementation of a program such as the interruption of residential water heating would require some time to initially work out the necessary implementation details. For example, he indicated that it would be necessary to choose the best communication system, determine methods of installation of equipment in customers' residences, and develop an operational staff. Mr. Edge indicated that this planning should be done during the next year. He proposed that during this year a program be developed and rates filed for Commission consideration. If these rates were approved, at the end of the one-year planning period, CP&L could proceed with implementation. Mr. Edge further stated that implementation should be on a limited basis until benefits and acceptance can be demonstrated.

Additional testimony on physical load management was also offered by Donald H. Denton, Jr., for Duke Power Company. Mr. Denton indicated that Duke was aware of the need for conservation and load management. He testified that Duke has implemented conservation programs and is currently evaluating load management programs in the areas of residential water heating and space conditioning, industrial and commercial interruptible rates, and time-of-day pricing. In this regard, Mr. Denton stated that Duke supports the study undertaken by the Public Staff and its consultants in this area. Witness Denton indicated that Duke is currently studying both residential water heating control and industrial interruptible rates. These studies will result in recommendations with regard to the benefits of these concepts. If found beneficial, rates would be developed and filed for approval by the Commission.

From review of the evidence in this proceeding, the Commission concludes that physical load management can be utilized to reduce the demands placed upon electric utility systems. This reduction in demand will allow the electric utilities to alter their planned construction programs, resulting in savings to the company in investment costs. Further, it appears from the evidence presented that the savings in generating plant investment as a result of physical load management programs can more than offset the cost of equipment necessary to implement these programs. Finally, the Commission concludes from the evidence that customers will accept load control if provided proper pricing incentives. In this regard the Commission concludes that load management programs based on utility control of residential water heating and interruptible industrial loads should be developed. The Commission is of the opinion that the incentives included in the rate structure as a part of these programs should be designed to reflect the anticipated net savings resulting from the implementation of the load management programs.

The Commission concludes that there is sufficient evidence to justify the gradual implementation of voluntary load

management programs which offer rate incentives to customers to allow the utility to control residential water heating or specified interruptible industrial loads. The Commission further concludes that gradual implementation should be accomplished by first offering the load management programs in the most dense area served by each utility and then by extending the offerings to other areas (by decreasing size). It is the Commission's opinion, however, that the actual implementation of these programs cannot begin for approximately one year for the reasons discussed. The Commission is of the opinion that during this period each utility should develop specific detailed implementation plans including rate schedule provisions to be filed for final Commission approval. These conclusions had been made by the Commission at the time of the Commission's Order adopting its 1978 Load Forecast and Capacity Plan. As a result, this docket was judicially noticed in Docket No. E-100, Sub 32; these matters were discussed briefly; and the related Ordering Paragraphs 4 and 5 shown below were included in the Order:

"4. That Carolina Power & Light Company, Duke Power Company, and Virginia Electric and Power Company shall, within 270 days after the date of this Order, file detailed plans for the implementation of two load management programs:

1. Utility control of residential water heating, and

2. Utility control of specified interruptible industrial loads.

"The implementation plans to be filed shall include:

1. Provisions for voluntary customer participation in these programs,

2. A description of the load management equipment to be used,

3. Detailed time schedules for implementation,

4. Proposed rate schedules and tariff provisions including limitations on interruptions,

5. An implementation date no later than January 1, 1980, in the area of greatest density served by each utility,

6. Plans for extending the offerings to other areas, and

7. Rate incentives, implementation plans, and provisions of interruption (maximum length and number of interruptions, etc.), which are to be developed and filed by each utility; however,

if these filings differ from those proposed by the Public Staff in Docket No. M-100, Sub 78, such filings should include appropriate justification.

"5. That Carolina Power & Light Company, Duke Power Company, and Virginia Electric and Power Company file voluntary rates incorporating time-of-day pricing to those customers who install thermal storage equipment, when used in connection with solar equipment, or installed separately, or a combination of the two for the purpose of providing space heating. The rate schedules shall be cost justified and shall be filed on an experimental basis with appropriate contract time designated, between the utility and the customer, sufficient to allow the customer an incentive to adopt such a rate in connection with a solar/thermal storage installation."

THE IMPLEMENTATION OF A RESIDENTIAL CONSERVATION RATE

In Docket No. E-7, Sub 237, of which the Commission takes judicial notice, a new Schedule RC rate was established for Duke Power Company. To be eligible for service under this rate, a residence must utilize high levels of insulation, the results of which are both decreased energy use and decreased coincident demand. The savings to the electric system from decreased coincident demand are passed along to the Schedule RC ratepayers in the form of reduced rates. The Commission concludes that CP&L and Vepco should investigate the appropriateness of offering similar rates on their systems.

IT IS, THEREFORE, ORDERED:

1. That this docket shall remain open pending issuance by the Department of Energy of final rules and regulations to be promulgated pursuant to Title II of the National Energy Conservation Policy Act. All electric and gas utilities subject to the provisions of this Order shall begin to take immediate action in formulating individual utility programs in conformity with Section 215 of NECPA.

2. That filings resulting from Ordering Paragraphs 4 and 5 (heretofore quoted on pages 18 and 19 of this Order) of the Commission's Order dated December 28, 1978, in Docket No. E-100, Sub 32, wherein the Commission adopted its 1978 Load Forecast and Capacity Plan shall also be incorporated into this docket.

3. That customer requests for dry contacts and totalizing meters be met within 25 working days of the request or a report be filed with the Commission detailing the reason(s) for delay. Such facilities shall be made available regardless of customer size. Charges for such extra facilities shall be cost-based.

4. That each bill for demand charges show actual demand as well as billing demand.

5. That CP&L and Vepco investigate and file with their next general rate cases an alternative residential conservation rate schedule, for the Commission's consideration, which is similar in form to Duke's Schedule RC.

6. That, in accordance with the Resolution issued by this Commission on February 15, 1979, in support of the principles and concepts of cogeneration, each electric utility subject to this Order shall hereafter file a report with the Commission by May 1 and November 1 of each year detailing the receipt of applications for cogeneration service.

7. That, pursuant to this Commission's letter dated October 10, 1977, all reports hereafter prepared by each electric utility subject to this Order in conjunction with feasibility studies undertaken to determine the effect on electric energy consumption resulting from a reduction in the upper limit of the allowed voltage range shall henceforth be filed in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of June, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. M-100, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision of Rule R2-36(a), Security for the Protection of the Public, of the Rules and Regulations of the North Carolina Utilities Commission	ORDER CHANGING RULE R2-36(a)

BY THE COMMISSION: On December 8, 1978, the Commission issued an Order in this Docket covering a Notice of proposed change in Rule R2-36(a) of the Rules and Regulations of the North Carolina Utilities Commission which prescribes limits of liability insurance in the amounts $50,000-$100,000-$50,000 applicable via all for-hire motor carriers engaged in the transportation of regulated commodities within the State of North Carolina.

The Notice provided that the Commission has given consideration to this matter and is of the opinion that the minimum amounts of liability insurance, as stated above, is possibly too low and should be increased to be $100,000-$300,000-$50,000 for said carriers operating over the highways of North Carolina.

The Commission invited all interested parties to file comments or objections to the proposed rule change on or before January 1, 1979.

The Commission's record, in this Docket, reflects that only four (4) replies were received relating to the proposed revision of Rule R2-36(a); one advising that the public interest would be better served in the event of an accident, and that the proposed change should be made without a hearing; the others advising that they opposed the increase. The carriers opposing the increase have on file with the Commission liability insurance in amounts equal to or greater than the proposed amounts of $100,000-$300,000-$50,000.

In view of the record in this matter as a whole, the Commission finds and concludes that its Rule R2-36(a) should be modified effective July 1, 1979, so as to provide that all common and contract carriers of property shall obtain and keep in force at all times public liability and property damage insurance issued by a company authorized to do business in North Carolina in amounts not less than:

(1) Limit for bodily injuries to or death of one person $100,000;

(2) Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $100,000 for bodily injuries to or death of one person) in the amount of $300,000; and,

(3) Limit for loss or damage in any one accident to property of others (excluding cargo) $50,000.

IT IS, THEREFORE, ORDERED:

(1) That Rule R2-36(a) attached hereto as Exhibit A and made a part hereof, of the Commission's Rules and Regulations, be, and the same is hereby, revised and changed accordingly effective July 1, 1979.

(2) That a copy of this Order shall be mailed to all regulated motor freight carriers authorized to engage in North Carolina intrastate commerce.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

EXHIBIT A

Rule R2-36. Security for the Protection of the Public.--(a) All common and contract motor carriers, including exempt for-hire passenger carriers, shall obtain and keep in force

at all times public liability and property damage insurance issued by a company authorized to do business in North Carolina in amounts not less than the following:

SCHEDULE OF LIMITS
Motor Carriers - Bodily Injury Liability - Property Damage Liability

(1) Kind of equipment	(2) Limit for bodily injuries to or death to one person	(3) Limit for bodily injuries to or death of all persons injured or killed in any one accident (Subject to a maximum of $100,000 for bodily injuries to or death of one person)	(4) Limit for loss or damage in any one accident to property of others (excluding cargo)
Passenger equipment: (seating capacity)			
7 passengers or less	$ 50,000	$100,000	$50,000
8 to 12 passengers, inclusive	50,000	150,000	50,000
13 to 20 passengers, inclusive	50,000	200,000	50,000
21 to 30 passengers, inclusive	50,000	250,000	50,000
31 passengers or more	50,000	300,000	50,000
Freight equipment: All motor vehicles used in the transportation of property	$100,000	$300,000	$50,000

DOCKET NO. M-100, SUB 82

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Amendment of Commission Rule R1-17) ORDER
to Require Statement of Conformity) ESTABLISHING
with Wage Price Guidelines) RULE

BY THE COMMISSION: On October 28, 1978, President Carter announced voluntary wage and price guidelines designed to curb inflation. Believing that inflation is our number one domestic problem, this Commission intends to use its full powers to ensure that all utilities under its jurisdiction

comply with the President's guidelines to the extent practicable. To this end, the Commission concludes that it should adopt a rule which requires all utilities filing rate increase applications with the Commission to certify that the requested increase complies with the anti-inflation standards promulgated by the Council on Wage and Price Stability, or to demonstrate why these standards should not apply. By adopting such a rule, the Commission can act affirmatively to assure consumers that any rate increases it may have to approve will be consistent with State and national efforts to control inflation.

Accordingly, the Commission believes it appropriate to modify the rate case informational filing requirements set forth in Commission Rule R1-17, so as to add a subsection R1-17(b)(9)g as set forth in Appendix A attached to this Order.

This rule should apply in all future rate applications. In all pending cases where hearings have not been completed, the applicant should file an affidavit setting forth the information required by the attached rule.

The Commission recognizes that this filing could be especially burdensome for small utilities with modest accounting expertise, but is of the opinion that no class of utility should be exempted. Consequently, the Commission calls upon the Public Staff to offer reasonable assistance to small utilities in their response to the requirements of the Rule herein described.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R1-17(b)(9)g be amended to include the subsection set forth in Appendix A to this Order.

2. That utilities which have cases now pending before this Commission in which hearings have not been completed, shall file an affidavit setting forth the information required by this rule.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of January, 1979.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A

"Rule R1-17(b)(9)g. Every general rate application shall contain a concise explanation of how the requested rate increase complies with the anti-inflation guidelines promulgated by the Council on Wage and Price Stability or to demonstrate why it should not comply. In making the certification the utility shall show the relationship between its proposed rate increase and the guidelines. For purposes of making requisite comparisons, the

utilities shall follow the procedures and definitions established in guidelines issued by the Council on Wage and Price Stability.

In making the certification, the utility shall show the relationship between its proposed rate increase and the guidelines. The utility shall analyze the following elements of its rate request to determine whether the Federal standards are satisfied and, if it determines that they are not, it shall provide, on a per unit of sales basis, the details of its analysis of: (a) cost increases reflecting differences between projected costs and the costs that underlie existing rates, including a specification of projected cost increases for labor, taxes and all other expenses; (b) cost increases related to increased investment per unit of service, including an analysis of compulsory and discretionary construction activities; (c) cost increases related to requests for increased rate of return, otherwise improved financial condition, or both; (d) additional revenues requested due to shortfalls in sales revenues, and (e) to the extent not reflected elsewhere, cost changes mandated by law or by contracts entered into before October 24, 1978."

DOCKET NO. E-100, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of Conservation of Energy Through More) ORDER
Efficient Outdoor Lighting)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, on January 17 and 18, 1978

BEFORE: Chairman Robert K. Koger, Presiding; Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Edward B. Hipp, and John W. Winters

APPEARANCES:

For the Respondents:

Richard E. Jones, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

Steve C. Griffith, Jr., and George W. Ferguson, Jr., Duke Power Company, P.O. Box 2178, Charlotte, North Carolina 28242
For: Duke Power Company

Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23225
For: Virginia Electric and Power Company

For the Intervenors:

Theodore C. Brown, Jr., Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: The Public Staff, by and through its Executive Director, Hugh A. Wells, filed a Petition with this Commission on September 9, 1977, to institute an investigation and set generic hearings on conservation of energy through more efficient outdoor lighting. In its Petition, the Public Staff stated that it had received comments from several groups, including luminaire manufacturers and consulting engineers, concerning the efficiency of existing incandescent, fluorescent, and mercury vapor outdoor luminaires in consuming energy. The Public Staff further stated that energy consumption can be significantly reduced by the retrofitting of relatively inexpensive pieces of equipment or by the replacement of existing fixtures with highly efficient alternative light sources.

The Commission was of the opinion that conservation could be served by an investigation and consideration of the costs and benefits of replacing or retrofitting inefficient lighting sources, institution of programs requiring replacement of inefficient lighting sources, and adoption of policies to prevent continuing installation of inefficient lighting. On September 20, 1977, the Commission issued an Order Instituting an Investigation and Setting a Generic Hearing on Tuesday, January 17, 1978. Duke Power Company (Duke), Carolina Power & Light Company (CP&L), and Virginia Electric and Power Company (Vepco) were specifically ordered to file affidavits, exhibits, and other evidence supporting their positions. Any interested parties, persons, associations, consumer groups, or corporations were allowed to file a formal intervention, with affidavits and other evidence, and be a formal party to the proceeding.

On December 6, 1977, the Public Staff filed a formal intervention. Carolina Power & Light Company filed a Petition to Intervene on December 19, 1977, and Duke filed a Petition to Intervene on January 4, 1978. Orders allowing interventions were entered on January 4, 1978, and January 10, 1978, respectively.

On January 17, 1978, the hearings in this matter commenced with testimony being received from a number of concerned public witnesses, the Commission's Public Staff and industry professionals sponsored by it, and electric utility representatives. The witnesses included Richard W. Seekamp,

Engineer, Electric Division, Public Staff - North Carolina Utilities Commission; Richard C. LeVere, F.I.E.S., Manager-Engineering and Technical Services, Holophane Division, Johns-Manville Sales Corporation; Arthur D. Harrington, Manager-Utility Programs, Lighting Systems Department, General Electric Company; T.L. Amick, Chief Executive Officer, Management Improvement Corporation of America; David H. Finch, President, Finelco Electrical Construction Company; Norris L. Edge, Assistant Manager-Rates and Service Practices Department, Carolina Power & Light Company; E.N. Hedgepeth, Jr., Acting Vice President, Distribution Engineering Construction and Operations, Duke Power Company; Henry H. Dunston, Manager-Cost Analysis, Virginia Electric and Power Company, Terry McGowan, Chief-New Technologies and Special Projects, Lamp Division, General Electric; Bob Lewis, Product Manager, Fixture Division, North American Philips Lighting Corporation; and public witnesses Paul Lawler, Stephanie Rodelander, Buddy Keester, and Dr. Gordon Robertson,

The testimony and cross-examination indicates that:

1. There are newer, more efficient lighting systems than the mercury vapor system now in predominant use;

2. That the future will bring even more efficient lighting sources to general availability;

3. That many of the present offerings of the more efficient luminaire systems are sized so as to offer the customer more light for approximately the same cost, rather than the same lumen level for less cost; and

4. That the present pricing mechanisms may not truly present to the consumer an efficient incremental cost decision set from which to choose an economical and efficient solution to new service requirements.

After the hearing was concluded, the Commission asked all parties of record to file written comments on a rule-making proposal wherein the Commission might adopt a rule requiring each electric utility to offer luminaires in each of several ranges of lumen output. The requirements would be minimum standard requirements and additional offerings could be made by a utility. The Proposed Rule was:

"Rule R8-46. Requirements of minimum standard offering of street lighting luminaires. - (a) When mercury vapor or newer lighting systems are offered, at least one luminaire must be offered in each of the following lumen output ranges:

Range	Mean Lamp Lumens (at 16,000 hours)
A	6,000 - 8,700
B	10,000 - 14,500
C	18,000 - 24,000
D	27,000 - 34,000
E	44,000 - 49,000

"(b) If a standard unit of the new type is not available in a lumen output range required in R8-46(a), the standard unit most closely meeting the lumen requirements of that range may be substituted.

"(c) Sizes of units other than those of R8-46(a) may be offered in addition to the required standard sizes.

"(d) As newer, more efficient types of lighting sources become available and in substantial or predominant use, the utility will not be required to continue to offer the older, less efficient types of lighting for new service. One or more sizes of the older types may be removed from the schedule of offerings for new installations at a time.

"(e) The lumen requirement ranges of R8-46(a) are based upon the light distributions on roadway and sidewalk areas resulting from the refractive characteristics of standard mercury vapor and high pressure sodium vapor luminaires. In order to qualify as meeting Rule R8-46(a), luminaire systems with other light distributions will require a corresponding adjustment of lamp lumen levels in order to equal the roadway and sidewalk illumination from standard luminaires."

The Commission also solicited comments from all parties of record concerning a change in the method of pricing street lights to a two-tier incremental costing system. Comments were solicited on the following types:

1. TIER A charges would recover the fixed investment cost of the installed luminaire. Once a luminaire is installed under contract, TIER A fixed charges for that luminaire would not change during the life of the contract. TIER A charges for new installations would be adjusted in rate cases, but the adjusted charges would only apply to new installations; charges for existing installations would not be affected.

2. TIER B charges would recover variable costs of energy, maintenance, relamping, etc. TIER B charges would apply to each luminaire in service, regardless of date of installation, and would be adjusted in rate cases.

3. Separate TIER A and TIER B charges would be developed for each similar type of luminaire.

Lengthy written comments were filed by interested parties as a result of the Commission's Order of February 8, 1978. On February 13, 1979, the Public Staff filed a Proposed Recommended Order. Responses to the Public Staff's proposed

order were received on February 23 from Carolina Power & Light Company; on March 15, from Duke Power Company; on April 13, from Virginia Electric and Power Company; and on May 18, from North American Philips Lighting Corporation (through the Public Staff counsel). No other responses have been received.

Based on the written comments, the testimony and exhibits received into evidence at the hearing, and the Commission's entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The newer more efficient high pressure sodium lights offer the potential for conservation of energy. Their design characteristics are such that more lumens per watt can be obtained from them than from mercury vapor, incandescent, and fluorescent lights. They also have longer useful lives.

Sodium lights however do have a higher initial capital cost and require more maintenance than the less efficient lights, but the potential for energy savings can offset these higher costs. This is particularly true for high voltage lights and this effect is presently demonstrated in the utilities' rate schedules.

The Commission does not find from this proceeding that the weight of the evidence is such as to warrant requiring the utilities to provide low pressure sodium lights at this time. The Commission received neither correspondence nor testimony from any individual, corporation, or municipality located within North Carolina indicating that they definitely desired low pressure sodium lights and were unable to obtain them.

2. Although sodium lights do conserve energy, they may not be desirable for every outdoor application. Sodium lights have disadvantages such as color rendition, disposal hazards, glare, and controllability. These disadvantages vary with the application and the type of light, high pressure sodium or low pressure sodium.

3. Sodium lights for street lighting appear to be cost justified at this time if their cost is examined on a cost per mile basis in new construction. Their higher lumen output per unit of energy results in fewer lights being needed per mile. The fewer number of lights combined with their energy cost savings can often offset their higher initial cost. This same effect will not be observed in retrofit installations except where high wattage lights are utilized.

4. The amount of electricity used for street lighting and outdoor area lighting accounts for a small portion of the total sales (less than 1% for CP&L) and contributes

virtually nothing to system peak demand. Retrofit installations of more efficient lamps can only result in a very small percentage savings in total electricity use and would cost millions of dollars.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Low pressure sodium lights offer the most light for the least amount of energy input, or 183 lumens per watt. High pressure sodium lights are the next most efficient source. The following table from witness Amick's testimony lists the relative efficiencies of the various lighting sources.

TABLE I
RELATIVE EFFICIENCIES OF VARIOUS LIGHT SOURCES

Lamp Type	Lumens per Watt	Relative Efficiency
Low Pressure Sodium (180W)	183	100
High Pressure Sodium (400W)	120	66
Metal Halide (400W)	87	48
Fluorescent (VHO 160W)	72	39
Mercury Vapor (400W)	54	30
Incandescent (500W)	22	12

However, witness Harrington testified that sodium lights have a higher initial cost and require more maintenance than the other commonly used lighting sources. This witness further testified that these high costs can be offset by the energy savings of sodium lights if they are larger sizes (approximately 200 watts or more). This energy saving effect is presently demonstrated in the utility company's rates as testified to by witness Seekamp.

Witness McGowan testified that high pressure sodium lamps have long lives of 20,000 or 24,000 hours. Witness Lewis testified that low pressure sodium lights have an expected life of approximately 18,000 hours.

The North Carolina Utilities Commission has made great efforts in recent years to ensure that all rates are cost justified and to prohibit one class of customer from subsidizing another. Thus, the Commission does not favor modifying existing lighting schedules to enhance the position of high pressure sodium lights relative to mercury vapor when such modifications are not cost justified. It seems apparent that increasing energy costs, combined with ever declining capital costs for sodium vapor lights in the future, will naturally lead to increasingly attractive rates for sodium lights for outdoor lighting users.

The Commission concludes that sodium lights do offer the potential for energy savings and this energy savings can offset their higher capital and maintenance costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Almost every industry witness and utility witness testified on advantages and disadvantages of the various sodium lights. The testimony on the advantages of high pressure sodium lights indicated that they are easily controlled because they are point source lights; they are more efficient than other commonly used sources; and they give better color rendition than low pressure sodium.

However, the disadvantages of high pressure sodium lights were also discussed in the testimony. It was stated that high pressure sodium lamps produce glare problems in certain applications. High pressure sodium lighting systems must be overdesigned at the time of installation because the lamps do not maintain their lumen rating.

The main advantage of low pressure sodium lights, as mentioned earlier, is that they offer the most light for the least amount of energy. However, low pressure sodium lights require increased circuit voltage over their life span; thus this initial efficiency decreases over time. On the other hand, low pressure sodium lights do maintain their lumen output over their life.

The most commonly mentioned objection to low pressure sodium lighting is that the light emitted is monochromatic, meaning the light delivered is confined to a narrow band of the color spectrum. Thus, yellow colors always appear yellow while most other colors appear black. Obviously, there are outdoor applications where this characteristic would be objectionable. However, low pressure sodium lights are widely used in Europe and are being used in this country.

Since low pressure sodium lights are not point source lights, their light is not as easily controlled as high pressure sodium. Witness LeVere testified that this trait may result in the need for more low pressure sodium lights per mile in a street lighting situation than some other types of lighting sources.

There was no general agreement among industry representatives concerning alleged disposal problems with low pressure sodium lights. Witness McGowan testified that he had repeatedly caused fires by breaking a low pressure sodium light and allowing the sodium to come in contact with water. In fact, many low pressure sodium light manufacturers include a notice with the light warning the user of the potential fire hazard. Witness Lewis, on the other hand, testified that several labs have tested low pressure sodium lights and have been unable to create a fire.

Low pressure sodium lights are not popular with investor owned electric utilities. Each of the utility representatives in this proceeding testified that his

company does not offer this type of light primarily due to a lack of interest on the part of their customers. Until the demand for these lights increases, the utility companies contend that including them in inventories is not cost justified. Witness Harrington testified that his survey of 89 investor owned electric utilities revealed that none offered low pressure sodium lights as of year end 1976.

Therefore, the Commission concludes that both high pressure sodium and low pressure sodium lights offer advantages over more commonly used light sources. Both sources have their disadvantages but the weight of the evidence indicates that high pressure sodium lights have fewer disadvantages than low pressure sodium lights.

Although the lumen output per watt for low pressure sodium compares very favorably with high pressure sodium, other factors such as color and light distribution characteristics have apparently minimized the demand for these units. In time, however, the objectionable features of low pressure sodium may be corrected and the demand increased.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Witness Edge of CP&L testified to and provided examples of instances where high pressure sodium lights are presently cost justified for street lighting purposes in new construction situations. This cost advantage arises from the fact that fewer high pressure sodium lights are needed per mile than other light sources.

If sodium lights are retrofitted, utilizing existing fixtures, this same cost advantage will not be realized unless high lumen output lights are used (50,000 and 60,000 lumen output lights in the case of CP&L).

Thus, the Commission concludes that high pressure sodium lights are presently cost justified in some street lighting applications and in other situations where high lumen output lights are utilized.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 AND 5

Witness Edge of CP&L testified that area and street lighting accounts for only 0.64% of total system kilowatt-hour sales and adds basically nothing to system peak demand. Thus, the Commission can conclude that, typically, outdoor lighting is a very small component of an electric utility's total sales in North Carolina.

Witness Edge testified that CP&L estimates that a retrofit conversion of all its lamps to high pressure sodium would result in an 0.08% reduction in the total energy produced. The cost of such a conversion is estimated to be in excess of $17 million.

Witness Hedgepeth testified that Duke estimated that replacing all of its mercury vapor lights with high pressure sodium lights on a one-for-one basis, while maintaining the same lumen level, would result in an energy savings of 37,790,092 Kwh annually, or less than 0.1% of Duke's total system sales. Duke estimates the cost of this replacement at $17,117,470.

Witness Dunston testified that Vepco estimated that replacement of all its incandescent, fluorescent, and mercury vapor lights with high pressure sodium lights would produce an energy savings of less than one-third of one percent of the total Kwh sales of Vepco's North Carolina jurisdictional customers. Vepco estimates the cost of this conversion at $2.7 million.

Thus, the Commission concludes that a mandatory retrofit of all inefficient lighting sources to more efficient high pressure sodium lamps would result in very little energy savings while costing millions of dollars.

IT IS, THEREFORE, ORDERED as follows:

1. That fluorescent and incandescent lights no longer be offered for new installations by the electric utilities under jurisdiction of this Commission effective six months from the date of this Order. Each utility should move to phase out any existing fluorescent or incandescent lighting sources as soon as is economically feasible to the customer.

2. That the use of high pressure sodium lights be encouraged for all users of outdoor lighting in North Carolina and that each electric utility shall promote these more efficient lighting sources over other sources to the fullest extent possible in their discussions with outdoor lighting users.

3. That low pressure sodium lights shall be made available on a case by case tariff basis, provided that each utility shall be allowed the time to order and install the necessary equipment after receiving a signed contract from the customer.

4. That each party shall file, within 60 days of the date of this Order, specific comments in support for or opposition to the adoption of all or part of the Rule R8-46 previously proposed in this docket. Comment is especially solicited on the appropriateness of (1) adopting the suggested range limits and (2) ordering immediate offering of high pressure sodium vapor lighting in each adopted range.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of May, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. E-100, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Conservation of Energy Through More Efficient Outdoor Lighting	)) ORDER ADOPTING) RULE R8-47)

BY THE COMMISSION: A history of this docket is included in the Commission's Order of May 31, 1979. As a result of the testimony and information filed in this docket, including the responses to the Commission's proposed rulemaking and policy considerations which were requested in its Orders of February 8, 1978, and May 31, 1979, the Commission makes the following additional

FINDINGS OF FACT

1. In general, when more efficient lighting sources have become available, it has been the practice of utilities to offer the sizes of the new luminaires which will produce more light at the same or greater charge, rather than offer the sizes of luminaires which will offer the same light at reduced charges. This practice does not contribute to the overall conservation of energy.

2. Requirements for offerings in a set of standard lumen ranges would allow consumers to choose between luminaire types based solely upon cost and lighting characteristics, without having to choose between different designs. Replacement or extension of existing systems would be more economically feasible.

3. The costs of lighting fixtures are affected by economies of scale of production and by inflation. The relative price of an early fixture versus a later made fixture cannot be foretold at the time of the initial offering of a new lighting system.

4. The Findings and Conclusions made in the Order of May 31, 1979, are still valid.

EVIDENCE AND CONCLUSIONS

The purpose of this investigation has been to identify those actions which the Commission can take to promote efficiency of the use of the electric system, the provision of adequate lighting service to consumers, and conservation of energy. The evidence in this docket clearly indicates that, under the present policies, consumers cannot choose between types of lighting without also choosing between lighting levels or lighting designs. The Commission concludes that standardization of a minimum set of offerings of lighting luminares would allow consumers to choose between types of luminaires on an equal basis, considering color and dispersion characteristics and cost of operation

only, without having to automatically upgrade lighting levels beyond the levels needed or desired. In addition, standardization of a minimum set of offerings would afford consistent opportunity for service for citizens throughout the State.

The Commission recognizes that there will always be some needs for special designs and concludes that provision should be made to allow utilities to additionally offer on a regular tariff basis luminaire sizes other than those required in the standard set. The Commission also recognizes that some new luminaire types may be especially suited only for the specialized high lumen level requirements for some few interchanges and parking areas, and concludes that utilities should not necessarily be required to include those types in the sizes covered by the standard set. It is appropriate, however, to require that lower lumen level luminaires be offered in a set of standard sizes before being offered in sizes between or slightly above the standard levels.

The Commission concludes that the new Rule R8-47 shown in Appendix A is reasonable and necessary to promote conservation of energy and economy of service, and that it should be adopted. Rule R8-47 will not limit the ability of a utility to offer additional sizes of luminaires, but it will assure consumers the freedom of choice.

After review of this docket, the Commission concludes that the Findings of Fact in its Order of May 31, 1979, are well founded and that Ordering Paragraphs 1, 2, and 3 should be affirmed.

The Commission further concludes that it would not be appropriate at this time to change the present pricing methodology for lighting systems. It appears that changing the methodology, while promoting efficiency, may not be cost justified. This matter should, however, be reviewed again in the future to assure that pricing policy does not have a significant impact on the process of selection between luminaire types.

IT IS, THEREFORE, ORDERED

1. That Ordering Paragraphs No. 1, 2, and 3 of the Commission's Order of May 31, 1979, in this docket are affirmed.

2. That Rule R8-47 attached in Appendix A is hereby approved to become effective July 1, 1980.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sharon C. Credle, Deputy Clerk

APPENDIX A

Rule R8-47. Requirements of minimum standard offerings of lighting luminaires.

(a) Utilities are urged to investigate new, more efficient lighting systems as they are developed and, where such systems are efficient and economical to the consumer, to request approval of newer systems as standard tariff items.

(b) Luminaires with less than 33,000 lamp lumens

(1) When new lighting systems of less than 33,000 lamp lumens are offered, at least one unit must be offered in each of the following standard lumen ranges before offerings may be made in other ranges.

STANDARD RANGES
(Nominal Lamp Lumen Ratings)

Area Lighting	Street Lighting
6,000 - 8,700	6,000 - 8,700
20,000 - 30,000	10,000 - 14,500
	19,000 - 25,000

(2) If a standard unit of the new type is not available in a lumen output range required in R8-46(b)(1), the standard unit most closely meeting the lumen requirements of that range may be substituted.

(3) The lumen ranges required for street lighting by R8-46(b)(1), are based upon the light distributions on roadway and sidewalk areas resulting from the refractive characteristics of standard mercury vapor and high pressure sodium vapor point source luminaires. In order to qualify as meeting Rule R8-46(b)(1), luminaire systems with other light distributions will require a corresponding adjustment of lamp lumen levels in order to equal the roadway and sidewalk illumination from these standard luminaires.

(c) Luminaires with 33,000 or more lamp lumens

New lighting systems may be offered in 33,000 lumen or larger size without being offered in the standard ranges required by Rule R8-47(b).

(d) As newer, more efficient types of lighting sources become available and in substantial or predominant use, utilities will not be required to continue to offer the older, less efficient types of lighting for new service. Upon approval of the Commission, one or more sizes of the older types may be removed at one time from the schedule of offerings.

Effective July 1, 1980

DOCKET NO. E-100, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of Conservation of Energy Through More Efficient Outdoor Lighting) ERRATA ORDER

BY THE COMMISSION: Appendix A of the Commission's Order Adopting Rule R8-47 contained three references to Rule R8-46(b)(1), which should be changed to Rule R8-47(b)(1).

IT IS, THEREFORE, ORDERED

The references shown as R8-46(b)(1) in Paragraphs (b)(2) and (b)(3) of Appendix A of the Commission's Order of December 20, 1979, should be changed to R8-47(b)(1).

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. E-100, SUB 32
DOCKET NO. M-100, SUB 78
DOCKET NO. E-100, SUB 35

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matters of
Investigation, Analysis, and Estimation of Future Growth in the Use of Electricity and the Need for Future Generating Capacity for North Carolina
and
Investigation of Cost-Based Rates, Load Management, and Conservation Oriented End-Use Activities
and
Investigation, Analysis, and Estimation of Future Growth in the Use of Electricity and the Need for Future Generating Capacity for North Carolina, and the Reliability and Safety of Proposed Facilities
) ORDER SEPARATING ISSUES FROM DOCKETS AND ALLOWING LOAD MANAGEMENT RATES TO BECOME EFFECTIVE PENDING INVESTIGATION

BY THE COMMISSION: The Commission's Order of December 28, 1978, in Docket No. E-100, Sub 32, required (in Ordering Paragraphs 4 and 5) that the three major electric utilities in North Carolina file detailed plans for two load management programs and also file voluntary time-of-day rates for customers with thermal storage.

The Commission's Order of June 1, 1979, in Docket M-100, Sub 78, required (in Ordering Paragraph 2) that the filings resulting from Ordering Paragraphs 4 and 5 of its previous

Order of December 28, 1978, in Docket No. E-100, Sub 32, be incorporated into Docket M-100, Sub 78.

On September 28, 1979, Duke Power Company filed its response to Ordering Paragraphs 4 and 5 of the Order of December 28, 1978, in Docket No. E-100, Sub 32. Duke's filing included a proposed new rate schedule RT (NC) to replace existing rate schedule TRV (NC) effective February 1, 1980.

On September 24, 1979, Virginia Electric and Power Company filed its response to Ordering Paragraphs 4 and 5 of the Order of December 28, 1978, in Docket E-100, Sub 32. Vepco's filing included a proposed new rate schedule 9, to become effective December 1, 1979. Vepco has also filed proposed new rate schedules 1P and 1W, and Rider J to rate schedule 1, in Docket E-100, Sub 35 (heard in July 1979). The schedules filed in Docket E-100, Sub 35, were to become effective October 1, 1979.

On September 24, 1979, Carolina Power & Light Company filed its response to Ordering Paragraph 4 of the Order of December 28, 1978, in Docket No. E-100, Sub 32. CP&L's filing included proposed new rate schedules LGSI-1 and Residential Service Rider 56, to become effective October 24, 1979.

The Commission's Public Staff in its memorandum of October 24, 1979, stated that it requires time to review the programs, with respect to overall reasonableness, cost effectiveness, and comparability between utilities, and expects to do so as a part of a current rate examination program.

The Commission is of the opinion that suitable load management programs should be implemented as soon as possible. It would not be in the best interests of North Carolina ratepayers to suspend these rates and thereby lose the opportunity to begin implementation of the large user programs for the 1979/1980 winter peak and the residential programs for the 1980 summer peak. It is not expected that changes of such magnitude as to significantly adversely affect customer use of these programs will be necessary at the conclusion of the review and coordination process. The Commission, therefore, concludes that it is appropriate and necessary to allow these proposed load management rates and programs to become effective during the review and coordination process.

IT IS, THEREFORE, ORDERED:

1. That the load management programs and rates filed by Duke Power Company on September 28, 1979, by Virginia Electric and Power Company on September 24, 1979, including those filed earlier by Vepco in Docket No. E-100, Sub 35, and incorporated therein, and by Carolina Power & Light Company on September 24, 1979, in response to the

Commission's Order of December 28, 1978, Paragraphs 4 and 5, are allowed to become effective as filed subject to further review.

2. That the above load management matters are hereby separated from Docket No. E-100, Sub 32, and Docket No. E-100, Sub 35, and henceforth are incorporated into Docket No. M-100, Sub 78. Any furure filings with respect thereto shall be made in Docket No. M-100, Sub 78.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-100, SUB 12
DOCKET NO. G-100, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Rule-Making Proceeding for Curtailment	) ORDER REQUIRING
of Gas Service Due to Gas Supply	) DELETION OF MONTHLY
Shortage - Change in Requirement of	) SUMMARY OF HELD
Reporting Procedures	) ORDERS REPORT

BY THE COMMISSION: On April 1, 1971, the North Carolina Utilities Commission issued an Order requiring data to be filed and establishing curtailment priorities. In said Order the Commission, in Ordering Paragraph No. 3, ordered "That on all new requests for gas service following receipt of this Order, each natural gas company shall obtain the following information:

(a) The date of the request.
(b) The name of the customer.
(c) The address of the customer.
(d) Class of service.
(e) Appliance or equipment to be used.
(f) Whether customer is on existing main or, if not, the distance from an existing main.
(g) Reason for accepting, rejecting, or limiting customer's requests for service.

That a monthly summary of all new applications shall be filed with the Commission, which report shall be due 15 days from the last day of the preceding month for which the report is due."

This Order was issued as the supply of natural gas to the State of North Carolina was beginning to be curtailed and in anticipation of decreasing volumes of natural gas through the next several years. The Commission finds that the curtailment of natural gas has increased up until the

present at which time supplies are projected to increase substantially.

A Commission Order dated January 3, 1978, ordered that each gas utility file with the Commission on a monthly basis a load attrition report showing the number of customers in Priorities 1.1, 1.2, and 2.1. Due to the present load attrition policy, the request for monthly reports as ordered in Docket No. G-100, Sub 21, and the increase in supply projections, it is the Public Staff's recommendation and the Commission's conclusion that the monthly summary report of held orders as ordered in Docket No. G-100, Sub 12, is no longer necessary and should no longer be required by this Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order issued on April 1, 1971, requiring the monthly filing of summary of held orders be and is hereby terminated and cancelled.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Anne L. Olive, Deputy Clerk

DOCKET NO. G-100, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rule-Making Proceeding Concerning Load) ORDER MODIFYING
Growth Policies of North Carolina Gas) LOAD GROWTH
Distribution Utility Companies) POLICY

BY THE COMMISSION: By Order issued October 25, 1977, in the above docket, the Commission established rules for the connection of natural gas customers to replace volumes lost by the distribution companies in certain high priority classes due to attrition and conservation. This Order provided that replacement customers in Priorities 1.1, 1.2, and 2.1, located on existing mains, could be attached to the gas systems without prior Commission approval but that new customer commitments for Priorities 1 through 5 with nonboiler usage greater than 50 Mcf on a peak day, and any commitments not on existing mains, were subject to prior approval depending upon the feasibility of the attachment and the ratio of gas availability to the numbers and types of jobs to be added to the State's economy. Replacement volumes were limited to the extent of 102% of 1973 consumption levels in each customer class.

In order to expedite service to, and prevent discrimination against, certain prospective customers who are located adjacent to existing mains, the Commission

issued a further Order on January 3, 1978, amending its attrition replacement rules to permit the attachment of customers in Priority 1.1 located within 300 feet of existing mains and those in Priorities 1.2 and 2.1 located within 500 feet of existing mains, without prior approval, subject to the volume limitations previously established. Also, by this Order, the Commission prescribed a standard procedure for requests to serve new customers or to provide additional service to customers in Priorities 2.2 and 2.5.

Since the issuance of these Orders, the Commission has received and acted on a number of requests to provide new, high priority gas service and, through review of monthly load attachment reports, has monitored the attrition replacement of the companies. In conjunction with these activities, the Commission has worked closely with the Industrial Development Division of the Department of Commerce to determine the availability of natural gas service to prospective industries.

In a separate but related endeavor, the Commission has participated with the gas companies in lengthy proceedings before the Federal Energy Regulatory Commission (FERC) and the Federal courts to obtain additional natural gas from the State's sole supplier, Transcontinental Gas Pipe Line Corporation (Transco). On July 13, 1978, the United States Court of Appeals for the District of Columbia rendered its decision in State of North Carolina, et al. v. FERC, D.C. Cir. No. 76-2102, reversing a 1976 FERC Order in Docket No. RP72-99, which had prescribed a permanent curtailment plan for Transco, and remanding the case back to FERC to determine and consider the impact of the curtailment plan on ultimate users on the Transco system and to explore the merits of compensation to offset discrimination caused by curtailment.

On July 31, 1978, Piedmont Natural Gas Company, Inc. (Piedmont), filed a Motion requesting the Commission to review its Order of October 25, 1977, and amend such Order so as to remove all restrictions on the additions of new services. By Order issued September 11, 1978, the Commission set the matter for oral argument, which was held as scheduled on October 10, 1978.

Since that time, settlement negotiations have been concluded in FERC Docket No. 72-99 and an Offer of Settlement from Transco has been accepted by FERC. The Transco CD-2 gas entitlements reflected in the settlement are the result of both increases in Transco's system supplies and the settlement negotiations. For the North Carolina companies, this year's CD-2 gas entitlements (flowing gas for the 1978-79 winter period and the 1979 summer period) amount to a 39% increase over the CD-2 gas entitlements of the previous annual period. However, the total North Carolina gas supply for the prior annual period consisted of CD-2 gas, 533 gas (customer-owned), emergency gas, DS-1 gas, and exploration and development gas.

Therefore, the 39% increase in CD-2 entitlements is not a 39% increase above last year's total gas supply to North Carolina companies. In fact, the settlement volumes (CD-2 gas entitlements) are only about 5% more than last year's total supply. (Last year's total supply for comparative purposes does not include DS-1 gas entitlements because DS-1 entitlements will also be received this year in addition to CD-2 entitlements.) Nevertheless, the price of gas has altered the market such that demand is expected to be more than satisfied without the additional purchasing of expensive emergency gas and 533 gas. In addition, the settlement provides for the CD-2 entitlements of the North Carolina companies for the following year to be 13% greater than the CD-2 entitlements of the present year.

Based upon the foregoing matters, both of record and of which the Commission takes judicial notice, the Commission is now of the opinion that the previously established attrition replacement rules are no longer relevant to current market conditions and are unduly restrictive on the gas distributors and the State as a whole. Specifically, the Commission concludes the following:

1. The load growth limitation to 102% of base period volumes should be lifted.

2. The distribution companies should be authorized to add new gas services in Priorities 1 and 2 without restriction.

3. The addition of new services in Priorities below 2 should remain subject to prior Commission approval on a case by case basis in accordance with procedures to be prescribed.

4. The companies should continue to file reports on customer and load attachments.

IT IS, THEREFORE, ORDERED as follows:

1. That the limitation of load growth by customer class to 102% of base period volumes heretofore imposed on the State's natural gas distribution companies is hereby lifted.

2. That the distribution companies are hereby authorized to add new gas services in NCUC Priorities 1 and 2 without restriction and without prior approval by this Commission.

3. That requests for addition of new services for customers below NCUC Priority 2 be submitted for Commission approval in accordance with procedures set forth in Appendix A attached hereto.

4. That each company file with the Commission a quarterly report of customer and load attachments made pursuant to this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: For Exhibit A, see the official Order in the Office of the Chief Clerk.

DOCKET NO. G-100, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rule-Making Proceeding Concerning Load Growth Policies of North Carolina Gas Distribution Utility Companies	) ORDER ELIMINATING CASE-) BY-CASE APPROVAL FOR) ADDITION OF NEW) INDUSTRIAL CUSTOMERS

BY THE COMMISSION: By Order issued January 25, 1979, in the above docket, the Commission modified the rules for the connection of new customers by the natural gas companies. This Order lifted all restrictions on the addition of customers in NCUC Priorities 1 and 2 with additions below Priority 2 being subject to prior approval. On February 13, 1979, the Public Staff filed a motion requesting that the Commission further modify its Load Growth Policy so as to allow new customer connections below Priority 2 without prior Commission approval and on February 20, 1979, Piedmont Natural Gas Company, Inc., filed a motion in support thereof. Reasons cited for the above consideration included (1) an expected increase in Transco gas supplies to North Carolina of 17.5% within the next two-year period - due partially to the FERC settlement and due partially to increased system supply; (2) the substantial savings due to conservation by customers in NCUC Priorities 1.1, 1.2, and 2.1 during the 12-month period ending November 1978, these savings amounted to approximately three billion cubic feet (3 BCF). In addition, further modification of the load growth policy is expected to benefit the industrial customers and the gas companies while also providing a benefit, as well as protection to the high priority market (mainly residentials). And finally, further modification of the present policy is consistent with the State's policy of encouraging industrial growth in North Carolina as well as with the United States Department of Energy's proposal to use the available gas supply to reduce our balance of payments and dependence on foreign oil.

Based upon the foregoing matters, both of record and of which the Commission takes judicial notice, the Commission is now of the opinion that it is no longer necessary for the

distribution companies to receive case-by-case Commission approval prior to providing service to new customers below Priority 2.

IT IS, THEREFORE, ORDERED as follows:

1. That the distribution companies are hereby authorized to add new gas services to customers without prior approval by this Commission.

2. That the distribution companies make new customers aware of Commission Rule R6-19.2, Priorities for Curtailment of Service.

3. That each company file with the Commission a quarterly report of customers and load attachments made pursuant to this Order. For customers below Priority 2, this report shall include the capital cost to connect said customer.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-100, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Rule-Making Proceeding and Investigation into the Feasibility of Increasing the Supply of Natural Gas in the State of North Carolina	) ORDER DEFINING) PROCEDURES FOR) NATURAL GAS) EXPLORATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 5, 1977, and September 12 and 13, 1978

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, and Edward B. Hipp

APPEARANCES:

For the Applicants:

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, Box 2129, 222 Maiden Lane, Fayetteville, North Carolina 28302
For: North Carolina Natural Gas Corporation

T. Carlton Younger, Jr., Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27402
For: Pennsylvania and Southern Gas Company and United Cities Gas Company

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27402
For: Piedmont Natural Gas Company

F. Kent Burns and James H. Day, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

For the Intervenors:

Henry S. Manning, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Aluminum Company of America

William McCullough and Charles C. Meeker, Sanford, Adams, McCullough and Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina 27602
For: CF Industries, Inc.

Dennis P. Meyers and Jesse Brake, Associate Attorneys General, Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Robert F. Page and Stephen G. Kozey, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On June 25, 1975, this Commission established Rule R1-17(h) of the Rules of Practice and Procedure of the North Carolina Utilities Commission (the "Rules"), entitled "Procedure for Participation in Exploration and Drilling Programs and Approval of Associated Changes in Natural Gas Rates." On July 18, 1977, CF Industries, Inc., through its Attorney, filed a Petition for Amendment of and Supplement to Natural Gas Exploration Rules, and such petition was set for hearing by this Commission. Motions were filed by Public Service Company of North Carolina, Inc., on August 30, 1977, and by Piedmont Natural Gas Company, Inc., on September 2, 1977, requesting clarification of the scope of the proposed hearings. This Commission issued an Order dated September 8, 1977, specifying the scope of these proceedings and requiring a prehearing conference in this docket.

A prehearing conference in the above-captioned docket was held on September 15, 1977, and this Commission issued an Order dated September 22, 1977, affirming the stipulation of the parties at the prehearing conference. The agreement of the parties as affirmed by such Order was that the hearings in Docket No. G-100, Sub 22, would consist of two parts: Phase I, being consideration of the ERI and Transmac Programs, and Phase II, being review of the rule-making request of Petitioner, CF Industries, Inc., for certain financial and accounting determinations in connection with the exploration programs. Hearings on Phase I and a portion of Phase II were held on October 5, 1977. Further hearings on Phase II were held on September 12 and 13, 1978.

The matter came on for hearing as shown above, and this Commission received affidavits and testimony of the following witnesses: Calvin B. Wells, Senior Vice President, North Carolina Natural Gas Corporation; Everett C. Hinson, Vice President and Treasurer, Piedmont Natural Gas Company, Inc.; Thomas W. McCreery, Jr., Assistant Vice President-Supply, Piedmont Natural Gas Company, Inc.; C. Marshall Dickey, Vice President-Gas Supply Services, Public Service Company of North Carolina, Inc.; Robert T. Johnson, Partner, Arthur Anderson & Co. (appearing for Public Service Company of North Carolina, Inc.); Marshall Campbell, Assistant Secretary, Pennsylvania and Southern Gas Company; Glenn Rogers, Vice President, Gas Supply, United Cities Gas Company; George S. Monkhouse, Petroleum Consultant, George S. Monkhouse and Associates, Inc. (appearing for the Public Staff - North Carolina Utilities Commission); Raymond J. Nery, Director, Gas Division, Public Staff - North Carolina Utilities Commission; Donald E. Daniel, Assistant Director, Accounting Division, Public Staff - North Carolina Utilities Commission; Maynard F. Stickney, Chief Industrial Engineer, Badin Works, Aluminum Company of America; Arthur DeLeon, Manager, Energy Planning, CF Industries, Inc.; T. Hamilton Traylor, Vice President, Operations, CF Industries, Inc.; Vernon F. Stanton, Senior Consultant, H. Zinder & Associates, Inc. (appearing for CF Industries, Inc.); and Robert Bruce McGregor, Co-Director, Utilities Group, Ernst & Ernst (appearing for the North Carolina Utilities Commission).

Based upon the evidence adduced at the hearing, information of which this Commission took judicial notice, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. That Piedmont Natural Gas Company, Inc., North Carolina Natural Gas Corporation, Public Service Company of North Carolina, Inc., Pennsylvania and Southern Gas Company (North Carolina Gas Service Division), and United Cities Gas Company are corporations authorized to do business in the State of North Carolina and are duly franchised public

utilities providing natural gas service to their respective North Carolina service areas.

2. Each of the five natural gas distribution companies is providing reasonable and adequate natural gas service to its existing customers in North Carolina to the extent that it is able to do so under the present level of curtailment of its pipeline supplies of gas.

3. The five North Carolina natural gas distribution companies appearing in this docket are properly before the Commission pursuant to Rule R1-17(h).

4. Each of the five natural gas distribution companies has formed a wholly owned subsidiary to engage in exploration and development activities and each exploration subsidiary is the legal and recognized regulatory owner of the natural gas discovered pursuant to the exploration and development programs approved by this Commission.

5. The exploration subsidiaries of the North Carolina distribution companies have begun to deliver small quantities of gas from wells on or near the Transco pipeline to their parent companies for sale in North Carolina, and these deliveries are expected to increase.

6. Each exploration subsidiary has executed a gas sales agreement with its respective parent distribution company which provides that sales of gas from the subsidiary to the parent will be made at the highest allowable interstate price. Certificates of convenience and necessity to transport such gas to North Carolina have been obtained by the subsidiaries from the Federal Power Commission (FPC) and Federal Energy Regulatory Commission (FERC) based on the highest available and approved interstate price.

7. The sales of natural gas between the subsidiaries and their parents are conducted as arm's-length transactions. The use of the FERC approved interstate price is a recognized method of natural gas pricing for selling gas volumes in the interstate market.

8. The price charged to the parent companies will produce a revenue pool in the exploration subsidiaries to be divided 75% for the ratepayers and 25% for the shareholders.

9. The rule-making body of the accounting industry is the Financial Accounting Standards Board (FASB). In December 1977, the FASB issued its statement of Financial Accounting Standards No. 19 (FASB STATEMENT NO. 19) entitled "Financial Accounting and Reporting by Oil and Gas Producing Companies." That Statement required the use of the successful efforts method of accounting by oil and gas producers except where regulatory bodies governing such producers required a different method of accounting, i.e., full cost accounting.

10. On August 31, 1978, the Securities and Exchange Commission set forth its own rules for Financial Accounting and Reporting Practices for Oil and Gas Producing Activities. Such rules provided for the development of "reserve recognition accounting," a system of accounting which would differ from both successful efforts accounting and full cost accounting.

11. On October 4, 1978, the FASB voted to postpone the effective date of FASB Statement No. 19 by deleting the effective date of the statement: the FASB removed the requirement that the statement apply to all financial statements for fiscal years beginning after December 15, 1978.

12. The North Carolina gas distribution companies are required to file periodic reports with the Securities and Exchange Commission (SEC). In filing such reports and in disseminating data or documentation governed by the SEC, the distribution companies will be required to provide accounting data using the accounting procedures approved by the SEC.

13. The North Carolina exploration subsidiaries are not uniform in their present method of accounting, with three subsidiaries using one standard of exploration accounting and with two subsidiaries using the other method. Requiring either group to change their books and records at the present time when further changes will be required by the SEC provides no discernible benefit either to the companies or their customers.

14. The total cost of gas for each exploration subsidiary is that base cost of gas obtained by using the chosen accounting method, increased by (a) severance taxes, (b) transportation costs, (c) line loss, and (d) administrative charges.

15. The profit or loss (the "positive" or "negative" benefit) from the sales of gas by the exploration subsidiaries to their parent distribution companies can be calculated by subtracting the total cost of gas for a stated volume from the established contract price of such gas, the highest approved interstate price.

16. Commission Rule R1-17(h) provides an understandable and equitable mechanism for the allocation and distribution of the benefits of natural gas exploration activities to the customers of the natural gas distribution companies. Supplemental methods are necessary to reflect the fact that customer consumption levels may be different during the period(s) where benefits are distributed, relative to the period(s) where funds were contributed. Supplemental methods for making specialized allocations of funds have been proposed by witnesses for the North Carolina Utilities Commission and petitioner CF Industries, Inc. The proposal of Robert Bruce McGregor, the Commission's witness, provides

for general breakdowns by priorities and by special, large customer accounts. That proposal would also apply only to future exploration revenues and not to any revenues already disbursed pursuant to Rule R1-17(h)(6). Both proposals result in increased but not burdensome administrative costs if applied only to the nonresidential classes of customers.

Whereupon, the Commission reaches the following

CONCLUSIONS

1. The natural gas produced by the exploration and drilling programs entered into by the North Carolina natural gas utilities pursuant to Rule R1-17(h) of the Commission's Rules and Regulations should be priced by the participating utilities at the highest interstate rate established by the Federal Energy Regulatory Commission (FERC). This method of pricing the natural gas produced by the exploration and drilling program is fair and reasonable and will prevent distortions in measuring the benefits to be flowed to customers of the natural gas utilities who have paid the exploration and drilling surcharges.

2. Since the North Carolina natural gas distribution companies are divided in the use of successful efforts accounting and full cost accounting, requiring a modification of either one of these methods by the nonconforming gas distribution companies would be both unnecessary and unreasonable when further accounting changes will be required by the SEC in the reasonably foreseeable future.

3. Commission Rule R1-17(h) provides that when revenues from the customers' portion of the exploration and drilling program received by the utility exceeds the unrecovered expenses of the exploration and drilling program the utility shall file to adjust its rates downward by an amount sufficient to amortize such excess revenues over the next six-month period.

As a result of conservation, the changing economy, and curtailment, many customers may have a different gas usage during the period(s) over which benefits are distributed, relative to the period(s) over which funds were contributed. Customers receiving gas under FERC Rule 533 is such an example. As a further example, industrial processing is one of the principal applications of large volume users of natural gas. Due to changes in business activity occasioned by changes in general economic conditions including the availability of natural gas supply, it is not uncommon to find significant variations or wide fluctuations in the level of usage of such customers. In contrast, the level of usage of small and moderate users (residential customers) of natural gas tends to be relatively constant, affected primarily by changes in the weather.

The Commission is deeply concerned with regard to the equitable treatment of all ratepayers who have been required to contribute to the companies' exploration and drilling programs. However, it is not unmindful of the administrative burden and the attendant cost that would be imposed upon the utilities (and ultimately borne by the ratepayers) should the Commission seek to achieve "perfect equity" in the distribution of the benefits derived therefrom. Such a perfectly equitable distribution of the benefits would require that each and every customer's individual beneficial interest be established which, at the very least, would require a determination of each customer's contribution to the E & D program. Although such an objective is, admittedly, commendable, the Commission believes that any benefits derived therefrom would be more than offset by administrative costs and thus be counterproductive.

The Commission must, therefore, establish a threshold of usage to be used in determining which customers are to be accorded individual treatment. While the Commission, at present, does not have the requisite data to establish the threshold level(s) of usage for purposes of determining which customers are to be treated individually, it believes that initially it is reasonable, as a minimum, to require that all customers whose average daily usage exceeds 300 dekatherms be considered on an individual basis. Further, the Commission believes that the natural gas distribution companies and the Public Staff should be called on to comment on the following:

1. What level of usage within each customer class would be practical as a threshold to consider the pro rata benefits of the E & D program on an individual basis?

2. Should customers who are permanently disconnected from the system and who have not received pro rata benefits on an individual basis be given a refund due an average customer?

3. Should customers who are permanently disconnected from the system be given notice to expect within a three-year period such pro rata refunds as may be due an average customer arising from past contributions to the E & D program?

While the Commission has specifically called on the natural gas distribution companies and the Public Staff to comment on the above, the Commission encourages and would welcome comments from all parties to this proceeding.

Based upon the foregoing, the Commission therefore concludes that its Rule R1-17(h) operates in a just, reasonable, and nondiscriminatory manner to allow for the return of benefits from the exploration program to the majority of customers of the natural gas distribution companies. However, in order to avoid undue discrimination

and inequities, the following supplemental procedures should be employed:

a. The contributions of all customers should be segregated and separately accounted for either individually, in the case of customers whose average daily gas use exceeds the threshold level (tentatively set at 300 dekatherms per day), or by class for all other customers.

b. The proportionate (cost) interest of such customers or classes should be determined and the benefits flowed back to individual customers by direct credits on their bills or by downward adjustment in rates pursuant to Rule R1-17(h) as the revenues are received.

c. There should be a true-up to date of all revenues received from exploration and drilling programs to determine whether individual customers or customer classes have received their proper share of such benefits.

The Commission wishes to emphasize that any customer not being treated on an individual basis who believes that his usage during the period over which the benefits from the E & D program were distributed was materially less than the level of usage during the period over which contributions were made to such program and thus believes that he is being unduly discriminated against because of such usage characteristics shall have the right to receive upon a satisfactory showing of such undue discrimination an adjustment as required to provide for an equitable sharing of the E & D program benefits. Further, the Commission believes that the natural gas distribution companies should be required to give notice of the foregoing to each of their affected customers.

The North Carolina Supreme Court has said

"In addition, the Commission provided in Subsection (7) of Rule R1-17(h) that funds received from rate increases for exploration expenses are to be kept segregated on the utilities' books and the beneficial interests in any gas discovered or profits generated through exploration activities funded by such increases are to be preserved for the customers paying such increases. Thus, <u>any discrimination between present and future ratepayers would appear to have been avoided</u>, since any rewards accruing from these increases must be preserved for the customers actually supplying the funds." (emphasis added)

The Commission concludes that the procedures as prescribed herein go as far as practical to meet the test of equity among ratepayers. To go further would have the counterproductive effect of sacrificing the reality of financial benefit for the theoretical satisfaction of absolute equity.

IT IS, THEREFORE, ORDERED as follows:

1. The five natural gas distribution companies shall pay their wholly owned subsidiaries the FERC price for natural gas (highest interstate price for gas) increased by any transportation charges paid, any severance taxes paid, any line loss of gas attributable to transportation of exploration volumes, any compressor fuel required to transport exploration volumes, and any administrative costs allocated by such subsidiary to its exploration activity.

2. Each distribution company and its wholly owned subsidiary is hereby required to continue using the accounting method, whether successful efforts or full cost accounting, used by such distribution companies and subsidiaries on October 31, 1978. Each company shall, to the extent required by the Securities and Exchange Commission, modify its accounting methods and practices to provide for the determination of costs of exploration by the Securities and Exchange Commission.

3. The exploration volumes shall be priced by the natural gas distribution companies to their customers according to the validly approved rates and charges of such utility on file with this Commission.

4. The natural gas distribution companies shall keep a separate account of payments made by reason of exploration and drilling surcharges by each natural gas utility customer whose daily use of natural gas is in excess of the threshold level (tentatively set at 300 dekatherms per day). As revenues from the customers' portion of the exploration and drilling gas revenues in excess of the expenses of such programs are received, the proportionate share of such revenues shall be credited to these customers on their monthly gas bills. In the event that such customers are not receiving service at the time such credits would otherwise be recognized, distribution of such customers' proportionate share of revenues in excess of cost shall be accomplished by means of a direct refund payment.

5. The natural gas distribution companies shall keep separate accounts of payments made by reason of exploration and drilling surcharges for all customer classes, excluding such customers whose daily use of natural gas is in excess of the threshold level (tentatively set at 300 Mcf per day). The proportionate interest of each class shall be determined and the benefits flowed back pursuant to Rule R1-17(h)(6) as the revenues are received.

6. The natural gas distribution companies shall file within 45 days hereof an accounting to date of all revenues received from exploration and drilling programs and of the benefits returned pursuant to Rule R1-17(h) to customers whose usage is above the threshold level and to other customers by class.

7. Except as modified herein, the allocation method approved previously and set forth in Rule R1-17(h)(6) is hereby specifically affirmed and shall continue to be the allocation method for distributing benefits and interests in the natural gas exploration programs to customers of the natural gas distribution companies.

8. The natural gas distribution companies and the Public Staff shall file within 45 days from the issuance date of this Order comments with regard to the following:

(1) What level of usage within each customer class would be practical as a threshold level to consider the pro rata benefits of the E & D program on an individual basis?

(2) Should customers who are permanently disconnected from the system and who have not received pro rata benefits on an individual basis be given a refund due an average customer?

(3) Should customers who are permanently disconnected from the system be given notice to expect within a three-year period such pro rata refunds as may be due an average customer arising from past contributions to the E & D program?

9. The natural gas distribution companies shall provide each affected customer with notice to the effect that any customer who has reason to believe that his usage during the period over which the benefits from the E & D program were distributed was less than the level of usage during the period over which contributions were made to such program and thus believes that he is being unduly discriminated against because of such usage characteristics shall have the right to receive upon a satisfactory showing of such discrimination an adjustment as required to provide for an equitable sharing of the E & D program benefits.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

HAMMOND, COMMISSIONER, DISSENTING: The decision of the majority places the Commission well along the road to the establishment of a procedure which will be clearly discriminatory in its treatment of natural gas customers. I do not agree that certain large customers have faced or will face circumstances so uniquely different from customers in general that special procedures must be established to assure that these large customers receive their fair share of the benefits of exploration activities while all other

customers must hope that, "on the average," they will get their fair share.

All natural gas customers, large and small, have paid surcharges in direct proportion to the amount of natural gas used. These customers will benefit from the exploration programs in direct proportion to the amount of natural gas used. Why should the Commission take special precaution to assure that the large corporation which uses 300 mcf per day "receive their fair share" of the benefits and at the same time lump the poor widow on a fixed income in with the residential class and hope or assume that she will receive her fair share?

If we believe the Biblical teachings, then the "few pennies" contributed by the widow are just as important as the contributions of the giant corporations. The majority has fallen into the all too common position of giving preferential treatment to the large corporate or commercial customer. This is totally unfair and flys in the face of our responsibility to treat all customers in an equitable manner.

The law does not require that the Commission achieve "absolute" or "perfect" equity. The concept of reasonable equity and the prohibition against undue discrimination leaves the Commission some latitude to balance the reality of administrative costs with the equity requirements.

I am convinced that this decision falls short of our moral responsibilities and perhaps is inconsistent with our legal responsibilities. The North Carolina Supreme Court, in ruling on the legality of these programs, stated, "Under these circumstances, the Commission was well within its authority in approving the exploration concept and including the excess costs in the price of gas to customers, since these expenses were incurred for their benefit and the excess profits, under the Commission order, were preserved for the customers paying the rate increase." (emphasis added)

The Court further stated, in discussing the issue of whether all customers would benefit from the programs and whether discrimination might arise between present customers who were paying the charges and future ratepayers, "...the Commission provided ...that funds received from rate increases for exploration expenses are to be kept segregated on the utilities' books and the beneficial interest in any gas discovered or profits generated through exploration activities funded by such increases are to be preserved for customers paying such increases. Thus, any discrimination between present and future ratepayers would appear to have been avoided, since any rewards accruing from these increases must be preserved for the customers actually supplying the funds." (emphasis added)

This decision does not meet the test of assuring that customers will receive benefits in direct proportion to their contributions. That assurance is guaranteed only to the large customer.

The majority leaves open the question of how the beneficial interests of those customers who may move off the gas utility system will be protected and for how long they will be protected. Neither is a provision made to assure that some future customers will not benefit from the exploration program, a program to which they made no financial contribution.

The utility companies are able to keep detailed records to assure that stockholders receive a share of profits in proportion to the amount invested. Detailed consumption and billing records are also kept on each individual customer.

Computerized record keeping techniques make possible many things that proved administratively troublesome in the recent past. The companies provided no specific details on the magnitude of the administrative burden that would result from assuring that benefits flow to all customers in direct proportion to their contribution to the program. Only generalized statements about the "administrative burden" or "unreasonable administrative costs" were offered into the record. I hope information submitted by the companies in response to this order will provide more reliable data to support a more precise determination of administrative costs.

If the administrative costs would, in fact, be too great then why not let all customers - residential, commercial, and industrial - feed from the same trough?

In summary, I feel that this decision has the potential for serious inequity and will discriminate against the small customer. Finally, I feel the decision may fail to meet the test upon which the North Carolina Supreme Court appears to have based its decision on the legality of the exploration programs and the involuntary participation of gas customers through higher rates to cover the costs of these programs.

Leigh H. Hammond, Commissioner

DOCKET NO. G-100, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rule-Making Proceeding and Investigation into the Feasibility of Increasing the Supply of Natural Gas in the State of North Carolina	))))	ORDER AMENDING COMMISSION RULE R1-17(h)

BY THE COMMISSION: The Commission, by Order dated January 26, 1979, in Docket No. G-100, Sub 22, established certain procedures to be employed in the allocation and distribution of customer benefits realized from the natural gas exploration activities of North Carolina's five natural gas distribution companies (North Carolina Natural Gas Corporation, Pennsylvania and Southern Gas Company - North Carolina Gas Service Division, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company).

On February 28, 1979, CF Industries, Inc. (CFI), filed a motion requesting that the Commission clarify what monies are to be returned to customers or customer groups under its Order in Docket No. G-100, Sub 22, dated January 26, 1979.

Among other matters and things addressed in its January 26, 1979, Order, the Commission specifically called upon the five natural gas distribution companies and the Public Staff to file comments with regard to the following questions:

1. What level of usage within each customer class would be practical as a threshold level to consider the pro rata benefits of the exploration and drilling (E & D) programs on an individual basis?

2. Should customers who are permanently disconnected from the system and who have not received pro rata benefits on an individual basis be given a refund due an average customer?

3. Should customers who are permanently disconnected from the system be given notice to expect within a three-year period such pro rata refunds as may be due an average customer arising from past contributions to the E & D programs?

In response to the Commission Order of January 26, 1979, Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), and the Public Staff filed comments on March 12, 1979; North Carolina Natural Gas Corporation (NCNG) filed comments on March 13, 1979; and Pennsylvania and Southern Gas Company - North Carolina Gas Service Division (Pennsylvania and Southern) and United Cities Gas Company (United Cities) filed comments on March 14, 1979.

In response to Question No. 1 (What level of usage within each customer class would be practical as a threshold level to consider the pro rata benefits of the E & D programs on an individual basis?), NCNG urged the Commission to set the threshold for individual customer accounting at the level of 3,000 dt per day; Piedmont stated that it believed the 300 dt per day threshold level tentatively set by the Commission was appropriate; Public Service, Pennsylvania and Southern, United Cities, and the Public Staff would have the

Commission follow Commission Rule R1-17(h)6. Additionally, the Public Staff offered two alternative proposals for the Commission's consideration. Further, CFI in its motion for clarification filed on February 28, 1979, requested that the Commission enter an Order stating in substance that:

"(a) All monies generated by the exploration and drilling ventures be refunded to customers or customer groups on a pro rata basis according to their entitlement thereto on a quarterly basis without regard to current gas usage.

(b) All expenses relating to presently approved, ongoing exploration and drilling ventures be paid by current ratepayers on the basis of a distinct exploration and drilling surcharge per unit of gas consumed."

The Commission after having very carefully considered the comments filed by the parties and all of the other evidence of record in this regard, for reasons stated in its Order of January 26, 1979, reaffirms its conclusion that its Rule R1-17(h) operates in a just, reasonable, and nondiscriminatory manner to allow for the return of benefits from the exploration program to the majority of customers of the natural gas distribution companies. However, in order to avoid undue discrimination and inequities, upon termination of customer participation in the E & D programs the following supplemental procedures should be employed:

a. The contributions of all customers should be segregated and separately accounted for either individually, in the case of customers whose average daily gas use exceeds the threshold level of 300 dekatherms per day, or by class for all other customers. Average daily usage should be determined by dividing the total volumes of utility owned gas received during the period beginning with the inception of the E & D programs and ending with their termination by the number of days service was provided during said period.

b. Upon termination of the E & D program and upon the billing of all customer costs related thereto (to be determined on an individual basis for each utility) the proportionate interest (cost) of each customer or customer class should be determined based upon each customer's or each customer classes' percentage contributions to total customer costs recovered with respect to the E & D programs. Pro rata benefits arising from such programs should be flowed back to individual customers based upon such percentage contributions by direct credits on their bills, by direct refunds, or by downward adjustment in rates pursuant to Rule R1-17(h), provided, however, that the distribution of benefits to customers treated on an individual basis (in cases where average daily usage exceeds 300 dt per day) be made by means of a lump sum payment by check or money order. Proposed apportionment of benefits to customers other than those treated separately, and the manner in which same is proposed to be accomplished should

be filed for Commission approval concurrent and consistent with the reporting requirements of Commission Rule R1-17(h) as modified herein.

c. Upon termination of customer participation in the E & D programs there should be a true-up to date of all revenues received from exploration and drilling programs to determine whether individual customers (in cases where average daily usage exceeds 300 dt per day) or customer classes have received their proper share of such benefits determined in accordance with the procedures set forth hereinabove.

As stated in its January 26, 1979, Order, the Commission is deeply concerned with regard to the equitable treatment of all ratepayers who have been required to contribute to the companies' exploration and drilling programs. However, it is not unmindful of the administrative burden and the attendant cost that would be imposed upon the utilities (and ultimately borne by the ratepayers) should the Commission seek to achieve "perfect equity" in the distribution of the benefits derived therefrom. Such a perfectly equitable distribution of the benefits would require that each and every customer's individual beneficial interest be established which, at the very least, would require a determination of each customer's contribution to the E & D programs. Although such an objective is, admittedly, commendable, the Commission believes that any benefits derived therefrom would be more than offset by administrative costs and thus be counterproductive.

However, the Commission does hereby call upon the companies and the Public Staff to carefully monitor the distribution of the benefits from the E & D programs as required herein to insure that no customer is unduly discriminated against because of his usage characteristics.

In response to Question No. 2 (Should customers who are permanently disconnected from the system and who have not received pro rata benefits on an individual basis be given a refund due an average customer?), the parties offered the following comments:

1. Companies do not maintain records that would enable them to determine those customers who are permanently disconnected from the system.

2. In many cases the companies do not have forwarding adresses for customers who have been disconnected.

3. Payment of the pro rata benefit due an average customer may result in an inequitable distribution to these customers.

4. Because of the nature of exploration, it is impossible to determine in advance how much benefit will ultimately be received from the programs.

5. In the past, customers who have been disconnected from a utility system have never participated in the distribution of supplier refunds and refunds associated with margin variation adjustments.

The Commission, after having carefully considered the evidence and the comments of the parties in this regard, concludes, for reasons that are apparent, that it would be impractical, if not imprudent, to impose upon the natural gas distribution companies a requirement such as that contemplated by Question No. 2 at this time.

Concerns expressed by the parties in response to question No. 3 (Should customers who are permanently disconnected from the system be given notice to expect within a three-year period such pro rata refunds as may be due an average customer arising from past contributions to the E & D programs?) were in all material respects the same as those expressed in response to Question No. 2.

The Commission after having considered the evidence and the comments of the parties in this regard concludes that, at this time, it should not impose upon the companies a requirement such as that contemplated by Question No. 3.

IT IS, THEREFORE, ORDERED as follows:

1. That paragraph (h) of Commission Rule R1-17 is hereby amended by the addition of subparagraph (8) as follows:

"(8) That upon termination of the exploration and drilling programs and upon the billing of all customer costs related thereto each natural gas distribution company shall file within 60 days thereof an accounting of all costs incurred and that billed its customers with respect to such natural gas distribution company's exploration and drilling programs and an accounting of all revenues received and that distributed to its customers with respect to such exploration and drilling programs. Contributions of all customers to such exploration and drilling programs shall be segregated and separately accounted for either individually, in the case of customers whose average daily gas use exceeds the threshold level of 300 dekatherms per day or by class for all other customers. Average daily usage shall be determined by dividing the total volumes of utility owned gas received during the period beginning with the inception of the exploration and drilling programs and ending with their termination by the number of days service was provided during said period.

"The proportionate interest (cost) of each customer (in cases where average daily usage exceeds 300 dt per day) or each customer class shall be determined based upon each customer's or each customer classes' percentage contribution to total customer costs billed with respect to the exploration and drilling programs and future pro

rata benefits arising therefrom shall be flowed back to individual customers or customer classes based upon such percentage contributions. Distribution of such benefits may be accomplished by direct credits on customer bills, by direct refunds or by downward adjustment in rates; provided, however, that the distribution of benefits to customers treated on an individual basis (in cases where average daily usage exceeds 300 dt per day) shall be made by means of a lump sum payment by check or money order. Proposed apportionment of benefits to customers other than those treated separately and the manner in which same is proposed to be accomplished shall be filed for Commission approval concurrent and consistent with the reporting requirements established herein. New customers added to the natural gas distribution companies' systems subsequent to termination of the exploration and drilling programs shall not participate in past or future revenue benefits derived therefrom.

"The accounting as required hereinabove shall clearly show whether individual customers (in cases where average daily usage exceeds 300 dt per day) or customer classes have received their proper share of revenue benefits realized since inception of the exploration and drilling programs as determined in accordance with the procedure(s) set forth in this subparagraph (subparagraph (8)). Further, in the event that such revenue benefits have not been distributed as provided by said subparagraph, the distribution company shall submit for Commission approval, a method by which it would propose to accomplish a true-up.

"Subsequent to its initial report and accounting upon termination of its exploration and drilling programs, each natural gas distribution company shall thereafter, on or before March 1 and September 1 of each year, file with this Commission an accounting of all revenues realized from Commission-approved exploration programs during the six-month period ending the preceding December 31 and June 30, respectively.

"Such accounting shall clearly show the total level of revenue realized during each six-month period and the level of revenue to be distributed to each customer (in cases where average daily usage exceeds 300 dt per day) or each customer class during the ensuing six-month period and shall include adjustments as required to accomplish a true-up of any over or under past distribution(s) of revenue benefits. Further, the accounting for each six-month period shall clearly show by customer or customer class (consistent with the above) the cumulative total amount of revenue benefits distributed to such customer or customer class since inception of the exploration and drilling programs.

"Each natural gas distribution company shall file for Commission approval in conjunction with each six-month

accounting as required herein a plan, consistent with the foregoing, by which it proposes to make the distribution of revenues realized during each six-month period and when required, to accomplish a true-up of any over or under past distribution(s) of such revenue benefits. New customers added to the natural gas distribution companies' systems subsequent to termination of the exploration and drilling programs shall not participate in past or future revenue benefits derived therefrom.

"In determining the amount of revenue realized from the exploration and drilling programs to be distributed to its customers, each natural gas distribution company may deduct reasonable developmental and other costs essential to the realization of said revenues; provided, however, that such costs are reported in detail to this Commission as a part of each natural gas distribution company's six-month report."

2. That Ordering Paragraph No. 9 of the Commission Order issued January 26, 1979, in Docket No. G-100, Sub 22, is hereby rescinded.

3. That except as modified herein the Commission's Order of January 26, 1979, issued in Docket No. G-100, Sub 22, is hereby reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

COMMISSIONER HAMMOND DISSENTS.

DOCKET NO. G-100, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rule-Making Proceeding for Curtailment of Gas Service Due to Gas Supply Shortage	)	ORDER MODIFYING RULE R6-19.2, JANUARY 1, 1979

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, October 10, 1978, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Respondents:

T. Carlton Younger, Jr., Brooks, Pierce, McLendon, Humphrey & Leonard, 1400 Wachovia Building, Greensboro, North Carolina 27402
For: United Cities Gas Company and Pennsylvania & Southern Gas Company

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, P.O. Drawer U, Greensboro, North Carolina 27402
For: Piedmont Natural Gas Company

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, Box 1406, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland & Raper, Box 2129, Fayetteville, North Carolina 28302
For: North Carolina Natural Gas Corporation

For the Intervenors:

Keith R. McCrea, Grove, Jaskiewiez, Gilliam & Cabert, Attorneys at Law, 1730 M St., N.W., Washington, D.C. 20036
For: Owens-Illinois, Inc.

Charles C. Meeker, Sanford, Adams, McCullough & Beard, P.O. Box 389, Raleigh, North Carolina 27602
For: CF Industries, Inc.

For the Public Staff:

Robert F. Page and Dwight Allen, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On October 25, 1977, in Docket No. G-100, Sub 24, the Commission approved a revised priority Rule R6-19.2 which listed priorities for the curtailment of gas service in the event of limited natural gas supplies. The Commission further amended this Rule on October 11, 1978, at which time Priorities 2.8 and 3.2 were established and Priority 6.1 was deleted. This change was made to realign the NCUC plan closer to FERC order No. 467B plan. Since the approval of this amendment, N.C. Natural Gas Corporation (NCNG) and the Public Service Company of North Carolina, Inc. (PS), have filed rate schedules that allow customers in Priorities 2.8 to be on rate schedules applicable to

Priorities 3, 4, and 5. All of these customers have oil as an alternate fuel. Piedmont Natural Gas rates are essentially all the same for all priorities, therefore, not necessitating a filing. The Commission in previous Orders has authorized all natural gas companies to purchase sufficient natural gas supplies to supply service to Priorities 1 and 2 on a design winter basis. The above actions by the Commission gave lower rates to Priority 2.8 customers while granting these customers the same guarantees as other Priority 2 customers. The Commission is of the opinion that this preference should not be allowed to continue and that its previous Orders requiring the North Carolina gas utilities to purchase gas for Priorities 1 and 2 customers on a design winter basis should be limited to Priorities 1 through 2.7, inclusive; provided, however, that nothing herein contained shall prevent the purchase of gas for any customer regardless of his priority under circumstances where the purchase of such gas will not result in an increase in the rates for any other customer. The Commission is further of the opinion that the NCUC priority system should be revised as follows:

Rule R6-19.2. Priorities for curtailment of service.

(a) Priority 2.

2.8 Commercial over 100 Mcf/day (excluding commercial Priorities 2.3 and 2.4 and commercial boiler fuel requirements over 300 Mcf per day).

(b) Curtailment Among Priority Classes.

If curtailment exists within Priorities 5 through 3, a pro rata allocation will be utilized until 35% curtailment exists for all customers in Priorities 5 through 3 at which time customers will be curtailed in accordance with the priority classifications in a normal manner (curtailment of all customers in 5 prior to curtailment of any customers in 4); Priority 2 will be curtailed next, also, if curtailment exists within Priorities 2.5, 2.6, and 2.7, a pro rata allocation will be utilized until 35% curtailment exists for all customers in Priorities 2.5 through 2.7, at which time customers will be curtailed in accordance with the priority classifications as usual.

IT IS, THEREFORE, ORDERED:

1. That the natural gas utilities in North Carolina be and are hereby authorized to purchase sufficient supplies of natural gas to supply service to Priorities 1 through 2.7 inclusive on a design winter basis; provided, however, that nothing herein contained shall prevent the purchase of gas for any customer regardless of his priority under circumstances where the purchase of such gas will not result in an increase in the rates for any other customer.

2. That the priority system Rule R6-19.2 be amended as noted above and is revised in Appendix A attached hereto and made a part hereof.

3. That each natural gas utility shall file revised tariffs or rules and regulations to include the changes made herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
(Revised January 1, 1979)

Rule R6-19.2. Priorities for curtailment of service. - (a) In the event the total volume of natural gas available to a North Carolina retail gas distribution utility is insufficient to supply the demands of all the customers of that utility, the utility shall provide gas service to individual customers in accordance with the following order of priorities:

Priority 1. Residential. Essential Human Needs With No Alternate Fuel Capability. Commercial less than 50 Mcf/day.

1.1 Residential requirements and essential human needs with no alternate fuel capability.
1.2 Commercial less than 50 Mcf/day.

Priority 2. Industrial Less than 50 Mcf/day. Process, Feedstock and Plant Protection With No Alternate Fuel Capability. Large Commercial requirements of 50 Mcf or more per day except for large commercial boiler fuel requirements above 300 Mcf/day.

2.1 Industrial less than 50 Mcf/day.
2.2 Commercial between 50 and 100 Mcf/day.
2.3 Commercial greater than 100 Mcf/day, non-boiler use.
2.4 Commercial greater than 100 Mcf/day, with no alternate fuel capability.
2.5 Industrial process, feedstock and plant protection between 50 and 300 Mcf/day, with no alternate fuel capability.
2.6 Industrial process, feedstock and plant protection between 300 and 3,000 Mcf/day, with no alternate fuel capability.
2.7 Industrial process, feedstock and plant protection greater than 3,000 Mcf/day, with no alternate fuel capability.
2.8 Commercial over 100 Mcf/day (excluding commercial Priorities 2.3 and 2.4 and commercial boiler fuel requirements over 300 Mcf/day).

Priority 3. All Other Industrial Requirements Not Greater Than 300 Mcf/day.

3.1 Industrial non-boiler between 50 and 300 Mcf/day.
3.2 Other industrial between 50 and 300 Mcf /day.

Priority 4. Nonboiler Use Between 300 and 3,000 Mcf/day.

Priority 5. Nonboiler Use Greater Than 3,000 Mcf/day.

Priority 6. Boiler Fuel Requirements of More Than 300 Mcf /day But Less Than 1,500 per day.

Priority 7. Boiler Fuel Requirements Between 1,500 and 3,000 Mcf /day.

Priority 8. Boiler Fuel Requirements Between 3,000 and 10,000 Mcf/day.

Priority 9. Boiler Fuel Requirements Greater Than 10,000 Mcf/day

(b) Curtailment Among Priority Classes. - Gas shall not be considered available for any priority class until requirements for emergency gas sales, current demands of higher priority classes and necessary storage for protection of service from Priorities 1 to 2.4 and system integrity are met. The curtailment priorities listed in paragraph (a) are arranged with the highest priority listed first; i.e., Priority 9 is the first category to be curtailed, followed by Priorities 8, 7, 6, 5, 4, 3, 2, and 1, in that order.

If curtailment exists within Priorities 5 through 3, a pro rata allocation will be utilized until 35% curtailment exists for all customers in Priorities 5 through 3 at which time customers will be curtailed in accordance with the priority classifications in a normal manner (curtailment of all customers in 5 prior to curtailment of any customers in 4); Priority 2 will be curtailed next, also, if curtailment exists within Priorities 2.5, 2.6, and 2.7, a pro rata allocation will be utilized until 35% curtailment exists for all customers in Priorities 2.5 through 2.7, at which time customers will be curtailed in accordance with the priority classifications as usual.

All customers within a priority class must be completely curtailed prior to the curtailment of any customer in a higher priority except for emergency gas service as described in the foregoing.

(c) Curtailment Within a Priority Class. - Except as herein otherwise provided, in the event it is not necessary to completely interrupt all customers within a priority class, each customer within that class shall, to the extent practicable, be curtailed on a pro rata basis for the season

(winter season - November 1 through March 31 and summer season - April 1 through October 31).

(d) Curtailment of Emergency Service. - In the event that gas supplies are not sufficient to support requests for emergency gas service from customers, such service shall be curtailed according to the above priorities. Within a priority class, emergency gas service shall be supplied on a first-request basis.

(e) Initial Base Period. - Peak day volumes are determined by dividing the highest monthly consumption during the 12 months' period by the number of days in the billing cycle. For Priorities 1 through 5, the period is July 1, 1976, through June 30, 1977. For Priorities 6 through 9, the period is May 1, 1972, through April 30, 1973.

(f) Updated Base Period. - During July and August of succeeding years, consumption for each customer in Priorities 1 through 5 for the 12 months ending June 30 of such year will be reviewed, and if it is found that the customer increased his consumption to the point it would place him in a lower priority (e.g., 2.5 to 2.6) during any two months, the customer will be automatically reclassified to the lower priority as of September 1.

(g) Reduced Consumption. - Any customer in Priorities 1 through 5 who permanently reduces his consumption to the point that it would place him in a higher priority (e.g., 2.6 to 2.5) can make a written request to the company and, upon proof that the consumption has, in fact, been reduced, the customer will be reclassified effective on the following September 1.

(h) Definitions.

Residential: Service to customers which consists of direct natural gas usage in residential dwelling for space heating, air conditioning, cooking, water heating and other residential uses.

Commercial: Service to customers engaged primarily in the sale of goods or services, including institutions and governmental agencies, for uses other than those involving manufacturing or electric power generation.

Industrial: Service to customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product including the generation of electric power.

Plant Protection Gas: Minimum quantities required to prevent physical harm to the plant facilities or danger to plant personnel when such protection cannot be afforded through the use of an alternate fuel. This includes the protection of such material in process as would otherwise be

destroyed but shall not include deliveries required to maintain plant production.

Feedstock Gas: Natural gas used as a raw material for its chemical properties in creating an end product, including atmospheric generation.

Process Gas: Gas use for which alternate fuels are not technically feasible such as in applications requiring precise temperature controls and precise flame characteristics.

Boiler Gas: Gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

Alternate Fuel Capabilities: A situation where an alternate nongaseous fuel could have been utilized whether or not the facilities for such use have actually been installed.

Essential Human Needs: Hospitals, nursing homes, orphanages, prisons, sanitariums and boarding schools, and gas used for water and sewage treatment.

Emergency Service: Service which if denied would cause shut down or an operation which in turn would result in plant closing.

DOCKET NO. G-21, SUB 196
DOCKET NO. G-100, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing by North Carolina Natural Gas for an Adjustment in Its Rates and Charges	)	ORDER ALLOWING RATE SCHEDULE NO. 4 TO BE APPLICABLE TO N.C.N.G. PRIORITY 2.8 CUSTOMERS (COMMERCIAL CUSTOMERS WITH BOILER FUEL REQUIREMENTS BETWEEN 100 AND 300 MCF PER DAY)

BY THE COMMISSION: On December 18, 1978, N.C.N.G. filed Amendment No. 8 to Original Sheet No. 2 and Amendment No. 1 to Original Sheet No. 9 of N.C.N.G. tariffs on file with the Commission. By this filing N.C.N.G. proposes to provide service under Rate Schedule No. 4 to commercial customers, with boiler fuel requirements between 100 and 300 Mcf per day.

These customers were upgraded to N.C.N.G. Priority 2.8 by the Commission's Order dated October 11, 1978, in Docket No. G-100, Sub 24.

The Public Staff has reviewed the filing submitted by N.C.N.G. and recommends to the Commission that the filing be approved.

The Commission is of the opinion based on the filing submitted by N.C.N.G. and the recommendation of the Public Staff that the filing should be approved.

IT IS, THEREFORE, ORDERED: That Amendment No. 8 to Original Sheet No. 2 and Amendment No. 1 to Original Sheet No. 9 of N.C.N.G. tariffs be approved effective on billings on and after December 31, 1978.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-100, SUB 25

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Prohibition of Installation of	) ORDER DETERMINING
Outdoor Lights Using Natural	) EXEMPTIONS FOR PROHIBITIONS
Gas and Use of Natural Gas in	) ON INSTALLATION AND USE OF
Outdoor Lights	) NATURAL GAS OUTDOOR LIGHTS

BY THE COMMISSION: On June 3, 1975, after investigation, the Commission issued an Order in Docket No. G-100, Sub 25, terminating the use of natural gas in torches. Also included in the Order was a prohibition of additional gas lighting service being offered. At that time it was estimated that 10,742 gas lights were in use, having a combined consumption of 223,382 Mcf on an annual basis.

On May 3, 1979, the Economic Regulatory Administration (ERA) issued rules implementing Section 402 of the Powerplant and Industrial Fuel Use Act of 1978. This section deals with a prohibition on the installation and use of natural gas outdoor lights. The Commission believes that its June 3, 1975, Order in the above-mentioned Docket effectively addresses the prohibition of the installation of new natural gas outdoor lights. As for the replacement of existing natural gas outdoor lights, the Commission will determine, upon petition by the appropriate body, whether to grant an exception based on the criteria established in the ERA rules.

A study has been conducted by the Public Staff concerning the consumption of natural gas in outdoor lights in the State. At present, there are 5,988 gas lights in operation using an estimated consumption of 103,221 dt annually. This represents 0.09 percent of the natural gas used in the State and a 55.14 percent reduction from the 1975 consumption of

natural gas in outdoor lights. Schedule 1 (below) shows a comparison by company of the 1975 study and the 1979 study on natural gas in outdoor lights.

Section 402 of the Powerplant and Industrial Fuel Use Act prohibits the use of natural gas in outdoor lights. In the case of industrial customers currently using natural gas in outdoor lights, this prohibition is effective on November 5, 1979. In the case of residences and municipalities currently using natural gas in outdoor lights, the prohibition is effective on January 1, 1982. Included in the ERA rules on the prohibition of the installation and use of natural gas outdoor lights is the criteria for granting exceptions to the above-mentioned prohibitions.

Subpart D, Section 516.47 of the ERA rules states that an exception to the prohibitions may be based on the public interest. The criteria for this exception shall be satisfied upon a finding that converting a natural gas outdoor lighting fixture(s) to substitute lighting would not reduce the use of natural gas.

In four years since the last study on natural gas in outdoor lights, annual consumption of this use has been reduced 55.14 percent and the number of natural gas outdoor lights has been reduced by 44.26 percent. Based on the results of the Public Staff study on natural gas use in outdoor lights, the Commission believes that the use of natural gas in outdoor lights will diminish to where there would be little or no natural gas outdoor lighting in use except for those which could be exempted for historical significance or for safety of persons and property.

Subpart D, Section 516.41 allows an exemption on the basis of historical significance. The criteria for this exemption shall be satisfied if the specifically identified natural gas outdoor lighting fixture(s) directly contributes to the quality of significance of the historic property or district and that said property: (a) is listed on the National Register of Historic Places or is officially determined eligible for such listing, or (b) is in a district whose State or local statutes are certified as providing adequate protection of historic places by the Secretary of the Department of Interior, pursuant to the Tax Reform Act of 1976. The Public Staff estimates that at least one such area could possibly qualify for an historic significance exemption.

Subpart D, Section 516.44(b)(2)(ii) allows an exception on the basis of the necessity to protect the safety of persons and property upon a finding that the prohibitions would not be justified by the savings likely to accrue over the useful life of the substitute lighting facility. The Public Staff estimates that the initial cost of replacing natural gas outdoor lights with a substitute lighting facility would be $200. With such a high initial cost, the Commission

believes it is unlikely that any savings will be accrued from such substitution.

The Commission, after review of the ERA rules and upon the recommendation of the Public Staff is of the opinion that a report be filed by all natural gas companies to determine which customers should be exempted based on the exceptions put forth in the ERA rules.

IT IS, THEREFORE, ORDERED:

1. That the Commission proposes to implement Subpart B, Sections 516.20 - 516.22 of the ERA rules (attached as Appendix A) pertaining to the prohibitions on the installation and use of natural gas outdoor lights.

2. That upon issuance of a Final Order, existing natural gas outdoor lights are hereby exempted from the prohibition on the use of natural gas in outdoor lights.

3. That within one year from the date of this Order, North Carolina Natural Gas Corporation, North Carolina Gas Service, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company shall provide this Commission with a report concerning natural gas outdoor lights which could possibly be exempted on the basis of historical significance or on the basis of safety for persons and property.

4. That the report in Ordering Paragraph 2 shall contain a list of customers which could possibly be exempted, along with the number of natural gas outdoor lights in use by said customer and the estimated annual consumption of these lights.

5. That within ninety (90) days of issuance of this Order, North Carolina Natural Gas Corporation, North Caroling Gas Service, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company shall provide comments concerning the implementation of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of July, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: For Appendix A, see the official Order in the Office of the Chief Clerk.

DOCKET NO. G-100, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Establishing a Policy for Nonexempt Industrial Boiler Fuel Users - Rates and Benefits	) ORDER ESTABLISHING FINAL) RULE; APPROVING TARIFFS;) REQUIRING REFILING

BY THE COMMISSION: Under Title II of the Natural Gas Policy Act of 1978 (hereafter NGPA) certain industrial customers who use natural gas as a boiler fuel will be charged a surcharge by their gas utility for the incremental cost of such gas, up to the point where their ultimate purchase price for natural gas is equal to the alternative fuel cost as determined pursuant to §204(e) of NGPA, unless these customers are already paying a rate at least that high on January 1, 1980. The Commission, being of the opinion that any revenue benefit to be derived from increased charges for natural gas to these nonexempt users in North Carolina should be retained for the benefit of the high priority customers in North Carolina, gave notice of a rulemaking and issued a proposed rule pursuant to G.S. 62-31 on August 14, 1979. The proposed rule provided a mechanism to retain any benefit resulting from the implementation of new rates for nonexempt industrial boiler fuel users within the State of North Carolina.

In the Order issued in this docket on August 14, 1979, the North Carolina Natural Gas Corporation, Pennsylvania and Southern Gas Company (N.C. Gas Service Division), Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., United Cities Gas Company, and the Public Staff of the North Carolina Utilities Commission were made parties to this rulemaking and the natural gas distributing companies were each ordered to file a tariff establishing a rate for customers that are subject to incremental rate provisions under Title II of NGPA. In addition, each party was ordered to file written comments on the proposed rule within 45 days from the date of the Order.

By Orders of the Chairman, the filing time was extended on September 25, 1979, and October 9, 1979, in order to allow the parties in this docket to study the Federal Energy Regulatory Commission (FERC) Orders in RM79-14 and RM79-21 which were issued September 28, 1979.

Comments were received from all parties in this docket. Comments were also received from the North Carolina Textile Manufacturers Association, Inc. (NCTMA). By this Order, the Commission treats the Intervention of NCTMA as a Petition to Intervene and allows said Petition. The Commission has given due consideration to the comments of the NCTMA.

The Commission has studied all comments filed in this docket and is of the opinion that the proposed rule is consistent with the intent of the National Gas Policy Act

(NGPA). Incremental pricing is required under the NGPA. While the Commission has filed comments with the Federal Energy Regulatory Commission (FERC) in Docket RM79-47 requesting the consideration of state exemption plans, the incremental pricing rules established in RM79-14 were effective November 1, 1979. Therefore, the nonexempt North Carolina industrial boiler fuel customers are now subject to incremental pricing (although no surcharge is to actually be charged until January 1, 1980). Under the Commission's proposed rule, the same nonexempt industrial boiler fuel customers subject to incremental pricing are the same as those subject to incremental pricing under federal rules. Therefore, North Carolina nonexempt industrial boiler fuel customers will pay the incremental surcharge, with or without the Commission's rule. However, with the adoption of the proposed rule, the benefits will be retained in North Carolina rather than flowing through to all Transco customers. The Commission concludes that it is not necessary for a hearing, either on the rule or on the filed tariffs; incremental pricing is in effect and consequently the proposed rule, modified slightly for clarification, should be adopted.

Upon review of the tariffs filed in this docket, the Commission is of the opinion that all tariffs filed in this docket should be approved except the tariff filed by North Carolina Natural Gas Corporation (NCNG). The Commission is aware of the special problem concerning the NCNG customers near the port of Wilmington. However, the NCNG filing does not comply with the Commission's Order of August 14, 1979, and is inconsistent with the final FERC rules in Docket RM79-14.

IT IS, THEREFORE, ORDERED:

1. That Rule R6-71 attached hereto as Exhibit A be, and hereby is, adopted as a final rule of this Commission.

2. That North Carolina Natural Gas Corporation refile its tariff for incrementally priced boiler fuel within five days of the date of this Order, with an effective date of November 15, 1979.

3. That the incrementally priced boiler fuel tariff filed by Public Service Company of North Carolina, Inc., is hereby allowed to become effective November 8, 1979.

4. That the incrementally priced boiler fuel tariff filed by Piedmont Natural Gas Company, Inc., is hereby allowed to become effective November 8, 1979.

5. That the incrementally priced boiler fuel tariff filed by Pennsylvania and Southern Gas Company is hereby allowed to become effective November 8, 1979.

6. That the incrementally priced boiler fuel tariff filed by United Cities Gas Company is hereby allowed to become effective November 8, 1979.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

EXHIBIT A

FINAL RULE R6-71. PROCEDURES APPLICABLE TO FUNDS COLLECTED FROM NONEXEMPT BOILER FUEL USERS

SCOPE: This Rule shall apply to the sale of natural gas to industrial customers for consumption in a boiler fuel facility which is not exempt from the incremental pricing provisions of the Natural Gas Policy Act of 1979 (hereinafter "nonexempt boiler fuel facility") and which is served under a tariff established for nonexempt boiler fuel.

OPERATION: In any month where a natural gas company sells gas to an industrial customer for use in a nonexempt boiler fuel facility and bills the customer at the FERC determined ceiling price, the difference between the rate charged under Paragraph (a) of the distributor's incrementally priced boiler fuel tariff and the rate the nonexempt industrial customer would have been charged, under Paragraph (b) of such rate shall be placed in a deferred account by the Company when received from the customer, and interest shall be paid by the Company on such deferred amounts. On a semiannual basis, the balance in this account shall be included as an offset to Transcontinental Gas Pipe Line Corporation's semiannual PGA increases (September 1 and March 1). This benefit shall be flowed through in the succeeding period on all gas sold other than gas sold for consumption in nonexempt boiler fuel facilities or on gas sold to such class(es) of customer(s) as ordered by the Commission.

DOCKET NO. P-100, SUB 45

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Investigation of Intrastate Long Distance, WATS, and Interexchange Private Line Rates of all Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission	) ORDER MODIFYING) REPORTING) REQUIREMENT

BY THE COMMISSION: By letter dated December 8, 1978, in this docket (Docket No. P-100, Sub 45), Southern Bell Telephone and Telegraph Company requested that it no longer be required to furnish the report setting forth the absolute dollar amounts of intrastate toll revenue settlements as

required by Ordering Paragraph No. 7 of the Commission's Order Setting Rates for Intrastate Toll Service issued March 24, 1978.

The Commission being of the opinion that good cause exists for the granting of such request,

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell Telephone and Telegraph Company's request that it no longer be required to furnish the report setting forth the absolute dollar amounts of intrastate toll revenue settlements as required by the Commission Order issued March 24, 1978, in this docket (Docket No. P-100, Sub 5) is hereby approved.

2. That except as modified hereinabove, the Commission's Order of March 24, 1978, is hereby reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of January, 1979.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. P-100, SUB 48

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation and Rulemaking Regarding Implementation of the 911 Emergency Telephone Number as a Service to the Citizens of North Carolina	) ORDER FOR TELEPHONE COMPANIES TO MAKE 911 SERVICE AVAILABLE FOR THE UNIVERSAL EMERGENCY TELEPHONE NUMBER THROUGHOUT NORTH CAROLINA; ADOPTING RULE FOR IMPLEMENTATION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, beginning on May 22, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Frances W. Crawley, Associate Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: Rufus Edmisten, Attorney General; North Carolina Department of Crime Control and Public Safety, Divisions of Crime Control

and Civil Preparedness; North Carolina Fire Commission; North Carolina Department of Human Resources, Office of Emergency Medical Services

For the Respondents:

William W. Aycock, Jr., Taylor, Brinson & Aycock, Attorneys at Law, P.O. Box 308, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company and Norfolk Carolina Telephone Company

John R. Boger, Jr., Williams, Willeford, Boger, Grady & Davis, Attorneys at Law, P.O. Box 810, Concord, North Carolina 28025
For: The Concord Telephone Company

R. Frost Branon, General Attorney, Southern Bell Telephone and Telegraph Company, P.O. Box 30188, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602
For: Mebane Home Telephone Company, Heins Telephone Company, Randolph Telephone Company, Mid-Carolina Telephone Company, Western Carolina Telephone Company, Westco Telephone Company, Sandhill Telephone Company

William C. Fleming, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702
For: General Telephone Company of the Southeast

James M. Kimzey, Kimzey, Smith & McMillan, Attorneys at Law, Wachovia Bank Building, P.O. Box 150, Raleigh, North Carolina 27602
For: Central Telephone Company

For the Public Staff:

Joy R. Parks and Paul Lassiter, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This proceeding was instituted on September 28, 1978, by the filing of a joint petition by the Honorable Rufus L. Edmisten, Attorney General of North Carolina, the North Carolina Department of Crime Control and Public Safety, Division of Crime Control, Civil Preparedness

and Fire Commission, and the North Carolina Department of Human Resources, Office of Emergency Medical Services asking the Utilities Commission to institute a proceeding for a uniform statewide rule for 911 emergency telephone systems in North Carolina.

On October 26, 1978, the Commission issued its Order instituting an investigation and rule-making proceeding into the implementation of the 911 emergency telephone system for service to all telephone exchanges in North Carolina on a county by county basis. All telephone companies in North Carolina were made respondents and ordered to file with the Commission, on or before January 15, 1979, information on specific subjects concerning their ability to implement the 911 emergency system. Each of the twenty-two (22) regulated telephone companies filed responses to the data requests. All parties having interests in support of or opposition to the implementation of the 911 emergency telephone service were invited to participate. The Commission, in an Appendix to the Order, submitted for consideration by the parties, Proposed Rule R9-5, Rule Requiring Implementation of 911 Emergency Telephone Number.

By Order issued on January 30, 1979, the Commission set the proposed rule for hearing on April 11, 1979, subsequently the hearing was rescheduled for May 22, 1979.

The two-day hearing was held as scheduled and reflected widespread interest on the part of the attending public, the witnesses involved in the planning or operation of the 911 system, and telephone company representatives.

William J. Lynch, Communications Coordinator, Department of Crime Control and Public Safety, presented a compendium of the 911 operating concept. He indicated that in June of 1979 he expects to get funds approved by the Governor's Commission on Crime Control so that he can invite engineering firms to submit bids for developing a statewide 911 plan similar to the existing statewide police radio communications plan. The police radio plan includes equipping each of the 100 North Carolina counties with at least one command control center (generally located in the Sheriff's Department) with adequate capacity to include fire, police, and emergency medical services, dispatching and message handling. Lynch, who represents the petitioning Department of Crime Control, suggested that this hearing establish "who should bear the cost of modification of central office telephone equipment when modifications are necessary in order to provide the 911 service."

Susan Harris, a 911 Planner in the Department of Crime Control, testified that 100 counties in North Carolina and 31 telephone companies were surveyed to determine interest in 911. Seventy-five counties returned the surveys and of those counties, 70 indicated an interest. She participated on the ad hoc task force which developed and distributed, to county commissioners and county managers, a Planning Guide

for use in preparation for implementation of the 911 system. She stated that a primary reason for having petitioned the Commission to hear this matter is to resolve the question of who will bear the costs of modification of central office equipment when a county desires to implement the 911 system.

Roger Reinke is a program manager in the United States Office of Telecommunications and Information Administration (NTIA). The function of NTIA is generally to oversee the executive branch's development and implementation of telecommunications policies. He described some of the legislation of several states which mandate 911 implementation or planning. Reinke testified regarding some of the problems experienced in attaining agreement among public safety agencies who must establish Public Safety Answering Points (PSAP) in order to implement the 911 system. He observed that, "state resources may or may not be used in the future to underwrite the cost of capital improvements of central office equipment but the Commission should bear in mind that 911 calls constitute only a tiny fraction of traffic which would be switched by the modified central office equipment."

Ed Canady is Supervisor of the Durham Emergency Operations Center that is responsible for handling all 911 emergency calls in the geographic areas encompassed by the City of Durham and Durham County. According to Canady, Durham was the first city in the Southeast with a population of over 100,000 (the present population is 146,000) to have a fully integrated communications network. The 911 system has been in operation there since 1972. A caller who dials 911 has one chance in 1,000 of getting a busy signal. This complies with the ideal standard suggested by AT&T. Canady opposes using Automatic Number Identification (ANI) because he believes that it would deter some citizens from calling when the emergency involves law enforcement.

B.J. Millikan, Director of Public Safety, City of Winston-Salem Communications, testified as to the steps that were taken in order to implement the citywide 911 system which has been in operation over the past two years. The system basically covers city, fire, and police; and relays calls received for the county - for ambulance service, for the fire and sheriff's departments. Prior to implementation of 911 Winston-Salem provided a centralized communications system using a seven-digit emergency number for police and fire emergencies. The current annual operating budget for the Communications Center is $536,000. Winston-Salem receives approximately 1,600 police emergency calls each week, around 50 of these are referred to the sheriff's department or ambulance service. It is estimated that an additional 400 calls per month are to report fires. The system has a locking device and hold which enables the Communications Center to trace the call. It also has "forced disconnect" so that once the Communications Center disconnects the line automatically disconnects in four or five seconds if the caller fails to hang up.

Sanford Smith is Director of Building Management and Technical Services for the City of Greensboro and he is President Elect of the Associated Public Safety Communications Officers, Inc. During the past two years he has been involved in the study and/or implementation of 911 systems in Orange County and Moore County, North Carolina. He testified concerning various problems of coordination between the local government and the telephone companies. Smith suggests that representatives of telephone companies meet with local government representatives for the purpose of adjusting telephone company schedules for changing equipment to coincide with plans of local government to provide 911 service. He observed that five to six telephone companies often service one county and this necessitates a coordination of efforts to achieve countywide 911 service.

Marvin Heller is Emergency Communications Director for the Raleigh-Wake County Emergency Communications Center. At the present time Wake County has a common emergency seven-digit number. The Communications Center serves 10 municipal police departments, 10 rescue squads, and 22 fire departments. It does not serve the sheriff's department, the City of Cary, or the Town of Apex. Wake County is served by three telephone companies: Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company, and General Telephone Company of the Southeast. Heller stated that approximately 97% of the people in Wake County have access to the Communications Center by dialing the seven-digit number. The Communications Center is administered by an organization known as the Wake Emergency Communications Organization which is composed of the management personnel from those municipalities and county people that are served by the Center. This is the planning organization for the implementation of 911. Heller advocates using ANI in Wake County because of the duplicate street names within the cities and because of the similar sounding street names.

W.D. Edmunson is employed with Carolina Telephone Company as a General Plant Extension Engineer. He described the types of telephone service in North Carolina - the common control office and the direct control office. Edmunson also testified as to the costs associated with modifying the central office equipment to accommodate 911.

Thomas Moncho is General Regulatory Manager for the North Carolina Division of Central Telephone Company. It is his position that if the telephone company is required to install central office equipment to implement 911 prior to the time such equipment would ordinarily be changed, the governmental agency requesting the service should bear the costs. He recommends a phase in plan which would allow the company to provide the switching within the budgeted cost of service plans and thus reduce the final impact.

Frankie Miller, Manager of Network Services at Central Telephone Company, testified on the cost estimates of modifying central office equipment to accomodate 911.

F.T. Fugate, the Local Revenue Requirements Manager for Carolina Telephone Company, testified on Carolina Telephone and Telegraph and Norfolk Carolina Telephone Company policies on the provision of the 911 Emergency Telephone Number. He indicated that out of the total of 183 central offices within the two companies only 52 offices now have, or will have by 1985, the capability of providing the 911 number with only minor modifications. He estimates that to make modifications in the remaining 131 offices prior to the scheduled replacement dates would cost as high as $17.1 million. Fugate suggests that if a locality implements the centralized Emergency Communications Center before the scheduled central office equipment changes that the telephone company should provide a seven-digit number which can be replaced with the 911 digits.

Claude O. Sykes is employed by General Telephone Company of the Southeast as the Vice President-General Manager for North Carolina. He stated that General serves Monroe, Alton, and Goose Creek areas of Union County and described the central office equipment costs which would be absorbed by the company.

Frank C. Pethel is President of Systech Corporation, a firm which has assisted local governments in North Carolina in the planning and acquisition of radio communications systems. Systech has worked on projects for Durham and Wilmington that directly involved inquiry into the details of 911 service. Pethel advocates using a seven-digit emergency number as an interim step when the added cost of 911 equipment is not presently available. He stated that the specific advantages of 911 over the seven-digit system is that 911 is easily advertised, easily remembered, and easily dialed. In communities where pay phones have a "dial tone first" the caller can use a pay phone and reach the emergency number without having deposited a coin. Where there is no "dial tone first" some additional adjustments would be necessary to permit coin-free use of coin-operated telephones.

Thomas L. Bingham, Secretary-Treasurer and Administrative Officer of Citizens Telephone Company, testified on the experience of Transylvania County under the seven-digit emergency telephone number system. He indicated that the switching modifications necessary to provide the countywide seven-digit emergency number have been made at no cost to the agencies receiving the service or to local governments. Bingham states that providing a seven-digit telephone number to an emergency answering center is an acceptable first step in establishing 911 service, as it allows the emergency service agencies and governing bodies the opportunity to make a commitment to a centralized answering service before

requiring the telephone company to make major expenditures in switching systems.

G.E. Stirewalt is a Southern Bell Telephone and Telegraph Company District Staff Manager - Business. He estimates the economic impact of modifying all Southern Bell central office equipment within one year would amount to approximately $4,829,000. In his opinion, modifications within this time period are inappropriate because: (1) all local agencies have not begun and/or completed 911 planning; (2) Southern Bell has not received requests from all governmental bodies that might order 911; and (3) Southern Bell has not implemented the necessary planning for the 911 systems. In order to recoup the expense associated with central office modification required to implement 911 service, Southern Bell would propose to include these costs as operating expenses for rate-making purposes and, therefore, all Southern Bell subscribers would share in the burden associated with the provision of the 911 service. Mr. Stirewalt recommends the following considerations in determining the "best time" for 911 implementation: (1) central office rearrangements costs versus the scheduled date for ESS (Electronic Switching System) conversion; (2) local political decisions such as which agency will answer the calls, where the answering location should be, the number and type of agencies to be served, and budgetary considerations; (3) Southern Bell planning functions - engineering of the system, equipment order intervals, and coordination with local agencies and independent telephone companies, planning should be stated after a request for 911 service is made; and (4) the facilities - necessary floor space, etc., provided by the municipalities. Southern Bell is now developing a comprehensive special Emergency Reporting Service tariff section that will include both 911 and expanded 911. The tariff is scheduled to be filed prior to January 1980. Mr. Stirewalt indicates that there can be no predetermined interval for providing 911 service following receipt of a subscriber's order. He summarized Southern Bell's four 911 policy objectives for the provision of basic 911 service as follows: (1) There is to be no local message charge to the calling party for a 911 call, regardless of where the call originates or terminates. (2) The costs for rearrangements necessary to accommodate the 911 code in the exchange network will not be billed to the subscriber. This means Southern Bell shall undertake to make whatever central office rearrangements are necessary to permit use of the 911 code effectively in that locality. (3) The governmental agency subscribing for service (the customer) is to be charged for the 911 exchange lines that terminate at the Public Safety Answering Point (PSAP) and for the equipment used to answer the emergency calls. (4) The telephone company is to determine the method of routing the 911 emergency calls and accommodating specific features requested by the customer to the extent economically feasible.

Phil Widenhouse is Executive Vice President and Treasurer of the Concord Telephone Company. He supports the 911 concept but is concerned that "premature" implementations may result in excessive costs. Widenhouse estimates that all nine exchanges of Concord Telephone Company will have 911 capability by the year 1986.

Royster Tucker, Jr., General Manager of North State Telephone Company, presented a suggested revision to the Commission proposed rule.

Based upon the evidence and record herein, the Commission makes the following

FINDINGS OF FACT

1. Nine-one-one (911) is the three-digit telephone number that has been designated for public use throughout the United States in reporting an emergency and requesting emergency assistance.

2. Telephone company policy now is to encourage practices that reduce the need for toll operators and to centralize operators at great distances from the calling point. This trend removes what has been an important emergency service supplied by the telephone company.

3. Nine-one-one service significantly speeds up true response time which is measured from the time of recognition of the need to the time the appropriate police, fire, or medical assistance is dispatched to the point of need.

4. The number 911 has a nationwide recognition factor of between 85% and 90% as an easily remembered and easily dialed number to call for police, fire, or medical assistance.

5. That the 911 emergency telephone number system is in the public interest and it is just and reasonable to require regulated telephone companies in North Carolina to make such 911 service available to local governmental agencies that desire to install such service in the political subdivision they serve, as hereinafter provided.

6. That an essential element of a 911 system is the Public Safety Answering Point (PSAP, often called "P-Sap"). It is the communications facility operated on a 24-hour basis which first receives 911 calls for persons in a 911 service area and which may, as appropriate, directly dispatch public safety service or extend, transfer, or relay 911 calls to the appropriate public safety agencies.

7. That a party calling 911 should receive a busy signal no more than one call in 1,000, except that as an interim standard one busy signal in 100 calls and a telephone answer within 10 seconds is acceptable.

8. That most of the 100 counties in North Carolina have at least one command control center set up for the statewide police radio communications with equipment that is adequate to handle fire and medical emergency messages.

9. There are presently six 911 systems in operation in North Carolina in the cities of Fairmont, Newland, and Winston-Salem; and the counties of Lincoln, Durham, and Orange. Approximately 18 additional North Carolina counties are in the advanced stages of planning for 911.

10. That 70 counties in North Carolina have a known interest in implementation of the 911 system.

11. That problems which arise when more than one telephone company services a single county can be resolved through cooperation and coordination of the involved telephone companies.

12. That the following problems arise from the regulation of franchised telephone companies and may be governed by Rules of the Commission: (a) The costs related to installation of 911 lines, (b) the recurring charges for 911 telephone service, and (c) the modification of central office telephone equipment to access 911.

13. That 911 calls constitute only an infinitely small fraction of traffic which would be switched when the central office equipment is modified to access 911.

14. That the costs of modifying the older step-by-step and cross bar type central office equipment for 911 service is substantially greater than the costs associated with modification of the newer electronic and digital central office equipment for 911 service.

15. That the reasonable method of charging for 911 service is for the telephone company to include the cost of modifying the central office equipment as part of the operating expenses or rate base, respectively, in accordance with the Uniform System of Accounts and to make those modifications in the instances where the costs are substantial in a time sequence that would limit overall costs but yet recognize the desirability of the local authorities having reasonable access to 911 service, and to charge the local governmental agency for the trunks and terminal equipment to which it subscribes.

16. That it is economically sound and in the public interest for local governmental agencies and telephone companies to negotiate mutually agreeable dates for implementation of 911 service.

17. Where a coordinated emergency call system has been developed prior to telephone company modification to access 911, the telephone company should immediately provide an interim seven-digit emergency number ending with the digits

911, at no additional cost to the agencies receiving the service or to the local government.

18. That the 911 emergency number or emergency seven-digit number should be affixed on all coin-operated public telephones and imprinted on the outside cover of all telephone directories.

CONCLUSION

The evidence supporting the above Findings of Fact is documented in the record and is summarized in the introductory section of this Order and in the following conclusions of the Commission.

Official interest in establishing a universal emergency telephone number stems primarily from a 1967 recommendation of the President's Commission on Law Enforcement and the Administration of Justice that a "single number should be established" for reporting emergencies to the police. In 1968 the American Telephone and Telegraph Company (AT&T) announced that it would make the digits 911 available nationwide as an emergency telephone number. In March 1973 the Office of Telecommunications Policy of the Executive Office of the President of the United States published Bulletin No. 73-1 dealing with national policy for the Emergency Telephone Number 911. This Bulletin was addressed to the "Heads of Executive Departments and Establishments" and provided information and guidance to be used in assisting state, local, and municipal governments in implementing 911 expeditiously.

Implementation of 911 is a matter of statewide concern. The state agencies involved have endorsed the 911 concept. Planning for implementation involves coordinated efforts of local political authorities, the local police chief and sheriff, the local fire chief, the emergency medical service agency, and the telephone company. Thus, responsibility for the establishment of 911 service rests with local government.

In order to facilitate local government planning, on December 8, 1978, the North Carolina Department of Crime Control and Public Safety released a 911 Planning Guide which was prepared by the Crime Control Division and funded by the North Carolina Governor's Crime Commission through a United States Department of Justice Law Enforcement Assistance Administration grant. This Guide, which outlines the steps necessary to implement a 911 system, was distributed to Chairmen of Boards of County Commissioners and County Managers throughout the State.

The North Carolina Department of Crime Control and Public Safety, the North Carolina Department of Human Resources, and the Attorney General on September 28, 1978, filed with the North Carolina Utilities Commission a joint petition requesting investigation and rule-making proceeding

regarding implementation of the 911 Emergency Telephone Number as a service to the citizens of North Carolina. The petition stated, inter alia, "that a major obstacle before the several North Carolina telephone companies in implementing 911 service is having central office equipment presently in service which is inadequate to accommodate the 911 emergency system." The petition further asserts "That the question of expense to the telephone utilities for acquiring the necessary equipment and for making the other operating adjustments necessary to implement the 911 system should be investigated by the Commission."

The Commission having heard the proponents of the 911 system, representatives who presently operate 911 systems, and the telephone companies, concludes that it is in the public interest to require regulated telephone companies to provide a single emergency telephone number which can be used anywhere in this State to report an emergency and to request assistance upon a time sequence subject to approval of the Commission, as hereinafter provided. The digits 911 should be the primary emergency number throughout the State of North Carolina. The use of this easily remembered number eliminates the need to determine the appropriate seven-digit number when an emergency occurs. The primary objective is to reduce response time and thus enable citizens to obtain law enforcement, medical, fire, rescue, and other emergency services in the most expeditious manner.

The present trend toward reduction in numbers of toll operators and centralization of operators at greater and greater distances from the calling point impacts directly upon the level and quality of service in emergency situations. The Commission concludes that these trends, unless corrected by an alternative system, will adversely affect the security, convenience, or safety of the general public and that G.S. 62-42 authorizes the Commission to order corrective action under these circumstances.

In order to facilitate the planning and implementation of the system by the local governments the Commission should establish a policy relating to the availability, and the costs, of that portion of 911 service which is to be provided by regulated telephone companies.

IT IS, THEREFORE, ORDERED:

1. The digits 911 shall be the number designated for public use throughout North Carolina in reporting an emergency and requesting emergency assistance in accordance with the provisions of NCUC Rule R9-5 adopted in this Order.

2. There should be sufficient circuits to the 911 emergency reporting system so that no more than one call out of 100 incoming calls will receive a busy signal on the first dialing attempt, with the ultimate goal of no more than one call out of 1,000 incoming calls receiving a busy signal on the first dialing attempt.

3. If the above required level of service is not met, the serving telephone company shall prepare plans, specifications, and cost estimates to raise the level of service to the required level and such information shall be provided to the Public Staff of the North Carolina Utilities Commission.

4. Problems which arise when more than one telephone company services a single county shall be resolved through cooperation and coordination of the involved telephone companies with assistance from the Public Staff upon request.

5. Telephone companies shall notify the Public Safety Answering Points (PSAP) at least 48 hours in advance of any routine maintenance work to be performed on emergency circuits or terminal equipment which may affect the 911 system. Any such work shall be performed during a time designated by PSAP as off-peak hours.

6. When subscribing to a 911 system, the local government units operating the PSAP shall request a contract from the servicing telephone company. The telephone company shall submit a proposed contract which shall include an itemized list showing installation and recurring costs for all system features and hardware as provided by the serving telephone company. A copy of the proposed contract shall be submitted to the Public Staff who shall review the proposed contract and upon request from the local government make recommendations as to the reasonableness of said contract.

7. Sufficient documentation of the capital costs and operating expenses associated with the modification of telephone company central office equipment to access 911 shall be submitted by the telephone company to the Public Staff who shall make recommendations to the Commission as to the reasonableness of the modifications and the costs. The Commission shall then notify the telephone company of the amount that can properly be applied to the operating expenses or company rate base.

8. Where a coordinated emergency call system has been developed prior to telephone company modification to access 911 the telephone company shall immediately provide an interim seven-digit emergency number ending with the digits 911, at no additional cost to the agencies receiving the service or to the local government.

9. The servicing telephone company shall affix the 911 emergency number or any interim seven-digit number on all coin operated public telephones in a 911 service area and designate on the outside cover of all affected telephone directories the 911 service areas covered by said directory and mail a printed sticker showing such number to all subscribers to telephones connected to 911 service for attachment to said telephones.

10. The Utilities Commission hereby adopts NCUC Rule R9-5, 911 Emergency Telephone Number System, as attached hereto as Appendix A and hereby made a part of this Order, to become effective October 1, 1979.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of July, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

Appendix A

RULE R9-5 911 Emergency Telephone Number System

It is the policy of the Commission that regulated telephone companies shall make 911 emergency telephone service available to local governmental agencies upon reasonable terms and time schedules as prescribed in relevant orders of the Commission. Every telephone company shall notify the Commission within ten (10) working days of an offical request from a local governmental authority for the availability costs and implementation dates for the 911 emergency telephone number in the exchange(s) of that authority's jurisdiction. The telephone company's response must be made to the inquiring authority within sixty (60) days. Notice of the inquiry and telephone company's response shall be filed with the Chief Clerk who shall provide copies to the Communications Division of the Public Staff and to the North Carolina Department of Crime Control and Public Safety, 911 Section. The implementation of the 911 service shall be further in accordance with the provisions of the Commission Order of July 27, 1979, in Docket No. P-100, Sub 48, Investigation of 911 Emergency Telephone Number.

DOCKET NO. P-100, SUB 48

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation and Rulemaking Regarding Implementation of the 911 Emergency Telephone Number as a Service to the Citizens of North Carolina	) MODIFICATION OF ORDER FOR) TELEPHONE COMPANIES TO MAKE) 911 SERVICE AVAILABLE FOR THE) UNIVERSAL EMERGENCY TELEPHONE) NUMBER THROUGHOUT NORTH CARO-) LINA; ADOPTING RULE FOR) IMPLEMENTATION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Beginning on May 22, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Leigh H. Hammond, Sarah Lindsay

Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Frances W. Crawley, Associate Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: Rufus Edmisten, Attorney General; North Carolina Department of Crime Control and Public Safety, Divisions of Crime Control and Civil Preparedness; North Carolina Fire Commission; North Carolina Department of Human Resources, Office of Emergency Medical Services

For the Respondents:

William W. Aycock, Jr., Taylor, Brinson & Aycock, Attorneys at Law, P.O. Box 308, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company and Norfolk Carolina Telephone Company

John R. Boger, Jr., Williams, Willeford, Boger, Grady & Davis, Attorneys at Law, P.O. Box 810, Concord, North Carolina 28025
For: The Concord Telephone Company

R. Frost Branon, General Attorney, Southern Bell Telephone and Telegraph Company, P.O. Box 30188, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602
For: Mebane Home Telephone Company, Heins Telephone Company, Randolph Telephone Company, Mid-Carolina Telephone Company, Western Carolina Telephone Company, Westco Telephone Company, Sandhill Telephone Company

William C. Fleming, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702
For: General Telephone Company of the Southeast

James M. Kimzey, Kimzey, Smith & McMillan, Attorneys at Law, Wachovia Bank Building, P.O. Box 150, Raleigh, North Carolina 27602
For: Central Telephone Company

For the Public Staff:

Joy R. Parks and Paul Lassiter, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This proceeding was instituted on September 28, 1978, by the filing of a joint petition by the Honorable Rufus L. Edmisten, Attorney General of North Carolina, the North Carolina Department of Crime Control and Public Safety, Division of Crime Control, Civil Preparedness and Fire Commission, and the North Carolina Department of Human Resources, Office of Emergency Medical Services, asking the Utilities Commission to institute a proceeding for a uniform statewide rule for 911 emergency telephone systems in North Carolina.

On October 26, 1978, the Commission issued its Order instituting an investigation and rule-making proceeding into the implementation of the 911 emergency telephone system for service to all telephone exchanges in North Carolina on a county by county basis. All telephone companies in North Carolina were made respondents and ordered to file with the Commission, on or before January 15, 1979, information on specific subjects concerning their ability to implement the 911 emergency system. Each of the twenty-two (22) regulated telephone companies filed responses to the data requests. All parties having interests in support of or opposition to the implementation of the 911 emergency telephone service were invited to participate. The Commission, in an Appendix to the Order, submitted for consideration by the parties, Proposed Rule R9-5, Rule Requiring Implementation of 911 Emergency Telephone Number.

By Order issued on January 30, 1979, the Commission set the proposed rule for hearing on April 11, 1979, subsequently the hearing was rescheduled for May 22, 1979.

The two-day hearing was held as scheduled and reflected widespread interest on the part of the attending public, the witnesses involved in the planning or operation of the 911 system, and telephone company representatives.

William J. Lynch, Communications Coordinator, Department of Crime Control and Public Safety, presented a compendium of the 911 operating concept. He indicated that in June of 1979 he expects to get funds approved by the Governor's Commission on Crime Control so that he can invite engineering firms to submit bids for developing a statewide 911 plan similar to the existing statewide police radio communications plan. The police radio plan includes equipping each of the 100 North Carolina counties with at least one command control center (generally located in the Sheriff's Department) with adequate capacity to include fire, police, and emergency medical services, dispatching

and message handling. Lynch, who represents the petitioning Department of Crime Control, suggested that this hearing establish "who should bear the cost of modification of central office telephone equipment when modifications are necessary in order to provide the 911 service."

Susan Harris, a 911 Planner in the Department of Crime Control, testified that 100 counties in North Carolina and 31 telephone companies were surveyed to determine interest in 911. Seventy-five counties returned the surveys and of those counties, 70 indicated an interest. She participated on the ad hoc task force which developed and distributed, to county commissioners and county managers, a Planning Guide for use in preparation for implementation of the 911 system. She stated that a primary reason for having petitioned the Commission to hear this matter is to resolve the question of who will bear the costs of modification of central office equipment when a county desires to implement the 911 system.

Roger Reinke is a program manager in the United States Office of Telecommunications and Information Administration (NTIA). The function of NTIA is generally to oversee the executive branch's development and implementation of telecommunications policies. He described some of the legislation of several states which mandate 911 implementation or planning. Reinke testified regarding some of the problems experienced in attaining agreement among public safety agencies who must establish Public Safety Answering Points (PSAP) in order to implement the 911 system. He observed that, "state resources may or may not be used in the future to underwrite the cost of capital improvements of central office equipment but the Commission should bear in mind that 911 calls constitute only a tiny fraction of traffic which would be switched by the modified central office equipment."

Ed Canady is Supervisor of the Durham Emergency Operations Center that is responsible for handling all 911 emergency calls in the geographic areas encompassed by the City of Durham and Durham County. According to Canady, Durham was the first city in the Southeast with a population of over 100,000 (the present population is 146,000) to have a fully integrated communications network. The 911 system has been in operation there since 1972. A caller who dials 911 has one chance in 1,000 of getting a busy signal. This complies with the ideal standard suggested by AT&T. Canady opposes using Automatic Number Identification (ANI) because he believes that it would deter some citizens from calling when the emergency involves law enforcement.

B.J. Millikan, Director of Public Safety, City of Winston-Salem Communications, testified as to the steps that were taken in order to implement the citywide 911 system which has been in operation over the past two years. The system basically covers city, fire, and police; and relays calls received for the county - for ambulance service, for the fire and sheriff's departments. Prior to implementation of

911 Winston-Salem provided a centralized communications system using a 7-digit emergency number for police and fire emergencies. The current annual operating budget for the Communications Center is $536,000. Winston-Salem receives approximately 1,600 police emergency calls each week, around 50 of these are referred to the sheriff's department or ambulance service. It is estimated that an additional 400 calls per month are to report fires. The system has a locking device and hold which enables the Communications Center to trace the call. It also has "forced disconnect" so that once the Communications Center disconnects the line automatically disconnects in four or five seconds if the caller fails to hang up.

Sanford Smith is Director of Building Management and Technical Services for the City of Greensboro and he is President Elect of the Associated Public Safety Communications Officers, Inc. During the past two years he has been involved in the study and/or implementation of 911 systems in Orange County and Moore County, North Carolina. He testified concerning various problems of coordination between the local government and the telephone companies. Smith suggests that representatives of telephone companies meet with local government representatives for the purpose of adjusting telephone company schedules for changing equipment to coincide with plans of local government to provide 911 service. He observed that five to six telephone companies often service one county and this necessitates a coordination of efforts to achieve countywide 911 service.

Marvin Heller is Emergency Communications Director for the Raleigh-Wake County Emergency Communications Center. At the present time Wake County has a common emergency 7-digit number. The Communications Center serves 10 municipal police departments, 10 rescue squads, and 22 fire departments. It does not serve the sheriff's department, the City of Cary, or the Town of Apex. Wake County is served by three telephone companies: Southern Bell, Carolina Telephone and Telegraph Company, and General Telephone Company of the Southeast. Heller stated that approximately 97% of the people in Wake County have access to the Communications Center by dialing the 7-digit number. The Communications Center is administered by an organization known as the Wake Emergency Communications Organization which is composed of the management personnel from those municipalities and county people that are served by the Center. This is the planning organization for the implementation of 911. Heller advocates using ANI in Wake County because of the duplicate street names within the cities and because of the similar sounding street names.

W.D. Edmunson is employed with Carolina Telephone Company as a General Plant Extension Engineer. He described the types of telephone service in North Carolina - the common control office and the direct control office. Edmunson also testified as to the costs associated with modifying the central office equipment to accommodate 911.

Thomas Moncho is General Regulatory Manager for the North Carolina Division of Central Telephone Company. It is his position that if the telephone company is required to install central office equipment to implement 911 prior to the time such equipment would ordinarily be changed, the governmental agency requesting the service should bear the costs. He recommends a phase in plan which would allow the company to provide the switching within the budgeted cost of service plans and thus reduce the final impact.

Frankie Miller, Manager of Network Services at Central Telephone Company, testified on the cost estimates of modifying central office equipment to accomodate 911.

F.T. Fugate, the Local Revenue Requirements Manager for Carolina Telephone Company, testified on Carolina Telephone and Telegraph and Norfolk Carolina Telephone Company policies on the provision of the 911 Emergency Telephone Number. He indicated that out of the total of 183 central offices within the two companies only 52 offices now have, or will have by 1985, the capability of providing the 911 number with only minor modifications. He estimates that to make modifications in the remaining 131 offices prior to the scheduled replacement dates would cost as high as $17.1 million. Fugate suggests that if a locality implements the centralized Emergency Communications Center before the scheduled central office equipment changes that the telephone company should provide a 7-digit number which can be replaced with the 911 digits.

Claude O. Sykes is employed by General Telephone Company of the Southeast as the Vice President-General Manager for North Carolina. He stated that General serves Monroe, Alton, and Goose Creek areas of Union County and described the central office equipment costs which would be absorbed by the company.

Frank C. Pethel is President of Systech Corporation, a firm which has assisted local governments in North Carolina in the planning and acquisition of radio communications systems. Systech has worked on projects for Durham and Wilmington that directly involved inquiry into the details of 911 service. Pethel advocates using a 7-digit emergency number as an interim step when the added cost of 911 equipment is not presently available. He stated that the specific advantages of 911 over the 7-digit system is that 911 is easily advertised, easily remembered, and easily dialed. In communities where pay phones have a "dial tone first" the caller can use a pay phone and reach the emergency number without having deposited a coin. Where there is no "dial tone first" some additional adjustments would be necessary to permit coin-free use of coin-operated telephones.

Thomas L. Bingham, Secretary-Treasurer and Administrative Officer of Citizens Telephone Company, testified on the experience of Transylvania County under the 7-digit

emergency telephone number system. He indicated that the switching modifications necessary to provide the countywide 7-digit emergency number have been made at no cost to the agencies receiving the service or to local governments. Bingham states that providing a 7-digit telephone number to an emergency answering center is an acceptable first step in establishing 911 service, as it allows the emergency service agencies and governing bodies the opportunity to make a commitment to a centralized answering service before requiring the telephone company to make major expenditures in switching systems.

G.E. Stirewalt is a Southern Bell Telephone and Telegraph Company District Staff Manager - Business. He estimates the economic impact of modifying all Southern Bell central office equipment within one year would amount to approximately $4,829,000. In his opinion, modifications within this time period are inappropriate because: (1) all local agencies have not begun and/or completed 911 planning; (2) Southern Bell has not received requests from all governmental bodies that might order 911; and (3) Southern Bell has not implemented the necessary planning for the 911 systems. In order to recoup the expense associated with central office modification required to implement 911 service, Southern Bell would propose to include these costs as operating expenses for rate-making purposes and, therefore, all Southern Bell subscribers would share in the burden associated with the provision of the 911 service. Mr. Stirewalt recommends the following considerations in determining the "best time" for 911 implementation: (1) central office rearrangements costs versus the scheduled date for ESS (Electronic Switching System) conversion; (2) local political decisions such as which agency will answer the calls, where the answering location should be, the number and type of agencies to be served, and budgetary considerations; (3) Southern Bell planning functions - engineering of the system, equipment order intervals, and coordination with local agencies and independent telephone companies, planning should be stated <u>after</u> a request for 911 service is made; and (4) the facilities - necessary floor space, etc., provided by the municipalities. Southern Bell is now developing a comprehensive special Emergency Reporting Service tariff section that will include both 911 and expanded 911. The tariff is scheduled to be filed prior to January 1980. Mr. Stirewalt indicates that there can be no predetermined interval for providing 911 service following receipt of a subscriber's order. He summarized Southern Bell's four 911 policy objectives for the provision of basic 911 service as follows: (1) There is to be no local message charge to the calling party for a 911 call, regardless of where the call originates or terminates. (2) The costs for rearrangements necessary to accommodate the 911 code in the exchange network will not be billed to the subscriber. This means Southern Bell shall undertake to make whatever central office rearrangements are necessary to permit use of the 911 code effectively in that locality. (3) The governmental agency subscribing for service (the

customer) is to be charged for the 911 exchange lines that terminate at the Public Safety Answering Point (PSAP) and for the equipment used to answer the emergency calls. (4) The telephone company is to determine the method of routing the 911 emergency calls and accommodating specific features requested by the customer to the extent economically feasible.

Phil Widenhouse is Executive Vice President and Treasurer of the Concord Telephone Company. He supports the 911 concept but is concerned that "premature" implementations may result in excessive costs. Widenhouse estimates that all nine exchanges of Concord Telephone Company will have 911 capability by the year 1986.

Royster Tucker, Jr., General Manager of North State Telephone Company, presented a suggested revision to the Commission proposed rule.

The Commission then issued its Order of July 27, 1979, for the telephone companies in North Carolina to make 911 service available throughout North Carolina and adopted Rule R9-5 for implementation.

Thereafter, on August 24, 1979, Southern Bell Telephone and Telegraph Company filed a request for modification of certain provisions in the 911 plan, followed by a similar request from Central Telephone Company. As a result the Commission issued a Notice allowing all parties of record until September 17, 1979, to file response to the comments of Southern Bell and Central Telephone regarding the aforementioned Order of July 27, 1979, issued in this docket. The Commission received responses to comments of Southern Bell and Central Telephone from the Attorney General and the following telephone companies: Carolina Telephone Company, Citizens Telephone Company, General Telephone Company of the Southeast, Heins Telephone Company, Lexington Telephone Company, Mid-Carolina Telephone Company, Sandhill Telephone Company, and the Town of Pineville.

The Commission, having reviewed the comments and the record in its entirety and finding good cause therefrom to modify Findings of Fact Nos. 7, 15, 17, and 18; Ordering Paragraph Nos. 2, 6, 7, 8, 9, and 10; deleting paragraph 3; and renumbering the remaining paragraphs of the Order issued July 27, 1979, now makes the following

FINDINGS OF FACTS

1. Nine-one-one (911) is the three-digit telephone number that has been designated for public use throughout the United States in reporting an emergency and requesting emergency assistance.

2. Telephone company policy now is to encourage practices that reduce the need for toll operators and to centralize operators at great distances from the calling

point. This trend removes what has been an important emergency service supplied by the telephone company.

3. Nine-one-one service significantly speeds up true response time which is measured from the time of recognition of the need to the time the appropriate police, fire, or medical assistance is dispatched to the point of need.

4. The number 911 has a nationwide recognition factor of between 85% and 90% as an easily remembered and easily dialed number to call for police, fire, or medical assistance.

5. That the 911 emergency telephone number system is in the public interest and it is just and reasonable to require regulated telephone companies in North Carolina to make such 911 service available to local governmental agencies that desire to install such service in the political subdivision they serve, as hereinafter provided.

6. That an essential element of a 911 system is the Public Safety Answering Point (PSAP, often called "P-Sap"). It is the communications facility operated on a 24-hour basis which first receives 911 calls for persons in a 911 service area and which may, as appropriate, directly dispatch public safety service or extend, transfer, or relay 911 calls to the appropriate public safety agencies.

7. There should be sufficient circuits provided between the serving central office and the 911 PSAP so that no more than one call out of 100 incoming calls will receive a busy signal on the first dialing attempt.

8. That most of the 100 counties in North Carolina have at least one command control center set up for the statewide police radio communications with equipment that is adequate to handle fire and medical emergency messages.

9. There are presently six 911 systems in operation in North Carolina in the cities of Fairmont, Newland, and Winston-Salem; and the counties of Lincoln, Durham, and Orange. Approximately 18 additional North Carolina counties are in the advanced stages of planning for 911.

10. That 70 counties in North Carolina have a known interest in implementation of the 911 system.

11. That problems which arise when more than one telephone company services a single county can be resolved through cooperation and coordination of the involved telephone companies.

12. That the following problems arise from the regulation of franchised telephone companies and may be governed by Rules of the Commission: (a) The costs related to installation of 911 lines, (b) the recurring charges for 911

telephone service, and (c) the modification of central office telephone equipment to access 911.

13. That 911 calls constitute only an infinitely small fraction of traffic which would be switched when the central office equipment is modified to access 911.

14. That the costs of modifying the older step-by-step and cross bar type central office equipment for 911 service is substantially greater than the costs associated with modification of the newer electronic and digital central office equipment for 911 service.

15. That the reasonable method of charging for 911 service is for the telephone company to include the cost of modifying the central office equipment as part of the operating expenses or rate base, respectively, in accordance with the Uniform System of Accounts and to make those modifications in the instances where the costs are substantial in a time sequence that would limit overall costs but yet recognize the desirability of the local authorities having reasonable access to 911 service, and to charge the local governmental agency for the trunks and terminal equipment to which it subscribes.

16. That it is economically sound and in the public interest for local governmental agencies and telephone companies to negotiate mutually agreeable dates for implementation of 911 service.[1]

17. Where a coordinated emergency call system has been developed prior to telephone company modification to access 911, the telephone company should immediately provide an interim 7-digit emergency number ending with the digits 911, at no additional cost to the agencies receiving the service or to the local government. In the event that the telephone company encounters a problem with providing a 7-digit emergency number ending with 911, it shall submit to the Commission a clear and concise statement of the problems and request a waiver of the requirement to end the 7-digit number with the digits 911.

18. That the 911 emergency number or emergency 7-digit number should be affixed on all coin-operated public telephones in a 911 service area and designate in the usual place for emergency numbers in its telephone directories the 911 service areas covered by said directory.

CONCLUSION

The evidence supporting the above Findings of Fact is documented in the record and is summarized in the introductory section of this Order and in the following conclusions of the Commission.

Official interest in establishing a universal emergency telephone number stems primarily from a 1967 recommendation

of the President's Commission on Law Enforcement and the Administration of Justice that a "single number should be established" for reporting emergencies to the police. In 1968 the American Telephone and Telegraph Company (AT&T) announced that it would make the digits 911 available nationwide as an emergency telephone number. In March 1973 the Office of Telecommunications Policy of the Executive Office of the President of the United States published Bulletin No. 73-1 dealing with national policy for the Emergency Telephone Number 911. This Bulletin was addressed to the "Heads of Executive Departments and Establishments" and provided information and guidance to be used in assisting state, local, and municipal governments in implementing 911 expeditiously.

Implementation of 911 is a matter of statewide concern. The state agencies involved have endorsed the 911 concept. Planning for implementation involves coordinated efforts of local political authorities, the local police chief and sheriff, the local fire chief, the emergency medical service agency, and the telephone company. Thus, responsibility for the establishment of 911 service rests with local government.

In order to facilitate local government planning, on December 8, 1978, the North Carolina Department of Crime Control and Public Safety released a 911 Planning Guide which was prepared by the Crime Control Division and funded by the North Carolina Governor's Crime Commission through a United States Department of Justice Law Enforcement Assistance Administration grant. This Guide, which outlines the steps necessary to implement a 911 system, was distributed to Chairmen of Boards of County Commissioners and County Managers throughout the State.

The North Carolina Department of Crime Control and Public Safety, the North Carolina Department of Human Resources, and the Attorney General on September 28, 1978, filed with the North Carolina Utilities Commission a joint petition requesting investigation and rule-making proceeding regarding implementation of the 911 Emergency Telephone Number as a service to the citizens of North Carolina. The petition stated, inter alia, "that a major obstacle before the several North Carolina telephone companies in implementing 911 service is having central office equipment presently in service which is inadequate to accommodate the 911 emergency system." The petition further asserts "That the question of expense to the telephone utilities for acquiring the necessary equipment and for making the other operating adjustments necessary to implement the 911 system should be investigated by the Commission."

The Commission having heard the proponents of the 911 system, representatives who presently operate 911 systems, and the telephone companies, concludes that it is in the public interest to require regulated telephone companies to provide a single emergency telephone number which can be

used anywhere in this State to report an emergency and to request assistance upon a time sequence subject to approval of the Commission, as hereinafter provided. The digits 911 should be the primary emergency number throughout the State of North Carolina. The use of this easily remembered number eliminates the need to determine the appropriate seven-digit number when an emergency occurs. The primary objective is to reduce response time and thus enable citizens to obtain law enforcement, medical, fire, rescue, and other emergency services in the most expeditious manner.

The present trend toward reduction in numbers of toll operators and centralization of operators at greater and greater distances from the calling point impacts directly upon the level and quality of service in emergency situations. The Commission concludes that these trends, unless corrected by an alternative system, will adversely affect the security, convenience, or safety of the general public and that G.S. 62-42 authorizes the Commission to order corrective action under these circumstances.

In order to facilitate the planning and implementation of the system by the local governments the Commission should establish a policy relating to the availability, and the costs, of that portion of 911 service which is to be provided by regulated telephone companies.

IT IS, THEREFORE, ORDERED:

1. The digits 911 shall be the number designated for public use throughout North Carolina in reporting an emergency and requesting emergency assistance in accordance with the provisions of NCUC Rule R9-5 adopted in this Order.

2. There should be sufficient circuits provided between the serving central office and the 911 PSAP so that no more than one call out of 100 incoming calls will receive a busy signal on the first dialing attempt.

3. Problems which arise when more than one telephone company services a single county shall be resolved through cooperation and coordination of the involved telephone companies with assistance from the Public Staff upon request.

4. Telephone companies shall notify the Public Safety Answering Points (PSAP) at least 48 hours in advance of any routine maintenance work to be performed on emergency circuits or terminal equipment which may affect the 911 system. Any such work shall be performed during a time designated by PSAP as off-peak hours.

5. When subscribing to a 911 system, the local government units operating the PSAP shall request a contract from the servicing telephone company. The telephone company shall submit a proposed contract which shall include an itemized list showing installation and recurring costs for

all system features and hardware as provided by the serving telephone company. A copy of the proposed contract shall be submitted to the Public Staff who shall review the proposed contract and upon request from the local government make recommendations as to the reasonableness of said contract. However, when a public utility has on file with the Commission an approved tariff governing its provision of 911 service, the above shall not apply.

6. Should the telephone company determine that facilities do not permit the provision of 911 service in an economically prudent manner at the time such service is requested, sufficient documentation of the capital costs and operating expenses associated with the modification of telephone company central office equipment to access 911 shall be submitted by the telephone company to the Public Staff who shall make recommendations to the Commission as to the reasonableness of the modifications and the costs. The Commission shall then notify the telephone company of the amount that can properly be applied to the operating expenses or company rate base and the amount which must be borne by the entity requesting service.

7. Where a coordinated emergency call system has been developed prior to telephone company modification to access 911, the telephone company shall immediately provide an interim 7-digit emergency number ending with the digits 911, at no additional cost to the agencies receiving the service or to the local government. In the event that the telephone company encounters a problem with providing a 7-digit emergency number ending with 911, it shall submit to the Commission a clear and concise statement of the problems and request a waiver of the requirement to end the 7-digit number with the digits 911.

8. The servicing telephone company shall affix the 911 emergency number or any interim 7-digit number on all coin-operated public telephones in a 911 service area and designate in the usual place for emergency numbers in its telephone directories the 911 service areas covered by said directory.

9. The Utilities Commission hereby adopts NCUC Rule R9-5, 911 Emergency Telephone Number System, as attached hereto as Appendix A and hereby made a part of this Order, to become effective October 31, 1979.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of October, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

Appendix A

RULE R9-5 911 Emergency Telephone Number System

It is the policy of the Commission that regulated telephone companies shall make 911 emergency telephone service available to local governmental agencies upon reasonable terms and time schedules as prescribed in relevant orders of the Commission. Every telephone company shall notify the Commission within ten (10) working days of an offical request from a local governmental authority for the availability costs and implementation dates for the 911 emergency telephone number in the exchange(s) of that authority's jurisdiction. The telephone company's response must be made to the inquiring authority within sixty (60) days. Notice of the inquiry and telephone company's response shall be filed with the Chief Clerk who shall provide copies to the Communications Division of the Public Staff and to the North Carolina Department of Crime Control and Public Safety, 911 Section. The implementation of the 911 service shall be further in accordance with the provisions of the Commission's modified order of October 18, 1979, in Docket No. P-100, Sub 48, Investigation of 911 Emergency Telephone Number.

DOCKET NO. E-7, SUB 240

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Statons Variety Store, Complainant	)	
	)	ORDER
vs.	)	DISMISSING
	)	COMPLAINT
Duke Power Company, Respondent	)	

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 19, 1978

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Leigh H. Hammond and John W. Winters

APPEARANCES:

For the Complainant:

Bruce L. Perkins, Attorney at Law, 623 E. Trade Street, Suite 202, Charlotte, North Carolina 28202
For: Statons Variety Store

Humphrey S. Cummings, Attorney at Law, 403 N. Tryon Street, Suite 600, Charlotte, North Carolina 28202, Appearing with Bruce L. Perkins
For: Complainant

For the Respondent:

W. Edward Poe, Jr., Attorney at Law, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

BY THE COMMISSION: Complainant is a variety store located at 1732 Pegram Street, Charlotte, North Carolina, and has been a customer of Duke Power Company. From 1970 to 1976, Complainant and Duke enjoyed a good business relationship such that Duke refunded Complainant its original $100.00 deposit due to its excellent payment record. Duke's records reveal that Complainant normally used about 1400 to 1500 kilowatt-hours of electricity per month during the 1970 to 1976 period.

In early 1976 a billing dispute arose between Complainant and Duke. This dispute arose shortly after Complainant's store was rewired in January or February 1976. Duke placed a new meter into service (#139422) at the time of the rewiring in order to serve the rewired premises, but did not

remove the old meter (#032871) which had been recording usage since 1970. Confusion arose when Duke continued to bill Complainant according to usage registered on the original meter ($032871) even though that meter had stopped recording. Although no usage was recorded, Duke records indicated service had not been terminated, and Duke's billing department continued to send Complainant a $5.25 minimum bill from February 1976 until September 1976. Complainant paid the $5.25 minimum each month. Meanwhile, Complainant continued to make normal usage of electricity which was recorded on the meter that had been installed during the rewiring. Between February and September 1976, the new meter measured a usage of 11517 Kwh, but Duke failed to bill Complainant for anything other than the minimum bill mentioned above. Until September 1976 Duke's billing department apparently had no knowledge of the second meter. Although Duke had not sent Complainant bills for this usage in August 1976, Duke contacted Complainant and demanded back payment on several occasions. A heated dispute arose between the parties. It should be noted that although Duke's billing methods were inept at best, Complainant was quite satisfied to receive normal service at the minimum rate of only $5.25 per month for six months without pointing out the obvious error to Duke.

In September 1976, after Duke demanded that the Complainant pay for the 11517 Kwh usage which was recorded on the new meter, Complainant refused to pay and Duke terminated service on September 7, 1976. Duke reinstated service the same day. Duke then eliminated or waived the charge for 11517 Kwh, and demanded only that the Complainant pay for all usage subsequent to September 7, 1976.

Rather than settle with Duke on this basis, Complainant steadfastly refused to pay its bills to Duke. On January 31, 1978, Complainant sued to enjoin Duke from terminating service and requested a hearing. Complainant alleged that Duke had an unreasonable billing procedure, but it was not alleged that Complainant did owe Duke a reasonable charge for electricity usage for current used after September 7, 1976. On February 28, 1978, Duke filed Answer to Complaint, and prayed that the complaint be dismissed and that the Complainant be adjudged indebted to the Respondent in the amount of $517.28 as payment for usage between September 7, 1976, and January 21, 1977. On March 21, 1978, Complainant filed an Amended Complaint and Reply, and alleged that pursuant to the terms of G.S. 62-139(b) Duke owes Complainant "no less than $1,378.56." G.S. 62-139(b) reads as follows:

> "(b) Any public utility in the State which shall wilfully charge a rate for any public utility service in excess of that prescribed in the schedules of such public utility applicable thereto then filed under this Article, and which shall omit to refund the same within 30 days after written notice and demand of the person overcharged, unless relieved by the Commission for good cause shown,

shall be liable to him for double the amount of such overcharge, plus a penalty of ten dollars ($10.00) per day for each day's delay after 30 days from such notice or date of denial or relief by the Commission, whichever is later. Such overcharge and penalty shall be recoverable in any court of competent jurisdiction."

Complainant applies this statute in the following manner:

1. Complainant owes Duke no more than $306.07 for service between September 7, 1976, and January 26, 1977.

2. Duke is attempting to collect $595.35 from Complainant or $289.28 more than it is entitled to, and therefore is "overcharging" the Complainant.

3. Duke owes Complainant 2 x $289.28 plus $10.00 per day for each of 79 days for a total of $1,378.56. (It is unclear how the 79 days was arrived at.) Complainant also seeks to recover $200.00 for pecuniary loss suffered because of termination on September 7, 1976.

Based on the foregoing facts, the pleadings, and the official file of the proceeding, the Commission reaches the following

CONCLUSIONS

1. Duke is no longer seeking recovery of bills for service rendered prior to September 7, 1976, and thus the confusing events occurring between January 1976 and September 7, 1976, are no longer germane to resolution of the case at bar. Duke is seeking to recover the amount owed for service rendered to Complainant from September 7, 1976, to January 21, 1977.

2. Uncontroverted evidence shows that Duke furnished Complainant with electric service between September 7, 1976, and January 21, 1977.

3. During this period of time Complainant used 6609 Kwh of electricity which is the difference between a meter reading of 11517 on September 7, 1976, and 18126 on January 21, 1977.

4. Complainant owes Duke the sum of $306.07 for the 6609 Kwh consumed between September 7, 1976, and January 21, 1977. This amount was calculated by applying the basic commercial tariff rate to 6609 Kwh and then applying various credit balances.

5. The fact that Duke committed numerous billing errors prior to and after September 7, 1976, does not support a claim that Complainant is entitled to free electricity. Furthermore, Complainant's claim that it is entitled to a refund and penalty charge from Duke even though it has never paid the disputed bill is without merit. This claim is

simply not supported by any reasonable interpretation of G.S. 62-139(b).

6. There is no evidence of malice or bad faith on the part of Duke Power Company or the Complainant. The record in this case reveals a circus of errors, and shows that even a large and generally efficient corporation such as Duke may commit human foibles, but the record does not show any ill will or malice by Duke.

7. Complainant has failed to prove that he suffered any pecuniary loss from termination of service on September 7, 1976. The Commission notes that service was reinstated that same day.

IT IS, THEREFORE, ORDERED:

1. That Complainant is indebted to Duke in the amount of $306.07.

2. That the relief prayed for herein is denied and complaint of Statons Variety is hereby dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. E-7, SUB 246

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Cynthia Williams, Complainant	)	
vs.	)	RECOMMENDED ORDER
	)	DISMISSING COMPLAINT
Duke Power Company, Defendant	)	

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 14, 1978, at 9:30 a.m.

BEFORE: Commissioner Leigh H. Hammond

APPEARANCES:

For the Complainant:

Humphrey S. Cummings, Staff Attorney, Legal Services of Southern Piedmont, Inc., 403 North Tryon Street, Suite 600, Charlotte, North Carolina 28202

For the Respondent:

W. Edward Poe, Jr., Attorney at Law, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242

For the Using and Consuming Public:

Theodore C. Brown, Assistant Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding was initiated on April 3, 1978, with the filing of a Complaint by Cynthia Williams (Williams), Complainant, vs. Duke Power Company (Duke), Defendant, alleging inter alia that Duke has wrongfully charged Williams for services which were not contracted for during the period November 21, 1977, through December 16, 1977. Furthermore, Complainant alleged that Duke, in its accounting process, misapplied payments from Williams, changing her position for the worse and putting her in a position of jeopardy. An Application for Order to Prosecute Action in Forma Pauperis was filed with the Complaint.

On April 24, 1978, the Commission caused the Complaint to be served on the Defendant in accordance with N.C.U.C. Rule R1-9.

The Public Staff - North Carolina Utilities Commission, on May 11, 1978, filed Notice of Intervention in accordance with G.S. 62-15.

On May 15, 1978, Duke filed its Answer to the Complaint, setting forth certain defenses therein and praying that the Complaint be dismissed pursuant to N.C.U.C. Rule R1-9(e) for failure to state a cause of action and that Complainant be adjudged indebted to the Defendant in the amount of at least $316.31. Duke's Answer was served on Williams by Commission Order of May 18, 1978.

On June 13, 1977, Williams requested a public hearing to present evidence in support of the Complaint.

By Order duly entered on June 16, 1978, the Commission set the matter for hearing on September 14, 1978. At the call of the hearing, all parties of record entered their appearances through counsel of record, as shown above. Attorney for the Complainant presented the testimony and exhibits of two witnesses: Cynthia Williams, Complainant, and Morris Bagwell, Office Manager of the Charlotte District of Duke Power Company. Attorney for Duke recalled Mr. Bagwell and elicited further testimony.

Cynthia Williams testified that she lives at 3101 Southwest Boulevard, Apartment 1, Charlotte, North Carolina,

and first received service from Duke Power Company at this address two and one-half years ago. A lease to the said property executed by Williams, effective the second day of November 1976 and ending the first day of November 1977, was filed at the hearing and identified by Complainant on cross-examination. Electric service was disconnected on November 21, 1977, for past due bills.

Williams testified that she was present in the apartment when the lights were disconnected (Tr 11) and that she then moved to the house of a friend. She stated that she did not maintain residence at the apartment during the period when electricity was terminated (period established to be November 21, 1977, through December 16, 1977). She did return to the apartment "three or four different times . . . just to pick up some items."

She lived at the apartment continuously following restoration of the electricity on December 16, 1977. Williams did not have various bills from Duke Power Company and upon interrogation recalled the approximate time and amounts of the bills. She furtner testified that prior to the disconnection of the electricity, she received a letter from Duke which notified her that she could avoid termination of service by calling Duke to make some satisfactory arrangements. She stated that she did not respond to the notice prior to disconnection; however, later she did go to Duke and paid an unspecified sum to have service reconnected as well as to open a new account.

Williams stated that she went to Duke to dispute the amount she was billed during the period of nonoccupancy, November 21, 1977, through December 16, 1977. When asked by her Attorney if she agreed to pay Duke for the period when she was not in the apartment, her response was, "I guess I did. I paid it." Williams testified on cross-examination that upon receipt of the letter from Duke notifying ner that service would be disconnected, she thinks she called Duke to get an extension of time.

During the disputed period she listed 3101 Southwest Boulevard as her address on applications which she filed seeking financial assistance. She also maintained possession of a key so that on occasions when she returned to the apartment to get clothing for the children and for herself, it was not necessary to get a key from the resident manager.

Morris Burton Bagwell testified that he is employed by Duke as Office Manager of the Charlotte District. Mr. Bagwell provided the following billing history of the Williams' account:

1) Service under account number 0116632880-2 was disconnected November 21, 1977.

2) The last bill received by Williams prior to disconnection reflected:

a)	Charges for service from September 20 to October 20, 1977	$39.85
b)	Overdue balance for service from July 20 to August 18, 1977.	30.48
c)	Late payment charge	.30
	Total Bill	$70.63

3) A bill was rendered on November 23, 1977, which reflected:

a)	Charges for service from October 20 to November 18, 1977.	$ 48.33
b)	Prior balance (from #2 above) . . .	70.63
c)	Late payment charge	.71
	Total bill	$119.67

4) Following termination of service on November 21, 1977, a bill was rendered which showed:

a)	Charges for service from November 18 to November 21, 1977	$ 6.63
b)	Prior balance (from #3 above). . . .	119.67
c)	Credit of deposit and accumulated interest	(17.17)
	Total final bill	$109.13

Mr. Bagwell stated that the meter reading at the time of disconnection on November 21, 1977, was 8,973 Kwh. When the meter was read to reconnect service on December 16, 1977, it reflected 10,926 Kwh, a difference of 1,953 Kwh compared to the reading on November 21, 1977. Bagwell calculated the total amount necessary for Williams to pay prior to restoration of service, as follows:

a)	Final amount due on old account	$109.13
b)	Deposit to reestablish credit	75.00
c)	Reconnect fee	5.00
	Total	$189.13

Duke received three various sums which totaled $189.13 from Williams, Charlotte Area Fund, and the Goodfellows Club.

Williams' initial bill on the new account (account number 01-16-63-2880-3) was in the amount of $74.85. This bill was for the period of November 21 to December 20, 1977, and reflected the following usage information:

a)	November 21, 1977, meter reading (date of service disconnection.	8,973 kwh
b)	December 16, 1977, meter reading (date of reconnection).	10,926 kwh
	Usage during supposed absence from apartment	1,953 kwh
c)	December 20, 1977, meter reading.	11,229 kwh

Usage during November 21-December 20, 1977 period.	2,256 kwh
Usage between December 16 and December 20, 1977.	303 kwh

The bill in the amount of $74.85 was for the total usage of 2,256 kwh. Williams did not dispute her liability for the 303 kwh consumed between December 16 and December 20, 1977, during which time she reoccupied the apartment after service was reconnected on December 16. The major dispute is over the portion of the bill that covers the usage of 1,953 kwh between November 21 and December 16, 1977, the period Williams alleges she did not occupy the apartment.

Duke applied the total payment of $189.13, which was required for service reconnection, as follows:

a)	Credit to account 01-16-63-2880-2 . . . . . (Final bill of $109.13 - $50.00 = $59.13 balance)	$ 50.00
b)	Deposit to reestablish credit	75.00
c)	Credit balance to new account 01-16-63-2880-3	64.13
	Total	$189.13

The $5.00 reconnect fee did not apply directly to the account since it was an extraordinary charge. The Complaint alleges that this was a wrongful application of payments.

At the close of the evidence Attorney for Complainant requested and was granted 10 days in which to file a brief on Article 1, Section 19, of the North Carolina Constitution. Attorneys for both parties were allowed 30 days from the mailing of the transcript in which to file Proposed Findings of Fact. The Attorney for Complainant filed neither brief nor Proposed Findings of Fact.

FINDINGS OF FACT

1. The Complainant, Cynthia Williams, is a citizen of the City of Charlotte and Mecklenburg County and resides at 3101 Southwest Boulevard, Apartment #1, in said city.

2. The Defendant, Duke Power Company, is a duly certificated public utility corporation doing business in Charlotte, Mecklenburg County, North Carolina.

3. On November 3, 1976, the Complainant contracted with the Defendant for electric service to be provided to her residence at 3101 Southwest Boulevard, Apartment #1, in Charlotte, North Carolina. The contract has not been nullified.

4. Duke sent a letter to the Complainant on or about October 25, 1977, requesting payment of a past due bill in the amount of $30.48 for electric service rendered from August 18 to September 20, 1977, wherein the Complainant was

notified to call Duke and make some satisfactory arrangement to avoid disconnection. The evidence is inconsistent as to whether or not the Complainant called in response to this correspondence.

5. The past due balance of $30.48 was not paid and Defendant disconnected the electricity at aforesaid address on November 21, 1977, with a meter reading of 8,973 kwh.

6. At the time service was discontinued, Complainant was indebted to Defendant for a total of $109.13. This indebtedness reflected the past due balance of $30.48; charges of $39.85 for service from September 20 to October 20, 1977; charges of $48.33 for service from October 20 to November 18, 1977; charges of $6.63 for service from November 18 to November 21, 1977; accumulated late payment charges of $1.01; and a credit of $17.17 which represented the original deposit and accumulated interest.

7. The Complainant entered Apartment #1 at 3101 Southwest Boulevard three or four times between November 21, 1977, and December 16, 1977. On these occasions Complainant used a key which remained in her possession to enter the apartment.

8. The apartment at 3101 Southwest Boulevard was in sole custody and control of the Complainant during the disputed period of November 21, 1977, to December 16, 1977.

9. The Complainant listed 3101 Southwest Boulevard as her current address on applications for financial assistance during the period November 21, 1977, and December 17, 1977.

10. In order to have electric service restored, the Complainant received financial assistance from at least two sources and paid Defendant the total indebtedness of $109.13 plus a deposit of $75.00 and a reconnection fee of $5.00, totaling $189.13.

11. Duke applied $50.00 of the $189.13 payment to the past due account leaving an unpaid balance of $59.13. A new account was opened and Duke credited this account with $64.13 and allocated $75.00 as a deposit to reestablish credit. Although confusing, the Complainant suffered no financial loss through this particular accounting treatment of her payment.

12. A Duke serviceman went to 3101 Southwest Boulevard on December 16, 1977, to reconnect service and found the meter intact and registering a reading of 10,926 kwh. The meter reading reflected a usage of 1,953 kwh, or $64.75 worth of electricity between the disconnection date of November 21, 1977, and the reconnection date of December 16, 1977.

13. Duke conducted a regular meter reading on December 20, 1977, and rendered a bill for $74.85 on December 22, 1977. This bill included the $64.75 for usage

during the disputed period of November 21, 1977, and December 16, 1977, and the usage from December 16, 1977, and December 20, 1977, for which the Complainant readily admits pecuniary liability.

Based on the foregoing Findings of Fact, the Hearing Commissioner concludes:

CONCLUSIONS OF LAW

The essence of the complaint in this matter is that Duke Power Company has improperly charged the Complainant $64.75 for kilowatt-hours registered on the meter at 3101 Southwest Boulevard, Apartment #1, Charlotte, North Carolina, for the period November 21, 1977, to December 16, 1977.

The contention of the Complainant is that she did not live in the apartment during that period and is therefore not responsible for electric services incurred. The evidence falls far short of supporting this contention. Even if we were to conclude that the Complainant did not continually occupy the premises, the testimony of the Complainant clearly establishes that she was in constructive possession. Having been in constructive possession of the premises and having duly executed a valid contract with Duke Power Company for electric service, the Complainant is liable to Duke in the amount of $64.75 for the cost of electricity to said premises.

The accounting procedures employed by Duke Power Company in this particular instance are intricate, to say the least, and could conceivably prove confusing to a customer. There is, however, no evidence that Duke failed to act in good faith.

The Complainant has satisfied her obligation by paying Defendant, Duke Power Company, for the electric service rendered to her premises during the period November 21, 1977, to December 17, 1977.

Consistent with the foregoing Findings of Fact and Conclusions,

IT IS, THEREFORE, ORDERED that the relief prayed herein is hereby denied, and the Complaint of Cynthia Williams is hereby dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Anne L. Olive, Deputy Clerk

DOCKET NO. E-7, SUB 268

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of J. Kenneth Powell, Complainant, vs. Duke Power Company, Respondent	)	RECOMMENDED ORDER DENYING COMPLAINT

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, August 16, 1979, at 9:30 a.m.

BEFORE: Allen L. Clapp, Hearing Examiner

APPEARANCES:

For the Complainant:

Stephen G. Kozey, Esq., Public Staff, Box 991, Raleigh, North Carolina 27602

For the Respondent:

W. Edward Poe, Jr., Esq., Duke Power Company, Box 33189, Charlotte, North Carolina 28242

CLAPP, HEARING EXAMINER: On April 30, 1979, Kenneth Powell filed a complaint against Duke Power Company alleging improper billing. On May 1, 1979, the Commission served the Complaint on Duke, and on May 16, 1979, Duke filed its Answer in Response to the Complaint. The Answer was served on the Complainant on May 17, 1979. On May 25, 1979, the Commission received a Request for Hearing from the Complainant. The Commission issued an Order on July 5, 1979, Setting Hearing for the above time and place. The Hearing came on as scheduled. The Complainant Kenneth Powell testified in his own behalf. Morris Burton Bagwell, Manager of Office Administration, and Charles Calvin Hucks, Supervisor of Customer Services, testified for Duke Power Company. On the basis of the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. The Complainant owns a multibuilding, multistore shopping complex known as the Plaza Central Shopping Center on Central Avenue in Charlotte, North Carolina. The electric service is separately metered to each store.

2. On November 17, 1977, the Complainant telephoned Duke to request that electric service to a vacant store at 4808 I

Central Avenue in Plaza Central Shopping Center be reconnected. The purpose of the service was to allow a janitorial service to clean and wax the floor of the store area. The service was connected by Duke and the meter read on November 18, 1977. Subsequently, Porter Janitorial Service cleaned and waxed the floor, taking approximately four hours.

3. Duke read the meter at 4808 I on December 6, 1977, along with others in the same meter cycle, and mailed to the Complainant on December 9, 1977, a bill in the amount of $94.51 for service rendered since November 18. The meter reading showed that 2701 Kwh had been used during the period and that a demand of 16 kilowatts had been placed on the electric system at some time during the period.

4. Subsequent to receiving the bill for $94.51 from Duke, the Complainant telephoned the realtor who handles the Plaza Central Shopping Center, and who had allowed Porter Janitorial Service entrance to the premises at 4808 I, to ask him to check the premises to be sure that no electrical usage was presently occurring. After checking the premises, the realtor reported back to the Complainant that "the circuit breakers are off."

5. On December 21, 1977, after receiving the response of the realtor to his questions, the Complainant telephoned Duke to inquire about the bill. As a result of the inquiry, the meter at 4808 I was reread by Duke on January 4, 1978. The meter indicated that 3773 Kwh had been used since December 6, 1977, and that a maximum demand of 13.4 Kw had been placed on the electric system during that interval. The reading did not change between the special reading on January 4, 1978, and the normal monthly meter reading on January 6. On January 9, 1978, Mr. Hucks called the Complainant's residence to inform the Complainant that the meter had been reread and that the December billing had been confirmed. That information was provided to the Complainant's wife in his absence.

6. On January 11, 1978, Duke mailed a bill to the Complainant for service from December 6, 1977, to January 6, 1978. The amount of that usage was $138.06. Also included in that bill were the $94.51 charge for service to December 6, 1977, and the $.95 late payment charge thereon. The total bill was $233.52. On February 9, 1978, Duke rendered to the Complainant a bill for $247.11, including $11.25 for the minimum bill for the January usage, a late payment charge of $2.34, and the outstanding balance of $233.52.

7. On February 15, 1978, Duke notified Complainant by letter that the kilowatt-hour usage in question was correct. On March 1, 1978, the Complainant requested an adjustment on his bill. Service was disconnected at the request of Complainant on March 2, 1978. A final bill was rendered by Duke in the amount of $10.13 (a prorated minimum bill) plus the prior balance of $247.11 for a total of $257.24.

8. On April 14, 1978, the Complainant mailed to Duke a check in the amount of $60.13. This was received by Duke on April 17, 1978, and cashed as partial payment of the outstanding balance leaving an unpaid balance of $197.11. This unpaid balance was transferred by Duke to another account (for a sign) of the Complainant listed in the same name, Plaza Central Shopping Center. The $60.13 was intended by the Complainant to fully satisfy his debt to Duke and to encompass the prorated minimum bill of $10.13 plus $50.00 as full payment for the useful service (electricity for cleaning purposes) which he had received.

9. On November 1, 1978, the meter at 4808 I was tested by Duke and found to be registering well within the limits set by this Commission.

10. Electric loads connected at 4808 I include 15 Kw of electric heating, five Kw of air conditioning, four Kw of lighting, two Kw of water heating, and one Kw of miscellaneous. 4808 I has approximately 1800 square feet of floor space.

EVIDENCE AND CONCLUSIONS

The evidence in this docket is that a total of 2701 Kwh, with a maximum demand of 16 Kw, was used by equipment at the premises at 4808 I Central Avenue between November 18, 1977, and December 6, 1977, a period of 18 days. Mr. Powell testified that Porter Janitorial Service would have cleaned the premises within a few days of November 18, 1977, but the exact date of that use is unknown. A further usage of electricity of 3773 Kwh at 13.4 Kw maximum demand was used and recorded between December 6, 1977, and January 4, 1978.

It is clear that no electrical equipment was connected to the service and operating on January 4, 1978, because the meter reading did not change between then and January 6, 1978. This would indicate that faulty equipment was not at fault. Further, it is apparent that no electric loads were connected and operating on December 21, 1977, when Mr. Powell contacted Duke concerning this usage because Mr. Powell had been so informed by the realtor who manages the Plaza Center Shopping Center for him.

Examination of the connected loads at 4808 I and consideration of the effects of such loads on usage under the conditions in evidence yield a consistent explanation for that usage. A five-Kw maximum air conditioning load, a 15-Kw maximum heating load, and a four-Kw maximum lighting load are consistent with the requirements of an 1800-square-reet store area. While the air conditioning load could only be fully on or fully off, the heating load and the lighting load could be partially on as well.

Heating equipment of this type normally consists of several heating stages controlled by relays. If the heat loss from the building is greater than the capability of the

first heating stage to supply heat, or if the thermostat is turned up suddenly, the relays will add one or more stages to the heating mode. The purpose of staging heating units is to prevent surges on power lines and to limit the maximum demand normally placed on the system, especially if some of the heating capacity is intended as backup capacity. With the electric loads connected in this store, it is consistent for the maximum demand placed on the system to be 16 Kw if the lights are turned on, the heating is turned on, and buffing machines are started at the same time. The evidence is that the premises were unoccupied and unvisited between the time the janitorial personnel left in November and the realtor arrived to check the premises in mid-December. The 13.4 Kw of demand experienced during this time is consistent with the premise that the heating system was on during this time but the lights were off.

Mr. Powell, under examination, testified specifically that he had been told by the realtor that the circuit breakers were off - not that the circuit breakers were off when the realtor arrived. It is consistent with the facts to conclude that the heating system was on at the same time as the lights at some time during November, most probably when the janitorial personnel used the premises, and that the heating system remained on until mid-December. Whether this scenario did occur and the heating system was turned off by the realtor or by some other person is not material to the allegations against Duke. The facts are that the electricity was used by equipment on the premises of 4808 I and that the Complainant accepted responsibility for payment therefor at the time of application for service. The fact that equipment was used at 4808 I without the knowledge of the Complainant does not relieve the Complainant of the responsibility for payment for service rendered to the premises which the Complainant accepted at the time of application for service. It is concluded that the charges by Duke for electric service at 4808 I are correct and that the Complainant remains in debt to Duke by the amount of $197.11.

IT IS, THEREFORE, ORDERED:

1. That this complaint and the relief sought therein are denied.

2. That the Complainant is adjudged to be in debt to Duke in the amount of $197.11.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. E-22, SUB 231

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Eric N. Doughtie, Complainant vs. Virginia Electric and Power Company, Respondent	) RECOMMENDED ORDER ALLOWING REFUND IN PART

HEARD IN: Industrial Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 5, 1978, at 9:30 a.m.

BEFORE: Robert P. Gruber, Hearing Examiner

APPEARANCES:

For the Complainant:

Eric N. Doughtie, 701 Virginia Street, Roanoke Rapids, North Carolina 27870
For: Himself

For the Respondent:

Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212
For: Virginia Electric and Power Company

For the Public Staff:

Paul Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

GRUBER, HEARING EXAMINER: This proceeding was initiated on February 8, 1978, by the filing of a letter complaint by Eric N. Doughtie vs. Virginia Electric and Power Company, alleging that Vepco wrongfully charged him $999.10 for current diverson. He alleged that in December 1978 Vepco told him to pay a charge of $999.10 for electricity wrongfully diverted over a period of about three (3) years or they would terminate his service, and that he paid the bill and sought redress some eight months later. Mr. Doughtie denied diverting current and asked the Commission to investigate the matter. He included in his complaint a record of his consumption before and after December 1978 and requested a review of his usage pattern.

On March 9, 1978, Vepco filed a response to the complaint, and alleged that on December 18, 1978 (a Saturday), a Vepco meter reader found Mr. Doughtie's meter inverted and

reported it to his supervisor. On the following Monday, two Vepco representatives went to the Doughtie residence and observed the meter to be right side up, but with the external meter seal cut and installed in such a manner as to appear uncut. It was alleged that the meter was removed, tested, and found to have a broken internal meter seal and excessively worn terminals. It was further alleged that having suspected energy diversion, Vepco conducted an examination of Mr. Doughtie's consumption patterns back to January 1973, and that his per day average consumption dropped steadily from January 1973. Based on his reduced consumption pattern, Vepco assessed Mr. Doughtie with an adjustment of $999.10 to compensate them for diversion of electricity between January 21, 1974, and December 18, 1976. In calculating the adjustment, Vepco estimated base usage of 30 Kwh per day based on readings in December 1976, added to this bill for 6,000 Kwh air conditioning usage per year, and arrived at a total estimated billing of $1,721.78 for the January 21, 1974, to December 20, 1976, period. From this total of $1,721.78 was subtracted the $738.68 actually billed, leaving an excess bill of $983.10 to which was added an $11 trip charge and $5 meter test, and the final charge of $999.10.

By Order entered on May 5, 1978, the Commission set the matter for hearing on July 5, 1978. The matter came on for hearing as scheduled and the parties were represented by counsel of record as shown above. At the hearing, the Complainant and his wife, Edna M. Doughtie, testified in support of the allegations and relief sought by the Complainant. Vepco offered the testimony of four witnesses, Jackie Cole Hester (the meter reader), John F. Hughes (District Supervisor), Charles Warren (Meter Supervisor), and Norman W. Chalmers (Director of Rates).

Based on the sworn testimony contained in the record of this case, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Eric Doughtie was a Vepco customer during the period investigated and resided at 701 Virginia Street, Roanoke Rapids, North Carolina.

2. The Respondent, Vepco, is a duly certified public utility corporation doing business in Roanoke Rapids, North Carolina.

3. The Complainant's residence is a three bedroom, 1,200 square foot house containing central air, a hot water heater, a range, a washing machine, a refrigerator, a color TV, and various small appliances.

4. During the period in question, the Complainant lived at this residence with his wife and young daughter.

5. The Complainant is a trained electrician with over 30 years of experience.

6. On December 18, 1976, a Vepco meter reader, while conducting a monthly reading of the meter at the Doughtie home observed that the meter was inverted, and that the meter reading revealed that the monthly consumption was far below estimated usage.

7. The meter reader observed that the grey external meter seal was cut but had been stuck back so as to appear to have been uncut.

8. The meter reader left to report this observation to the district office and returned in about 20 minutes to find that the meter was upright and the seal was placed in such a manner so as to appear not to have been cut.

9. Further internal and external analysis of the meter revealed that the meter terminals were excessively worn, scarred and scratched. The meter's internal seal was broken and screwdriver marks indicated that the meter had been tampered with by someone.

10. The various markings indicated that the meter had been inverted on numerous occasions.

11. Complainant had inverted the meter during December 1976 when he had removed it to work on his house.

12. Complainant had removed the meter eight to 10 times during the year 1976 to work on his wiring and had done so without Vepco's approval.

13. The Complainant had cut the external meter seal on at least one occasion without Vepco's approval.

14. The purpose of the external meter seal is to secure the meter from hazard and to serve as a security device to prevent meter tampering.

15. Complainant was billed $738.68 for usage during the January 21, 1974, to December 18, 1976, period which was based on meter readings taken during this period.

Whereupon, the Hearing Examiner makes the following

CONCLUSIONS

1. Complainant wrongfully diverted current by inverting his meter during the January 21, 1974 - December 18, 1976, period. By his own admission he inverted the meter on at least one occasion. He frequently removed the meter, and broke and tampered with the meter seal. As a trained electrician he knew or should have known that it was improper to break the seal and remove the meter without seeking Vepco's permission. He claims that he mistakenly

inverted the meter, but this is unconvincing in light of the fact that he is a skilled electrician. Having wrongfully diverted current, the Complainant is liable to Vepco for current used and not paid for during the period in question.

2. That Complainant owes Vepco an additional $619.02, or $380.08 less than the $999.10 he paid Vepco for diverted current in December 1976. The Examiner concludes that the total bill of $999.10 is excessive in that there is insufficient proof that the Complainant used his air conditioning during the summers of 1974, 1975, and 1976. The record reveals that if the estimated three years' air conditioning usage of 18,000 Kwh (6,000 Kwh per year) is "backed out" of the bill, Complainant was overcharged by $380.08. (Tr. p. 86) The Examiner suspects that Complainant used his air conditioning, having no reason not to use it since he was diverting current. However, mere suspicion will not support a conclusion that he was using air conditioning.

3. Complainant is entitled to a refund of $380.08 in total. Complainant is not entitled to interest. The equities of this case do not justify the payment of interest since Complainant has engaged in a willful and deceitful act and Vepco did not charge interest for the three years Complainant diverted current.

IT IS, THEREFORE, ORDERED that Vepco refund the sum of $380.08 to Eric N. Doughtie within 10 days from the date this Order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. E-2, SUB 380
DOCKET NO. E-7, SUB 283
DOCKET NO. E-22, SUB 251

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. 62-134(e)	)	
Application by Duke Power Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. 62-134(e)	)	ORDER REVISING RULE R8-46 AND RULE R1-36
Application by Virginia Electric and Power Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. 62-134(e)	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 11, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp and Leigh H. Hammond

APPEARANCES:

For the Applicants:

John T. Bode, Esq., P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

George W. Ferguson, Esq., P.O. Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

Guy Tripp, Esq., Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212

For the Using and Consuming Public:

Jerry D. Fruitt, Chief Counsel, Theodore C. Brown, Jr., and Paul L. Lassiter, Public Staff, Legal Division, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On August 4, 1978, the Commission issued its "Order Revising Power Plant Performance Review Plan and Establishing Rule R8-46, and Order Initiating Changes in Procedures for Fuel Cost Rate Adjustments Pursuant to G.S. 62-134(e); and Revising Rule R1-36." This

rule adopted a new procedure providing for the semiannual review of the performance of base loaded power plants, and new procedures for reviewing applications for rate changes based solely upon the increased cost of fuel used in generating electricity. The Order modified the procedures set forth in Rule R1-36 as follows: (1) The Commission would normally use a six-month base period rather than three; (2) The Commission would schedule hearing semiannually rather than monthly, with possible interim hearings if emergencies arise; and (3) The Commission would update the basic rates each six months to incorporate changed fuel costs rather than updating these changes in general rate cases and using the fuel clause rider. The Order further provided for a monthly review of the base rate level and allowed for additional adjustments in the form of a fuel cost adjustment surcharge (or credit) if more recent fuel cost experience, as indicated by a moving three-month test period, were more than 0.1¢/Kwh above or below the base fuel cost established in the six-month period. An entirely new procedure was also adopted to provide for review of base load power plant performance.

The first semiannual hearings under the new procedures were conducted for Carolina Power & Light Company (CP&L), Duke Power Company (Duke), and Virginia Electric and Power Company (Vepco) in December 1978. Subsequent semiannual hearings were held, as well as monthly hearings for those instances when the base fuel cost was exceeded by 0.1¢/Kwh.

On December 11, 1979, the Commission held duly noticed hearings under the aforesaid procedures for CP&L, Duke, and Vepco in Docket Nos. E-2, Sub 380, E-7, Sub 283, and E-22, Sub 251. The Notice of Hearing for each of these dockets also stated that the Public Staff of the Commission would present evidence regarding revisions to the Commission's rules and procedures for rate changes based solely upon the increased cost of fuel.

At the aforesaid hearings for CP&L, Duke, and Vepco, Andrew W. Williams, Director of the Electric Division of the Public Staff, testified to the proper fuel charges under the existing procedure and testified that Commission Rules R1-36 and R8-46 should be modified. He stated that Rule R1-36 should be revised because it was not accomplishing its stated purpose of stabilizing rates through the avoidance of monthly fuel cost adjustments.

He also expressed concern that a semiannual power plant performance does not provide protection against "poor" plant performance, when monthly fuel cost adjustments are made.

Mr. Williams recommended that the Commission adopt a procedure which reviews and adjusts the fuel cost component in the basic rates three times annually and uses, therefore, a four-month historical test period with power plant performance reviewed at each hearing. No monthly fuel cost adjustments would be allowed. Furthermore, under the new

procedure, rates would be based on service rendered on and after the effective date of the Commission's Order (in contrast to the current procedure based on bills rendered after the date of the Order).

More specifically the Public Staff's procedure would be structured as follows:

Test Period	Hearing Month	Billing Months
January	June	August
February		September
March		October
April		November
May	October	December
June		January
July		February
August		March
September	February	April
October		May
November		June
December		July

Under the Public Staff's procedure, the same basic formulas, definitions, and restrictions currently in use would continue. The fuel cost experience in a given test period would be used to adjust the fuel cost component in the basic rate for the appropriate billing period utilizing the existing formula (E/S - base x) tax factor. Public hearings would be held near the end of the designated hearing month to allow time for adequate notice and power plant performance evaluation. All adjustments would be to the basic rates with no provision for monthly fuel cost adjustment surcharge.

The three companies through testimony and argument of counsel generally supported the Public Staff's proposed procedure, and differed only in regard to the timing of its implementation.

FINDINGS AND CONCLUSIONS

The Commission finds that the current semiannual fuel cost procedures were adopted to promote rate stabilization, customer understanding, equity for the utility, and protection against poor plant performance. The Commission concludes that the recent increase in the number of monthly fuel cost adjustment hearings indicates that these objectives are not being met. Further, the Commission accepts that the present mechanism does not adequately afford the ratepayer protection against poor plant performance. From the above described, the Commission concludes that the rule revisions proposed by the Public Staff will tend to rectify these deficiencies and that the

Commission Rules R1-36 and R8-46 should be amended in accord with the Public Staff's proposed rule changes.

The Commission further concludes that the new procedure should take effect in February 1980 in order to avoid the problems of having to prorate customer bills which would create further misunderstanding with regard to fuel adjustment procedures.

IT IS, THEREFORE, ORDERED:

1. That Commission Rule R1-36(c) be, and hereby is, rewritten as set forth in Appendix A attached hereto.

2. That Commission Rule R8-46 be, and hereby is, amended as set forth in Appendix B attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of December, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A

Rule R1-36. Applications for change in rates based on cost of Fuel

(c) Fuel Cost Review Plan:

(1) Changes of rates based solely on the cost of fuel pursuant to G.S. 62-134(e) shall occur at four-month intervals through adjustments to basic rates to be charged for the succeeding four-month period. Hearing schedules, test periods, and billing periods shall be as follows:

Test Period	Hearing Month	Billing Months
January February March April	June	August September October November
May June July August	October	December January February March
September October November December	February	April May June July

APPENDIX B

Rule R8-46. Base Load Power Plant Performance Review Plan. - (a) Each electrical public utility which uses fossil or nuclear fuel, or both, in the generation of electrical power shall, on or before the 25th day of each month, file a Base Load Power Plant Performance Report as required in paragraph (d) below for review by the Public Staff and any other interested Party.

(b) If the system average nuclear capacity factors for the six four-months and the 12 months ending with October, November, April, August, or December, as appropriate, are less than 60%, or upon Motion by the Commission, the Public Staff, or another party, the Commission will review the performance of the system's base load generating plants during the next fuel adjustment hearing, December, January, February, June, or October, as appropriate. The affected utility will be required to present to the Commission an explanation of the low performance and comments on remedial actions.

(c) If the Commission finds that responsibility for some or all of the poor performance lies with the utility because of management practices deemed to be imprudent, the Commission may disallow some or all of the cost of below minimum performance, as appropriate. In determining the amount of this adjustment, the Commission considers the following as relevant factors: the time of the outage, its duration, the magnitude of the cost, the minimum capacity level at which nuclear generation "breaks even" with coal-fired generation on an economic basis, prior performance of the unit, the vintage of the units, and the general diligence and responsibility of management. The Commission will also consider other relevant factors suggested by the parties.

(d) Requirements for Base Load Power Plant Performance Report. - The following shall be separately reported for fossil generation and nuclear generation.

(1) List each outage during the monthly period and include:

(i) Duration of each outage,

(ii) Cause of each outage,

(iii) Explanation for occurence of cause, if known, and

(iv) Remedial action to prevent recurrence of outage, if any.

Note: List scheduled outages before forced outages.

(2) Provide the following information for the monthly period and provide a summary for the ~~[illegible]~~, ~~[illegible]~~, four-month, and the 12-month periods ending with the current month:

(i) Maximum dependable capacity (MDC) in Megawatts (MW),

(ii) Hours in period,

(iii) Megawatt-hours (MWH) generated in the period,

(iv) MWH not generated due to scheduled outages,

(v) MWH not generated due to forced outages,

(vi) MWH not generated due to economic dispatch or other causes, and

(vii) Total MWH possible in period ((i) x (ii)).

Note: Provide (i) through (vii) in the units required and provide (iii) through (vi) as a percent of (vii).

(3) The base load plants to be included in the report are the following: CP&L - Roxboro, Robinson #2, Brunswick; Duke - Belews Creek, Oconee; Vepco - Mt. Storm, Surry, North Anna. Subsequent base loaded plants shall be reported beginning with their first full calendar month of commercial operation. The Public Staff will be expected to comment on the utilities' presentation.

DOCKET NO. E-7, SUB 262

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Duke Power Company)
for an Adjustment of Its Retail) ORDER GRANTING PARTIAL
Electric Rates and Charges in Its) INCREASE IN RATES
Service Area Within North Carolina)

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and the Cities of Durham, Marion, Greensboro, Hendersonville, and Charlotte

DATES: June 11-13, 1979, and June 26-July 13, 1979

BEFORE: Chairman Robert K. Koger, Presiding; Commissioners Edward B. Hipp, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, and John W. Winters

APPEARANCES:

For the Applicant:

Steve C. Griffith, Jr., Vice President and General Counsel, Duke Power Company, P.O. Box 2178, Charlotte, North Carolina 28242

George W. Ferguson, Jr., Deputy General Counsel, Duke Power Company, P.O. Box 2178, Charlotte, North Carolina 28242

W. Edward Poe, Jr., Senior Attorney, Duke Power Company, P.O. Box 2178, Charlotte, North Carolina 28242

Clarence W. Walker, Attorney at Law, Kennedy, Covington, Lobdell & Hickman, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For the Protestants:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Box 527, Raleigh, North Carolina
For: N.C. Oil Jobbers Association and Berico Fuels, Inc.

Robert B. Byrd, Byrd, Byrd, Ervin, Blanton & Whisnant, Drawer 1269, Morganton, North Carolina
For: Great Lakes Carbon Company

W.I. Thornton, Jr., City Attorney, 101 City Hall Plaza, Durham, North Carolina 27701
For: City of Durham

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, P.O. Box 2246, Raleigh, North Carolina 27602
For: Kimberly-Clark Corporation, et al.

Paul E. Meyer, Central Carolina Legal Services, Inc., P.O. Box 3467, Greensboro, North Carolina 27402
For: Dora N. Calhoun and Carolina Action

For the Using and Consuming Public:

Robert F. Page and Stephen G. Cozey, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, Raleigh, North Carolina 27602

Dennis Myers and David Gordon, Associate Attorneys General, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: This Proceeding is before the Commission upon the application of Duke Power Company (hereinafter called the Applicant, the Company, or Duke) filed with the Commission on March 9, 1979, for authority to adjust and increase its electric rates and charges for its retail customers in North Carolina. The proposed increase was designed to produce approximately $35,511,000 of additional revenues from the Company's North Carolina retail operations, when applied to a test period consisting of the 12 months ended December 31, 1978, or approximately a 4.0% increase in electric operating revenues.

The Commission, being of the opinion that the increases in rates and charges proposed by Duke were matters affecting the public interest, by Order issued on April 5, 1979, declared the application to be a general rate case pursuant to G.S. 62-137; suspended the proposed rate increases for a period of 270 days; set the matter for hearing before the Commission beginning on June 11, 1979; required Duke to give notice of such hearing by newspaper publications and by appropriate bill inserts; established the test period to be used in the proceeding; and required protests or interventions to be filed in accordance with the Commission Rules and Regulations.

Notice of Intervention in this docket was given by the Attorney General of North Carolina on behalf of the Using and Consuming Public on March 14, 1979. The Public Staff, by and through its Executive Director Hugh A. Wells filed Notice of Intervention on behalf of the Using and Consuming Public. The Intervention of the Attorney General was duly recognized by the Commission. The Intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations.

By Petition filed May 8, 1979, Great Lakes Carbon Corporation petitioned to intervene and protest and object to any increase in rates. On June 5, 1979, the Commission by Order allowed Great Lakes Carbon to intervene.

On May 8, 1979, the North Carolina Oil Jobbers Association and Berico Fuels, Inc., filed a Petition to Intervene, said Intervention being allowed by Order of the Commission on May 10, 1979.

The City of Durham filed a Petition for Leave to Intervene on April 11, 1979, and on April 19, 1979, an Order was issued allowing the Intervention.

Carolina Action-Greensboro filed a Petition to Intervene on June 15, 1979, and on June 18, 1979, the Commission allowed the Intervention.

A joint Petition to Intervene by Kimberly-Clark Corporation, Air Products and Chemicals, Inc., Union Carbide Corporation, Olin Corporation, American Cyanamid Company, BASF Wyandotte Corporation, Owens-Illinois, Inc., PPG

Industries, Inc., Weyerhaeuser Company, and E.I. DuPont DeNemours and Company was filed on May 21, 1979, and by Commission Order of June 4, 1979, the joint Petition was allowed.

Out-of-town hearings were conducted by the Commission for the purpose of receiving testimony from members of the Using and Consuming Public with regard to Duke's proposed rate increases. The first such hearing was held in Durham, North Carolina, at 7:30 p.m. on June 11, 1979; the second in Marion, North Carolina, on June 12, 1979, at 2:00 p.m.; the third in Hendersonville, North Carolina, on June 12, 1979, at 8:00 p.m.; the fourth on June 12, 1979, in Greensboro, North Carolina, at 7:30 p.m.; and the fifth hearing in Charlotte, North Carolina, on June 13, 1979, at 7:30 p.m. Public witnesses at these hearings included the following persons:

Durham - Estelle Clinton, Ruth Ford, Thelma Denning, Bessie Ware, William R. Capps, James Arnold, Howard Sherman, Sam Reed, Barbara Harris, Roz Walborsht, William L. Whitmore, Mary Burnett, James D. Green, George Amos, Edward Abdullah, Joan Peak, and George White;

Marion - no witnesses;

Hendersonville - Herbert Martin, Leonard Proper, Harold Breeding, Charles Hutchinson, and Charlie Drake;

Greensboro - Carlton Maynard, Nettie Code, John Calhoun, Alta Raines, Irene Pleasant, Dan Jackson, Ed Gower, Walt Clark,

Claire Morse, Robert Williams, Lawrence Morse, Gerry Chapman, Tobi Lippin, Diane Smith, Page Hartsell, John Michael, C.L. Hickerson, Don Miller, Virginia Farrington Dietz, Otto Koester, and John P. Kernodle, Jr.;

Charlotte - Mary Wells, Brenda Best, Willie Jeeter, Ann Dorsett, Virginia Winchester, Maggie Freeman, Julia Davis, W.G. Coffey, Huey Long, Elizabeth Goldman, Robert Janette, Ella Kelly, Jim Stikeleather, Barry Duggan, Mike Larocco, Linda Klein, Mike Phenal, Joy Lingal, and Cindy Stikeleather; and

Raleigh - Arthur Eckles.

In general terms, the testimony of these witnesses can be summarized as follows. Some of the customers were opposed to any further rate increase by Duke, in view of the rate increase approved in 1978 (Docket No. E-7, Sub 237) and the high earnings which Duke's Annual Report listed for 1978. Some customers were opposed to further construction of nuclear power plants and encouraged the development of other methods to meet energy needs in Duke's service area, such as conservation and power generated from solar sources. Some witnesses were very concerned over the probable future impact of the accident at Three Mile Island on their rates,

due to the provisions of the Price-Anderson Act. Several customers were very disturbed about the law which became effective on July 1, 1979, (and is not the law of this case) that allows construction work in progress (CWIP) to be included in rate base. Other customers were opposed to rate designs which allow large users to pay lower average rates than small users, such as residential customers.

The matter came on for hearing in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on June 26, 1979, at 9:30 a.m. Duke Power Company offered the testimony and exhibits of the following witnesses: William S. Lee, President of Duke Power Company and its Chief Operating Officer, and William H. Grigg, Senior Vice President-Legal and Finance, both of whom testified as to the Company's need for the proposed rate increase, its construction program, the efficiency of its operations, its financial condition and overall general corporate policy; Dr. Stephen F. Sherwin, economist and Executive Vice President of Foster Associates, an economic consulting firm, who testified to the fair rate of return required by Duke Power; W.R. Stimart, Controller of Duke, who testified to the results of the Company's operations in the historical test year after pro forma adjustments, and the fair value of the Company's plant in service; and M.T. Hatley, Jr., Manager of the Rate Department, who testified with respect to the proposed rates and rate design.

The Public Staff offered the testimony and exhibits of the following witnesses: Carol Kimball Bunn, Public Utilities Complaint Analyst for the Consumer Services Division of the Public Staff, who testified with respect to the number and types of complaints received concerning Duke; J. Reed Bumgarner, Utilities Engineer with the Public Staff's Electric Division, who testified to cost-of-service and jurisdictional allocation studies and to probable future revenues and expenses applicable to electric plant in service at the end of the test period; Andrew W. Williams, Director of the Electric Division of the Public Staff, who testified with respect to Duke's fuel procurement activities and the coordination of Duke's test year fuel expense and revenues related to the fuel cost adjustment mechanism; William W. Winters, Staff Accountant, Accounting Division of the Public Staff, who testified as to the Public Staff's investigation and analyses of the Company's original cost net investment, revenues and expenses, and rates of return under present and proposed rates; and Richard G. Stevie, Economist with the Economic Research Division of the Public Staff, who testified as to the capital structure of Duke for rate-making purposes.

Carolina Action offered the testimony of Dan Q. Jackson, a retired sales engineer, who testified concerning Duke's rate design and in favor of the concept of lifeline rates.

In rebuttal to the testimony on certain rate base and accounting adjustments proposed by Public Staff witnesses

Winters and Stevie, Duke offered the testimony of John F. Utley, a partner with the accounting firm of Deloitte, Haskins & Sells, and the testimony and exhibits of W.R. Stimart, Controller of Duke Power Company.

Oral arguments were scheduled by the Commission, with consent of all parties, and were held in the Commission Hearing Room, Dobbs Building, on July 13, 1979, at 3:30 p.m. Arguments were presented on behalf of the Company, the City of Durham, the North Carolina Oil Jobbers Association, Carolina Action, and by the Attorney General and the Public Staff for the Using and Consuming Public.

Based on the foregoing, the verified application, the testimony and exhibits received into evidence at the hearings, and the Commission's entire record with regard to this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. Duke Power Company is a duly licensed public utility, subject to the jurisdiction of this Commission, and holds a franchise to furnish electric power in the State of North Carolina.

2. The test period for purposes of this proceeding is the 12-month period ending December 31, 1978. Duke is seeking an increase in its rates and charges to its North Carolina retail customers of approximately $35,511,000 based on operations in the test period.

3. The reasonable original cost of Duke's North Carolina retail electric plant in service is $2,439,808,000. From this amount should be deducted the reasonable accumulated provision for depreciation and amortization of $764,217,000 and cost-free capital of $214,890,000 resulting in a reasonable original cost less depreciation and amortization and cost-free capital of $1,460,701,000.

4. The reasonable allowance for working capital is $165,408,000.

5. The fair value of Duke's plant used and useful in providing electric service to the retail customers in North Carolina is $1,853,162,000, which amount is determined by adjusting the fair value of Duke's rate base as determined by this Commission on August 31, 1978, in Docket No. E-7, Sub 237, for the original cost of plant placed into service since September 30, 1977, the end of the test period for that proceeding, and for retirements, depreciation, etc., in the same period.

6. The fair value of Duke's rate base used and useful in providing electric service to North Carolina retail customers is $1,803,680,000, which sum is comprised of the fair value of plant of $1,853,162,000 plus a reasonable

allowance for working capital of $165,408,000 less cost-free capital of $214,890,000.

7. Duke's approximate gross electric operating revenues for the test year under present rates, after accounting and pro forma adjustments, are $887,453,000, and after giving effect to the proposed rates are $922,964,000, and under the rates approved herein are $915,767,000.

8. The level of Duke's test year operating revenue deductions, after accounting and pro forma adjustments, including taxes, interest on customer deposits, and amortization of investment tax credits, is $735,926,000 which includes $78,907,000 for actual investment currently consumed through reasonable actual depreciation.

9. Duke should be required to increase its research and developmental expenditures with respect to alternative energy resources available within North Carolina by $1,000,000 on a jurisdictional basis. Funds for such expenditures are reflected in the test year level of operating revenue deductions as previously set out hereinabove.

10. The capital structure which is proper for use in this proceeding in relation to original cost capitalization is the following:

Item	Percent
Long-term debt	48.00
Preferred stock	14.00
Common equity	38.00
Total	100.00

11. When the excess of the fair value of the Company's property used and useful at the end of the test year over and above the original cost net investment (i.e., the fair value increment) of $177,571,000 is added to the equity component of the original cost net investment, the resulting fair value capital structure is as follows:

Item	Percent
Long-term debt	43.28
Preferred stock	12.62
Common equity	44.10
Total	100.00

12. The proper embedded cost rates for long-term debt and preferred stock are 8.05% and 7.98%, respectively.

13. The fair rate of return that Duke should have the opportunity to earn on the fair value of its North Carolina investment for retail operations is 9.15% which requires an increase in annual revenues from North Carolina retail operations of $28,314,000 based upon the historical test

year (12 months ended December 31, 1978) level of operations, as adjusted for known changes occurring subsequent thereto. This rate of return on the fair value of Duke's property yields a fair rate of return on Duke's fair value equity of approximately 10.56%. The full amount of additional revenues requested by Duke in this proceeding would produce rates of return in excess of those approved herein and such level of revenues is, thus, unjust and unreasonable.

14. Duke's fuel procurement activities are reasonable and are in accordance with similar practices previously reviewed by the Commission.

15. The service provided by Duke is good, and the Company's response to customer complaints reveals that a reasonably thorough inquiry is made into each complaint.

16. Duke's rate designs were substantially altered in Docket No. E-7, Sub 237, and the new rates were based upon valid, fully distributed cost studies in existence at that time. These rates had only been in effect approximately three months during the 1978 Cost of Service Study year and the full effects of those changes on consumption patterns are not reflected therein.

17. Substantial examination of changes in consumption and cost patterns is planned by Duke and by the Public Staff for Duke's next rate case.

18. Rate schedules designed in accordance with the guidelines set forth herein will result in Duke earning from each classification of customers, i.e., residential, commercial, and industrial, approximately the same rate of return as the other classifications on the basis of the appropriate study of Duke's fully distributed book cost of service. Accordingly, such rates will be fair and equitable as between classes and therefore are just and reasonable.

19. It is not appropriate at this time to take any steps, other than those that are reflected in the rate design guidelines set forth herein and those that are already in process, to make any further changes in rate designs to fully implement the standards set out in Section 111(d) of the Public Utility Regulatory Policies Act of 1978.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence for these findings is contained in the verified application, the Commission's Order Setting Hearing, the testimony and exhibits of Company witnesses Lee and Stimart, and the testimony and exhibits of Public Staff witness Winters. These findings are essentially informational, procedural, and jurisdictional in nature and were basically uncontested. The findings require no further discussion at this point.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding consists of the testimony and exhibits presented by Company witnesses Stimart and Utley and Public Staff witness Winters concerning the original cost of Duke's retail electric plant in service. The following chart summarizes the amount which each of the parties contends is proper for the North Carolina retail operations:

(000's Omitted)

Item	Company	Public Staff
Electric plant in service	$2,439,808	$2,439,808
Deduct: Accumulated depreciation	764,217	764,217
Nuclear simulator and construction equipment included in the plant accounts	-	13,547
Cost-free capital*	195,704	216,279
Total deductions	959,921	994,043
Net electric plant in service	$1,479,887	$1,445,765

*Includes customer deposits.

As reflected above, the Company and the Public Staff agree on the allocation factors and methods for determining the portion of Duke's total electric plant in service which is attributable to North Carolina retail operations and on the proper amount of accumulated depreciation and amortization as of December 31, 1978, the end of the test year. However, the witnesses do not agree with respect to the treatment of certain other items of cost and capital.

The differences between the Company and the Public Staff as to Duke's original cost net electric plant in service center around the following four items which the Public Staff contends should be either deducted or eliminated from plant in service:

(000's Omitted)

(a)	Deduction from plant in service of deferred income taxes attributable to capitalized overheads	$19,186
(b)	Deduction from plant in service of an amount equal to 2/3 of former deferred taxes (now taxes due and payable) attributable to construction expenditures capitalized on the portion of the Catawba Plant which has been sold	$ 1,389
(c)	Elimination of construction equipment from plant in service	$11,703
(d)	Elimination of nuclear simulator from plant in service	$ 1,844
	Total	$34,122

With respect to the proper amount of deferred income taxes, i.e., cost-free capital to be deducted from the rate base, Company witness Stimart testified that, "I have excluded the tax timing differences that are clearly associated with generating units under construction as of December 31, 1978." Mr. Stimart stated that $31,238,000 of the total Company deferred income taxes arose from deducting currently for tax purposes, the property taxes, social security taxes, and fringe benefits associated with the Company's construction program.

Mr. Stimart testified that he did not deduct from rate base that portion of deferred income taxes which arises from overhead costs capitalized with respect to plant still under construction because construction work in progress is not included in the rate base. He testified that such deferred taxes should, instead, be deducted from construction work in progress when computing allowance for funds used during construction (AFUDC).

Public Staff witness Winters included $19,186,000 of the $31,238,000 in his calculation of the cost-free capital related to the North Carolina retail operations. Mr. Winters testified as follows:

> "The deferred income taxes referred to by Mr. Stimart arise from the normalization concept of accounting for income taxes. The Company capitalizes certain taxes, fringe benefits and other items for book purposes which are deducted currently for income tax purposes. Under the normalization concept, deferred taxes are calculated on the items deducted for tax purposes but capitalized for book purposes. The taxes are then amortized to the cost of service over the life of the asset. Use of this concept results in the Company including for financial reporting and rate-making purposes an amount for income tax expense which is higher than the actual amount paid to the state and federal governments. Since these deferred taxes are included in the cost of service for rate-making purposes, the customer pays these taxes currently through the rate structure. The $31,238,00 of deferred taxes which Mr. Stimart proposes not to deduct in determining his original cost net investment have been paid in by the customers since 1974."

Company witness Utley testified on rebuttal that the provision for deferred income taxes does not require current ratepayers to pay any additional costs, but merely offsets a reduction in the current income tax provision created by the Company's construction program. He further stated that the deferral of this tax benefit results in current ratepayers being isolated from the effects of the construction program.

Both Mr. Stimart and Mr. Utley relied upon the language in the Commission's Order in the last Duke rate case, Docket No. E-7, Sub 237, related to cost-free capital. In that

Order, cost-free capital was deducted in the calculation of net electric plant in service. The Order specifically discusses how the deferral of income taxes related to accelerated depreciation results in cost-free capital being contributed by ratepayers. The inference drawn by both Duke witnesses from such Order is that the Commission meant to deduct only deferred taxes related to accelerated depreciation in determining net electric plant in service.

While the Commission's Order dated August 31, 1978, issued in Docket No. E-7, Sub 237, does specifically address deferred taxes related to accelerated depreciation, deferred income taxes related to the construction program were clearly included in the total amount of cost-free capital deducted in the calculation of electric plant in service for use therein. This inclusion was not an oversight. The important consideration then, as it is now, is - "Should the customer be required to pay currently a return on capital which he has provided to the Company at no cost"?

The North Carolina Supreme Court has ruled in Utilities Commission v. Vepco, 285 N.C. 398, 206 S.E.2d 283 (1974) that it is not proper for a utility to include in its rate base funds which it has not provided but which it has been permitted to collect from its customers for the purpose of paying expenses at some future time.

The Commission believes that it would be inequitable, unfair, and unlawful to require Duke's North Carolina customers to pay a return on capital which they have provided when such capital bears no cost to Duke. The Commission therefore concludes that the $19,186,000 of deferred income taxes related to FICA taxes, fringe benefits, and other overhead items capitalized should be deducted in the calculation of net electric plant in service.

The second item of difference relates to the adjustment made by Public Staff witness Winters with respect to deferred income taxes attributable to construction costs capitalized on that portion of Duke's Catawba Plant which has been sold.

During construction of the Catawba nuclear station certain construction overhead costs were expensed for tax purposes and capitalized for book purposes, creating a tax timing difference recorded as deferred taxes. In November 1978 Duke sold a portion of the Catawba station, as a result of which those deferred taxes became payable. Accordingly, Duke eliminated the deferred tax accrual on its books and correspondingly increased current taxes payable.

Mr. Winters stated that the adjustment was made to refund to the ratepayers the contributions which have been paid in by them through the rate structure and which have not properly been credited to them through the rate-making process.

On rebuttal Mr. Stimart testified that the treatment proposed by Mr. Winters is improper for two reasons. First, the Company's decision to deduct the Catawba construction overhead costs for tax purposes did not change the cost of service for present customers; the income taxes paid in by the ratepayers through the rate structure were precisely the same that they would have been if the Catawba Unit No. 2 had not been constructed at all. Second, as a result of the sale of a portion of the Catawba unit the taxes have now become payable to the United States Government, and the amounts have been transferred to current taxes payable. Thus, the "deferred taxes" to which Mr. Winters refers no longer exist.

Clearly, the Catawba sale has resulted in elimination of the deferred income taxes related thereto since such taxes are now due and payable. Therefore, the Commission concludes that inclusion of the $1,389,000 deduction in the calculation of electric plant in service as proposed by Mr. Winters is improper and therefore should be rejected.

The third item of difference between the Company and the Public Staff with respect to the calculation of the proper level of electric plant in service concerns the adjustment made by Public Staff witness Winters to exclude certain construction equipment from such calculation.

Mr. Winters proposed to exclude from plant in service $11,703,000 of construction equipment contending that such equipment is not "used and useful" in providing public utility service. Mr. Winters recognizes that the Uniform System of Accounts, which is applicable to Duke under the regulations of this Commission, requires that construction equipment be included in plant in service, but he contends that the magnitude of Duke's construction operations justifies a departure from the Uniform System of Accounts for rate-making purposes.

On rebuttal Mr. Utley stated that the fact that Duke does more of its own construction work than the average electric utility does not justify a departure from the Uniform System of Accounts. Mr. Utley further stated that while the Uniform System of Accounts does not dictate that this rate-making treatment be adopted it presumes that it will, and he testified that in his opinion there is no sound basis for departing from that presumption in this case.

This Commission believes that Duke's present customers benefit from the Company's ongoing practice of constructing its own plants because of the lower construction cost per kilowatt that Duke is able to achieve compared with other utilities. Moreover, the fact that Duke engages in more of its own construction than other utilities is not a sufficient basis for overriding the Uniform System of Accounts which has been adopted by this Commission. The Commission does, however, emphasize that it does not consider any accounting treatment to be controlling with

respect to the treatment of any item of revenue or cost for rate-making purposes. Conversely, however, the Commission does believe that good accounting must follow the treatment of revenues and costs employed in the rate-making process. The Commission therefore concludes that the construction equipment should be included in plant in service for rate-making purposes and accordingly will not adopt the Public Staff's adjustment.

The final item of difference between the Company and the Public Staff with respect to the calculation of the proper level of electric plant in service concerns the adjustment made by Public Staff witness Winters to exclude a nuclear simulator from electric plant in service.

Duke owns and operates a nuclear simulator, which has been in operation since 1977, for the purpose of training its personnel in the operation of nuclear generating stations. According to the evidence, the principal purpose of this simulator is to train operators for the McGuire and Catawba nuclear stations, but it is also used to some extent to train engineers and other personnel in operations unrelated to those plants.

Public Staff witness Winters proposed to eliminate this simulator from electric plant in service because it was designed to train operators for the McGuire and Catawba Plants, which are still under construction, and therefore, the simulator is not used and useful in providing electric service to present customers.

Company witnesses Stimart and Utley testified that the simulator has been in service, performing the functions for which it was designed, since late 1977, and that under the Uniform System of Accounts it should properly be classified as plant in service rather than as construction work in progress. Mr. Utley stated that in his opinion the nuclear simulator is now "used and useful" to Duke in performing the service for which it was franchised. Mr. Utley differed with Mr. Winters' view that in order to qualify as "used and useful" the simulator must be employed in rendering electric service to present customers. Finally, Mr. Utley pointed out that to take the simulator out of plant in service and resume the capitalization of AFUDC on it will in the final analysis be more expensive to Duke's ratepayers.

The rate-making statute requires that the Commission "ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State." G.S. 62-133(b)(1). The inquiry here is whether the nuclear simulator is used and useful to Duke in providing public utility service in North Carolina. The Commission is of the opinion that it is. Therefore, the Commission concludes that Mr. Winters' adjustment to exclude the simulator from utility plant in service should be rejected.

Finally, based upon the foregoing the Commission concludes that the proper level of net electric plant in service for use herein is $1,460,701,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Original cost of plant in service at 12/31/78	$2,439,808
Less: Accumulated depreciation	764,217
Cost-free capital	214,890
Net electric plant in service	$1,460,701

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

With regard to the reasonable and proper allowance for working capital, the Company and the Public Staff prefiled a Stipulation that the allowance for working capital should be set at $165,408,000 for purposes of this case. Both parties agreed to employ the lead-lag methodology in the determination of the allowance for cash working capital in this case and agreed that this Stipulation would not bind either party in future rate cases.

Since no other parties offered testimony or conflicting cross-examination on the allowance for working capital, the Commission concludes that the reasonable allowance for working capital in this case is $165,408,000.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

None of the witnesses testifying in this docket offered any evidence concerning the replacement cost or trended original cost of Duke's plant in service in North Carolina. The only witness to present testimony relating to fair value in this proceeding was Company witness Stimart. His methodology was to start with the fair value rate base determined in Duke's last general rate case, Docket No. E-7, Sub 237, and to adjust that figure for changes in rate base components which occurred between September 30, 1977, and December 31, 1978. Since the Commission has previously adopted different amounts of plant in service, working capital, and cost-free capital than those proposed by Mr. Stimart in his original filing, it becomes necessary for the Commission to calculate the fair value of Duke's property used and useful in providing service to customers in North Carolina.

The Commission will begin by using Mr. Stimart's methodology to determine the fair value of Duke's plant in service. The rate base established in Docket No. E-7, Sub 237, for the period ending September 30, 1977, as shown in Stimart Exhibit 3, was $1,792,300,000. Gross plant in service was determined to be $1,814,114,000, based on a 7/10 weighting given to original cost less depreciation and a

3/10 weighting given to replacement cost less depreciation. To this figure the Commission will add gross electric plant additions calculated at cost by Mr. Stimart of $173,415,000 and will deduct $12,774,000 of retirements at 111% of original cost and $121,593,000 of additions to accumulated depreciation at cost both as recommended by Mr. Stimart.

Based on the foregoing, the Commission concludes that the fair value of Duke's plant in service which is used and useful in providing electric service in North Carolina is $1,853,162,000. This fair value of plant includes a reasonable fair value increment of $177,571,000 over and above the original cost less depreciation of such plant. ($2,439,808,000 - $764,217,000 = $1,675,591,000; $1,853,162,000 - $1,675,591,000 = $177,571,000).

Thus, the Commission concludes that the just and reasonable fair value rate base to be used herein is $1,803,680,000. Such sum is calculated as follows:

(000's Omitted)

Item	Amount
Fair value of plant	$1,853,162
Add: Allowance for working capital	165,408
Deduct: Cost-free capital	214,890
Fair value rate base	$1,803,680

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witness Stimart and Public Staff witness Winters proposed the following amounts with respect to the proper level of Duke's test year operating revenues:

(000's Omitted)

Item	Company Witness Stimart	Public Staff Witness Winters
Operating revenues	$880,897	$887,453

Company witness Stimart adjusted book revenues to normalize and annualize the revenues for the test year ended December 31, 1978. The Public Staff accepted these adjustments and proposed the following additional adjustments which account for the difference of $6,556,000, as reflected above.

(000's Omitted)

Item	Amount
Adjustment to fuel clause revenues	$5,447
Adjustment for temperature variances	1,109
Total	$6,556

Regarding the adjustment to fuel clause revenues, Public Staff witness Williams recommended an adjustment to the test year to reflect a perfect matching of fuel clause revenues and expense, effectively zeroing the fuel adjustment charge for the test year. Witness Williams stated that this adjustment was required in order to prevent an unnecessary and improper component of fuel cost from being included in the Company's base rates. Witness Williams further stated that Duke had previously agreed with this adjustment and had made a similar revenue adjustment in its last general rate case in Docket No. E-7, Sub 237.

Company witness Stimart testified that Duke did not believe witness Williams' adjustment was necessary or proper in this case because of the procedural change in the fuel cost adjustment mechanism which became effective subsequent to the Commission's final Order with respect to Duke's last general rate case. Mr. Stimart stated that he would not object to Mr. Williams' adjustment if Duke's fuel adjustment clause provided a dollar for dollar recovery of Duke's actual fuel expense.

Apparently, Mr. Stimart's objection to the Public Staff's adjustment assumes that the fuel clause adjustment mechanism which was in effect at the time of Duke's last general rate case was intended to guarantee a dollar for dollar recovery of Duke's actual fuel expense. Clearly, the previous mechanism, like the present one, provides no such guarantee.

Based upon the foregoing, the Commission concludes that the revenue adjustment proposed by the Public Staff to achieve a perfect matching of the test year level of fuel clause revenues and expense is proper and therefore should be adopted for use herein.

Regarding the Public Staff's adjustment for temperature variance, Public Staff witness Bumgarner, in his direct testimony, stated that Duke in calculating its revenue adjustment for temperature variance had used the North Carolina retail average rate per Kwh to apply to the temperature adjusted Kwh usage. Mr. Bumgarner testified that, in his opinion, this method was incorrect since it was more probable that the changes in Kwh usage related to heat sensitive customers would fall in the last pricing blocks of the Company's rate schedules. Mr. Bumgarner stated that his proposed method of pricing the temperature variance Kwh, utilizing the Company's bill frequency distribution data, was far more accurate than Duke's.

In rebuttal testimony, Duke witness Stimart testified that while the method used by witness Bumgarner was more accurate in some respects than the method used by the Company, there was a disadvantage in applying annual bill frequency data to separate seasonal usages and that the relative degree of improvement in the accuracy of the adjustment was questionable and not justifiable in the Company's opinion. On cross-examination, Mr. Stimart agreed that neither the

Company's method nor Mr. Bumgarner's method was inherently unreasonable.

Based upon the foregoing, the Commission concludes that the methodology employed by witness Bumgarner in determining the revenue effect of temperature adjusted Kwh sales is superior in terms of accuracy to that proposed by Duke. Therefore, the Commission will adopt witness Bumgarner's adjustment for use herein.

The Commission therefore concludes that Duke's approximate gross revenues for the test year under present rates after appropriate accounting and pro forma adjustments are $887,453,000 ($880,897,000 + $5,447,000 + $1,109,000 = $887,453,000). Further, the Commission concludes that revenues for the test year under the rates proposed by Duke would have been $922,964,000 ($887,453,000 + $35,511,000). Finally, the Commission concludes that revenues for the test year hereinafter found to be just and reasonable are $915,767,000 ($887,453,000 + $28,314,000 = $915,767,000).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

In its filing and in the prefiled testimony and exhibits of Mr. Stimart, the Company presented the level of operating revenue deductions, after accounting and pro forma adjustments, at $731,694,000 (Stimart Exhibit 1, Page 2, Column 4, Line 10). This included an estimated amount ($19,476,000 total company; $12,112,000 North Carolina retail) of increase in the level of operation and maintenance (O & M) expenses occurring between the end of the test year and the conclusion of the hearings. Subsequently, Mr. Stimart revised this adjustment to base it on more recent data (Stimart Exhibit 4). Also, the Company's filing understated income taxes by $1,579,000, which the Company and the Public Staff both recognized and corrected. These corrections increased the Company's proposed operating revenue deductions to $732,944,000. Further, as set out in Duke's proposed Order after considering the income tax effect of updating the embedded cost rates and the income tax effect of the working capital stipulation, the Company's proposed operating revenue deductions decrease to $732,491,000.

Public Staff witness Winters presented a proposed level of operating revenue deductions of $733,940,000. The differences between the Company and the Public Staff may be summarized as follows:

(000's Omitted)

Item	Company Witness Stimart	Public Staff Witness Winters
Operation and maintenance expense	$489,884	$486,061
Depreciation	78,907	78,907
Other operating taxes	76,606	77,000
Federal and State income taxes	88,512[1]	93,390
Amortization of investment tax credit	(1,619)	(1,619)
Interest on customer deposits	201	201
Total operating revenue deductions	$732,491	$733,940

[1]Income tax expense reflects the effect of updating the embedded cost rates and effect of working capital stipulation.

The difference in operation and maintenance expense ($3,823,000) consists of the Public Staff's disagreement with the following four items of increase in such expenses between the end of the test year and the time of the close of the hearing, as presented in Stimart Exhibit 4:

(000's Omitted)

Item	Amount
To adjust O&M expenses to reflect expensing training costs	$ 954
To adjust O&M expenses to reflect the increased costs of maintaining reliability of service (Tree trimming, etc.)	2,136
To adjust O&M expenses for servicing an expanded customer awareness	366
To adjust O&M expenses for new load research requirements	367
Total	$3,823

With respect to the Company's expensing of nuclear operator training costs ($954,000), Mr. Stimart testified that a recently completed audit by the Federal Energy Regulatory Commission (FERC) had resulted in the FERC's requiring the Company to expense these costs rather than capitalize them as the Company had previously done. Public Staff witness Winters took the position that these costs should be capitalized for rate purposes because they relate in part to training operators for the Catawba Plant, which is still under construction. He said that in his opinion the FERC would recede from its requirement that the costs be expensed if this Commission requires that they be capitalized. On rebuttal Mr. Stimart stated that in his

opinion the FERC will persist in its requirement that these costs be expensed, in which case the Company would have no way to recover them in its North Carolina retail rates unless the Commission either allows them as expenses in the cost of service or permits a special adjustment to rate base in the future over and above the amount that will be shown on the Company's books.

There is no dispute that these are legitimate costs that should be recovered through the rate structure. The treatment proposed by the Company and mandated by the FERC would recover them currently, whereas Mr. Winters proposes that they be capitalized and recovered in the future.

The Commission is of the opinion that these costs are properly chargeable to the test year level of expense and therefore concludes that the Public Staff's adjustment is improper.

The remaining items of post-test year O&M expenses in dispute between the Company and the Public Staff consist of various areas in which O&M expenses increased measurably between the end of the test year and the close of the hearings. Examples are increased tree-trimming expense and increased expenses for lines and substations, both of which are attributable to the maintenance of reliable service. Mr. Stimart testified that these increased costs are specifically identified and result from new regulations and new procedures which are over and above ongoing inflation. The Public Staff's objection to including these costs in the cost of service is based on its criticism of the methodology by which they were identified and determined. Mr. Winters contended that the Company's method gave no assurance that the expenses were of a recurring nature and that the Company had chosen certain expense items which showed increases over the test year, without examining the total operation and maintenance picture.

An examination of the specific O&M cost increases which are in dispute reveals that three, at the very least, are recurring costs which were incurred subsequent to the end of the test year but prior to the close of the hearing. These costs are as follows:

(000's Omitted)

Item	Amount
Twenty-four-hour answering capability throughout the system ($66 x .61824)	$ 41
Informational cost associated with the Residential Conservation Rate (RC) and the Energy Efficient Structure standards ($72 x .61824)	44
Cost associated with new load research requirements	367
Total North Carolina Retail	$452

While there is no evidence in the record which clearly shows that the remainder of the cost increases cited by Mr. Stimart are not permanent and recurring, the Commission is not unmindful of the fact, as pointed out by Mr. Winters, that the methodology employed by Mr. Stimart may have failed to identify certain accounts wherein costs have decreased.

Undoubtedly, the Company has experienced some cost increases subsequent to the close of the test year but prior to the close of the hearing which are unrelated to increases in the number of customers served and/or changes in customer usage other than the items of cost enumerated above. Such increases are properly includable in the test year cost of service.

After carefully considering the evidence with regard to the remaining post-test year O&M expense adjustments at issue, the Commission concludes that $1,424,000 of such Public Staff adjustments should be allowed.

Based upon the foregoing, the Commission concludes that the proper level of operation and maintenance expense for use herein is $489,179,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Operation and maintenance expense proposed by Company witness Stimart	$489,884
Public Staff adjustments - total	(3,823)
Public Staff adjustments - not adopted:	
- Cost associated with 24-hour answering capability	41
- Informational cost associated with RC rate and EEI standards	44
- Costs associated with new load research requirements	367
- Nuclear operator training cost	954
- Cost increases unrelated to the number of customers served or changes in customer usage	712
Cost associated with alternative energy research and development	1,000
Total	$489,179

Both witnesses agree that the appropriate operating revenue deduction attributable to depreciation in the test year is $78,907,000. No conflicting evidence was offered. Therefore, the Commission concludes that the reasonable test year level of depreciation expense is $78,907,000.

With respect to taxes - other than income, the difference between the witnesses relates to gross receipts tax

applicable to the revenue adjustments proposed by the Public Staff.

The Commission, having previously found the Public Staff's revenue adjustments to be proper, concludes that other operating taxes should be increased by the gross receipts tax related thereto ($393,000). The Commission therefore concludes that the proper level of other operating taxes for use herein is $76,999,000.

The differences shown hereinabove between the Company and the Public Staff with respect to the provision for income taxes result from differences in revenues and costs which have been previously discussed, with two exceptions.

The first exception in tax expense arises from Staff witness Winters' position that $450,000 of the Company's deferred tax provision should be disallowed. This arises out of a correction by Mr. Stimart of the inadvertent recording of a flowback of deferred taxes related to construction overheads prior to placing the plant in service. Mr. Winters does not disagree with the Company's position that the flowback should not have been recorded prior to the plant's coming into service. His concern is that "unless the books are adjusted to restore the credits which have been eliminated by Mr. Stimart the ratepayers will never get the benefit of these taxes which they have paid in through the rate structure." On rebuttal Mr. Stimart made it clear that he does intend to restore the credits by returning them to the deferred tax reserve. Therefore, the Commission concludes that the Company's treatment is proper and that Mr. Winters' adjustment is not required.

The second and final difference in the income tax provision between the Company and the Public Staff is $695,000. Such difference relates to deferred income taxes associated with that portion of Duke's Catawba station which has been sold. This adjustment represents the annual amortization of 1/3 of the total amount of deferred income taxes related thereto. The remaining 2/3 of such deferred tax was discussed previously under Evidence and Conclusions for Finding of Fact No. 3. Consistent with the Commission's previous finding, for reasons which need not be repeated here, the Commission concludes that the Public Staff's adjustment is improper and therefore should not be made.

Finally, the Commission concludes that the proper level of income tax expense for use herein under present rates is $92,259,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Income tax expense proposed by Duke	$88,512
Income tax effect of Public Staff revenue and expense adjustments adopted by the Commission and the Commission's adjustment to research and development costs	3,382
Adjustment for income tax effect of interest allocation adjustment	365
Total	$92,259

There is no disagreement between the witnesses with respect to the amortization of investment tax credit ($1,619,000) and interest on customer deposits that are properly includable in the test year level of operations.

Based upon the entire record in this proceeding, the Commission concludes that the proper level of operating revenue deductions for use herein under present rates is $735,926,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Operation and maintenance expense	$489,179
Depreciation	78,907
Other operating taxes	76,999
Federal and State income taxes	92,259
Amortization of investment tax credit	(1,619)
Interest on customer deposits	201
Total operating revenue deductions	$735,926

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

At the public hearings held across the State, considerable concern was expressed over the cost of building new power generation facilities. Many witnesses indicated a desire to see more activity by Duke in development and promotion of alternative energy sources which could lower the demands for the construction of new centralized generating plants and improve the utilization of the present electric systems. Possible alternative sources suggested included solar, biomass, wood, wind, low-head hydro, and geothermal. The Commission is also concerned about the future cost and efficiency of our electric power supply systems. The Commission further believes that utilization of alternative energy sources, on either a centralized or dispersed basis, could enhance the overall efficiency of our electric supply systems.

During the hearing, the Commission requested from Duke a breakdown of the Company's expenditures on research and development. The Commission has examined that work and concludes that it is necessary and acceptable. The total

research and development funds expended internally by Duke during the test year were $1,343,594. $507,296 was for internal research associated with large centralized power plants primarily to improve plant productivity and $91,917 was for internal research on transmission and distribution systems. $610,208 was for research and development of the use of time-of-day rates and load management equipment. $134,173 was for conservation-related research. The Commission's review also included an analysis of the contribution of $4,730,549 that Duke made to the Electric Power Research Institute (EPRI) during the test year for external research and of the EPRI's proposed research expenditures on a national basis.

Having reviewed Duke's test year expenditures for research and development regarding the use of alternative energy sources and on promoting the conservation of electric power, the Commission finds that Duke has made some initial efforts in studying the utilization of alternate energy sources, substantial efforts in promoting conservation, and has made contributions to national research efforts such as the EPRI. However, the Commission is of the opinion that more should be done by Duke to increase energy supply options. Limited additional funds expended for alternate energy supplies would eventually inure to the benefit of its electric utility ratepayers. Consequently, the Commission is adjusting test year expenses from $734,926,000 to $735,926,000 to cover additional research, development, and commercialization of alternative energy sources.*

*Conservation and load management activities are defined broadly herein to be an alternate energy source in that they can be considered substitutes or replacements for additional energy sources.

Developing economical alternative energy sources, which would substitute in part for the expansion of large coal and nuclear plants, makes sense for electric utility customers and for North Carolina as a whole. Based on evidence received in the Commission's hearings in Docket No. E-100, Sub 35, on long-term electric power forecasts and capacity expansion plans, the growth in North Carolina's economy and the resulting demand for electrical power will significantly outpace the national average. Without a doubt, it behooves electric utility customers to seek all reasonable means to dampen this growth in electric power demand while still ensuring that adequate power will be available in the future to serve themselves, their children, and an expanded economy.

Since each new coal or nuclear generating plant built in recent years to meet power demands have been added at much higher costs than those built in preceding years, higher and higher rates for electric power have resulted. Costs of construction for Duke generating units 10 years ago averaged around $150/Kw, while plants now being designed for the

1990's are estimated to exceed $1,500/Kw. Thus, to the extent that growth in electric power demand can be reduced through the development and reliance on economically competitive, reliable, and environmentally acceptable alternative energy sources, electric utility ratepayers can directly benefit through reduced rates. The State should also benefit in that, if electric rates can continue to be held below the national average, it will help the State to maintain its present advantages in attracting high wage-paying industries.

The Commission recognizes that North Carolina must continue to greatly rely on existing methods of generation for the present time, but it certainly will be in our best interests to widen our energy supply choices in order to limit construction of new centralized plants to the greatest extent practical.

One principal need in the further development and commercialization of alternative energy sources is additional coordination between the electric utilities who produce and distribute electricity from centralized sources and their customers who may desire to add supplemental energy sources at their decentralized locations. Undoubtedly, large amounts of money will be expended by the Federal government over the next several years on research into alternative energy sources. For example, President Carter has initiated proposals which are designed to result in 20% of our energy supply being provided by alternative energy sources by the year 2000. The Carter Administration proposes to spend over $500,000,000 this fiscal year on solar research and development. Additional emphasis on interaction at the local level between the utilities and their customers should increase the utilization of the results of this focus of large concentrations of resources on a national basis. Localized testing by competent and well recognized technical entities in North Carolina may be necessary before most North Carolinians would accept results of the research efforts of the Federal government. For example, objective analyses and person-to-person technical assistance from utilities on local demonstration projects involving direct solar, wood, wind, and/or biomass energy forms could greatly accelerate their commercialization in North Carolina.

Some examples of alternative energy technology which need further research, development, and possible commercialization are as follows:

1. Investigate the increased utilization of wood heaters and furnaces to determine the impact on the overall electric systems and develop means by which increased utilization of these alternate energy sources can serve to enhance the overall efficiency and utilization of the electric supply systems.

2. Development and demonstration of small wood boiler systems, including controls, which can be used by residential and commercial customers for heating and by larger customers for cogeneration purposes to lower overall plant capacity requirements and improve load factor.

3. Development and demonstration of economic methods of using garbage and other biomass as fuel sources in both large and small boiler generating systems.

4. Development and demonstration of heat and cooling storage systems, including controls, which can lower peak demand and improve load factor.

5. Development and demonstration of combined solar (active and/or passive) heat storage systems.

6. Integration of low head hydroelectric generation systems into the electric systems.

7. Research into potential stability, reliability, and safety problems associated with widespread commercialization of cogeneration systems.

8. Design of control systems to protect workers on the electric supply systems from backflow from cogeneration systems when distribution lines are out for maintenance.

9. Development and demonstration of commercial uses for waste products from the combustion cycle.

10. Investigation into any potentially adverse environmental effects of various alternative energy sources.

11. Development and demonstration of photovoltaic systems and other programs which may be or become appropriate.

The Commission being of the opinion that Duke should undertake a more active role in the research and development of alternative energy technologies including those set forth hereinabove concludes that the test year levels of expense should be increased approximately $1,000,000 to fund such research and developmental activities. Further, the Commission concludes that such funds should be accounted for by Duke by establishing a subaccount on its books of account entitled, "Reserve for Research and Development - Alternative Energy Technologies," wherein monthly accruals of such funding may be reflected. The monthly accrual to such subaccount shall be in an amount equal to $1,000,000 divided by the test year level of Kwh sales multiplied by monthly total North Carolina retail Kwh sales. The reserve account shall, of course, be relieved when expenditures are made in the area of alternative energy technologies and when such expenditures are consistent with the outcome of a further decision of the Commission on the procedure for expending these funds.

As stated earlier, the Commission is aware of national research efforts funded by the Federal Government and by organizations such as the Electric Power Research Institute, but believes that these research efforts are generally so generic in nature as to prevent rapid commercialization and development in North Carolina. We are also aware of the significant efforts in this State by the North Carolina Energy Institute; however, we do not believe the level of funding of this organization in the alternative energy research, development, and commercialization areas is sufficient for immediate, widespread application in North Carolina. The Commission feels that additional funding for specific activities in North Carolina could result in substantial early benefits for this State.

The Commission is cognizant also of the level of individual work taking place in the area of alternate energy technology by Carolina Power & Light Company, Virginia Electric and Power Company, and Nantahala Power and Light Company. We are generally aware of the research and development being undertaken by the electric cooperatives and the "electric" municipalities in the State. As a whole, we find these efforts commendable but less than should be done if North Carolina is to make substantial progress towards the development of alternative energy sources. However, we do foresee some danger that duplicative programs in the alternate energy area may be undertaken by each of these entities. For example, we would probably not need a residential solar heating and cooling research and demonstration program financed by two utilities operating side by side in North Carolina; whereas, we might have to have our own North Carolina demonstration program even if another one were being conducted in Arizona.

In order to eliminate possible duplication and maximize the use of our resources in this effort in North Carolina, we are suggesting that all the electric suppliers including the electric cooperatives and municipalities distributing electric power consider joining together to form a nonprofit North Carolina Alternative Energy Corporation to conduct appropriate research, development, and commercialization of alternative energy supply sources.

By a copy of this Order we are notifying all regulated and nonregulated electric suppliers of this proposal and requesting comments from all parties, electric suppliers, and the public by December 15, 1979. Comments should include proposals for the procedure for establishment and operations of the corporation and the initially established level of funding.

The Commission would also welcome ideas on the establishment of advisory committees to the board of directors of the proposed corporation. Possibly, leading alternative energy proponents and experts should serve on such advisory committees.

The Commission concludes that Duke Power Company should refrain from expending funds in the subaccount entitled, "Reserve for Research and Development - Alternative Energy Technologies," until the Commission reaches a final decision on the possible establishment of the Alternate Energy Corporation and the final level of annual funding or until the Commission reaches a decision that any amount of funding including the $1,000,000 should be spent internally on alternative energy research. The Commission further concludes that Duke should maintain its books and records in such a manner that all or a part of the funds recorded in the aforementioned subaccount could be refunded pending the Commission's final decision in this matter.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10, 11, AND 12

The evidence relating to these Findings of Fact is found in the testimony and exhibits of Company witnesses Grigg, Sherwin, and Stimart and Public Staff witnesses Stevie and Winters.

In its filing the Company presented a pro forma capital structure consisting of 48% long-term debt, 14% preferred stock and 38% common equity. The Public Staff took the position that the capital structure should be the actual one that existed at the end of the test year, December 31, 1978.

During the hearings the Company contended that the pro forma capital structure was more representative of the Company's actual capital structure as of the time of the hearings and that such capital structure was more representative of the capital structure that the Company could be expected to experience on an ongoing basis. Mr. Stimart presented evidence showing that the average common equity component of the capital structure over the first six months of 1979 was 38.45%. In addition, Mr. Stimart presented evidence which showed that when the Company's June 1979 earnings and its June 1979 first mortgage bond and preferred stock sales were added to the May 31, 1979, book balances that the Company's common equity capitalization ratio was approximately 38%.

Company witness Sherwin testified that the pro forma common equity ratio of 38% differs only slightly from that at the end of the test year, December 31, 1978. He also testified that it is not always possible to quantify differences in risk associated with small variations in capital structure. He concluded that Duke's equity ratio is reasonable, since it represents the Company's objective capital structure and since capital structure is the "prerogative of management, subject to regulatory review." On cross-examination, witness Sherwin further testified that, in his judgment, the capital structure in existence should be employed since it has been tested in the marketplace.

Public Staff witness Stevie testified that Duke did not present evidence to justify the use of an increased equity ratio over that employed in the Company's previous rate case. In addition, he testified that the small increase in the equity ratio adds $.423 million to the Company's revenue requirements over that which is necessary if the end of test year (December 31, 1978) capital structure is employed and does not measurably reduce the financial risk of the firm.

The Commission after having reviewed Duke's past and present capitalization and all of the other evidence of record with respect thereto concludes that the pro forma capital structure proposed by the Company is reasonable and is representative of the capital structure that Duke can be expected to maintain during the period the rates approved herein are in effect. Therefore, the Commission concludes that the proper original cost capital structure for use in this proceeding is the following:

Item	Percent
Long-term debt	48.00
Preferred stock	14.00
Common equity	38.00
Total	100.00

When the excess of the fair value of Duke's property, or rate base, over the original cost net investment in the amount of $177,571,000 is added to the equity component of the original cost capital structure, the resulting fair value capital structure is as follows:

Item	Percent
Long-term debt	43.28
Preferred stock	12.62
Common equity	44.10
Total	100.00

The Company presented evidence tending to demonstrate that the embedded cost rates for long-term debt and preferred stock were 8.05% and 7.98%, respectively, based on circumstances occurring after the end of the test period, i.e., the issuance of additional amounts of long-term debt and preferred stock. G.S. 62-133(c) permits the updating of historical test-period data to show actual changes occurring up to the time the hearing is closed. The Public Staff also recognized the appropriateness of increasing these embedded costs to reflect known changes.

Therefore, the Commission concludes that the proper embedded cost rates for use herein are 8.05% for long-term debt and 7.98% for preferred stock.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

In its application, the Company did not seek to change the 13.59% rate of return on book common equity granted in the Company's last general rate proceeding (Docket No. E-7, Sub 237).

Company witness Sherwin presented testimony on the rate of return on book common equity which he felt appropriate for the Company. He utilized three methods to derive a range of equity costs. The first method was a comparable earnings analysis of three groups of industrial firms with risk characteristics which Dr. Sherwin believed were similar to those of Duke. Witness Sherwin concluded from this analysis that Duke's cost of equity capital was in the range of from 14.5% to 15.0%.

His second approach was to utilize what he referred to as a financial integrity test. This analysis consisted of an examination of market-to-book ratios and earnings of firms with bond ratings similar to Duke's from which he derived a cost of equity capital in the 14.7% to 15.0% range.

Witness Sherwin's third method applied the capital attraction standard to the estimation of a rate return. This method principally relies upon a discounted cash flow analysis, using selected groups of electric utilities and industrial firms. Witness Sherwin derived a cost of equity (excluding market pressure and financing costs) of 13.5% by utilizing an estimated dividend yield of 8.5% and a growth rate of 5%. His growth rate was estimated by examining the growth in earnings, dividend, and book value, over four different time periods, for the groups of firms he selected for this analysis. After including estimated costs for market pressure and financing, witness Sherwin calculated a cost range of from 14.1% to 14.5%, using this method, with 13.75% as a minimum value.

Witness Sherwin's testimony has been carefully considered even though the Company only sought a 13.59% rate of return on book equity as evidenced by its application and the testimony of Company witnesses Lee and Grigg. Witness Lee, the Company's President, testified that the philosophy behind the application was to adjust Duke's rates to cover increased costs which prevented the Company from earning the 13.59% rate of return on equity which Duke was allowed in its last general rate case. On cross-examination, Mr. Lee further testified that the Company was not addressing the adequacy of the rate of return previously granted. Witness Grigg, the Company's financial Vice President, also testified that the Company was merely seeking a 13.59% return. He contended that Duke was seeking only to recover the shortfall between the allowed return and the return actually achieved since the last rate case, stressing that the Company must be given a reasonable opportunity to earn the allowed rate of return.

The determination of the appropriate fair rate of return for the Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. The Commission has the statutory responsibility to ensure that all these interested parties are fairly and equitably treated. In the final analysis, the determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. The Commission has considered carefully all of the relevant evidence presented in this case. The Commission takes note of the uncontroverted fact that, despite a reasonable record of managerial efficiency, Duke has been unable to actually achieve a rate of return on equity as high as that which the Commission allowed in its last rate Order for Duke in 1978. The Commission also is cognizant of the substantial construction budget and resulting financial requirements which the Company will face in the immediate future.

The Commission takes notice of the opinion of the Supreme Court of the State of North Carolina in Utilities Commission, et al. v. Duke Power Company, 285 N.C. 377(1974), wherein the following statements concerning the level of the fair rate of return appear on page 396:

> "The capital structure of the Company is a major factor in the determination of what is a fair rate of return for the Company upon its properties. There are at least two reasons why the addition of the fair value increment to the actual capital structure of the Company tends to reduce the fair rate of return as computed on the actual capital structure. First, treating this increment as if it were an actual addition to the equity capital of the Company, as we have held G.S. 62-133(b) requires, enlarges the equity component in relation to the debt component so that the risk of the investor in common stock is reduced. Second, the assurance that, year by year, in times of inflation, the fair value of the existing properties will rise, and the resulting increment will be added to the rate base so as to increase earnings allowable in the future, gives to the investor in the Company's common stock an assurance of growth of dollar earnings per share, over and above the growth incident to the reinvestment in the business of the Company's actual retained earnings. As indicated by the testimony of all of the expert witnesses, who testified in this case on the question of fair rate of return, this expectation of growth in earnings is an important part of their computations of the present cost of capital to the Company. When these matters are properly taken into account, the Commission may, in its own expert judgment, find that a fair rate of return on equity capital in a fair value state, such as North Carolina, is presently less than the amount which the Commission would find to be a fair return on the same equity capital without considering the fair value equity increment."

The Commission therefore concludes that it is fair and reasonable to consider in its findings on rate of return the reduction in risk to Duke's equity holders and the protection against inflation which is afforded by the addition of the fair value increment to the equity component of the Company's capital structure.

As set forth above, the fair value capital structure of Duke is as follows:

Item	Percent
Long-term debt	43.28
Preferred stock	12.62
Common equity	44.10
Total	100.00

The Commission finds and concludes that the fair rate of return that Duke should have the opportunity to earn on the fair value of its North Carolina rate base for retail operations is 9.15%, which requires an increase in annual revenues from Duke's North Carolina retail customers of $27,314,000 based upon the adjusted historical test year. This rate of return on the fair value of Duke's rate base will allow the Company to meet its fixed obligations and will yield a fair return on Duke's fair value common equity of approximately 10.56%, or approximately 13.60% on book common equity. The Commission concludes that this is a fair and reasonable rate of return. In order to provide sufficient funds for additional research, development, and commercialization of alternative energy sources, the Commission concludes that the total annual increase in North Carolina retail revenues should be $28,314,000. However, this additional amount will not affect the rate of return figures.

The Commission has not made a specific addition to the fair rate of return to offset attrition since it believes other factors are present which tend to offset the effect of attrition, if, in fact, attrition might otherwise occur. For example, the Legislature has provided for an updated test year which helps to insulate the Company from increases in expenses occurring after the test year. Likewise, Duke enjoys the benefit of a fuel adjustment procedure which enables it to recover increases in its operating costs resulting from increases in the cost of fuel. Additionally, recent experience indicates that Duke's electric revenues have continued to grow, thereby helping to offset the effect of inflation. In short, the Commission concludes that Duke will have every reasonable opportunity to earn the rate of return approved herein.

In setting the approved rates of return at the foregoing levels, the Commission has considered all of the relevant testimony and the tests of a fair return set forth in G.S. 62-133(b)(4). The Commission concludes that the rates herein allowed should enable the Company, given efficient

management, to attract sufficient debt and equity capital from the market to discharge its obligations, including its dividend obligation, and to achieve and maintain a high level of service to the public.

Further, the Commission concludes that the increase in rates, as approved herein, is consistent with the voluntary wage and price guidelines as promulgated by the President's Council on Wage and Price Stability.

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve, based on the rates approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings, adjustments, and conclusions approved by the Commission in this Order.

DUKE POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RETURN
TWELVE MONTHS ENDED DECEMBER 31, 1978
(000's Omitted)

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Gross operating revenues	$ 887,453	$28,314	$ 915,767
Operating Revenue Deductions			
Operating and maintenance expenses	489,179	-	489,179
Depreciation	78,907	-	78,907
Taxes - other than income	76,999	1,699	78,698
Interest on customer deposits	201	-	201
Income taxes	92,259	13,105	105,364
Amortization of investment tax credit	(1,619)	-	(1,619)
Total operating revenue deductions	735,926	14,804	750,730
Net Operating Income for Return	$ 151,527	$13,510	$ 165,037

Investment in Electric Plant			
Electric plant in service	$2,439,808	-	$2,439,808
Less: Accumulated depreciation	764,217	-	764,217
Cost-free funds	214,890	-	214,890
Net investment in plant	1,460,701	-	1,460,701
Allowance for working capital	165,408	-	165,408
Net investment in electric plant in service plus allowance for working capital	$1,626,109	-	$1,626,109
Fair value rate base	$1,803,680	-	$1,803,680
Rate of return on fair value rate base	8.40%	-	9.15%

DUKE POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RETURN ON FAIR VALUE EQUITY
TWELVE MONTHS ENDED DECEMBER 31, 1978
(000's Omitted)

Capitalization	Fair Value Rate Base	Ratio %	Embedded Cost or Return on Fair Value Equity %	Net Operating Income for Return
	Present Rates - Fair Value Rate Base			
Long-term debt	$ 780,532	43.28	8.05	$ 62,833
Preferred stock	227,655	12.62	7.98	18,167
Fair value equity	795,493[1]	44.10	8.87	70,527
Total	$1,803,680	100.00	-	$151,527
	Approved Rates - Fair Value Rate Base			
Long-term debt	$ 780,532	43.28	8.05	$ 62,833
Preferred stock	227,655	12.62	7.98	18,167
Fair value equity	795,493[1]	44.10	10.56	84,037
Total	$1,803,680	100.00	-	$165,037

[1] Book common equity $617,922
Fair value increment 177,571
Fair value equity $795,493

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this Finding of Fact is contained in the Company's prefiled data and minimum filing requirements exhibits, which accompanied the original application for general rate relief, and the testimony of Public Staff witness Williams. The Public Staff's evidence consisted of a summary of its investigation of Duke's fuel procurement activities since Duke's last general rate case, including its review of the Company's long-term coal contracts and "spot" coal procurement activities.

Public Staff witness Williams testified that the Company's fuel procurement activities appeared reasonable and within the informal guidelines adopted by the Commission.

From the evidence presented, the Commission concludes that Duke's fuel procurement activities and purchase policies are reasonable and are in accordance with practices heretofore reviewed and approved by this Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15, 16, 17, AND 18

The evidence for these findings is contained in the testimony and exhibits of Company witness Hatley, Public Staff witness Bumgarner, Carolina Action witness Jackson, and the testimony of various public witnesses, including the following: Barbara Harris (Durham); Charles Hutchinson (Hendersonville); Dan Jackson, Ed Gower, and Gerry Chapman (Greensboro); Ella Kelly (Charlotte); and Arthur Eckles (Raleigh).

The individual public witnesses, including Mr. Jackson, who testified as a member of the general public in Greensboro and on behalf of Carolina Action in Raleigh, while opposed to any amount of rate increase, generally supported two rate design concepts - Lifeline Rates and Fair Share Rates. With regard to Lifeline Rates, the witnesses recommended an expansion of the class of customers eligible for the SSI Rate approved by the Commission in Docket No. E-7, Sub 237. The witnesses also recommended that no part of any increase approved herein be added to the existing SSI Rate. With regard to Fair Share Rates, the witnesses recommended that the rates be designed so as to produce the same rate in cents per Kwh, without any consideration of the quantity consumed, demands imposed, load factor, allocable customer costs, or other factors.

The Company, through witness Hatley, proposed no significant changes in the basic rate design approved in Duke's last rate case, Docket No. E-7, Sub 237, and proposed to increase test period revenues in each of the present rate schedules by approximately 4% and thus preserve the existing relationships between rate schedules. Mr. Hatley indicated, however, that in Duke's next general rate case they would study rate designs which would tend to close any

differentials between classes which varied from system average return by more than 10%.

On cross-examination as to his reasons for not designing rates which give more weight to the effect of winter coincident peak cost allocations, Mr. Hatley stated the winter peak studies filed in this docket were not statistically valid. He stated that Duke does not have a statistically valid sample of customer usage and demand for the winter peak because its winter peak cost-of-service study was performed using a customer sample originally selected for use in conjunction with a summer study only. He stated that while Duke has recorders now in place, the data for a statistically significant sample of Duke's winter peak will not be available until some time after the winter of 1979-80, but prior to Duke's next rate case. Mr. Hatley also noted that while Duke has had an actual winter peak for approximately three years, these peaks would have occurred in the summer under normal weather conditions and Duke's Planning and Forecast Department was continuing to use summer peak for system development.

Testifying for the Public Staff, Mr. Bumgarner stated that he had reviewed Duke's cost-of-service and jurisdictional allocation studies and rate design. He stated that, given Duke's limitations on acquiring coincident peak demand data by jurisdiction, he agreed with the result of Duke's jurisdictional allocation studies. He stated that the Public Staff did not redesign the rates in this docket to produce more equalized rates of return, but they did plan an extensive review of Duke's rate design during the Company's next rate case.

On cross-examination, Mr. Bumgarner generally agreed with Mr. Hatley concerning the lack of availability of a statistically significant sampling of Duke's winter peak demands and indicated that if appropriate data were made available in Duke's next rate case, he would probably recommend allocating costs on some type of multiple peak basis.

The Commission concludes that it is reasonable, proper, and appropriate to use the summer coincident peak cost allocation study in this docket, but that Duke should continue to file annual cost-of-service studies based on the annual winter coincident peak, the average of winter and summer coincident peaks, and on summer peak only. The Commission further concludes that, upon Duke's completion in 1980 of a statistically significant sample of system operations and customer usage at winter peak, copies of the cost allocation studies based on winter peak should be filed with the Commission and served upon all parties of record in this proceeding.

The Commission concludes that, given the facts that Duke's rate design was substantially altered in Docket No. E-7, Sub 237, such rates were based upon valid, fully distributed

cost studies; that such rates have only been in effect for one year; and that, in Duke's next general rate case, substantial rate design changes will be considered; and that Duke's rate design proposal, in this case, to increase all rate schedules uniformly, across-the-board (except the SSI Rate), is just and reasonable. The rate increase should be essentially an across-the-board increase above the level of test year revenues, including fuel cost revenues, as adjusted. Changes in the basic rates which are based solely upon the increase in cost of fuel occurring after the close of the test year and which were approved in Docket Nos. E-7, Sub 257, and E-7, Sub 271, should be incorporated in the final rate design to be filed herein.

The Commission concludes that the SSI Rate class should be exempted from any increase on the first 350 Kwh's in order to increase the effectiveness of the ongoing SSI Rate experiment.

There are approximately 9,000 customers, at present, being served under Duke's experimental SSI Rate schedule. In the establishment of the SSI classification in Docket No. E-7, Sub 237, it was estimated that at least 20,000 customers would be eligible and apply for the experimental rate. No doubt, the relatively low discount being offered has caused a poor response to the rate. Exempting the SSI Rate classification from the increase approved herein for their first 350 Kwh's of usage each month will increase the maximum monthly savings to the SSI customer class, depending on this subclass, approximately as follows:

	Discount At Present	Discount Under New Rate
SSI - R	$0.63	$0.88
SSI - RW	$0.91	$1.16
SSI - RC or RA	$0.53	$0.78

It should be noted that an SSI customer would not receive a per Kwh discount above any usage in excess of 350 Kwh's per month. The Commission estimates that the increased discount, though minor, may result in additional customers opting for the SSI Rate classification. The total revenue impact of exempting the existing and projected SSI customers from this increase is considered by the Commission to be *de minimis* in that the total additional discount will approximate $50,000 out of total annual North Carolina retail revenues of $915,767,000. It is also insignificant in terms of the North Carolina residential customer class's annual revenue payments of over $370,000,000.

This experiment will continue to be closely monitored by the Commission. Also, under the national innovative rate program, the U.S. Department of Energy has indicated that funding will be made available to use for the employment of independent consultants to help ensure the scientific validity of the SSI experiment and to help analyze the results once data has been obtained.

With regard to Fair Share Rates, the Commission concludes that the General Statutes do not permit the Commission to design rates without regard to costs that individual customers and classes of customers place on the system. It has been demonstrated in case after case before the Commission that dividing total revenue requirements by total Kwh's sold and charging on that basis for each Kwh consumed would result in extreme discrimination between customers and classes of customers. This is not to say that the customer class rate schedules may not need to be flattened further. The Commission made substantial changes toward flattening the rate schedules in Duke's last rate case by raising the rates more on high-end usage blocks. Such changes were supported by the increased marginal costs of generation. The Commission will give consideration in subsequent general rate cases of Duke to a further flattening of the schedules.

For the foregoing reasons, the Commission concludes that within five days of the date of this Order, Duke should file rate schedules designed to produce the revenue requirement approved herein in accordance with the guidelines set forth in Appendix A attached hereto.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Witness Hatley summarized where Duke stands in relation to the PURPA standards set forth in 16 U.S.C. 2621 as follows:

"In regard to the cost of service section, Duke has filed cost of service studies in this docket, that is, E-7, Sub 262, based on the summer peak, the winter peak and the average of the summer and winter peak for both present and proposed rates. The rates proposed in this case are cost base and conform to the rate design approved by the Commission in the Company's last general rate case; that is, in Docket E-7, Sub 237.

"Concerning the declining block rates, the residential rates proposed in this case are not declining block rates. Generally such rates have a uniform front-end basic facility charge applicable to all customers and the first block, that is, the rates which we have filed in this case have a basic facility charge applicable to all customers and the first block is the lowest block, the second is higher than the first and the third is lower than the second but higher than the first.

"In regard to the time of day section, the "Commission has approved time-of-day rates applicable to randomly sampled customers on a voluntary basis. The Company has extended the applicability of such rates for an additional year following the initial one-year period.

"Seasonal Rates. The Commission approved a summer-winter differential for residential rates in Docket E-7, Sub 237.

"Interruptible Rates. The Commission has interruptible load provisions applicable to retail rate schedules providing for interruptible service to water heaters, air conditioning equipment and large general service and industrial customer loads.

"Lifeline Rates. In the Company's last general rate case this Commission had made an attempt to deal with electric rates applicable to low income residential ratepayers by adopting a special discount rate for North Carolinians who received SSI payments."

Based on the evidence of record in this and related proceedings, the Commission now reaches the following conclusions regarding the rate design standards contained in the Public Utility Regulatory Policies Act (PURPA) of 1978, as they apply to Duke:

1. Cost base rates - Duke has filed cost-of-service studies based on summer peak, winter peak, and the average of summer and winter peak for present and proposed rates. The rate designs and allocation methods approved herein are, to the extent practicable, based on cost of service. The Commission concludes that this use of cost-of-service studies in the design of rates is appropriate and consistent with State law.

2. Declining block rates - The energy component of the rate schedules, particularly with regard to residential rates, are uniform. There are no declining block rates as defined by PURPA. Some of the rate schedules appear to decline, but this merely reflects that customer and/or demand costs are being recovered fully prior to the tail block. The Commission concludes that this is appropriate and consistent with State law.

3. Time-of-day rates - The Commission has approved time-of-day rates for Duke applicable to randomly sampled customers on a voluntary basis. The Commission is monitoring experimental time-of-day rate designs which are being carried out, in other dockets, on both a voluntary and involuntary basis. It would be premature for the Commission, in this docket, to reach any ultimate conclusions regarding voluntary or involuntary time-of-day rates.

4. Seasonal rates - The Commission approved a summer-winter differential for Duke in the last general rate case. Such differential will be carried forward by the rate design approved herein. The Commission concludes that this is appropriate and consistent with State law at this time.

5. Interruptible rates - The Commission has approved voluntary interruptible load provisions applicable to retail rate schedules, providing for interruptible service to water heaters, air conditioning equipment, and large general service and industrial customer loads. The Commission

concludes that this is appropriate and consistent with State law.

6. Load management techniques - The Commission has recently considered the probable impact on Duke and the other North Carolina electric utilities of load management techniques and devices in Docket Nos. M-100, Sub 78, and E-100, Sub 35.

The Commission has ordered each electric utility to file interruptible industrial rates and residential appliance control rates, which were to be administered on a voluntary basis through rate incentives. Duke has made a preliminary filing in this regard and is now authorized to offer these rates on an interim basis.

In view of the previous conclusions regarding the design of rates approved herein, the Commission concludes that such rates are not only consistent with the PURPA standards just noted, but represent substantial implementation of such standards. In any event, the Commission will consider the full implementation of these standards again in generic hearings now scheduled to commence on May 6, 1980, in Docket No. E-100, Sub 36, for all North Carolina electric utilities and in Duke's next general rate case.

NUCLEAR SAFETY

During the course of the public hearings in this docket, 45 public witnesses expressed concern for the safety of the nuclear generating plant operated by Duke at Oconee, South Carolina, and the nuclear plants under construction by Duke on Lake Norman in Mecklenburg County, North Carolina, and Lake Wylie in South Carolina. The concern for nuclear safety has become particularly acute since the incident on March 28, 1979, at the Three Mile Island Nuclear Plant in Pennsylvania.

The Commission shares the concern of all citizens of North Carolina for the safety of operation of all utility plants, and particularly the safety of nuclear generating plants. The concern for public health, safety, and welfare requires that the first priority in regulation of electric companies is to investigate all aspects of public and employee safety and to insist at all times that such plants be operated with the maximum degree of safety. The Commission maintains a constant and continuing interest and concern for such operation. The issue of Nuclear Safety is before the Commission in Docket No. E-100, Sub 35, Electric Load Forecast, involving all utilities operating nuclear plants in North Carolina, and the Commission concludes that the issue of nuclear safety as presented in this docket should be transferred to Docket No. E-100, Sub 35.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission hereby approves a partial increase in rates for Duke Power Company as described in Ordering Paragraph No. 4 below, to be effective on service rendered on and after the date of this Order, and Duke Power Company is hereby authorized to file new tariffs which shall be designed to produce an annual level of North Carolina retail revenues no greater than $915,767,000, based on the test year level of operations (12 months ended December 31, 1978, adjusted for known changes subsequent thereto).

2. That the proposed rates originally filed by Duke, which were designed to produce additional revenues of $35,511,000, are in excess of those which are just and reasonable and the same are hereby disapproved and denied.

3. That Duke Power Company shall intensify its role in the research and development of alternative energy technologies and shall comply with the funding and the accounting requirements set forth in this Order. That Duke and other parties having an interest shall respond by December 15, 1979, on the proper entity or means and operating requirements recommended for carrying out the research, development, and commercialization of alternative energy sources in North Carolina utilizing the funds allowed in this docket for that purpose. That all monies collected for these purposes under the special authorization shall be accounted for as previously set forth in this Order.

4. That on or before five days from and after the date of this Order, Duke shall file with the Commission revised rate schedules designed to produce the revenue requirement as approved in Ordering Paragraph No. 1 above in accordance with the guidelines set forth in Appendix A attached hereto. The increase in rates, as approved herein, results in an overall increase in present rates of approximately 3.19%. Such increase shall become effective on all service rendered on and after the issuance date of this Order.

5. That Duke shall file with the Commission an annual cost-of-service study based on the annual winter coincident peak and shall continue to collect data which will enable it to produce cost-of-service studies based on a single peak and/or on the averages of multiple coincident peaks in conjunction with future rate cases.

6. That Duke shall give public notice of the partial rate increase approved herein by mailing a copy of the notice attached hereto as Appendix B by first-class mail to each of its North Carolina retail customers during the next normal billing cycle following the filing and acceptance of the rate schedules described in Ordering Paragraph No. 4 above.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of October, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: Commissioners Fischbach and Campbell did not participate in this decision.

APPENDIX A

METHOD OF ADDING ALLOWED INCREASE TO PRESENT RATE SCHEDULES

1. Apply the overall Allowed Increase Factor to the test year revenues from present rates to obtain Allowed Revenue Targets for each rate schedule.

2. Make proper adjustments to reflect growth to year-end and weather normalization. Subtract the revenue received from the fuel cost adjustments from the present rate revenues and the Allowed Revenue Targets. Divide the resultants to calculate the Basic Rate Increase Factor.

3. Apply the Basic Rate Increase Factor to the base rate revenues from present rates to determine the Allowed Basic Rate Revenue Targets. Apply the Basic Rate Increase Factor as equally as possible to basic facilities charges, demand charges, and Kwh charges to adjust the rate schedules to meet the Allowed Basic Rate Revenue Targets. Apply no increase on the first 350 Kwh's of usage of the experimental SSI Rate schedule.

4. Ensure that the total revenues produced by the revised rates do not exceed that allowed in this Order.

5. Incorporate the changes in basic rates due to increases in the cost of fuel which were approved in Docket No. E-7, Sub 257 and Sub 271.

APPENDIX B

DOCKET NO. E-7, SUB 262

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Duke Power Company)
for an Adjustment of Its Retail) NOTICE TO CUSTOMERS
Electric Rates and Charges in Its)
Service Area Within North Carolina)

The North Carolina Utilities Commission today, after months of investigation and following hearings held throughout the State into Duke Power Company's request for a

$35,511,000 annual increase in rates, issued an Order cutting Duke's request to 3.2% limiting the annual revenue increase to $28,314,000 per year.

In allowing the 3.2% increase, the Commission ruled that the approved rates would provide Duke, under efficient management, an opportunity to earn a 9.15% rate of return on the fair value of its property. The Commission found that the 3.2% rate increase was the minimum that could be granted and still have Duke to maintain good service, to continue a reasonable construction program in order to meet growth in electric power demands, and to provide the Company's stockholders with a fair return on their investment. The increase granted was due to the impact of general inflation on Duke's costs since its last general rate increase which became effective on August 31, 1978. The Commission noted that the increase was well within and complied with the wage and price guidelines established by the Federal Administration.

The rate changes approved by the Commission will increase the monthly bill of a typical residential customer whose average monthly usage is 550 kilowatt-hours in the R schedule by approximately $.78, or from approximately $25.80 to $26.58. In the RW schedule (electric water heater), with average monthly usage of 895 kilowatt-hours, the monthly bill will increase by approximately $1.12, or from approximately $37.35 to $38.47. The increase for the RA schedule at the average monthly usage of 1,690 kilowatt-hours will increase the summer monthly bill by approximately $1.99, or from approximately $66.65 to $68.64, and the winter monthly bill by approximately $1.95, or from approximately $65.24 to $67.19. The increase for the RC schedule (conservation rate) at the average monthly usage of 1,380 kilowatt-hours will increase the summer monthly bill by approximately $1.68, or from approximately $55.97 to $57.65, and the winter monthly bill by approximately $1.67, or from approximately $55.68 to $57.35. In regard to rate design, the Commission held that the total increase of approximately 3.2% should be spread uniformly across-the-board to all rate classes with the exception of the first 350 Kwh block of the SSI Rate classification. Under the Commission's Order no increase will be applied to this block of the SSI Rate classification. The SSI Rate is a special experimental rate open only to the elderly and/or handicapped who have incomes approximately 25% below the Federal poverty guidelines and whose eligibility is determined by whether they qualify for supplemental security income from the Federal Social Security Administration. This special rate classification was authorized on August 31, 1978, and was based on the estimated lower costs of serving this group of customers resulting from implied differences in their load characteristics and the lower relative burden they place on the utility system. Exempting the first 350 Kwh's from the 3.2% increase results in an additional discount of about 25¢ per month to this class and raises the maximum monthly discount from $0.91 to $1.16. It

is anticipated that the number of customers on this experimental rate will increase slightly from the present 9,000.

The Commission addressed its attention extensively in its Order to the matter of alternative energy sources and appropriate expenditures by Duke on the research, development, and commercialization of such sources. The Commission found that Duke should increase its activities in this area and earmarked $1,000,000 of the approved increase for this purpose. The Commission further directed Duke and other regulated utilities to respond by December 15, 1979, regarding the possible establishment and operation of a nonprofit North Carolina Alternative Energy Corporation in order to maximize efforts and to avoid likely duplication in these areas among themselves. Electric cooperatives and municipalities distributing electric power in the State were invited to comment regarding their possible participation.

The Commission pointed out that it believes that the level of funding presently being made in this area is insufficient to encourage significant commercialization of alternative energy sources in North Carolina and that, with the costs of large centralized plants escalating, it makes sense for the utilities to fund such research and development in order to slow the demand for such construction and as a result to keep electric rates to consumers down. Excerpts from the Order explaining this matter further are available from the Commission.

In reference to nuclear power safety-related questions raised by public witnesses in these hearings, the Commission noted that this issue along with the matter of the long-term electric load forecast for North Carolina and the types and sizes of generating plants to meet these loads were pending in Docket No. E-100, Sub 35, and that a decision would be forthcoming later this year in that docket.

DOCKET NO. E-22, SUB 236 DOCKET NO. E-22, SUB 241
DOCKET NO. E-22, SUB 239 DOCKET NO. E-22, SUB 242
DOCKET NO. E-22, SUB 240 DOCKET NO. E-22, SUB 243
DOCKET NO. E-22, SUB 244

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Virginia Electric and Power Company - Investigation of the Causes of the High Cost of Retail Electric Service in North Carolina and Applications by Virginia Electric and Power Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. 62-134(e)	ORDER REDUCING ALLOWED FUEL COST TO REASONABLE LEVELS AND DIRECTING REFUNDS

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on January 31, February 1, April 23, May 1 - 11, and May 24, 1979

Ahoskie Recreation Center, Ahoskie, North Carolina, on April 24, 1979

The Knobs Creek Recreation Center, Elizabeth City, North Carolina, on April 25, 1979

City Hall, Williamston, North Carolina, on April 26, 1979

Roanoke Rapids Community Center, Roanoke Rapids, North Carolina, on April 27, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Joyner and Howison, Attorneys at Law, 906 Wachovia Bank Building, Raleigh, North Carolina

Guy T. Tripp III and Edward Roach, Hunton and Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia

For the Using and Consuming Public:

Jerry B. Fruitt, Chief Counsel, Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

Dennis P. Meyers, Special Deputy Attorney General, and David Gordon, Associate Attorney General, Attorney General's Office, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 18, 1978, in Docket No. E-22, Sub 236, the Commission issued an Order instituting an investigation into the disparity between Virginia Electric and Power Company's (Vepco, Company) rates and the rates in other parts of North Carolina and into the underlying causes for Vepco's high cost in providing retail electric service in North Carolina. This action was taken as a result of the request by Governor James B. Hunt, Jr., that a thorough examination be made of Vepco's high rates for retail electric service, and due to the concern expressed by the Commission Panel who heard Vepco's

application for a general rate increase during the summer of 1978, that economic development was being stymied by the high cost of electricity in Vepco's North Carolina service area. This action was also prompted due to the large number of complaints from customers and ratepayers in Vepco's North Carolina service area.

The investigation was to include but not be limited to the following factors:

1. The allocation formulae and procedures that have been used in assigning Vepco's generation and transmission plant and system operating costs between its wholesale and retail service, respectively, in West Virginia, Virginia, and North Carolina, the three states which Vepco serves.

2. The high cost of meeting air pollution standards for Vepco's generating plant in the Washington, D.C., air quality areas and its possible effect on North Carolina retail consumers.

3. The reasonableness of Vepco's heavy dependence upon high cost oil-fired generation of electricity as compared to the lower cost generation by Duke Power Company (Duke) and Carolina Power & Light Company (CP&L) from coal-fired and nuclear generators.

4. The reasonableness of the load factor experienced by Vepco in the utilization of its generation plant.

5. The efficiency and line losses incurred in serving North Carolina from generating plants located in Virginia and West Virginia.

6. Vepco's high cost of construction of recent new generating plants.

7. Investigation of all other factors which may cause the disparity between Vepco's retail rates in the 22 counties served by Vepco in North Carolina and the areas of North Carolina served by other electric utilities.

The Public Staff - North Carolina Utilities Commission - was requested to perform such audits, studies, and investigation and to report in writing to the Commission. Vepco was ordered to furnish its statement, studies, and data in response to the investigation. The Commission further requested the Industrial Development Division of the Department of Commerce, the Division of Policy Analysis of the Department of Administration, the Attorney General of North Carolina, and any other State agencies having an interest in the high electric rates of Vepco to furnish to the Commission any data or information having a bearing upon the subject of this investigation.

On September 21, 1978, the Attorney General filed Notice of Intervention on behalf of the using and consuming public.

On October 5, 1978, the Public Staff, by and through its Executive Director Hugh A. Wells, also filed Notice of Intervention on behalf of the using and consuming public. On November 2, 1978, ElectriCities of North Carolina filed a Petition to Intervene. Said Intervention was allowed by Order dated November 29, 1978.

On January 22, 1979, the Public Staff and Vepco filed their Reports.

The Public Staff Report provides comparative data for a 23-company group, as well as specific comparisons with Duke Power Company and Carolina Power & Light Company. In addition, the Report offers data and information on Vepco's power production operation, including internal (Company) task force studies and studies performed by consultants employed by Vepco. The Public Staff alleges in its Report that Vepco's management has pursued a policy of avoiding justified capital expenditures required for proper maintenance of its generating units and that Vepco has failed to convert some of its high-cost oil-fired units to use low-cost coal even though internal studies indicated that this would result in savings to the ratepayers. In addition, the Public Staff alleges that Vepco's large low-cost units have a record of poor availability, further contributing to Vepco's high rates and that Vepco has paid excessive prices for coal for its Mt. Storm units.

On January 22, 1979, the Public Staff filed a Motion in Docket No. E-22, Sub 239, requesting that the Commission reduce Vepco's proposed February fuel charge rider by 0.133 cents per kilowatt-hour. In its Motion, the Public Staff recommended that the Commission make appropriate adjustments in its determination of the reasonable fuel expenses to be passed on to the ratepayers in Vepco's fuel cost adjustment proceedings to: (1) reflect reconversion of certain of Vepco's oil units to coal; (2) reflect improved average system fossil heat rate to at least Vepco's 1970 average level and to reflect at least average utilization of Vepco's large low-cost units; and (3) adjust for excessive prices that Vepco paid for coal under the Island Creek contract and to Laurel Run (a subsidiary of Vepco) for use at its Mt. Storm units.

By reply to said Motion, dated January 25, 1979, Vepco denied the material allegations of said Motion and asserted that the Commission was without statutory authority in a G.S. 62-134(e) proceeding to make a "heat rate" or "conversion from oil- to coal-fired generation" adjustment, as sought by the Public Staff's Motion. Following oral argument on the Public Staff's Motion and Vepco's Reply, on February 1, 1979, the Commission issued its "Notice of Decision" wherein it gave notice (1) that it was approving a fuel credit of 0.240¢/Kwh and (2) that the issues of "heat rate decline," "conversion of plant from oil-fired to coal-fired generation," and "plant availability" would be

considered in this docket and set evidentiary hearing thereon for February 13, 1979.

On February 9, 1979, Vepco filed in Docket No. E-22, Sub 239, a Motion for Cancellation of Hearing and in Docket No. E-22, Sub 236, a Motion for Extension of Time for Filing Rebuttal Testimony. With its Motion for Extension of Time, Vepco filed an Undertaking to Refund to its customers the difference between the fuel factors included in its charges during the months of March, April, and May 1979 and fuel factors for these months calculated on the basis set out by the Public Staff in its January 22, 1979, Motion. These refunds were to be made in the event the Commission found that, based on heat rate decline, conversion of plants from oil-fired to coal-fired generation, and plant availability, adjustments in fuel cost were required for the months of March, April, and May 1979. Vepco stated that, because of the complexity of the issues and the length of anticipated testimony, it would be impossible for it to adequately prepare for an evidentiary hearing on February 13, 1979. The Company moved that the issues for hearing in Docket No. E-22, Sub 239, be deferred until hearings were held in Docket No. E-22, Sub 236.

After considering Vepco's Motions, the form of the Undertaking filed by Vepco, and the other documents filed in these dockets, the Commission concluded in Orders dated February 13 and 14, 1979, that the hearings in Docket No. E-22, Sub 236, should be set for May 1, 1979. The Commission further concluded that the hearing scheduled for February 13, 1979, in Docket No. E-22, Sub 239, should be continued until May 1, 1979, and that Vepco should be allowed until March 15, 1979, to file its testimony.

On February 28, 1979, Vepco filed an Undertaking to Refund in a manner to be prescribed by Order of the Commission the amount, if any, by which the fuel charge factor charged by Vepco to its customers during March, April, and May 1979, exceeded the charges that would have been made those customers if the fuel factor had been calculated, with respect to heat rate decline, availability, and conversion of plants from oil-fired to coal-fired generation by the method set forth in the Public Staff's Motion of January 22, 1979.

On January 31, 1979, Vepco filed its monthly fuel cost report with the Commission in Docket No. E-22, Sub 240, requesting the termination of the fuel adjustment credit for the billing month of March 1979. On February 27, 1979, the Public Staff filed the affidavit testimony of Andrew W. Williams, Director of the Electric Division, and M.D. Coleman, Director of the Accounting Division, detailing the Public Staff's proposed adjustments to Vepco's three-month fuel expense. If approved, the Public Staff's adjustment would have resulted in a fuel adjustment credit of $0.00247/Kwh to Vepco's North Carolina retail customers during the billing month of March 1979. The Commission on

February 28, 1979, authorized Vepco to terminate the fuel adjustment credit for the billing month of March 1979. It was further ordered that the difference between this basic charge and the Public Staff's recommended March fuel adjustment credit of $0.00247/Kwh be collected pursuant to the Undertaking for Refund filed by Vepco on February 28, 1979, pursuant to the Commission's Order of February 14, 1979, pending the final determination of the Commission on the issues raised by the Public Staff in this proceeding. The Commission's Order consolidated the proposed adjustments in Docket No. E-22, Sub 240, for hearing with the investigation in Docket No. E-22, Sub 236.

On February 28, 1979, Vepco filed its monthly fuel cost report with the Commission in Docket No. E-22, Sub 241. Vepco requested that it be allowed to continue to charge its approved basic rates with no fuel cost adjustment for the billing month of April 1979. On March 30, 1979, the Public Staff filed the affidavit testimony of Andrew W. Williams, Director of the Electric Division, and M.D. Coleman, Director of the Accounting Division, detailing the Public Staff's proposed adjustment to Vepco's three-month fuel expense. If approved, the Public Staff's adjustment would have resulted in a fuel adjustment credit of $0.00191/Kwh to Vepco's North Carolina retail customers during the billing month of April 1979. The Commission on March 30, 1979, authorized Vepco to use the basic rates approved in the last semiannual fuel cost review hearing, with no fuel cost adjustment rider, for the billing month of April 1979. The Commission ordered that the Public Staff's recommended March fuel adjustment credit of $0.00191/Kwh be collected pursuant to the Undertaking for Refund filed by Vepco on February 28, 1979. The Commission also consolidated Docket No. E-22, Sub 241, with the investigation in Docket No. E-22, Sub 236.

On March 30, 1979, Vepco filed an application in Docket No. E-22, Sub 242, requesting authority to increase its retail electric rates and charges for the billing month of May 1979 by $0.00248/Kwh based solely upon the increased cost of fuel used in the generation of electric power, pursuant to G.S. 62-134(e). On April 19, 1979, the Public Staff filed the testimony of J. Reed Bumgarner, Utilities Engineer, Electric Division, and M.D. Coleman, Director of the Accounting Division, detailing the Public Staff's proposed adjustment to Vepco's fuel expense. If approved, the Public Staff's adjustment would have resulted in a zero fuel charge factor. The Commission, by Orders issued on April 25, 1979, and May 7, 1979, authorized Vepco to increase its electric rates by $0.00248/Kwh by addition of Fuel Charge Rider SS effective for the billing month of May 1979. It was further ordered that the issues raised by the Public Staff relating to (1) Mt. Storm's (Island Creek and Laurel Run) excess prices, (2) plant conversion and availability adjustments, and (3) heat rate adjustment were separated from Docket No. E-22, Sub 242, and set for evidentiary hearing on their merits at the same time and place as the consolidated hearings in Docket No. E-22,

Subs 236 and 239. It was further ordered that the difference between the fuel charge rider allowed to be charged by Vepco and the Public Staff's recommended zero fuel charge be collected pursuant to the Undertaking for Refund filed by Vepco on February 28, 1979.

On April 30, 1979, Vepco filed an application in Docket No. E-22, Sub 243, requesting authority to increase its retail electric rates and charges for the billing month of June 1979 by $0.00259/Kwh based solely upon the increased cost of fuel used in the generation of electric power, pursuant to G.S. 62-134(e). On May 18, 1979, the Public Staff filed the testimony of J. Reed Bumgarner, Utilities Engineer, Electric Division, and M.D. Coleman, Director of the Accounting Division, detailing the Public Staff's proposed adjustment to Vepco's fuel expenses. If approved, the Public Staff's adjustment would result in a zero fuel charge factor. On June 1, 1979, the Commission held a hearing in Docket No. E-22, Sub 243, taking the testimony of Vepco and the Public Staff. By Order issued June 1, 1979, the Commission authorized Vepco to increase its basic electric rates by $0.00259/Kwh by the addition of Fuel Charge Rider TT effective for the billing month of June 1979 and ordered that this amount be collected pursuant to Undertaking for Refund pending the final Order in Docket No. E-22, Sub 236.

On May 31, 1979, Vepco filed an application in Docket No. E-22, Sub 244, under Commission Rule R1-36 for authority to increase its base fuel component of $.01327/Kwh by $.00241/Kwh for the billing months of July through December 1979. Also in this filing, Vepco requested approval for a fuel charge rider of $.00205/Kwh for the billing month of July 1979. The matter was heard on June 12, 1979, at which time Vepco offered the testimony of C.L. Dozier and R.N. Fricke. Vepco also introduced testimony of Gary R. Keesecker which showed that the Company had operated its nuclear plants at a capacity factor in accordance with Commission Rule R8-46. The Public Staff offered the testimony of J. Reed Bumgarner, Dennis J. Knightingale, and M. Dell Coleman. If approved, the Public Staff's adjustment would result in a decrease of $0.00002 in Vepco's base fuel component and a fuel charge factor of $0.00316 for the billing month of July. By Order issued June 28, 1979, the Commission authorized Vepco's requested increases and ordered that these amounts be collected pursuant to Undertaking for Refund pending the Order in Docket No. E-22, Sub 236.

On March 6, 1979, the Public Staff filed a Motion requesting that the Commission conduct a portion of the hearings in the cities of Ahoskie, Elizabeth City, and Williamston, to allow retail customers of Vepco to attend the hearings and offer testimony. On March 12, 1979, Vepco filed its response to the Public Staff's Motion. The Commission, on March 16, 1979, issued an Order setting public hearings to be held in Ahoskie, Elizabeth City,

Williamston, and Roanoke Rapids for the receipt of testimony from public witnesses. The remainder of the hearings were to be held in Raleigh.

Between the time of the Commission's setting this matter for hearing and the beginning of public hearings, several motions were filed by various parties concerning discovery, production of documents, extensions of time to file testimony, and other procedural matters. Such Motions and the Commission's Orders in response thereto are reflected in the Clerk's official files of this proceeding.

The matter came to hearing as scheduled in the Commission's Order Setting Hearing. A number of public witnesses appeared at each of the four out-of-town hearings to object to Vepco's rates as being unduly and unjustifiably high. Witnesses also complained that Vepco's rates are much higher than the rates of neighboring electric utilities and that it is extremely difficult for customers on fixed incomes to pay Vepco's rates. Several witnesses stated that Vepco is a good corporate citizen and provides good and reliable service. Richard S. Coiner appeared and testified as Chairman of Operation Overcharge. He stated that Operation Overcharge was formed in response to a petition signed by 45,000 citizens of eastern North Carolina protesting Vepco's high rates. Mr. Coiner stated that the goal of Operation Overcharge was to do everything possible to have Vepco's rates reduced. He further stated that Vepco should improve its operations and that Vepco's customers should not be required to pay for Vepco's poor decisions.

At the hearing, the Public Staff presented the following witnesses: Andrew W. Williams, Director of the Public Staff's Electric Division, who testified to the overall Public Staff Report and conversion from oil to coal in particular; M.D. Coleman, Director of the Public Staff's Accounting Division, who testified to the prices paid for coal by Vepco; William E. Carter, Jr., Assistant Director of the Public Staff Accounting Division, who testified to intercompany comparisons; Dennis Nightingale, Utilities Engineer for the Public Staff, who testified to Vepco's peak forecasting, plant investment costs, and cost of plant additions; N. Edward Tucker, Utilities Engineer for the Public Staff, who testified to cost, performance, and operational characteristics of Vepco, Duke, CP&L, and other utilities. John P. Rossie, a partner in the consulting firm of R.W. Beck and Associates, offered testimony concerning Vepco's high heat rate; and Dr. Richard G. Stevie, Economist of the Economic Research Division of the Public Staff, testified to Vepco's ability to obtain funds through external financial sources.

Vepco presented the following witnesses: Stanley Ragone, President of Vepco, who testified to the issue of conversion of certain oil-fired units to coal-fired operations, the increase in Vepco's system heat rate, prices paid under coal contracts, and the availability of Vepco's generating units;

O. James Peterson, Vice President, Treasurer and Chief Financial Officer of Vepco, who testified to the financial condition of Vepco in December 1973 through December 1978; Gary R. Keesecker, Manager - Power Supply for Vepco, who testified to Vepco's load forecasting, electricity price forecasts, and generation reserve margins; Henry H. Dunston, Jr., Manager - Cost Analysis for Vepco, who testified to the jurisdictional allocations made in Vepco's recent general rate case; Raymond R. Bennett, Consulting Engineer, who testified to the increase in Vepco's fossil system heat rates and the availability of Vepco's power plants; William C. Daley, Manager of Production Operations for Vepco, who testified to the availability and heat rates of Vepco's power plants; C.M. Jarvis, Vice President - Public Relations of Vepco, who testified to economic development in Vepco's North Carolina service area; and Eugene W. Meyer, Director of Kidder, Peabody and Company, who testified to his evaluation of Vepco's financial circumstances during the period 1974-1977.

Richard P. Morreale, Operations Manager, Corporate Procurement for Abbott Laboratories, testified to the disparity between Vepco's rates and those of the other electric utilities in North Carolina. He stated that Vepco's applicable rate for Abbott Laboratories is about 25% higher than the rate for Carolina Power & Light Company and 35% higher than the rate for Duke Power Company. Mr. Morreale further stated that as a result Abbott's electric bill is $140,000 to $200,000 more per year from Vepco than it would be if Abbott were served by Carolina Power & Light Company or Duke Power Company.

Larry Cohick, Executive Director of the Economic Development Division of the Department of Commerce, testified that in his opinion the differential in power rates between Vepco and other electric utilities in this State has not had an adverse effect on the industrial development of northeastern North Carolina.

At the close of the hearing, the parties agreed that Vepco would continue to file its monthly fuel clause applications as it has for the last several months and that the Public Staff would continue to file its affidavits in response to Vepco's fuel clause filings. Vepco then agreed to file appropriate undertakings to refund the amounts that Vepco's fuel charge exceeded that calculated as proper by the Public Staff.

Based upon the foregoing, the testimony and exhibits received in evidence at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That Virginia Electric and Power Company is duly organized as a public utility company under the laws of North Carolina, subject to the jurisdiction of this Commission, and holds a franchise to furnish electric power in the northeast portion of the State of North Carolina under rates and services regulated by the Utilities Commission as provided in Chapter 62 of the General Statutes.

2. That the allocation formulae and procedures used by this Commission in Vepco's general rate case proceedings correctly allocate Vepco's generation plant and system operating costs between its wholesale and retail service, respectively, in Virginia, West Virginia, and North Carolina.

3. That Vepco's comparatively high rates for electric service in North Carolina are not a result of costs to meet air pollution standards for Vepco's generating plant in the Washington, D.C., air quality areas.

4. That Vepco's comparatively high rates for electric service in North Carolina are not a result of unreasonable load factors.

5. That Vepco's comparatively high rates for electric service in North Carolina are not a result of unreasonable transmission and line losses, or of inappropriate allocation of losses to Vepco's North Carolina retail operation.

6. That Vepco's comparatively high rates for electric service in North Carolina are not a result of excessive costs of constructing generating plants.

7. That Vepco's comparatively high rates for electric service in North Carolina are primarily due to its costs of fuels used in the generation of electricity.

8. That North Carolina G.S. 62-134(e) and G.S. 62-130(a) empower this Commission to permit a change in rates for an electric utility based solely upon the costs of fuel, where such costs have been found just and reasonable.

9. That Vepco's decision to convert its units from coal-fired to oil-fired capability in the early 1970s was not unreasonable; and that it was not unreasonable to construct Yorktown 3 and Possum Point 5 for oil-fired-only capability, and that it is not now economically feasible to convert these two units.

10. That court orders prevent the reconversion of Yorktown 1 and 2.

11. That since early 1977, Vepco has known with certainty that significant net savings would result from the

reconversion to coal-fired generation of Chesterfield 2 and 4, Portsmouth 3 and 4, and Possum Point 4.

12. That, upon passage of the Clean Air Act Amendment in November 1977, timely and responsible action by Vepco's management would have resulted in conversion to coal-fired generation of certain of its oil-fired units (as specified in Finding No. 11) by no later than January 1, 1981.

13. That Vepco has not been financially prohibited from reconverting certain of its oil-fired units (as specified in Finding No. 11).

14. That Vepco's management has acted imprudently by not pursuing a program to effect the reconversion of certain of its oil-fired units (as specified in Finding No. 11) and thereby avoiding excess expenses associated with oil-fired generation.

15. That, effective January 1, 1981, Vepco's rates for North Carolina retail electric service should be adjusted to remove excess expenses associated with oil-fired generation from Chesterfield 2 and 4, Portsmouth 3 and 4, and Possum Point 4.

16. That the prices paid for coal under the Island Creek, Laurel Run, and Appolo Fuel contracts for the test periods under consideration herein should not be adjusted.

17. That Vepco's fuel expenses are excessive and should be adjusted in these and future proceedings to remove unreasonable costs associated with poor system fossil-fired heat rate and low availability at the Mt. Storm station and Chesterfield Units 5 and 6.

18. That, for the periods under consideration herein, refunds in the following amounts should be made to reflect adjustments for excess fuel expenses:

Docket No. E-22	Billing Month	Adjustment
Sub 239	February	0.118¢/Kwh
Sub 240	March	0.218
Sub 241	April	0.147
Sub 242	May	0.248
Sub 243	June	0.259
Sub 244	July	0.224

19. That Vepco's base fuel component for the period July-December 1979 should be 1.370¢/Kwh.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The Evidence for Finding of Fact No. 1 is contained in the verified application and the record as a whole. This finding is procedural and jurisdictional in nature.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Section IV of the Public Staff's Report reviews generally accepted major cost allocation methods with the conclusion that because Vepco is primarily a summer peaking system, the coincident peak method is appropriate to use for Vepco. This conclusion is essentially uncontroverted by Company witness Dunston. The Commission agrees that the coincident peak method, which has been used historically by this Commission, is appropriate to allocate Vepco's generation plant and operating costs between its wholesale and retail service, respectively, in Virginia, West Virginia, and North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Testimony concerning the cost of meeting air pollution standards at Vepco's Possum Point station in the Washington, D.C., area was given by Mr. Ragone. He explained that all five Possum Point units are subject to the standards of Virginia Air Quality Control Region 7 which have higher sulfur dioxide emission limitations than other regions of Virginia. However, Mr. Ragone testified that fuel cost per Kwh is not higher than it would be at other locations (except for transportation costs). Possum Point Unit 5 is classified as a "new source" under the Federal Clean Air Act of 1970 and must comply with more stringent emission levels by burning a low sulfur oil which would be required regardless of its location. Since Region 7 standards are applied to the station as a whole and not to individual units, the use of low sulfur oil in Unit 5 enables Vepco to meet the station standard without using the more expensive low sulfur oil in Units 1, 2, 3, and 4.

In that Mr. Ragone's testimony on this subject is uncontroverted, the Commission concludes that there is no economic impact on North Carolina customers due to meeting the air pollution standards applicable to the District of Columbia.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Sections II.A.1.a and II.B.1.a of the Public Staff's Report and the testimony of Public Staff witness Tucker and Company witness Jarvis deal with load factors. Load factor is the ratio of actual electrical consumption to maximum possible consumption during some specified time interval. As such, load factor provides an indication of the efficiency with which customers are utilizing the Company's equipment.

The Public Staff analysis shows that in 1977 Vepco had a system load factor of 55.3%, ranking the Company 17th among the 23-company comparison group. Vepco's load factor decreased by 4.2% since 1970; however, all except five companies also experienced a decrease in load factor during this period.

Compared to Duke and CP&L, the Public Staff analysis shows that in 1972 Vepco's load factors for retail operations in both Virginia and North Carolina were lower by approximately 10 percentage points, but that by 1977 Vepco's load factor for retail operations in North Carolina had improved to nearly the level of the other two companies. Vepco's Virginia load factor has remained constant. The Public Staff analysis reveals that the improvement in Vepco's North Carolina retail load factor resulted from improvement in load factors for the small and large commercial classes (which include industrial sales). As a system, however, Vepco's load factor normally ranges 4 to 8 percentage points lower than those of Duke and CP&L.

Neither the Public Staff nor any Intervenors contend that Vepco's load factors are unreasonable.

The Commission accepts the findings of the Public Staff and concurs that neither Vepco's system load factor nor its North Carolina retail load factor is unreasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

In Section II.A.1.b and Schedule II.A.1.b-1 of its Report, the Public Staff shows that Vepco's system losses are near the median for the comparison companies. Company witness Dunston, in his direct testimony, states that the loss factors used for the North Carolina retail customers are based on system average loss factors. The Commission therefore concludes that Vepco's system loss factors are reasonable and are appropriately allocated to the North Carolina retail portion of Vepco's operation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Sections I.A.3 and I.B.2 of the Public Staff's Report and the testimony of Public Staff witness Nightingale and Company witness Ragone deal with the construction costs of recent Vepco generating facilities.

The Public Staff's Report compares Vepco's plant cost in $/Kw to the average plant cost of the 23-company comparison group for the years 1970, 1973, 1975, and 1977. While Vepco's total steam system installed cost since 1973 has been above the comparison group average, the difference between Vepco's cost and the group average has narrowed with time and the two were approximately the same in 1977. The Public Staff Report also compared the construction costs of the three major electric utilities operating in North Carolina for existing units installed since 1965 and for units to be installed after January 1979. This analysis reveals that Vepco's oil-fired additions in 1974 and 1975 had a higher $/Kw cost than Duke's coal or nuclear additions in the same time period. Further, the installed cost of Vepco's 1978 nuclear addition (North Anna 1) was approximately double that of CP&L's 1977 nuclear addition. Witness Nightingale testified that Vepco's cost of

construction through the early 1970s was on a par with that of CP&L and Duke, but that it appeared to be increasing more rapidly than that of CP&L or Duke.

Mr. Ragone compared the capital cost of Vepco's three nuclear units in commercial operation (Surry 1 and 2 and North Anna 1) and the one scheduled for operation in 1980 (North Anna 2) with those built and operated by other utilities. According to his Exhibit SR-2, the cost of the Surry plant (Units 1 and 2) and the cost of the North Anna plant (Units 1 and 2) lie near the least squares trend developed from the actual cost data for all units in the analysis.

The Public Staff investigated the cost of North Anna 1 in Vepco's last rate case (Docket No. E-22, Sub 224) and recommended that the cost of this unit be reduced by $12.6 million due to modifications for recirculation spray pumps and increased AFUDC between January and April 1978 as a result of the delay. Extensive testimony was taken on this subject, and the Commission Panel found no grounds for reducing the cost of North Anna 1. The Public Staff Report in this docket restated the issue of cost overruns on North Anna 1 by alleging that Vepco has not been diligent in trying to collect damages for alleged faulty designs of components which produced construction delays. The Commission has reviewed the evidence in this docket and the prior examination in Docket No. E-22, Sub 224, and concludes that the matter was properly considered in that docket.

Based upon the evidence presented, the Commission concludes that Vepco's overall costs of constructing generating plants are not excessive.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Section II.B.2 of the Public Staff's Report and the testimony of Company witness C.M. Jarvis provide a comparison of electric rates for the three major utilities serving North Carolina. On the basis of revenues per kilowatt-hour, the Public Staff's data show for 1977:

	Residential	Small Commercial	Large Commercial & Industrial
Vepco	4.21¢/Kwh	3.84¢/Kwh	2.65¢/Kwh
CP&L	3.76¢/Kwh	3.38¢/Kwh	2.51¢/Kwh
Difference	12.0%	13.6%	5.6%
Duke	3.42¢/Kwh	2.96¢/Kwh	2.17¢/Kwh
Difference	23.1%	29.7%	22.1%

Mr. Jarvis provided evidence on the basis of total revenues for all classes for 1977 and 1978:

	1977	1978
Vepco	3.416¢/Kwh	3.872¢/Kwh
CP&L	3.126¢/Kwh	3.446¢/Kwh
Difference	9.3%	12.4%
Duke	2.797¢/Kwh	3.018¢/Kwh
Difference	22.1%	28.3%

Mr. Jarvis testified that the major reason that Vepco's rates are higher is fuel cost. He noted that customer density and per customer consumption are also contributors, but agreed under cross-examination that their contribution was not significant. Mr. Jarvis provided data for fuel and purchased power costs for the three utilities for 1977 (see below). He stated that when these cost differences are taken into account, rates for the other utilities are higher.

	Vepco	DUKE	CP&L
Revenue/Kwh	3.416¢/Kwh	2.797¢/Kwh	3.126¢/Kwh
Fuel & purchase power expense	1.714	1.022	1.009
	1.702¢/Kwh	1.775¢/Kwh	2.117¢/Kwh
		4.3% higher	24.4% higher

Based upon the Company's testimony and the absence of any evidence to the contrary, the Commission concludes that fuel costs constitute the primary reason for the disparity in rates between Vepco and the other major utilities serving North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Pursuant to North Carolina G.S. 62-134(e), the North Carolina Utilities Commission is empowered to utilize expedited proceedings to fix rates which are based solely upon the cost of fuel used in the generation of electric power. In fixing such rates, the Commission is required to determine that "such rates are just and reasonable." G.S. 62-130(a). Accordingly, any unreasonable or imprudent expenditures for fuel must be disallowed including excessive prices paid in the purchase of fuels, such as coal and oil, or excessive costs incurred as a result of wasteful or inefficient use of said fuels after purchase.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Evidence on the oil to coal conversions made in the early 1970s is found in Section III.B.1 of the Public Staff's Report. Evidence on the construction of Possum Point 5 and Yorktown 3 is found in Section III.B.2 of the Public Staff's Report. No party contends that Vepco's decision to convert certain of its units from coal-firing to oil-firing capability in the early 1970s was unreasonable. In addition, Vepco's decisions to build Yorktown 3 and Possum Point 5 for oil-only capability were not substantially controverted. The parties agreed that it is not economically feasible to convert these latter two units from

oil- to coal-burning capability. The Commission concurs in these conclusions.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10, 11, 12, 13, 14, AND 15

Evidence on the reconversion from oil to coal for certain of Vepco's generating units is contained in Section III.B.3 of the Public Staff's Report, the testimony of Public Staff witness Andrew W. Williams, and Company witness Stanley Ragone.

The Public Staff contended that it is, and has been, cost effective to reconvert certain of Vepco's oil-fired units. In support of their position, the Public Staff refers to Vepco's in-house studies, beginning as early as 1976, which initially showed that it would be economically attractive to reconvert Chesterfield 4, Portsmouth 3 and 4, and Yorktown 1 and 2 from oil to coal, and subsequently showed that even larger cost benefits would be achieved and that Possum Point 4 is also an economically attractive candidate. The Public Staff contends Vepco should have taken timely action to reconvert these units. The Public Staff alleges that Vepco places undue reliance on the fuel cost adjustment mechanism; that Vepco has been hesitant to make the capital and maintenance expenditures required to reconvert units from oil to coal, thus lowering fuel costs; and that this hesitancy results from the fact that these expenditures must be justified in rate proceedings and are not as readily recoverable as are changes in fuel costs.

Vepco witness Ragone denied that this was a policy of the Company and testified that the reconversion was not performed due to inadequate funds and legal complications concerning environmental controls. Witness Ragone stated that the Company is not insensitive to the impact on ratepayers of the high cost of oil-fired generation and has therefore moved expeditiously to bring low fuel-cost nuclear units on line. Vepco's available financial resources have been focused to achieve an early completion date of its North Anna nuclear units.

The Public Staff supported its charge that Vepco was abusing the fuel cost adjustment mechanism with statements from a consultant's report commissioned by Vepco. This report stated, among other things, that major work should be done on generating units because there was a good possibility that the fuel adjustment mechanism would terminate. If this occurred the Company would no longer be able to afford the "luxury" of recovering, through the fuel clause, costs reflective of decreased efficiency.

Mr. Ragone denied that the consultants were qualified to make such statements.

Vepco recognized, through the testimony of Mr. Ragone, that Chesterfield 4, Portsmouth 3 and 4, and Possum Point 4

were good candidates for reconversion, though certain electrostatic precipitator modifications would be required. In addition, Mr. Ragone added Chesterfield 2 as a reconversion candidate due to revised environmental regulations. The witness stated that with a reconversion of only Chesterfield 2 and 4 and Portsmouth 4 by 1980, Vepco's annual fuel cost would be reduced by about $13 million with net savings expected to be about $7 million annually. Mr. Ragone testified that, even though it was economical to do so, Yorktown 1 and 2 could not be reconverted because these units have been under court order not to burn coal.

Mr. Ragone testified that financial restrictions and environmental limitations and uncertainties have prevented Vepco from reconverting the candidate units. The witness recounted Vepco's financial difficulties during the years 1974, 1975, and 1976; but stated under cross-examination that Vepco was "on the road to recovery" in 1976 and expenditures could have been made, "...if you were sure that those expenditures would meet the environmental laws and there was no assurance of that." The witness further responded that the same was true for 1977.

Mr. Ragone testified that it was prudent to wait until passage of the Clean Air Act Amendment of 1977, which removed some environmental uncertainties, particularly regarding scrubbers, thereby making it easier for utilities to accomplish conversion of units from oil to coal. Witness Ragone testified that the Clean Air Act Amendment of 1977 provided, among other things, for the administration of Delayed Compliance Orders (DCO). A DCO would allow a utility to convert to coal but to add electrostatic precipitators at a later date, after they had been built. Without a DCO, a utility must first construct and install the precipitator before burning coal.

Mr. Ragone testified that the Environmental Protection Agency certified to the Department of Energy in May 1977 that Vepco would be able to have sufficient precipitators completed and installed on some of its oil-fired units to begin burning coal between September 1, 1980, and January 1, 1981.

When asked on direct whether there was any basis for an adjustment to the Company's (current) rates for hypothetical conversions to coal as suggested by the Public Staff, Mr. Ragone replied, "Obviously no adjustment in rates should be made for hypothetical conversion from oil to coal if those conversions are not permitted by law and, even if permitted, would be uneconomical or would not be prudent for financial or operations reasons."

Public Staff witness Williams agreed with Vepco that in 1976 the Company might have been required to use additional environmental control equipment before the units could have been reconverted to burn coal. He agreed that it was not certain whether environmental restrictions could have been

met by only adding electrostatic precipitators, or could also have required expensive scrubbers, and that it was prudent of Vepco to wait until passage of the Clean Air Act Amendment in 1977 before beginning any construction of environmental equipment.

From the evidence presented, it is clear that Vepco is, and has been, under court order not to burn coal at Yorktown 1 and 2. It is also clear and uncontroverted that by early 1977 Vepco had determined and confirmed that Chesterfield 4, Portsmouth 3 and 4, and Possum Point 4 were cost-effective candidates for conversion to coal-fired generation. Subsequently, Vepco added Chesterfield 2 to this list. It is also uncontroverted that Vepco was correct in not beginning any construction on environmental equipment to effect an oil to coal conversion prior to the passage of the Clean Air Act Amendment in November 1977.

At issue, then, are Vepco's actions post-November 1977 with respect to the reconversion of Chesterfield 2 and 4, Portsmouth 3 and 4, and Possum Point 4.

The Commission concludes that pertinent environmental-control obstacles no longer existed at this juncture. Uncertainties about which form of controls would be needed were laid to rest by the Clean Air Act Amendment. It is true that this Amendment provided the statutory means for an expedited conversion, namely the Delayed Compliance Order, and that the necessary rules and regulations have yet to be finalized by the Department of Energy. However, this is no defense for total inaction on Vepco's part. The DCO simply allows a utility to convert prior to constructing and installing the environmental control equipment. Vepco could have begun the construction of said equipment and continued to burn oil until such time as installation could be accomplished (typically a three-year interval). If in the interim a DCO were granted as a result of a parallel course of action, conversion would simply take place sooner.

We further conclude that, whatever Vepco's financial problems may have been in 1974 and 1975, the situation had improved by 1976 and that certainly by November 1977 Vepco was in a posture to commit to expenditures over the next three years for the environmental control equipment necessary for the reconversion of the candidate units. We do not suggest that Vepco should have delayed its in-service date for North Anna 1 nuclear unit, but rather, that necessary funds have been available or could have been secured.

Fuel costs are a major expenditure for Vepco. Oil-fired generation costs approximately one-half cent more per kilowatt-hour than coal-fired generation, and this difference is not expected to recede in the foreseeable future. Although the Company made a seemingly responsible decision in the late 1960s to depend heavily on oil, and a prior Commission has commended the Company for that

decision, it has been clear for many years that oil no longer is, or will be, economical as electric generation fuel. It is inconceivable to this Commission that responsible management would not put a primary emphasis on controlling fuel cost. The expenditures which are required to accomplish the reconversion process are small when compared to Vepco's total borrowings.

The Commission concludes that, faced with such extreme differences in fuel prices, prudent management should have had contingency plans, namely the necessary studies and cost proposals for precipitator installation, in order to begin the process of constructing the necessary air quality control equipment for reconversion upon resolution of the environmental uncertainties by the Clean Air Act Amendment of 1977. Although the Company indicated that it did perform studies of some type during 1976 and 1977, Vepco obviously has not seriously pursued this goal. The Company was not ready to act with dispatch upon amendment of the Clean Air Act and, apparently, is still not ready to act. The timetable of conversion activities in Ragone Exhibit SR-1 indicates absolutely no action by the Company in 1978. Mr. Ragone testified that it will now be approximately 1982 before the necessary precipitators can be installed to allow reconversion without a DCO. The evidence in this case is that, had Vepco acted prudently, the units could have been converted by the end of 1980.

The Commission concludes that effective January 1981 it would be unreasonable for the Company to expect, or for this Commission to allow, ratepayers to bear the excess costs associated with oil-fired generation from Chesterfield Units 2 and 4, Portsmouth Units 3 and 4, and Possum Point 4. The Company has known for three years that it is cost effective to convert these units and that said conversions will result in substantial cost savings to its customers. It has been more than two years since the Clean Air Act Amendment removed environment control obstacles, yet the Company has done nothing more than request Delayed Compliance Orders. To do nothing hoping for a DCO is akin to rejecting a bus ride to one's destination with the hope that a limousine may come along.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Extensive evidence was presented with respect to the reasonableness of prices paid by Vepco during 1978 under long-term contracts with Island Creek Coal Company, Laurel Run Mining Company, and Appolo Fuels, Inc. This is found in Section III.C.2 of the Public Staff's Report and the testimony of Public Staff witness M.D. Coleman and Vepco witness Stanley R. Ragone.

The Public Staff's Report first reviewed the requirements of each of Vepco's long-term contracts and the freight cost incurred at each of the Company's coal-fired stations. Witness Coleman discussed the cost at each station and

concluded that freight costs incurred at the Bremo and Chesterfield stations were not unreasonable and that, because of its location near the coal fields, the freight on coal at the Mt. Storm station is favorable. Schedules C.2-4 through C.2-6 from the Public Staff's Report compare Vepco's coal costs under long-term contract and from the spot market to the coal costs of Duke Power Company and Carolina Power & Light Company. The comparisons were made on a monthly basis from February 1975 through August 1978. Mr. Coleman pointed out that these comparisons showed Vepco's coal cost from all sources was comparable to that of Duke and CP&L. Vepco's contract coal costs were lower than those of Duke in 1975 and 1976. In 1977 and 1978, Vepco's contract coal costs were lower than Duke's total contract coal costs which include Duke's affiliated company purchases, but Vepco's contract coal costs were higher when Duke's affiliated purchases were excluded. With regard to CP&L, Vepco's coal costs were lower in 1975 and 1976, but were higher in 1977 and 1978. The spot market data showed Vepco's coal cost to be higher than CP&L's in 1975 and 1976 but lower in 1977 and lower than both Duke's and CP&L's for the first eight months of 1978.

Witness Coleman took issue with the prices paid under the Island Creek contract for the first half of 1978. This is a cost-plus type of contract under which the price per ton of coal is determined by dividing the cost of mining by the tons of coal produced during each six-month period. The evidence shows that increased prices for the first six months of 1978 resulted from the United Mine Workers' strike that began in mid-December 1977 and lasted until late March 1978. Coal production was drastically reduced during the miners' strike, but costs to maintain the mine continued, as did carrying charges on equipment, depreciation, insurance, taxes, and other expenses. As a result the price per ton for the first six months of 1978 rose to $42.38. In contrast, during the second six months of 1978 the price per ton fell to $30.53 and during the first six months of 1979 Island Creek Mining Company has informed Vepco that the estimated price per ton has decreased further to $23.18.

Mr. Coleman testified that the increase in the price paid for Island Creek coal was significantly above the normal rate of increase under the contract. Based on his review of Annex B to the contract, he found that prior increases had ranged from $.80 to $3.59 per ton, as compared to the increase for the January to June 1978 period of $13.37 per ton. He recommended the price be limited to $31.28 per ton, which was the price expected for the last six months of 1978, because management's action in response to the price increase was unreasonable. He concluded that reasonable action would have been for Vepco to withhold payment of the increase and seek to negotiate a reduction in the increase under the contract.

Mr. Ragone offered testimony on coal procurement, and specifically the Island Creek contract, for Vepco. He noted

that the comparison of Vepco's coal purchasing to Duke and CP&L was flattering to Vepco; and that the comparisons did not include freight cost, and therefore eliminated the transportation advantage of Vepco's mine-mouth Mt. Storm station. He concluded that there was no rational basis for the Public Staff's stating that Vepco's coal purchases had contributed to Vepco's overall fuel cost being higher than that of Duke and CP&L, and that the comparisons contradict such a conclusion.

Mr. Ragone testified that the principal criticism of Vepco's coal purchasing was directed at the Island Creek contract, and the impact that prices paid under that contract were having on the prices paid to Vepco's subsidiary, Laurel Run. He concluded that the sole basis for the Public Staff's recommendation, that fuel expense should be reduced for prices paid Island Creek during the first half of 1978, was that the rate of increase was significantly above the normal rate of increase per ton under the contract. He concluded that the Public Staff, on the basis of the undisputed fact that the price was higher due to the Mine Workers' strike, leaped to the erroneous conclusion that Vepco should not be permitted to include in inventory the amount paid Island Creek for the first six months of 1978. He presented an Exhibit (SR-3), of prices paid under the contract from January 1974 through December 1978, which showed that the price was substantially higher for the first half of 1978 than any other six-month period.

Mr. Ragone explained that coal was priced under the Island Creek contract by dividing the actual mine operating expenses before profit for each six-month period by the tons produced, and adding to the result 75¢ per ton for profit. He testified that these costs would have to be paid by Vepco if it owned the mine. He stated the reasonableness of these costs were attested to by audits performed by outside independent auditors, that the Company was in frequent communication with Island Creek about the operation of the mine, and that its own subsidiary mining operations provide Vepco with familiarity of coal mining operations.

In explaining why the cost did not go down 50% as a result of production being cut in half, Mr. Ragone pointed out that, while miners' wages are not paid during a strike, other operating expense necessary to keep the mine ready for operation, carrying charges on investment and associated insurance taxes, security on equipment, management salaries, and maintenance must go on. He further testified that long-term contracts are necessary for a continuing viable supply, and that it seemed fair that Vepco pay the reasonable cost of producing coal from the Island Creek Mine. He specifically pointed out that the profit is 75¢ per ton, and that an objective evaluation of the contract should have highlighted this very advantageous provision.

Mr. Ragone discussed the conditions under which the current Island Creek contract was negotiated. He pointed

out that Vepco had a contract with Island Creek for 120,000 tons per month prior to the Arab oil embargo. In November 1973 Island Creek advised that it was increasing the price from $9.19 to $14 per ton and would stop delivery if Vepco refused to pay the new price. Discussions with Island Creek were unproductive and the parties sued each other. Settlement negotiations during the litigation resulted in the current contract which had an original base price of $12.65 per ton. Mr. Ragone agreed that the actual adjusted price for the first six months of the contract was $13.49 per ton. He testified this was not a favorable time to be renegotiating a coal contract because higher prices and shortage of oil had increased the demand for coal.

On cross-examination, Mr. Coleman admitted that the Island Creek contract was reasonable when it was executed in 1974; but he argued that management's failure to take any action to negotiate or otherwise mitigate this increase was unreasonable. The witness pointed out that the price per ton was based on an abnormally low level of production during this period. He stated that Vepco's manager of fossil fuels advised him that Vepco's legal counsel provided an opinion saying the $43.21 price per ton would have to be paid, but had refused to provide it for review on the basis it was client-attorney privileged information. Mr. Coleman stated further that the Company's legal counsel in a letter dated November 28, 1978, advised counsel for the Public Staff that no written opinion had been located on the pricing provisions of the Island Creek contract.

The term of the Island Creek contract is from 1974 through 1985. The Commission believes it is improper to consider the price paid for coal during a narrow period under such a contract without reviewing other periods. We note that the contract price has been below, as well as above, the spot market price from time to time. The Public Staff witness stated that the Island Creek contract was reasonable and that cost adjustments were audited by independent certified public accountants. Under these circumstances the Commission concludes that the Island Creek contract was negotiated in good faith and is a reasonable contract and that the expenses incurred under the provisions of the contract for the test periods under consideration herein are not unreasonable.

The Public Staff, through the testimony of Mr. Coleman, recommended that the fuel expense be reduced for prices paid by Vepco for coal from its wholly owned subsidiary, Laurel Run. Witness Coleman explained that the subsidiary was in the development phase during 1978 and that during this phase the price paid for coal was limited by order of the Virginia State Corporation Commission to the field market price of Vepco's other two contract suppliers at Mt. Storm. He testified that the higher price paid for Island Creek coal during the first six months of 1978 was not representative of market price and should not be used to determine the price paid for coal purchased from the subsidiary during the

last quarter of 1978. He concluded that using the $43.21 per ton paid for Island Creek coal resulted in a price for subsidiary coal of $30.35 per ton and that use of the expected price of $31.28 per ton for Island Creek coal during the last half of 1978 would result in a price of $25.16 per ton for the subsidiary's coal.

Mr. Ragone testified as to how Island Creek coal prices affected the price per ton paid Vepco's subsidiary Laurel Run; that there was a lag in calculation of the price to be paid the subsidiary; and that if Vepco is not allowed to charge a reasonable price for Laurel Run coal it would have no reasonable alternative but to sell the mine. Mr. Ragone testified that the Laurel Run mine experienced the same conditions of continued overhead expenses and low production during the coal miners' strike as did Island Creek, but that Laurel Run was affected to a greater degree. For that reason, allowing the price paid for Laurel Run coal to increase by the weighted effect of the Island Creek increase would be reasonable.

The Commission concludes that, since the expenses at Laurel Run were similarly impacted by the mine strike and the method of pricing the Laurel Run coal is as reasonable a method as is available, the cost increases at Island Creek should be used to calculate the Laurel Run price for the test periods under consideration herein and until the Public Staff shall propose a superior method of pricing.

Mr. Coleman presented testimony for the Public Staff on the prices paid during 1978 for coal purchased under a long-term contract from Appolo Fuels for the Chesterfield station. In his direct testimony filed on January 22, 1979, the witness expressed concern over prices being paid for coal under this contract, but stated that, based on assurances from Vepco's manager of fossil fuels that a decline in price was imminent, he had not recommended an adjustment.

On March 30, 1979, Mr. Coleman filed addendum testimony in which he recommended a reduction in the amount of fuel expense Vepco was seeking to recover through the fuel clause for its two coal-fired units at the Chesterfield station. The addendum testimony was accompanied by four exhibits. Exhibits II and III which contain confidential data, were filed at the hearing. Exhibit IV compared contract tonnage received at Chesterfield to contract requirements. Exhibit V compared actual tons received and consumed to estimated consumption. Exhibit VI listed offers received by TVA from coal suppliers during its most recent request for bids. Exhibit VII, consisting of three schedules, showed the calculation of the reduction in fuel expense for the three-month period ending January 31, 1979, to eliminate what Mr. Coleman termed unreasonable prices paid for coal purchased from Appolo Fuels.

Mr. Coleman discussed the pricing provisions of the contract, explaining that it contained two components: mine operating expenses per ton and the profit component. The profit component rises at 7/10 of the rate of increase in the operating expenses. He pointed out that the price per ton F.O.B. mine paid by Vepco had increased from $21 per ton in 1976 to $38.49 in 1979. He testified that management actions in approving price increases were extremely important in this type contract since the provisions of the contract offer a direct incentive for the supplier to produce coal without regard to cost.

He stated that he had reviewed data pertinent to an evaluation of action taken by the Company in administering the contract and approving price increases. Coleman Exhibit III contained four items obtained during this review that were considered confidential by the Company: a memo summarizing three meetings between Vepco, Appolo, and A.T. Massey; a copy of a report summarizing a review of Appolo's mining operations by John T. Boyd made at Vepco's request; a copy of Ernst and Ernst's audit report for the four quarters ended June 30, 1978; and a memo summarizing a meeting between Vepco and Appolo in October 1978.

Witness Coleman discussed each item contained in his Exhibit III. According to the witness, the memo dated March 13, 1978, summarized the February 1978 meetings with Appolo. These meetings resulted from Appolo's request for an increase in the F.O.B. mine price beginning in February 1978 from $30 per ton paid during the three months ended January 1978 to $41.25 per ton for the three months ended April 1978. He pointed out that, as a result of these meetings, a price of $36.05 per ton was agreed upon for the three months ended April 1978.

Mr. Coleman summarized the findings in the Boyd Report as follows: that the mine was capable of producing 69,000 tons per month; that mining equipment was in good condition; that Vepco should require economic justification for new equipment that does not replace old equipment; that Appolo's hiring of an experienced foreman was positive; that engineering plans showing stripping volumes a year in advance for the Davisburg operation are required; that increased night shift blast hole drillings at Appolo's Davisburg and Fork Ridge operations were recommended and that stripping be considered at Fork Ridge; that the unit train load out facility is a cost function requiring review from the standpoint of Vepco's interest; and that estimated reserves exceed contract requirements of 3.6 million tons.

Mr. Coleman testified that his review did not disclose any action on Vepco's part in response to the Report. He modified that answer on cross-examination to recognize that Vepco and Appolo were trying to separate the cost of the load out facility and stated he did not know whether under the contract Vepco could require economic justification for equipment purchased.

Concerning the Ernst and Ernst Report, Mr. Coleman testified that Vepco and Appolo had agreed to deviations from generally accepted accounting principles but that the impact could not be measured from data contained in the Report. Also, the Report drew attention to salaries and royalties paid stockholder officers and their relatives and that to his knowledge Vepco had not inquired into the reasonableness of those costs. On cross-examination he stated he had no reason to believe Vepco would agree to a deviation that was unfavorable to them, but that the information in the Report was not adequate to permit such an evaluation. He further stated on cross-examination that he had simply pointed to the auditors' comments on salaries paid Appolo's stockholder officers and royalties paid relatives; that Vepco, to his knowledge, had not inquired into the reasonableness of those costs and that he, of his own knowledge, could not say whether these costs were reasonable.

Mr. Coleman reviewed the October 31, 1978, memorandum summarizing the meeting with Appolo Fuels. The purpose of the meeting was to discuss Appolo's immediate financial problems and Vepco's response. Mr. Coleman concluded that production was a problem and that removal of force majeure conditions and proper scheduling of railroad cars were essential to improvement of production. He stated force majeure conditions were becoming the rule rather than the exception if force majeure was responsible for the poor performance under this contract.

Mr. Coleman testified on direct that Vepco had not aggressively pursued securing the contract tonnage because of poor performance of the Chesterfield coal-fired units. He offered as support for that opinion Exhibits IV and V showing an analysis of consumption by these two units for the years 1976, 1977, and 1978. He testified that this analysis showed that November 1976 was the only month in which the Company approached its annualized consumption level of 6,000 tons per day; that tons received from all sources was only 60.63% in 1976, 55.21% in 1977, and 34.78% in 1978; that actual consumption as a percent of contract requirements was 122.79% in 1976, 81.29% in 1977, and 58.25% in 1978. He concluded from this that it was obvious that aggressive pursuit of contract requirements would have led to a major buildup of inventory at the Chesterfield station.

Mr. Coleman presented as Exhibit VI data compiled from an article on TVA coal purchases which had been offered to him by the Company to demonstrate the reasonableness of the prices paid for coal purchased from Appolo. Mr. Coleman concluded that the data did not support the reasonableness of prices paid for Appolo coal.

Mr. Coleman concluded that management's response to price increases was unreasonable and was directly attributable to the inability of the Chesterfield station to burn coal equal to the estimated daily consumption, or at minimum an amount

equal to the contract requirements. He recommended that higher prices should not be passed on to the customer and offered, as Exhibit VII, a calculation of the reduction in fuel cost at the Chesterfield station required to implement his recommendation. In essence, he adjusted the delivered price of Appolo coal included in inventory to the price paid Omar Mining under a long-term contract to supply coal for the Bremo station. He testified there was a slight difference in the quality of the two coals, but that he had used this price because it was competitively priced in spite of the UMWA strike. The deliveries in 1978 were 74% of contract requirements.

Company witness Ragone did not give direct testimony on the prices paid under the Appolo contract, but offered considerable comment on cross-examination. Mr. Ragone agreed: that the normal monthly requirements for Chesterfield station's two coal-fired units are 180,000 tons, or approximately 6,000 tons per day; that actual daily consumption for the unit was approximately 4,000 tons in 1976, 2,673 in 1977, and 1,900 to 2,000 in 1978; that Vepco was not getting anywhere near full output; that consumption did not exceed contract requirements during any month in 1978; that Vepco only received 58% of its contract tonnage in 1978, and 81% in 1977; that Appolo had provided 74% of contract tonnage in 1978, 74% in 1977, and 76% in 1976; and that the Appolo contract was a cost plus contract. Mr. Ragone testified that Chesterfield's inability to consume the estimated 6,000 tons daily resulted from conversion problems at the station.

Mr. Ragone testified that it was sound policy to contract for 50% to 75% of the station's coal requirements and that more than needed should be under contract because it was his experience that suppliers never meet contract requirements. The witness testified that Vepco did not push Appolo to meet full production because the coal could be purchased by Vepco in the spot market at a lower price. He stated that it would not be sound policy to demand performance when the result would be to increase the stockpile and to pay a price higher than the market. He stated that, if Vepco had received full production from Appolo, it could not have used the coal.

With regard to the production, Mr. Ragone agreed that Appolo was capable of producing the contract requirements and that, under the circumstances outlined in the Boyd Report, the price per ton would decrease. He agreed that the price for Appolo coal was 183.17¢ per MBTU in June 1978 and that the price for No. 6 oil was 186.80¢ per MBTU. He further agreed the price for No. 6 oil and Appolo coal were approximately the same for the entire year of 1978. He contended that, even if one were able to knock $4 or $5 a ton off the price by increasing production, the effect of that would be to pay higher prices than were available in the spot market, and that would be quite ridiculous.

The Commission has closely reviewed the evidence presented herein and concludes that the prices paid under the Appolo contract for the test periods under consideration herein are not unreasonable. In reaching this conclusion, the Commission does not mean to give the impression that it is pleased about the terms or performance under the Appolo contract, but rather that there are overriding considerations. First, it has been clear to this Commission for some time and as a result of other proceedings that since the Arab oil embargo in 1973 electric utilities have not been in a favorable position when it comes to negotiating coal contracts. In many instances the utilities are on the receiving end of little more than a "take it or leave it" stance by the mine owners. While the Appolo contract cannot be considered particularly favorable to Vepco and its ratepayers, neither can it be termed unreasonable when one considers the climate under which such contracts must be negotiated. Second, the Appolo contract was entered into to provide long-term assurances of coal for Vepco's Chesterfield Units 5 and 6, which had been converted back to coal-fired capability. It would be less than fair to commend Vepco for its decision to convert these units while at the same time penalizing for costs through a contract that had to be negotiated in that time frame.

In summary, the Commission concludes that Vepco's long-term coal contracts are reasonable. An examination of Vepco's overall coal procurement activities demonstrates that Vepco's coal purchases compare favorably with those of Duke and CP&L, the utilities chosen by the Public Staff for its comparison. Further, that although the prices paid for coal under the Island Creek, Laurel Run, and Appolo Fuels contracts for the test periods under consideration herein are higher than the Commission would prefer to see, they are not excessive when viewed in the total context of the evidence of record in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The Public Staff contends, through its Report and the testimony of its witnesses, that Vepco has improperly coordinated, planned, staffed, and funded its maintenance activities at its fossil stations. As a result, Vepco's heat rate for its fossil-fired units has deteriorated and the availability of its large generating units is poor. The Public Staff's main witnesses were Andrew W. Williams, N. Edward Tucker, and John P. Rossie. Testifying on behalf of the Company were Stanley Ragone, Raymond R. Bennett, and William C. Daley.

Evidence on the subjects of heat rate and maintenance activities is contained in Sections II and III and the Appendices of the Public Staff's Report and the testimony of the witnesses presented. Heat rate expresses the efficiency with which a generating plant converts energy. It is, simply, the ratio of thermal input (BTU) to net electrical output per unit Kwh. Thus, the heat rate of a unit or

system is the amount of energy from coal, oil, or uranium which is, or has been, required to generate one Kwh of electricity. Low heat rates indicate high generating efficiency.

Section II of the Public Staff's Report provides a comparison for heat rate between Vepco and the 23-company comparison group. This shows Vepco's 1970 fossil-fired heat rate was slightly less (better) than the average of the 23 comparison electric companies. By 1977 the fossil-fired heat rate on Vepco's system was significantly higher than the comparison group average. From 1970 to 1977 the comparison group average increased (worsened) by approximately 0.1% while Vepco's increased almost 6%. This section also shows that Vepco's heat rate fell relatively, in the Public Staff's comparison group, from 9th position in 1970 to 20th in 1977. Of the 23 comparison companies for which full data was available, 12 companies reduced their system fossil-fired heat rates; the best reduction was 5.9% and the next best was 3%. Three companies had heat rates which remained stable. Seven experienced increased heat rates: 0.9%, 1.2%, 1.3%, 2.3%, 3.4%, 6.0% (Vepco), and 9.2%.

Vepco criticized the Public Staff's use of comparison companies because the averages were not weighted by Kwh sales. Mr. Tucker responded under cross-examination that the comparison group average was a numerical average, that an average weighted by Kwh sales resulted in only a slightly different average heat rate for the comparison group, and that using the weighted average fossil heat rate put Vepco in an even less favorable light.

Mr. Ragone argued that the Company should not be compared with other companies because Vepco has installed so much nuclear capacity and this impacts heat rate for the fossil-fired units.

Section III of the Public Staff's Report provides data on Vepco's heat rates by station, unit, and years. Schedule D-6 gives heat rate by year from 1965 to 1977 for each of Vepco's fossil-fired stations. The average for these stations was 10,085 BTU/Kwh in 1965. It improved to 9,845 in 1966 and to 9,766 in 1967, but worsened progressively thereafter for every year but one. For 1977 the heat rate was 10,791 BTU/Kwh. Each station had a similar trend: Bremo worsened progressively from 1970 forward, Chesterfield from 1969, Mt. Storm from 1969, Portsmouth from 1968, Possum Point from 1967, and Yorktown from 1970. Schedule D-7 gives heat rate by year from 1965 to 1977 by generating unit for each of Vepco's fossil-fired stations. All units display a trend of general decline.

Evidence on the subjects of plant availability and other performance factors and maintenance activities is contained in Section III and the Appendices of the Public Staff's Report, and the testimony of the witnesses presented. The

availability factor is the percent of time during a specified time period that a generating unit was available for service whether or not it was actually needed. Availability factor reflects full outages, both planned and forced. Partial outages are not considered in the calculation of availability factor. Equivalent availability factor recognizes both full and partial outages. Capacity factor is the percent of actual electrical output compared to design output; as such, it recognizes full and partial outages as well as dispatching cutbacks for economic or other reasons.

In its review of plant performance, the Public Staff addressed its attention to Vepco's large low cost units: Chesterfield 5 and 6, Mt. Storm 1, 2, and 3, Yorktown 3, Possum Point 5, and Surry 1 and 2. These units have the lowest generation costs, and outages therefore require replacement energy from smaller, higher cost units or from purchases.

The Public Staff's Report utilizes power plant operational data from two sources: The Edison Electric Institute (EEI), which publishes annual reports using data furnished by the electric utilities; and the testimony of James R. Wittine, Director of the Division of Energy Regulation for the Virginia State Corporation Commission, filed with that Commission in Case No. 19960, Application of Virginia Electric and Power Company for an Increase in Rates.

Schedule D-1 of the Public Staff's Report provides a comparison of the annual availability factors of Vepco's generating units with the EEI 10-year averages for the years 1973, 1974, 1975, and 1976. These data, a portion of which is shown below, reveal that Chesterfield 5 had an availability factor below the EEI average for that size unit in all four years. Chesterfield 6 was below the average for the last two years. Mt. Storm 1, 2, and 3 were each below the average for all four years except Unit 1 in 1976. Schedule D-2 provides a comparison of the 10-year average availability factors of the Vepco units (ending in 1976) with the EEI 10-year averages (ending in 1976.) Chesterfield 5 and 6, and Mt. Storm 1, 2, and 3 all fall below the average for their class based on unit size.

	1973	1974	1975	1976
Chesterfield 5	75	59	60	60
300-399Mw EEI Average	85.9	85.3	81.2	80.1
Mt. Storm 1	59	74	59	84
Mt. Storm 2	77	74	52	73
Mt. Storm 3	46	45	61	45
500-599Mw EEI Average	79.6	78.9	78.3	77.9
Chesterfield 6	76	88	58	68
600-699Mw EEI Average	72.9	73.3	74.3	73.5

Schedules D-3, D-4, and D-5 utilize data from Mr. Wittine's testimony. Comparisons are made by service life year against averages for groups containing units of the same size, vintage, and fuel type (except for Chesterfield 5 for which no group averages were offered). These data are summarized below:

Schedule D-3: Comparison of Annual Availability Factors
Mt. Storm 1 below average for 10 of 12 years shown
Mt. Storm 2 below average for 6 of 10 years shown
Mt. Storm 3 below average for 4 of 4 years shown
Chesterfield 6 below average for 6 of 8 years shown
Chesterfield 5 with factors of 81.0, 59.2, 59.7, 57.9, and 37.6 for the last 5 years shown

Schedule D-4: Comparison of Annual Equivalent Availability Factors
Mt. Storm 1 below average for 7 of 9 years shown
Mt. Storm 2 below average for 6 of 10 years shown
Mt. Storm 3 below average for 4 of 4 years shown
Chesterfield 6 below average for 6 of 8 years shown
Chesterfield 5 with factors of 77.3, 56.1, 51.7, 44.8, and 28.4 for the last 5 years shown

Schedule D-5: Comparison of Annual Capacity Factors
Mt. Storm 1 below average for 8 of 9 years shown
Mt. Storm 2 below average for 8 of 10 years shown
Mt. Storm 3 below average for 4 of 4 years shown
Chesterfield 6 below average 7 of 8 years shown
Chesterfield 5 with factors of 58.7, 46.4, 42.0, 34.9, and 20.8 for the last 5 years shown.

The Public Staff criticized Vepco for the poor operational performance of Chesterfield 5 and 6 and the three Mt. Storm units. The Public Staff points out that these units have significantly lower performance than in prior years and that they are significantly below the average for the classes which include these units.

Public Staff witness Rossie analyzed the heat rate of Vepco's Mt. Storm station for the months May through December 1978, the period for which Vepco had filed operational information with this Commission. He selected these units because they are the lowest operating cost fossil units on the Vepco system. Based upon his analysis, it was Mr. Rossie's opinion that the Mt. Storm heat rates are higher than would generally be expected from units of this size. He concluded that the cause of the high heat rate at Mt. Storm is something other than low loading (low plant operation) of the generating units. Mr. Rossie further stated that the Mt. Storm heat rate is 1,500 BTU/Kwh to 2,000 BTU/Kwh higher than the heat rate Vepco has filed with the Federal Energy Regulatory Commission in its 1977 Form 12.

Mr. Rossie also testified on the subjects of plant availability and maintenance activities. Based on his

examination of information filed with this Commission for the period May 1978 through January 1979 for the Mt. Storm station, Mr. Rossie concluded that extreme climatic conditions were only a comparatively minor cause for forced outages during that period. The predominant causes were boiler and ash pit tube leaks and an electrical grounding problem in the rotor of the unit 1 generator. He suggested that this latter outage could be considered a result of inadequate operator training. Mr. Rossie discussed outages in August and September which he considered as possibly preventable with more effective maintenance and better operator training.

On the subject of maintenance, Mr. Rossie was asked if a utility can save by postponing normal maintenance and by catching up later. He responded:

> "The most efficient and least costly course of action for a utility is to have a well-planned preventative maintenance program. A well-planned program would include regular preventative maintenance plus full pre-planning for scheduled outages of each unit, to minimize forced outages. While a scheduled shutdown may be delayed for a matter of weeks for cases of high-load demands, the planning should be continuously updated, inputting carefully monitored observations of operating power plant equipment. It is significant that a vital planning program requires only a comparatively small increment in manpower resources. There is a large leverage in benefits derivable from this type of planning."

When asked how the lack of a properly planned maintenance program affects the cost of power, Mr. Rossie responded:

> "An inadequate maintenance program will result in increases in full and partial forced unit outages, as well as longer-than-necessary scheduled outages. Forced outages can occur at inadvertent times, and may require bringing on line some other generating units, which are more costly in mills/Kwh, for carrying the load, or require the purchasing of power from interconnected utility systems. The report of EPRI, 'Availability of Fossil-Fired Steam Power Plants,' EPRI FP-422SR, dated June, 1977, uses a four to one cost ratio of forced unit outages to scheduled outages. This is an approximate figure and could be higher or lower for any specific incident. Inadequate maintenance also results in deterioration of generating equipment performance as regards efficiency and consequent increase in heat rates."

Under cross-examination Mr. Rossie admitted that the period covered by his analysis was not representative of climatic conditions as they exist from year to year at Mt. Storm, but that that was the only period for which he had information. Mr. Rossie also admitted that he was not aware that a labor strike was in progress at the time the electrical grounding outage occurred, and that substitute

personnel were operating the station. He agreed that using substitute personnel was a good decision in lieu of shutting down the plant.

In support of its case, the Public Staff offered, as Appendices to its Report, a Vepco in-house Task Force Report prepared by Vepco's personnel and several reports by consultants commissioned by Vepco and/or the Virginia State Corporation Commission.

Appendix A to the Public Staff's Report is the major portion of the in-house Task Force Report which was presented to Vepco's management on December 15, 1977. These are statements from that Report:

"The present organization, which has had only minor changes in the past five years to meet specific needs, is not structured nor manned to respond as it should to manage a system the size of Vepco."

"The present supervisory training effort is not adequate to provide the quality of supervision needed."

"The forced outage rates are higher than the industry average and this factor coupled with load curtailment as a result of equipment problems has had an adverse effect on the company's ability to meet its load requirements."

"Heat rates on fossil units have increased substantially over the past five years. Present staffing does not permit sufficient attention to be focused on the identification and correction of the heat rate problems at the station."

"Scheduled outages are not being planned in sufficient detail to permit an accurate assessment of time, man-power and materials required to manage them properly."

"Production O&M does not have a comprehensive formal preventive maintenance program for the stations."

"The work load at the stations has increased significantly in recent years without corresponding increases in personnel. The result is that key individuals are being severely overloaded and only those problems that are most pressing get attention."

"The planning efforts at both the system level and the stations need to be improved, particularly in the area of maintenance."

"The overtime problem has been a long term one and is having a serious effect on the productivity and morale of the employees. Overtime averages 30% over base hours for maintenance journeymen and up to 50% for certain specific classifications."

"The overall maintenance condition of our fossil units is poor."

"The station maintenance work force manning should be completely re-evaluated and adjusted to provide proper support for: (1) routine and preventive maintenance requirements, and (2) overhaul requirements."

"The present Production O&M Organization is inadequate, both in structure and manning, to respond effectively to problems or to implement programs to improve the present inefficiencies. Production O&M remains in a 'crisis' mode and reacts to events as they occur rather than anticipating problems and developing sound alternatives to cope with them."

"At the stations, the general independence of maintenance and operations, as well as the vertical orientation of mechanical maintenance with respect to electrical maintenance, has erected barriers to efficient performance."

"The Surry and North Anna initial manning requirements were underestimated and bringing these stations up to the necessary manning levels has left few experienced personnel available for consideration for key positions in the fossil power stations and the system office. This situation has required the assignment of personnel into key positions who did not have the desired experience level and in some cases individuals were assigned because there was no one else to choose from.... Conversely, highly qualified people have been forced by circumstances to remain in key positions (such as at Surry) because of the lack of sufficiently trained replacements. Meanwhile, their peers in other parts of the Company have attained one or more promotions."

"Authorized station manning levels are based on historical forecasting practices rather than upon a sound analysis of expected workload. This is particularly true for the initial manning levels authorized to support the larger and more complex newer units."

"Reducing the first cost of new units has been accorded priority in recent years, primarily because of the cash crunch and the accompanying high rates of price escalation. Consequently, some equipment is marginal and new units are less easily maintained than they should be. This adversely affects operation and maintenance activities and needs to be recognized by management as having an adverse effect on expenses, manpower requirements and availability."

"Needs for equipment, tools, materials and supplies, particularly for scheduled outages, have not been properly determined well in advance. In some cases, there have been shortages of critical items once an outage has begun

resulting in excessively long outages or work not being done."

"Poor scheduled outage planning and implementation (i.e., overruns on original schedules) causes disruption to subsequent scheduled maintenance throughout the system. Units are not being taken out for needed maintenance on schedule, with the resultant increased risk of performance degradation."

"The present practice involving wholesale temporary transfers of maintenance personnel from one station to another has seriously affected their morale and their respect for the Company.... It has also virtually obviated any possibility for the creation of friendly performance-oriented rivalry among stations."

"One of the loudest generic complaints and a cause of unnecessary overtime work has been the inability of the station to remove a unit from service for maintenance at the time specified.... When a unit does not come down for maintenance when it is scheduled, this action creates unnecessary costs, high equipment failure risks and poor morale."

"The organizational structure within the department has tended to obstruct effective two-way communication. We noted several instances in which the communications had been essentially one-way: downward. Management information has not been effectively prepared and made available, particularly to those directly affected by it. Report preparation methods are obsolete and frequently redundant. Reports tend to focus on past data and events, rather than affording projections for the future, thereby making planning difficult."

"Unit performance and heat rate testing programs are weak at all stations, and this situation is reflected in our increasing system heat rate."

"The current effort of patch and run on boiler-related forced outages runs counter to good maintenance practice and the training that mechanics and electricians receive during their apprenticeship programs."

"The tendency is to force units back into service with an absolute minimum level of repair making it very likely the company will suffer additional forced outages because of repeat failures."

In addition to the Task Force Report, Vepco commissioned Emerson Consultants, Inc. Emerson submitted its Report to Vepco's management in February 1978. This Report is contained in Appendix B of the Public Staff Report. Emerson found:

"Several elements are symptomatic of underlying problems of organization, policy, or procedure:

(1) Maintenance costs are increasing as a result of:

.Excessive overtime of maintenance personnel.

.Expensive repairs arising from incorrect operation or resulting from the continued operation of defective equipment.

.Marginally repaired equipment returned to service prematurely, necessitating a repetition of maintenance work.

(2) Unsatisfactory unit availability and system reliability.

(3) Increasing heat rates.

(4) A sense of frustration and low morale at all levels in the organization."

"A universal problem in the maintenance area is the lack of parts and material for all types of maintenance work. Not only are parts not available when needed, but the requisitioning process is slow and cumbersome. . . . Not only is the materials situation a serious one from a present day viewpoint, but it is understood that a certain amount of cannibalization of equipment is taking place which can cause all sorts of unseen problems in the future. . .."

"Most of the problems identified in the generating stations are associated with the maintenance function. The function is neither well-managed, productive, nor effective...."

"There is little maintenance planning. Other than scheduled major outages, which are planned with varying degrees of thoroughness, routine work is not planned. No one is assigned the task of estimating in advance the manpower and materials required to complete a work order and to develop daily schedules of maintenance work."

"The maintenance forces at most plants are undermanned. The problem is exascerbated by the practice of assigning maintenance men from one generating station to another for major maintenance work. The home station is more than likely crippled in its routine maintenance efforts."

"In many stations, maintenance is a day-shift, 5-day week operation. Some stations have skeleton crews on second shifts, however. In either case, all week-end maintenance is accomplished on overtime. This factor, combined with general undermanning of crews, results in excessive

overtime hours for work maintenance men. Many report 800 to 1,000 overtime hours per year."

"The total maintenance effort - mechanical, electrical, and instruments and controls - is uncoordinated."

"There is no preventive maintenance program. Only one station reported assigning maintenance personnel to check on critical, high-maintenance equipment on a regular basis."

"Storerooms in general are, frankly, a mess.... Security is lax, pilfering common, and misplaced inventory a usual occurrence. Needed materials often are not available."

"Station personnel complain of lack of tools, particularly during major outages."

"Because some equipment designed to operate automatically does not, or because the equipment is poorly maintained and requires special handling, some operating supervisors report a shortage of personnel. A contributing factor could be the lack of training for operating personnel, limiting their efficiency, fostering gross operating errors, and promoting turnover as a result of a sense of insecurity in handling the equipment."

"The lack of maintenance planning and the general maladministration of stores result in last-minute, rush purchase requisitions to complete critical maintenance jobs. Normal procedures apparently require months to process a purchase requisition until delivery of materials. For this reason, a bypass procedure has been formulated to hand carry orders to purchasing. Although this latter procedure may shorten the time required, it upsets the processing of routine orders, so that stock-outs are common. The storekeeper's response is to increase the stock on hand of a given part or material to compensate for the extended purchase-to-delivery interval. Thus total inventory value increases exponentially."

"...the advantages to be gained by developing the management skills of the lower levels and by showing confidence in them far outweigh the risks. The risk of not delegating sufficient authority is even greater, for mediocre managers will make mediocre decisions, and there will be difficulty in filling the upper ranks of management with good men in the years ahead."

Appendix C of the Public Staff's Report is the Report prepared for Vepco by System Development Corporation. The following statements are included in this Report:

"We found that Vepco's outage records were inadequate as source documents for the study. Kept primarily for reporting to the Edison Electric Institute (EEI), they do not contain the information needed to make component

reliability assessments, compute mean time to failure, and compute mean time to repair. Further, they cannot be used to detect incipient failures in time to take corrective action."

"We investigated the effect of the absence of such data on the productivity planning effort at both the station and the corporate level. We found that, lacking data, planners at both levels have apparently relied on personal or group judgments in determining what actions should be taken to improve productivity. When the judgments at the two levels have been different, those of the corporate planners have inevitably prevailed. We believe this situation has adversely affected the productivity of Chesterfield No. 6 (and probably of units elsewhere as well)."

"For example, each year Chesterfield submits a plan for annual maintenance of its units in which is specified the number of days of scheduled outages that will be required. When this plan is reviewed at Richmond, the amount of scheduled outage time is almost always reduced. It should be noted that neither Chesterfield nor Richmond can be reasonably sure of what the right amount of outage time should be; neither has the outage, reliability, and diagnostic data needed to make a well-informed estimate. However, unless Chesterfield's planners deliberately overestimate the time needed (and we found no evidence of this), Richmond's practice of reducing the time almost certainly means that on some occasions - perhaps many - not enough time is allowed to perform proper maintenance."

"We found that the same thing often happens when there is an unscheduled outage: Chesterfield's proposed allowances for time and manpower are frequently reduced at the corporate level. The fact that Chesterfield No. 6 has repeated outages from the same causes may perhaps have been the result of such corporate decisions."

"The overall availability rates for the units in the Vepco system indicate that other units suffer the same maintenance problems as Chesterfield No. 6."

"During our study of Chesterfield No. 6, much was made of how much it costs Vepco to extend an outage for even a single day to get the job done right. However, we heard precious little about the expense of subsequent outages as a result of not taking the time to do it right the first time. We feel that analysis of this tradeoff should be a part of the maintenance planning process. We see no evidence that it is currently being done on a routine basis."

"There is not ... any contingency planning for base load units that may fail during the year and interfere with the planned maintenance of another unit."

"An aggressive preventive maintenance program, integrated into the corporate planning process, is essential for Vepco to improve the productivity of such units as Chesterfield No. 6. This preventive maintenance program is necessary to maintain an acceptable state of repair, once it has been reached."

"We found no approved corporate procedure by which productivity goals are set and action plans are developed for meeting those goals."

"Outage records (Chesterfield No. 6) are inadequate for any type of detailed equipment analysis. Component failure rate calculations based on them are impossible."

"Vepco's corporate planning does not currently make use of diagnostic information available at the power plant. By diagnostic information we mean unit operating parameters that are monitored, such as pressures, temperatures, fuel consumption rates, vibration levels, and electrical production. If these parameters are recorded and their trends determined, and properly presented, they can be used by plant personnel and management alike as indicators of future equipment problems."

"We consider it critically important that Vepco improve its corporate planning for operations and maintenance. No significant improvements will occur at Chesterfield No. 6 until Vepco can provide sufficient time, money, materials, and manpower to get Chesterfield No. 6 back in shape and keep it in shape. This can only be accomplished through a corporate plan. Specific equipment problems at Chesterfield No. 6, as revealed by outage statistics, are meaningless if maintenance crews are forced into 'bailing wire' repair jobs by budget, time, and manpower limitations."

"Since Vepco will almost certainly lose some of the cost recovery privileges it has enjoyed under the automatic fuel adjustment clause, Vepco can no longer afford not to improve the reliability and efficiency of its power plants. With a toned-down fuel adjustment clause in effect, the stockholders will begin to feel the impact of low power plant productivity, historically felt solely by the ratepayer."

"We stress this fact because we are certain that the automatic fuel adjustment clause will soon become a thing of the past. With it will go the luxury of deferring improvement projects at the expense of decreased efficiency and increased fuel costs."

"SDC recommends that Vepco increase and improve its corporate planning for operation and maintenance activities company wide. We assume that the problems we found are not unique to Chesterfield No. 6."

Appendix D of the Public Staff's Report is a report prepared for the Virginia State Corporation Commission by Theodore Barry & Associates. The study reviewed Vepco's management of power station construction and engineering programs. The following are statements from the Barry Report:

"Vepco's approach to management of power plant programs can best be described as one which is in transition. They are moving toward implementation of an organization and level of management control appropriate for their large construction programs. While some implemented changes have affected the ongoing projects in a positive manner, weaknesses in planning, staffing and management direction and control and financial shortages have caused other needed changes and improvements not to be implemented."

"General weaknesses involved management's slow implementation of changes in response to identified problems. Improved management skills in planning, controlling and coordination are needed."

Vepco offered the testimony of Raymond R. Bennett for comment on the Public Staff's Report with regard to heat rate and plant availability. He explained the concept of heat rate and stated that it could not be used alone to evaluate the operating efficiency of a unit or a system, but could only be a guide due to the large variety of factors which might be involved. He further stated that a detailed examination would be necessary before a conclusion could be reached and he was critical of the Public Staff's Report because it contained no such examination. Finally, he offered his analysis of Vepco's heat rate. Mr. Bennett criticized some of the Public Staff's availability comparisons and offered his own comparisons. He also commented on availability at the Mt. Storm units.

Witness Bennett discussed the results of his analysis of Vepco's fossil-fired heat rate for 1973 and 1977, which showed that over this period heat rate had increased (worsened) 281 BTU/Kwh. This study showed that 50% of this change was due to a change in unit loading, 12% was due to error in fuel measurement, 13% was due to problems with the high pressure feedwater heaters, 29% was miscellaneous, 4% was unaccounted for, and the addition of new fossil units provided a 9% improvement.

Witness Bennett testified that loading was a significant factor because this loading occurred as a result of the new, low fuel cost, nuclear units being based loaded which pushes the fossil units up on the loading curve. As a result, according to Mr. Bennett's testimony, the fossil units could not be used as efficiently as before and the heat rate worsened.

Under cross-examination Mr. Bennett conceded that his heat rate study did not take into account the effects on loading

of the low availability of Vepco's major units and admitted that low availability would worsen the Company's heat rate. The Public Staff, through cross-examination, offered evidence purporting to show that other utilities, which have added a comparable amount of nuclear capability to their systems, have been able to control their fossil heat rates. The utilities in the comparison group were narrowed to those which had 20% or more nuclear generation in 1977 (Vepco generated 25.66% of its energy with nuclear in that year). Of these 10 companies, four had decreases (improvements) in heat rates of up to 3% and one held stable. Of the remaining five, Vepco had the highest increase, 6%, almost double the next worst performer.

Under cross-examination witness Bennett also conceded that a change in heat rate as found in his analysis to be due to errors in fuel measurement has the effect of charging the ratepayers for fuel that was never consumed.

The Public Staff tendered cross-examination exhibits which updated their Report by providing heat rate data for each of Vepco's generating units for 1978 and the first two months of 1979. Mr. Bennett agreed that heat rates at a number of Vepco's units were significantly worse now (1978) than both the 1970 and unit design levels. As examples, the heat rate of Mt. Storm 1 for 1978 was 10,627 BTU/Kwh compared to 9,814 BTU/Kwh in 1970 and a 9,028 BTU/Kwh design heat rate; Mt. Storm 2 had a 1978 heat rate of 11,012 BTU/Kwh versus a 1970 heat rate of 9,700 BTU/Kwh and a 9,028 BTU/Kwh design heat rate; Mt. Storm 3 had a 1978 heat rate of 11,105 BTU/Kwh compared with a 1973 heat rate (first year of operation) of 9,749 BTU/Kwh and a 9,028 BTU/Kwh design heat rate; and Chesterfield 5 had a heat rate for the first two months of 1979 of 13,617 BTU/Kwh compared with its 1970 heat rate of 9,556 BTU/Kwh.

Under cross-examination Mr. Bennett stated that he was generally familiar with the requirements of an adequate maintenance program for fossil generating units and that planning, manpower, spare parts, and a preventive maintenance program were all necessary ingredients. He stated that he had not investigated Vepco's maintenance program and agreed that neglected maintenance of units would affect heat rate as well as availability.

When asked if he had investigated whether wear has been a factor in the increase of Vepco's unit heat rates, Mr. Bennett responded that he had not, that that would require a very lengthy examination and it is done by monitoring heat rate tests which are performed from time to time. He stated that he had not used Vepco's heat rate test curves because they contained so many discrepancies that he could place no confidence in them. On further questioning, he stated that test curves require a day to produce and although preparations are necessary they do not require taking the unit out of service.

On the subject of availability, Mr. Bennett was critical of the Public Staff's comparison of Vepco units with the EEI averages (Schedule D-1). He stated that these averages are for groups distinguished only by size and that type of fuel should be considered as well as particular circumstances. Mr. Bennett offered a comparison of the 10-year average availabilities of Vepco's units against the EEI averages. Regarding the units that are controverted in this proceeding, he stated that: Chesterfield Units 5 and 6 equalled the EEI average (for their size units) if credit is given for outage time during conversion of the unit from coal to oil and then from oil to coal. Mt. Storm Units 1 and 2 were at least equal to the EEI average if consideration is given to the poor quality of coal available for use at that station, and Mt. Storm Unit 3 was below the EEI average, but the availability of that unit has since improved considerably.

Concerning the Mt. Storm units, Mr. Bennett testified that the quality of coal coupled with the design of Units 1 and 2 have caused boiler problems that have reduced availability. Mt. Storm 3, which has a balanced draft type boiler, was plagued in its early years of operation by failures of induced draft fans. He stated that the fan problem has since been solved and the availability of that unit has improved.

Under cross-examination Mr. Bennett agreed that his 10-year average availabilities for the two Chesterfield units were near the EEI average only as a result of the very good performance at Chesterfield in the early years. He acknowledged that Chesterfield 5 had gone from 75% availability in 1973 to 38% in 1977 and 39% in 1978. He agreed that 39% was "very poor." He accepted that the national average availability for coal-fired units 400 Mw and larger was 73.5% in 1975, the most recent year covered by a report from the Department of Energy dated April 1978. He further acknowledged that Portsmouth 4 went from an availability of 89% in 1973 to 38% in 1977, that Chesterfield 6 was 47% in 1977, and that Mt. Storm 1 was 38% in 1978.

Vepco offered the testimony of William C. Daley for comment on the Public Staff's Report. He reviewed the circumstances surrounding numerous outages, as well as the problems with feedwater heaters (referred to by Mr. Bennett). Mr. Daley discussed the activities of the Task Force (of which he had been chairman). He described the actions Vepco is currently taking to improve its maintenance program. Mr. Daley testified that maintenance activities at the fossil-fired plants had adversely affected heat rate and availability but stated that these activities were, nonetheless, appropriate.

Witness Daley testified that after Chesterfield 5 and 6 were reconverted from oil back to coal, their availability rates were low because of boiler tube failures caused by the

accelerated tube life wastage which resulted from firing oil. He stated that a portion of the boiler tubing was replaced in 1977 and 1978 at a cost of over $3 million and that this eliminated one of the major problems affecting unit availability. Another problem which resulted in a number of unit outages and curtailments was the failure of bearings on the shaft-driven boiler feed pumps on the large units. Mr. Daley testified that Vepco, in a joint effort with a consultant and the equipment vendor, had substantially modified the bearings on three of the large units and would modify others in the forthcoming scheduled maintenance outages. Portsmouth power station experienced boiler tube failures similar to those at Chesterfield. Thorough acid cleaning and extensive tube repairs on Unit 4 in early 1975 did not reduce the tube failures. Witness Daley testified that Portsmouth 4 was removed from service for major boiler tube work and that, since its return to service in early 1976, that boiler had performed very well.

Mr. Daley testified that the feedwater heaters at Portsmouth 4 and Possum Point 4, which went into service in 1962, began to experience tube leaks and were replaced in 1967. Tube leaks subsequently developed again at those units and at Mt. Storm, the Company's lowest cost fossil station. The problem became a continuous one. To solve it, Vepco analyzed the feedwater heaters to develop new specifications to which new heaters could be built. Vepco employed Battelle Laboratories to assist in the testing of existing heaters and in the development of specifications for the new heaters. Contracts for 11 new feedwater heaters were let in 1977 and the first two new heaters were installed in 1978.

Mr. Daley stated that his Task Force commenced its activities in July 1977 and submitted their report to management in December 1977. During this period his group visited all of the Company's power stations and interviewed over one hundred employees. They also visited seven other utility companies. Emerson Consultants was commissioned in November 1977 and its Report was submitted in February 1978. He stated that other utilities were pleased with the work Emerson had done for them. Mr. Daley testified that both groups were investigating basically the same subject matter but that they proceeded independently. He stated that the Emerson Report generally agreed with the recommendations in the Task Force Report.

Mr. Daley testified that his Task Force and Emerson recommended new organizational structures for the Operations and Maintenance Department and the power stations. He stated that in September 1978 the system office was reorganized and that in January 1979 the nuclear stations (North Anna and Surry) were reorganized. Regarding the fossil stations, Mr. Daley further stated that Mt. Storm had been reorganized in February 1979, Chesterfield and Yorktown in April 1979, and two other stations were scheduled for reorganization in June 1979.

Mr. Daley further testified that a number of programs are currently in development. These are:

"1. Unit Availability Improvement - Problem areas in specified units concerning availability, heat rate, and capacity limitations are being identified and corrective plans developed. The large coal-fired units in addition to the nuclear units have been given top priority in this effort.

"2. Maintenance Management Program - Maintenance planning with an improved work order system are being developed to improve maintenance productivity, minimize outage time and reduce forced outage rates. With the assistance of Emerson a formal preventive maintenance program will be established in all power stations.

"3. Unit Testing - A more comprehensive unit full-load testing program has been started. This program will permit the station personnel to more quickly determine when below optimum unit performance occurs and to take the steps necessary to correct such conditions promptly."

Mr. Daley testified that beginning about 1972 and continuing until recently there had been two fundamental causes of problems in performing maintenance work at the fossil-fired stations. The first was a series of unanticipated outages at the Surry nuclear units that required allocation of maintenance personnel to that station on a priority basis. The Surry units came into service in 1972 and 1973 and during the first three to four years of their operation these units experienced a number of unusual equipment problems that resulted in lengthy outages. Mr. Daley stated, "Because we had to concentrate so many of our most qualified maintenance personnel at Surry, routine maintenance at the fossil-fired units could not be performed as promptly as would have been desirable." The witness testified that it was appropriate to focus all resources on the nuclear units because getting them into operation avoided enormous amounts of fuel expense from the coal- and oil-fired units.

The second reason offered by Mr. Daley was that since 1972 scheduled outages for maintenance work on the fossil-fired units were deferred due to delays in completion of the nuclear units and forced outages of those units. Mr. Daley stated, "When the nuclear units were unavailable for service, because of construction delays or unanticipated outages, we kept our coal-fired units at Mt. Storm and Chesterfield in service, even though they were scheduled to come out of service for maintenance and, in fact, needed maintenance. In several instances continuing to operate these units, instead of taking them out of service for maintenance, led to subsequent forced outages of these units." The witness continued, "Normally a fossil unit will

be completely overhauled every three to four years, with other maintenance work occurring between those major overhauls. Because we interrupted that normal schedule and deferred such maintenance work on our large fossil units, for the reasons I have just stated, our forced outage rates on these units have increased. This is bound to occur when scheduled maintenance is deferred." Mr. Daley testified that these practices were, nonetheless, appropriate because it is less expensive in terms of fuel costs to operate coal-fired plants than the higher generation cost units or to purchase energy from other utilities.

Mr. Daley testified that the trend of maintenance expenditures for Chesterfield and Mt. Storm for the period 1970-1974 shows a general increase in spending level at each of these stations. In 1975 a significant increase in maintenance expenditures was made at both plants to improve unit performance and/or to reduce fuel costs. This was in addition to the capital expenditures on those units. Mr. Daley further indicated that expenditures for 1976, 1977, and 1978 continued at a high level and are expected to increase substantially in 1979. According to Mr. Daley, the maintenance expense for Mt. Storm should have increased in 1974 and subsequent years because of the third unit added in 1973, but the maintenance level for Mt. Storm reflects considerably more than the added expense for the addition of one unit. Mr. Daley testified that, during the period of 1972 through 1978, Vepco increased its power plant maintenance staff from 411 to 780 people, an increase of approximately 90%. An example of Vepco's efforts to improve performance was the major modification ($8 million) to the boilers of Mt. Storm 1 and 2 in 1974 and 1975. This was done to eliminate power house leaks.

Under cross-examination Mr. Daley was asked to read and comment on passages from memoranda on availability improvement provided to the Public Staff by his superior, Mr. Stallings. Mr. Daley stated that the author of the comments "took liberties in writing up this report here in trying to get people's attention." The first passage included the following:

> "A quick overview of Vepco's performance over the last six years using the availability yardstick shows that (1) During summer and winter peak seasons since 1971, the availability of large fossil units has declined from 90 percent in the summer of 1971, to a low of 61.5 percent in the winter of 1975-76. Since 1975-76 the availability of large fossil units has been on the upswing but still is not above 76 percent. (2) During the same period, the availability of our other fossil units has steadily declined from a high of 93.5 percent in the summer of 1971, to a low of 73.5 percent in the winter of 1975-76. Since that time, we have still only hovered around the 80 percent mark. This is not nearly good enough. (3) For the entire period 1971-1977, the availability of our large fossil units has averaged 71.25 percent. The Edison

Electric Institute gives an average figure for these same size units during this period of 80 percent to 85 percent. (4) For the entire period 1971-1977 the availability of our other fossil units has averaged 83.25 percent. The Edison Electric Institute gives an average figure for these same size units during this period of 85 percent to 90 percent."

He continued: "The coal mill problems outage was caused by poor operating procedures on one mill and worn parts on two others. The clinker in the ash pit was caused by poor combustion operation and lack of pulling bottom ash."

"Your major problem as of late has been tube leaks. There were a number of contributing factors to this situation. A few were (1) no acid wash of the boiler either after the long coal conversion outage in 1975 or the turbine rotor failure outage in 1976, (2) running with only two of three boiler circ pumps for much of the last three years. There were other factors, but let us look to prevention of this in the future."

"Chesterfield 5 and Portsmouth 4 were both guilty of burning up a generator in 1974. Both should have learned a lesson, but Portsmouth 4 burned up its generator again in 1977. Chesterfield 5 had better not. You make sure the field voltage is on a correct value every time you monitor the control board. Most important is that you get the generator core temperature monitor in working order..."

Mr. Daley said that the clinker problem did not result from poor combustion but because the tilts went down into the pit and, with the high ash content coal that was burned, a clinker built up. The problem was corrected. Mr. Daley testified that the company had put in protective systems that would preclude burning up more generators. He continued reading:

"Since 1973, the availability of Chesterfield Number 5 has consistently been among the worst in our system. So far in 1977, it is the worst. The unit has had its problems but this up-coming retubing job will end all viable excuses for poor performance. Consider this job time for retubing as your annual outage also. Do not ask for another annual in 1978. Get all your work done this time.

"Taking into consideration a 100 day outage for retubing, I see no reason why Chesterfield Unit 5 cannot have an availability in 1978 of 67 percent. If your forced outage rate can drop to 8 percent or below, you can meet this goal..."

Mr. Daley accepted that the availability of Chesterfield 5 for 1978 was 39%. Referring to Chesterfield 6 he continued:

"The fire in 'E' mill was a result of poor operating procedures. 'E' and 'F' mills were almost completely destroyed. Has a fire brigade been set up at Chesterfield?

"The ground overvoltage outage was due to operational neglect in not answering an alarm in 230 kv switchyard.

"You, of course, know about the preheater thrust bearing outage and the poor upkeep that caused it."

Referring to Mt. Storm 2, Mr. Daley continued:

"Operations has got to stay on top of these clinker build-ups or we are going to experience more outages in the future."

Mr. Daley testified that Vepco has taken measures, such as putting a soot blower in the throat of the boiler, to prevent this from happening. After the clinker outage, Vepco put in a window so that the operator could look in to see that no clinker was forming. He stated that requiring the operations personnel to go in and break up clinkers if they formed, rather than maintenance people, had a good effect.

Continuing, Mr. Daley read further concerning Portsmouth 4:

"Of course, in December, Unit 4 began a long forced outage for generator repairs. This outage was caused by operational neglect.

"The scheduled acid wash lasted over 8 days. This is much too long. It should be no longer than 3 to 4 days.

"For the second time in five years, operational neglect destroyed the generator field on Unit 4.

"The two cases of generator field failure, one in 1973-74 and one in '77, were due to operational neglect."

"Vepco has a number of units whose net available output now falls significantly below their original rating. At present, the aggregate 'lost' capacity is in the range of 350 Mw to 400 Mw. This loss adversely affects Vepco's reserves and reduces the possibilities of removing equipment from service for needed maintenance."

When asked if he would not say that these passages would indicate that operational neglect was present in these outages, Mr. Daley replied, "No, I can't say that operations did not contribute to the Portsmouth field failures." Mr. Daley agreed that the reports show a number of cases caused by operational neglect or negligence on the part of the operators, but he stressed again that the documents were prepared to bring the attention of people to problem areas.

Under cross-examination by the Attorney General's office Mr. Daley stated that of the 411 maintenance personnel in 1972, 42 were at nuclear stations and that of the 780 personnel in 1978, 268 were at nuclear stations. The Commission notes that this reflects an increase of 40% in maintenance personnel at fossil-fired plants during a period when Vepco increased its fossil-fired generation by 45%, due primarily to the addition of units at Mt. Storm, Possum Point, and Yorktown.

Company witness Stanley Ragone offered direct testimony in general response to the Public Staff's charges that Vepco has avoided necessary capital expenditures that would have resulted in improved heat rate and unit availability and thereby reduced fuel costs. Mr. Ragone stated that the Public Staff's charges are not supported by facts, that Vepco has made substantial expenditures for improvement of operation and performance of generating units. He offered Exhibit SR-4 to show capital expenditures beginning in 1974 and projected for 1979. This exhibit shows $85 million spent during the 1974-1978 period and $73 million estimated for 1979. Mr. Ragone described some of the expenditures:

$8.2 million spent in 1974-75 for Mt. Storm units 1 and 2 to reduce forced outages due to penthouse leaks. Mr. Ragone stated that this expenditure had proved to be highly successful.

$820,000 to purchase a new rotor for Mt. Storm 3 as a result of turbine blading failure in 1976.

$130,000 for a spare induced draft fanwheel for Mt. Storm 3.

Ordered 11 replacement high pressure feedwater heaters in 1977. Cost expected to be $3.3 million.

Ordered simulator facility for the nuclear units in 1975. Facility completed in 1978 at a cost of about $5 million.

Ordered a System Operator Center in 1976 at a cost of over $6 million. Completion expected in late 1979.

With regard to production maintenance expenses, Mr. Ragone testified that these expenses have increased substantially, from $13.7 million in 1973 to $61.2 million in 1978.

Under further direct Mr. Ragone responded to the Public Staff's charge of mismanagement by referring to two independent management audits of the Company, one performed by Arthur D. Little Company in 1975 and the other by Theodore Barry and Associates in early 1978. Both reports had been retained by the Virginia State Corporation Commission. Mr. Ragone read from the Little Report:

"We were favorably impressed with the managerial capabilities of Vepco's management team. Vepco has

developed a management style which, while relatively informal, has brought the participation of the many technical specialties which are needed in the running of a utility to focus on and resolve long-range as well as short-range problems."

"Vepco's managers are highly competent technically. We found few, if any, indications of other than high skill and proficiency. Staffing levels are lean, therefore, in the body of the report we point out areas where additional staff might be usefully employed."

"In summary, we found no serious deficiencies in the company's past practices related to forecasting, system planning, engineering, construction, or fuel purchases which led to poor management decisions in these areas. Current and future conditions, however, call for some procedural changes if management decisions are to continue to be sound and in the best interest of the public. In summary, we observed no significant shortcomings in Vepco's general management; indeed we were favorably impressed with the motivation, dedication and effectiveness of its management team."

Mr. Ragone stated that:

"Arthur D. Little's recommendations were implemented as soon as practical. Those recommendations included strengthening our forecasting activities; planning to accommodate a range of future system load growth rates and communicating the significance of such growth to customers, employees, regulatory commissions and investors; expanding in-house construction project management; determining which plants should be converted from oil to coal and how emission regulations would be met; and increasing the staff of the Fuel Resources Department. Another recommendation was that we obtain additional supplies of uranium beyond those then covered by contract."

Concerning the Theodore Barry Audit, Mr. Ragone stated:

"TB & A primarily looked at construction activities and did not specifically evaluate the restraints on management of availability of capital and operating funds or personnel required for the 95 TB & A recommendations for improving Vepco's construction practices. All but 13 of their recommendations had been started or investigated as to feasibility prior to the TB & A Report. Ten had already been completed. A number of the recommendations had to be deferred because of lack of manpower or capital."

"TB & A carefully conducted work force utilization and productivity studies at Vepco's construction projects and concluded that 'Work Sampling . . . disclosed productivity levels equal to or greater than those experienced on other

projects. In addition this in-depth study pointed out that our salary levels and manning were below those of the industry, which was true at the time because of the need to keep expenditures down. Since the TB & A investigation at our construction projects, we have reviewed reports of 3 TB & A investigations and one other management consultant study at 4 other utilities and in all cases the work force utilization levels for the North Anna and Bath County projects far exceeded those levels at the other utilities (Long Island Lighting Co., Public Service Electric & Gas, Washington Public Power Service, and TVA). This was the second independent audit of Vepco management in the past 4 years and, although both audits resulted in some recommendations to improve operations, neither was derogatory of Vepco management."

Mr. Ragone was asked if he had any further general comments on the Public Staff's criticisms. He responded:

"In the testimony I have already given I have tried to point out to the Commission how the Public Staff's criticisms are based on superficial review of statistics and incomplete review of the relevant facts."

"The Public Staff charged that Vepco 'has badly abused the fuel adjustment mechanism' by not investing capital to lower fuel costs. The Public Staff made no mention of our commitment to nuclear energy and pumped storage hydro-electric facilities, both requiring higher investment than other base load and peaking alternatives. They could have readily reviewed our capital expenditures and improvement requisitions which are listed in our monthly financial reports. If they had done so, they would have seen the major capital expenditures made for the items I have specifically mentioned and numerous other expenditures made for improvement in the availability, reliability and operation of our generating units. The Public Staff has also charged that we did not spend money to maintain our facilities, but the testimony of Mr. Daley shows otherwise."

"With respect to operating statistics such as heat rate which Mr. Bennett discusses, the Public Staff apparently made no inquiry into the causes for changes in heat rate but simply looked at raw statistics and then published charges of mismanagement and deliberate abuse of the fuel cost adjustment procedure."

"The members of the Public Staff have not had the experience or the responsibility of operating a large, complex electric utility system. No one aspect of such a system can be meaningfully evaluated in isolation. As my testimony has shown, there is an interrelationship among the construction programs, load forecasts, fuel availability and price, availability of capital, environmental and other government constraints, personnel requirements, reliability of service considerations and

innumerable other factors, large and small, that must be considered in the day-to-day and year-to-year operation of a large utility system such as ours. There are also the changes in the economy, interest rates, foreign political and economic actions, unusual equipment failures and other events over which we have no control and which we cannot reasonably foresee. We must constantly make decisions in light of all of these considerations, and those decisions cannot properly be judged in hindsight on the basis of their effect on a single or even a few aspects of our operations."

Under cross-examination Mr. Ragone was referred to his statement that the Public Staff's criticism concerning heat rate was unjustified and was asked to read from the Vepco Task Force Report page II-3. Mr. Ragone responded:

"Heat rates on fossil units have increased substantially over the past five years. Present staffing does not permit sufficient attention to be focused on the identification and correction of heat rate problems at the station."

Mr. Ragone agreed with the statement that a problem existed but that that was December 1977 and since that time there have been "changes and modification."

When asked what the changes were and whether heat rate was now improved, the witness responded:

"Feedwater heaters weren't the only changes... On Mt. Storm 1 and 2 in 1974 and 1975, we spent substantial amount of money on water-air heaters which improved the boiler efficiency. We spent the item, an ID fanwheel, induced draft fanwheel, reduces the outage time which reduces the overall heat rate for the month because you will have less start-ups and less shut-downs. We added some computer systems in 1978 and 1979 and haven't finished them yet on Mt. Storm. We have added the Chesterfield air pre-heater wash system on Units 4 and 5 in 1974 that clean the pre-heaters regularly which improve the boiler efficiently. We went to low excess air firing for both environmental reasons and improved efficiency on Units Chesterfield 4, 5 and 6. We had the new turbine supervisory instrumentation on Chesterfield 1, 2 and 3 which helped in the start-ups and shut-downs. We had new computer replacements at Chesterfield 5. That is not completed yet. We have got the Surry, a number of changes that were made at Surry. In 1977 we bought a new rotor for Portsmouth No. 3, that was bought in 1977 but I am not so sure it is in place yet. There are some other areas that I know we have done to improve the expenditures. I can look them up, but these were all to improve the efficiencies of the units. The new rotor for Mt. Storm is obviously one. Without having one row of blades on the rotor, you generally lose about 7 or 8 per cent of the output, probably five per cent of the heat rate."

When asked again whether heat rate had improved, Mr. Ragone answered:

"I would say they have increased but not necessarily because of damage of the units or maintenance to the units. I think they are due to a lesser use of the coal-fired units, the fossil units which were obvious when you had the data like 50 per cent nuclear in the last three months of 1978 which you used as a base or the Staff used as a base. That is one area. You will also have different coal qualities, different operational qualities on both low sulfur oil, high sulfur oil; you are adding more and more station power when you add newer precipitators which we are doing. When we went to the precipitator operations on Chesterfield 5 and 6, the upgrading one on Mt. Storm, those type things all increased the power output - excuse me - increased the station power. I admit it is only a small amount but it still affects heat rate. There are a number of other things that were done to meet air quality standards that also increase power requirements and reduce the saleable electricity. We had to meet the water quality, the sewerage treatments and the drainage of outside of the units. All of these things eat up power and are going to reduce heat rate."

Under further cross-examination Mr. Ragone was referred to his comment under direct concerning the Public Staff's charge that Vepco has avoided capital and maintenance expenditures where such expenditures could lower fuel costs so that the excess fuel costs will be recovered from the ratepayers through proceedings pursuant to G.S. Section 62-134(e) rather than the company's seeking recovery in a general rate case. The witness was asked to read from page 2.1 of the study by System Development Corporation. Mr. Ragone quoted:

"Since Vepco will almost certainly lose some of the cost recovery privileges it has enjoyed under the automatic fuel adjustment clause, Vepco can no longer afford not to improve their reliability and efficiency of its power plants. With a toned-down fuel adjustment clause in effect, the stockholders will begin to feel the impact of low power plant productivity historically felt by the - solely by the ratepayer. We stress this fact because we are certain that the automatic fuel adjustment clause will soon become a thing of the past. With it will go the luxury of deferring improvement projects at the expense of decreased efficiency and increased fuel costs."

Mr. Ragone responded:

"And I will not accept that and I didn't accept it when the consultant's report was handed to me. The consultant was not capable of making that decision. That's his opinion. He was not hired for that. I don't believe his expertise was along that line and he didn't - he made

other comments in this report that I basically wash out of my mind because he didn't visit Surry. He made comments that we weren't pursuing certain things at our nuclear plants that he didn't even investigate. So this report is a very poor one. It was done, once you get it, it was a poor one. I didn't accept it. When it came to me, the people that hired these, the people under my supervision that hired them, I didn't know they hired them at the time but it was their choice. That's their prerogative but when I read it, this man went - this group went well-beyond their expertise."

Under cross-examination Mr. Ragone was referred to his direct testimony concerning the management audits performed by Arthur D. Little and Theodore Barry. The witness agreed that the Theodore Barry study dealt only with engineering and construction activities at the Company's Bath County and North Anna power stations. Concerning the Arthur D. Little study, Mr. Ragone agreed that its purpose was to focus on questions related to Vepco's planning, construction, and fuel procurement. He agreed that this had not been an audit of the entire company's operations and that Vepco had never had an audit of its entire operation. He stated that the cost of such an audit could be better spent elsewhere. When asked if he thought the Company could possibly learn from such an audit, Mr. Ragone gave an unresponsive reply.

Mr. Ragone was then directed to the Vepco Task Force Report. Counsel for the Public Staff read statements from the Report and asked the witness if he agreed.

1. "The present organization, which has had only minor changes in the past five years to meet specific needs, is not structured nor manned to respond as it should to manage a system the size of Vepco."

The witness said he agreed.

2. "The present supervisory training effort is not adequate to provide the quality of supervision needed."

The witness stated that he agreed.

3. "The overall maintenance condition of our fossil units is poor."

The witness stated that was true in several of the stations, that "Mt. Storm was in pretty good shape maintenance-wise in '77-'78."

4. "The forced outage rates are higher than the industry average and this factor coupled with low curtailment as a result of equipment problems has had an adverse effect on the company's ability to meet its load requirements."

The witness responded that there was no question about that.

5. "Heat rates on fossil units have increased substantially over the past five years. The present staffing does not permit sufficient attention to be focused on the identification and correction of the heat rate problems at the station."

The witness answered that he partially agreed because they had not made a detailed study.

6. "Understaffed stations and continual long, overtime hours averaging 30 to 50 percent annually are driving our maintenance supervision and work forces to the point where they are unable to work effectively and absenteeism is becoming a problem."

The witness stated that he did not agree 100 percent because employees are absent for tax reasons, not because they are tired of working.

When asked if it is a good policy to plan maintenance so that people have to work 30% - 50% annual overtime the witness responded that it was not a good way to plan and that it was never planned that way.

7. "Vepco has a number of units whose net available output now falls significantly below their original rating. At present the aggregate loss of capacity is in the range of 350 to 400 megawatts."

The witness stated that he agreed, but

> "... you've got to know the reason. It doesn't necessarily have anything to do with maintenance. It has a question of Chesterfield 5 and 6, the coal availability, the coal quality that's obtainable now compared to the others, all affected capacity. Oil, some of the oil firing had an effect on the capacity of the units and are in the process of modifications. You can't just say this had anything to do with maintenance. Some of it did. Some of it didn't. The majority of it, I think, was due to other things."

8. "New (and prospective) supervisors are given little, if any, supervisory development training."

The witness stated that he did not necessarily agree.

9. "There is no policy and procedures manual delineating; (1) How the department is to operate, (2) Desired lines of communication, and (3) Specific areas of responsibility."

The witness responded that he did not think it was necessarily desirable to have written instructions on how to operate a department.

10. "Scheduled outages are not being planned in sufficient detail to permit an accurate assessment of time, manpower and materials required to manage them properly."

The witness stated that he disagreed with respect to the nuclear units and Mt. Storm.

11. "Production O&M does not have a comprehensive formal preventive maintenance program for the stations."

The witness stated that he agreed.

12. "In some cases there have been shortages of critical items once an outage has begun resulting in excessively long outages or work not being done."

The witness responded:

> "I think that that statement is correct but you've got to know what they were talking about. Yes, you had the boiler discussion. We thought we had a boiler problem that was only in the front wall of the boiler. It turned out that after you got into it and took the - and thoroughly investigated, the problem was in more area than that. You try to keep your maintenance costs to a minimum. You also try to keep your inventory costs to a minimum. The front wall of these boilers, you bought in 10-foot wide panels, 60 to 80 feet long. You don't go around and just buy a complete boiler wall. You buy what you think you're needing. After you get in there it's possible that you need something extra and it takes more than two weeks to get it. I don't argue with that. In fact, I can see, and I've been discussing with my people recently, the cost of the inflation times and the need to keep inventories down, you no longer can depend on suppliers to even provide simple maintenance items like valves now. You might have to go to a dozen places to get a dozen small four-inch, five-inch valve."

13. "The current effort of patch and run on boiler-related forced outages runs counter to good maintenance practice and in training that mechanics and electricians receive during their apprenticeship programs."

The witness responded that this was not a policy, that it was a current effort, that it was a necessity,

"(that) otherwise we would have had to buy power that this company would not have been able to pay for, I don't

believe. So you keep the units on the line to provide reliable service, reliable service at the lowest practical cost at that time. Sure, the decision to patch and run was a valid one. It was the only thing you had if you didn't want, maybe, to put the lights out because of outages on other units."

14. "The tendency is to force units back into service with an absolute minimum level of repair making it very likely the company will suffer additional forced outages because of repeat failures."

The witness stated this was not true for the nuclear stations and Mt. Storm, but was true for the other stations.

15. "Unit performance and heat rate testing programs are weak at all stations and this situation is reflected in our increasing system heat rate."

The witness agreed that testing programs were weak but did not accept that it was reflected in the increasing heat rate because the Task Force had not done a detailed study.

16. "Power supply does not fully appreciate that another few hours of down time can make the unit more reliable and reduce the probability of a second outage because of hurried and incomplete repairs the first time."

The witness answered that it was only partially true. Counsel for the Public Staff then addressed Mr. Ragone's attention to the Emerson Report, which had been commissioned by Vepco.

17. "... two operating philosophies originating at the system level or higher, appear to degrade system performance significantly: (1) Avoiding the purchase of power from other utilities seemingly takes precedent over the maintenance of capital assets. (2) Minimum manning levels apparently are expected to be maintained even at the expense of unit availability."

The witness responded that this was done by necessity not by policy.

18. "Several elements are symptomatic of underlying problems of organization, policy or procedure and one is that the maintenance costs are increasing as a result of excessive overtime of maintenance personnel."

The witness stated that he disagreed, but accepted that this same criticism had been made in the Task Force Report.

19. "Expensive repairs arising from incorrect operation are resulting from the continued operation of defective equipment."

The witness agreed that expensive repairs had arisen from incorrect operation, but that he didn't know that defective equipment was ever operated knowingly.

20. "Marginally repaired equipment returned to service prematurely necessitating a repetition of maintenance work."

The witness stated that he didn't disagree.

21. "A sense of frustration and low morale at all levels of the org-anization."

The witness agreed that this was partially true but not necessarily due to maintenance.

22. "Most of the problems identified with generating stations are associated with the maintenance function. The function is neither well-managed, productive nor effective."

The witness responded that problems were due to operations and maintenance, that the function was as well-managed as it could be under the circumstances, that his people were productive and "... I think there was some effective - whether they were completely effective, ..."

23. "There is little or no delegation of authority and most major decisions are made in the system office. Virtually all station managers and superintendents reported that they do not have the degree of authority consistent with assigned responsibility."

The witness responded, "That's a good sign." When asked about delegation of authority with respect to promotion and transfers, Mr. Ragone responded:

"Promotions and transfers are discussed with the, with the superintendents of the station. They're asked to put those people on the list they'd like to see done. We review. The personnel department adds people's names that are top-level people that they believe ought to be considered for the promotions and transfers and then it is reviewed. They then are told, yes, we went along with your recommendation or no, we didn't, and there's no question that if you went with their ability of only promoting from within, within a given station, you're going to find out that you're going to have nepotism to the effect that the people will not listen to the supervisors that work up through those same ranks and that's the only man that the station superintendent might want to promote. So this is always going to be a problem and you can't have the station managers having final say

so on who they particularly want. They can recommend. They can give their arguments to the top people and hopefully they can sell it and hopefully get the man that they want but you can't live with that. I've been through that too many times."

When asked why station managers or superintendents cannot make purchases over $100, Mr. Ragone responded:

"That's not true. That statement is wrong. They can make purchases under a local purchase order, each item on the sheet can be $50. I think we may have upgraded that because of inflation. Those local purchase orders are very carefully controlled and the reason that you've got to have some control, we've got a purchasing policy manual that's just been reviewed. That purchasing policy manual was very carefully thought out originally. It was reviewed by Price Waterhouse as to the proper procurement policies and you've got to abide by those procurement policies if you're going to control expenditures and control the question of purchases. You can't have every person in the system buying without competitive bids, without keeping the process and the dollar values correct or you're going to go down the drain."

"Purchases, they have - if they want to make purchases over a hundred dollars, sure, they have to call somebody."

"I can't visualize where they need very many purchases for over a hundred dollars. They've got supplies. They're supposed to recommend the supplies that ought to be in the storeroom. They're the ones that recommend those. They also, on major items, it has to be cleared through the front. This is a control point."

"They may want to buy $5,000 worth of valves that we've got at Portsmouth that they could bring to Chesterfield before they cut the old ones out and the system would know that. There may be $50,000 worth of bearings that they want to buy that may be available."

"You still have procedures that they have to follow. If you start letting them deviate from procedures, you'll get in trouble. The procedures we have established have been thoroughly investigated. We went out and paid Price Waterhouse to revise the purchasing orders. Those purchase and procurement manuals have been issued. We have a group, a task force within the company to review such things as should that number be raised to $500. If so, the task force can make the recommendation. It comes to me and I can change the procedures manual. You can blame the procedures manual on me but you've got to abide by it if you're going to keep the auditing and the price controls and the operation of this company in a valid condition. We've had a plant manager that we had to fire because of improper following of procedures. You're going

to find a bad apple occasionally and if you don't have the procedures, you'll never find him."

When asked about delegating disciplinary responsibility, Mr. Ragone responded:

"They have the right to suspend any employee without contacting anybody. The firing of people or the termination of their employment or the laying off of people that affect their salaries, I don't think ought to be the decision of one man. You could have that man that doesn't like this individual and penalize him three weeks off when somebody else at another station who's less demanding may only give the guy one day off and that will create morale problems that you can't see. Discipline, he has every right to suspend that man, contact the system, find out what the policies have been. He can argue with it or he can present his story that I think the man ought to be fired or that man ought to be laid off for three weeks and here's the reason. The system can say, but we just had a similar case in Tidewater and we thought that a week was satisfactory. If the fella can argue and say his case is a little different and he thinks that three weeks is necessary because this guy is a real bad apple, we'll go along with it. We also have a union contract that requires that certain specific procedures be followed and if that fella follows that under the discipline procedures, he will then suspend him and discuss with the management of the company, the system management."

24. "A universal problem in the maintenance area is a lack of parts and material for all types of maintenance work. Not only are parts not available when you need it, but the requisitioning process is slow and cumbersome."

The witness responded that it was not slow and cumbersome because authority wasn't delegated, but because of the way it was originally set up. He stated that lack of parts and materials for maintenance work was a universal problem in every power station in the United States.

25. "Not only is the material situation a serious one from the present day viewpoint but it is understood that a certain amount of cannibalization of equipment is taking place which can cause all sorts of unseen problems in the future."

The witness responded,

"I don't know that cannibalization of equipment has taken place which could cause all sorts of unforeseen problems. Yes, there has been - I don't call it cannibalization."

26. "One very serious problem in the maintenance area is lack of a preventive maintenance program."

The witness responded that the Company had a "preventive maintenance program philosophy" but wasn't able to utilize it.

When asked if the lack of a preventive maintenance program was one of the reasons for low unit availability and high heat rate, Mr. Ragone responded,

"I don't agree that that's the reason the heat rate's high. It may be that the availability is low. That's partially true of heat rate."

When asked if a good preventive maintenance program wouldn't increase unit efficiency, Mr. Ragone responded that that wouldn't necessarily be true.

When asked if sound management wouldn't dictate a preventive maintenance program, Mr. Ragone responded,

"To set up a preventive maintenance program and not have the money to run it and not have the people to run it and not have the reserves to do it is sort of like putting the window dressing on nothing. Yes, we've got a preventive maintenance program. We've always had the idea of preventive maintenance but because of the changes that occurred in the 72-77 period of time with the nuclear units taking more and more time, the inability to get the proper maintenance forces, the inability to get them, the inability to get construction workers to do the maintenance or outside contractors to do it, all affected the preventive maintenance program."

When asked if he were saying that in 1976 and 1977 the Company couldn't afford a preventive maintenance program, Mr. Ragone replied,

"I didn't say that. I said we couldn't get the manpower and the people and we couldn't do the preventive maintenance that we had because of other things, the outages of equipment and other things that were really beyond our control at that instant in time on the nuclear units and the mine-mouth units."

27. "A problem which exists throughout the station, as it does throughout the department, is the lack of sufficient management and supervisory training for all levels of supervision. Some supervisors have been to charm school but almost everyone who has experienced it has very little good to say for its effectiveness. For those who have been given this training, in all too many cases, it was given some years after they were moved into supervision."

The witness responded that this didn't mean the Company was without a good management training program. He went on to say,

"I tell you what this is. This is a disgruntled couple of supervisors that were probably involved in the chastisement we gave to them for improper policies and improper handling and it's coming back because of comments they made."

When asked if the Task Force Report and the Emerson Report were not highly critical of Vepco in several significant areas of operation, Mr. Ragone answered,

"I think Emerson was critical. I think our task force was making recommendations. I didn't think they were critical. I think they were given the task of making recommendations. That's why they were sent out to do it. They were supposed to make recommendations. If they'd come back and said everything was all right, I knew they would be lying. Cause I was familiar with a lot of these problems. It was the purpose of it. These problems originated in 74, 75, 76."

Under cross-examination by the Attorney General's office, Mr. Ragone was asked if heat rate has been a matter of concern to Vepco. The witness responded affirmatively, that it had been a personal concern of his since 1948. Mr. Ragone was referred to his repeated statement that a detailed study is necessary to determine the reasons for a decline in heat rate, and then asked if, in fact, any such study has been made by the Company prior to the initiation of these proceedings. The witness responded,

"I think it would be a lot of wasted dollars spent when you can gather the same information from monthly tests and try to review the test values on the unit. I think you will get a better condition under those circumstances, better monitoring procedure, it is what was recommended by the task force, it is what we used to have and it sort of got out of use of not keeping up the test programs by the efficiency engineers at the stations, that has all been corrected."

Under further questioning about heat rate improvement, Mr. Ragone replied that efforts toward improvement were all favorable from a procedural standpoint. When asked about the standpoint of results, Mr. Ragone testified that it would be 4 to 5 years to see results.

Upon review of the evidence presented, the Commission finds that Vepco's fossil-fired generating efficiency as measured by heat rate is poor. It is poor when compared to that of other electric utilities and poor when compared to that of the Company in prior years.

The Commission further finds that the generating efficiency of Vepco's Mt. Storm units and Chesterfield Units 5 and 6 as measured by availability, equivalent availability and capacity factor is poor. It is poor when compared to other industry units of comparable size and vintage, and

poor when compared to prior years.

These findings alone, however, do not establish that the Company's fuel expenses are unreasonable and should therefore be partially disallowed.

The Company does not dispute that its fossil-fired heat rate is comparatively poor or that heat rate is a measure of generating efficiency. The Company's position, essentially, is that a statement about heat rate, be it a comparison between units, between companies, or between years, is superficial. The Company contends strongly that it is necessary to search out the underlying causes for heat rate differences, since such causes may be, and in their case are, totally justifiable. The Company's position is essentially the same regarding other measures of plant operation such as availability, equivalent availability, or capacity factor. The Company again contends strongly that one must look at why the units have been unavailable for service or have operated at a low level.

The Commission agrees with Vepco. Although we would like to see favorable heat rates and capacity factors, we accept that poor levels should first invoke scrutiny, not criticism. Only after review of the underlying causes can criticism be justified. In fact, we have adopted precisely this approach in our Order in Dockets No. E-2, Sub 316; E-7, Sub 231; E-22, Sub 216, Power Plant Performance Review, wherein this Commission rejected the concept of an automatic penalty based solely and mathematically on low capacity factors for nuclear power plants. Instead, this Commission adopted a "trigger-level" at which point the utility assumed the burden to explain and justify why their nuclear units were operating at low levels.

Thus, the question facing this Commission is clear cut. Do circumstances and underlying causes justify the Company's poor heat rate and availability?

The Public Staff's case is basically in two parts. First is the evidence as to what Vepco's heat rate and availability are and have been, as presented through witnesses Williams and Tucker who sponsored this portion of the Public Staff's Report. This evidence is factual, as we have already stated, and need not be reviewed. Second is the evidence put forward to show that said performance is a result of improperly coordinated, planned, staffed, and funded maintenance activities. This consists of internal Vepco reports, authored by Company personnel and outside consultants, and the testimony of John Rossie, an outside expert, who reviewed the Public Staff's case and investigated filed data for Vepco's Mt. Storm station.

We find that Mr. Rossie's testimony strengthens the Public Staff's case. His many years as an expert in the field lend credibility to the approach taken by the Public Staff; namely that they have investigated the pertinent factors

necessary to gauge power plant performance. Additionally, Mr. Rossie's investigation of Mt. Storm, while not in great depth, nonetheless adds weight to the Public Staff's contention that maintenance activities rather than justifiable factors, such as unit loading due to demand, are the cause of Vepco's poor heat rate and availability.

The Company's case rests in the testimony of witnesses Bennett, Daley, and Ragone. Mr. Bennett criticized the Public Staff's conclusions concerning heat rate and availability, and offered his own studies. Mr. Daley reviewed circumstances at the plants, the activities of his Task Force, and the actions Vepco is now taking. Mr. Ragone gave direct testimony in general response to the charge that the Company has avoided expenditures that would have improved heat rate and availability and thereby reduce fuel costs, plus considerable testimony under cross-examination in defense of his actions and those of the Company against the evidence provided in the internal Company reports.

In his analysis of factors affecting the Company's fossil-fired heat rate, Mr. Bennett places great emphasis on the change in unit loadings with the explanation that this effect arises from the additions of nuclear units to the system. Mr. Ragone also takes this position. Yet, evidence was presented that showed other utilities which added comparable amounts of nuclear capacity were not necessarily afflicted with worsened heat rate. The evidence also shows that during the period Mr. Bennett investigated, the average heat rate for the Company's fossil-fired steam units changed less than the heat rates for the large, low generating cost units which one would expect to have been loaded more heavily if possible (2.7% for the fossil-fired average from 1973 to 1977; 17.5% and 10.7% for Chesterfield Units 5 and 6, respectively; and 2.7%, 3.6% and 11.6% for Mt. Storm Units 1, 2, and 3, respectively). Mr. Bennett's argument, concurred in by Mr. Ragone, is also in conflict with the Company's position, as stated by Mr. Daley, that the nuclear units were consistently experiencing outages during this period which required reliance on the coal-fired units more than might otherwise have been the case. Additionally, we find Mr. Bennett's availability study flawed. His sole comparison of Vepco's 10-year average availabilities against EEI 10-year averages can be of little value because a 10-year average camouflages precisely what is of interest: namely, the trend over time in the performance of the Company's generating units.

The testimony of Mr. Daley provides the perspective of an employee for over twenty years on the operations and maintenance side, of the person now responsible for this department, and of the individual who served as chairman of the Task Force that candidly spelled out to top management what the department's problems were. Mr. Daley says, basically, that for several years problems at the nuclear units put a drain on maintenance resources at the fossil-fired units and, further, that the unavailability of the

nuclear units required the coal-fired plants to be pushed beyond their maintenance limitations; as a result, performance has suffered. Management set up a Task Force and called in consultants; as a result, changes are now being made. We can understand the circumstance of a transient drain on maintenance personnel, but not why the situation was allowed to persist for several years. We can also accept that scheduled maintenance could be justifiably deferred on occasion and for a brief period, but we cannot accept the prudence of maintenance deferral as a policy. Mr. Daley's Task Force recommended organizational changes in December 1977, concurred in by Emerson in February 1978. Yet, reorganization at the power stations did not commence until January 1979. We cannot help but ponder whether these changes were not influenced by the initiation of these proceedings in September 1978. Concerning efforts to improve plant performance, Mr. Daley cites Chesterfield 5, stating that its availability was adversely affected by its conversion back to coal in 1975 and that the replacement of a portion of the boiler tubing in 1977 and 1978 has eliminated one of the major problems impacting availability. We note the memorandum to Mr. Daley from his superior in 1977 which states that the retubing job "... will end all viable excuses for poor performance..." (and that even with) "a 100-day outage for retubing, I see no reason why Chesterfield Unit 5 cannot have an availability in 1978 of 67 percent." Yet, the evidence reveals that for 1978 Chesterfield 5 had an availability of 39%, only one percentage point above its 1977 level. Evidence was offered by Vepco that for March and April 1979 Chesterfield 5 had availability factors of 97% and 99%, respectively. Yet, in reports being filed with this Commission by Vepco as a result of these proceedings, we find that Chesterfield 5 had capacity factors below 29% in both months. April is of particular interest because the Company had no nuclear generation in this month hence there can be no way that Chesterfield 5 should not have been operating at maximum loading. Mr. Daley, as well as Mr. Ragone, point to examples where Vepco has expended time and money to improve plant performance. The Public Staff does not contend, nor do we believe, that Vepco has done nothing, but rather that the Company has failed to come even close to doing enough.

In support of his position that the Company has made substantial expenditures for improvement of operation and performance of its plants, Mr. Ragone referred to his exhibit which shows $85 million spent during the 1974-1978 period and $73 million estimated for 1979. However, in our review of this exhibit we find that less than half, $33 million, was spent on the fossil units, which is the point of contention herein, and less than half, $31 million, estimated for 1979. More specifically, of the $33 million, less than half, $15 million, was spent at Mt. Storm and Chesterfield, the Company's base-load fossil units during this period. We do not accept that $15 million over a five-year period is a substantial amount of money for a company whose fuel costs, recovered from ratepayers through fuel

adjustment surcharges, are in the range of $500 million annually. On average this is approximately one-half of one percent per year. Mr. Ragone repeatedly criticized the Public Staff's conclusion concerning heat rate because, as he stated, they had performed no detailed study of the causes. Yet, when asked by the Attorney General's Office if the Company had ever performed such a study prior to the initiation of these proceedings, Mr. Ragone said no, that it was not necessary, that all one had to do was to review heat rate test curves (i.e., graphs of heat rate versus loading levels which an electric utility periodically produces). Thus, the question we ask ourselves: if such Company test curves show that heat rate at a given loading is as good as it was in prior years and therefore that current annual heat rates differ from prior years only due to operations at lower loadings, why did the Company not offer such evidence into the record? The answer appears to be in Mr. Bennett's testimony wherein he stated that the Company's heat rate test curves contained so many discrepancies that he could place no confidence in them and hence did not use them. The Commission is thus confronted with the inescapable conclusion that Vepco did no detailed studies nor has Vepco been equipped with any form of monitor to gauge the performance of its generating units, despite the fact that since 1968-1970 each and every one of its fossil-fired units has experienced serious and systematic deterioration in heat rate. With regard to the internal reports and Mr. Ragone's response thereto under cross-examination, we are of the opinion that these reports, authored by Company personnel and two outside consulting firms, speak for themselves, as do Mr. Ragone's responses, and need no specific comment by us.

The Commission finds the testimony of Company witnesses Bennett, Daley, and Ragone unpersuasive. We conclude that the evidence is overwhelming: that for several years Vepco has improperly coordinated, planned, staffed, and funded the maintenance of its fossil-fired stations and this has resulted in poor generating efficiency as measured by heat rate at each fossil-fired steam station and as measured by availability, equivalent availability, and capacity factor at Mt. Storm station and Chesterfield Units 5 and 6.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18 AND 19

The Public Staff proposed adjustments to Vepco's allowed fuel charges to remove excess costs related to poor plant availability and heat rate. The Commission has reviewed the Public Staff's proposals and the Company's response thereto, and concludes that adjustments should be made as follows:

The adjustment for availability should shift generation (Kwh) from higher cost sources to Mt. Storm Units 1, 2, and 3 and to Chesterfield Units 5 and 6. These are Vepco's lowest operating cost fossil-fired units and should be in operation second only to the nuclear units. Specifically, in test periods where these coal-fired units have operated

at capacities below national averages, generation should be assigned to them to the extent necessary to reflect operation at national average capacity factors. In such test periods, generation should be assigned from (1) generation via purchases, (2) generation above 250 hours per three months from combustion turbine units, and (3) generation above 30% capacity from oil-fired steam units. The minima used for the combustion turbines and the oil-fired units reflect levels necessary for system operating stability. The capacity factors used for the Chesterfield and Mt. Storm units should be the 1976 EEI averages for units of comparable size and vintage. These are: 60.94% for Chesterfield 5, 56.88% for Chesterfield 6, and 59.50% for Mt. Storm 1, 2, and 3. These data should be used until such time as more current EEI data become available.

The adjustment for heat rate should apply to all fossil-fired steam units and should be made after adjusting for availability. We conclude from the evidence presented, that the Company's 1970 annual system fossil-fired steam heat rate (10,172 BTU/Kwh) should be used as the reference point to which the Company's system fossil-fired steam heat rate for test periods under consideration should be adjusted. Specifically, the burned-fuel costs for total fossil-fired steam generation should be reduced by the ratio of 10,172 to test period heat rate. The Company contended that it would be improper to adjust a three-month figure against an annual figure; however, upon analysis of the evidence and the Company's argument, we conclude that the Company's position lacks merit.

For each period under consideration herein, the adjustment to total company fuel costs for availability and heat rate is:

E-22, Sub 239	February	$ 9,846,741
E-22, Sub 240	March	11,414,098
E-22, Sub 241	April	15,227,978
E-22, Sub 242	May	20,357,086
E-22, Sub 243	June	18,874,194
E-22, Sub 244	July	16,544,563
E-22, Sub 244	July-December	35,548,777

For each period under consideration herein, the amount Vepco has over collected is:

E-22, Sub 239	February	0.118¢/Kwh
E-22, Sub 240	March	0.218
E-22, Sub 241	April	0.147
E-22, Sub 242	May	0.248
E-22, Sub 243	June	0.259
E-22, Sub 244	July	0.224

These amounts have been computed as shown by schedules which follow.

Based upon the investigations and hearings in this docket, the Commission has determined that Vepco's management has performed inadequately in the areas of planning and maintenance of its generation facilities. As a result, the Commission is making downward adjustments to Vepco's rates consistent with the maximum amount shown by the evidence and permitted by law and consistent with the excess costs estimated to have been imposed and being imposed on Vepco's customers by the Company's inadequate planning and maintenance of its generating facilities.

The imposed downward adjustments are threefold. First is a refund to Vepco's customers to reflect overcollections in fuel expenses from February through July 1979. Second, current base rates are reduced. Both of these adjustments reflect what the rates should have been, absent those poor planning and maintenance practices by Vepco identified in detail heretofore. Third, rates after December 1980 will be further adjusted to reflect the savings that would have begun to accrue after that date had Vepco observed prudent and timely planning in the conversion of several of its oil-fired generating units to coal-fired use. On a total-company basis, the refund would be approximately $31 million and the reduction in current rates would be in excess of $82 million annually. The additional reduction in rates ordered to begin after 17 months would be in excess of $10 million annually. Translated to Vepco's customers in North Carolina and under our jurisdiction, the refund is approximately $1.6 million and the reduction in current rates is in excess of $4.1 million on an annual basis. The additional reduction beginning after 1980 would be in excess of $500,000 annually.

While these downward adjustments in rates are significant and are the maximum that can be imposed under the General Statutes of North Carolina, they will not result in Vepco's retail rates being comparable at this time to those of other electric utilities serving North Carolina. Nor can this Commission preclude Vepco (or other electric utilities for that matter) from filing for increased rates in the future based on increased costs due to inflation in our economy. However, in future rate proceedings, this Commission intends to consider adjustments for excess costs as detailed in this docket. As a result, it can be anticipated that Vepco's rates during the next few years will be significantly less than they otherwise would be. During these hearings the Public Staff projected that Vepco's rates in the future will attain closer parity with those of neighboring utilities as Vepco moves away from its heavy dependence on expensive oil-fired generation. Based on the Public Staff's projections and the Commission's downward adjustments as made herein, we anticipate Vepco's retail rates becoming comparable in the 1983-84 time frame to those of Carolina Power & Light Company.

Furthermore, the Commission will carefully consider in future rate proceedings, Vepco's rate of return on

stockholders' equity during the future periods that Vepco must continue to rely on a high percentage of expensive oil-fired generation. While Vepco's management cannot justifiably be criticized for making what was not an unreasonable business decision in the late 1960s and early 1970s to rely on a substantial amount of oil-fired generation due to the projected economical advantage of oil over coal at that time, neither does it appear to the Commission that Vepco's stockholders should enjoy more than a very minimum return while their ratepayers are bearing the burden of the higher cost of these oil-fired plants. However, as required by the General Statutes of North Carolina, the Commission must withhold judgment on the determination of an appropriate future rate of return pending the hearing of further evidence in any general rate case that may be filed in the future. The Commission would point out that the rate of return on stockholders' investment allowed in Vepco's last general rate case was approximately 10% less than that allowed to the other major electric utilites serving the public in North Carolina.

These actions as a composite should provide sufficient incentive to Vepco to improve its operations in the areas outlined in this Order. Assuming the Public Staff's price projections are accurate and we have no reason to doubt that they are, Vepco's present and potential customers should see "a light at the end of the tunnel" in terms of reaching parity with rates being paid by other North Carolinians for electric utility service.

Virginia Electric and Power Company

SUMMARY STATEMENT OF OVERCOLLECTION OF FUEL COST

Line No.	Item (a)	Sub 239 February (b)	Sub 240 March (c)	Sub 241 April (d)	Sub 242 May (e)	Sub 243 June (f)	Sub 244 July-Dec. Base Fuel Component (g)	Sub 244 July (h)
1.	Actual fuel expenses*($)	98,619,168	106,902,934	126,883,396	162,556,357	167,534,008	299,316,040	172,432,644
2.	Commission adjustment ($)	9,846,741	11,414,098	15,227,978	20,357,086	18,874,194	35,548,777	16,544,563
3.	Difference ($)	88,772,427	95,488,836	111,655,418	142,199,271	148,659,814	263,767,263	155,888,081
4.	Test period sales (mwh)	8,877,607	8,509,410	9,389,041	10,417,032	10,667,742	19,258,808	9,869,767
5.	Fuel cost L3 ÷ L4 (¢/kwh)	1.000	1.122	1.189	1.365	1.394	1.370	1.579
6.	Base fuel component **(¢/kwh)	1.327	1.327	1.327	1.327	1.327	1.370	1.370
7.	Difference (¢/kwh)	(.327)	(.205)	(.138)	.038	.067	-	.209
8.	FAC L7 x 1.06383 (¢/kwh)	(.348)	(.218)	(.147)	.040	.071	-	.222
9.	FAC Properly billed ***(¢/kwh)	(.348)	(.218)	(.147)	0	0	-	.222
10.	FAC Actually billed ****(¢/kwh)	(.230)	0	0	.248	.259	-	.446
11.	Overcollection (¢/kwh)	.118	.218	.147	.248	.259	-	.224

* Per Company applications.

** Per Commission Order in Docket No. E-22, Sub 238 for the billing months of February, March, April, May and June; per this calculation for billing months July - December.

*** L3 except when smaller than 0.100 ¢/kwh.

**** Entry for July reflects FAC of .205 ¢/kwh plus .241 ¢/kwh increase in base fuel component.

ADJUSTMENT TO VEPCO SYSTEM ENERGY COST

September, October, November
E-22, Sub 239

	Test Period-Actual				Test Period-Adjusted				
	Generation (Mwh)	Burned Fuel ($)	Burned Fuel ($/Mwh)	Capacity Factor (%)	Change in Generation (Mwh)	Total Generation (Mwh)	Capacity Factor (%)	Total Burned Fuel ($)	Change in Burned Fuel ($)
NUCLEAR									
North Anna 1	1,537,190	7,533,244				1,537,190		7,533,244	
Surry 1,2	2,978,784	14,121,103				2,978,784		14,121,103	
TOTAL NUCLEAR STEAM	4,515,974	21,654,347				4,515,974		21,654,347	
FOSSIL-COAL									
Bremo 3,4	133,614	2,457,981				133,614		2,457,981	
Chesterfield 5	87,596	1,715,499	19.584214	12.04		87,596		1,715,499	
Chesterfield 6	306,826	6,008,946	19.584214	21.35	58,619	365,445	25.43	7,156,953	1,148,007
Mt. Storm 1	460,814	6,535,384	14.182260	38.15	257,798	718,612	59.50	10,191,542	3,656,158
Mt. Storm 2	673,684	9,554,362	14.182260	55.78	44,928	718,612	59.50	10,191,542	637,180
Mt. Storm 3	667,965	9,473,252	14.182260	54.62	59,744	727,709	59.50	10,320,557	847,305
TOTAL COAL	2,330,499	35,745,424				2,751,588		42,034,074	
FOSSIL-OIL									
Chesterfield 1	33,154	833,712	25.146641	27.11		33,154		833,712	
Chesterfield 2	28,477	716,101	25.146641	17.86		28,477		716,101	
Chesterfield 3	64,015	1,609,762	25.146641	29.31		64,015		1,609,762	
Chesterfield 4	82,274	2,068,915	25.146641	22.69		82,274		2,068,915	
Chesterfield 6 (oil)	54,455	1,369,360	25.146641		(54,455)	0	0	0	(1,369,360)
Portsmouth 1	40,620	843,304	20.760812	18.41		40,620		843,304	
Portsmouth 2	100,427	2,084,946	20.760812	45.53	(34,252)	66,175	30.00	1,373,847	(711,099)
Portsmouth 3	239,977	4,982,117	20.760812	67.82	(133,835)	106,142	30.00	2,203,594	(2,778,523)
Portsmouth 4	0	0		0		0		0	
Possum Point 1	17,629	398,792	22.621384	10.91		17,629		398,792	
Possum Point 2	39,357	890,311	22.621384	26.12		39,357		890,311	
Possum Point 3	81,113	1,834,888	22.621384	36.77	(14,938)	66,175	30.00	1,496,970	(337,918)
Possum Point 4	185,075	4,186,653	22.621384	36.37	(32,413)	152,662	30.00	3,453,426	(733,227)
Possum Point 5	580,549	13,132,822	22.621384	33.02	(53,113)	527,436	30.00	11,931,332	(1,201,490)
Yorktown 1	163,016	3,291,470	20.191088	44.96	(54,253)	108,763	30.00	2,196,043	(1,095,427)
Yorktown 2	155,214	3,133,940	20.191088	41.81	(43,830)	111,384	30.00	2,248,965	(884,975)
Yorktown 3	501,503	10,125,891	20.191088	28.07		501,503		10,125,891	
TOTAL OIL	2,366,855	51,502,983				1,943,766		43,390,965	
TOTAL FOSSIL STEAM	4,697,354	87,248,408				4,697,354		84,425,039	
HYDRO	80,560					80,560			
COMBUSTION TURBINES	17,987	831,466				17,987		831,466	
PURCHASE & INTERCHANGE	(143,233)	(1,462,077)				(143,233)		(1,462,077)	
TOTAL ENERGY SUPPLY	9,168,643	108,272,144			0	9,168,643		105,448,775	

Month	Fossil-Fired Steam Heat Rate (Btu/Kwh)	Fossil-Fired Steam Generation (Mwh)	Test Period Heat Rate (Btu/Kwh)
September	11,174	1,752,113	
October	11,066	1,483,231	11,095
November	11,031	1,462,010	

Total Availability Adjustment	(2,823,369)
Heat Rate Adjustment to Total Fossil Steam (10,172/11,095 - 1) x 84,425,039	(7,023,372)
TOTAL ADJUSTMENT	(9,846,741)

ADJUSTMENT TO VEPCO SYSTEM ENERGY COST
October, November, December
E-22, Sub 240

	Test Period-Actual				Test Period-Adjusted				
	Generation (Mwh)	Burned Fuel ($)	Burned Fuel ($/Mwh)	Capacity Factor (%)	Change in Generation (Mwh)	Total Generation (Mwh)	Capacity Factor (%)	Total Burned Fuel ($)	Change in Burned Fuel ($)
NUCLEAR									
North Anna 1	1,675,483	9,084,188				1,675,483		9,084,188	
Surry 1,2	2,709,207	11,854,314				2,709,207		11,854,314	
TOTAL NUCLEAR STEAM	4,384,690	20,938,502				4,384,690		20,938,502	
FOSSIL-COAL									
Bremo 3,4	237,237	4,016,134				237,237		4,016,134	
Chesterfield 5	32,163	591,756	18.398669	4.37		32,163		591,756	
Chesterfield 6	389,731	7,170,532	18.398669	26.83	278,740	668,471	46.01	12,298,977	5,128,445
Mt. Storm 1	213,741	3,013,407	14.107760	17.51	512,768	726,509	59.50	10,249,415	7,234,008
Mt. Storm 2	703,198	9,920,549	14.107760	57.59	23,311	726,509	59.50	10,249,415	328,866
Mt. Storm 3	707,380	9,979,547	14.107760	57.21	28,327	735,707	59.50	10,379,178	399,631
TOTAL COAL	2,283,450	34,693,925				3,126,596		47,784,875	
FOSSIL-OIL									
Chesterfield 1	33,979	873,940	25.719991	27.48		33,979		873,940	0
Chesterfield 2	35,652	916,970	25.719991	22.12		35,652		916,970	0
Chesterfield 3	101,165	2,601,963	25.719991	45.82	(34,925)	66,240	30.00	1,703,692	(898,271)
Chesterfield 4	43,815	1,126,922	25.719991	11.95		43,815		1,126,922	0
Chesterfield 6 (oil)	75,747	1,948,213	25.719991		(75,747)	0	0	0	(1,948,213)
Portsmouth 1	17,275	347,055	20.089993	7.75		17,275		347,055	0
Portsmouth 2	137,323	2,758,818	20.089995	61.58	(70,421)	66,902	30.00	1,344,060	(1,414,758)
Portsmouth 3	267,826	5,380,624	20.089995	74.88	(160,517)	107,309	30.00	2,155,838	(3,224,786)
Portsmouth 4	0	0	0			0		0	0
Possum Point 1	32,357	714,766	22.089999	19.80		32,357		714,766	0
Possum Point 2	55,591	1,228,005	22.089999	36.49	(9,885)	45,706	30.00	1,009,645	(218,360)
Possum Point 3	99,016	2,187,263	22.089999	44.40	(32,114)	66,902	30.00	1,477,865	(709,398)
Possum Point 4	235,402	5,200,030	22.089999	45.76	(81,063)	154,339	30.00	3,409,348	(1,790,682)
Possum Point 5	671,530	14,834,098	22.089999	37.78	(138,298)	533,232	30.00	11,779,095	(3,055,003)
Yorktown 1	152,292	3,061,069	20.099999	41.55	(42,334)	109,958	30.00	2,210,156	(850,913)
Yorktown 2	160,417	3,224,382	20.099999	42.74	(47,809)	112,608	30.00	2,263,421	(960,961)
Yorktown 3	691,876	13,906,707	20.099999	38.31	(150,033)	541,843	30.00	10,891,044	(3,015,663)
TOTAL OIL	2,811,263	60,310,825				1,968,117		42,223,817	
TOTAL FOSSIL STEAM	5,094,713	95,004,750				5,094,713		90,008,692	
HYDRO	111,117					111,117			
COMBUSTION TURBINES	40,304	1,735,682				40,304		1,735,682	
PURCHASE & INTERCHANGE	(232,297)	(4,289,188)				(232,297)		(4,289,188)	
TOTAL ENERGY SUPPLY	9,398,527	113,389,746			0	9,398,527		108,393,688	

Month	Fossil-Fired Steam Heat Rate (Btu/Kwh)	Fossil-Fired Steam Generation (Mwh)	Test Period Heat Rate (Btu/Kwh)
October	11,066	1,483,231	
November	11,031	1,462,010	10,953
December	10,822	2,149,472	

Total Availability Adjustment	(4,996,058)
Heat Rate Adjustment to Total Fossil Steam (10,172/10,953 - 1) x 90,008,692	(6,418,040)
TOTAL ADJUSTMENT	(11,414,098)

ADJUSTMENT TO VEPCO SYSTEM ENERGY COST
November, December, January
E-22, Sub 241

	Test Period-Actual				Test Period-Adjusted				
	Generation (Mwh)	Burned Fuel ($)	Burned Fuel ($/Mwh)	Capacity Factor (%)	Change in Generation (Mwh)	Total Generation (Mwh)	Capacity Factor (%)	Total Burned Fuel ($)	Change in Burned Fuel ($)
NUCLEAR									
North Anna 1	1,660,127	9,008,339				1,660,127		9,008,339	
Surry 1,2	2,875,250	11,872,276				2,875,250		11,872,276	
TOTAL NUCLEAR STEAM	4,535,377	20,880,615				4,535,377		20,880,615	
FOSSIL-COAL									
Bremo 3,4	339,084	5,699,000				339,084		5,699,000	
Chesterfield 5	43,087	818,420	18.994598	5.86	266,938	310,025	42.17	5,888,800	5,070,380
Chesterfield 6	397,159	7,543,876	18.994598	27.34	429,230	826,389	56.88	15,696,927	8,153,051
Mt. Storm 1	0	0	13.760698	0	726,509	726,509	59.50	9,997,270	9,997,270
Mt. Storm 2	738,381	10,160,638	13.760698	60.47		738,381		10,160,638	
Mt. Storm 3	705,111	9,702,820	13.760698	57.03	30,595	735,706	59.50	10,123,829	421,009
TOTAL COAL	2,222,822	33,924,754				3,676,094		57,566,464	
FOSSIL-OIL									
Chesterfield 1	34,670	933,198	26.916588	28.04		34,670		933,198	
Chesterfield 2	61,305	1,650,121	26.916588	38.03	(12,950)	48,355	30.00	1,301,551	(348,570)
Chesterfield 3	118,658	3,193,869	26.916588	53.74	(52,418)	66,240	30.00	1,782,955	(1,410,914)
Chesterfield 4	0	0	26.916588	0		0		0	
Chesterfield 6 (oil)	96,605	2,600,277	26.916588		(96,605)	0		0	(2,600,277)
Portsmouth 1	43,433	860,369	19.809102	19.48		43,433		860,369	
Portsmouth 2	148,093	2,933,589	19.809102	66.41	(81,191)	66,902	30.00	1,325,268	(1,608,321)
Portsmouth 3	273,148	5,410,817	19.809102	76.36	(165,839)	107,309	30.00	2,125,695	(3,285,122)
Portsmouth 4	809	16,025	19.809102	.16		809		16,025	
Possum Point 1	52,566	1,157,437	22.018738	32.17	(3,548)	49,018	30.00	1,079,315	(78,122)
Possum Point 2	72,535	1,597,129	22.018738	47.61	(26,829)	45,706	30.00	1,006,388	(590,741)
Possum Point 3	108,396	2,386,743	22.018738	48.61	(41,494)	66,902	30.00	1,473,097	(913,646)
Possum Point 4	327,934	7,220,693	22.018738	63.74	(173,595)	154,339	30.00	3,398,350	(3,822,343)
Possum Point 5	728,530	16,041,311	22.018738	40.99	(195,298)	533,232	30.00	11,741,095	(4,300,216)
Yorktown 1	161,225	3,260,613	20.223989	47.99	(51,267)	109,958	30.00	2,223,790	(1,036,823)
Yorktown 2	167,325	3,383,979	20.223989	44.58	(54,717)	112,608	30.00	2,277,383	(1,106,596)
Yorktown 3	965,068	19,517,525	20.223989	53.43	(423,225)	541,843	30.00	10,958,227	(8,559,298)
TOTAL OIL	3,360,300	72,163,695				1,981,324		42,502,706	
TOTAL FOSSIL STEAM	5,583,122	106,088,449				5,657,418		100,069,170	
HYDRO	204,695					204,695			
COMBUSTION TURBINES	59,657	2,713,005				59,657		2,713,003	
PURCHASE & INTERCHANGE	74,296	2,166,727			(74,296)	0		0	(2,166,272)
TOTAL ENERGY SUPPLY	10,457,145	131,848,796			0	10,457,145		123,662,790	

Month	Fossil-Fired Steam Heat Rate (Btu/Kwh)	Fossil-Fired Steam Generation (Mwh)	Test Period Heat Rate (Btu/Kwh)
November	11,031	1,462,010	
December	10,822	2,149,472	10,942
January	11,008	1,971,640	

Total Availability Adjustment	(8,186,006)
Heat Rate Adjustment to Total Fossil Steam (10,172/10,942 - 1) x 100,069,170	(7,041,972)
TOTAL ADJUSTMENT	(15,227,978)

ADJUSTMENT TO VEPCO SYSTEM ENERGY COST
December, January, February
E-22, Sub 242

	Test Period-Actual				Test Period-Adjusted				
	Generation (Mwh)	Burned Fuel ($)	Burned Fuel ($/Mwh)	Capacity Factor (%)	Change in Generation (Mwh)	Total Generation (Mwh)	Capacity Factor (%)	Total Burned Fuel ($)	Change in Burned Fuel ($)
NUCLEAR									
North Anna 1	1,568,337	8,573,186				1,568,337		8,573,186	
Surry 1,2	2,346,459	10,051,130				2,346,459		10,051,130	
TOTAL NUCLEAR STEAM	3,914,796	18,624,316				3,914,796		18,624,316	
FOSSIL-COAL									
Bremo 3,4	409,731	6,853,684				409,731		6,853,684	
Chesterfield 5	77,541	1,612,948	20.801233	10.78	360,788	438,329	60.94	9,117,783	7,504,835
Chesterfield 6	348,330	7,245,694	20.801233	24.51	460,094	808,424	56.88	16,816,216	9,570,522
Mt. Storm 1	0	0	13.977617	0	710,716	710,716	59.50	9,934,116	9,934,116
Mt. Storm 2	718,129	10,037,732	13.977617	60.12		718,129		10,037,732	
Mt. Storm 3	745,041	10,413,898	13.977617	61.59		745,041		10,413,898	
TOTAL COAL	2,298,772	36,163,956				3,830,370		63,173,429	
FOSSIL-OIL									
Chesterfield 1	38,339	971,977	25.352174	31.70	(2,051)	36,288	30.00	919,980	(51,997)
Chesterfield 2	99,762	2,529,184	25.352174	63.27	(52,458)	47,304	30.00	1,199,260	(1,329,924)
Chesterfield 3	127,270	3,226,571	25.352174	58.92	(62,470)	64,800	30.00	1,642,821	(1,583,750)
Chesterfield 4	59,826	1,516,719	25.352174	16.69		59,826		1,516,719	
Chesterfield 6 (oil)	100,865	2,557,147	25.352174		(100,865)		0.	0	(2,557,147)
Portsmouth 1	76,951	1,515,675	19.696628	35.27		76,951		1,515,675	
Portsmouth 2	152,731	3,008,286	19.696628	70.01		152,731		3,008,286	
Portsmouth 3	277,992	5,475,505	19.696628	79.44		277,992		5,475,505	
Portsmouth 4	8,083	159,208	19.696628	1.61		8,083		159,208	
Possum Point 1	82,723	1,833,143	22.160010	51.75	(34,771)	47,952	30.00	1,062,617	(770,526)
Possum Point 2	94,781	2,100,348	22.160010	63.59	(50,069)	44,712	30.00	990,818	(1,109,530)
Possum Point 3	145,366	3,221,312	22.160010	66.63	(79,918)	65,448	30.00	1,450,328	(1,770,984)
Possum Point 4	381,877	8,462,398	22.160010	75.88	(230,893)	150,984	30.00	3,345,807	(5,116,591)
Possum Point 5	955,014	21,163,119	22.160010	54.92	(270,335)	684,679	39.38	15,172,493	(5,990,626)
Yorktown 1	209,331	4,303,551	20.558594	58.38		209,331		4,303,551	
Yorktown 2	165,734	3,407,258	20.558594	45.13		165,734		3,407,258	
Yorktown 3	1,060,458	21,801,527	20.558594	60.02		1,060,458		21,801,527	
TOTAL OIL	4,037,103	87,252,928				3,153,273		66,971,853	
TOTAL FOSSIL STEAM	6,335,875	123,416,884				6,983,643		130,145,282	
HYDRO	289,262								
COMBUSTION TURBINES	166,975	7,690,833	46.059787		(43,225)	123,750	250 hrs	5,699,899	(1,990,934)
PURCHASE & INTERCHANGE	604,543	17,198,581			(604,543)	0	0	0	(17,198,581)
TOTAL ENERGY SUPPLY	11,311,451	166,930,614			0	11,311,451		154,469,497	

Month	Fossil-Fired Steam Heat Rate (Btu/Kwh)	Fossil-Fired Steam Generation (Mwh)	Test Period Heat Rate (Btu/Kwh)
December	10,822	2,149,472	
January	11,008	1,971,640	10,829
February	10,667	2,214,763	

Total Availability Adjustment	(12,461,117)
Heat Rate Adjustment to Total Fossil Steam (10,172/10,829 - 1) x 130,145,282	(7,895,969)
TOTAL ADJUSTMENT	(20,357,086)

ADJUSTMENT TO VEPCO SYSTEM ENERGY COST
January, February, March
E-22, Sub 243

	Test Period-Actual				Test Period-Adjusted				
	Generation (Mwh)	Burned Fuel ($)	Burned Fuel ($/Mwh)	Capacity Factor (%)	Change in Generation (Mwh)	Total Generation (Mwh)	Capacity Factor (%)	Total Burned Fuel ($)	Change in Burned Fuel ($)
NUCLEAR									
North Anna 1	1,553,280	7,710,647				1,553,280		7,710,647	
Surry 1,2	1,879,785	9,353,436				1,879,785		9,353,436	
TOTAL NUCLEAR STEAM	3,433,065	17,064,083				3,433,065		17,064,083	
FOSSIL-COAL									
Bremo 3,4	409,364	6,849,352				409,364		6,849,352	
Chesterfield 5	136,895	3,148,935	23.002559	19.03	301,434	438,329	60.94	10,082,688	6,933,753
Chesterfield 6	265,602	6,109,526	23.002559	18.67	542,822	808,424	56.88	18,595,821	12,486,295
Mt. Storm 1	0	0	13.721205	0	710,716	710,716	59.30	9,751,880	9,751,880
Mt. Storm 2	740,715	10,163,503		62.01		740,715		10,163,503	
Mt. Storm 3	730,536	10,023,834		60.39		730,536		10,023,834	
TOTAL COAL	2,283,112	36,295,150				3,838,084		65,467,078	
FOSSIL-OIL									
Chesterfield 1	46,362	1,210,015	26.099283	38.33	(10,074)	36,288	30.00	947,091	(262,924)
Chesterfield 2	117,038	3,054,608	26.099283	74.23	(69,734)	47,304	30.00	1,234,601	(1,820,007)
Chesterfield 3	132,773	3,465,280	26.099283	61.47	(67,973)	64,800	30.00	1,691,234	(1,774,046)
Chesterfield 4	138,766	3,621,693	26.099283	38.70	(31,198)	107,568	30.00	2,807,448	(814,245)
Chesterfield 6 (oil)	97,397	2,541,992	26.099283		(97,397)	0	0	0	(2,541,992)
Portsmouth 1	88,900	1,831,800	20.605173	40.75		88,900		1,831,800	
Portsmouth 2	152,312	3,138,415	20.605173	69.82		152,312		3,138,415	
Portsmouth 3	261,921	5,396,927	20.605173	74.85		261,921		5,396,927	
Portsmouth 4	8,083	166,552	20.605173	1.61		8,083		166,552	
Possum Point 1	68,264	1,599,321	23.428476	42.71	(20,312)	47,952	30.00	1,123,442	(475,879)
Possum Point 2	98,912	2,317,357	23.428476	66.37	(54,200)	44,712	30.00	1,047,534	(1,269,823)
Possum Point 3	157,691	3,694,460	23.428476	72.28	(92,243)	65,448	30.00	1,533,347	(2,161,113)
Possum Point 4	364,139	8,531,222	23.428476	72.35	(157,067)	207,072	41.14	4,851,382	(3,679,840)
Possum Point 5	884,833	20,730,289	23.428476	50.89		884,833		20,730,289	
Yorktown 1	241,996	5,295,195	21.881332	67.49		241,996		5,295,195	
Yorktown 2	105,215	2,302,244	21.881332	28.65		105,215		2,302,244	
Yorktown 3	959,477	20,994,633	21.881332	54.30		959,477		20,994,633	
TOTAL OIL	3,924,079	89,892,003				3,923,881		75,092,134	
TOTAL FOSSIL STEAM	6,207,191	126,187,153				7,161,965		140,559,212	
HYDRO	391,061					391,061			
COMBUSTION TURBINES	144,959	6,875,345	47.429580		(21,209)	123,750	250 hrs	5,869,411	(1,005,934)
PURCHASE & INTERCHANGE	933,565	23,505,586			(933,565)	0		0	(23,505,586)
TOTAL ENERGY SUPPLY	11,109,841	173,632,167			0	11,109,841		163,492,706	

Month	Fossil-Fired Steam Heat Rate (Btu/Kwh)	Fossil-Fired Steam Generation (Mwh)	Test Period Heat Rate (Btu/Kwh)
January	11,008	1,971,640	10,846
February	10,677	2,214,763	
March	10,874	2,020,788	

Total Availability Adjustment	(10,139,461)
Heat Rate Adjustment to Total Fossil Steam (10,172/10,846 - 1) x 140,559,212	(8,734,733)
TOTAL ADJUSTMENT	(18,874,194)

ADJUSTMENT TO VEPCO SYSTEM ENERGY COST

February, March, April
E-22, Sub 244

	Test Period-Actual				Test Period-Adjusted				
	Generation (Mwh)	Burned Fuel ($)	Burned Fuel ($/Mwh)	Capacity Factor (%)	Change in Generation (Mwh)	Total Generation (Mwh)	Capacity Factor (%)	Total Burned Fuel ($)	Change in Burned Fuel ($)
NUCLEAR									
North Anna 1	1,039,870	5,144,950				1,039,870		5,144,950	
Surry 1,2	800,983	4,180,507				800,983		4,180,507	
TOTAL NUCLEAR STEAM	1,840,853	9,325,457				1,840,853		9,325,457	
FOSSIL-COAL									
Bremo 3,4	390,857	6,324,156				390,857		6,324,156	
Chesterfield 5	173,804	3,977,912	22.887345	24.44	259,655	433,459	60.94	9,920,726	5,942,814
Chesterfield 6	323,404	7,401,859	22.887345	23.01	476,038	799,442	56.88	18,297,105	10,895,246
Mt. Storm 1	67,791	903,411	13.326418	5.74	635,028	702,819	59.50	9,366,060	8,462,649
Mt. Storm 2	775,495	10,334,571		65.65		775,495		10,334,571	
Mt. Storm 3	788,470	10,507,481		65.92		788,470		10,507,481	
TOTAL COAL	2,519,821	39,449,390				3,890,542		64,750,099	
FOSSIL-OIL									
Chesterfield 1	50,923	1,343,031	26.373762	42.57		50,923		1,343,031	
Chesterfield 2	109,888	2,898,160	26.373762	70.47		109,888		2,898,160	
Chesterfield 3	132,006	3,481,495	26.373762	61.80		132,006		3,481,495	
Chesterfield 4	206,034	5,433,892	26.373762	58.11		206,034		5,433,892	
Chesterfield 6 (oil)	101,446	2,675,512	26.373762		(101,446)	0	0	0	(2,675,512)
Portsmouth 1	60,908	1,322,093	21.706386	28.23		60,908		1,322,093	
Portsmouth 2	147,109	3,193,204	21.706386	68.19		147,109		3,193,204	
Portsmouth 3	272,646	5,918,160	21.706386	78.79		272,646		5,918,160	
Portsmouth 4	7,274	157,892	21.706386	1.46		7,274		157,892	
Possum Point 1	64,191	1,615,352	25.164780	40.61		64,191		1,615,352	
Possum Point 2	96,382	2,425,432	25.164780	65.40		96,382		2,425,432	
Possum Point 3	149,852	3,770,993	25.164780	69.46		149,852		3,770,993	
Possum Point 4	350,571	8,822,042	25.164780	70.44		350,571		8,822,042	
Possum Point 5	862,785	21,711,794	25.164780	50.18		862,785		21,711,794	
Yorktown 1	251,016	5,842,747	23.276392	70.79		251,016		5,842,747	
Yorktown 2	50,244	1,169,499	23.276392	13.84		50,244		1,169,499	
Yorktown 3	892,113	20,765,172	23.276392	51.06		892,113		20,765,172	
TOTAL OIL	3,805,388	92,546,470				3,703,942		89,870,958	
TOTAL FOSSIL STEAM	6,325,209	131,995,860				7,594,484		154,621,057	
HYDRO	409,617					409,617			
COMBUSTION TURBINES	135,193	6,476,190	47.903294		(11,443)	123,750	250 hrs	5,928,033	(548,157)
PURCHASE & INTERCHANGE	1,328,655	31,541,569	23.739473		(1,257,832)	70,823		1,681,300	(29,860.269)
TOTAL ENERGY SUPPLY	10,039,527	179,339,076			0	10,039,527		171,555,847	

Month	Fossil-Fired Steam Heat Rate (Btu/Kwh)	Fossil-Fired Steam Generation (Mwh)	Test Period Heat Rate (Btu/Kwh)
February	10,667	2,214,763	
March	10,874	2,020,788	10,783
April	10,808	2,089,658	

Total Availability Adjustment	(7,783,229)
Heat Rate Adjustment to Total Fossil Steam (10,172/10,783 - 1) x 154,621,057	(8,761,334)
TOTAL ADJUSTMENT	(16,544,563)

ADJUSTMENT TO VEPCO SYSTEM ENERGY COST
November, December, January, February, March, April
E-22, Sub 244

	Test Period-Actual				Test Period-Adjusted				
	Generation (Mwh)	Burned Fuel ($)	Burned Fuel ($/Mwh)	Capacity Factor (%)	Change in Generation (Mwh)	Total Generation (Mwh)	Capacity Factor (%)	Total Burned Fuel ($)	Change in Burned Fuel ($)
NUCLEAR									
North Anna 1	2,699,997	14,153,289				2,699,997		14,153,289	
Surry 1,2	3,676,233	16,052,783				3,676,233		16,052,783	
TOTAL NUCLEAR STEAM	6,376,230	30,206,072				6,376,230		30,206,072	
FOSSIL-COAL									
Bremo 3,4	729,941	12,023,156				729,941		12,023,156	
Chesterfield 5	216,891	5,567,559	21.059238	14.99	664,638	881,529	60.94	18,564,329	13,996,770
Chesterfield 6	720,563	15,174,508	21.059238	25.21	905,268	1,625,831	56.88	34,238,762	19,064,254
Mt. Storm 1	67,791	917,230	13.530265	2.82	1,361,537	1,429,328	59.50	19,339,186	18,421,956
Mt. Storm 2	1,513,876	20,483,144	13.530265	63.02		1,513,876		20,483,144	
Mt. Storm 3	1,493,581	20,208,547	13.530265	61.06		1,493,581		20,208,547	
TOTAL COAL	4,742,643	73,374,144				7,674,086		124,857,124	
FOSSIL-OIL									
Chesterfield 1	85,593	2,273,274	26.559106	35.19	(12,614)	72,979	30.00	1,938,178	(335,096)
Chesterfield 2	171,193	4,546,733	26.559106	53.99	(76,059)	95,134	30.00	2,526,674	(2,020,059)
Chesterfield 3	250,664	6,657,412	26.559106	57.70	(120,344)	130,320	30.00	3,461,183	(3,196,229)
Chesterfield 4	206,034	5,472,079	26.559106	28.57		206,034		5,472,079	
Chesterfield 6 (oil)	198,051	5,260,057	26.559106		(198,051)	0	0	0	(5,260,057)
Portsmouth 1	104,341	2,168,215	20.780085	23.78		104,341		2,168,215	
Portsmouth 2	295,202	6,134,323	20.780085	67.28		295,202		6,134,323	
Portsmouth 3	545,794	11,341,646	20.780085	77.36		545,794		11,341,646	
Portsmouth 4	8,083	167,965	20.780085	.80		8,083		167,965	
Possum Point 1	116,757	2,769,765	23.722476	36.32	(20,320)	96,437	30.00	2,287,724	(482,041)
Possum Point 2	168,917	4,007,129	23.722476	56.36	(78,996)	89,921	30.00	2,133,148	(1,873,981)
Possum Point 3	258,248	6,126,282	23.733476	58.86	(126,625)	131,623	30.00	3,122,424	(3,003,858)
Possum Point 4	678,505	16,095,818	23.722476	67.04	(374,859)	303,646	30.00	7,203,234	(8,892,584)
Possum Point 5	1,591,315	37,749,932	23.722476	45.51	(520,624)	1,070,691	30.06	25,399,442	(12,350,490)
Yorktown 1	412,241	8,940,960	21.688673	57.17		412,241		8,940,960	
Yorktown 2	217,569	4,718,783	21.688673	29.46		217,569		4,718,783	
Yorktown 3	1,857,181	40,279,792	21.688673	52.27		1,857,181		40,279,792	
TOTAL OIL	7,165,688	164,710,165				5,637,196		127,295,770	
TOTAL FOSSIL STEAM	11,908,331	238,084,309				13,311,282		252,152,894	14,068,585
HYDRO	614,310					614,310			
COMBUSTION TURBINES	194,850	9,189,195				194,850		9,189,195	
PURCHASE & INTERCHANGE	1,402,951	33,708,296	24.026709		(1,402,951)	0		0	(33,708,296)
TOTAL ENERGY SUPPLY	20,496,672	311,187,872			0	20,496,672		291,548,161	

Month	Fossil-Fired Steam Heat Rate (Btu/Kwh)	Fossil-Fired Steam Generation (Mwh)	Test Period Heat Rate (Btu/Kwh)
Nov. - Jan.	10,942	5,583,122	10,857
Feb. - Apr.	10,783	6,325,209	

Total Availability Adjustment	(19,639,711)
Heat Rate Adjustment to Total Fossil Steam (10,172/10,857 - 1) x 252,152,894	(15,909,066)
TOTAL ADJUSTMENT	(35,548,777)

IT IS, THEREFORE, ORDERED:

1. That Vepco shall refund to its North Carolina retail customers an amount equal to the sum of 0.118¢/Kwh for consumption during the month of February, 0.218¢/Kwh for consumption during the month of March, 0.147¢/Kwh for consumption during the month of April, 0.248¢/Kwh for consumption during the month of May, 0.259¢/Kwh for consumption during the month of June, and 0.224¢/Kwh for consumption during the month of July.

2. That the refunds referred to hereinabove shall be made within 45 days of the date of this Order and shall be in the form of a credit to customers' bills or a refund check for customers no longer receiving service. That total amounts less than $1.00 as computed in Ordering Paragraph No. 1 for customers no longer receiving service shall be placed in the North Carolina Escheat Fund.

3. That Vepco shall file revised tariffs to reflect a reduced and adjusted base fuel component of 1.370¢/Kwh in Docket No. E-22, Sub 244, for the billing months of August through December 1979.

4. That for billing periods after December 31, 1980, Vepco shall file fuel expenses showing an adjustment to reflect coal-fired generation from Chesterfield Units 2 and 4, Portsmouth Units 3 and 4, and Possum Point Unit 4.

5. That Vepco shall include in all bills containing the credit referred to hereinabove, or with all refund checks, the notice provided by Appendix A of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Virginia Electric and Power Company - Investigation of the Causes of the High Cost of Retail Electric Service in North Carolina and Applications by Virginia Electric and Power Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. 62-134(e)	NOTICE TO CUSTOMERS

By Order dated July 31, 1979, the North Carolina Utilities Commission ordered Vepco to make refunds to its customers to reflect disallowed total-company fuel expenses of $31 million in the determination of Vepco's rates for the billing months of February through July 1979. Refunds to

customers will be based on their consumption during that period. For example, the refund is $12.14 for customers using 1,000 Kwh each month. The Commission also ordered Vepco to reduce its rates to North Carolina retail customers to reflect a disallowance of $41 million in total-company fuel expenses used to determine Vepco's rates for the second half of 1979. The Commission also found that Vepco should be able to have five of its oil-fired plants converted to coal use by no later than the end of 1980. Beginning then, if the plants have not already been converted, the Commission will adjust Vepco's rates to remove excess fuel expenses associated with the oil-fired generation. It is expected that this adjustment on a total-company basis would be in excess of $10 million annually.

The Commission's action comes as a result of an investigation initiated in September 1978 in response to a request by Governor James B. Hunt, Jr., and concerns expressed to the Commission by the Commission Panel which heard Vepco's request for a rate increase in the summer of 1978. The investigation was conducted by the Commission's Public Staff who subsequently presented their results and recommendations during two weeks of public hearings before the Commission in May of this year.

Based upon the investigations and hearings in this docket, the Commission determined that Vepco's management has performed inadequately in the areas of planning and maintenance of its generation facilities. As a result, the Commission is making downward adjustments to Vepco's rates consistent with the maximum amount shown by the evidence and permitted by law and consistent with the excess costs estimated to have been imposed and being imposed on Vepco's customers by the Company's inadequate planning and maintenance of its generating facilities.

The imposed downward adjustments are threefold. First is a refund to Vepco's customers to reflect overcollections in fuel expenses from February through July 1979. Second, current base rates are reduced. Both of these adjustments reflect what the rates should have been, absent poor planning and maintenance practices by Vepco. Third, rates after December 1980 will be further adjusted to reflect the savings that would have begun to accrue after that date had Vepco observed prudent and timely planning in the conversion of several of its oil-fired generating units to coal-fired use. For Vepco's customers in North Carolina and under this Commission's jurisdiction, the refund is approximately $1.6 million and the reduction in current rates is in excess of $4.1 million on an annual basis. The additional reduction beginning after 1980 will be in excess of $500,000 annually.

While these downward adjustments in rates are significant and are the maximum that can be imposed under the General Statutes of North Carolina, they will not result in Vepco's retail rates being comparable at this time to those of other electric utilities serving North Carolina. Nor can the

Commission preclude Vepco (or other electric utilities for that matter) from filing for increased rates in the future based on increased costs due to inflation in our economy. However, in future rate proceedings, the Commission intends to consider adjustments for excess costs as detailed in this docket. As a result, it can be anticipated that Vepco's rates during the next few years will be significantly less than they otherwise would be. During these hearings the Public Staff projected that Vepco's rates in the future will attain closer parity with those of neighboring utilities as Vepco moves away from its heavy dependence on expensive oil-fired generation. Based on the Public Staff's projections and the Commission's downward adjustments, Vepco's retail rates are expected to become comparable in the 1983-84 time frame to those of Carolina Power & Light Company.

Furthermore, the Commission will carefully consider in future rate proceedings Vepco's rate of return on stockholders' equity during the future periods that Vepco must continue to rely on a high percentage of expensive oil-fired generation. While Vepco's management cannot justifiably be criticized for making what was not an unreasonable business decision in the late 1960s and early 1970s to rely on a substantial amount of oil-fired generation due to the projected economical advantage of oil over coal at that time, neither does it appear to the Commission that Vepco's stockholders should enjoy more than a very minimum return while their ratepayers are bearing the burden of the higher cost of these oil-fired plants. However, as required by the General Statutes of North Carolina, the Commission must withhold judgment on the determination of an appropriate future rate of return pending the hearing of further evidence in any general rate case that may be filed in the future. The Commission would point out that the rate of return on stockholders' investment allowed in Vepco's last general rate case was approximately 10% less than that allowed to the other major electric utilities serving the public in North Carolina.

These actions as a composite should provide sufficient incentive to Vepco to improve its operations in the areas outlined in this Order. Assuming the Public Staff's price projections, Vepco's present and potential customers should see "a light at the end of the tunnel" in terms of reaching parity with rates being paid by other North Carolinians for electric utility service.

DOCKET NO. E-22, SUB 239

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Virginia Electric and	)	
Power Company for Authority to Adjust	)	NOTICE
Its Electric Rates and Charges	)	OF DECISION
Pursuant to G.S. 62-134(e)	)	

BY THE COMMISSION: The Commission hereby gives notice of its January 31, 1979, decision approving a fuel charge credit of $2.40 per 1,000 Kwh for Vepco for the February billing month. A written Order will be issued in the near future.

The Commission gives notice that it has determined that the issues of heat rate decline and conversion of plants from oil-fired to coal-fired generation may be appropriately considered in this docket, and that an evidentiary hearing on these issues will be held on February 13, 1979, at 9:30 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The parties must prefile their testimony by February 12, 1979, at 12:00 noon.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. E-22, SUB 239

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Virginia Electric and Power Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G. S. 62-134(e)	) ORDER APPROVING FUEL CLAUSE REDUCTION AND ORDERING FURTHER REDUCTION AND SETTING FURTHER HEARING

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, January 31, 1979, at 9:30 a.m.

BEFORE: Robert K. Koger, Presiding; Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Joyner & Howison, Attorneys at Law, Wachovia Bank Building, P. O. Box 109, Raleigh, North Carolina 27602
For: Virginia Electric and Power Company

Guy T. Tripp III, Hunton & Williams, Attorneys at Law, P. O. Box 1535, Richmond, Virginia 23212
For: Virginia Electric and Power Company

For the Intervenors:

Hugh A. Wells, Jerry B. Fruitt, and Paul Lassiter, Public Staff, North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

David Gordon, Associate Attorney General, Attorney General's Office, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On December 29, 1978, Virginia Electric and Power Company (Vepco) filed an application for authority to adjust its retail electric rates and charges pursuant to NCUC Rule R1-36, as amended by Order of August 4, 1978, based solely upon the decreased cost of fuel in the generation of electric power pursuant to G. S. 62-134(e) decreasing by more than 1.00 mil/Kwh the Fuel Adjustment Charge (FAC) set for January - June 1979, in Docket No. E-22, Sub 238. Vepco sought approval to adjust the fuel charge by a new Fuel Charge Rider RR which would reduce Vepco's basic Fuel Charge Rider by a credit of 0.230¢ per kilowatt-hour, which would be a decrease of 0.086¢ from the 0.144¢ per kilowatt-hour credit contained in the then existing Fuel Charge Rider QQ.

On January 22, 1979, the Public Staff of the Utilities Commission, intervening on behalf of the using and consuming public, filed a Motion for additional decrease in Vepco's proposed fuel charge adjustment for an additional reduction of 0.133¢ per kilowatt-hour.

The Public Staff Motion contended that Vepco's proposed Fuel Charge Rider RR contained excessive or improper expenses charged to the fuel account for the test period as follows:

1.	Mt. Storm (Island Creek and Laurel Run) excess prices	$ 844,543
2.	Heat Rate Improvement to 1970 level	7,200,172
3.	Coal to Oil Conversion & availability improvement	3,100,064
	Total	$11,144,779

On January 26, 1979, the Commission issued an Order setting the Public Staff Motion for oral argument on January 29, 1979.

Following the hearing on oral argument from all parties, the Commission issued its Order on January 30, 1979, setting an evidentiary hearing on the Vepco application and the Public Staff Motion as to excessive prices for coal under Vepco's Island Creek and Laurel Run contracts, and setting additional oral argument on the other two Public Staff

issues of heat rate decline and conversion from oil to coal generation, both for January 31,1979.

On January 30, 1979, the Honorable Rufus L. Edmisten, Attorney General, intervened on behalf of the using and consuming public.

On January 31, 1979, the Commission heard all parties in oral argument on the Public Staff Motion as to the heat rate decline and the conversion from oil to coal generation, and then proceeded with the full evidentiary hearing on the issue as to the cost of coal under Vepco's Island Creek and Laurel Run coal contracts. Vepco offered the testimony of C. L. Dozier, Jr., Manager of General Accounting Services of Vepco, and W. N. Thomas, Vice President for Fuel Resources. The Public Staff offered the testimony of J. Reed Bumgarner, Utilities Engineer, and Dell Coleman, Director of Accounting Division.

After careful consideration and scrutiny of the evidence offered by both Vepco and the Public Staff and all matters of record herein, the Commission makes the following

FINDINGS OF FACT

1. That Vepco has included in its total expenses in its Fuel Charge Rider RR an amount of $669,910 for the cost of coal from the Island Creek mine, based upon a contract with the mine to pay the mine's overhead costs during outages caused by work stoppages, and said $669,910 is the excess in the coal cost booked at $43.21 per ton due to a strike, whereas the normal price before and after the strike was no greater than $31.28 per ton, and said excess cost constitutes an aberration in the coal cost which is not a proper charge under G.S. 62-134(e) and should be normalized to $31.28 per ton to constitute the cost of fuel under G.S. 62-134(e).

2. That the Vepco Fuel Charge Rider RR contains in its base charges an amount of $174,633 arising from the pricing of coal from Vepco's company-owned Laurel Run mine during its developmental operation, at a time when the coal produced was to be priced at a cost based, in part, on the cost of coal from the Island Creek mine; that inasmuch as the Commission has found that the cost of coal from the Island Creek mine during said period included charges that were not proper charges for the fuel charge, as found in Finding of Fact 1 above, the Commission finds that said $174,633 of charges for Laurel Run coal, based upon Island Creek costs for overhead operation, was not a proper charge for the fuel charge under G.S. 62-134(e), but would be accounted for as a cost of development, and capitalized for future handling when the mine is assigned commercial operating status, as in the case of the costs of Duke's Peter White mine, in Docket No. E-7, Sub 243, 1978 (post).

3. That said combined nonproper charges for coal of $174,633 at Laurel Run and $669,910 at Island Creek, for a combined disallowed fuel charge totalling $844,543, requires a further reduction of 0.01¢ per kilowatt-hour which should be added to Vepco's proposed credit in its Fuel Charge Rider RR of 0.230¢ per kilowatt-hour for a new Fuel Charge Rider giving a credit of 0.240¢ per kilowatt-hour effective on all bills rendered on and after February 1, 1979.

4. That the heat rate at which Vepco operates its steam generating plants could have a bearing upon proper fuel charges under G.S. 62-134(e) under the Public Staff contentions that Vepco operated its steam boilers in a negligent fashion and improper manner out of intention to collect for any excessive costs of fuel therefrom through the fuel clause rather than operating at a reasonable heat rate and reflecting expenses therefrom in a general rate case, if proved, and said Motion and allegation and Vepco's Response thereto should be set for evidentiary hearing.

5. That the cost of fuel for oil generation exceeds the cost of fuel for coal generation, and under the contentions of the Public Staff Motion an improper or negligent or wrongful failure to convert Vepco's oil-fired generators to coal-fired generators could have an effect upon the cost of fuel to be charged as a reasonable expense under G.S. 62-134(e), and said allegation should be set for evidentiary hearing.

CONCLUSIONS

The Legislature has adopted G. S. 62-134(e) as a special procedure to increase or decrease rates and charges of electric companies based solely upon the increased or decreased cost of fuel used in the generation or production of electricity in electric power. The statute provides for expedited hearing in order to reflect changes in the cost of fuel in the rates for electric power without the regulatory lag associated with general rate cases under G.S. 62-133. The history of fuel charges in the United States and in North Carolina has established a primary feature of said fuel clauses which the Commission adopts, requiring utmost care and caution that no fuel expenses be charged to fuel charges except those reasonably incurred, and that the fuel charge should be related solely to the reasonable fuel cost, whether they be for increases or decreases in said fuel costs.

The Commission has heretofore reduced the fuel charge of an electric company based upon excessive cost of coal in a company-owned mine during developmental stage and ordered reduction in the fuel charge as a result thereof with the development costs subject to amortization in future accounting treatment. Docket No. E-7, Sub 243, Duke Power Company - Adjustment of Electric Rates under G.S. 62-134(e), March 29, 1978.

The Island Creek coal was charged into the fuel charge under a contract requiring Vepco to pay Island Creek's overhead charges during the strike, resulting in charges of $43.21 per ton as compared to charges immediately after the strike of $31.28 per ton, and said difference in the strike cost should be removed as an unreasonable and nonfuel charge which is not a proper charge under G.S. 62-134(e).

The evidence in this case clearly showed that Vepco's company-owned Laurel Run mine was in the developmental stage and that the price that Vepco charged to the fuel charge for Laurel Run coal included developmental costs, and that the price per ton should be normalized to a normal base price of $31.28 per ton rather than the $43.21 per ton charged in the fuel charge.

The two issues set for further oral argument on January 31, 1979, as to whether they were appropriate issues for a fuel charge, i.e., the heat rate and the coal to oil conversion, should be set for evidentiary hearing before any determination can be made on the final issue as to whether the fuel charge should be further reduced.

IT IS, THEREFORE, ORDERED as follows:

1. That a further credit of 0.01¢ per kilowatt-hour is hereby added to the Vepco filing of its Fuel Charge Rider RR so that said Fuel Charge Rider RR, as approved herein, shall become effective on February 1, 1979, as a credit of 0.240¢ per kilowatt-hour effective on all bills rendered on and after February 1, 1979.

2. That the issues in the Public Staff Motion filed January 22, 1979, relating to (1) the heat rate improvement to the 1970 level, and (2) coal to oil conversion and availability improvement, are hereby separated from the action taken herein on said Motion, and are set for evidentiary hearing on April 24, 1979, on the merits of said issues of the Public Staff Motion and the Response thereto filed by Vepco on January 25, 1979, in accordance with the Order of the Commission entered in consolidated Docket No. E-22, Subs 236 and 239, on February 13, 1979.

3. That if any portion of said two issues from the Public Staff Motion should be allowed after full evidentiary hearing and opportunity for Vepco to offer evidence thereon, the rates approved thereunder shall be effective and refunds shall be ordered as a result thereof, pursuant to the Undertaking for Refund filed in Docket No. E-22, Sub 236, on February 9, 1979.

4. That Vepco shall file its prefiled testimony of expert witnesses for said public hearing on March 15, 1979, and serve a copy thereof on other parties of record on or before March 15, 1979.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

TATE, COMMISSIONER, DISSENTING: The majority of the Commission has concluded that the amount of $669,910 in coal costs paid to Island Creek Coal Company is excessive because those costs reflect increases in the price of coal due to the coal mine strike. Vepco's long-term coal purchase contract with Island Creek is virtually a cost plus arrangement, presumably entered into in good faith with bargaining at arm's length, a fact that is uncontroverted in the record. As acknowledged by the Public Staff, since its inception in 1974 and up until the early months of 1978, Vepco's contract with Island Creek has operated in a manner which has been favorable to the Company and its customers. The 1978 rise in cost of Island Creek coal or that portion of cost which the Public Staff and the majority consider to be excessive, results from the strike or work stoppage of the United Mine Workers (UMW) during early 1978.

Clearly, in establishing the level of consideration to be exchanged in any contractual arrangement including the buying or selling of coal, the parties must carefully consider and weigh the impact of all factors entering into the decision-making process. In determining the buying or selling price of coal no factor is weighed more heavily than the impact on prices and profits of work stoppages by the UMW. Therefore, it is reasonable to conclude that the cost of such work stoppages will be reflected in the exchange price of the coal. If under the provisions of the contract the cost of coal is fixed at some average price per unit, i.e., at the level of $30 per ton or $1.06 per MBTU, it is clear that total cost, including cost arising from UMW work stoppages, are expected to be recovered on an average unit of sales basis over the life of the contract.

However, on the other hand, if the Contract is on a cost-plus basis, such as Vepco's contract with Island Creek, costs are not recoverable until such time as they are incurred. Therefore, the unit cost of coal will fluctuate and undoubtedly will be adversely affected by events such as the UMW strike of 1978.

It is patently unfair, inequitable, and unreasonable to determine the propriety of prices paid for coal by comparing coal prices determined on an average unit of cost basis whereby total costs are expected to be recovered proportionately (per unit) over the life of the contract to the unit price as determined on a cost-plus basis during a period (month) when such prices have been adversely and dramatically affected by an event such as the UMW strike. This is precisely the comparison that the Public Staff and the majority have used in determining that Vepco's Island Creek contract was imprudent and its prices unreasonable.

Obviously, a far better criteria for determining the reasonableness of the Island Creek Contract would be to compare the average unit cost of coal to date or the expected average cost of coal over the life of the Contract to the average unit cost of coal acquired or to be acquired by Vepco under other long-term contracts or to that acquired or to be acquired by Duke or CP&L.

It is interesting to note that the Public Staff did not provide any direct cost comparison of the price paid under Vepco's Contract with Island Creek to the prices paid by CP&L and Duke. The price comparisons that the Public Staff did offer were comparisons of the cost of coal, excluding freight cost, delivered to Vepco's Mt. Storm generating plant, which receives 100% of the coal purchased from Island Creek, as compared to the Company's other coal fired production facilities and cost comparisons of Vepco's total coal costs from all sources to that of CP&L and Duke.

During the period March 1975 through August 1978, with very, very few exceptions the monthly unit cost of coal received by Vepco at Mt. Storm, excluding freight costs, was less than that of Duke Power Company and in all material respects was the same as or less than that of CP&L. When freight cost is included, Mt. Storm's combined total coal and freight cost is significantly lower than that of both Duke and CP&L. The following excerpts from several cost comparisons presented by the Public Staff clearly show that prices paid for coal by Vepco for use at Mt. Storm and on a systemwide basis are more favorable than prices paid for coal by Duke and on the average for the comparative periods are as favorable as prices paid by CP&L.

TABLE I
COAL RECEIVED FROM ALL SOURCES
WEIGHTED AVERAGE COST

Line No.	Period	Amount Per Ton		
		Duke	Vepco	CP&L
1.	11 months ended 12/31/75	$22.24	$18.81	$19.98
2.	12 months ended 12/31/76	22.58	18.62	19.30
3.	12 months ended 12/31/77	25.25	21.21	21.95
4.	8 months ended 8/31/78	29.00	25.10	24.64

		Amount Per MBTU		
		Duke	Vepco	CP&L
1.	11 months ended 12/31/75	$ .9462	$ .8160	$ .8262
2.	12 months ended 12/31/76	.9447	.7919	.7900
3.	12 months ended 12/31/77	1.0590	.9152	.9169
4.	8 months ended 8/31/78	1.2130	1.0707	1.0211

TABLE II
COAL RECEIVED UNDER LONG-TERM CONTRACT
WEIGHTED AVERAGE COST

Line No.	Period	Amount Per Ton		
		Duke	Vepco	CP&L
1.	11 months ended 12/31/75	$22.86	$17.58	$21.46
2.	12 months ended 12/31/76	25.28	19.46	20.71
3.	12 months ended 12/31/77	26.08	22.32	21.24
4.	8 months ended 8/31/78	30.13	27.47	23.58

		Amount Per MBTU		
		Duke	Vepco	CP&L
1.	11 months ended 12/31/75	$ .9742	$ .7674	$ .8712
2.	12 months ended 12/31/76	1.0655	.8213	.8407
3.	12 months ended 12/31/77	1.0964	.9507	.8754
4.	8 months ended 8/31/78	1.2545	1.1679	.9680

TABLE III
MT. STORM COST COMPARISONS
COAL RECEIVED UNDER LONG-TERM CONTRACT

PERIOD	COST PER MBTU				
	MT. STORM		ALL SOURCES		
	NON-AFFILIATED	AFFILIATED	DUKE	Vepco	CP&L
	(a)	(b)	(c)	(d)	(e)	(f)
1975 March	$ .7117	$ .6089	$ .9812	$ .7037	$ .7655
April	.7416	.6988	1.0453	.7495	.7757
May	.7280	.7017	1.0437	.7349	.8834
June	.7349	.6954	1.0005	.8212	.8426
July	.6955	.6931	1.0781	.7616	.8278
August	.6760	.7684	.9893	.8196	.9718
September	.6713	.7164	.9415	.7707	.9103
October	.6748	.7291	.9463	.7695	.9041
November	.6702	.7021	.8648	.7533	.8624
December	.6742	.7080	.9150	.7773	.9419
1976 January	.9942	.5721	.9015	.9279	.9121
February	.7343	.7126	.9026	.8407	.8949
March	.7261	.7017	.9365	.8053	.8256
April	.7270	.7458	.9638	.8129	.8063
May	.7047	.7506	.9374	.8176	.8605
June	.7128	.7568	.9428	.8235	.8548
July	.6861	.7810	1.0472	.7890	.8929
August	.7760	.7810	1.0229	.8197	.7648
September	.7949	.7766	1.0090	.8213	.8334
October	.7965	.8228	.9724	.8388	.8124
November	.8084	.8342	1.0069	.8107	.8087
December	.7783	.8381	1.0451	.8486	.8398
1977 January	.7194	.8414	.9929	.8246	.8587
February	.9315	.8218	1.0912	.9258	.8795
March	.9761	.8105	1.0353	.9518	.9052
April	.8369	.8356	1.1925	.8980	.8610
May	.8694	.8312	1.1591	.8897	.8566
June	.8547	.8521	1.0757	.9023	.8589
July	.8000	.8800	1.1199	.9613	.8231
August	.8600	.8500	1.0173	.9700	.8423
September	.9400	.8700	1.1752	.9900	.8597
October	.9400	.9100	1.0823	1.0100	.9116
November	.9700	.9100	1.1349	1.0100	.8589
December	1.0925	.9110	-	1.0034	.9786
1978 January	-	-	1.4363	1.2955	.9502
February	-	-	1.2912	1.1858	.9159
March	.8019	1.0213	1.2714	1.0995	1.1680
April	1.0115	.9953	1.1941	1.0833	.9434
May	1.0892	1.0420	1.1851	1.1663	.9486
June	1.0687	1.0449	1.2178	1.1387	.9855
July	1.0473	1.1275	1.4446	1.1828	.8788
August	1.3323	1.1037	1.3095	1.2757	.9532

As previously stated, it is understood that when a coal strike occurs, there will be an increase in the price of coal and in both the case of Duke Power and Carolina Power & Light Company, these increased costs of coal were passed on to the consumer through the fuel clause. It is at the very least inconsistent to now find that in Vepco's case, the high costs of coal attributable to the coal strike are "an aberration." Unlike a general rate case where there is a test year which may include some very high costs that are not expected to recur in the future and some low charges that may reasonably be expected to be higher in other years which must be normalized, the fuel clause by its very being acknowledges that fuel costs are so erratic that they cannot be effectively normalized within the traditional test year context. Therefore, the fuel clause procedure was implemented and operates to collect the changing cost of fuel both when it is high and when it is low. Simply stated, fuel costs are expected to fluctuate and there is absolutely nothing unique about the increased cost of coal to Vepco attributable to the UMW strike of 1978. Unfortunately, such strikes are common place within the coal mining industry and have come to be expected. Therefore, to contend that reasonable costs associated with such strikes should not be refected in the prices paid for coal is absurd.

In addition, the Commission has failed to deal with the fact that Vepco has a firm contract with the Island Creek Coal Company and has operated under that contract since February 1974. Like all contracts, this contract must be viewed as a whole and not construed by simply looking at one article for one period of time. The witness of the Public Staff, Mr. Coleman, agreed that the contract had been in effect since 1974 and that there had been no unreasonable charges resulting from this contract over those years.

The Public Staff did not specifically contend, nor has the Commission specifically ruled, but both by their actions imply that it was imprudent for Vepco to enter into the Island Creek contract.

Freight cost is a component of total fuel cost that is tracked through the fuel charge rider. Freight cost associated with contract coal received at Mt. Storm as compared to Vepco's other coal fired production facilities compare most favorably as illustrated by Table IV below:

TABLE IV
FREIGHT COST
COAL RECEIVED UNDER LONG-TERM CONTRACT
HIGH-LOW COST PER MBTU-Vepco SYSTEM

Year	Mt. Storm[1]	Other
1975	$.0237 - $.0091	$.3486 - $.2941
1976	.0156 - .0069	.3752 - .3262
1977	.0315 - .0077	.4118 - .3454
1978	.0273 - .0044	.5687 - .3620

[1]Excludes freight on coal from Laurel Run.

Freight costs of Duke and CP&L were not offered into evidence. However, such cost can reasonably be expected to be in the high-low range or exceed the freight cost applicable to Vepco's production facilities other than Mt. Storm.

Apparently, the Public Staff and the majority gave very little if any consideration to the absolutely minimal cost of transporting coal from the Island Creek coal mines to Mt. Storm and the effect that such reduced cost has in lowering total fuel costs. Such considerations are unquestionably an integral factor to be weighed very heavily before entering into a contractual agreement for the buying of coal and most assuredly are worthy of more than just casual indifference when evaluating the prudence of Vepco's management decision in this regard.

Considering freight costs, Vepco has paid lower than normal coal prices under this contract, and according to Mr. Coleman, even when freight cost is excluded, there have been no excessively high prices paid under the contract. Now, due to the coal strike, considered as an aberration by the majority, Vepco is told that it cannot pay, or at least it cannot collect through the fuel charge, the costs for the coal procured through this contract.

Now to the question of the Laurel Run coal. Laurel Run is a subsidiary of Vepco and, therefore, the prices for its coal must be looked at even more carefully because the contract cannot be considered an arm's-length transaction. The Virginia Commission set up a method for fairly pricing the coal from Vepco's subsidiary, Laurel Run. The technique devised by the Virginia Commission was to set the price for Laurel Run coal at the weighted average of the price of coal under Vepco's two other suppliers (one of whom was Island Creek) for the Mt. Storm plant. This was similar to the approach taken by the North Carolina Public Utilities Commission in the case of the Peter White Mine, a subsidiary of Duke Power Company. Having first decided that Island Creek was paid too much due to a so-called aberration, the Commission then applied the same adjusted price of that coal to Vepco's subsidiary, Laurel Run.

I, therefore, disagree with the majority on two basic principles. Coal strikes and the resultant costs arising from them should be treated in the same way for all the electric utilities that we regulate and the Commission has allowed the costs of the strike to be passed through to the consumers of Duke and CP&L but refuses to allow Vepco to collect these charges. Apparently what was reasonable for Duke and CP&L miraculously becomes "an aberration," when dealing with Vepco. And secondly, when examined closely, Vepco's average cost of coal acquired from Island Creek is shown to be lower than the average of Duke and CP&L and, therefore, is not an unreasonable expense.

The Commission has Docket No. E-22, Sub 236 already in existence for the purpose of investigating the high electric charges of Vepco in its service area. When that hearing is held, the Commission should consider every facet of Vepco's operation in order to ascertain if their charges are reasonable and to consider whether or not their management has operated prudently. In its eagerness to protect the North Carolina consumer, however, the Commission should never depart from the basic rule of fairness that requires us to treat all utilities equally and consistently.

In summary, I can find no evidence that the price of Island Creek coal was excessive or unreasonable. Therefore, I find no evidence that the price of coal received from Laurel Run was either excessive or unreasonable. Costs associated with work stoppages of the UMW are and have long been considered by this Commission to be reasonable costs properly includable in Duke Power Company's, Carolina Power & Light Company's and, heretofore, Virginia Electric and Power Company's overall cost of service or more specifically fuel costs subject to recovery through the fuel charge rider.

For the majority to now single out this item of cost and contend that it is an "aberration" solely with respect to Vepco is unwarranted, unreasonable and unfair. It is this vast inequity that brings forth my dissent.

Sarah Lindsay Tate, Commissioner

DOCKET NO. E-7, SUB 237

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for an Adjustment of Its Rates and Charges in Its Service Area Within North Carolina	)))))
	ORDER APPROVING TARIFF AND CLOSING DOCKET

PLACE: Commission Hearing Room, Raleigh, North Carolina

DATE: February 6, 1979

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Ben E. Roney, John W. Winters, Sarah Lindsay Tate, Robert Fischbach, and Leigh H. Hammond

APPEARANCES:

For the Applicant:

George W. Ferguson, Jr., and W. Edward Poe, Attorneys at Law, Duke Power Company, P.O. Box 33198, Charlotte, North Carolina 28242

For the Intervenors:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Box 527, Raleigh, North Carolina 27602
For: The North Carolina Oil Jobbers Association

For the Public Staff:

Dwight W. Allen and Theodore C. Brown, Jr., Staff Attorneys, NCUC - Public Staff, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Department of Justice:

Dennis P. Myers and M. David Gordon, Officer of the Attorney General, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: The Commission established a new rate for Duke Power Company, Schedule RC, Residential Service Energy and Conservation rate, in its August 31, 1978, Order in this docket. Schedule RC includes standards for insulation of residences which must be met before the residence can be served on the new tariff. A recorded conference was held on September 27, 1978, to discuss controversies which had arisen concerning the levels of insulation required. As a result, the Commission on October 11, 1978, issued a notice of further hearing for the purpose of determining the appropriate thermal standards for Duke Power Company's Schedule RC. The hearing was originally set for October 19 and was continued several times at the request of the Public Staff and others until February 6, 1979.

On January 24, 1979, Duke filed a letter amendment to the RC Schedule to allow an approved vapor barrier installation to be accepted as meeting the schedule requirement for ventilation. Presently the attic space must be adequately ventilated by either free air movement or mechanical ventilation. This requirement precludes service on the rate

to homes with cathedral ceilings and to mobile homes. The purpose of the ventilation requirement is to prevent moisture which migrates from the moist residence interior toward the dry, cold outside air from condensing on the cooler portions of the insulation and reducing its effectiveness. Duke indicated that a vapor barrier would essentially eliminate the migration of vapor from the residence interior to the insulation, would meet the purpose of the requirement, and would allow mobile homes and residences with cathedral ceilings to qualify for the rate. The amendment was approved on an interim basis by the Commission in the Public Conference of February 5, pending the Order to be issued as a result of the scheduled February 6, 1979 hearing.

Testimony was received from Richard W. Seekamp, Utilities Engineer of the Public Staff, comparing Duke's suggested insulation requirements with those of the North Carolina Building Code. Dan Galloway and V.V. Vercoe of Dow Chemical illustrated the usefulness of insulated sheathing in a wall section. Ray Sparrow and John Crosland, each President of a large firm engaged in home construction and each a former President of the North Carolina Homebuilders Association (NCHA), and G.W. Francis, a consulting engineer for the NCHA, presented the results of studies of the economic attractiveness of various insulation alternatives. Donald H. Denton, Vice President of Duke Power Company, illustrated Duke Power Company's proposals. Messrs. Crosland and Denton testified in earlier proceedings in this docket and that testimony has been considered.

Based on the testimony in this Docket, the Commission makes the following

FINDINGS OF FACT

1. That the installation of high levels of insulation results in decreased use of energy and decreased coincident demand upon the electric utility supply system.

2. That the present level of the RC rate schedule charges will pass along to the ratepayer the reductions in cost to the electric utility system which result from the installation of high levels of insulation in a residence.

EVIDENCE AND CONCLUSIONS

The matters at issue are essentially threefold. Should the RC Schedule require R-30 insulation levels in ceilings? Should R-16 insulation be required in walls? Should R-19 insulation be required in floors?

Testimony by Mr. Crosland for the homebuilders indicated that there was an excessively long payback from these three investments and that these requirements should be R-19 for ceilings and R-11 for walls and floors. Mr. Crosland's analysis appears to have improperly treated the tax effects

of these investments and thus has overstated the payback periods. Testimony by Mr. Galloway for makers of insulated sheathing indicated that R-17 wall insulation was the proper requirement. Mr. Galloway agreed with Duke that R-17 would require the use of an insulated sheathing if standard house construction methods are used, whereas R-16 could be accomplished by several means. Testimony by Mr. Denton for Duke indicated that the reduced rates in the RC schedule were matched with the savings to the electric system of the higher insulation levels. Testimony by Mr. Seekamp indicated that the Public Staff supported requirements for levels of insulation which economically conserved energy and demand requirements.

The primary problem addressed by the RC rate is one of developing a program to reduce both the total use of energy and the coincident use of energy (peak load). Since high insulation levels cause energy conservation, cause increased diversity, and result in decreases in the coincident demand on the electric system, and since the reduced RC rate is designed to pass the resultant savings along to the consumers, the Commission concludes that this rate concept is reasonable.

The program which the Commission has approved on an interim basis requires R-30 ceiling insulation, R-19 floor insulation, and R-12 wall insulation to meet the RC Rate requirements. While R-16 wall insulation would increase the savings to the electric system, it is a practical impossibility for many existing residences to be upgraded to the higher R-16 wall requirements. However, the Commission concludes that the upgrading of new homes to these high levels can be induced at the time of construction by allowing Duke to continue promoting its Energy Efficient Structure program.

The General Assembly has charged the Commission with the responsibility of planning ahead to assure that the citizens of North Carolina are provided with adequate, efficient, and economical utility services. The Commission concludes that the two-part program of (1) implementing the RC Rate and (2) allowing the EES program to coexist is an aid in meeting these responsibilities. The Commission also concludes that the rate levels previously set are just and reasonable and that the RC rate schedule, as amended on February 5 should be approved on a permanent basis. The Commission concludes that the results of this program should be closely monitored.

IT IS, THEREFORE, ORDERED:

1. That the interim insulation standards of the RC rate tariff, as amended in public conference on February 5, 1979, to allow the use of an approved ceiling vapor barrier installation in lieu of the attic ventilation requirement, and as shown in Appendix A attached, are hereby approved on a permanent basis.

2. That Duke Power Company shall, as a part of its required annual filing on costs of service, present the Commission with a report on the effectiveness of this RC rate as presently structured.

3. That this docket is hereby closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

ATTACHMENT A

"Thermal Requirements for Energy Conservation:

"Sufficient application of thermal control products must be installed to meet standards outlined below:

"Ceilings shall have insulation installed having a thermal resistance value of 30 (R-30).

"Walls exposed to full temperature differential (TD) or unconditioned area shall have a total resistance of R-12.

"Floors over crawl space shall have insulation installed having a resistance of R-19.

"Windows shall be insulated glass or storm windows.

"Doors exposed to full TD shall be weatherstripped and equipped with storm doors or of the insulated type. Other doors exposed to unconditioned areas must be weatherstripped.

"Air ducts located outside of conditioned space must have: (1) all joints mechanically fastened and sealed, and (2) a minimum of 2-inches of R-6.5 duct wrap insulation, or its equivalent.

"Attic ventilation must be a minimum of one square foot of free area for each 150 square feet of attic area. Mechanical ventilation or a ceiling vapor barrier, in lieu of free area, may be used where necessary, subject to special approval.

"Chimney flues and fireplaces must have tight fitting dampers.

"Alternate Equivalent Performance Standard: Variations may be made in the Insulation Standards as long as total heat loss does not exceed that

calculated using the specific Standards above. Duct or pipe losses shall be included in the computation of total heat losses. Duke Power's procedure for calculating heat loss or the current edition of ASHRAE Guide shall be the source for heat loss calculations.

"Framing corrections are not to be considered in computing resistance values.

"All Thermal control products described in the Standards above should be installed in accordance with manufacturer's recommendation."

DOCKET NO. A-23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carteret Boat Tours, Inc., Route 1, Box 467, Highway 101, Beaufort, North Carolina 28516 - Application for Authority To Transport Passengers And Their Baggage as a Common Carrier by Boat	) RECOMMENDED) ORDER GRANTING) COMMON CARRIER) AUTHORITY)

HEARD IN: Municipal Building Auditorium, 202 South 8th Street, Morehead City, North Carolina, on January 25, 1979, at 9:30 a.m.

BEFORE: Commissioner Robert Fischbach

APPEARANCES:

For the Applicant:

Richard L. Stanley, Taylor & Stanley, Attorneys at Law, 315 Cedar Street, P.O. Box 688, Beaufort, North Carolina 28516

For the Protestant:

R.D. Darden, Jr., Attorney at Law, 710 Arendell Street, Morehead City, North Carolina 28557
For: Outer Banks Transportation Company and Josiah W. Bailey

Samuel Pretlow Winborne, Attorney at Law, Appearing in behalf of Vaughan S. Winborne, Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27601
For: Outer Banks Transportation Company and Josiah W. Bailey

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

FISCHBACH, HEARING COMMISSIONER: On October 11, 1978, Carteret Boat Tours, Inc., Beaufort, North Carolina, filed an Application with the Commission for authority to engage in the transportation of passengers and their baggage, in the same boat with passengers, as a common carrier by boat, over the following routes:

FIRST ROUTE - Leaving a dock on the waterfront near Front Street, Beaufort, North Carolina and traveling Westerly and Southerly to a dock on the West side of Bird Shoal opposite Radio Island in Carteret County; thence in a

southerly direction along Beaufort Inlet to Fort Macon State Park on Bogue Banks; thence in an easterly direction through Beaufort Inlet to a dock on the South side of Shackleford Banks; thence in a Northerly direction up North River to Taylor Creek; thence in a Westerly direction along Taylor Creek to the dock on the Beaufort waterfront.

SECOND ROUTE - Leaving a dock on the Front Street of Beaufort, North Carolina, and traveling in a northerly direction up Gallant Channel and Beaufort Town Creek to the Newport River; thence in a southerly direction along the Newport River and past Phillips Island and the North Carolina State Ports to the Morehead City Channel; thence in a westerly direction along the North Carolina State Ports and the Morehead City waterfront to the Intracoastal Waterway; thence in an easterly direction along the Intracoastal Waterway to Morehead City Channel located on the West side of Radio Island; thence in a southeasterly direction along Radio Island to a dock on the West end of Bird Shoal; thence in a northeasterly direction along the West side of Bird Shoal to the dock on Front Street in the Town of Beaufort.

THIRD ROUTE - From Harkers Island to an area near the Cape Lookout Lighthouse in the Cape Lookout National Seashore Park in Carteret County, North Carolina, and a return trip over the same route.

FOURTH ROUTE - Leaving a dock on the Beaufort waterfront and running in an easterly direction along Taylor Creek and along the South side of Harkers Island to a point near Cape Lookout Seashore Park, and to return to the Beaufort waterfront over the same route.

On November 9, 1978, the Commission issued an Order giving notice of the application and setting the matter for hearing in Morehead City on January 11, 1979. Thereafter, on December 29, 1978, Josiah W. Bailey, Jr., trading under the name of Outer Banks Transportation Company, filed Protest and Motion to Intervene in this Docket. By Order issued January 4, 1979, Josiah W. Bailey, Jr., was allowed to intervene as a party protestant in the docket. (The Order also continued the hearing to January 25, 1979.)

On January 10, 1979, the Public Staff of the North Carolina Utilities Commission filed Notice of Intervention on behalf of the using and consuming public. The intervention was recognized by the Hearing Commissioner at the beginning of the hearing.

The matter came on for hearing in Morehead City as scheduled. The Applicant, the Protestant, and the Public Staff were present and represented by counsel. At the beginning of the hearing the Applicant moved that the request for routes three and four in the Application be dismissed. Counsel for Protestant Bailey stated that he

would not contest the Application with respect to the sightseeing routes but that he did contest the Application with respect to point-to-point transportation of passengers, particularly from Beaufort, North Carolina, to Shackleford Banks.

The Applicant presented the testimony of the following witnesses: Donnie Russell, the President and stockholder of the corporate Applicant, who testified as to the proposed service on routes one and two, the need for the service, the boats that will be used on these routes, the fares to be charged, and the financial resources of the Applicant; Deborah Wesley Russell, a stockholder and officer of the Applicant, who testified generally on the need for the proposed service, the estimated costs for providing the service, and the financial resources of the Applicant; Barbara Wesley, a stockholder, who testified on the financial worth of herself and her husband, another stockholder; Michael Bradley, Manager of the Duke University Marine Laboratory at Beaufort; Charles R. McNeil, Director of the Hampton Mariners Museum in Beaufort; Catherine Page Cloud, President of the Beaufort Historical Association; and Mrs. Copeland Kell, a businesswoman, author, and member of the Beaufort Historical Association and Carteret Research Association - all four of whom testified on the need and demand for the service proposed by the Applicant.

The Protestant Bailey did not present any witnesses but asked the Commission to take judicial notice of the certificate of convenience and necessity granted him in Commission Docket No. A-20 and to take judicial notice of the Commission's Order of May 24, 1978, in Docket No. A-20, Sub 3. The Protestant stipulated that he was not now providing service from Beaufort to Shackleford Banks.

Based upon the Application, the evidence presented at the hearing, and the entire record in this proceeding, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. The Applicant Carteret Boat Tours, Inc., is a North Carolina corporation with its principal office at Route 1, Box 467, Highway 101, Beaufort, North Carolina. Donnie Russell, Deborah Russell, Donald Wesley, and Barbara Wesley are the principal stockholders of the corporation.

2. The Applicant proposes to furnish passenger service by boat over the following two routes:

FIRST ROUTE - Leaving a dock on the waterfront near Front Street, Beaufort, North Carolina and traveling Westerly and Southerly to a dock on the West side of Bird Shoal opposite Radio Island in Carteret County; thence in a southerly direction along Beaufort Inlet to Fort Macon State Park on Bogue Banks; thence in an easterly direction through Beaufort Inlet to a dock on the South side of

Shackleford Banks; thence in a Northerly direction up North River to Taylor Creek; thence in a Westerly direction along Taylor Creek to the dock on the Beaufort waterfront.

SECOND ROUTE - Leaving a dock on the Front Street of Beaufort, North Carolina, and traveling in a northerly direction up Gallant Channel and Beaufort Town Creek to the Newport River; thence in a southerly direction along the Newport River and past Phillips Island and the North Carolina State Ports to the Morehead City Channel; thence in a westerly direction along the North Carolina State Ports and the Morehead City waterfront to the Intracoastal Waterway; thence in an easterly direction along the Intracoastal Waterway to Morehead City Channel located on the West side of Radio Island; thence in a southeasterly direction along Radio Island to a dock on the West end of Bird Shoal; thence in a northeasterly direction along the West side of Bird Shoal to the dock on Front Street in the Town of Beaufort.

3. On route number one the Applicant proposes to make a stop on Bird Shoal and a stop on the south side of Shackleford Banks. The Applicant has requested the owners of Shackleford Banks for permission to locate a dock there and has also contacted the appropriate state agency for a dock permit. On route number two the only proposed stop would be on Bird Shoal, and the Applicant has requested the owner for permission to locate a dock there.

4. The Applicant owns the oil screw "Karen Ann," which is documented by the United States Coast Guard and is certified to carry 35 passengers. The corporation also leases the oil screw "Margie." The "Margie" is a 44-foot headboat licensed and approved by the Coast Guard for 30 passengers. Both of these vessels would be used by the Applicant in carrying the passengers over routes one and two. Both vessels require a captain and a mate.

5. Donnie Russell, who is a United States Coast Guard certified ocean operator captain, will be operating one of the vessels. Deborah Russell is in the process now of obtaining her captain's license so that she can serve as either captain or mate on either or both of the vessels.

6. The Applicant will be able to secure liability insurance once the marine survey has been completed on the "Karen Ann." Currently, the "Margie" is covered by a policy of liability insurance.

7. The Applicant's vessels will be docked on the waterfront in Beaufort, and it has arranged with the dockowner to pick up and discharge passengers on the Beaufort waterfront.

8. The Applicant proposes to make three or four trips each day over routes one and two. The proposed service,

which would be seasonal, would begin about the middle of March and would cease at Thanksgiving. The daily schedules would be set after the Applicant had conferred with the Hampton Mariners Museum and the Beaufort Historical Association.

9. The Applicant proposes to furnish the passenger service from the Beaufort waterfront over routes one and two in order to provide shelling, swimming, and sight-seeing activities. The Applicant is willing to furnish this service on a continuing basis, and the stockholders are willing to provide the corporation the financial support to carry out the proposed service. It has been approximately two or three years since the service the Applicant proposes to conduct from the Beaufort waterfront has been offered, and when the service was offered approximately two or three years ago, it was on a limited basis by charter only. There is no day-to-day continuing operation to take care of the public's need at this time.

10. The Applicant currently has net assets of approximately $11,000. The net worth of Donnie and Deborah Russell, two of the principal stockholders, is $51,140. The net worth of stockholders Donald and Barbara Wesley is $350,049.30. All four stockholders are prepared to financially support the corporation in carrying out the proposed plans and the construction of docks.

11. The Applicant has had numerous requests for its proposed service from both in-county and out-of-county residents and organizations. The Applicant conducted its own survey in 1978: out of approximately five or six hundred people questioned, only one person indicated that he would not be interested in taking one or both of the proposed tour routes. Both the Beaufort Historical Association and the Hampton Mariners Museum have also had numerous requests concerning the availability of passenger ferry service on the waters surrounding the Town of Beaufort, Shackleford Banks, Fort Macon, and Morehead City.

The Applicant has discussed the demand for the proposed service with the Beaufort Historical Association, the Hampton Mariners Museum, Duke University, and with other organizations and persons, and the Applicant has found that there is sufficient demand for this service to justify Applicant's proposed operations. School groups have contacted the Applicant concerning the proposed passenger ferry service also. Duke University Marine Laboratory at Beaufort has also received calls inquiring about ways to get to Shackleford Banks by water. Most of these persons contacting Duke Marine Lab do not have the financial resources to charter a boat to make this trip and the Applicant would be able to meet the needs of some or all of these persons requesting service.

12. Based on the operations of Donnie and Debbie Russell in the fall of 1978, the Applicant projects that its daily

operating cost will be approximately $75.00 per day to include a captain and mate, gas, maintenance, and insurance. In order to meet the daily costs, the Applicant would have to carry approximately 37 adult fare-passengers per day. The Applicant proposes to advertise the passenger ferry service in several newspapers in the State of North Carolina and by brochures.

13. For sight-seeing tours over routes one and two without a stop at Shackleford Banks, the Applicant proposes to charge $5.00 per round trip for adults (age 12 years and older), $1.50 for children between the ages of six to 12, and for children under the age of six years, there would be no charge. For route one with a proposed stop at Shackleford Banks, the Applicant proposes to charge $5.00 per round trip for adults (age 12 years and older), $2.50 for children between the ages of six and 12 years, and children six years and under would be free.

14. The Applicant estimates that it would cost approximately $800.00 to construct a dock on Shackleford Banks. The cost for a dock on Bird Shoal would be about the same as that proposed for Shackleford Banks. The Applicant should not make landings at these points until safe and adequate docks have been constructed thereon.

15. The Protestant Josiah W. Bailey, Jr., and Outer Banks Transportation Company, which holds a certificate from this Commission granted in Docket No. A-20, did not present any witnesses at the hearing. The Protestant stipulated that it does not contest the Application with respect to the sight-seeing activity and that it is not now providing service from Beaufort to Shackleford Banks.

CONCLUSIONS OF LAW

The Application under consideration in this proceeding must meet the requirements set out by the applicable statutes and the Rules of the Commission. G.S. 62-262(e), the controlling statute, provides:

> If the application is for a certificate, the burden of proof shall be upon the applicant to show to the satisfaction of the Commission:
>
> (1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and
>
> (2) That the applicant is fit, willing and able to properly perform the proposed service, and
>
> (3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

Commission Rule R2-15(a) provides:

> If the application is for a certificate to operate as a common carrier, the applicant shall establish by proof (i) that a public demand and need exists for the proposed service in addition to existing authorized service, (ii) that the applicant is fit, willing and able to properly perform the proposed service, and (iii) that the applicant is solvent and financially able to furnish adequate service on a continuing basis. Uncorroborated testimony of the applicant is generally insufficient to establish public demand and need.

The Hearing Commissioner is of the opinion and so concludes, that the Applicant in this proceeding has met the burden of proof required by G.S. 62-262(e) and by the rules of the Commission.

First, the Hearing Commissioner concludes that the public convenience and necessity require the proposed service in addition to the existing authorized service. The evidence was overwhelming to the effect that there is a strong demand for the proposed services being offered by the Applicant over routes one and two as set forth in the Applicant's application for a certificate of convenience and necessity. The Applicant's survey of five to six hundred people in 1978 disclosed that only one person questioned would not be interested in the proposed service. Beaufort, North Carolina is an old historical town that has undergone extensive restoration. The town has become a popular tourist attraction. For example, in 1978 approximately 75,000 people visited Hampton Mariners Museum which is located approximately one-half block from the Applicant's dock. Applicant's witness Charles R. McNeil, Director of the Museum, testified that a large number of the museum's visitors desire some type of trip on the water. Other witnesses testified to similar requests by visitors to Beaufort. Jean Kell had approximately 10,000 visitors to her antique shop on Front Street in Beaufort and approximately one-third of them requested information on local boat trips. The Beaufort Historical Association had 20,000 to 25,000 visitors at their welcome center in 1978, and many of these inquired about boat trips around the Beaufort area. Mike Bradley, Manager of the Duke University Marine Laboratory at Beaufort, also testified as to the demand for the proposed service by visitors to the area; many people are interested in transportation to Shackleford Banks and Bird Shoal and for sight-seeing. All of the witnesses testified that there is not presently being offered the type of service demanded by the public which visits the Beaufort area every year. The Protestant Josiah W. Bailey, Jr., the holder of certificate A-20 from this Commission, stipulated that he is not now providing service from Beaufort to Shackleford Banks.

The Hearing Commissioner finds and concludes that the Applicant Carteret Boat Tours, Inc., is fit, willing, and

able to properly perform the proposed service. The Applicant owns one Coast Guard approved vessel with the necessary safety equipment and conveniences on board for the public. The Applicant also has a lease boat at its disposal for use on the proposed routes. Donnie Russell is a Coast Guard certified captain and Deborah Russell is currently taking the course to gain her captain's license. The evidence also showed several other certified captains who would be available to the Applicant if their services were required. The Applicant has demonstrated its ability to obtain the proper insurance for these vessels.

The Applicant has arrangements with the dock operator on the Beaufort waterfront for docking space for the two proposed routes. The Applicant has also contacted the landowner on Bird Shoals and the State Permit Agency so that a dock can be constructed on Bird Shoals in the very near future. The Applicant is in the process of making arrangements for the construction of a dock on Shackleford Banks to serve the public.

The Hearing Commissioner concludes that the Applicant Carteret Boat Tours, Inc., is solvent and financially able to furnish adequate service on a continuing basis. The Applicant's evidence showed that the net worth of the corporation is approximately $11,000 and that the vessel "Karen Ann" is unencumbered. The net worth of stockholders Deborah and Donnie Russell is $51,000, and they indicated that they were willing to financiallly support the corporation and assist the corporation in carrying out the proposed services set forth in the Applicant's petition for a certificate of convenience and necessity. The other two principal stockholders, Donald and Barbara Wesley, have a net worth of approximately $350,000, and Barbara Wesley testified that she and her husband were committed to financially support the corporation in carrying out the proposed services.

Attention is called to G.S. 62-262(f). The Applicant contends in its brief that, under the Application and the evidence in this proceeding, the provisions of paragraph (f) are inapplicable, since the Applicant is not proposing to serve a route already served by a previous motor carrier and since the current certificate holder is not rendering service over the routes proposed by the Applicant. The Hearing Commissioner agrees.

Clearly, the Applicant has shown that the service over the proposed routes is inadequate and that the proposed routes are not being served by any other authorized carrier. The Protestant Bailey has stipulated that it does not contest the application with respect to the sight-seeing routes (except to the stop at Shackleford Banks). The Protestant has also stipulated that he is not now providing service from Beaufort to Shackleford Banks. The Hearing Commissioner takes judicial notice of the certificate granted by this Commission to Protestant Bailey on

September 3, 1964, in Docket No. A-20, and also the Order of May 24, 1978, suspending the operating of the Protestant (pursuant to Protestant's request) until January 1, 1979.

In conclusion, the Applicant Carteret Boat Tours has met the requirements of the statute and the Rules of the Commission, and the Application for routes one and two should be approved. This Order shall provide that, whereas nonstop round trip service may commence with the effective date of this Order, Applicant shall notify the Commission, prior to providing transportation to Shackleford Banks and Bird Shoal, that docking facilities have been constructed at these points.

IT IS, THEREFORE, ORDERED as follows:

1. That a Certificate of Public Convenience and Necessity for common carrier operating authority be issued to Applicant, more fully described in Exhibit A, which is attached hereto and incorporated as a part herein.

2. That Applicant shall maintain its books and records in such 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 upon request to the Accounting Division.

3. That to the extent Applicant has not already done so, Applicant shall file with the Commission evidence of insurance, list of equipment, tariff of rates and charges, designation of process agent and otherwise comply with the Rules and Regulations of the Commission prior to commencing operations under the authority acquired herein. Whereas the Applicant may commence nonstop round trip service with the effective date of this Order, the Applicant shall notify the Commission, prior to providing point-to-point transportation to Shackleford Banks and Bird Shoal, that docking facilities have been constructed at these points.

4. That Applicant shall begin service under the authority granted herein within 60 days from the effective date of this Order, and upon filing evidence of compliance with paragraph 3 above, unless the Applicant shall have applied to and been granted an extension of time from this Commission in which to begin service.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

EXHIBIT A

COMMON CARRIER AUTHORITY

Transportation of passengers, their baggage, and freight by boat over the following routes:

FIRST ROUTE - Leaving a dock on the waterfront near Front Street, Beaufort, North Carolina and traveling Westerly and Southerly to a dock on the West side of Bird Shoal opposite Radio Island in Carteret County; thence in a southerly direction along Beaufort Inlet to Fort Macon State Park on Bogue Banks; thence in an easterly direction through Beaufort Inlet to a dock on the South side of Shackleford Banks; thence in a Northerly direction up North River to Taylor Creek; thence in a Westerly direction along Taylor Creek to the dock on the Beaufort waterfront.

SECOND ROUTE - Leaving a dock on the Front Street of Beaufort, North Carolina, and traveling in a northerly direction up Gallant Channel and Beaufort Town Creek to the Newport River; thence in a southerly direction along the Newport River and past Phillips Island and the North Carolina State Ports to the Morehead City Channel; thence in a westerly direction along the North Carolina State Ports and the Morehead City waterfront to the Intracoastal Waterway; thence in an easterly direction along the Intracoastal Waterway to Morehead City Channel located on the West side of Radio Island; thence in a southeasterly direction along Radio Island to a dock on the West end of Bird Shoal; thence in a northeasterly direction along the West side of Bird Shoal to the dock on Front Street in the Town of Beaufort.

DOCKET NO. A-23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Carteret Boat Tours, Inc., Route 1, Box 467, Highway 101, Beaufort, North Carolina 28516 - Application for Authority to Transport Passengers and Their Baggage as a Common Carrier by Boat	) FINAL ORDER) OVERRULING) EXCEPTIONS AND) AFFIRMING RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 20, 1979, at 11:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Sarah Lindsay Tate, and Leigh H. Hammond

APPEARANCES:

For the Applicant:

Richard L. Stanley, Attorney at Law, 133 Turner Street, P.O. Box 150, Beaufort, North Carolina 28516
For: Carteret Boat Tours, Inc.

For the Protestant:

Samuel Pretlow Winborne, Attorney at Law, (Appearing for R.D. Darden, Jr., Attorney at Law), 710 Arendell Street, Morehead City, North Carolina 28557
For: Josiah W. Bailey, Jr., and Outer Banks Transportation Company

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On March 14, 1979, a Recommended Order was issued in this docket by Hearing Commissioner Robert Fischbach wherein the Applicant, Carteret Boat Tours, Inc., was granted authority to engage in the transportation of passengers, their baggage, and freight as a common carrier by boat over the following routes:

FIRST ROUTE - Leaving a dock on the waterfront near Front Street, Beaufort, North Carolina and traveling Westerly and Southerly to a dock on the West side of Bird Shoal opposite Radio Island in Carteret County; thence in a southerly direction along Beaufort Inlet to Fort Macon State Park on Bogue Banks; thence in an easterly direction through Beaufort Inlet to a dock on the South side of Shackleford Banks; thence in a Northerly direction up North River to Taylor Creek; thence in a westerly direction along Taylor Creek to the dock on the Beaufort waterfront.

SECOND ROUTE - Leaving a dock on the Front Street of Beaufort, North Carolina, and traveling in a northerly direction up Gallant Channel and Beaufort Town Creek to the Newport River; thence in a southerly direction along the Newport River and past Phillips Island and the North Carolina State Ports to the Morehead City Channel; thence in a westerly direction along the North Carolina State Ports and the Morehead City waterfront to the Intracoastal Waterway; thence in an easterly direction along the Intracoastal Waterway to Morehead City Channel located on the West side of Radio Island; thence in a southeasterly direction along Radio Island to a dock on the West end of Bird Shoal; thence in a northeasterly direction along the

West side of Bird Shoal to the dock on Front Street in the Town of Beaufort.

The above-referenced Recommended Order was entered by Hearing Commissioner Fischbach subsequent to the holding of a public hearing on January 25, 1979, in Morehead City, North Carolina. The Applicant, who was present and represented by counsel at said hearing, offered the testimony of seven witnesses in support of its application. The Protestant, Josiah W. Bailey, Jr. (who operates under the trade name of Outer Banks Transportation Company), and the Public Staff were also present and represented by counsel at said proceeding.

On March 29, 1979, counsel for the Protestant filed certain Exceptions to the Recommended Order and a request for oral argument thereon, setting forth Exceptions 1 through 4 and the reasons and arguments in support thereof. Counsel for the Applicant, the Protestant, and the Public Staff subsequently presented oral argument on the Exceptions to the Commission on April 20, 1979.

Based upon a careful consideration of the entire record in this proceeding and the Exceptions to the Recommended Order filed herein by the Protestant and the oral argument heard thereon, the Commission concludes that the findings, conclusions, and ordering paragraphs contained in the Recommended Order of the Hearing Commissioner are all fully supported by the record. Accordingly, it is the further conclusion of the Commission that each of the Exceptions 1 through 4 should be overruled and denied and that the Recommended Order dated March 14, 1979, should be affirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the Exceptions 1 through 4 herein filed by the Protestant be, and the same are hereby, overruled and denied.

2. That the Recommended Order in this docket dated March 14, 1979, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of May, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Joan H. Pearson, Deputy Clerk

Commissioners Winters and Hipp did not participate.

DOCKET NO. A-23, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carteret Boat Tours, Inc., Route 1, Box 467, Highway 101, Beaufort, North Carolina 28516 - Application for Authority to Transport Passengers from Beaufort and Harkers Island to Cape Lookout	RECOMMENDED ORDER GRANTING OPERATING AUTHORITY

HEARD IN: Municipal Building Auditorium, 202 South 8th Street, Morehead City, North Carolina, May 25, 1979, at 9:30 a.m.

BEFORE: Commissioner Robert Fischbach

APPEARANCES:

For the Applicant:

Richard L. Stanley, Attorney at Law, P.O. Box 150, Beaufort, North Carolina 28516

For the Protestants:

R.D. Darden, Jr., Attorney at Law, 710 Arendell Street, Morehead City, North Carolina 28557
For: Josiah W. Bailey, d/b/a Outer Banks Transportation Company

For the Intervenor:

Thomas C. Manning, Assistant United States Attorney, Eastern District of North Carolina, P.O. Box 26897, Raleigh, North Carolina 27608
For: National Park Service and U.S. Department of Interior

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

FISCHBACH, HEARING COMMISSIONER: On April 25, 1979, Carteret Boat Tours, Inc., filed an application for authority to transport passengers and their baggage as a common carrier by boat, over the following routes:

First Route: From Harkers Island to the landing area near Cape Lookout Lighthouse in the Cape Lookout National Seashore Park in Carteret County, North Carolina, and a return trip over the same route.

Second Route: From the water front in the Town of Beaufort to the landing area near Cape Lookout Lighthouse in the Cape Lookout National Seashore Park in Carteret County, North Carolina, and a return trip over the same route.

Third Route: From the Beaufort waterfront via the Intracoastal Waterway and the Neuse River to Oriental Marina and Restaurant in Oriental, Pamlico County, North Carolina, and a return trip over the same route.

Josiah W. Bailey, d/b/a Outer Banks Transportation Company, on April 27, 1979, by and through his attorneys, filed a Protest and Motion to Intervene in this docket. By Order dated May 3, 1979, the Commission allowed Josiah W. Bailey, Jr., to intervene as a Protestant party in this proceeding.

On May 11, 1979, the Public Staff of the North Carolina Utilities Commission filed Notice of Intervention to represent the using and consuming public pursuant to G.S. 62-14(d).

The United States of America and United States Department of Interior on May 11, 1979, filed Notice of Appearance and on May 14, 1979, filed a Motion to Intervene, which was allowed by Commission Order dated May 17, 1979.

On May 11, 1979, Applicant filed a Motion for temporary operating authority to transport school children and other members of the public to Cape Lookout over the First and Second Routes pending final disposition of the matter. The Motion was set for consideration at the hearing scheduled on May 25, 1979.

The hearing was convened as scheduled in Morehead City on May 25, 1979. All of the parties were present and represented by counsel. The Applicant presented the testimony of the following witnesses: Deborah Russell, Secretary and stockholder of the corporate Applicant, who testified as to the proposed service over Routes One, Two, and Three, the need for the service, the boats that will be used on these routes, the fares to be charged, the estimated cost for providing service, and the financial resources of the Applicant. Charles McNeil, Director of the Hampton Mariners Museum in Beaufort; W.H. Anthony and Cabelle C. Ramsey, former and present managers of Grayson's Motel, Harkers Island, North Carolina; and John E. Rossey, retired Army Officer and certified ocean operator, testified on the need and demand for the service proposed by the Applicant.

Josiah Bailey and Robert W. Griffith, Jr., testified on behalf of the Protestant. Mr. Bailey described the authority which he holds from this Commission and stated that it was now suspended. He further testified as to his present status with respect to the landing of passengers at Cape Lookout.

During the hearing the United States through counsel requested several rulings on its status as an Intervenor. Thereafter, the United States made a motion that it be allowed to withdraw from this proceeding, which was allowed.

At the close of the hearing the Hearing Commissioner granted the Applicant's Motion for temporary authority to transport the public over the First Route and school children over the Second Route. The Commission affirmed the granting of temporary authority by Order of June 4, 1979.

Based upon the application, the evidence presented at the hearing, and the entire record in this proceeding, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. The Applicant is a North Carolina corporation with its principal office at Route 1, Box 467, Highway 101, Beaufort, North Carolina.

2. The Applicant proposes to furnish passenger service by boat over three routes, as follows: on the First Route the Applicant proposes to leave from Grayson's Marina on Harkers Island, North Carolina, to stop and discharge passengers at the landing area near Cape Lookout Lighthouse located within the Cape Lookout National Seashore Park, and to make a return trip over the same route. This passenger ferry service would begin around Easter weekend and would continue until about Thanksgiving; the Applicant would make three or four trips each day. The Applicant has docking arrangements at Grayson's Motel and Marina, and also has a concession permit from the Cape Lookout National Seashore Park for the pickup and discharge of passengers at the landing area near Cape Lookout Lighthouse.

On the Second Route the Applicant proposes to leave the Beaufort waterfront and travel via Middle Marsh and Back Sound to Barden's Inlet and the landing area near Cape Lookout Lighthouse. The Applicant has docking arrangements on the Beaufort waterfront and has a concession permit for the pickup and discharge of passengers within the landing area of the Cape Lookout National Seashore Park. This service would be offered from Easter weekend through Thanksgiving; one trip would be made daily.

On the Third Route the Applicant proposes to leave the Beaufort waterfront and travel via the Intracoastal Waterway and the Neuse River to Oriental and return over the same route. This service would be offered from Easter weekend through Thanksgiving on a seasonal basis; two trips are proposed weekly.

3. The Applicant currently holds a concession permit from the Cape Lookout National Seashore Park which has been issued through 1980; this permit authorizes the Applicant to pick up and discharge passengers within the Park at a

landing area furnished by the Park. There is presently located near Cape Lookout Lighthouse a dock approximately 30 feet in length and 4 feet in width with a portable moving ramp for the pickup and discharge of passengers. This dock was constructed by the Cape Lookout National Seashore Park and is adequate for the pickup and discharge of passengers.

4. The proposed rates for the First Route are $5 for adults, $2.50 for children ages seven to 12, and no charge for children six years and under. Over the Second Route, the proposed rates would be $8 for adults, $4 for children ages seven through 12, and no charge for children six years and under. The proposed rates over the Third Route would be $10 for adults, $5 for children between the ages of seven through 12, and no charge for children six years and under.

5. The Applicant owns the oil screw "Karen Ann," which is documented by the United States Coast Guard and is certified to carry 35 passengers. The corporation also owns the oil screw "New World," which is documented by the United States Coast Guard and is certified to carry 49 passengers. The corporation also leases the oil screw "Margie," which is a 44-foot headboat licensed and approved by the Coast Guard for 30 passengers. The vessel "Margie" would be used by the Applicant in carrying the passengers over Route One. The oil screw "New World" would be used by the Applicant in carrying passengers over Route Two. Both vessels require a captain and a mate.

6. Deborah Russell is the United States Coast Guard certified ocean operator captain who will be operating the vessel "Margie." Harrison Guthrie is a United States Coast Guard certified ocean operator captain who will be operating the vessel "New World."

7. The Applicant currently has in effect liability insurance coverage on the vessels "New World" and "Margie."

8. The current assets of the corporation are valued at $43,311.71. The corporation currently has liabilities of $528.58. The net assets of the corporation are $42,783.13.

9. The Applicant proposes to furnish the passenger service over Routes One and Two in order to provide shelling, swimming, fishing, and sight-seeing activities. The Applicant proposes to furnish the passenger service over Route Three in order to provide dining and sight-seeing activities. The Applicant is willing to furnish these services on a continuing basis.

10. The Applicant provided passenger service between Harkers Island and Cape Lookout pursuant to its concession permit from Cape Lookout National Seashore Park during 1978 and 1979. In May 1979, the Applicant was informed by Cape Lookout National Seashore Park that it should submit an application to the North Carolina Utilities Commission for operating authority.

11. There is sufficient demand for service over all three routes as described in Applicant's application. The Applicant currently has a contract with Cape Lookout National Park Service for transporting Carteret County school children on 23 trips from Beaufort to Cape Lookout; more than 600 children were transported prior to May 25, 1979, and 400 remain to be carried under the contract. The Applicant has received numerous inquiries regarding shelling, swimming, and sight-seeing trips from Harkers Island to Cape Lookout. Through its concession permit with Cape Lookout National Seashore Park, the Applicant has already carried 306 people in 20 trips made from Harkers Island to Cape Lookout during 1979 and prior to May 25, 1979. The Applicant has also had numerous requests from individuals, church groups, recreational groups, and other parties for passenger ferry service over Routes One and Two as described in the Applicant's application. Fairfield Harbor has indicated to Applicant that they would send the passengers to Applicant for the visit to Oriental.

12. Witness W.H. Anthony during the 1976 season carried approximately 542 Fishermen to Cape Lookout. He testified that there was a big demand from persons wanting to go to Cape Lookout for sight-seeing, fishing, and other activities. It was his opinion that the public demand would support at least two separately operated boats from Harkers Island to Cape Lookout.

13. Charles McNeil, Director of the Hampton Mariners Museum in Beaufort, has had numerous requests and inquiries daily from people visiting the museum as to the availability of boat trips for sight-seeing and shelling on Cape Lookout, Shackleford Banks, and on the waters near Beaufort and Harkers Island. Cabell C. Ramsey, manager of Grayson's Motel, Harkers Island, North Carolina, has received phone calls and other inquiries daily inquiring about passenger ferry service between Harkers Island and Cape Lookout; 50% of his business is during the months of September, October, and November, and most of this business is for fishing at Cape Lookout. John Rossey, who had carried passengers between Harkers Island and Cape Lookout between 1972 and 1978, also testified that there was considerable demand in the fall for passenger service to Cape Lookout for fishing.

14. There is sufficient demand to ensure continued service as proposed by the Applicant.

15. The Protestant Outer Banks Transportation Company has heretofore been issued a Certificate of Convenience and Necessity from this Commission over Routes contained within Applicant's proposed Routes One and Two (Docket No. A-20). However, Protestant has requested of the Commission that his certificate be indefinitely suspended; the request has been granted. Protestant has allowed Coast Guard certification of his vessel to lapse and is not in a position to begin active operations. Likewise, Protestant does not hold a permit from Cape Lookout National Seashore Park to land

within the Cape Lookout National Seashore Park. For these reasons the Protestant is not able to offer service to Cape Lookout over Routes One and Two as proposed by the Applicant. Furthermore, Mr. Bailey's vessel "Diamond City" is for sale.

16. The Protestant last offered passenger service over the Applicant's proposed Route One in 1977. In 1977 the Protestant held a one-year concession permit from the Cape Lookout National Seashore Park for the pickup and discharge of passengers on Cape Lookout. The Protestant offered passenger service between Beaufort and Cape Lookout for two or three summers in the early 1970s. Protestant has never offered service over Route Three as proposed by Applicant.

17. Josiah Bailey, the Controlling stockholder of the Protestant, was offered a concession permit from Cape Lookout National Seashore Park for 1978 but refused to accept the permit under the terms of the Park Service. He has no permission from the Department of Interior to land anywhere on Federal lands at Cape Lookout, and he has no capability to offer service to the Federal lands at Cape Lookout because of his lack of a permit. His service from Beaufort to Cape Lookout has been inactive or dormant since 1972.

CONCLUSIONS OF LAW

The application under consideration in this proceeding must meet the requirements set out by the applicable statutes and the rules of the Commission. G.S. 62-262(e), the controlling statute, provides:

> If the application is for a certificate, the burden of proof shall be upon the applicant to show to the satisfaction of the Commission:
>
> (1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and
>
> (2) That the applicant is fit, willing and able to properly perform the proposed service, and
>
> (3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

Commission Rule 2-15(a) provides:

> If the application is for a certificate to operate as a common carrier, the applicant shall establish by proof (i) that a public demand and need exists for the proposed service in addition to existing authorized service, (ii) that the applicant is fit, willing, and able to properly perform the proposed service, and (iii) that the Applicant is solvent and financially able to furnish adequate service on a continuing basis. Uncorroborated

testimony of the applicant is generally insufficient to establish public demand and need.

The Applicant in this proceeding has met the burden of proof required by G.S. 62-262(e) and by the Rules of the Commission.

First, public convenience and necessity require the proposed service in addition to the existing authorized service. The evidence was overwhelming to the effect that there is a strong demand for the Applicant's proposed services over Routes One, Two, and Three as set forth in the Applicant's application for a certificate of convenience and necessity. The Applicant testified that it had already carried 306 people in 20 trips from Harkers Island to Cape Lookout prior to May 25, 1979. As of May 25, 1979, the Applicant had booked an additional 250 people to carry to Cape Lookout over the First Route. The Applicant had 609 school children from Beaufort to Cape Lookout over the Second Route as of May 25, 1979, and there still remains approximately 400 more children to be transported from Beaufort to Cape Lookout. The Applicant has also had 500 to 600 people inquire about passenger ferry service by boat from Harkers Island to Cape Lookout and from Beaufort to Cape Lookout. Beaufort, North Carolina, is an old historical town that has undergone extensive restoration. The Town has become a popular tourist attraction. Hampton Mariners Museum is one of the tourist attractions in the Town of Beaufort and is located approximately 1/2 block from the Applicant's dock. In 1978 approximately 75,000 people visited this museum. Applicant's witness Charles R. McNeil, Director of the Hampton Mariners Museum, testified that a large number of the museum's visitors desired some type of trip on the water either from Beaufort to Cape Lookout, Harkers Island to Cape Lookout, or Beaufort or Harkers Island to Shackelford Banks. W.H. Anthony, Cabell C. Ramsey, and John Rossey all testified as to similar requests made by visitors and tourists desiring transportation from Harkers Island to Cape Lookout. John Rossey and W.H. Anthony testified that they had operated boats between Harkers Island and Cape Lookout in the past, and during some of their operating periods it was necessary for them to operate three boats at one time. All three of these witnesses testified that the demand in the fall months for passenger service between Harkers Island and Cape Lookout was extremely heavy.

It was also their testimony that Cape Lookout has become a tourist attraction for shelling, swimming, fishing, and site-seeing activities there. Many people desire to go to Cape Lookout to view the lighthouse and to observe and enjoy its natural state. All of the witnesses for the Applicant testified that there is not presently being offered the type of service demanded by the public between Harkers Island and Cape Lookout and between Beaufort and Cape Lookout.

The Applicant further offered evidence that it has been contacted by Fairfield Harbor concerning trips via the Intracoastal Waterway to Oriental from Beaufort, and that Fairfield Harbor has offered to provide the passengers if the Applicant would furnish the service.

The Protestant Josiah W. Bailey, Jr., the holder of Certificate A-20 from the North Carolina Utilities Commission, admitted that the one vessel his company now owns is not currently certified by the United States Coast Guard. Further, the Protestant stipulated that he does not currently hold a concession permit from the Cape Lookout National Seashore Park or the Department of Interior, and that the Protestant does not have the capability or approval to pick up or discharge passengers within the Cape Lookout National Seashore Park. In summary, the Protestant Bailey admitted that because of the problems he is experiencing with Cape Lookout National Seashore Park, he is not in a position at this time to provide service between Harkers Island and Cape Lookout and does not know when he can provide the needed services. Likewise, the Protestant stipulated that he has not provided service from Beaufort to Cape Lookout since 1972.

Second, the Applicant is fit, willing, and able to properly perform the proposed service. The Applicant owns the "New World," a Coast Guard approved vessel with the necessary safety equipment and conveniences on board for the public. The Applicant also has at its disposal the "Margie," a leased boat for use on the proposed First Route. Deborah Russell is a Coast Guard certified captain and will be operating the "Margie." The captain on the "New World" is Harrison Guthrie, a licensed ocean operator captain. The Applicant also has in effect proper insurance for both vessels, and the Applicant also has a third boat, the "Karen Ann," available for service if needed.

The Applicant has arrangements with the dock operator on the Beaufort waterfront and with Grayson's Marina and Motel for the three proposed routes. Most importantly, the Applicant currently holds a permit from the Cape Lookout National Seashore Park which grants to the Applicant permission to pick up and discharge passengers with the Federal Park area near Cape Lookout.

Finally, the Applicant is solvent and financially able to furnish adequate service on a continuing basis. The Applicant's evidence shows that the net worth of the corporation is approximately $42,783.13.

The provisions of paragraph (f) of G.S. 62-262 are inapplicable since the Applicant is not proposing to serve a route already served by a previous motor carrier and since the current certificate holder is not rendering service over the routes proposed by the Applicant. Likewise, the Protestant does not have the capability at this time to render service over the routes proposed by the Applicant

since the Protestant does not have a concession permit from the Department of Interior and the Cape Lookout National Seashore Park which grants the Protestant permission to pick up and discharge passengers on Cape Lookout. The Applicant has shown that the service over the proposed routes is inadequate since the Protestant has not serviced the First Route since 1977 and does not have the capability of serving this Route at this time. Likewise, the Applicant has shown that the service over Route Two is inadequate and that the proposed Route Two is not being served by any other authorized carrier since the Protestant stipulated that he has not provided service from Beaufort to Cape Lookout since 1972. The Hearing Commissioner takes judicial notice of the certificate granted by this Commission to Protestant Bailey on September 3, 1964, in Docket No. A-20, and also the recent Order which indefinitely suspended the operations of the Protestant pursuant to Protestant's request.

In conclusion, the Applicant Carteret Boat Tours has met the requirements of the statute and the Rules of the Commission, and the application of Routes One, Two, and Three are approved.

IT IS, THEREFORE, ORDERED as follows:

1. That a Certificate of Public Convenience and Necessity for common carrier operating authority be issued to Applicant, more fully described in Exhibit A, which is attached hereto and incorporated as a part herein.

2. That 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. A copy of the annual report form shall be furnished to the Applicant upon request to the Accounting Division.

3. That to the extent Applicant has not already done so, Applicant shall file with the Commission 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 prior to commencing operations under the authority acquired herein.

4. That Applicant shall begin service under the authority granted herein within 30 days from the effective date of this Order and upon filing evidence of compliance with paragraph 3 above, unless the Applicant shall have applied to and been granted an extension of time from this Commission in which to begin service.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

EXHIBIT A
COMMON CARRIER AUTHORITY

Transportation of passengers, their baggage, and freight by boat over the following routes:

FIRST ROUTE - From Harkers Island to the landing area near Cape Lookout Lighthouse in the Cape Lookout National Seashore Park in Carteret County, North Carolina, and a return trip over the same route.

SECOND ROUTE - From the waterfront in the Town of Beaufort to the landing area near Cape Lookout Lighthouse in the Cape Lookout National Seashore Park in Carteret County, North Carolina, and a return trip over the same route.

THIRD ROUTE - From the Beaufort waterfront via the Intracoastal Waterway in the Neuse River to Oriental Marina and Restaurant in Oriental, Pamlico County, North Carolina, and a return trip over the same route.

DOCKET NO. A-23, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carteret Boat Tours, Inc., Route 1, Box 467, Highway 101, Beaufort, North Carolina 28516 - Application for a Certificate of Authority to Operate a Passenger Ferry Service Between Harkers Island and Cape Lookout	) FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

BY THE COMMISSION: On August 28, 1979, Commissioner Robert Fischbach issued a "Recommended Order Granting Operating Authority" in this docket. On September 11, 1979, counsel for and on behalf of the Protestants Josiah W. Bailey, Jr., and Outer Banks Transportation Company filed certain Exceptions to the Recommended Order and requested oral argument thereon before the full Commission.

On September 12, 1979, the Commission issued its Order setting oral argument on the Exceptions on October 12, 1979. On October 10, 1979, upon consideration of a motion by Protestant's attorney requesting that the scheduled oral argument be waived and the matter decided on the record, the Commission issued an Order cancelling the oral argument.

Upon a careful consideration of the entire record in this proceeding, including the Exceptions to the Recommended Order filed by the Protestant, the Commission is of the

opinion, finds, and concludes that all of the findings, conclusions, and ordering paragraphs contained in the Recommended Order are fully supported by the record. Accordingly, the Commission further finds and concludes that the Recommended Order of Commissioner Fischbach, dated August 28, 1979, should be affirmed and that each of the Exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That all of the Exceptions, filed herein by the Protestant, to the Recommended Order of August 28, 1979, be, and the same are hereby, overruled and denied.

2. That the Recommended Order in this docket dated August 28, 1979, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. A-24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Alonzo O. Burrus, Jr., P.O. Box 127, Ocracoke, North Carolina 27960 - Application for Authority to Transport Passengers as a Common Carrier by Boat Between Ocracoke and Portsmouth, North Carolina	) RECOMMENDED* ORDER) GRANTING COMMON) CARRIER AUTHORITY

*Corrected by Errata Order dated September 19, 1979.

HEARD IN: Superior Courtroom, Carteret County Courthouse, Beaufort, North Carolina, on August 30, 1979, at 10:00 a.m.

BEFORE: Commissioner Robert Fischbach

APPEARANCES:

For the Applicant:

Alonzo O. Burrus, Jr.
For: Himself

For the Using and Consuming Public: None

FISCHBACH, HEARING COMMISSIONER: On June 21, 1979, Alonzo O. Burrus, Jr., P.O. Box 127, Ocracoke, North Carolina, filed an application with the Commission for authority to engage in the transportation of passengers, their baggage,

and light express, as a common carrier by boat between Ocracoke and Portsmouth, North Carolina. The Applicant also requested temporary authority to engage in such transportation pending final disposition of the application for permanent authority.

On June 29, 1979, the Commission issued its Order granting the application for temporary authority. This Order also required Mr. Burrus to file evidence of appropriate insurance with the Commission as well as a list of equipment and tariffs and charges. A subsequent Order scheduled the permanent application for hearing in Beaufort on August 30, 1979. The Order further provided that protest to the application should be filed at least 10 days prior to the hearing. No protests or interventions have been filed in this proceeding.

The application came for hearing as scheduled on August 30 in Beaufort. The Applicant Alonzo O. Burrus, Jr., was present and appeared for himself. Mr. Burrus offered testimony and presented the testimony of Danny Garrish in support of his application. The Applicant also offered statements of persons who supported the proposed service.

Based upon the application and the testimony and exhibits presented at the hearing, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. The Applicant Alonzo O. Burrus, Jr., is an individual with his address at P.O. Box 127, Ocracoke, North Carolina.

2. The Applicant proposes to provide common carrier passenger service by boat between Ocracoke and Portsmouth, North Carolina. The trip will begin in Ocracoke and proceed over a six-mile route through the Ocracoke Inlet to Portsmouth, and return.

3. The proposed rate for one person, round trip, is $30, and for each additional person is $5.00 per person. Under Coast Guard regulations the Applicant can carry no more than six persons per trip.

4. The Applicant owns two vessels, one which is 19 feet in length and the other 20 feet in length. These vessels have been inspected by the Coast Guard.

5. The Applicant has a United States Coast Guard license to operate or navigate passenger carrying vessels, motorboats, or other vessels of 15 gross tons or less, while carrying six or less passengers for hire upon waters other than ocean.

6. The Applicant currently has in effect liability insurance coverage on his vessels.

7. The Applicant has total assets of $51,200, including $42,000 in real estate and $9,000 in equipment. The Applicant has total liabilities of $3,600.

8. There is sufficient demand for the service proposed by the Applicant. In 1976 the Applicant transported 319 people over the route, 520 people in 1977, 444 people in 1978, and through August 29, 1979, 373 people. The area in question is generally inaccessible except by the Applicant's proposed service.

9. There is no existing carrier which provides the service proposed by the Applicant.

10. The Applicant advertises his service in local businesses in and around Ocracoke.

11. The Applicant has a concession permit from the Cape Lookout National Seashore Park to land people at Portsmouth Island, which is a part of the National Park.

CONCLUSIONS OF LAW

The Application under consideration in this proceeding must meet the requirements set out by the applicable statutes and the Rules of the Commission. G.S. 62-262(e), the controlling statute, provides:

If the application is for a certificate, the burden of proof shall be upon the Applicant to show to the satisfaction of the Commission:

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the applicant is fit, willing and able to properly perform the proposed service, and

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

Commission Rule 2-15(a) provides:

If the application is for a certificate to operate as a common carrier, the applicant shall establish by proof (i) that a public demand and need exists for the proposed service in addition to existing authorized service, (ii) that the applicant is fit, willing and able to properly perform the proposed service, and (iii) that the applicant is solvent and financially able to furnish adequate service on a continuing basis. Uncorroborated testimony of the applicant is generally insufficient to establish public demand and need.

The Applicant is this proceeding has met the burden of proof required by G.S. 62-262(e) and by the Rules of the Commission.

First, public convenience and necessity require the Applicant's proposed service. There is no existing service. The evidence clearly established the need for this service from Ocracoke to Portsmouth by boat, and return. Portsmouth Island is a part of the Cape Lookout National Seashore Park and is relatively inaccessible to most people except by the Applicant's proposed service., Since 1976 the Applicant has transported more than several hundred people each year over the proposed route. Danny Garrish, who works at a grocery store and a restaurant on Ocracoke, testified that he receives inquiries daily about transportation to Portsmouth. There is a need for the Applicant's proposed service and there is no existing carrier which provides this service.

Second, the Applicant is fit, willing, and able to properly perform the proposed service. The Applicant owns two vessels which can carry up to six passengers each. The Coast Guard has made the necessary inspections of the vessels. The Applicant holds the Coast Guard License that is appropriate for the proposed service. Furthermore, the Applicant has the insurance required by this Commission and has sufficient unencumbered assets. Finally, the Applicant holds a concession permit from the National Park Service to land people on Portsmouth Island.

Third, the Applicant's evidence clearly establishes that he is solvent and financially able to furnish adequate service on a continuing basis.

IT IS, THEREFORE, ORDERED as follows:

1. That a Certificate of Public Convenience and Necessity for common carrier operating authority be issued to Applicant, more fully described in Exhibit A, which is attached hereto and incorporated as a part herein.

2. That 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. A copy of the annual report form shall be furnished to the Applicant upon request to the Accounting Division.

3. That to the extent Applicant has not already done so, Applicant shall file with the Commission 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 prior to commencing operations under the authority acquired herein.

4. That Applicant shall begin service under the authority granted herein within 30 days from the effective date of this Order and upon filing evidence of compliance with paragraph 3 above, unless the Applicant shall have applied to and been granted an extension of time from this Commission in which to begin service.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. A-24 Alonzo O. Burrus, Jr.
P.O. Box 127
Ocracoke, North Carolina 27960

EXHIBIT A Common Carrier Authority
Transportation of passengers, their baggage, and light express by boat over the following route:

From Ocracoke to Portsmouth, through Ocracoke Inlet, and return.

DOCKET NO. A-24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Alonzo O. Burrus, Jr., P.O. Box 127, Ocracoke,)
North Carolina 27960 - Application for Authority to) ERRATA
Transport Passengers as a Common Carrier by Boat) ORDER
Between Ocracoke and Portsmouth, North Carolina)

BY THE COMMISSION: The Order issued in this docket on September 14, 1979, should have been captioned Recommended Order Granting Common Carrier Authority. This Order also attaches as Appendix A the Notice To Parties which should be attached to the front of the Recommended Order.

IT IS, THEREFORE, ORDERED:

1. That the Order issued in this docket September 14, 1979, should be corrected so that its caption should read "Recommended Order Granting Common Carrier Authority."

2. That the Notice To Parties attached as Appendix A to this Order shall be attached to the front of the Recommended Order of September 14, 1979.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of September, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-21, SUB 182
DOCKET NO. G-21, SUB 197

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Natural Gas) ORDER REFUNDING
Corporation for an Adjustment of Its Rates) OVERCOLLECTION
and Charges)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 7, 1979, at 9:30 a.m.

BEFORE: Commissioner Robert Fischbach, Presiding; and Commissioners Ben E. Roney and Sarah Lindsay Tate

APPEARANCES:

For the Applicant:

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, P.O. Box 2129, Fayetteville, North Carolina 28302
For: North Carolina Natural Gas Corporation

For the Intervenors:

Charles C. Meeker, Sanford, Adams, McCullough and Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina 27602
For: CF Industries, Inc.

Robert F. Page, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On February 20, 1979, in Docket No. G-21, Sub 182, North Carolina Natural Gas Corporation (NCNG) filed an application for approval of crediting $56,105 of overcollected excess emergency gas surcharges to the Deferred Gas Cost Account for return to all customers, except those on Rate Schedule No. 7.

On February 14, 1979, in Docket No. G-21, Sub 197, NCNG filed an application which proposed to refund the balance of the Deferred Gas Cost Account to all customers except those on Rate Schedule No. 7. Included in the Deferred Gas Cost Account was the $56,015 overcollection of excess emergency gas costs.

During the Staff Conference on March 12, 1979, CF Industries, Inc. (CFI), the only customer on Rate Schedule No. 7, questioned that none of the $56,015 was allocated to

Rate Schedule No. 7 customers. On March 16, 1979, in Docket No. G-12, Sub 197, NCNG was ordered to file a tracking rate to flow through the benefits to its customers upon recalculation of the amounts to be tracked in the Deferred Gas Cost Account.

On March 27, 1979, CFI filed a response in Docket No. G-21, SUB 182, stating that CFI is due $27,613 of a $107,975 credit for the summer of 1977 due to a recently received refund for transportation charges related to purchases of emergency gas during that summer period.

During informal negotiations before and after CFI's response, NCNG and the Public Staff presented several methods for allocating excess emergency gas costs incurred since November 1, 1976. Despite these negotiations, the Public Staff, CFI, and NCNG have been unable to agree on the correct allocation of these excess emergency gas costs.

The Commission set the matter for hearing on Thursday, June 7, 1979, to determine the correct allocation of these excess costs and to determine how the overcollection should be refunded.

At the hearing Calvin Wells, Senior Vice-President of NCNG, presented testimony regarding the excess cost of emergency gas incurred during the 1976-1977 winter, 1977 summer, 1977-1978 winter, and 1978 summer entitlement periods and the allocation of such excess costs and cost recovery as between Rate Schedule No. 7 (Farmer's Chemical or CFI) and other NCNG customers during these time periods. He testified that the over or undercollection of each period was "rolled" into the next succeeding period and that his exhibits reflected a true-up of final accounting of cost and cost recovery among Farmer's Chemical and other rate schedules based on the volumes of gas that these rate schedules actually received.

Mr. Wells stated that Farmer's Chemical paid the emergency gas surcharge on all volumes received only in the 1976-1977 winter period and that Farmer's Chemical, in the 1977 summer period, paid the surcharge on volumes only after the first 2,039,747 Mcf of gas taken per the Commission's Order. He further stated that Farmer's Chemical took no gas during 1977-1978 winter period and therefore paid no surcharge during that period and that in the 1978 summer period Farmer's Chemical was exempt from the surcharge. Mr. Wells, in presenting his exhibits, pointed out that the Transco retroactive billing of $322,508 billed to NCNG in May 1978, but applicable to gas received in the 1976-1977 winter and 1977 summer periods was properly reflected as costs during these periods and since Farmer's Chemical received service during those periods, a portion of these costs were properly allocable to Rate Schedule No. 7. In addition, the Transco transportation refund of $126,000 received by NCNG in August 1978 was applicable to the 1977 summer period and in his

exhibits were properly shown as a reduction of excess gas cost during this period.

Mr. Wells stated that he felt that the $56,015 should be refunded to all rate schedules except Rate No. 7.

Donald E. Daniel, Assistant Director of Accounting - Public Staff, testified on the excess emergency gas costs incurred by various NCNG customers and the recovery of these costs. Witness Daniel stated that in Docket No. G-21, Sub 182, NCNG presented a calculation of a $56,015 overcollection of excess emergency gas costs during the four entitlement periods beginning with the 1976-1977 winter period. He pointed out that the overcollection actually resulted from the 1976-1977 winter and 1977 summer periods and reflected a $156,683 overcollection from other than Rate Schedule No. 7 customers and a Rate Schedule No. 7 undercollection of $48,708. In explaining his computations, witness Daniel explained that he was not "reallocating" costs between Rate Schedule No. 7 and other customers but was merely presenting the assignment of excess emergency gas costs and their recovery based on the actual volumes of natural gas consumed. He continued by stating that the EP surcharge in the previous entitlement periods was based on estimates of costs and volumes and that the surcharge amounts thereby determined were, in fact, estimates subject to a final accounting in this proceeding. Witness Daniel recommended, based on his computation, that no part of the $56,015 overcollection be refunded to Farmer's Chemical because (1) other customers had absorbed $48,708 of costs properly allocable to Farmer's Chemical and (2) that Farmer's Chemical was allocated none of the 1978 summer excess emergency gas costs even though it was on the system. Witness Daniel did not recommend that Farmer's Chemical pay an additional $48,708 but observed that Farmer's Chemical had paid $48,708 less than the amount of cost properly allocable to it. Witness Daniel further testified that his accounting actually showed a $37,000 benefit to Farmer's Chemical from allocation of the Transco transportation refund or approximately $9,000 more than Farmer's Chemical was requesting in this proceeding.

Arthur DeLeon, Manager of Energy Planning for CFI, testified on the position of Farmer's Chemical in this proceeding. Specifically, Mr. DeLeon expressed Farmer's Chemical's desire to receive its pro rata share ($27,613) of the Transco transportation refund related to the purchase of emergency gas in the summer of 1977. He stated that this position was consistent with the Commission's Order in Docket No. G-21, Sub 183, concerning retroactive billing by Transco for emergency gas purchased in the summer of 1977. He further testified that both NCNG and the Public Staff were improperly reallocating costs among customers; costs which had determined when the Commission had issued Orders setting EP surcharge amounts and allowing the carry-forward of any previous under or overcollection of excess costs. Mr. DeLeon testified that in his opinion, the previous

Orders were final, that the amounts allocable to Rate Schedule No. 7 and other customers were thereby fixed, and going back now is improper since neither NCNG nor the Public Staff appealed these Orders.

Based upon the foregoing, the testimony and exhibits offered at the hearing, and the Commission's entire files and records in this matter, the Commission now makes the following

FINDINGS OF FACT

1. North Carolina Natural Gas Corporation is a corporation duly organized under the laws of the State of North Carolina and engaged in the business of providing natural gas service to the public as a franchised public utility under jurisdiction of this Commission.

2. NCNG is lawfully before this Commission seeking a refund to all of its customers except the customer served on Rate Schedule No. 7, a net overcollection of $56,015 from emergency purchase surcharges billed to its customers during the 1976-1977 winter period, the 1977 summer period, the 1977-1978 winter period, and the 1978 summer period.

3. The net overcollection of $56,015, computed by NCNG and reported to this Commission includes (a) all surcharges ordered by this Commission to be collected by NCNG through rates approved by the Commission at various times throughout the two-year period in its various Orders applicable to Rate Schedule No. 7 and the several other rate schedules of NCNG; and (b) all costs of emergency purchase gas incurred by NCNG, including Transco's retroactive billings of $322,508 received by NCNG in May 1978, and Transco's refund of $126,000 received by NCNG in August 1978.

4. Over or undercollections at the end of each seasonal period, as determined after the end of such seasonal periods and without regard to subsequent retroactive billings or refunds, which could not then be known, were computed by NCNG and rolled into the computation of the following period's emergency purchase surcharge applicable to all rate schedules or as otherwise found to be fair and reasonable by this Commission.

5. The first 2,039,747 Mcf of gas sold on Rate Schedule No. 7 during the 1977 summer period was exempt, by Commission Order in Subs 168 and 169, from the emergency gas surcharge. During this period, the following data regarding total customer takes and emergency gas surcharges billed are noted:

	Rate Schedule No. 7		All Other Rate Schedules		Total All Rate Schedules	
	Amount	%	Amount	%	Amount	%
Total Mcf Sales	5,006,156	40%	7,520,508	60%	12,526,664	100%
EP Surcharges Billed	$ 706,764	25%	$2,119,496	75%	$2,826,820	100%

CFI took no gas from NCNG during the 1977-1978 winter period and did not pay any emergency purchase surcharge for that period.

CFI paid no emergency purchase surcharge during the summer of 1978, except for $64,333 relating to retroactive billings for prior periods and specifically ordered by the Commission in its Order dated June 22, 1978, in Docket No. G-12, Sub 183. During that period, NCNG incurred excess costs of $531,863 to purchase 502,296 dt of emergency gas to serve its summer period demand. The other customers of NCNG paid the entire costs of emergency gas purchased during the 1978 summer period.

At the beginning of the 1978 summer period, NCNG had net undercollections of $594,973, after considering the aforementioned retroactive billings and refunds. The $650,988 overcollection during the 1978 summer period was paid substantially by ratepayers other than the one customer served on Rate Schedule No. 7.

6. The cost allocation presented by Company witness Wells and supported by Public Staff witness Daniel is proper and results in a fair and reasonable allocation of such costs between Rate Schedule No. 7 and the other rate schedules of NCNG and the resulting over or undercollections of emergency purchase surcharges of these customer groups.

7. That the principal purpose of this proceeding is to determine the correct allocation of the excess costs of emergency gas purchased and sold by NCNG during the periods in question.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence for both findings is contained in the verified Application, the Commission Order setting hearing, and the record in general.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

It is uncontested that the overcollections for the 1976-1977 summer period were "rolled into the amounts to be recovered for the 1977 summer period, that the cumulative net undercollection at the end of the 1977 summer period was rolled into the 1977-1978 winter period, and that the cumulative undercollection at the end of the 1977-1978 winter period was then rolled into the 1978 summer period,

including supplemental billings by Transco for the 1976-1977 winter and 1977 summer periods totaling $322,508.

It is also uncontested that after the end of the 1978 summer period the net overcollection for all the periods is $56,015 including the refund by Transco of $126,000 of transportation charges applicable to the 1977 summer period. Therefore, the Commission concludes that the net overcollection has been properly computed by NCNG and reported to the Commission. The Commission further concludes that no final accounting or true-up has previously taken place.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

All customers of NCNG, including CFI, have paid to NCNG the amount of emergency purchase surcharges as ordered by the Commission; however, the "true-up" mechanism employed by this Commission is used to determine that the gas distribution companies collect only the amount of their reasonable costs incurred in rendering service; the Commission notes that variances from estimates of the quantity of emergency gas to be purchased, its cost, volumes to be sold during seasonal periods, and even the weather used to compute surcharges will occur, and the Commission concludes that such variances are properly considered in the "true-up" mechanism.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Wells testified regarding the emergency gas surcharge billings and the related amounts of excess cost of emergency gas that make up the net overcollection of $56,015. He further testified that the $56,015 should be refunded to all rate schedules other than Rate No. 7, since Rate No. 7 did not pay any surcharges in the 1978 summer period except $64,333 related to Transco's retroactive billing for the 1976-1977 winter period and the 1977 summer period.

Public Staff witness Daniel testified regarding the recovery of the excess cost of emergency gas purchased by NCNG for the 1976-1977 winter and 1977 summer periods and to the treatment of the resulting overcollection.

Witness Daniel also testified that the actual components of the overcollection at issue arose in the 1976-1977 winter period and the 1977 summer period and that these components consist of an overcollection of $107,975 which in turn is made up of an overcollection of $156,683 from rates other than Rate No. 7 and an undercollection of $48,708 from Rate No. 7.

Witness Daniel testified that none of the $56,015 overcollection should be allocated to Rate No. 7 since other rates had absorbed at least $48,708 of excess costs properly allocable to Rate No. 7 and none of the excess costs of the

1978 summer period were absorbed by Rate No. 7 even though Rate No. 7 was on the system and received the benefits of that gas being available.

CFI witness DeLeon testified that CFI is entitled to its pro rata share of the transportation refund related to the summer of 1977 based on the policy adopted by the Commission in Docket No. G-12, Sub 183.

Witness DeLeon testified that NCNG and the Public Staff were recommending a different allocation scheme than what the Commission had previously ordered.

Witness DeLeon further testified that the Commission had already dealt with the question of a matching EP cost to the surcharge revenues by matching on a seasonal basis, rather than going back over two or three or four or five or six different periods.

After examining all of the testimony and exhibits presented in this proceeding, the Commission concludes that the point at issue here is principally an accounting matter rather than a legal or policy matter. The Commission concurs with CF Industries that the policy of the Commission is contained in previous Orders of the Commission. However, the Commission rejects the position of CFI that the prior periods' dockets are closed for all purposes and that the Commission is precluded from considering anything other than the Transportation refund itself in determining the proper parties to whom the net overcollection should be refunded.

The Commission, therefore, concludes that the allocation of costs and recovery of costs as shown in Wells' Exhibit 1 and Daniel Exhibit 1 is in accordance with the Commission Orders and intent in these dockets.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Commission has considered the contention of CF Industries that they are entitled to a pro rata share of the net overcollection of $107,975 at the end of the 1977 summer period.

In so contending, CFI implies that the Commission is precluded from allocating costs based on actual facts after they are known even though such allocation is necessary to ascertain the proper disposition of the overcollection at issue in this proceeding.

The Commission notes that both the Company and Public Staff accountings allocate a portion of the transportation refund ($36,599) to Rate No. 7 in reaching their conclusion that the overcollection should be refunded to all rates other than Rate No. 7. The Commission concurs with NCNG and the Public Staff that the net overcollection of $56,015 is properly refundable to all rates other than Rate No. 7.

The Commission also notes that neither the Company nor the Public Staff proposes additional assessments against Rate No. 7. The Commission concurs with this position.

IT IS, THEREFORE, ORDERED:

That North Carolina Natural Gas Corporation refund the net overcollection of $56,015 to all customers other than the customer served under Rate No. 7 by including the $56,015 in the company's next application to track changes in the wholesale cost of gas.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of June, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Joan H. Pearson, Deputy Clerk

DOCKET NO. G-9, SUB 176
DOCKET NO. G-9, SUB 176-A
DOCKET NO. G-9, SUB 181
DOCKET NO. G-9, SUB 186
DOCKET NO. G-9, SUB 187
DOCKET NO. G-9, SUB 189
DOCKET NO. G-9, SUB 192
DOCKET NO. G-9, SUB 193

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Piedmont Natural Gas Company, Inc.) FINAL ORDER SETTING RATES
) AND REQUIRING REFUNDS

HEARD IN: Commissioner's Board Room, 4th Floor, County Office Building, Charlotte, North Carolina, on October 24, 1979, at 3:00 p.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 29, 1979, at 10:30 a.m.

BEFORE: Chairman Koger, Presiding; and Commissioners Leigh H. Hammond, Sarah Lindsay Tate, Edward B. Hipp, John W. Winters, and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey and Leonard, P.O. Drawer U, Greensboro, North Carolina 27402

For the Intervenors:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

David Gordon, Special Deputy Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Jerry B. Fruitt, Chief Counsel, Public Staff

Robert F. Page, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: A summary of the procedures upon which this Order is based is as follows:

Docket No. G-9, Sub 176. On December 30, 1977, Piedmont Natural Gas Company, Inc. (Piedmont), filed an application with this Commission for authority to adjust its rates and charges for retail natural gas in North Carolina. The North Carolina Textile Manufacturers Association, Inc. (NCTMA), the Attorney General of North Carolina (Attorney General), and the Public Staff of the North Carolina Utilities Commission (Public Staff) intervened. Hearings were held in Charlotte, North Carolina, on May 30, 1978, in Greensboro, North Carolina, on May 31, 1978, and in Raleigh, North Carolina, on June 1, 2, 6, and 7, 1978. The Commission issued an Order setting rates on August 7, 1978. Under that Order, as amended by Order dated August 29, 1978, Piedmont was required to collect $190,000 of revised rates subject to an undertaking pending resolution of Piedmont's gas apportionment plan.

Docket No. G-9, Sub 176-A. On October 2, 1978, Piedmont filed revised tariffs reducing its rates by 5.93 cents per dekatherm (dt). On November 7, 1978, the Commission issued an Order approving revised rates and requiring Piedmont to again file revised rates if its gas supplies were to further increase. Piedmont filed revised tariffs on February 2, 1979, further reducing its rates by 20.95 cents per dt. By Order dated March 21, 1979, the Commission required Piedmont to file revised tariffs and make refunds pursuant to formulas set forth in that Order. On March 26, 1979, Piedmont gave notice of appeal and asked for a hearing and stay of the March 21, 1979, Order. On March 30, 1979, the Commission issued an Order staying its March 21, 1979, Order and scheduled a hearing. A hearing was held in Raleigh, North Carolina, on April 9 and 10, 1979. The Commission issued Orders on May 11, 1979, and May 14, 1979, requiring Piedmont to reduce its rates and make certain refunds. The May 11 and 14, 1979, Orders of the Commission were stayed by Orders of the North Carolina Court of Appeals issued on June 5 and June 20, 1979. On October 9, 1979, NCTMA filed an intervention.

Docket No. G-9, Sub 181. By application dated February 28, 1979, Piedmont requested the Commission to grant it permission to purchase supplemental gas to replace volumes being curtailed by its normal suppliers and to

permit it to recover the excess cost of such gas through increased rates. Revised applications were filed on June 1, 1979, August 29, 1979, and October 2, 1979. A hearing was held in Raleigh, North Carolina, on Wednesday, September 20, 1979. By Order dated November 6, 1978, the Commission approved the increased rates proposed by Piedmont subject to true-up to determine that Piedmont did not recover more than the excess cost of such supplemental gas. Piedmont advised the Commission by filing dated August 1, 1979, that it had overcollected $681,653 which it proposed to refund to its customers with interest.

Docket No. G-9, Sub 186. On September 2, 1979, Piedmont filed an application for authority to increase its rates effective March 1, 1979, by 17.48 cents per dt to recover its increased cost of gas. On March 7, 1979, the Commission issued an Order approving an increase in Piedmont's rates of 17.42 cents per dt. On March 26, 1979, Piedmont gave notice of appeal of the Commission's March 7, 1979, Order and requested a hearing and stay. On March 30, 1979, the Commission issued an Order granting the requested hearing and stay and consolidating the hearing with the hearing ordered in Docket No. G-9, Sub 176-A. The consolidated hearing was held on April 9 and April 10, 1979. By Orders dated May 11 and May 14, 1979, the Commission concluded that Piedmont should increase its rates by 17.49 cents per dt on and after March 1, 1979. On May 18, 1979, Piedmont filed two sets of rate schedules with the Commission. On May 31, 1979, the Commission rejected both sets of rate schedules and held that Piedmont's then current rates should remain in effect but that those rates would be deemed to include a PGA increase of 17.49 cents and an additional CTA decrement of 17.49 cents per dt. On August 15, 1979, the Commission issued an Order requiring Piedmont to place into effect within five days (subsequently extended to 12 days) revised tariffs reflecting a PGA increase of 17.49 cents per dt. This Order was necessitated by action of the North Carolina Court of Appeals which granted Piedmont a stay of the Commission Order in Docket No. G-9, Sub 176-A, which required the 17.49 cents per dt CTA reduction in rates. On August 31, 1979, Piedmont filed a petition for clarification or rehearing of the August 15, 1979, Order. On October 9, 1979, NCTMA filed its intervention.

Docket No. G-9, Sub 189. On March 26, 1979, Piedmont filed a petition to terminate its Curtailment Tracking Adjustment Formula (CTA). By Order dated April 24, 1979, the Commission declared the proceedings to be a General Rate Case and ordered Piedmont to file certain information with the Commission.

Docket No. G-9, Sub 189. By Order dated May 7, 1979, the Commission authorized Piedmont to purchase three million dt of gas from East Tennessee Natural Gas Company; provided, however, that 50% of the margin (revenues less cost of gas and gross receipt taxes) earned with respect to the sale of such gas be credited to Account No. 253 and be used to

reduce purchased gas adjustment increases occurring subsequent to August 31, 1979. On August 27, 1979, Piedmont filed an amended application with this Commission in Docket No. G-9, Sub 193, seeking permission to credit the principal amount of $1,072,045 plus interest to Account No. 253 as ordered by the Commission.

Docket No. G-9, Sub 192. On August 1, 1979, Piedmont filed an application with this Commission for authority to adjust its rates and charges for retail natural gas service in North Carolina and to withdraw its CTA. By Order dated August 28, 1979, the Commission declared the application to be a General Rate Case under G.S. 62-137, suspended the proposed rates for a period of 270 days from the proposed effective date of September 1, 1979, set the matter for investigation and hearing and required public notice to be given. On September 5, 1979, the Public Staff filed Notice of Intervention on behalf of the using and consuming public. On October 3, 1979, the Attorney General filed a Notice of Intervention on behalf of the using and consuming public. On October 10, 1979, NCTMA filed its intervention.

Docket No. G-9, Sub 193. On August 27, 1979, Piedmont filed an amended application seeking to recover its increased cost of gas from its wholesale suppliers effective September 1, 1979. In that filing, Piedmont also seeks approval to credit Account No. 253 for the emergency gas overcollections and the East Tennessee Margin refunds which credits are to be offset against purchased gas adjustment debits to Account No. 253 including debits relating to Docket No. G-9, Sub 186. By Order dated September 12, 1979, Piedmont was permitted to place in effect $.226332 per dt of the requested increase subject to an undertaking to refund up to 20% of said increase.

Proposed Settlement Agreement. On October 5, 1979, Piedmont filed a motion in each of the above-captioned dockets requesting approval of a settlement agreement (the Settlement Agreement) attached to the motion and executed by Piedmont and the Public Staff. By Order dated October 5, 1979, the Commission rescheduled the General Rate Case hearings for the purpose of considering Piedmont's motion and all matters covered by the Settlement Agreement. Piedmont was required to give notice of the hearings which were to determine if the proposed rates and charges contained in the Settlement Agreement are just and reasonable. Hearings were held in Charlotte, North Carolina, on October 24, 1979, and in Raleigh, North Carolina, on October 29, 1979. At the October 24, 1979, hearing, the NCTMA withdrew its intervention in each of the above-captioned dockets in which it had intervened; and the Attorney General filed a motion supporting the proposed Settlement Agreement. In Raleigh on October 29, 1979, Piedmont presented the direct testimony and exhibits of Everette C. Hinson, Senior Vice President, Finance, who explained the proposed Settlement Agreement and the exhibits attached thereto. In addition, Piedmont offered into

evidence the prefiled testimony of company witnesses John H. Maxheim, W. Randall Powell, Ware F. Schiefer, Paul C. Gibson, Robert S. Hahne, Barry L. Guy, Ted C. Coble, Everette C. Hinson, and Eugene W. Meyer. The Public Staff offered the testimony of Donald E. Daniel who testified that the Public Staff had conducted an investigation with respect to each of the issues set forth in the Settlement Agreement and had determined that the Settlement Agreement and the rates and refunds set forth therein are fair and reasonable to the using and consuming public.

Following the receipt of all testimony and exhibits, it was agreed by all parties of record that the right to file legal briefs and proposed findings of fact and conclusions of law would be waived in order to permit the Commission to issue an Order prior to November 1, 1979, when the proposed rates are to become effective.

Based upon the entire record of these proceedings, the Commission makes the following

FINDINGS AND CONCLUSIONS

1. Piedmont is a duly created and existing New York corporation authorized to do business in North Carolina as a franchised public utility providing natural gas services in 42 North Carolina communities and is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its proposed rates and charges as regulated by the utilities statutes of North Carolina. (The evidence for this finding appears in the verified application in Docket No. G-9, Sub 192.)

2. Piedmont is providing adequate natural gas service to its existing customers in North Carolina. (The evidence for this finding appears in the testimony of witness Hinson.)

3. This Commission issued an Order dated May 8, 1978, in Docket No. G-9, Sub 176, and Docket No. G-9, Sub 181, approving a gas apportionment plan under which Piedmont would apportion its gas supplies between North Carolina and South Carolina. The effectiveness of the gas apportionment plan was contingent upon its approval by the Public Service Commission of South Carolina. On August 6, 1979, the Public Service Commission of South Carolina issued an Order rejecting the gas apportionment plan, primarily for reason that the receipt of additional volumes of gas by Piedmont had made an allocation plan unnecessary. (The evidence for these findings appear in the testimony of witness Hinson and in Article II of the Settlement Agreement.)

4. During the 12-month period ended October 31, 1979, the proper CTA rate based upon North Carolina sales of 36,313,536 dt is negative $.217304 per dt. (The evidence for this finding appears in the testimony of witness Hinson and in Article III of the Settlement Agreement.)

5. In order to recover its increased wholesale cost of gas in Docket No. G-9, Sub 186, Piedmont should have had in effect at all times since March 1, 1979, a PGA increase of $.1749 per dt. (The evidence for this finding appears in the testimony of witness Hinson and in Article III of the Settlement Agreement.)

6. Piedmont overcollected supplemental gas costs of $681,653 in Docket No. G-9, Sub 181. (The evidence for this finding appears in the testimony of witness Hinson and in Article III of the Settlement Agreement.)

7. Piedmont collected margin of $2,144,090 on the sale of gas purchased from East Tennessee Gas Company during the summer of 1979 and is required by this Commission's Order of May 7, 1979, to refund one-half of said margin ($1,072,045) plus interest. (The evidence for this finding appears in the testimony of witness Hinson and in Article III of the Settlement Agreement.)

8. The CTA was adopted in 1974 in Docket No. G-9, Sub 131, and has been modified on several occasions since its adoption. The CTA was initiated for the purpose of stabilizing the base period margin (gas sales revenue less cost of gas and gross receipts taxes) which has been subject to variation due to variation in Piedmont's gas supplies caused by curtailment. The CTA has caused Piedmont numerous problems in projecting and reporting its earnings and in planning for its capital requirements. It appears that as a result of recent rulings of the FERC and an improvement of Transco's gas supplies, fluctuations in future gas supplies can now be projected more accurately. We therefore conclude that the CTA should be terminated effective November 1, 1979; provided, however, that the CTA calculated be subject to true-up as hereinafter provided. (The evidence for this finding appears in the testimony of witness Hinson.)

9. Piedmont's cost of gas from its suppliers increased effective September 1, 1979, by $8,655,652 annually. On September 1, 1979, Piedmont had in storage a total of 7,397,432 dt of gas allocable to North Carolina. Piedmont increased its rates on September 15, 1979, by $.22633 per dt to recover the aforesaid supplier increase. (The evidence for this finding appears in the testimony of witness Hinson and in Article V of the Settlement Aggreement.)

10. In order to establish just and reasonable rates for Piedmont to be effective November 1, 1979, the Commission makes the following findings:

A. The test period established by the Commission and utilized by all parties for the purpose of establishing just and reasonable rates to be effective November 1, 1979, is the 12 months ended March 31, 1979. (The evidence for this finding is contained in the verified application in Docket No. G-9, Sub 192, the Commission's Order of August 28, 1979, the prefiled

testimony and exhibits of witnesses Gibson, Guy, and Coble, and in Schedule III of the Settlement Agreement.)

B. The change in revenues sought by Piedmont in the Settlement Agreement is a reduction of $8,958,488 of the revenues Piedmont would earn under the present rates if the CTA is eliminated. However, the total revenues sought by Piedmont under the Settlement ($128,879,642) is an increase of $14,620,440 over the total revenues after adjusted for allowed margin in Docket No. G-9, Sub 176 ($114,259,202). (The evidence for this finding is contained in the testimony of witness Hinson and in Schedule III of the Settlement Agreement and in prefiled testimony of company witness Guy.)

C. The original cost of Piedmont's plant in service used and useful in providing natural gas service in North Carolina is $122,293,526. To this amount should be added leasehold improvements net of amortization of $27,999 and from this amount should be deducted the accumulated depreciation associated with the original cost of this plant of $34,760,686 and customer advances for construction of $467,062. This results in a reasonable original cost less depreciation, or a net gas plant in service of $87,093,777. (The evidence for this finding appears in the verified application in Docket No. G-9, Sub 192, and in Schedule III of the Settlement Agreement.)

D. The reasonable allowance for working capital for Piedmont is $12,696,432. Cost-free capital of $4,912,366 is provided by deferred income taxes. (The evidence for this finding appears in the verified application in Docket No. G-9, Sub 192, and in Schedule III of the Settlement Agreement.)

E. Piedmont's test year operating revenues from the sale of gas, after appropriate accounting and pro forma adjustments, under present rates are approximately $137,655,626 if one assumes the CTA is eliminated. Under the rates proposed in the Settlement Agreement the revenues from the sale of gas would be $128,697,138. (The evidence for this finding appears in the testimony of witness Hinson and in Schedule III of the Settlement Agreement.)

F. The level of Piedmont's operating revenues deductions after accounting and pro forma adjustments, including taxes and interest on customer deposits, is $119,540,195 which includes the amount of $3,407,825 actual investment currently consumed through reasonable actual depreciation. (The evidence for this finding appears in the testimony of witness Hinson and in Schedule III of the Settlement Agreement.)

G. That the capital structure which is proper for use in this proceeding is the following:

Item	Amount	Percent (%)
Long-term debt	$ 69,376,579	55.55
Preferred stock	3,027,900	2.42
Common equity	52,492,962	42.03
Total	$124,897,441	100.00

(The evidence for this finding is found in the prefiled testimony and exhibits of witnesses Guy, Coble, and Meyer and on Schedule III of the Settlement Agreement.)

H. Piedmont's proper embedded costs of debts and preferred stock are 7.48% and 5.14%, respectively. The rate of return which should be applied to the original cost of property (or rate base) is 9.77%. This return on Piedmont's rate base will allow Piedmont the opportunity to earn a return on common equity of 13.06% after recovery of the embedded costs of debt and preferred stock. Such returns on rate base and common equity are just and reasonable. (The evidence supporting this finding is found in Piedmont's data responses on Form G-9, the prefiled testimony of witness Meyer and in Schedule III of the Settlement Agreement. Witness Meyer, the only witness to offer testimony on rate of return testified that Piedmont required a return on common equity of 15% to 15.5%. The parties stipulated to a return on common equity of 13.06%, being the identical return found just and reasonable in Piedmont's last general rate case in August 1978. We conclude that such return is fair and reasonable.)

I. Piedmont's pro forma return on the original cost of its property, or rate base (absent the CTA), at the end of the test year is approximately 14.25%, which is greater than the Commission has determined to be just and reasonable. Therefore, in order to earn the level of return which the Commission finds to be just and reasonable, Piedmont should reduce its rates and charges by $8,958,488 based on operations during the test year modified to reflect the sales of 42,565,000 dt of gas. The Commission finds that, given efficient management, this reduction in gross revenue dollars will afford Piedmont an opportunity to earn the level of return on rate base and/or common equity which the Commission has found to be fair, both to Piedmont and the ratepayers. (The evidence supporting this finding is set forth with respect to paragraph H above.)

J. The schedule of rates and charges attached hereto as Appendix A is hereby found to be just and reasonable and should be placed into effect by Piedmont effective November 1, 1979. (The evidence supporting this finding is found in the evidence of witness Hinson and in the prefiled testimony of witness Schiefer and the Settlement Agreement Schedule II.)

IT IS, THEREFORE, ORDERED as follows:

1. That in view of the improvements in Piedmont's supplies of natural gas, the allocation plan by which Piedmont proposed to allocate its gas suppliers between North Carolina and South Carolina shall not be binding upon Piedmont; provided, however, that no party nor this Commission shall be barred from seeking approval of the same on a different allocation plan should future gas supplies make an allocation plan necessary or desirable.

2. That the $190,000 undertaking filed by Piedmont in Docket No. G-9, Sub 176, be and the same hereby is dissolved and terminated.

3. That Piedmont shall refund the sum of $5,018,807 to those customers (or former customers) who paid the excess charges as set forth in Schedule I of the Settlement Agreement, with each such customer receiving his pro rata share of each monthly refund based upon his monthly usage; provided, however, that the amount of refunds reflected in Schedule I for Docket No. G-9, Sub 181, and Docket No. G-9, Sub 189, shall be increased by an amount sufficient to refund interest at an annual rate of 9% on $1,753,698 ($681,653 + $1,072,045) from September 1, 1979, to the date of payment of said refunds; and, further provided, that the amount of refunds reflected in Schedule I for Docket No. G-9, Sub 176-A (CTA), shall be increased to reflect the margin earned (including gross receipt taxes) from the sale of more than the 26,313,536 dt during the 12 months ended October 31, 1979; and, further provided, that any margin gain from the sale of more than 36,313,536 dt shall be computed by subtracting the average cost of gas for the month of October 1979 from the rate at which the excess volumes were sold (it being assumed that the excess volumes were sold at the lowest rate) and multiplying the remainder by the excess sales volumes; and, further, that all such refunds shall be made by check and mailed with the December cycle bills, provided, however, that any customer who does not receive a December bill and who is entitled to receive a refund of $1.00 or more, shall be mailed a check on or before January 15, 1980; and, further provided, that any portion of the refund not mailed to customers as herein provided shall escheat to the State as provided by law.

4. That the CTA shall terminate as of November 1, 1979, and shall not be subject to true-up except as provided for herein (including the refunds provided for in paragraph 3 hereof).

5. That the parties' joint motion to dismiss the application in Docket No. G-9, Sub 187, contained in Article IV of the Settlement Agreement is hereby granted.

6. That Piedmont be and it hereby is authorized and directed to increase its rates effective September 1, 1979, by $.2347 per dt; provided, however, that Piedmont should

delay placing into effect $.03697 per dt of said increase until the refunds provided for in this and the following paragraph shall equal $1,674,275 (including gross receipt taxes) in order to account for inventory appreciation relating to the Docket No. G-9, Sub 193, PGA increase; further provided, that in recognition of the fact that Piedmont placed into effect an increase of $.22633 per dt effective September 15, 1979, pursuant to an undertaking to refund up to 20% of said amount, Piedmont shall place into its deferred Account No. 253 for future recovery from its customers the amount lost as a result of the PGA increase being placed into effect on September 15, 1979, rather than on September 1, 1979, and will refund to its customers paying said $.22633 per dt increase an amount of $.02860 per dt pursuant to said undertaking for the period September 15, 1979, through October 31, 1979, and that said undertaking shall automatically dissolve and terminate immediately upon payment of said refund.

7. That Piedmont be, and it is hereby authorized to adjust its rates and charges so as to reduce the annual revenues produced by the present rates absent the CTA by $8,958,488. Such decrease shall become effective on all gas sold as provided hereinafter.

8. That effective for all gas sold on or after November 1, 1979, Piedmont is hereby allowed to place into effect the rates set forth in Appendix A which rates are designed to produce annual revenues from the sale of gas of $128,697,138.

9. That Piedmont shall file amended tariffs reflecting the rates contained in Appendix A on or before November 1, 1979.

10. That the Settlement Agreement be and the same hereby is approved without modification or condition.

11. That the attached customer notice be included as a bill insert in the first billing cycle reflecting the new rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of October, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A

PIEDMONT NATURAL GAS COMPANY, INC.
SCHEDULE SHOWING BASE RATES AND REVENUES
AS ESTABLISHED IN DOCKET G-9, SUB 192 (GENERAL RATE CASE)
AND SETTLEMENT BILLING RATES @ NOVEMBER 1, 1979

RATE SCHEDULE (1)	BILLS (2)	DEKATHERMS (3)	BASE RATES SUB 192 ($/DT) (4)	REVENUES GENERATED COL. 2 x COL. 4 + COL. 3 x COL. 4 (5)	PURCHASE GAS ADJUSTMENT PLUS EXP. & DEV. TRACKER ($/DT)* (6)	BILLING RATE @ NOV. 1, 1979 (COL. 4 + COL. 6) (7)
	1,381,909		$4.05	$ 5,596,731		$4.05
101 Winter		9,522,073 DT	$3.15848/DT	30,075,277	$.25963/DT	$3.41811/DT
101 Summer		3,323,753	2.65848/DT	8,836,131	.25963/DT	2.91811/DT
	181,730		$8.00	1,453,840		$8.00
102 Winter		6,356,094	$3.15848/DT	20,075,596	$.25963/DT	$3.41811/DT
102 Summer		3,486,219	2.65848/DT	9,268,043	.25963/DT	2.91811/DT
	854		$75.00	64,050		$75.00
103 Winter		1,290,265	$2.90848/DT	3,752,710	$.25963/DT	$3.16811/DT
103 Summer		2,062,622	2.65848/DT	5,483,439	.25963/DT	2.91811/DT
	2,282		$75.00	171,150		$75.00
104		16,519,661	$2.65848/DT	43,917,188	$.25963/DT	$2.91811/DT
105		4,313	$5.00	21,565		$5.00
		42,565,000 DT		$128,715,720		

*Rate consists of the following:

23.47	¢/DT	Purchase Gas Adjustment (G-9, Sub 193)
(3.697)	¢/DT	PGA Adjustment for Revenue Gain on Stored Gas (G-9, Sub 193)
6.19	¢/DT	Exploration and Development Tracker (G-9, Sub 191)
25.963	¢/DT	Net

On October 31, 1979, the North Carolina Utilities Commission issued its Order in Docket No. G-9, Sub 192, which provides customers of Piedmont Natural Gas Company, Inc., a rate reduction of $8,958,488 annually and a onetime refund of $5,018,807. Effective November 1, 1979, residential winter rates are reduced by approximately 17 1/2¢ per dekatherm from $3.595 to $3.418. For a typical residential customer using 108 dekatherms of gas per year, bills will be reduced from $388.00 to $370.00 per year. A typical customer will also receive a onetime cash refund of approximately $15.00 on or before January 15, 1980. The onetime refund will be based on gas consumption during the 12 months ending October 31, 1979.

The rate reduction and refund were ordered after public hearings and approval of a settlement agreement proposed by the Public Staff and Piedmont and joined in by the Attorney General of North Carolina. The Commission's action taken today closes eight pending dockets, including a case that was appealed to the North Carolina Court of Appeals by Piedmont, and a general rate case filed by Piedmont on August 1, 1979.

Below is a schedule of the approved rates effective November 1, 1979, and the former rates.

Rate Schedule	Customer Charge Per Bill	Rate Per Therm Effective November 1	Rate Per Therm Prior to November 1	Reduction Per Therm
101 Winter	4.05	$.341811	$.35946	(.017649)
Summer	4.05	.291811	.30946	(.017649)
102 Winter	8.00	.341811	.35946	(.017649)
Summer	8.00	.291811	.30946	(.017649)
103 Winter	75.00	.316811	.35946	(.042649)
Summer	75.00	.291811	.30946	(.017649)
104	75.00	.291811	.30946	(.017649)
105	5.00			

John Maxheim, President
Piedmont Natural Gas Company, Inc.

HIPP, COMMISSIONER, CONCURRING.

I concur in the view expressed in Dr. Hammond's dissenting opinion that the settlement should not be construed as a new procedure to be adopted by the Commission in future cases. I believe that the entire Commission shares this position.

The settlement proposed in these consolidated dockets is unique in that it presents to the Commission and to the customers of Piedmont an opportunity to have reduced rates on natural gas made effective beginning November 1, 1979, for the oncoming heating season, and to include a refund of $5,018,807 at a time when it is sorely needed by low income customers to cope with their fuel bills for the coming season. The reduction of 17 1/2¢ per dekatherm will be a reduction of nearly 5% in gas heat, when most other heating

fuel is increasing at an alarming rate. Except for the agreement of the Public Staff, the Attorney General, and the other parties in this proceeding to the settlement proposed here, the litigation in these nine dockets could have taken a final decision well beyond the heating season and would run the risk that the reduction in rates would not be achieved by the customers on line this winter, as well as a risk that it would not be in the same amount.

I have examined the settlement documents filed in these proceedings on October 5, 1979, and am satisfied that the settlement achieves a just and reasonable result for the customers of Piedmont. The Public Staff and the Attorney General have also made the same examination and conclusion. Each of the Commissioners joining in this decision have reached such conclusion.

The settlement agreement was filed as a public document and the Commission conducted public hearings on the settlement proposal in Charlotte on October 24 and in Raleigh on October 29.

I conclude that it is in the best interest of the customers of Piedmont that the reduced rate on natural gas made available by this decision be made at the earliest practicable time with full opportunity for all parties to make full investigation of the cases involved and the settlement proposed to insure that the result is just and reasonable under the test established by the Public Utilities Act. This decision makes the rate reduction available November 1, 1979, at a time when it is vitally needed by the customers, and it is the only way that the reduction could be achieved for this winter heating season. I therefore believe that the customers' interest have been fully asserted and protected in these proceedings by the Public Staff, the Attorney General, and the Commission decision.

Edward B. Hipp, Commissioner

KOGER, CHAIRMAN, AND COMMISSIONERS TATE, WINTERS, AND CAMPBELL join in the concurring opinion of Commissioner Hipp.

HAMMOND, COMMISSIONER, DISSENTING.

I am dissenting from this decision because I feel it was reached out of a sense of expediency. The settlement proposed by Piedmont and the Public Staff, and approved by the majority, wipes clean a slate that contained numerous complex issues. Some of those issues were before the Courts on appeal while others were before this Commission.

I have a basic faith in the ability of the Courts and the Commission to sort out the issues and resolve them in a manner equitable to the interests of the customers and the company. Admittedly this would involve time and hard work.

Therefore, the settlement is appealing from the standpoint of a quick and relatively easy resolution of the issues.

Yet, in spite of the attractiveness of the settlement process, there are both obvious and hidden pitfalls in the process. In this specific case, the Commission has terminated the Curtailment Tracking Adjustment (CTA) which has served to protect the companies' earnings during the time of short supplies of natural gas. Now that the supply of natural gas has improved and the CTA served to benefit the customers, the company sought to have it terminated and through the settlement has accomplished their wishes. This was done without benefit of full debate on the relative merits of the issue.

The settlement, among all the other issues, dealt with all the issues of a general rate case. The decision will enhance the ability of the company to improve its rate of return. In fact, even though the settlement results in a reduction in the per therm cost of gas, it will increase Piedmont's total revenues by some $14 million due to the availability of significantly larger volumes of natural gas to be sold.

It is my conviction that these issues should be debated and adjudicated out in the spotlight of full public view through full courtroom proceedings where the various issues can be explored in depth and the relative merits of the pro and con arguments evaluated more precisely.

Based on this decision, other companies might adopt a policy of initiating a flood of filings, petitions, motions, appeals, etc., and then out of the confusion offer to settle in order to wipe the slate clean. The temptation for the Commission might again be too great to pass up.

It is my hope that acceptance of this settlement will not be interpreted by the utility companies, the Public Staff, or any other parties as a signal that this is a new way to do business with the Commission. I do not think use of the settlement technique fulfills our legal and moral responsibilities to the citizens of North Carolina. Therefore, I hope the Commission will be extremely reluctant to participate in any future decisions of this nature.

Leigh H. Hammond, Commissioner

DOCKET NO. G-9, SUB 176-A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Piedmont Natural Gas Company, Inc.,) NOTICE OF
Application for Adjustment of Rates) DECISION
and Charges Due to Increase in Supply) AND ORDER

BY THE COMMISSION: On January 19, 1979, the Federal Energy Regulatory Commission approved Transco's Offer of Settlement with the result that Piedmont's annual supply volumes from Transco were substantially increased (by approximately 25%). Since then Piedmont has received notification from Transco of an additional allocation of 429,000 dekatherms.

On February 2, 1979, Piedmont filed a revised CTA calculation which proposed to increase the negative CTA from $.05931 per dt to $.26881 per dt on all bills rendered from March 1, 1979, through October 31, 1979.

Having considered Piedmont's application, pleadings filed by the parties in this docket, and oral argument of the parties on their pleadings, the Commission hereby gives notice that it has decided that the most reasonable and equitable sharing of the CTA benefit between winter and summer customers resulting from the increased level of gas supply would be to calculate the prospective CTA rate to be utilized during the period April 1, 1979, through October 31, 1979, by dividing the remaining gross margin to be refunded as of January 19, 1979, based on an annual level of gas supply of 35,348,218 dekatherms by the annual level of gas supply (35,348,218 dt) less volumes sold during the period November 1, 1978, through January 18, 1979. The Commission further concludes that the difference between the CTA rate calculated in accordance with the procedure set forth hereinabove and the CTA rate in effect during the period January 19, 1979, through March 31, 1979, should be refunded to the Company's customers on the basis of usage during said period (January 19, 1979, through March 31, 1979).

An Order setting forth findings and conclusions in support of this decision will issue in the near future.

IT IS, THEREFORE, ORDERED:

1. That Piedmont Natural Gas Company, Inc., is hereby ordered to file for Commission approval within five days from the issuance date of this Order revised tariffs reducing all rates on all service rendered on or after April 1, 1979, in an amount calculated by dividing the remaining gross margin to be refunded as of January 19, 1979, based upon an annual level of gas supply of 35,348,218 dekatherms, by the annual level of gas supply (35,348,218 dt) less volumes sold during the period November 1, 1978, through January 18, 1979.

2. That Piedmont Natural Gas is hereby required to make a onetime refund to its customers of the difference between the CTA rate calculated in accordance with the procedure set forth in Ordering Paragraph No. 1 hereinabove, upon receipt of Commission approval of such rate, and the CTA rate in effect during the period January 19, 1979, through March 31, 1979, based upon usage during said period (January 19, 1979,

through March 31, 1979). Such refund may be made by way of check or credit to the customer's bill.

3. That propane stabilization volumes and costs shall be excluded from the calculation of the CTA in this and future applications.

4. That Piedmont shall file, at the time of its next annual CTA, a true-up of over or undercollections made pursuant to this Order, which shall include an accounting of the refunds required by Ordering Paragraph No. 2 above.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-9, SUB 176-A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Piedmont Natural) ORDER REQUIRING FURTHER
Gas Company, Inc., for an Adjust-) MODIFICATION OF CTA RATE
ment of Its Rates and Charges)

BY THE COMMISSION: On April 23, 1979, the Public Staff notified the Commission that Piedmont Natural Gas Company, Inc.'s 1979 CD-2 entitlement from Transco had been increased by 1,065,000 dt. Piedmont confirmed such increase by letter of May 2, 1979. On May 7, 1979, Piedmont informed the Commission that Transco had acknowledged a further increase in its CD-2 entitlement but that an estimate of this additional gas supply to Piedmont had not been finalized. On May 8, 1979, Transco advised the Commission that Piedmont would receive an additional 1,670,000 dt, CD-2 entitlement effective May 8, 1979, bringing Piedmont's projected annual Transco total entitlement for the period ending October 31, 1979, to 40,857,000 dt.

On May 9, 1979, the Public Staff filed Motion of Public Staff for Further Consideration requesting that the Commission consider these additional volumes in setting Piedmont's CTA rate. On May 10, 1979, Piedmont filed a response to the Public Staff's motion stating legal objections to such further consideration. These objections are overruled for reasons set forth in the Commission's Final Order on Exceptions issued May 11, 1979.

After careful consideration of this matter, the Commission is of the opinion that Piedmont's CTA rate, which will be in effect through October 31, 1979, should be further modified to reflect the additional 2,735,000 dt increase in its CD-2 entitlement acknowledged by Transco in April (1,065,000 dt) and May (1,670,000 dt) of this year (1979). Current

inclusion of this additional gas supply will reduce Piedmont's present CTA decrement by approximately 3¢, thereby, decreasing the amount by which Piedmont would otherwise overcollect in the absence of this additional surcharge credit. Any over or undercollections realized or incurred by Piedmont with respect to the CTA are, of course, trued-up at the end of each annual period.

The Commission, therefore, concludes that the proper level of Piedmont's gas supply for use herein is 37,504,802 dt, which sum is calculated as follows:

Item	Volume in dt
1. Total Company Supply from Piedmont Filing of 2-2-79	47,127,394
2. Transco March, April, and May Give-Back (429,000 dt + 1,065,000 dt + 1,670,000 dt)	3,164,000
3. Total (Lines 1 and 2)	50,291,394
4. N.C. Allocation Factor (Summer-Winter Weighted)	76.07%
5. N.C. Supply (Line 3 x Line 4)	38,256,663
6. N.C. Propane Purchases (Piedmont 2-2-79 Filing)	51,816
7. Company Use and Unaccounted for (Piedmont 2-2-79 Filing)	(803,677)
8. N.C. Volumes Available for Recovery (Line 5 through Line 7)	37,504,802

IT IS, THEREFORE, ORDERED as follows:

1. That a further modification in addition to that required by the Commission Order of May 11, 1979, in Docket No. G-9, Sub 176-A, be made to the CTA rate to be implemented prospectively to reflect the additional 2,735,000 dt increase in Piedmont's CD-2 entitlement from Transco for the annual period ending October 31, 1979.

2. That Piedmont Natural Gas Company, Inc., shall file for Commission approval within five days from the issuance date of this Order revised tariffs, in lieu of the revised tariffs required by the Commission Order of May 11, 1979, reducing all rates on all service rendered in an amount calculated by dividing the annual gross margin variation for the 12-month period ending October 31, 1979, based upon an annual level of gas supply of 37,504,802 dekatherms by said annual level of gas supply (37,504,802 dt). Further, in accordance with the refund provision of Ordering Paragraph No. 3 of the Commission Order of May 11, 1979, in Docket No. G-9, Sub 176-A, Piedmont shall file for Commission approval a calculation of the CTA rate made in accordance with procedures set forth in Ordering Paragraph Nos. 1 and 2 of such Order.

3. That the volumetric composition and cost of the gas supply to be used in the calculation of the annual gross

margin variation as required by Ordering Paragraph No. 2 above shall be that composition and cost reflected in Piedmont's Revised Curtailment Tracking Adjustment Filing of February 2, 1979, in Docket No. G-9, Sub 176-A, plus the March, April, and May 1979 increases in Piedmont's CD-2 entitlement from Transco of 429,000 dt, 1,065,000 dt, and 1,670,000 dt, respectively, at a cost of $1.242340 per dt.

4. That Piedmont shall use in its revenue forecast, with respect to its calculation of the gross margin variation for purposes as required herein, no rate less than its summer industrial rate of $2.1293 per dt.

5. That except to the extent they have hereinabove been allowed Piedmont's objections to Motion of the Public Staff for Further Consideration, filed on May 10, 1979, are denied.

6. That except to the extent it has hereinabove been modified, the Commission Order of May 11, 1979, in Docket No. G-9, Sub 186, and Docket No. G-9, Sub 176-A, is hereby reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of May, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-9, SUB 186
DOCKET NO. G-9, SUB 176-A

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	) FINAL ORDER ON EXCEPTIONS AND) ORDER ESTABLISHING PGA RATE AND) PROCEDURE FOR CALCULATION OF) CURTAILMENT TRACKING RATE AND) REQUIRING APPORTIONMENT OF) INCREASED GAS SUPPLY BENEFIT

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 9, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27402

For the Intervenors:

Jerry B. Fruitt, Chief Counsel, and Robert W. Page, Staff Attorney, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: By Order dated June 22, 1977, in Docket No. G-9, Subs 131D and 131E, the Commission adopted a revised Curtailment Tracking Adjustment (CTA) Formula for Piedmont Natural Gas Company, Inc. (Piedmont), wherein it ordered Piedmont to file an estimated CTA rate on or before October 1 of each year to be effective for the 12 months beginning with the following November 1. Further, the Commission ordered that upon expiration of each 12-month period the revenues collected under the CTA be "trued-up."

On October 2, 1978, Piedmont filed with the Commission in Docket No. G-9, Sub 176-A, its annual application to adjust its rates through the CTA for the period November 1, 1978 - October 31, 1979. Based on the projected annual supply volumes of 29,670,901 dt (as compared to 27,442,110 dt during the base period), Piedmont proposed to reduce its rates by 5.931¢ per dekatherm. The projected volumes included an amount of 100,000 dt of propane stabilization volumes used to equalize the BTU content of gas delivered to Piedmont by its two separate suppliers in South Carolina. The projected volumes (and CTA rate) did not include any increase in Transco supply volumes that might result from the settlement negotiations then pending before the FERC in its Docket No. RP72-99.

By Order issued on November 7, 1978, the Commission allowed Piedmont's proposed tariff, reducing its rates by 5.931¢ per dekatherm but providing that "if there is an increase in volume as a result of settlement conferences with Transcontinental Gas Pipeline Corporation, Piedmont should file within five days a revised CTA reflecting these changes." The Commission also provided that proper treatment of the propane stabilization volumes would be subject to further study and further Orders of the Commission.

On January 19, 1979, the FERC approved an Offer of Settlement filed by Transco which had the effect of increasing Piedmont's projected annual supply from Transco by approximately 15%. The FERC Order made the effective

date of these increased annual Transco supplies retroactive to November 1, 1978.

On February 2, 1979, pursuant to the Commission's November 7, 1978, directive, Piedmont filed an application to further reduce its CTA rate due to the increased supply volumes resulting from the settlement. Piedmont applied for a new negative CTA of 26.88¢ per dt to be effective from March 1, 1979, through October 31, 1979. At Staff Conference on March 12, 1979, the Public Staff recommended that the Commission approve a negative CTA of 26.562¢ per dt to be effective from March 1, 1979, to October 31, 1979, and thereby exclude propane stabilization volumes. By letter dated March 12, 1979, Piedmont notified the Commission of a further increase in its 1979 entitlement from Transco of 429,000 dt, the North Carolina portion of which was 76.07% or 326,340 dt.

Also, on February 2, 1979, in Docket No. G-9, Sub 186, Piedmont filed an application pursuant to G.S. 62-133(f) and NCUC Rule R1-17(g) for authority to increase its rates and charges effective March 1, 1979, in order to recover increases in costs of gas to it from its suppliers. Piedmont's proposed PGA would increase its rates by 17.48¢ per dt in order to recover increased costs of gas to North Carolina ratepayers totalling $6,287,758.

On March 7, 1979, the Commission issued an Order Approving PGA Tracking Increase in Part for Period Beginning March 1, 1979, wherein it approved an increase in Piedmont's rates of 17.42¢ per dt in lieu of Piedmont's proposed 17.48¢ per dt.

On March 15, 1979, the Public Staff filed Motion of Public Staff for Further Consideration in Docket No. G-9, Sub 176-A, requesting that Piedmont be required to place into effect a negative CTA of 16.921¢ per dt on all bills rendered on or after April 1, 1979, and to allocate to Piedmont's winter customers (those receiving bills from November 1, 1978, through March 31, 1979) their appropriate share of benefits from the increased supply volumes resulting from the settlement. This allocation, in the form of a refund, was to be an amount equal to the difference between the negative CTA of 16.921¢ and the negative CTA of 5.931¢ preiously approved times the volumes consumed between November 1, 1978, and March 31, 1979.

On March 15, 1979, Piedmont filed a Response in Opposition to Motion of Public Staff wherein it contended that: (1) refunds could not be accurately determined until after October 31, 1979, (2) the granting of the refund would create confusion and disharmony among Piedmont's customers, (3) Piedmont had filed the rates on February 2, 1979, and the rates had become automatically effective on March 4, 1979, since the Commission had not acted to suspend them, and (4) the CTA is illegal per se and should therefore be abolished. Piedmont and the Public Staff appeared before the Commission on March 16, 1979, and presented oral

argument on the matters raised in the Public Staff's motion and Piedmont's response. The legality of the CTA was argued at great length by both parties.

On March 21, 1979, after hearing oral argument from the parties on the said motion and response, the Commission issued Notice of Decision and Order and ordered the following:

1. That Piedmont Natural Gas Company, Inc., is hereby ordered to file for Commission approval within five days from the issuance date of this Order revised tariffs reducing all rates on all service rendered on or after April 1, 1979, in an amount calculated by dividing the remaining gross margin to be refunded as of January 19, 1979, based upon an annual level of gas supply of 35,348,218 dekatherms, by the annual level of gas supply (35,348,218 dt) less volumes sold during the period November 1, 1979, through January 18, 1979.

2. That Piedmont Natural Gas is hereby required to make a onetime refund to its customers of the difference between the CTA rate calculated in accordance with the procedure set forth in Ordering Paragraph No. 1 hereinabove, upon receipt of Commission approval of such rate, and the CTA rate in effect during the period January 19, 1979, through March 31, 1979, based upon usage during said period (January 19, 1979, through March 31, 1979). Such refund may be made by way of check or credit to the customer's bill.

3. That propane stabilization volumes and costs shall be excluded from the calculation of the CTA in this and future applications.

4. That Piedmont shall file, at the time of its next annual CTA, a true-up of over or undercollections made pursuant to this Order, which shall include an accounting of the refunds required by Ordering Paragraph No. 2 above.

On March 26, 1979, Piedmont filed Notice of Appeal and Exceptions in Docket No. G-9, Sub 186, to the Commission's Order dated March 7, 1979, and also filed motions for a hearing on its exceptions, for a hearing on all matters pertaining to that docket, and for a stay.

On March 26, 1979, Piedmont also filed Notice of Appeal and Exceptions in Docket No. G-9, Sub 176-A, to the Order dated March 21, 1979, entitled "Notice of Decision and Order," together with separate motions for hearing on exceptions, for an evidentiary hearing on all issues, and for a stay of the Commission's Order.

On March 29, 1979, the Public Staff filed a response to Piedmont's motions for hearings and asked for a hearing on the appropriate CTA rate and for a stay.

On March 30, 1979, in Docket No. G-9, Sub 176-A, the Commission issued its Order Setting Oral Argument on Exceptions and Further Hearing wherein it allowed Piedmont's motions for a hearing on exceptions and all issues and a stay. And on March 30, 1979, the Commission issued its Order Allowing Hearing and Consolidating Hearings wherein in Docket No. G-9, Sub 186, it allowed Piedmont's motions for hearing on exceptions and all matters "properly pertaining to this docket" and for a stay. It was also ordered that hearings in Docket No. G-9, Subs 176-A and 186, be consolidated for hearing.

On March 30, 1979, the Public Staff filed Exceptions and Notice of Appeal of Public Staff to the Notice of Decision and Order issued March 21, 1979, in Docket No. G-9, Sub 176-A. On April 3, 1979, the Commission issued an Order Setting Oral Argument scheduling these exceptions for "oral argument on the same day and time as Piedmont's exceptions."

These matters came on for hearing on April 9, 1979. At the hearing Piedmont offered the testimony of the following witnesses: Ware Schieffer, Vice President of Gas Supply, and Everette C. Hinson, Senior Vice President of Finance. The Public Staff presented the testimony of Donald E. Daniel, Assistant Director of Accounting for Gas, Water, and Transportation, and Eugene H. Curtis, Jr., Utilities Engineer, Gas Division. In addition to hearing this evidence which pertained to the proper CTA rate and the general operation and effect of the CTA on earnings, the Commission heard argument from the parties on their respective exceptions to the March 21, 1979, Order and on the other motions the parties filed herein.

The Public Staff moved that the scope of the hearing be limited to a determination of the proper CTA rate for April 1, 1979 - October 31, 1979, and the apportionment of the CTA benefits among customers. Piedmont opposed this motion and asked that it be permitted to argue for the abolishment of the CTA on legal grounds and by introducing evidence showing the effect on its overall operations, i.e., its earnings, rate of return, ability to finance, incentive to add new customers, etc. Piedmont also moved the Commission to declare the case to be a general rate case pursuant to G.S. 62-137.

After hearing argument of counsel, the Commission ruled that matters to be heard in Docket No. G-9, Sub 176-A, should be confined to the reasonableness of the specific rate for the CTA, as prescribed in Docket No. G-9, Subs 131D and 131E, and Docket No. G-9, Sub 131, and that this docket involves questions which do not require a determination of the entire rate structure and overall rate of return. The Commission further ruled that it would not consider the question of abolishing the CTA in this docket, except to rule on Piedmont's exceptions, but that it would hear argument and evidence as to abolishing the CTA in Docket No. G-9, Sub 187, which had been filed by Piedmont on

March 26, 1979. The Commission reaffirms these procedural rulings and concludes that Docket No. G-9, Sub 176-A, properly involves only the establishment of the proper CTA level and the apportionment of CTA benefits resulting from the FERC Settlement.

At the outset the Commission notes that Piedmont's various motions and arguments concerning the CTA are belated and ill-timed. Although Piedmont proposed the adoption of the CTA formula in Piedmont's 1974 general rate case and although Piedmont has participated in at least six CTA proceedings during the past four years, the Company now asserts for the first time that the formula is illegal and, even if it were legal, it cannot be applied without going through a general rate case proceeding. Curiously, the Company made neither of these assertions during Piedmont's general rate case decided on August 8, 1978, nor at the time it filed for an annual adjustment CTA on October 2, 1978, nor at the time it filed a revised CTA on February 2, 1979. These contentions were not made until after the Commission issued its Notice of Decision which apportioned the benefits of added gas supply to Piedmont's customers in a manner different from that proposed by Piedmont.

Having considered argument of counsel on exceptions and the other motions filed herein, the Commission concludes that it is legal and appropriate for it to make an adjustment in the CTA rate set forth herein. The CTA formula is a "rate" established under Chapter 62 by this Commission and it is presumed to be just and reasonable. G.S. 62-132, G.S. 62-3(2), Commission v. Edmisten, 291 N.C. 327 (1976). Having previously established the CTA formula, having previously overruled challenges to its legality from the Attorney General, an identical rate having been affirmed by the N.C. Court of Appeals in Edmisten v. Public Service Gas Company, 35 N.C. App. 156 (1978), and having applied it to Piedmont on at least six occasions during the past four years, the Commission may apply it in this docket without going through what would amount to a general rate case.

However, in response to Piedmont's exceptions and oral argument challenging the legality of the CTA, the Commission states that as a matter of law the CTA is a valid and legal rate. The CTA formula is an approved rate within the meaning of G.S. 62-3(24) in that it is a published method or schedule by which the monetary amount paid by each customer is figured. The law permits the use of such a formula. Commission v. Edmisten, 291 N.C. 327 (1976). Furthermore, the VVAF, which is Public Service Gas Company's curtailment tracking adjustment rate, has been held to be a just and reasonable rate in Edmisten v. Public Service Gas Company, 35 N.C. App. 156 (1978).

In overruling Piedmont's motion that the matter be declared to be a general rate case, the Commission notes that Piedmont has not met the Commission's general rate case filing requirements, nor has it given the required notice to

its customers. Thus, if the Commission were to declare the matter to be a general rate case, it would either be forced to dismiss the filing or to order the requisite data to be filed and notice to be given to customers. Either procedure would deny Piedmont's customers the benefits of the new CTA rate and the refunds ordered herein. Fortunately, neither result is required since as a matter of law the mere application or revision of the CTA rate, as opposed to its adoption or abolition, may be made without going through a general rate case. The adjustment of the CTA rate involves a determination of a permitted or allowed rate which may be decided without a general rate case. Edmisten v. Public Service Gas Company, 35 N.C. App. 156 (1978).

Based upon the foregoing, four issues are presented to the Commission for decision herein:

1. What treatment should be accorded the propane stabilization volumes which Piedmont is required to purchase for safety and economic reasons in order to equalize the BTU content of gas received from Transco and from Carolina Pipeline at various distribution points in South Carolina?

2. What is the proper level of gas supply to be used in the calculation of a mid-year adjustment to the existing CTA rate?

3. How should the CTA benefit arising from the additional gas supply volumes flowing from Transco to Piedmont be distributed among the customers of Piedmont?

4. What has been the CTA rate in full force and effect during the period March 1, 1978, through the present?

One aspect of the first issue is the treatment to be accorded the propane stabilization volumes with respect to the PGA. This was addressed by the Commission in its Order of March 7, 1979, in Docket No. G-9, Sub 186. As previously stated, such Order was subsequently stayed at the request of Piedmont and the matter was set for hearing. Prior to hearing a stipulation between the parties with respect to the proper PGA rate was agreed upon and a copy of same was filed with the Commission's Chief Clerk. In the stipulation it was agreed that the correct increase in Piedmont's North Carolina rates, effective March 1, 1979, to give effect to recent supplier cost of gas increases was either:

(a) 17.48¢ per dt if propane stabilization volumes are included at CD-2 rates, or

(b) 17.49¢ per dt if propane stabilization volumes and costs are excluded.

During the hearing of April 9, 1979, no further evidence was offered as to the treatment the Commission should accord propane stabilization volumes and costs with respect to the

PGA, although Piedmont did offer a witness who testified on the need for the Company's propane stabilization program.

The Commission in its Order of March 7, 1979, in Docket No. G-9, Sub 186, concluded in part as follows:

> G.S. 62-133(f) authorizes the Commission to consider increases and decreases in cost of gas to North Carolina gas utilities resulting from increases and decreases in wholesale prices as separate items not requiring the procedures and detailed findings of a general rate case. However, the charges properly includable in the "wholesale cost" of natural gas supplies are those costs over which neither the natural gas company nor the Utilities Commission has control. Increased or decreased costs resulting from a discretionary determination on the part of the natural gas company are not within the meaning of "wholesale costs" as set forth in G.S. 62-133(f). (See Utilities Commission v. Industries, Inc., 39 N.C. App. 477 (1979).) Therefore, the propane stabilization volumes are not associated with Purchased Gas Costs as contemplated by section G.S. 62-133(f).

The Commission having received no evidence to the contrary reaffirms its earlier conclusion that propane stabilization volumes are not properly associated with purchased gas costs as contemplated by G.S. 62-133(f) and, therefore, such volumes and costs should not be reflected in the PGA.

Further, the Commission concludes that the required increase in Piedmont's North Carolina rates to give effect to supplier cost of gas increases effective March 1, 1979, is 17.49¢ per dt. Such increase was effective on all gas sold on and after March 1, 1979.

The second and final aspect of the first issue is what treatment should be accorded the propane stabilization volumes with respect to the CTA.

The Public Staff contends, solely as a matter of consistency, that since it is proper to exclude propane stabilization volumes and costs from the PGA it must also follow that such volumes and costs should be excluded from the CTA.

As stated previously, G.S. 62-133(f) does not permit the inclusion of propane stabilization volumes and costs in the PGA; however, this statutory constraint does not apply to the CTA. Clearly, the Commission has within its discretion authority to determine the proper treatment of such stabilization volumes with respect to the CTA based upon all the facts of record without being unduly limited to the matter of consistency as proposed by the Public Staff.

As stated in the Commission Order of March 7, 1979, in Docket No. G-9, Sub 186, Piedmont purchases gas from two sources in South Carolina, those sources being Transco and

Carolina Pipeline (Carolina). Carolina in turn purchases gas from Transco and Southern Natural Gas Company (Southern). The gas being supplied to Carolina from Southern is being supplemented with LNG at a higher BTU content. The result of Piedmont's gas being purchased in South Carolina from two sources with different BTU content has created a customer safety problem in four locations supplied by Piedmont in South Carolina, due to changing BTU content at customer premises. In order to eliminate this safety problem, Piedmont has installed propane injection facilities at these four locations so that the heat content of the Transco gas is raised to the level of the higher BTU gas of Carolina Pipeline.

Obviously, as a result of the receipt of gas from Southern through Carolina and as a result of the propane injection, Piedmont and its customers enjoy a greater level of gas supply than they would otherwise have without the availability of such volumes. To the extent that there is a greater total system supply, there is also a greater level of supply available to Piedmont's North Carolina customers. Moreover, the Commission views the need for propane stabilization to be an operational problem of the entire Piedmont system and not a problem confined solely to Piedmont's South Carolina operations.

The Commission therefore concludes that the propane stabilization volumes and cost should be included in the CTA as proposed by Piedmont. Further, the Commission concludes that the cost of the propane stabilization volumes included therein should be limited to the test year weighted average cost (demand and commodity) of gas received under CD-2 entitlements of $1.24234 per dt, as proposed by Piedmont.

The second issue, the proper level of gas supply to be used in the calculation of a midyear adjustment to the existing CTA rate, arises from a disagreement between the Company and the Public Staff with regard to the propriety of each other's estimate of the annual level of gas supply for the 12-month period ending October 31, 1979.

The Public Staff contends that the most reasonable estimate of the annual level of gas supply is 35,348,218 dt; whereas, the Company now contends the proper level to be 33,789,000 dt.

Public Staff witness Curtis testified that his estimate of the Company's annual level of gas supply of 35,348,218 dt had been calculated by adding to the Company's estimated annual level of gas supply of 47,127,394 dt as reflected in its revised curtailment tracking adjustment filing of February 2, 1979, a 429,000 dt increase in CD-2 summer entitlement to Piedmont acknowledged by Transco in March of 1979, less propane stabilization volumes of 100,000 dt. Thus, the Public Staff's calculation of its estimate of Piedmont's North Carolina gas supply for the 12-month period ending October 31, 1979, is as follows:

Item	Volume in dt
1. Total Company Supply from Piedmont Filing of 2-2-79	47,127,394
2. Transco March Give-Back	429,000
3. Propane Stabilization Volumes	(100,000)
Total (Line 1 through Line 3)	47,456,394
4. N.C. Allocation Factor (Summer-Winter Weighted)	76.07%
5. N.C. Supply (Line 4 x Line 5)	36,100,079
6. N.C. Propane Purchases (2-2-79 Filing)	51,816
7. Company Use and Unaccounted for (2-2-79 Filing)	(803,677)
8. N.C. Volumes Available for Recovery (Line 6 through Line 8)	35,348,218

Company witness Schieffer testified concerning the estimated level of gas supply of 33,789,000 dt which he considered to be proper for use herein. Although witness Schieffer's explanation of the need to revise Piedmont's estimate of its gas supply for the annual period ending October 31, 1979, from that set forth in Piedmont's filing of February 2, 1979, was somewhat ambiguous, it is clear that two factors entering into witness Schieffer's assessment of the need for revision were: (1) the increase in Piedmont's CD-2 summer entitlement of 429,000 dt acknowledged by Transco in March of 1979 and (2) failure of the FERC to act with respect to Piedmont's request concerning the "Jonesboro Agreement." Such agreement would allow Piedmont additional operational flexibility with respect to volumes received from Carolina Pipeline as a result of gas transfers between Transco and Southern Natural Gas Company at Jonesboro, Georgia.

There is no disagreement between the parties with regard to the propriety of the inclusion of the 429,000 dt Transco give back in determining the annual level of gas supply for the period ending October 31, 1979.

With respect to the Jonesboro Agreement, the Commission pursuant to G.S. 62-65(b) hereby takes judicial notice of the Federal Energy Regulatory Commission's Order issued April 4, 1979, in Docket Nos. G-8110, CP 79-38, CP 79-39, CP 79-40, and CP 79-41 wherein the petitioners' request with respect to the Jonesboro Agreement was approved. As a result of the FERC action in this regard, the need, as determined by witness Schieffer, for a downward adjustment of approximately 900,000 dt to the Company's February 2, 1979, estimate of its annual level of gas supply is negated.

With regard to other factors which may have entered into witness Schieffer's downward revision of Piedmont's estimated annual level of supply, the Commission must acknowledge that it is somewhat perplexed with regard to the ambiguity and lack of specificity of witness Schieffer's testimony concerning the significance, which he attaches or

which he believes the Commission should attach to the failure of the South Carolina Public Service Commission to adopt the apportionment plan offered by Piedmont and adopted by this Commission for use in determining the cost-of-service in Piedmont's last general rate case, and the propriety of using Piedmont's sales profile in lieu of gas supply in determining a prospective CTA rate. Moreover, the Commission is perplexed by Piedmont's apparent lack of interest in identifying and clearly delineating the reasons for the difference between the estimated level of gas supply of 35,348,218 dt (which is also the level of gas supply proposed by the Public Staff for use herein) set forth in the Commission's Notice of Decision and Order in Docket No. G-9, Sub 176-A, issued March 21, 1979 (the composition of which should have been effortlessly ascertainable by Piedmont), and the estimated annual level of gas supply which Piedmont now contends to be proper. Piedmont has not offered into evidence an explanation of its revised estimated annual level of gas supply sufficient to permit the Commission to reconcile such differences. The Commission is not unmindful of the difficulty inherent in formulating a reasonable estimate of the annual level of gas supply, particularly when such an estimate depends heavily on the accuracy of projections made by Transco. Notification by Transco on April 19, 1979, of an additional 1,065,000 dt CD-2 entitlement for 1979 to Piedmont is a vivid example of both the instability and unpredictability of Piedmont's gas supply. However, this difficulty is further magnified for the Commission when the evidence presented is woefully lacking and incomplete.

The Commission emphasizes that whatever estimate is used for the volumes available to Piedmont the revenue impact of such volumes is subject to the true-up at end of year, thereby precluding any opportunity for Piedmont's customers to be overcharged or undercharged as a result of the CTA. Such true-up also assures that Piedmont will be treated fairly.

Based upon the foregoing and after careful consideration of all the evidence presented with respect to the estimated level of gas supply, the Commission concludes that the most reasonable estimate of Piedmont's gas supply for use herein is 35,424,288 dt, which sum is calculated as follows:

Item	Volume in dt
1. Total Company Supply from Piedmont Filing of 2-2-79	47,127,394
2. Transco March Give-Back	429,000
3. Total (Lines 1 and 2)	47,556,394
4. N.C. Allocation Factor (Summer-Winter Weighted)	76.07%
5. N.C. Supply (Line 3 x Line 4)	36,176,149
6. N.C. Propane Purchases (Piedmont 2-2-79 Filing)	51,816
7. Company Use and Unaccounted for (Piedmont 2-2-79 Filing)	(803,677)
8. N.C. Volumes Available for Recovery (Line 5 through Line 7)	35,424,288

The third issue regarding the treatment of the CTA benefit arising from the additional gas supply volumes flowing from Transco, both as a result of the increased Transco allocation and as a result of the FERC Order Approving Settlement, is of major consideration in this docket. The issue is not whether there has been or will be an overcollection of cost but rather how the benefits of increased gas supply to North Carolina will be apportioned among Piedmont's customers. Piedmont favors a midyear, prospective adjustment to increase the CTA decrement so as to flow the benefit back in the remaining months of this year (ending October 1979). The Public Staff favors setting the CTA rate prospectively (from and after April 1, 1979, which will now have to be May 1, 1979) at the level it would have been for the entire annual period had the greater volume availability been known prior to November 1, 1978, coupled with a onetime return of the benefit to customers in an amount represented by their usage from November 1, 1978 - March 31, 1979 (which will now have to be November 1, 1978 - April 30, 1979), times the difference between the prospective CTA rate and the CTA rate in effect during said period.

The Commission is of the opinion that it would be unfair and inequitable to Piedmont's winter heating customers (residential and commercial) to allow the entire benefit of increased Transco supplies to be forced into the summer period since such customers' demand for service would be considerably diminished, if not zero, in the summer as compared to the winter heating season and, particularly, in view of the fact that customers receiving gas during the winter season were required to bear a greater level of cost associated with curtailment or absence thereof.

In Docket No. G-9, Subs 131D and 131E, where the Commission revised the Curtailment Tracking Adjustment (CTA) Formula, the following policy was set forth:

> It is anticipated that the estimated CTA rate will be in effect for the entire 12-month period. Should there be

a significant change in estimated volumes, however, the Commission may direct that the estimated CTA rate be recalculated in order to minimize possible undercollections or overcollections at the end of the period.

The Commission Order in that docket further provided that after the period of November 1 through October 31 each year, when actual volume experience is known, Piedmont's CTA rates in effect during that period would be trued-up. The procedure of that true-up involves determining (1) the "true" CTA rate, based on actual North Carolina supply, which would have been required to protect the base margin determined in Piedmont's last general rate case, (2) the revenues which would have been collected had the true CTA rate been in effect, and (3) the revenues actually collected.

The difference between (2) and (3) above (i.e., actual collections versus collections which would have resulted from the true CTA rate) plus interest from date of collection is defined as overcollection or undercollection for the period. Finally, the Order specified that

> Piedmont shall maintain records which will allow the company to return any overcollections to the customers who paid in the overcollections. Unless otherwise authorized by the Commission, overcollections shall be refunded by credits to bills or checks and undercollections shall be placed in the deferred account. (emphasis added)

Therefore, after having carefully considered all of the evidence in this regard, the Commission concludes that equity and prior Commission policy (which has not been formerly reviewed or amended) dictate that the entire 12-month period be used in recalculating the CTA rate. Further, the Commission concludes that since a large portion of natural gas consumption in the winter season goes for residential heating while a preponderance of the summer volumes goes to commercial and industrial customers, if equity is to prevail, the Commission must require Piedmont to employ in the distribution of the CTA benefit a methodology similar to that proposed by the Public Staff.

The fourth and final issue that the Commission must consider is what was the CTA rate in full force and effect during the period March 1, 1978, through the present.

From November 1, 1978, through February 28, 1979, the CTA rate in effect was a negative 5.931¢ per dekatherm. On February 2, 1979, Piedmont filed a revised CTA rate pursuant to the Commission's earlier Order in this docket requesting that the CTA rate be further reduced by 20.95¢ per dekatherm, resulting in an effective negative CTA rate of approximately 26¢ per dekatherm. The Commission did not suspend the rate so filed; therefore, on March 4, 1979, Piedmont could have elected to put the filed rates into

effect. However, it chose not to do so but chose to put into effect a rate that had not been filed and, thus, neither approved nor allowed to be effective by this Commission. Company witness Hinson testified that the total CTA decrement in the Piedmont rates as of April 10, 1979, was the sum of the 5.931¢ per dekatherm, in effect earlier, and an additional 17.48¢ per dekatherm decrement that had been in effect since March 1, 1979.

While Piedmont could have billed the filed CTA rate of 26.881& per dekatherm after March 1, 1979, because the Commission did not suspend it within 30 days from the date it was filed, Piedmont had no authority to bill the negative 23.411¢ (17.48¢ + 5.931¢) per dekatherm rate. G.S. 62-134(a) and G.S. 62-134(b) read as follows:

> (a) Unless the Commission otherwise orders, no public utility shall make any changes in any rate which has been duly established under this Chapter, except after 30 days' notice to the Commission, which notice shall plainly state the changes proposed to be made in the rates then in force, and the time when the changed rates will go into effect. The public utility shall also give such notice, which may include notice by publication, of the proposed changes to other interested persons as the Commission in its discretion may direct. All proposed changes shall be shown by filing new schedules, or shall be plainly indicated upon schedules filed and in force at the time and kept open to public inspection. The Commission, for good cause shown in writing, may allow changes in rates without requiring the 30 days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such public utility.
>
> (b) Whenever there is filed with the Commission by any public utility any schedule stating a new or revised rate or rates, the Commission may, either upon complaint or upon its own initiative, upon reasonable notice, enter upon a hearing concerning the lawfulness of such rate or rates. Pending such hearing and the decision thereon, the Commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons therefor, may, at any time before they become effective, suspend the operation of such rate or rates, but not for a longer period than 270 days beyond the time when such rate or rates would otherwise go into effect. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate shall go into effect at the end of such period. After hearing, whether completed before or after the rate goes into effect, the Commission may make such order with respect thereto as would be proper in a proceeding instituted after it had become effective.

It is apparent that G.S. 62-134(a) and G.S. 62-134(b) allow filed rates to become effective if the Commission does

not suspend them but gives a utility no authority to put into effect a rate that has not been filed. Such a rate is neither permitted nor approved. Accordingly, the Commission can recognize neither the CTA rate Piedmont contends to be in effect nor the filed CTA rate which could have become effective had Piedmont chosen to place it into effect by billing it instead of the nonfiled rate.

The Commission concludes that the CTA which has been in effect from March 1, 1979, to the present is 5.931¢ per dekatherm which was approved on November 7, 1979, by Commission Order.

Again, as in the case of determining the proper level of volumes for use herein, the Commission emphasizes that the end of year CTA true-up precludes any over or undercollection of costs, thereby eliminating any inequities, should they arise, to Piedmont or its customers.

The Commission has considered each and every one of Piedmont's exceptions 1-13 to the Notice of Decision and Order dated March 21, 1979, filed in Docket No. G-9, Sub 176-A, and concludes that except to the extent they have herein been allowed, they should be denied and overruled.

The Commission has considered each and every one of Piedmont's exceptions to the Order Approving PGA Tracking Increase in Part For Period Beginning March 1, 1979, filed in Docket No. G-9, Sub 186, and concludes that, except to the extent that they have herein been allowed, they should be denied and overruled.

The Commission has considered each and every one of the Exceptions and Notice of Appeal of Public Staff and concludes that, except to the extent that they have herein been allowed, they should be denied and overruled.

IT IS, THEREFORE, ORDERED:

1. That Piedmont Natural Gas Company, Inc., shall file for Commission approval within five days from the issuance date of this Order revised tariffs reducing all rates on all service rendered on or after May 1, 1979, in an amount calculated by dividing the annual gross margin variation for the 12-month period ending October 31, 1979, based upon an annual level of gas supply of 35,424,288 dekatherms by said annual level of gas supply (35,424,288 dt).

2. That the volumetric composition and cost of the gas supply to be used in the calculation of the annual gross margin variation as required by Ordering Paragraph No. 1 above shall be that composition and cost reflected in Piedmont's Revised Curtailment Tracking Adjustment Filing of February 2, 1979, in Docket No. G-9, Sub 176-A, plus the March 1979 increase in Piedmont's CD-2 summer entitlement from Transco of 429,000 dt at a cost of $1.242340 per dt.

3. That Piedmont Natural Gas shall make a onetime refund to its customers of the difference between the CTA rate calculated in accordance with the procedure set forth in Ordering Paragraph Nos. 1 and 2 hereinabove plus interest, upon receipt of Commission approval of such rate, and the CTA rate in effect during the period November 1, 1979, through April 30, 1979, based upon usage during said period (November 1, 1979, through April 30, 1979). Such refund may be made by way of check or credit to the customer's bill. The attached notice shall accompany the refund check or the bill that reflects the credit.

4. That the CTA rate in full force and effect during the period November 1, 1979, through the effective date of the CTA rate to be approved by this Commission, as provided hereinabove, is a negative 5.931¢ per dekatherm.

5. That propane stabilization volumes and costs at the CD-2 rate in the base period shall be included in the calculation of the CTA in this and future CTA applications.

6. That propane stabilization volumes and costs shall be excluded in the calculation of the PGA in this and future PGA applications.

7. That the proper PGA rate required to give supplier cost of gas increases prior to March 1, 1979, is 17.49¢ per dt. Such increase was effective on all gas sold on and after March 1, 1979.

8. That Piedmont shall file, at the time of its next annual CTA, a true-up of over or undercollections made pursuant to this Order, which shall include an accounting of the refunds required by Ordering Paragraph No. 3 above.

9. That, except to the extent they have hereinabove been allowed, Piedmont's exceptions to the Commission's Notice of Decision and Order, dated March 21, 1979, are denied.

10. That, except to the extent they have hereinabove been allowed, Piedmont's exceptions to the Order Approving PGA Tracking Increase in Part for Period Beginning March 1979 are denied.

11. That, except to the extent they have hereinabove been allowed, the Exceptions and Notice of Appeal of Public Staff are denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of May, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sharon C. Credle, Deputy Clerk

NOTICE

Docket No. G-9, Sub 186
Docket No. G-9, Sub 176-A

The North Carolina Utilities Commission has ordered Piedmont Natural Gas Company to reduce its rates slightly beginning May 1, 1979, and to make a refund to customers for natural gas service received between November 1, 1978, and April 30, 1979. Both actions are due to an increase in gas supply. Although the calculations have not been finalized, the refund should amount to about $8.50 for an average residential customer. The refund will, of course, vary depending upon usage and is being paid either by check or a credit on each customer's monthly bill. In ordering both the reduction in rates and the refund, the Commission rejected a proposal that would have applied the total benefits to the spring and summer periods and thereby provide no benefit to Piedmont's winter heating customers.

PIEDMONT NATURAL GAS COMPANY, INC.
John H. Maxheim, President

COMMISSIONER TATE, DISSENTING: I dissent to that portion of the majority decision which deals with when and how the C.T.A. benefits are to be distributed among Piedmont's customers. I concur with the Majority that the C.T.A. is legal and agree to the adjustments made regarding propane stabilization and the level of gas supply volumes.

Heretofore in past decisions, gas supplies have been dealt with on a seasonal six-months basis; but in Docket No. G-9, Subs 131D and 131E, the Commission changed to an annual period for both estimates and true-up. If supply estimates change after the initial estimate (made on October 31st of each year) for the C.T.A., I agree that the prospective C.T.A. benefit or decrement should be adjusted. I do not believe, however, that refunds or credits should be ordered on the basis of estimates. Instead, I believe that refunds and credits should only be ordered on the basis of actual supplies and this cannot be known until the true-up at the end of the 12-month period. I agree with the majority that the winter heating customers should benefit from the increased gas supplies received by Piedmont to the extent these supplies were available during the heating season; however, it seems inappropriate to me to order what is in effect a true-up in the middle of the year which can only be based on estimates.

In Docket Nos. G-3, Sub 58-F, G-3, Sub 76-A and G-5, SubE 136, the Commission ordered Pennsylvania and Southern and Public Service to adjust their C.T.A. forward but refunds of the C.T.A. were not retroactively granted to customers based on mere estimates of the annual supply. The operation of the C.T.A. apparently requires constant adjustment as Transco's (and/or FERC's) supply advisories change. To me it is far more reasonable, as well as

practical, to respond to those supply changes by setting new rates for the future rather than to adjust backwards. Rates for the future could continue into the next heating season in order to flow through the benefits equitably to all customers. Or in the alternative, refunds could be ordered at true-up time when actual supplies have been accurately determined. The majority has ordered refunds based on estimates and if their estimates are wrong and any refunds so ordered may be legally irretrievable, the benefits have been flowed through inequitably.

Also, I feel it is better policy to treat all the gas companies and their customers consistently and I would, therefore, prefer to follow the precedents set in the Pennsylvania & Southern and Public Service Order of the Commission.

Sarah Lindsay Tate, Commissioner

DOCKET NO. G-9, SUB 186
DOCKET NO. G-9, SUB 176-A

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 DENYING MOTION FOR HEARING, REHEARING AND STAY OF REFUND, AND APPROVING RATES

BY THE COMMISSION: On May 18, 1979, Piedmont Natural Gas Company, Inc. (Piedmont, Company), in compliance with Commission Orders issued on May 11, 1979, and May 14, 1979, in Docket No. G-9, Subs 186 and 176-A, filed a set of rates, identified as Exhibit A, calculated in accordance with the procedures set forth in such Orders. Piedmont also filed, for reasons set forth therein, an alternative set of rates, identified as Exhibit B, for the Commission's consideration. Further, on May 18, 1979, Piedmont filed in Docket No. G-9, Sub 176-A, Motion of Piedmont Natural Gas Company, Inc., for Rehearing and Stay, Motion for Hearing on Notice of Appeal and Exceptions of Piedmont Natural Gas Company, Inc., and Notice of Appeal and Exceptions of Piedmont Natural Gas Company, Inc.

The Public Staff on May 23, 1979, in Docket No. G-9, Sub 176-A, filed its response to Piedmont's request for hearing and stay.

As observed by the Public Staff in its May 23, 1979, filing, Piedmont's Motion for Hearing on Notice of Appeal and Exceptions contains no new matter or arguments, with one exception (Exception No. 49), which have not been previously considered and rejected by this Commission.

Piedmont's Exception No. 49 relates to the Commission's Order of May 14, 1979. With respect to this Exception, the

Commission would remind Piedmont that there is absolutely nothing unique about the use of Transco's projected CD-2 entitlements in determining a projection of Piedmont's annual gas supply without regard to whether such data is transmitted to the Commission by Piedmont, by the Public Staff, or by Transco. Without fail, since the inception of the Curtailment Tracking Adjustment (CTA) formula some four and one-half years ago (December 12, 1974), Transco's annual projected CD-2 entitlements have been steadfastly used both by Piedmont and by this Commission in all matters concerning curtailment of gas supply. Piedmont does not contest the accuracy of the Transco data, nor does the Company show how any inaccuracy could damage the Company. As Piedmont well knows, the end-of-year true-up exists for the purpose of dealing with over or under collections that may have arisen as a result of imprecise estimates.

The Commission has considered each and every one of Piedmont's exceptions 1-58 (filed on May 18, 1979, in Docket No. G-9, Sub 176-A) to the Commission's Order entitled Final Order on Exceptions and Order Establishing PGA Rate and Procedure for Calculating of Curtailment Tracking Rate and Requiring Apportionment of Increased Gas Supply Benefit issued on May 11, 1979, in Docket No. G-9, Subs 186 and 176-A, and to the Commission's Order entitled Order Requiring Further Modification of CTA Rate issued on May 14, 1979, in Docket No. G-9, Subs 186 and 176-A, and concludes that Piedmont's Motion for Hearing on Notice of Appeal and Exceptions of Piedmont Natural Gas Company, Inc., filed May 18, 1979, in Docket No. G-9, Sub 176-A, should be denied.

The Commission has considered the Motion of Piedmont Natural Gas Company, Inc., for Rehearing and Stay filed on May 18, 1979, in Docket No. G-9, Sub 176-A, and concludes that it should be denied.

The sum and substance of Piedmont's Exceptions are that the Commission's Orders of May 11 and May 14, 1978, which require refund and reduction in rates are confiscatory and in violation of Article I, Section 19, of the Constitution of North Carolina and the Fourteenth Amendment of the Constitution of the United States in that they unlawfully deprive Piedmont of its property, property rights, and statutory rights without due process of law. It is inconceivable that Piedmont has lost sight of a fundamental fact in these proceedings; namely, the opportunity to file for rate relief under the provisions of G.S. 62-133.

The CTA was designed to be and has been used consistently to deal with the problem of severe revenue fluctuations due to erratic supply variations. The CTA serves only to maintain a margin, from which the Company must pay its nongas expenses and service its capital. When supplies were contracting, the CTA served to keep Piedmont's margin from contracting. As intended, the CTA never provided any assistance toward rate of return; in fact, rate of return

was never a consideration in any past CTA proceeding. When the Company's margin, due to inflation or other reasons, became inadequate, the Company filed for rate relief under G.S. 62-133 (e.g., Docket G-9, Sub 176). Currently, nothing has changed. Supply of natural gas to North Carolina continues to vary erratically, but in an expanding rather than contracting mode. The CTA serves to keep Piedmont's margin from expanding; but consistent with the past it provides no assistance toward rate of return. If the Company's margin due to inflation or other reasons is inadequate, as in the past, the Company can file for rate relief under G.S. 62-133.

The Commission having considered the two sets of rate schedules identified as Exhibit A and Exhibit B by Piedmont in its filing of May 18, 1979, in Docket No. G-9, Subs 186 and 176-A, concludes that the set of rates identified as Exhibit A are true and correct and should be approved by this Commission. However, since the revenue impact of the differential between the $.27268 rate reflected in Exhibit A and the current rate of $.27255 is de minimis, the Commission will not require that the rate of $.27268 per therm be placed into effect; but rather will increase the $.02329 CTA decrement, reflected in the calculation of the $.27268 net rate in Exhibit A, by $.00013.

The Commission concludes that such rate is properly calculated as follows:

Line No.	Item	Amount per therm
1	Present Rate	$ .27255
2	PGA Increase	.01749
3	Withdrawal of Current CTA	.00593
4	New CTA	(.02342)
5	Net Rate	$ .27255

Finally, the Commission concludes that the PGA increase of $.01749 per therm and the CTA decrement of $.02342 per therm as adopted hereinabove should become effective on all service rendered on and after the issuance date of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont's Motion for Hearing on Notice of Appeal and Exceptions to the Commission's Final Order on Exceptions and Order Establishing PGA Rate and Procedure for Calculating of Curtailment Tracking Rate and Requiring Apportionment of Increased Gas Supply Benefit, issued on May 11, 1979, in Docket No. G-9, Subs 186 and 176-A, and to the Commission's Order Requiring Further Modification of CTA Rate, issued on May 14, 1979, in Docket No. G-9, Subs 186 and 176-A, are denied.

2. That the Motion of Piedmont Natural Gas Company, Inc., for Rehearing and Stay, filed on May 18, 1979, in Docket No. G-9, Sub 176-A, is denied.

3. That the current rate of $.27255 per therm shall remain in effect, provided, however, that the PGA increase of $.01749 per therm and the CTA decrement of $.02342 per therm reflected therein shall become effective on all service rendered on and after the issuance date of this Order.

4. That the CTA rate as calculated by Piedmont and presented in Appendix A of its May 18, 1979, filing of $.013981 per therm on sales from November 1, 1978, through April 30, 1979, is proper. The attached notice shall accompany the refund check or the bill that reflects the credit in lieu of the notice required by the Commission's Order of May 11, 1979.

5. That except to the extent they have hereinabove been modified, the Commission's Orders of May 11, 1979, and May 14, 1979, in Docket No. G-9, Subs 186 and 176-A, are hereby reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of May, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTICE

The North Carolina Utilities Commission has ordered Piedmont Natural Gas Company to make a refund to customers for natural gas service received between November 1, 1978, and April 30, 1979. This action is due to an increase in gas supply. Although the calculations have not been finalized, the refund should amount to about $12.00[1] for an average residential customer. The refund will, of course, vary depending upon usage and is being paid either by check or a credit on each customer's monthly bill. In ordering the refund, the Commission rejected a proposal that would have applied the total benefits of increased gas supply to the spring and summer periods and thereby provide no benefit to Piedmont's winter heating customers.

PIEDMONT NATURAL GAS COMPANY, INC.
John H. Maxheim, President

DOCKET NO. G-9, SUB 186
DOCKET NO. G-9, SUB 176-A

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 DENYING FURTHER) INCREASE IN CTA RATE) AND REQUIRING IMPLE-) MENTATION OF PRE-) VIOUSLY APPROVED PGA

BY THE COMMISSION: On May 31, 1979, the Commission issued its Order Denying Motion For Hearing, Rehearing and Stay of Refund and Approving Rates in Docket No. G-9, Subs 186 and 176-A. Subsequently, on June 6, 1979, the Court of Appeals entered its Order Allowing the Petition for Temporary Stay with respect to Docket No. G-9, Sub 176-A, filed with the Court of Appeals on June 4, 1979, by Piedmont Natural Gas Company, Incorporated (Piedmont). On July 5, 1979, Piedmont by letter dated July 3, 1979, advised the Commission as follows:

> In order to comply with the Court's orders, Piedmont will take the following action:
>
> (1) Delay all refunds until further order of the Court.
>
> (2) Remove the 17.49¢ per dt reduction from Piedmont's existing rate schedules. Although Piedmont is entitled under the Court's order to take this action immediately, we will delay the action until July 16, 1979, to provide adequate time to notify our customers of the change.

The Public Staff on July 12, 1979, in Docket No. G-9, Sub 176-A, filed Motion of Public Staff to Deny Piedmont's Revised Tariffs Increasing Rates. On July 16, 1979, Piedmont filed its Response to Motion of Public Staff to Deny Piedmont's Revised Tariffs Increasing Rates.

On July 16, 1979, the Commission issued its Order suspending Piedmont's tariffs pending further investigation and on July 18, 1979, issued its Order Setting Oral Arguments. Oral arguments were heard by the Commission on July 30, 1979.

"The botton line" of the issue between the parties which the Commission must address is, perhaps, best stated in question form as follows:

To comply with the Court of Appeals Order Allowing Piedmont's Petition for Temporary Stay of the Commission's Orders of May 11, 14, and by extension May 31, 1979, is it necessary and proper for Piedmont to increase its existing tariffs by 17.49¢ per dt to reflect removal of the increased

CTA decrement included in Piedmont's rates by Order of this Commission, issued on May 31, 1979, in Docket No. G-9, Sub 176-A?

The Commission after careful consideration of the entire record in this matter believes that it would be improper and inappropriate to allow Piedmont to revise its existing tariffs as proposed in its letter to the Commission dated July 3, 1979. As set out in the Commission's May 31, 1979, Order, Piedmont was allowed an increase in rates to reflect an increase in its wholesale cost of gas purchased from its pipeline supplier Transco (PGA increase) in the amount of 17.49¢ per dt. Decretal Paragraph No. 3 of said Order reads as follows:

> That the current rate of $.27255 per therm shall remain in effect, provided, however, that the PGA increase of $.01749 per therm and the CTA decrement of $.02342 per therm reflected therein shall become effective on all service rendered on and after the issuance date of this Order.

As reflected in Ordering Paragraph No. 3 above, Piedmont was also required to increase its then existing CTA decrement of 5.93¢ per dt by an additional 17.49¢ per dt resulting in a total CTA decrement of 23.42¢ per dt. Therefore, Piedmont's total rate (base rate plus surcharges) remained unchanged.

As previously stated the Court of Appeals on June 6 issued its Order granting Piedmont a stay with respect to all Orders of this Commission issued in Docket No. G-9, Sub 176-A, as they pertain to matters now under the jurisdiction of the Court. Clearly, the Commission can take no further action with respect to such matters.

The Commission, therefore, concludes that the additional CTA decrement of 17.49¢ included in Piedmont's rates by Commission Order of May 31, 1979, was effectively stayed by Order of the Court of Appeals issued on June 6, 1979. Further, the Commission concludes that upon stay of the 17.49¢ CTA decrement on June 6, 1979, by the Court that it became incumbent upon Piedmont to file revised tariffs with this Commission in order to reflect in its rates the increased cost of purchased gas which, as previously stated, was also approved by the Commission in its May 31, 1979, Order in Docket No. G-9, Sub 186, in the amount of 17.49¢ per dt which rate was not stayed by the Court's June 6, 1979, Order.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont Natural Gas Company, Inc.'s request to further increase its rates and charges by 17.49¢ per dt to reflect the removal of an additional CTA decrement is denied.

2. That Piedmont Natural Gas Company, Inc., shall file within five days from the issuance date of this Order revised tariffs reflecting the PGA increase of 17.49¢ per dt as approved by the Commission's Order of May 31, 1979, in Docket No. G-9, Sub 186.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-5, SUB 136

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Public Service Company of North Carolina, Inc., for an Adjustment of Its Rates and Charges	) FINAL ORDER ON) EXCEPTIONS AND DENYING) MOTION FOR REHEARING)

HEARD IN: The Commission Hearing Room, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 13, 1978

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Applicant:

F. Kent Burns and James M. Day, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602

For the Intervenors:

W. I. Thornton, Jr., City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701
For: The City of Durham

Dennis P. Myers, Associate Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Robert F. Page, Staff Attorney - Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On October 9, 1978, the Commission issued its Final Order Setting Rates in this docket. On November 1, 1978, Public Service Company of North Carolina, Inc. (Public Service), filed Exceptions and Notice of Appeal, a separate Motion for Oral Argument on these exceptions, and a Motion for Rehearing. By Order dated November 8, 1978, the Commission granted Public Service's Motion for Oral Argument on its exceptions to the Final Order, and set the Motion for Rehearing for oral argument as to whether rehearing should be allowed.

The matters came on for hearing on Wednesday, December 13, 1978, in the Commission Hearing Room, and Public Service and the other parties to this docket presented argument on exceptions, and on whether rehearing should be allowed.

In Exceptions 9, 16, and 17, Public Service argues for the elimination of the volume variation adjustment factor (VVAF) or, in the alternative, "consistent treatment" vis-a-vis the other gas companies. The Commission has adequately discussed the need to continue the VVAF in the Recommended Order in this docket; in the Piedmont case, Docket No. G-9, Sub 176; and in the NCNG case, Docket No. G-21, Sub 177; and need not repeat itself here except to say that should it become appropriate at some future date to eliminate the VVAF, such can be accomplished without requiring a general rate case. As regards consistency, the Commission's treatment of volumes tendered but not taken is consistent for all three gas companies. Also, Public Service argues for the treatment provided Piedmont so as to allow margin recovery on storage volumes. In the Piedmont case, the ompany contended that its margin for the volume variation should be based on less than test-period volumes in order to avoid the possibility of later inequities in the volume variation surcharge arising from the use of storage. The Commission rejected Piedmont's proposal and used test-period volumes for the margin calculation, as is the treatment in NCNG and Public Service cases, but addressed this question in Ordering Paragraph No. 6 of the Piedmont Order. The Commission concludes that it would be appropriate to apply similar treatment to Public Service such that in future true-ups of revenues collected under the VVAF surcharge, recognition shall be given to gas volumes placed in storage for carry-over to the following winter season so that Public Service may recover through the VVAF the margin postponed through the placement of gas volumes in storage for later use.

The Commission has considered each and every one of Public Service's 25 exceptions to the Commission's Final Order and concludes that all, except as discussed hereinabove, are without merit and should be overruled.

After considering Public Service's Motion for Rehearing and Oral Argument thereon, the Commission concludes that it should be denied.

IT IS, THEREFORE, ORDERED:

1. That Exceptions 1 through 8, 10 through 15, and 18 through 25 are overruled.

2. That Exceptions 9, 16, and 17 are allowed in part and denied in part.

3. That in future true-ups of revenues collected under the VVAF surcharge, recognition shall be given to gas volumes placed in storage for carry-over to the following winter season so that Public Service may recover through the VVAF the margin postponed due to the placement of gas volumes in storage for later use.

4. That the Motion for Rehearing is denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. G-5, SUB 143
DOCKET NO. G-9, SUB 184
DOCKET NO. G-21, SUB 190

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rates, Service Regulations, and Administration of North Carolina Intrastate Transportation Services for Customer-Owned Gas by North Carolina Natural Gas Corporation, Public Service Company of North Carolina, Inc., and Piedmont Natural Gas Company	)	ORDER REVISING TRANSPORTATION RATES

HEARD IN: The Commission Hearing Room, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 5 - December 8, 1978

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate and Robert Fischbach

APPEARANCES:

For the Complainant (and certain Intervenors):

Thomas R. Eller, Jr., N.C.N.B. Regional Operations Center, Suite 105, 1305 Navaho Drive, Raleigh, North Carolina 27609

For: North Carolina Textile Manufacturers Association, Inc.; Collins & Aikman; Cone Mills Corporation; Guilford Mills, Incorporated; Minette Mills, Inc.; Sayles-Biltmore Bleacheries, Inc.; Sanford Finishing Corporation; J.P. Stevens & Company; and Texfi Industries

For the Respondents:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey and Leonard, P.O. Drawer U, Greensboro, North Carolina 27402
For: Piedmont Natural Gas Corporation, Inc.

F. Kent Burns and James M. Day, Boyce, Mitchell, Burns and Smith, P.O. Box 1406, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland and Raper, P.O. Box 2129, Fayetteville, North Carolina 28302
For: North Carolina Natural Gas Corporation

For the Intervenors:

Charles C. Meeker, Sanford, Adams, McCullough and Beard, 333 Fayetteville Street, Raleigh, North Carolina 27603
For: C.F. Industries, Inc.

Henry S. Manning, Joyner & Howison, P.O. Box 109, Raleigh, North Carolina 27602
For: Aluminum Company of America, Inc.

Robert F. Page, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

Dennis P. Meyers, Special Deputy Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On July 14, 1978, the North Carolina Textile Manufacturers Association, Inc. (NCTMA), filed a motion in Docket No. G-5, Sub 136 (Public Service Company of North Carolina, Inc., or Public Service), Docket No. G-9, Sub 176 (Piedmont Natural Gas Company, Inc., or Piedmont), and Docket No. G-21, Sub 177 (North Carolina Natural Gas Corporation or N.C.N.G.), requesting the Commission to institute a general investigation into the justness and reasonableness of the level of rates, service regulations, administration, and treatment of revenues associated with

the provision of transportation of customer-owned (or +533) gas by the three natural gas utilities.

By Order issued on August 16, 1978, the Commission declared the matter to be a complaint against a utility pursuant to G.S. 62-73, placed the burden of proof upon NCTMA, designated the three gas utilities as parties Respondent to the complaint, made the Public Staff a party hereto, requested the Public Staff to make an investigation into Respondents' transportation rates, charges, and service regulations, set the matter for hearing on November 7, 1978, required notice of the hearing to be given to transportation service customers, and required that testimony and exhibits of all parties be prefiled no later than 15 days prior to the hearing.

By additional orders and rulings of the Commission, which will appear of record herein, the hearing date was continued until December 5, 1978, and additional parties were allowed to intervene. The matter came for hearing at the scheduled time, date, and place.

The Complainant NCTMA, as the party having the burden of proof, was allowed to proceed first with the presentation of its evidence and offered the following witnesses: Tenney I. Deane, Jr., an agent of Con-Sol, Ltd., a concern which assists in the location of and negotiation of contracts for customer-owned gas; Jerry T. Roberts, Secretary-Treasurer of NCTMA; Jon Wimbish, Administrative Assistant to the Chairman and Corporate Energy Coordinator of Cone Mills Corporation; H.E. Lollis, Chief Engineer of the Finishing Division of Cone Mills Corporation; Daniel Cronin, Industrial Engineer, Collins & Aikman; E.J. Parks, Manager of Purchasing for Guilford Mills, Incorporated; R.J. Nery, Chief, Natural Gas Division of the Public Staff (called as an adverse witness); Charles Duval, Treasurer and Purchasing Agent of Minette Mills; Graham G. Lacy, Jr., Director of Legal Services and Secretary of Texfi Industries, Inc.; H. Randolph Currin, Jr., Vice President of Financial Services at Booth and Associated, Inc.; and Randolph G. Brecheisen, Senior Utility Analyst of Booth and Associates, Inc.

The Respondent N.C.N.G. offered the testimony and exhibits of Raymond A. Ransom, consultant engineer of R.A. Ransom Company, Washington, D.C. The Respondent Public Service offered the testimony of Allen J. Schock, Vice President - Rates of Public Service Company. The Respondent Piedmont Natural Gas sponsored no witnesses or exhibits.

The Intervenor Alcoa offered the testimony of Maynard Stickney, Plant Manager of the Baden Works for Aluminum Company of America. The Intervenor Public Staff offered the testimony of Eugene H. Curtis, Jr., Utilities Engineer with the Natural Gas Division of the Public Staff, and William F. Watson, Economist with the Economics and Research Division of the Public Staff.

The Commission was requested to and hereby takes judicial notice of the testimony, exhibits, and Commission Orders in Docket No. G-100, Sub 33; Docket No. G-21, Sub 177; Docket No. G-5, Sub 136; Docket No. G-9, Sub 176; and Docket No. G-9, Sub 156. The Commission also takes judicial notice of F.P.C. (FERC) Orders 533 and 533-A, the decision of the U.S. Court of Appeals for the D.C. Circuit, Case No. 76-2102 issued July 13, 1978, and entitled State of North Carolina, et al. v FERC, et al., the Offer of Settlement filed by Transcontinental Gas Pipeline Corporation (Transco) on October 31, 1978, in FERC Docket No. RP72-99, and the provisions of the National Energy Act of 1978.

Based upon the foregoing, the testimony and exhibits sponsored at the hearing and the Commission's entire records in this proceeding, the Commission now reaches the following

FINDINGS OF FACT

1. That the Complainant, NCTMA, has filed a complaint against a utility and the complaint is properly before the Commission pursuant to G.S. 62-73.

2. That the Respondents, N.C.N.G., Public Service, and Piedmont, are public utilities as defined by G.S. 62-3(23) and are properly before the Commission pursuant to the Commission's Order of August 16, 1978.

3. That the parties hereto (who were among the parties in the Respondents' last general rate cases) have earlier stipulated and agreed in Docket No. G-21, Sub 177 (N.C.N.G.), Docket No. G-5, Sub 136 (Public Service) and Docket No. G-9, Sub 176 (Piedmont) that the justness and reasonableness of the transporation rate tariffs and the level of revenues produced by such tariffs were not at issue in such general rate case proceedings.

4. That the other parties recognized hereto, the various Intervenors, have been properly recognized as parties to this proceeding, either through motions for leave to intervene or upon the Commission's own motion.

5. That the existing transportation rates and charges (Rate Schedule T-1, N.C.N.G.; Rate Schedule 20, Public Service; and Rate Schedule 113 (now 107), Piedmont) were allowed to become effective in the fall of 1975 (September-October) and such rates have remained substantially unchanged to date.

6. The current transportation rates for the three Respondents are as follows:

	Option A	Option B
Piedmont	$0.02444/therm	$0.04399/therm
Public Service	$0.02071/therm	$0.04658/therm
N.C.N.G.	$0.02621/therm	$0.04369/therm

7. That the existing transportation rates were based on the total cost, excluding gas costs, to serve the $533 customer were he taking gas under tariffs for his end-use.

8. That all current transportation customers purchased $533 gas with knowledge of the current transportation rates and charges.

9. That the same investment in fixed facilities and the same operating expenses, except for cost of gas, sales promotion and related items, are imposed upon the Respondent gas utilities by the delivery of customer-owned gas as would be required to deliver utility-owned gas.

10. That customers who receive delivery of $533 gas pursuant to the present transportation tariffs do not pay any surcharges - e.g., purchased gas adjustments, curtailment tracking adjustments, exploration adjustments, or emergency gas purchase adjustments - which apply to customers of utility-owned gas.

11. That transportation customers should properly make a contribution to the fixed costs of the gas distribution utility companies.

12. That the average cost of service, excluding the cost of gas, of the three Respondents applicable to their regular customers in tariff classes similar in end use to $533 transportation users is $0.7913 per dt.

13. That revenues realized from the transportation of $533 gas should be flowed through, as a reduction in the cost of service, to all non-$533 gas customers via the curtailment tracking mechanisms (CTR, CTA, VVAF). $533 gas customers should receive no portion of such revenue benefit.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence for these findings is contained in the verified complaint, the Commission's Orders Setting Investigation and Hearing, Allowing Extension of Time to File Testimony, and Allowing Intervention (issued August 16, September 16, October 19, and November 9, 1978), various procedural rules at the hearing, the Public Utilities Act, Commission Docket No. G-21, Sub 177, Docket No. G-5, Sub 136, and Docket No. G-9, Sub 176, and a Complainant's Exhibits 16 - 18. These findings are procedural and jurisdictional in nature and were uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 - 7

The evidence for these findings is contained in the Commission's official files and records, the testimony of witness R.J. Nery, and Complainant's Exhibits 1 - 13, 22, and 24.

In the fall of 1975, the North Carolina gas distribution companies were facing cutbacks in their traditional supplies of flowing pipeline gas of approximately 35% - 40%. These anticipated cutbacks were the result of the implementation by FPC (now FERC) of a full Order 467-B end-use curtailment plan for Transco. It appeared that many traditional natural gas customers in North Carolina would be 100% curtailed from natural gas service during the 1975-1976 winter period. Order 533 and 533-A were self-help options which allowed high priority industrial customers to purchase natural gas in the field and have such gas transported to them over the interstate pipelines and local, intrastate distribution utilities.

At the time, none of the distribution utility Respondents had on file with the Commission a tariff to provide transportation service of customer-owned gas. At the request of some of these purchasers such tariffs were filed with the Commission by each of the three Respondents.

After having been considered as agenda matters at weekly Staff Conferences in September of 1975, each of the tariffs were allowed to become effective pursuant to G.S. 62-134(a).

The Public Utilities Act contains two provisions whereby a utility proposed tariff may become effective, one of which is where a tariff may be "allowed to become effective" as filed or as modified by the Commission without a full-scale investigation and hearing. Therefore, the transportation rates were established pursuant to provisions of the Public Utilities Act.

Mr. Nery testified that, with minor alterations (such as changing Piedmont's transportation tariff from Schedule 113 to Schedule 107), the rates and conditions of service for the transportation tariffs are substantially the same at present as when these tariffs were originally established by the Commission. Furthermore, the evidence of record indicates that the transportation rates filed and allowed to become effective were derived by examination of the total service cost (excluding gas costs) of the schedule that would have been applicable to the §533 customers if they were being served by regular pipeline gas. The Commission therefore concludes that the tariffs in question were originally established by the Commission pursuant to G.S. 62-134 and that such rates have remained in effect without substantial change from October 1975 to the present.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding appears of record herein from the testimony and exhibits of Complainant's witnesses Parks, Wimbish, Cronin, Duval, Lacy, Nery (adverse Public Staff witness), and Currin and the testimony and exhibits of Public Staff witnesses Curtis and Watson. Of particular interest are Complainant's Exhibits 12, 13, and 25 (Currin Exhibit 1) and Public Staff Exhibit WC-4.

These exhibits show that the maximum allowable time for a transportation certificate pursuant to FERC Orders 533 and 533-A is two years. Since the rates here in question have been in effect for substantially in excess of two years (See Evidence and Conclusions for Finding of Fact No. 5, supra), any North Carolina purchaser having a currently effective §533 contract would be presumed to have entered into such contract with full knowledge of the transportation rate being charged by the distribution utility serving such customer. During the time interval from October 1975 through October 1978, N.C.N.G. has had one general rate case (Docket No. G-21, Sub 177) and numerous Curtailment Tracking Rate adjustments. Piedmont and Public Service have had two general rate cases (Docket No. G-9, Subs 156 and 176; Docket No. G-5, Subs 119 and 136) and numerous Curtailment Tracking Adjustment or Volume Variation Adjustment Factor cases.

The Commission therefore concludes that all customers having a currently effective §533 contract entered into such contract with prior knowledge of the existing and effective transportation rates and charges of Respondents.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 - 11

The evidence for these findings is contained in the testimony of Complainant's witnesses Roberts, Wimbish, Lollis, Lacy, Currin, and Nery (adverse Public Staff witness); the testimony and exhibits of N.C.N.G. witness Ransom and the testimony and exhibits of Public Staff witnesses Curtis and Watson.

While the evidence tended to show that no new or additional fixed investments by the utilities were required to serve §533 customers (because such customers had at one time been served with pipeline, or utility-owned gas), such evidence also tended to show that no lesser amount of utility investment was required. That is, in order to deliver customer-owned gas to the Complainant's members (and Intervenors of like interest) the utility was required to have exactly the same junction terminals, transmission and distribution lines, compressor stations, local laterals, meters and regulators as were required to serve that same customer with pipeline, or utility-owned gas. No evidence was offered to show that the original cost of the utility investment necessary to provide transportation service to the §533 customers had ever been fully recovered through rates.

When customer-owned gas is tendered by Transco to any of the Respondent utilities for delivery to the §533 customer, the same costs, fixed and variable, are imposed upon the utility, with certain exceptions, as would be imposed upon the tender by Transco of utility-owned volumes for delivery to customers purchasing under different rate schedules. The principal difference in cost imposed upon the utility would be the cost of gas. Order §533 gas imposes no cost of gas upon the utility and since §533 gas customers, as regards

transportation service, receive no utility-owned gas, it would not be proper to allocate such costs to these customers.

Evidence was offered by various witnesses which tended to show that the transportation rates and charges are not subject to the periodic fluctuations, mostly upward, caused by the imposition of surcharges approved by the Commission from time to time. This means that §533 customers do not pay anything for the utilities' exploration program. These costs are absorbed by the regular flowing gas customers, even though the gas flowing from exploration ventures may eventually be used to provide service to customers now receiving delivery of §533 gas. The §533 customers make no contribution to purchased gas adjustments or emergency gas adjustments. Also, the §533 customer has paid no surcharge due to gas volume variations as do the regular, flowing gas customers through the curtailment tracking rate (CTR, CTA, or VVAF). This exclusion from surcharges is one of the benefits inherent in §533 contracts.

Based on the foregoing, the Commission is of the opinion and thus concludes that it is just and reasonable for the transportation customers to make a contribution to the fixed costs of the gas distribution companies.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

In the last general rate cases for the three Respondents, the cost of gas was presented as follows:

	Piedmont[1]	Public Service[2]	NCNG[3]
Gas Cost	$44,970,609	$39,071,956	$27,802,868
Base Period Volumes (Therms)	274,421,098	251,796,300	206,469,538
Cost (¢/Therm)	16.39	15.52	13.47

Therefore, the total cost of service excluding the cost of gas of the rate schedules that would be applicable to +533 customers under normal service would be as follows:

	Piedmont[1] (Rate 103,av)	Public Service[2] (Rate 23)	NCNG[3] (Rate 3)
Rate	$2.339/dt	$2.440/dt	$2.133/dt
Gas Cost	1.639	1.552	1.347
	$0.700/dt	$0.888/dt	$0.786/dt

[1] Piedmont (Docket No. G-9, Sub 176, Order dated August 7, 1978)
[2] Public Service (Docket No. G-5, Sub 136, dated October 9, 1978)
[3] N.C.N.G. (Docket No. G-21, Subs 177 and 171, dated June 23, 1978)

Average cost of service for the three companies (excluding costs of gas and facilities charge) is $0.7913.

In this hearing, the attempt to reach a "correct" rate for the §533 customer resulted in much of the testimony being of an accounting nature. However, the Commission feels accounting is not the central issue here, but rather how should the § 533 customers be characterized. The gas Companies are not in business to operate as a carrier but as a retail distributor of gas. It is the existence of unique and unfortunate circumstance (i.e., curtailment) that places the gas companies in the position of serving a customer in this manner.

It is clear that the transportation of §533 gas is the necessary accommodation of a critical situation. Furthermore, with the present forecast of supply, the Commission does not expect these circumstances to recur and the duration of the present situation is limited.

While some parties argue that the transportation rate should be based on the "incremental" cost of service to §533 customers, others argue that the transportation customers should pay the same cost of service (excluding the cost of gas) as all other customers. The Commission concludes that both extremes are inequitable. To base §533 rates on the incremental cost of service is tantamount to placing yet another layer of the curtailment burden on the non-§533 user. Conversely, to base §533 transportation rates on the total cost of service (excluding the cost of gas) would be improper because it would not take into account the other costs borne by this customer to secure gas: finder's fees, attorney's fees, and, in some cases, the cost of building a pipeline from the field to the Transco system. It would also fail to recognize the reduction in the regular customers' rates from the §533 transportation volumes going through the CTA Surcharge formula, which is not available to the §533 customer. Therefore, the Commission finds that a transportation rate based on a weighting of 45% of the fully allocated cost of service to a regular customer, excluding the cost of gas, is a reasonable assignment of the burden of such cost. This is approximately 50% above the incremental cost developed in the Complainant's evidence and is approximately 50% higher than the present Option A level of rates. Because some of the transportation customers deal with more than one distribution company, the Commission further concludes that uniformity of transportation rates among the companies is also appropriate for this unique situation. The Commission concludes that both the companies and their existing Option A customers have benefited from the large volumes sold on weekends under Option A and that those rates should continue as a grandfathered rate for existing Option A customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The cost of service of a public utility is defined as the sum total of: (a) proper operating expense; (b) depreciation expense; (c) taxes; and (d) a reasonable return on the net valuation of property. In North Carolina,

as in most states, the gross revenue requirements of a public utility, i.e., the total amount of revenue a public utility is authorized to collect through the rates charged for its sales of service, is based on its total cost of service. The Commission in general rate case proceedings establishes each utility's total cost of service and has consistently set each utility's gross revenue requirement equal thereto.

As has been herein discussed (Evidence and Conclusions for Findings of Fact Nos. 5-7), the rates for the transportation of §533 gas were originally established for the Respondent gas utilities pursuant to G.S. 62-134(a), rather than within the context of a general rate case. Consequently, the CTA, CTR, or VVAF was used as a mechanism to return to the other customers of the utilities the revenues derived from the transportation of §533 gas.

Further, as stated herein (Finding of Fact No. 3), the parties hereto have earlier stipulated and agreed that the justness and reasonableness of the transportation rates and the level of revenues produced therefrom were not at issue in the round of general rate cases recently heard (Docket No. G-21, Sub 177; Docket No. G-5, Sub 136; Docket No. G-9, Sub 176). Therefore, the total cost of service - i.e., the gross revenue requirement - for each utility is currently being met through base rates, and the level of revenues produced therefrom, for service to all customers except the §533 gas user. The result of not dealing with §533 revenues in the general rate case is to meet the total cost of serving all customers including the §533 user through rates and charges levied on all customers except the §533 user. Consequently, the continued use of the CTA, CTR, or VVAF to return §533 revenues to all other customers takes into account through a Rider (credit) what would have served as an offset to base rates and charges had the §533 revenues been considered as a source of revenue in the general rate case.

The Commission therefore concludes that the present method, which allows only the non-§533 customers to benefit from the receipt of §533 revenues, is just and reasonable and that the CTA, CTR, or VVAF is an appropriate mechanism until such time as revenues from §533 users are considered in the context of the general rate cases.

IT IS, THEREFORE, ORDERED as follows:

1. That the transportation rate for each of the Respondents is to be set at $0.3561/dt.

2. That the customers presently being served under Option A of the current rate schedules continue to be served at the current rate for each utility.

3. That the Respondents file tariffs within 10 days of the effective date of this Order to reflect the change.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. H-63

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of the Housing Authority of the City of High Point for a Certificate of Public Convenience and Necessity	) RECOMMENDED ORDER) GRANTING CERTIFICATE)))

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 5, 1979, at 2:00 p.m.

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Applicant:

Edward N. Post, Morgan, Post, Herring & Morgan, P.O. Box 2756, High Point, North Carolina 27261
For: High Point Housing Authority

For the Intervenors: None

For the Public Staff: None

PARTIN, HEARING EXAMINER: On October 1, 1979, the Housing Authority of the City of High Point, North Carolina (the Housing Authority or the Applicant), filed with the North Carolina Utilities Commission an application pursuant to G.S. 157-28 for a Certificate of Public Convenience and Necessity for the establishment, development, construction, maintenance and operation of 50 units of low-rent public housing and for authority to exercise the right of eminent domain in connection with the construction and development of such units. This application was perfected by a filing on October 25, 1979.

On November 6, 1979, the Commission issued an Order setting the application for hearing and directing that the Applicant make newspaper publication of the application. This Order provided that Protests to the application should be filed with the Commission on or before Wednesday, November 28, 1979.

The matter came on for hearing as scheduled in Raleigh on December 5, 1979. The Applicant was present and represented by counsel. No protests were filed to the application and no one appeared at the hearing to oppose the application. The Applicant offered into evidence an affidavit of publication and also an amendment to the application, which was allowed. The Applicant offered the testimony of H.K. Martin, Executive Director of the Housing Authority of the City of High Point. His testimony showed the need for the proposed 50 units.

Based upon the application as amended, the evidence at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Housing Authority of the City of High Point is a duly created corporate body under the Housing Authority Law as set forth in Chapter 157 of the North Carolina General Statutes.

2. The Housing Authority and the City of High Point have jointly entered into a corporation agreement, which is attached as Attachment B to the application and is incorporated herein by reference.

3. On October 3, 1968, the Housing Authority determined there was a need for low income housing and authorized the filing of 50 units.

4. On May 19, 1977, the City Counsel of High Point approved amendment #4 to cooperation agreement authorizing the application for 50 units.

5. The Housing assistance plan of High Point for 1978 shows the need for low-income housing. The Department of Housing and Urban Development has approved a program reservation Number 6-12 for 50 units for $106,356.

6. The Housing Authority has the expertise to implement and carry out the development and management of these 50 units and is ready, willing, able, and otherwise fit to carry out all lawful duties with the proposed 50 units.

7. There exists a need for the 50 units of low rent housing in the City of High Point, in that there are a very large number of dilapidated and deteriorated dwellings therein. Furthermore, the Housing Authority is continually receiving new applications for housing on a daily basis and the vacancy rate for the housing is less than 1%.

CONCLUSIONS

Upon consideration of the above findings, and the entire record herein, the Hearing Examiner concludes that the Housing Authority of the City of High Point, North Carolina, has met the requirements of applicable law with respect to acquiring a Certificate of Public Convenience and Necessity for the construction, maintenance, and operation of 50 additional units of low-rent public housing in the City of High Point.

IT IS, THEREFORE, ORDERED that the Housing Authority of the City of High Point, North Carolina, be, and hereby is, granted a Certificate of Public Convenience and Necessity for the establishment, construction, maintenance, and operation of 50 additional units of low-rent dwelling units

in the city of High Point, as fully set forth in the Amended application, and that this Order shall itself constitute such Certificate of Public Convenience and Necessity.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of December, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. B-271, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Coach Company, Complainant	)	
vs.	)	FINAL ORDER
Roy L. Rouse, d/b/a Rouse Transportation Company, Defendant	)	ON EXCEPTIONS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, April 6, 1979, at 9:30 a.m.

BEFORE: Commissioner Robert Fischbach, Presiding; and Commissioners Ben E. Roney, Edward B. Hipp, Leigh H. Hammond, Sarah Lindsay Tate, and John W. Winters

APPEARANCES:

For the Complainant:

Noah H. Huffstetler III, Allen, Steed and Allen, P.A., Attorneys at Law P.O. Box 2058, Raleigh, North Carolina 27602

For the Defendant:

Thomas B. Griffin, Griffin & Griffin, Attorneys at Law, 213 East Gordon Street, P.O. Box 3062, Kinston, North Carolina 28501

BY THE COMMISSION: On February 16, 1979, a Recommended Order was entered in this docket by Robert P. Gruber, Hearing Examiner, ordering that the Defendant cease and desist from any further performance of unlawful transportation service in violation of the Statutes of North Carolina, and the Rules of the Commission. The Complainant, Carolina Coach Company, on March 1, 1979, filed Exceptions and Request for Oral Argument in this proceeding, and on April 6, 1979, the Commission heard oral argument on exceptions to the Recommended Order.

Upon a review of the entire record in this matter and consideration of the arguments of counsel on behalf of the parties herein, the Commission is of the opinion, finds and concludes that the exceptions filed by the Complainant should be allowed and that the Findings of Fact set forth in the Recommended Order entered February 16, 1979, should be adopted as those of the Commission.

The Commission is further of the opinion, finds and so concludes, that further relief to the Complainant is

warranted based on such Findings of Fact and, therefore, that Contract Carrier Permit No. B-160, heretofore issued to Defendant should be revoked and cancelled and that the Recommended Order entered in this docket on February 16, 1979, should be modified accordingly.

IT IS, THEREFORE, ORDERED:

1. That the Exceptions to Recommended Order filed on March 1, 1979, be, and the same are hereby, allowed to the extent set out in paragraph 2 below, and that the Recommended Order in this docket dated February 16, 1979, be, and the same is hereby, adopted by the Commission except to the extent that same is modified as hereinafter set forth.

2. That Contract Carrier Permit No. B-160 heretofore issued to Roy L. Rouse, d/b/a Rouse Transportation Company be, and the same is hereby, revoked and cancelled.

3. That a copy of this Order be sent to Defendant by Certified Mail, Return Receipt Requested, and a copy directed to the North Carolina Division of Motor Vehicles, Attention: Mr. Gonzali Rivers, Director of Vehicle Service.

4. That in the event the Defendant makes application to and obtains from the Commission a Certificate of Exemption authorizing transportation exempt from economic regulation by the Commission, any transportation of passengers outside of the scope of such Certificate of Exemption by Defendant shall constitute a deliberate and willful violation of Chapter 62 of the North Carolina General Statutes and the Rules and Regulations of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of May, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. B-271, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
A Petition and Letter (Treated as a Petition) of Complaint Against Trailways Southeastern Lines, Inc.) RECOMMENDED ORDER DISMISSING COMPLAINT

HEARD IN: Hearing Room 403, Court Square, Courthouse, Lumberton, North Carolina, on March 15, 1979, at 10:00 a.m.

BEFORE: Hearing Examiner Robert H. Bennink, Jr.

APPEARANCES:

For the Complainant: None

For the Defendant:

Henry S. Manning, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Trailways Southeastern Lines, Inc.

For the Using and Consuming Public:

Joy R. Parks, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BENNINK, HEARING EXAMINER: On November 7, 1978, Cicero W. Watson, the Complainant in this matter, filed a petition with the Commission complaining about the hours of operation of the Trailways Southeastern Lines, Inc., bus station located in Lumberton, North Carolina. The petition, with 51 signatures affixed thereto, specifically alleged that the early hours of closing of the Lumberton bus station result in public and patron inconvenience and that patrons of the bus service are not provided with bathroom facilities and shelter from the cold and rain while waiting for buses during those hours that the bus station is closed. Mr. Watson subsequently filed a letter of complaint with this Commission (dated December 4, 1978) wherein it was complained that bus patrons departing from the Lumberton bus station on Sunday mornings are not provided with shelter or bathroom facilities because said station is then closed.

By Commission Order dated February 5, 1979, this matter was set for public hearing at 10:00 a.m., on Thursday, March 15, 1979, in the Hearing Room 402, Court Square, Courthouse, Lumberton, North Carolina.

On February 8, 1979, the Public Staff filed Notice of Intervention on behalf of the Using and Consuming Public pursuant to G.S. 62-15(d).

The hearing was subsequently commenced at the appointed time in Hearing Room 403, rather than Hearing Room 402, of the Courthouse, Lumberton, North Carolina. The Complainant was present, but not represented by counsel. Complainant and Thomas Middleton, a public witness who testified in support of the complaint, were assisted in their testimony by counsel for the Public Staff. Testimony by Phillip Cooke was offered by the Public Staff. The Defendant was represented by counsel and presented as its witnesses, Susan Horne, Manager of the Lumberton bus station, and James R. Young, Area Sales Manager for Commission Agencies affiliated with Trailways Southeastern Lines, Inc.

At the beginning of the hearing, counsel for the Defendant made a motion to amend the caption in this docket to reflect a change in the Defendant's corporate name from Continental Southeastern Lines, Inc., to Trailways Southeastern Lines, Inc. This motion was granted since such name change had previously been recognized and approved on February 26, 1979, by an Order of this Commission entered in Docket No. B-69, Sub 125.

Based upon the petition and letter of complaint, the evidence adduced at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Defendant, Trailways Southeastern Lines, Inc., is a duly certificated motor common carrier doing business in North Carolina and more particularly in Lumberton, Robeson County, North Carolina.

2. The Complainant, Cicero W. Watson, is a resident of North Carolina who is himself a bus passenger on the average of three or four times per month, riding buses between Lumberton and the cities of Laurinburg and Durham, North Carolina, to visit relatives. Complainant generally makes his bus trips on weekdays rather than on Sundays. Complainant's interest in the hours of operation of the Lumberton bus station is generally premised upon problems which other individuals may experience as a result of the station being closed rather than any difficulties which he has personally experienced as a passenger of the Defendant bus company.

3. None of the 51 individuals who signed the original petition of complaint in this matter attended the hearing to present testimony in support of said petition of complaint.

4. Thomas Middleton is primarily concerned about the closing hours of the Lumberton bus station on weekdays rather than on Sundays, since Mr. Middleton generally never departs from or arrives in Lumberton on Sunday mornings. Mr. Middleton is a bus passenger about once every two or three months when he travels to the V.A. Hospital located in Winston-Salem, North Carolina. He last rode a bus in October 1978, and was also a bus passenger approximately two months prior thereto. Mr. Middleton has returned to Lumberton on the bus arriving at 1:25 a.m., but has not had occasion to return on either of the buses scheduled at 3:50 a.m. or 5:25 a.m., respectively.

5. The Trailways bus station located in Lumberton, North Carolina, is not a station which is owned and operated by the Defendant corporation, but is a commission agency station that is independently operated by Susan Horne, Station Manager, under an independent contractual agreement with the Defendant. Mrs. Horne has been Station Manager in Lumberton since September 1978.

6. Susan Horne is not a salaried employee of the Defendant corporation, but is a commission agent thereof, whose earnings are based upon commissions amounting to 10% of the passenger fares which result from tickets sold during the hours the bus station facility is actually open, 13% of the freight express originating from Lumberton, and 5% of the freight destined for Lumberton. From her commission earnings, Mrs. Horne must pay all of the expenses incurred as a result of the operation of the Lumberton bus station facility, including charges for building rental, utility bills, insurance, wages to employees, and other typical operating expenses. Her average commission for each of the first 25 Sundays which elapsed after she became Station Manager in September 1978 was approximately $35.75. According to figures compiled by the Defendant, average Sunday costs of operating the Lumberton bus station are currently in excess of the commissions being earned by the Station Manager.

7. The hours of operation of the Lumberton bus station are presently as follows: 7:00 a.m. - 8:00 p.m., Monday through Saturday and 1:00 p.m. - 8:00 p.m. on Sunday.

8. Three Trailways buses arrive and depart from the Lumberton bus station Monday through Saturday when said station facility is closed. These buses are scheduled to arrive/depart from Lumberton at the identical times on Sundays.

9. Four other Trailways buses, in addition to the three scheduled buses discussed in Finding No. 8 above, arrive/depart from the Lumberton bus station on Sunday mornings prior to the opening of the bus station at 1:00 p.m. These buses are scheduled to arrive/depart at the following times: 7:15 a.m., 7:20 a.m., 11:00 a.m., and 11:10 a.m.

10. During the hours of nonoperation of the Lumberton bus station, passengers boarding and deboarding at said point do not have interior access to any portion of the bus station facility, including the restrooms found therein. The only shelter provided on the outside of the building from adverse weather such as rain is that which would be afforded by an overhang of the station building's roof. There are telephone booths located on the outside of the bus station for the use of passengers and a taxi stand is located nearby.

11. Signs describing the schedules of buses arriving/departing from Lumberton, the hours of operation of the station facility, and containing other pertinent information for the use and convenience of bus passengers are currently posted in the windows of the Lumberton bus station.

12. A passenger desiring to purchase a ticket when the Lumberton bus station is closed can purchase said ticket

either during the normal business hours of the station or from the driver of the bus which the passenger wishes to board.

13. Passenger arrival/departure studies made and compiled by the Defendant bus company for the first 10 weeks of 1979 indicate that an average of only 10.4 persons boarded and deboarded in Lumberton on the four buses scheduled to arrive/depart at said point on Sunday mornings between the hours of 7:15 a.m. and 11:10 a.m. A breakdown of these 1979 ridership figures indicates that of the 10.4 Sunday morning average passenger ridership, an average of 6.0 passengers deboarded in Lumberton while 4.4 passengers departed therefrom on outbound buses. Ridership figures compiled by the Defendant company for 1978 indicated an average ridership of 22.13 passengers for all four of the busses arriving/departing between 7:15 a.m. and 11:10 a.m., including 13.13 passengers deboarding in Lumberton and 9 passengers boarding at said point. Studies made by the Defendant bus company further indicate that some decrease in the 1979 average bus ridership counts in Lumberton from 1978 figures would be consistent with similar decreases presently being experienced in other areas served by the Defendant company as a result of competition from the airlines and Amtrack.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Section G.S. 62-75 of the North Carolina General Statutes specifically provides that the ultimate burden of proof in a complaint proceeding before this Commission must be borne by the Complainant. Based upon a careful review of the evidence presented, the record as a whole, and the foregoing Findings of Fact, the Hearing Examiner is of the opinion, and so concludes, (1) that the Complainant in this proceeding has failed to carry the burden of proof imposed by G.S. 62-75; (2) that the current hours of operation of the Lumberton bus station and the facilities provided at said station are adequate and commensurate with the needs and requirements of the traveling public, when all of the pertinent factors which affect the operation and management of said commission agency station are considered; and (3) that the complaint in this docket should therefore be dismissed.

Although the Hearing Examiner recognizes that there are undoubtedly bus passengers who have on occasion been inconvenienced to some extent as a result of the hours of operation observed at the Lumberton bus station, it is, nevertheless, the opinion of the Hearing Examiner that even such element of inconvenience does not presently warrant a finding that the hours of operation at said station facility should be further expanded. The Hearing Examiner also recognizes that motor common carriers of passengers have a general duty to provide adequate bus station facilities

commensurate with the requirements of the traveling public. However, in the case of an independently operated commission agency station, it would seem that the duty to provide public access to station accommodations need be fulfilled only insofar as it is practicable and reasonable to do so.

In formulating this Recommended Order, the Hearing Examiner has attempted to give careful consideration to all of the evidence and circumstances thought to be pertinent to resolution of the issues at hand. From both an economic viewpoint and a practical approach, it is therefore the opinion of the Hearing Examiner that the current level of bus passenger traffic arriving at and departing from the Lumberton bus station (when weighed against all of the circumstances to be considered) is not sufficient to reasonably justify requiring any further expansion in the hours of operation thereof.

Notwithstanding the fact that some element of public inconvenience does appear to be inherent in a continuation of the present operating schedule of the Lumberton bus station, a careful review of the entire record in this case leads the Hearing Examiner to conclude that the Complainant has failed to carry the burden of proof imposed by statute and that for that reason the complaint in this docket should be dismissed.

In concluding this Recommended Order, it is further noted that on March 14, 1979, one day before the public hearing conducted by the Hearing Examiner, a memorandum written by Dennis E. Sovel of the Public Staff was placed in the official Commission file. This memorandum contains the results of an investigation conducted at the Lumberton bus station by Mr. Sovel on Sunday, March 11, 1979, between 10:40 a.m. and 11:20 a.m. The Hearing Examiner first became aware of the existence of Mr. Sovel's memorandum while drafting the Recommended Order in this docket. (This memorandum was apparently inserted in the official Commission file after such file was last reviewed by the Hearing Examiner on the day prior to the hearing.) Mr. Sovel did not subsequently appear at the hearing as a witness for the Public Staff. Nor was his memorandum discussed or offered in evidence at said hearing.

Therefore, a careful consideration of Commission Rule R1-21(f) and all of the circumstances inherent in this case leads the Hearing Examiner to conclude that it would not be proper to give consideration to Mr. Sovel's memorandum in resolving the issues presented herein.

IT IS, THEREFORE, ORDERED that the petition and letter of complaint filed in this docket by Cicero W. Watson be, and the same is hereby, dismissed and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of April, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. B-105, SUB 38

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 Service Rates and Intercity Bus Passenger Charter Rates and Charges, Scheduled to Become Effective November 15, 1978	) ORDER VACATING SUSPENSION AND GRANTING INCREASES

HEARD IN: The Hearing Room of the Commission, Dobbs Building, Raleigh, North Carolina, on March 20, 1979, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Ben E. Roney and John W. Winters

APPEARANCES:

For the Applicants:

R.C. Howison, Jr., Joyner & Howison, P.O. Box 109, Raleigh, North Carolina
For: Trailways Southeastern Lines, Inc. (formerly Continental Southeastern Lines, Inc.)

Edward S. Finley, Jr., Joyner & Howison, P.O. Box 109, Raleigh, North Carolina 27602
For: Trailways Southeastern Lines Inc. (formerly Continental Southeastern Lines, Inc.)

Arch T. Allen, Allen, Steed & Allen, P.A., P.O. Box 2058, Raleigh, North Carolina 27602
For: Carolina Coach Company

David L. Ward, Jr., Ward and Smith, P.A., 310 Broad Street, New Bern, North Carolina 28560
For: Seashore Transportation Company

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald and Fountain, P.O. Box 2246, Raleigh, North Carolina 27602
For: Greyhound Lines, Inc.

For the Intervenors:

Francis W. Crawley, Associate Attorney General, North Carolina Department of Justice, Dobbs Building, Raleigh, North Carolina
For: The Using and Consuming Public

Joy R. Parks and Dwight W. Allen, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On September 9, 1978, the Commission received tariff filings by, for and on behalf of the following intercity motor bus common carriers:

Appalachian Coach Company, Inc.; Carolina Coach Company; Central Buslines of North Carolina, S.D. Small, d/b/a; Continental Southeastern Lines, Inc.; D & M Bus Company; Fort Bragg Coach Company; Gaston - Lincoln Transit, Inc.; Greyhound Lines, Inc.; Nooney Bus Lines; Piedmont Coach Lines, Inc.; Safety Transit Lines, B.H. Gauldin, d/b/a; Seashore Transportation Company; Silver Fox Lines, a Corporation; Southern Coach Company; Twin State Coach Lines, Ralph Ownbey, d/b/a; Virginia Dare Transportation Company, Inc.; and National Bus Traffic Association, Inc., Agent.

The general increases which were to become effective upon North Carolina intrastate traffic on November 15, 1978, would vary according to the carriers participating in the various increases and the type service provided. The following is a listing by type service showing the proposed increase and the participating carriers:

I. Passenger fares and charges are proposed to be increased by approximately 20%, for account of:

Carolina Coach Company; Continental Southeastern Lines, Inc.; D & M Bus Company; Fort Bragg Coach Company; Greyhound Lines, Inc.; Piedmont Coach Lines, Inc.; Seashore Transportation Company; and Southern Coach Company

II. Package Express rates are proposed to be increased by approximately 15%, for account of all 17 carriers except:

Nooney Bus Line, Inc., and Silver Fox Lines, a Corporation

III. Various changes in bus passenger charter rules and regulations as well as adjustments and increases on charter rates and charges are proposed by the following carriers:

Appalachian Coach Company, Inc.; Carolina Coach Company; Continental Southeastern Lines, Inc.; Fort Bragg Coach Company; Greyhound Lines, Inc.; Nooney Bus Line, Inc.;

Safety Transit Lines, R.H. Gauldin, d/b/a; Seashore Transportation Company; Silver Fox Lines, a Corporation; and Southern Coach Company.

By Order of the Commission dated November 10, 1978, the rates were suspended, an investigation was instituted and the matter was assigned for hearing.

On October 9, 1978, the National Bus Traffic Association, Inc. (Association), filed Amendment 1 to Application No. 54 wherein Seashore Transportation Company sought to change its participation in certain proposed charter rule changes described in Appendix D to Application 54.

On October 9, 1978, Seashore Transportation Company filed a Motion to amend the testimony of R.C. O'Bryan to reflect the changes presented in Amendment 1 to Application No. 54.

On October 17, 1978, the Association filed Amendment 2 to Application 54 to correct certain clerical errors in Appendix A to Application 54 and to amend Appendix D of Application 54 to reflect the changes described in Amendment 1 to Application 54.

On January 25, 1979, the Association filed Amendment 3 to Application 54 to delete Nooney's Bus Line, Inc., from the participating carrier listing on page 2 of Application 54.

On February 21, 1979, the Association filed Amendment 4 to Application 54 to eliminate Silver Fox Lines from the participating carrier listing on page 1 of Appendix D to Application 54.

Notice of Intervention by the Attorney General was given on January 16, 1979, and by the Public Staff on December 29, 1978.

Upon verbal request by counsel for Continental Southeastern Lines, Inc., the Commission issued an Order on December 14, 1978, continuing the hearing scheduled to begin on March 13, 1979, to March 20, 1979, at 9:30 a.m.

The matter was called for hearing as scheduled in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. The Applicants, the Attorney General, and the Public Staff were present and represented by counsel.

Before testimony was received, the Applicants offered the following stipulation: that all witnesses sponsoring prefiled testimony be sworn simultaneously and their testimony be allowed into the record; that additional testimony be offered by the Applicants in response to the specific data requests contained in the testimony of Public Staff witness Dennis E. Sovel; and that cross-examination be limited to the additional testimony.

The Applicant also moved to vacate the Order of Suspension previously issued in this docket and to allow the rates to go into effect as soon as possible.

The Public Staff agreed with these stipulations with the understanding that issues regarding the Applicants' sampling procedure and allocation of costs and revenues would be discussed by representatives of the parties at a later date and that if no agreement was reached within a reasonable time period, another docket would be instituted to resolve the conflicts regarding allocation of revenues and expenses. The Public Staff also requested that oral testimony be presented to justify certain proposed rule changes regarding both express and charter traffic.

In addition, R.C. Howison moved that the Commission take judicial notice of its Order dated February 26, 1979, in Docket No. B-69, Sub 125, wherein Applicant Continental Southeastern Lines, Inc., was authorized to change its name to Trailways Southeastern Lines, Inc. (Trailways). Furthermore, Mr. Howison stated that Charles P. Smith would not be available to present his prefiled testimony and that David Taylor of Trailways was present and would adopt the prefiled testimony.

Prefiled testimony for the following witnesses was admitted in evidence by stipulation: R.C. O'Bryan, Vice-President and General Manager of Seashore Transportation Company; David Taylor, Vice President-Controller of Trailways Southeastern Lines, Inc.; E.D. Christensen, Internal Auditor of Greyhound Lines, Inc.; Robert E. Brown, Treasurer of Carolina Coach Company, and A.R. Guthrie, Vice-President-Marketing of Carolina Coach Company. The Public Staff presented the testimony and exhibits of the following witnesses: George E. Dennis, Staff Accountant, and Dennis E. Sovel, Acting Director-Transportation Rates Division.

Based upon the record in this proceeding, the testimony and exhibits introduced at the hearing, and the entire record, the Commission makes the following

FINDINGS OF FACT

1. Applicants hold certificates of operating authority from the Commission and are properly before the Commission for an increase in the rates and charges pursuant to Chapter 62 of the General Statutes of North Carolina.

2. The test period North Carolina intrastate issue traffic expenses of the four cost study carriers are $8,309,217, and approximately $8,839,593 for all carriers.

3. The total test year North Carolina intrastate issue traffic revenues for all participating carriers are $8,407,101 which, when added to the proposed increase in revenues of $1,659,486, results in total annual revenues for

all participating carriers, after the proposed increase, of $10,066,587.

4. The test period operating ratio prior to the proposed increase is 105.1% and the operating ratio after the proposed increase in rates and charges for all carriers will be 89% which does not exceed that which is just and reasonable.

5. The existing rule on charter cancellations permits carriers to charge a $25.00 fee if notice of cancellation is made less than three hours prior to dispatch departure time. The proposed rule, applicable only to Trailways, Fort Bragg Coach, Seashore, and Carolina, would allow a $50.00 cancellation fee if notice of cancellation is made after noon of the day prior to the dispatch departure time. Certain other carriers propose a change in charter cancellation tariffs but would increase the notice of cancellation requirements to 72 hours prior to dispatch departure time.

6. Applicants seek approval of express tariffs relating to changes in the size of single lot shipments and increases in the proof of delivery and collect shipment charges.

7. The proposed revenue/cost data includes revenues generated by the numerous rule changes in the package express and charter tariffs and, with the exception of the 72-hour charter cancellation provisions proposed by some carriers, are just and reasonable.

8. The rate increase granted complies with the standards of the Wage and Price Guidelines of the Council on Wage and Price Stability.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding comes from the verified application. The finding is essentially informational, procedural and jurisdictional in nature and is not contested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2, 3, AND 4

The Applicant carriers presented the testimony of R.C. O'Bryan, David Taylor, E.D. Christensen and Robert E. Brown regarding the revenue and cost comparisons in North Carolina intrastate traffic and the need for additional revenues based upon these comparisons.

Applicants testified that the data used was taken from samples of North Carolina intrastate passenger and express movements based on the experiences of the following cost study carriers:

Carolina Coach Company (Carolina Coach)
Greyhound Lines, Inc. - East (Greyhound)
Seashore Transportation Company (Seashore)
Trailways Southeastern Lines, Inc. (Trailways)

The Public Staff presented the testimony of George E. Dennis and Dennis E. Sovel which included revenue/cost analyses with accompanying adjustments for the four cost study carriers. Dennis Exhibit I, Schedule 1, provides present adjusted North Carolina intrastate expenses of $8,309,217 for the four cost study carriers, and present operating revenues of $7,902,675. The present composite operating ratio of the four cost study carriers is 105.1%.

Witness Sovel stated that the cost study carriers represent 94% of the total North Carolina intrastate intercity passenger revenues and provide a representative study group for rate-making purposes.

The Commission concludes that the cost study carriers' revenue/expense data is representative of total North Carolina intrastate bus traffic experiences for the test year ending June 30, 1978. The Commission further concludes that the actual operating ratio for overall North Carolina intrastate bus traffic was 105.1% for the year ending June 30, 1978.

Sovel Exhibit 5, Page 1, indicates that the intercity bus carriers would realize $1,659,486 in additional revenue from the proposed increases in Application 54.

Dennis Exhibit I, Schedule 1, illustrates that the four study carriers would realize revenues of $9,488,316 and expenses of $8,444,524 with the proposed increases in Application 54. The proposed operating ratio of the four cost study carriers after the proposed increases would be 89%.

The Commission concludes that the levels of operating expenses and revenues presented in Dennis Exhibit I, Schedule 1, are correct. The Commission further concludes that the resulting operation ratio of 89% is just and reasonable.

Although the Commission concludes that the proposed rates should be approved, it does not wish to infer that the allocation and sampling procedures utilized by Applicants are being accepted as reasonable. The Commission recognizes that Applicants, Greyhound and Carolina Coach, differ with the Public Staff over which allocation and sampling procedures should be used in future cases. The Commission is hopeful that these differences can be resolved through discussions which the parties indicated would be held during the next few months.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5, 6, AND 7

The Applicant carriers presented testimony of R.C. O'Bryan, David Taylor, E.D. Christensen, and Robert E. Brown regarding the justification of and revenues produced by certain proposed changes in the package express and charter rules and charges. The witnesses stated that increased employee and equipment utilization with resulting minimization of costs are the dominant reasons for the various rule changes.

Sovel Exhibit 5, Page 1, shows that the carriers would realize $139,476 in additional revenue from the proposed rule changes. The additional dollars in revenue were accounted for and included in computing the proposed operating ratio of 89%.

Application Coach Company, Safety Transit Lines, R.H. Gauldin, d/b/a, Southern Coach Company, and Silver Fox Lines seek to increase the notification period to 72 hours in lieu of the present three hours. This 72-hour notification rule change has not been accompanied by any statement of justification by the Applicants and appears excessive.

The Commission concludes that the proposed rule changes would effect greater equipment and employee utilization which would be beneficial to both the carriers and the using and consuming public. The Commission further concludes that the proposed rule changes are just and reasonable except that the notification period required to cancel a charter trip should be no greater than noon of the day prior to the departure date.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Applicants offered affidavits showing that the proposed increases were in compliance with the guidelines of the Council on Wage and Price Stability. The Public Staff stated at the hearing that they had reviewed the standards of the Council on Wage and Price Stability and found that the increases applied for did not exceed the Federal Wage and Price Guidelines.

IT IS, THEREFORE, ORDERED THAT:

1. The Applicants be, and the same are hereby, authorized to increase North Carolina intrastate rates and charges in accordance with Application 54, except as otherwise ordered.

2. The proposed charter rule changes described in Appendix D, Page 1, to Application 54 be denied.

3. The Applicant carriers proposing to participate in the proposed charter rule changes described in Appendix D, Page 1, of Application 54 be, and hereby are, authorized to

participate in the proposed charter rule changes set forth on page 2 of Appendix D to Application 54.

4. The Commission's Orders of Suspension and Investigation in this proceeding be, and the same hereby are, vacated and set aside.

5. The suspension supplements to the Applicants' tariffs be cancelled by the filing of appropriate tariff schedules, publication to be in accordance with Rule R4-5(e) of the Commission's Rules and Regulations governing the construction, posting, and filing of transportation tariff schedules.

6. The Applicants involved herein seeking increased rates and charges be, and hereby are, authorized to publish appropriate tariff schedules providing for the increase set forth in Ordering Paragraphs 1, 2, and 3 above.

7. The publications may be made effective on one day's notice to the Commission and the public.

8. The publications herein authorized have been made, the investigation in this matter be discontinued and the docket closed.

IT IS FURTHER ORDERED THAT:

9. Within 90 days after the date of this Order, representatives of the Applicant motor bus carriers and members of the Public Staff shall hold a meeting or meetings for the purpose of establishing allocation methods, sampling procedures and data requirements for use in future proceedings.

10. Within 30 days after said meeting, the Public Staff shall report its findings to the Commission with view of making recommendations as to the allocation methods, sampling procedures, and data requirements for use in future proceedings.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-127, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Kenan Transport Company, Incorporated, Chapel Hill, North Carolina - Application for Authority to Transport Group 21, Dry Synthetic Plastic Granules and Pellets, in Bulk, in Tank Vehicles, Between the Plant Sites of Fiber Industries, Inc., Fiberton and Earl, North Carolina	) FINAL ORDER OVERRULING EXCEPTIONS; AFFIRMING RECOMMENDED ORDER DENYING APPLICATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 23, 1979, at 9:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; Commissioners Ben E. Roney, Leigh H. Hammond, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Thomas W. Steed, Jr., Allen, Steed and Allen, Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: Kenan Transport Company, Incorporated

For the Protestants:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina
For: Central Transport, Inc., and Fleet Transport Company, Inc.

BY THE COMMISSION: On August 1, 1977, Counsel for Kenan Transport Company, Inc., filed an application seeking authority to operate as a motor common carrier in North Carolina intrastate commerce transporting the following:

> Group 21, Dry synthetic plastic granules and pellets, in bulk, in tank vehicles, between the plant sites of Fiber Industries, Inc., at or near Fiberton, North Carolina, and Earl, North Carolina.

Protests to the granting of Kenan's application were filed on behalf of Central Transport, Inc., and Fleet Transport Company, Inc. The application was heard before Hearing Examiner D.D. Coordes on September 29, 1977, and a "Recommended Order Denying Application" was thereafter issued by the Hearing Examiner on January 4, 1979.

On January 17, 1979, the Applicant filed "Exceptions to Recommended Order" and a request for oral argument, setting

forth Exceptions 1 through 6 and the reasons and arguments in support thereof. Counsel for both the Applicant and the Protestants subsequently presented oral argument on the Exceptions to the Commission on February 23, 1979.

Upon consideration of the entire record in this proceeding, including the application, the exhibits, the evidence, and the exceptions and oral argument heard thereon, the Commission concludes that each of the Exceptions 1 through 6 should be overruled and denied and that the Recommended Order should be affirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the Exceptions 1 through 6 herein filed by Kenan Transport Company, Inc., be, and the same are hereby, overruled and denied.

2. That the Recommended Order in this docket dated January 4, 1979, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of April, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-127, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Kenan Transport Company, Incorporated, P.O. Box 2729, Chapel Hill, North Carolina - Application for Authority to Transport Group 21, Dry Synthetic Plastic Granules and Pellets, in Bulk, in Tank Vehicles, from New Bern, to Asheboro, North Carolina	) ORDER) DENYING) APPLICATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 19, 1978, at 9:30 a.m.

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners Ben E. Roney and John W. Winters

APPEARANCES:

For the Applicant:

Tom Steed, Jr., Allen, Steed & Allen, Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: Kenan Transport Company, Inc.

For the Protestants:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Central Transport, Inc., and Fleet Transport Company, Inc.

Vaughan S. Winborne, Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27601
For: Everette Truck Lines, Inc.

BY THE COMMISSION: This matter came before the Commission through an Application filed on May 18, 1978, by Kenan Transport Company, Inc. (Applicant), seeking additional common carrier authority to transport dry synthetic plastic granules and pellets, in bulk, in tank vehicles, from New Bern, North Carolina, to Asheboro, North Carolina.

The Application was set for hearing on August 22, 1978, and duly noted in the Commission's Calendar of Hearings issued June 1, 1978.

Protests were filed on behalf of Everette Truck Lines, Inc., Central Transport, Inc., and Fleet Transport, Inc. The Commission issued orders allowing intervention of these parties.

Kenan Transport Company filed a Motion on August 16, 1978, asking the Commission to continue the hearing until a date after November 1, 1978. By Order dated August 18, 1978, the Commission reset the hearing for November 2, 1978. The Applicant, on October 16, 1978, again moved to further continue the hearing for at least 30 days. The Commission, by Order dated October 24, 1978, granted the Motion for Continuance and set the hearing for December 19, 1978, at 9:30 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

At the beginning of the hearing, Vaughan S. Winborne, Attorney for Protestant Everette Truck Lines, Inc., moved and was granted permission to withdraw its protest.

In support of its Application, Kenan presented the testimony of Troy Max Brim, Jr., Director of Planning and Transportation for Texfi Industries, Inc., and W. David Fesperman, Traffic Manager for Kenan Transport Company, Inc.

Mr. Brim testified that Texfi Industries purchases chemicals, produces polyester chips, spins raw yarn, textures the yarn, and either knits or weaves the textured yarn to make finished fabrics. Mr. Brim indicated that the New Bern plant has the capability of handling the entire production sequence from processing chemicals (DMT and

virgin glycol) into polyester chips to knitting or weaving the textured yarn into finished fabric.

The Asheboro plant of Texfi does not have a polymer plant to produce the polyester chip; therefore, it is necessary to purchase the chip from an outside supplier. Mr. Brim testified that Texfi is attempting to produce additional polyester chips at the New Bern facility and ship them to the Asheboro facility for final processing in order to reduce their reliance on outside purchases.

Currently, Texfi is purchasing the polyester chip from Hoechst Fibers in Spartanburg, South Carolina. The polyester chips are transported in bulk by Kenan from Spartanburg to the Asheboro plant under interstate authority. The Asheboro plant has the capability of spinning approximately 400,000 pounds per week. It is the goal of Texfi to ship approximately 200,000 pounds of polyester chips per week from the New Bern plant to the Asheboro plant. This will cut in half the shipments from Hoechst Fibers.

The Applicant, Kenan Transport, seeks additional intrastate authority to transport the polyester chips from New Bern to Asheboro for Texfi Industries.

Witness Brim testified that Texfi had utilized the services of Kenan for one and one-half years, that its service had been excellent, and that he would like for Kenan to handle the movement between New Bern and Asheboro. He indicated that service is of utmost importance and that Kenan has demonstrated that it can provide the service needed. Currently, Kenan has the entire movement of chemicals into and out of the New Bern facility and it would be easy for Kenan to coordinate the transportation of the additional shipments between New Bern and Asheboro.

Under cross-examination, witness Brim testifed that his decision to use Kenan and his desire to continue to use Kenan between New Bern and Asheboro is not based upon any knowledge that Central or Fleet cannot do the job. It is just that he prefers that Kenan provide the service. He also testified that Fleet Transport Company had solicited the business. Mr. Brim could not recall specifically whether he had received inquiries from Central Transport.

W. David Fesperman, Traffic Manager for Kenan Transport, testified that for the period January through November 1978 Kenan had handled 375 loads of polyester chips from Spartanburg to Asheboro. This traffic amounted to a total weight of 19,058,502 pounds and produced revenues for Kenan of $92,784. He indicated that if Kenan were not to participate in the movement from New Bern to Asheboro, then a piece of equipment that was purchased specifically for movement of plastic pellets to Texfi Industries would be idle.

Protestant Central Transport, Inc., offered the testimony of its Traffic Manager, Benjamin H. Keller III. Mr. Keller testified that Central is a common motor carrier specializing in the transportation of bulk commodities throughout the Southeastern United States. He further testified that Central holds a Certificate of Public Convenience and Necessity (C-543) from the North Carolina Utilities Commission and is authorized under this certificate to transport dry commodities, in bulk, in special equipment, between all points and places in the State of North Carolina and that this authority authorizes Central to transport the polyester chips from New Bern to Asheboro for Texfi.

Mr. Keller testified that Central can handle the movement in a number of different ways. Central has dry bulk equipment capable of handling the movement stationed at Charlotte, Wilmington, and High Point and could station this equipment at any of the other sub terminals such as China Grove, Moncure, or Fayetteville, which are in reasonable proximity to Asheboro. In the alternative, Central could dedicate equipment to the customer's plant site, whichever method would be most satisfactory to Texfi. He further testified that Central handles a commodity for Fiber Industries which is very similar to the polyester chips required by Texfi Industries.

Witness Keller entered into evidence a list of all the equipment operated by Central at this time in order to demonstrate their capability of handling the additional traffic between New Bern and Asheboro. He pointed out that approximately 30 pneumatic dry bulk trailers on the list meet the requirement for shipment of the polyester chips from New Bern to Asheboro.

Witness Keller testified that Central is more than willing to provide the transportation service for Texfi and has solicited the business on a number of occasions.

Protestant Fleet Transport Company offered the testimony of its Charlotte Terminal Manager, Jerry O. Gordon. Mr. Gordon testified that Fleet holds Certificate Permit CP-39 issued by the North Carolina Utilities Commission and that this certificate authorizes Fleet to transport the commodity in question.

In an earlier proceeding before this Commission, Docket No. T-127, Sub 12, involving Kenan Transport Company as the Applicant and Central and Fleet as Protestants and also involving the same commodity, a question arose as to whether this commodity fits within the commodity description listed under item (8) of Fleet's certificate. A decision had not been rendered in Docket No. T-127, Sub 12, at the time of hearing this docket. Both parties requested that the Commission take judicial notice of briefs in that earlier document in order to preclude the necessity for creating a record on the issue in this docket.

Witness Gordon testified that Fleet is able to serve Texfi's transportation needs between New Bern and Asheboro. He further testified that he had personally made several contacts with representatives of Texfi to solicit the business.

A Recommended Order in Docket No. T-127, Sub 12, was issued on January 4, 1979. Regarding the issue of whether Fleet Transport has proper authority for the transportation of plastic granules and pellets, the Hearing Examiner concluded that the "protest of Fleet will be allowed to stand, not because of any interpretation of its authority, but because the evidence of record concerning the service of Central is such that Fleet's protest had no bearing upon the decision in this matter." The Hearing Examiner further concluded that the record in Docket No. T-127, Sub 12, did not contain the proper type of factual technical information upon which a proper determination on the issue could be made and recommended that the Commission institute an investigation into Fleet's operating authority with respect to its interpretation of powdered chemicals to include synthetic plastic pellets or granules.

Having considered the testimony and evidence presented in this record, the Commission makes the following

FINDINGS OF FACT

1. That the Applicant, Kenan Transport Company, Inc., is fit, willing, and otherwise able to provide the service required by the authority sought herein.

2. That the Protestant, Central Transport, Inc., is fit, willing, and otherwise able to provide the service required by Texfi Industries, Inc., and has proper intrastate authority under the Certificate of Public Convenience and Necessity issued by the North Carolina Utilities Commission.

3. That a question still remains concerning the authority of Fleet Transport, Inc., to transport dry synthetic plastic granules and pellets.

4. That the public convenience and necessity do not require the proposed service in addition to existing authorized transportation service.

CONCLUSIONS

The General Statutes of North Carolina, G.S. 62-262, places the burden of proof upon the Applicant to show to the satisfaction of the Commission that public convenience and necessity require the proposed service in addition to existing authorized transportation service. The Commission is of the opinion and concludes that the Applicant has failed to establish by competent material and substantial testimony that the public convenience and necessity require the granting of the additional authority sought through this

Application. Protestant Central Transport, Inc., has demonstrated through its testimony that it has proper authority to transport the commodity in question and is willing and able to provide the service and, in fact, has solicited the business on several occasions.

The Commission concludes that the question of whether or not Fleet Transport, Inc., has the proper authority to transport the commodity in question in this docket is not critical to a decision in this matter and should be dealt with in a separate, distinct proceeding.

Based upon the Applicant's failure to carry the burden of proof, the Commission concludes that the Application should be denied.

IT IS, THEREFORE, ORDERED that the Application of Kenan Transport Company, Inc., as set forth in this docket be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-1976, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Marion J. Devilbiss, d/b/a Red Line Courier Service, 3709 Cherryblosson Lane, Hope Mills, North Carolina 28348 - Application for Common Carrier Authority	RECOMMENDED ORDER DENYING APPLICATION

HEARD IN: Conference Room, Second Floor, Old Cumberland County Courthouse, Gillespie Street, Fayetteville, North Carolina, on September 13, 1979, at 10:00 a.m.

BEFORE: Carolyn D. Johnson, Hearing Examiner

APPEARANCES:

For the Applicant:

L. Stacy Weaver, Jr., McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, P.O. Box 2129, Fayetteville, North Carolina 28302
For: Marion Devilbiss, d/b/a Red Line Courier Service

For the Protestant:

Thomas W. Steed, Jr., Allen, Steed & Allen, Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: Purolator Courier Corporation

JOHNSON, HEARING EXAMINER: By application filed with the Commission on July 20, 1979, in Docket No. T-1976, Sub 1, Marion J. Devilbiss, d/b/a Red Line Courier Service seeks common carrier authority as follows:

Transportation of Group 1, General Commodities on a courier-type service on a seven-day week basis for expedited delivery over irregular routes between all points and places within the State of North Carolina with the restrictions that no one shipment would exceed 2,000 pounds from one consignor at one location to one consignee at one location on any one day.

Notice of the application was posted on the Calendar of Hearings, North Carolina Utilities Commission issued August 8, 1979.

By Order of the Commission issued August 23, 1979, the hearing date was scheduled for 10:00 a.m., September 13, 1979, in Fayetteville, North Carolina.

Protests were filed on August 31, 1979, by two Protestants and intervention was permitted. Pony Express and Purolator Courier Corporation protests were allowed by Order of September 7, 1979.

When the matter came on for hearing, the Applicant, Marion J. Devilbiss, d/b/a Red Line Courier Service, and the Protestant Purolator Corporation were present and represented by their respective counsel.

APPLICANT'S EVIDENCE

Marion J. Devilbiss, owner and sole proprietor of the Red Line Courier Service (Red Line or Applicant) testified in support of the application. Her testimony tended to show the following: Applicant, one week prior to this hearing, by final Order of September 5, 1979, was granted authority to transport:

Group 1, General Commodities, subject to the following restriction, over irregular routes, from Fayetteville, North Carolina, to all points and places in North Carolina:

1. No service shall be provided in the transportation of packages or articles weighing in the aggregate more than 2,000 pounds when moving from one consignor at one location to one consignee at one location on any one day.

Ms. Devilbiss now states, "the authority I am asking for is certification to operate as a common carrier over irregular routes to carry expedited service requirements to include raw materials, repair parts, semi-manufactured goods and to do this on a seven-day-a-week basis with a limit of 2,000 pounds per consignor in one day." She further states: "the present authority only certifies me to carry objects from the City of Fayetteville to any point within the boundaries of North Carolina. It does not include anything coming back into the City of Fayetteville or between separate points outside the city."

Applicant indicated a desire to transport semi-manufactured goods and products manufactured by four specific companies - Black & Decker, Kelly Springfield, Carolina Machine Company, and Dupont.

Applicant described in detail specific commodities which she desires to transport for each of the aforementioned companies. Ms. Devilbiss stated that the weight of the commodities would often reach 2,000 pounds and that she intends to "operate as a 24-hour, seven-day-a-week service to be on call whenever the need is there."

At the present time, Red Line equipment consists of two Econoline vans with a 2,000-pound weight limit. Ms. Devilbiss is the sole operator at the present time. She has a general oral agreement to serve the aforementioned companies but has executed no written contract. On cross-examination when asked, "Now what do you mean by courier-type service?" the Applicant responded, "I don't know why I used the word 'courier' but what I intend to do is provide a service which is expedited which means I can be on call and be to the company depending on the company from 15 minutes to one-half hour after the call. I can respond within 30 minutes to any of the four companies." Ms. Devilbiss agreed that the description of operating authority under the original application in Docket No. T-1976, which became effective one week prior to this hearing, is for general commodities and has no similar restrictions or definition as to courier-type service on a seven-day basis. On redirect examination, Applicant elaborated on the term "expedited" as follows: "I would say 'expedited' to me means for the four companies that I have previously named a maximum of 30 minutes depending upon their distance from our location." On recross, Ms. Devilbiss was asked, "Now what do you mean happens within 30 minutes?" and responded, "Within 30 minutes from the time I receive a call from a company, any one of the four companies I have named, I can have a truck at their dock." She further indicated that she has no intention of confining the service to the four shippers and is asking for expanded authority to provide a seven-day, 24-hour, courier-type service for general commodities between any point and place in North Carolina. Red Line's only existing terminal facilities are in Fayetteville, North Carolina.

Ronald E. Hailey, Purchasing Manager for Black & Decker Company in Fayetteville, testified in support of the application. His testimony tended to show the following: Hailey has been purchasing manager for three of his five years of employment with Black & Decker. He is presently responsible for the transportation of raw materials components - not of finished goods. He detailed certain components which require transporting, including but not limited to, steel machine parts, stamp metal parts and plastic parts. He indicated a need to move commodities in the counties of Mecklenburg, Gaston, Rockingham, Chatham, Forsyth, Edgecombe, and Pitt. These commodities vary in weight between 50 and 2,000 pounds and the company requires immediate pickup and fast turnaround and courier service or a service that would, in fact, be available to wait until such parts are finished. He expects to use the Red Line Courier Service, "on a 24-hour, seven-day week basis at any time day or night." Hailey predicts that business at Fayetteville will grow to 40% to 60% within the next two years and stated the company is presently doubling the plant facility to meet this expected growth. At the present time Black & Decker uses the services of Wheeler Associates, taxicabs, and company employees. In response to the question by the Examiner as to what common carriers have been contacted during the past five years, Hailey responded, "There are so many of them and I guess I am not familiar with which ones are necessarily that serve just strictly the State's requirements as well as outside of the State of North Carolina, but one in particular or two of them are Estes and Overnite Transportation. They are two major ones that are carriers of ours."

There are presently about 15 common carriers involved in handling Black & Decker business in Fayetteville. Hailey was asked on cross-examination, "So what in essence you really require is somebody to dedicate equipment for your use when you need it; is that right?" He responded, "No." He indicated that he knows of the Protestant "Purolator" service but doesn't know "who these people are...they are our next-door neighbor, in fact the Purolator Company." He had not discussed the needed services with Purolator.

Elek Torok, principal stockholder and executive officer of Carolina Machine Company testified to the effect that the company is in the industrial machine tool building and maintenance of that. He indicated several named clients, including Black & Decker and Purolator, with which Carolina Machine Company does business. The company has had to use their own employees to transport commodities and would prefer not to do so. The products range in weight from a few ounces to thousands of pounds. His need for the service which Applicant would render is very random, irregular; but when there is a need, immediate service is desired. The geographical area which Carolina Machine indicated a need to transport commodities include the counties of Robeson, Sampson, Lee, and Cumberland.

At this time, approximately 1 1/2 hours after the calling of the hearing at the scheduled time, attorney for Applicant moved for a recess to attempt to locate a witness who had not appeared but may have "gone back to the plant." This motion was not granted and the hearing proceeded with the Protestant Purolator Courier Corporation. Prior to putting on any evidence, Protestant moved that the application as applied for in Docket No. T-1976, Sub 1, "be denied on the grounds that the application is asking for unrestricted except as to this weight and whatever courier-type service means, general commodities authority between all points and places within the State of North Carolina and there has been no evidence, one, of any shipper need for points and places within, all points and places in the State of North Carolina with the exception of some specific delivery needs from Fayetteville to certain named towns outside of Fayetteville and from certain named towns outside of Fayetteville into Fayetteville; and in addition, there has been absolutely no showing of any fitness or ability to provide the type of service that is described in this application from all points and places in North Carolina. What it really amounts to, and I think it is very apparent, is a request for a courier-type service where equipment is dedicated to specific shippers for their needs that they can't get provided for by regular commodities carriers and there has been absolutely no showing that would authorize the granting of authority for general commodities between all points and places in North Carolina which would mean originating anywhere in North Carolina and being delivered anywhere in North Carolina for any general commodity on an immediate basis as long as it doesn't weigh over 2,000 pounds; so we would move that it be dismissed on that ground." The motion was allowed.

Based upon the verified application, the evidence adduced at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. North Carolina General Statute 62-262(e), which sets forth the standard to be applied in passing upon this application, provides that:

> If the application is for a certificate, the burden of proof should be upon the applicant to show to the satisfaction of the Commission:
>
> (1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and
>
> (2) That the applicant is fit, willing and able to properly perform the proposed service, and
>
> (3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

2. A "common carrier by motor vehicle" is defined in G.S. 62-3(7) as "any person which holds itself out to the general public to engage in the transportation of persons or property for compensation, including transportation by train, bus, truck, boat or other conveyance, except as exempted in G.S. 62-260."

3. Rule R2-15(a) requires proof that "If the application is for a certificate to operate as a common carrier, the applicant shall establish by proof 'that a public demand and need exists for the proposed service,...' generally insufficient to establish public demand and need."

4. Applicant, Red Line Courier Service, one week prior to this hearing, by final Order effective September 5, 1979, was granted common carrier authority to transport Group 1, General Commodities over irregular routes from Fayetteville, North Carolina, to all points and places in North Carolina. There is a 2,000-pound weight restriction per shipment.

5. By the instant application, Red Line Courier Service seeks authority to provide courier-type service on a seven-day-a-week basis for expedited delivery of Group 1, General Commodities as a common carrier, over irregular routes, statewide with a 2,000-pound weight restriction per shipment.

6. That supporting testimony was presented by the Applicant and two representatives of companies located in Fayetteville (Black & Decker and Carolina Machine Company).

7. That each of the aforementioned companies have a need for expeditious delivery of specific commodities from Fayetteville to specific counties in North Carolina and in some instances these commodities must be returned to Fayetteville, North Carolina.

8. That the convenience and necessity herein described is that of two individual companies and not those of the public.

9. That the record is completely void of evidence to indicate a statewide demand for the proposed operations.

10. That the application is protested by Purolator Courier Corporation, an existing authorized carrier whose offices are located adjacent to Black and Decker Corporation in Fayetteville.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Chapter 62 of the General Statutes of North Carolina requires that the Applicant for irregular route common carrier authority prove the existence of a public need and

demand for the service proposed by the Applicant in addition to existing, authorized service.

The essential question for resolution in this proceeding is whether the proposed additional common carrier services for the transportation of Group 1, General Commodities,[1] statewide will serve the public convenience and necessity. An affirmative answer found justified by evidence of record demands that authority issue. Likewise, a negative answer found justified by a lack of evidence of record demands that the authority be denied. Applicant, as the proponent of the affirmative finding, shoulders the initial burden of proof. It must, in order to meet success, present sufficient evidence to allow this Examiner to balance the competing interests of Applicant and existing carriers, and, predicated on such evidence, conclude (1) that there exists a real and substantial public need or demand for the services proposed; (2) that fulfillment, by Applicant of the demonstrated need for service will not unduly impair the continued operations of existing carriers, to the public detriment; and (3) that Applicant is fit, willing, and able to provide the services it proposes in accordance with all applicable rules and regulations. See, generally, Utilities Commission v. American Carrier Corp. 8 N.C. App. 358 (1970); and Utilities Commission v. McCotter, 16 N.C. App. 475 (1972).

[1] Group 1. General Commodities. This group includes 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.

The Applicant has not on this record demonstrated a statewide public need and demand for expedited transportation of general commodities weighing up to 2,000 pounds. The record merely reflects: (1) That two companies need to have specific commodities transported from Fayetteville to certain named towns outside of Fayetteville and from certain named towns outside of Fayetteville into Fayetteville; (2) The Applicant, one week prior to this hearing, was granted common carrier authority to transport Group 1, General Commodities, weighing up to 2,000 pounds, from Fayetteville, North Carolina, to all points and places in North Carolina; (3) The Applicant indicates a desire to continue serving four named companies, but simultaneously declares an intention to not confine services to these named companies; (4) The Applicant specifically indicates an intention to transport commodities between all points and places in North Carolina for all shippers who request the services; (5) The Applicant's own witness testified that Black & Decker does not require somebody to dedicate equipment for its use...because "if Red Line Courier Service didn't have a truck available, I would find some other method...;" (6) Applicant's second witness testified the need of Carolina Machine Company for this service is "very random,"...."very irregular..." On such a record it can only

be concluded that the public convenience and necessity do not require the proposed service in addition to existing authorized service, and, therefore, that the Applicant has failed to carry the burden of proof prescribed under G.S. 62-262(e) for a common carrier certificate.

Absent a showing of public need, the question arises whether the Applicant is entitled to receive a contract carrier permit, which, under its Rule 2-10, the Commission will grant notwithstanding the scope of the application. G.S. 62-262(i) requires the Commission to give due consideration to "whether the proposed operations conform with the definition in this Chapter of a contract carrier." Under Commission Rule 2-15(b) the Applicant for a contract carrier permit must show "that one or more shippers...have a need for a specific type of service not otherwise available by existing means of transportation."

The statutes permit the Commission to disregard the form of the application if the Applicant has merely misconceived the nature of his proposed operation or has misconstrued the meaning of terms used in his application. But the statutes do not permit the Examiner to completely disregard the evidence reflecting the Applicant's proposed services and subtuitute therefor some type of authority based on the Examiner's own conjecture of what the Applicant ought to have proposed.

In summary, based on the evidence in its entirety, the Hearing Examiner concludes that the Applicant has failed to offer competent, material, and substantial evidence tending to show the need for an additional irregular route common carrier authority to transport Group 1, General Commodities to provide courier-type service on a seven-day-a-week basis for expedited delivery statewide.

Inasmuch as the Applicant has failed to carry the burden of proof to show that there is a public need and demand for the statewide services proposed in the application, the same should be denied.

IT IS, THEREFORE, ORDERED as follows:

That the application of Marion J. Devilbiss, d/b/a Red Line Courier Service filed in Docket No. T-1976, Sub 1, be, and hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of October, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-1873

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Sucorn, Inc., of Florida, Rt. 70 East, Marion, North Carolina 28752 - Application for Contract Carrier Authority to Transport Group 21, Liquid Sweeteners in Bulk Between Marion, North Carolina, and All Places in North Carolina	) FINAL ORDER OVERRULING EXCEPTIONS, AFFIRMING RECOMMENDED ORDER DENYING APPLICATION

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 214, Dobbs Building, Raleigh, North Carolina, on March 15, 1978

BEFORE: Commissioner Edward B. Hipp, Acting Chairman, and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, and John W. Winters

APPEARANCES:

For the Applicant:

Vaughan S. Winborne, Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27601

For the Protestant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602

BY THE COMMISSION: On December 6, 1977, a Recommended Order was issued in this docket by Hearing Examiner Antoinette R. Wike, denying the application of Sucorn, Inc., of Florida (Sucorn) for authority to transport Group 21, liquid sweetners, in bulk, between Marion, North Carolina, and all places in North Carolina under contract with A.E. Staley Manufacturing Company (Staley).

The Recommended Order was entered after public hearing was held on July 20, 1977, with evidence being offered by the Applicant Sucorn, the shipper Staley, and the Protestant Fleet Transport Company (Fleet). The Recommended Order denying the application is reported in the 1977 NCUC Orders and Decisions, 498.

On December 20, 1977, the Applicant Sucorn filed Exceptions to the Recommended Order and request for oral argument, setting forth Exceptions 1 through 12 and the reasons and arguments in support thereof.

On March 15, 1978, the full Commission heard oral argument on the Exceptions, Chairman Koger not participating.

Based upon the entire record in this proceeding and the Exceptions to the Recommended Order filed by Sucorn and the oral argument heard thereon, the Commission is of the opinion that the Exceptions do not show sufficient cause or merit to constitute cause for allowing said Exceptions, and each of said Exceptions is overruled and denied for the reasons hereinafter set forth, and the Commission makes the following

FINDINGS OF FACT

1. That Applicant is a Florida corporation duly authorized by the Secretary of State to do business in North Carolina.

2. That, in October 1976, Applicant established a liquid sweetener distribution plant at Marion, North Carolina, with facilities for rail storage, transfer from rail to storage, filtering and steaming, blending, bulk storage, and transportation.

3. That, by this application, Applicant proposes to transport liquid sweeteners in bulk for the account of A.E. Staley Manufacturing Company between Marion and all points in North Carolina under a written contract with A.E. Staley which was filed with the Commission at the time of the hearing.

4. That two representatives of A.E. Staley have testified that their Company is a distributor of bulk liquid sweeteners with a substantial volume of sales in North Carolina and adjoining states.

5. That the Protestant, Fleet Transport Company, Inc., is authorized under Certificate/Permit No. CP-39 to transport liquid sweeteners and liquid commodities, in bulk, in tank trucks, between all points in North Carolina and maintains permanent terminals at Charlotte and Lexington.

6. That A.E. Staley's sole distribution point in North Carolina was at Lexington until November 1976, when it transferred all but two North Carolina accounts and all interstate accounts served from North Carolina to Applicant's facility at Marion.

7. That the establishment of the Applicant's distribution plant in Marion was in contemplation of providing integrated storage, blending, and transportation services for the account of A.E. Staley Manufacturing Company as well as for Sucorn's own accounts.

8. That A.E. Staley's representatives have expressed a need for the nontransportation distribution services offered by Applicant at Marion and a preference for the transportation services offered by Applicant at Marion.

9. That A.E. Staley's representatives have stated that without the transportation of liquid sweeteners for its account Sucorn would not be able to continue its other services at Marion.

10. That A.E. Staley's motor transportation needs at Marion, North Carolina, are similar in kind to its motor transportation needs at Lexington, North Carolina.

11. That A.E. Staley's representatives have testified that the transportation services provided by the Protestant at Lexington and at points in interstate commerce have been satisfactory.

12. That both the Applicant and the Protestant have suitable equipment and the necessary expertise to transport liquid sweeteners in bulk.

13. That the Protestant has presented uncontradicted evidence tending to show that traffic from A.E. Staley which it previously handled has been diverted to Applicant resulting in a decrease in the Protestant's operating revenues.

14. That the Protestant has adduced evidence tending to show that present and potential diversion of revenue from A.E. Staley will have an adverse effect upon its operating ratio.

15. That Applicant has, since November 1976, performed intrastate transportation of liquid sweeteners in bulk for the account of A.E. Staley without authority from this Commission.

CONCLUSIONS

The Commission concludes from a review of the record and the Exceptions filed by the Applicant Sucorn that the Findings of Fact made by the Hearing Examiner in the Recommended Order are all fully supported by the record and that each such Finding of Fact is made and adopted above by the Commission. Exceptions 1, 2, 3, 4, 5, and 6 each deal with Findings of Fact made in the Recommended Order, and the Commission finds that none of said Exceptions raise meritorious or substantial exceptions sufficient to find error in said Findings of Fact.

Exceptions 7, 8, 9, and 10 are to the Conclusions entered in said Recommended Order, and the Commission has reviewed said Conclusions and does not find meritorious or substantive errors or omissions in said Conclusions and overrules said Exceptions.

Exceptions 11 and 12 are to the ordering paragraphs of said Recommended Order denying the application and ordering the Applicant to cease and desist from any transportation service for which authority has been sought and denied. The

Commission finds that said ordering paragraphs are supported by the record and overrules said Exceptions.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the Exceptions to the Recommended Order herein filed by Sucorn, Inc., of Florida, to wit, Exceptions 1 through 12, are hereby overruled and denied.

2. That the Recommended Order in this docket dated December 6, 1977, be, and the same is hereby, affirmed and adopted as the Order of the Commission herein.

3. That the Applicant Sucorn shall cease and desist from any transportation service for which authority has been sought by this application and which is hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of March, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

Chairman Koger did not participate.

DOCKET NO. T-1950

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Richard Dahn, Inc., 620 W. Mountain Road, Sparta, New Jersey 07871 - Application, as Amended, for Authority to Transport Group 21, Animal and Poultry Feed	) RECOMMENDED ORDER GRANTING AUTHORITY IN PART

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on February 28, 1979, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate

APPEARANCES:

For the Applicant:

A.W. Flynn, Jr., Harris, Flynn & Rightsell, Attorneys at Law, P.O. Box 180, Greensboro, North Carolina 27402

For the Protestants:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602

For: Riverside Transportation Co., Inc., C.C. Roberts Concrete Construction Co., Inc., and Tri-County Transport, Inc.

Samuel Pretlow Winborne (appearing for Vaughan S. Winborne), Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27601
For: Ezzell Trucking, Inc.

Clawson L. Williams, Jr., Attorney at Law, Seven Lakes, West End, North Carolina 27376
For: I.W. Bowling, Inc.

TATE, COMMISSIONER: By application filed on January 22, 1979, Richard Dahn, Inc. (Applicant), seeks common carrier authority to transport:

Group 21, Animal and poultry feed and animal poultry and pet food ingredients and cracklings, except liquid commodities in tank vehicles, between all points in the State of North Carolina.

Notice of the application and date of hearing, along with a description of the authority sought, was published in the Commission's Calendar of Hearings issued January 31, 1979. Protests were duly filed by Riverside Transportation Co., Inc. (Riverside), C.C. Roberts Concrete Construction., Inc. (Roberts), Tri-County Transport, Inc. (Tri-County), I.W. Bowling, Inc. (Bowling), and Ezzell Trucking, Inc. (Ezzell). All interventions were allowed by subsequent Commission Orders.

The public hearing at which all parties were present or represented by counsel was conducted as scheduled. Prior to the presentation of any evidence, Applicant moved to amend its application by restricting the territorial scope to traffic originating at points in Lee and Vance Counties:

Group 21, Animal and poultry feed and animal poultry and pet food ingredients and cracklings, except liquid commodities in tank vehicles, from points in Lee and Vance counties to points in the State of North Carolina.

After the motion to amend was granted by the Hearing Commissioner, Protestants, Roberts and Tri-County, upon request were allowed to withdraw their Protests and were excused from further participation in the hearing.

The Applicant offered the testimony of its President, Richard Dahn, Paul Franklin Thompson, General Manager, United Proteins, Incorporated, Sanford, North Carolina, and Alex L. Poitevint II, President, Eastern Minerals, Incorporated, Henderson, North Carolina.

A summary of the Applicant's testimony is as follows:

Richard C. Dahn, Applicant's President, testified and sponsored five exhibits: (1) a directory of Applicant's certificates of public convenience and necessity issued by the Interstate Commerce Commission, (2) Applicant's balance sheet as of June 30, 1978, (3) Applicant's statement of income and retained earnings for the six-month period ended June 30, 1978, (4) Applicant's equipment list, and (5) a certified copy of Applicant's corporate charter. Mr. Dahn started the business in 1940 and incorporated it in 1959 with the main office being in Sparta, New Jersey. Mr. Dahn, his sons, and his wife are the officers and directors of the company and are actively involved in its operation. Under Applicant's interstate authority, it is presently transporting commodities similar to those involved in this application between points outside North Carolina and points in North Carolina and as a result, Applicant's vehicles are delivering and picking up in the state almost daily. Stone is being picked up in Lilesville, Mount Airy, Kings Mountain, Staley, and on some occasions, Spruce Pine and animal feed ingredients are being delivered to Henderson and Sanford as well as other points. Applicant operates a number of large aluminum dump trailers ranging in length from 28 feet to 34 feet with the newer ones having swinging gates so that they may be loaded with bagged commodities, all of which are suitable for the transportation of feed and feed ingredients. Seven such trailers have cross augers and airlocked equipment so that the commodity may be blown into a silo. The remainder lift hydraulically. Applicant also operates five van trailers. Normally, after Applicant's vehicles unload in the State, deadhead mileage is involved in travelling to a pickup point for a shipment leaving North Carolina. The authority applied for, if granted, would cut down such deadhead mileage. Applicant has trucks unloading in Sanford four or five times a week. Applicant proposed to start a terminal at either Sanford or Staley, during the coming summer.

On cross-examination, Mr. Dahn stated that the primary motivation for his Company's application was to obtain intrastate backhauls to complement its existing interstate movements in North Carolina. At present, after Applicant's trucks deliver to United Proteins, Incorporated, at Sanford, they go to Robbins, Laurinburg, Lilesville, or Staley, North Carolina, to pick up another load.

Paul Franklin Thompson, General Manager of United Proteins, Incorporated (United), Sanford, North Carolina, testified in support of the application. United is a blender of meat and bone meal which is derived from meat scrap, blended into 50% protein, and sold to national and local feed mills primarily in North Carolina that produce feed either commercially or for their own use. From its plant in Sanford, United ships to points throughout the State. Ingredients have been delivered to United from out of state by Applicant since September 15, 1977, and the service has been good. Transportation from United's plant to its customers is by dump trailers primarily. Present

production averages 700 tons per week, 600 tons of which move to points in North Carolina. A truckload is approximately 22 tons. The daily volume is seven to 10 truckloads. United attempts to have each of its three trucks handle two truckloads per day. On the average, one or two truckloads per day are tendered to common carriers. At times within the past year, United has had difficulty obtaining common carrier service when needed. Its primary carrier is Bowling, but it has used Riverside on some occasions. There have been occasions when it has called on them and they have not had equipment available. When the schedule is followed, there are usually no problems in obtaining adequate equipment. Bowling is located 20 miles from United, but as business increased, United bought more trucks of its own. United feels that it can serve its customers with its own equipment better than any outside carrier can. Problems in obtaining adequate numbers of vehicles arise when the customer wants an unscheduled shipment on short notice. There have been situations where Mr. Dahn's equipment has been unloading at United's plant and United has had an intrastate shipment to be delivered but its own (United's) equipment has not been available. In Mr. Thompson's opinion, there is a need for the proposed service in addition to services presently available.

On cross-examination, Mr. Thompson stated that United is shipping only meat and bone meal, which is a feed ingredient, within the State of North Carolina. Its plant is located within two or three miles from the city of Sanford. United ships five days a week with a weekly average of approximately 30 truckloads. The range on a daily basis can be from three to 10 truckloads. United has had a shortage of materials since Christmas due to rail problems. It attempts to use its own trucks as much as possible. Normally, when working with an outside carrier, United can advise the carrier on Thursday and Friday when pickup will be needed during the following week. Bowling receives most of the freight handled by outside carriers, but Riverside has been tendered three loads since United's plant opened in 1977. The problem with authorized carriers is not availability on a planned schedule, the problem is availability when the movement is not planned. United has called on Riverside for quick service many times when Riverside did not have trucks in the area, but Mr. Thompson cannot recall whether those requests had to do with intrastate or interstate traffic. Riverside has dump equipment of the type United's outbound movements require. Riverside's trucks occasionally haul products into United's plant and usually leave empty after delivery. In December, Applicant asked United to support this application. Some of United's customers pick up their own commodities in their own vehicles. Perhaps six truckloads per week, or 10% of the North Carolina volume is picked up by customer's trucks. Bowling was handling 30-50 truckloads per month, but business to common carriers since United acquired its own trucks has decreased about 60%. United's general need for a common carrier has decreased as it uses its own trucks when

it can. It is more economical for United to use its own trucks. The only complaint with Bowling's service is that on occasion it has not been able to provide a truck on the same day it was called. Mr. Thompson would not consider the granting of this application a necessity to United's business but would be an added convenience. On the average, Applicant has trucks in United's plants three or four times a week. It would be more convenient for United to load those trucks when they are leaving than to call another carrier. As soon as business gets to the point where it is economically possible, United will use its own trucks for all service.

On redirect, Mr. Thompson stated that Ezzell had never solicited United's business.

Alex L. Poiteving II, President of Eastern Minerals, Incorporated (Eastern), testified in support of the application. Eastern is a manufacturer and distributor of animal and poultry feed ingredients with a plant near Henderson, Vance County, North Carolina. The plant, which is a blending, packaging, warehousing facility opened October 2, 1978, and its first commercial shipment was picked up by a customer's truck on January 31, 1979. At present, there are six employees, but eventually there will be 25 employees. Present production is 10,000 tons per year and, with commodities that are bought and resold without processing, the total annual volume is 15,000 tons. Ultimate capacity is 50,000 tons per year - 25,000 tons of blending and 25,000 tons of packaging. As United's products are packaged, vans are preferred, but grain trailers with adequate tarpaulins can be utilized. At present, Eastern uses Applicant on both inbound and outbound interstate shipments and the service provided has been satisfactory. Riverside handles all intrastate traffic which presently averages a load a day or perhaps a little more. There have been no problems with Riverside's service. Eastern supports Applicant as a second or backup carrier with Riverside remaining the primary carrier. Applicant's services are also needed for shipments involving stopping in transit. For example, bicarbonate of soda is produced at Syracuse, New York, and Fostoria, Ohio, and some customers require half truckloads of this commodity. If the truck delivering from the production source could stop by the Henderson plant, unload half, and carry the remainder to the customer, it would save handling and labor. Applicant could provide such service if this application is approved because it has interstate authority to any point in North Carolina. Eastern has a suitable and acceptable relationship with Riverside. There may be situations where Eastern may have a large number of intrastate shipments in one day and Eastern needs Applicant available to help in such peak periods. It is customary for Eastern's customers to give short notice of need for delivery and, sometimes, they may require service on the same day. Eastern is concerned with the conduct of the carriers which serve it and has found that the Applicant has a fine reputation.

On cross-examination, Mr. Pointevint stated that the commodities shipped from Eastern's plant at Henderson are trace mineral ingredients used in feed manufacturing. The first shipments from Henderson by means of regulated carriers occurred during the week of January 31, 1979. Some shipments were tendered to both Applicant and Riverside during that week. Since then, Applicant has handled all interstate movements, and Riverside has handled all intrastate movements. Riverside's services have been comparable to those provided by Applicant. Based upon his experience with transportation in other jurisdictions, Mr. Poitevint is of the opinion that there will be breakdowns in Riverside's service and Applicant will be needed as a backup carrier. Eastern made, in Mr. Poitevint's opinion, a very thorough study of the carriers available to provide intrastate service. He asked 10 to 15 carriers to send copies of their authority, and after evaluation by counsel, determined that Riverside was the only one with complete intrastate authority, and Applicant was the only one with complete interstate authority. In making the study, Eastern talked with brokers and customers. Mr. Poitevint was not aware of the availability of Bowling's services. It was his opinion prior to the hearing that Riverside was the only carrier holding statewide authority to service the Henderson plant. A sister corporation located in Georgia has 25 delivery destinations in North Carolina that will now be served by Eastern because of the lesser distances involved. Eastern's business will be with feed manufacturing firms throughout the State of North Carolina. Mr. Poitevint made no inquiry of the Commission as to carriers authorized to serve its plant at Henderson. To date, there has not been an occasion where a carrier with stop-in-transit privileges was needed at the Henderson plant.

On redirect examination, Mr. Poitevint stated that to his knowledge, Eastern's business had not been solicited by either Bowling or Ezzell.

Protestants offered the testimony of James A. Ezzell, President, Ezzell Trucking, Incorporated; Dennis A. Peacock, President, Riverside Transportation Co., Inc.; and Issac Waddell Bowling, President, I.W. Bowling, Inc., and a summary of such testimony is as follows:

James Audiman Ezzell, President of Ezzell Trucking, Incorporated, testified that his company is located in Harrells, North Carolina. It holds Certificate No. C-159 which authorizes transportation of general commodities in truckloads between points within 125 miles of Tarboro and (by tacking) between that area and points in the rest of the State. According to Mr. Ezzell, the 125-mile radius covers both Lee and Vance counties. Currently, Ezzell is hauling to points in Lee County and through Vance County. On the average, two or three trucks per day return empty from the northern states to Tarboro through Vance County. Ezzell has not solicited the traffic of either Eastern Minerals or United Proteins because it was not aware of their existence

prior to this hearing. Mr. Ezzell is the owner of all the stock in Ezzell and has sufficient personal assets to provide all equipment necessary to do the job. The company owns 18 tractors and 47 trailers and leases five tractors from owner-operators. It has 30 vans and three dump trailers, two of which have been sitting idle since Christmas. One dump trailer has been able to handle all dump movements Ezzell has had in 1979. Ezzell's main customer is Swift & Company for whom it is making numerous deliveries in Virginia, and that equipment comes back into North Carolina empty. Ezzell is authorized to serve the supporting shippers in this docket. It would be willing to serve as a backup carrier for Eastern, since a lot of its equipment is passing by the Eastern plant at the present time.

On cross-examination, Mr. Ezzell stated that Ezzell holds no interstate operating authority. Its interstate movements for Swift & Company are of exempt commodities, frozen turkeys. 75% of its revenue is generated from transportation for Swift & Company, including transportation of feed ingredients between points in North Carolina. Harrells is located 45 miles north of Wilmington on Highway 421. Mr. Ezzell has been in the trucking business since 1951, and he incorporated his business in 1970. Ezzell maintains 15 or 20 refrigerated trailers in its fleet which would be suitable for transporting packaged feed ingredients.

Of the 47 trailers utilized by Ezzell, 23 are refrigerated, three are dump trailers, 10 are flatbed trailers, and the remaining are vans.

Dennis A. Peacock, Riverside's President, testified and sponsored four exhibits: (1) the scope of Riverside's authority under Certificate No. C-1084, (2) Riverside's equipment list, (3) Riverside's profit and loss statement for the nine months ending December 8, 1979, and (4) an abstract of animal feed and feed ingredients traffic hauled by Riverside during the period November 1977 through November 27, 1978. Riverside's principal business is the transportation of animal feed and feed ingredients. Under its North Carolina certificate, it is authorized to transport these commodities between all points in the State. An application for permanent authority is pending with the ICC to transport these commodities between points in a 22-state area including North Carolina and surrounding states. Riverside operates 71 power units and 77 trailers. There are 33 refrigerated trailers, or open-top vans. The dump trailers are from 30-35 feet in length. To Mr. Peacock's knowledge, the dump equipment maintained by Riverside is suitable for transportation of United's products and has in fact been used in service to United on several occasions. Riverside has six to eight full-time drivers with the remainder being owner-operators. The main terminal is in Wilson, and there are owner-operators stationed at other points, including Mount Olive where five trucks are

stationed, and there is a lessor with 29 tractors and 35 trailers located in Pantego, North Carolina. 85%-90% of Riverside's trucking business involves the transportation of feed and feed ingredients, most of which is North Carolina, intrastate. On a regular basis, Riverside hauls feed and feed ingredients within North Carolina for Ralston Purina, Carolina-By-Products, Central Soya, Allied Mills, Cargill, Eastern Minerals, Perdue at Elkin and Tunis, and Tyson Feeds at Creswell, Sanford, and Elkin. It is serving Eastern and is transporting soybean meal into the Henderson area from various origins. It has vans moving into Henderson with exempt loads from various points throughout the State. It is hauling into the Sanford area for various shippers in both van and dump trailers. Most of the time, the equipment is empty when it leaves Sanford. Riverside has not been able to get much of United's business, and United is the main shipper in Sanford. Riverside has one to three vans unloading in Henderson each day, some of which are being loaded out at Eastern. Riverside realized an operating loss for the first nine months of 1978. According to Mr. Peacock, there were two causes: excessive truck repairs and lack of hauling. Riverside was audited by this Commission for 1978 before and its operating ratio was 114%. Riverside is constantly soliciting business. Mr. Peacock solicits business, as does the accountant who is a combination dispatcher, good-will man, and salesman. Both make in person and telephone calls on shippers. There has never been an occasion when Riverside has been unable to provide service when requested to do so by United Protein on the movement of United's product within North Carolina. When United located in Sanford, Mr. Peacock called Mr. Thompson on several occasions, advised him that one of his lease operators, W.M. Waters of Nashville, who has five trucks and trailers, could devote them to Mr. Thompson's service. Riverside has equipment available at this time which could be used for United. Riverside has handled six loads for Eastern at Henderson. All have been truckload movements. Five were to one consignee, and the first was a split load to two consignees. To date, less than one truck has been needed to service Eastern's needs. Other trucks are available if needed. At present, Riverside's equipment is operating at no more than 65% capacity. Riverside is willing to acquire additional equipment when needed and has done so in the past, as circumstances have dictated. Riverside has handled emergency shipments for other shippers similar to those described by the witnesses for the Applicant. Riverside's revenue from hauling feed and feed ingredients in North Carolina for the 12-month period ending November 1978, was approximately $65,000. The volume, both as to number of loads and revenue would be greater now. Mr. Peacock is familiar with the unauthorized carriers operating in the Sanford area, and according to him, every load they haul is a load that Riverside does not haul.

On cross-examination, Mr. Peacock stated that Riverside owns only three dump trucks. The remainder are leased from owner-operators. Riverside's owner-operators are free to

haul exempt commodities for their own account on the days they're not hauling for Riverside. All leased equipment may not be available at all times, but there has been a surplus. The rate per ton for hauling feed and feed ingredients ranges from $4.80/ton for 0-50 miles to as much as $22.50 - $25.00/ton for 440 miles or more. If this application is approved, Riverside would be subject to lose 100% of the traffic it is moving out of the areas involved in the amended application.

I.W. Bowling, Bowling's President, testified that his company holds Certificate No. C-1077, which authorizes statewide transportation of the commodities involved in this application. Bowling holds no interstate authority, and 90% of its revenues are derived from transportation of such commodities. In the past six months, Bowling's revenue has decreased steadily. Bowling has seven tractors and eight trailers, six of which are dumps. Only four of the tractors are licensed at this time because business is down and payment of the license fees has not been justified. If business should increase, those trucks will be placed back into service. Sometimes, if United calls for a truck in two hours, it is hard to provide one for him, although Bowling's terminal is 12 miles from Mr. Thompson's plant. Bowling has not solicited Eastern because it did not know of Eastern's existence until the hearing. The trucks Bowling does have licensed are fairly busy, but one is used primarily as a spare.

On cross-examination, Mr. Bowling stated that in addition to the dumps, he has a grain trailer and a refrigerated van. Mr. Bowling personally owns stock in a feed mill and performs some transportation for it. In Mr. Bowling's opinion, he could service Eastern Mineral with one trailer. During the last several years, the feed and feed ingredients business has increased tremendously. Bowling's business has decreased because of the mills', such as United, going to private carriage.

Based upon the foregoing and of the entire record in this proceeding as a whole, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. Applicant is a New Jersey corporation with its corporate headquarters in Sparta, New Jersey.

2. By this application, as amended at the hearing, Applicant proposes to transport Group 21, animal and poultry feed and animal, poultry and pet feed ingredients and cracklings, except liquid commodities in tank vehicles, from points in Lee and Vance Counties to points in the State of North Carolina.

3. Applicant is an experienced carrier of feed and feed ingredients in interstate commerce and is regularly

delivering and picking up interstate freight at points throughout North Carolina, including the facilities of United Proteins, Incorporated, near Sanford, Lee County, and Eastern Minerals, Incorporated, near Henderson, Vance County.

4. Applicant has provided satisfactory interstate service to United Proteins, Incorporated, and Eastern Minerals, Incorporated, and the Presidents of both companies have testified in support of this application.

5. Applicant operates a fleet of equipment including both van and dump trailers suitable for the transportation of the commodities sought herein, and plans to establish a terminal at either Sanford or Staley, North Carolina.

6. United Proteins, Incorporated, blends meat and bone meal at its Sanford plant, which it ships by dump trailers to feed mills throughout North Carolina.

7. At present, transportation of the products of United Proteins, Incorporated, to points in North Carolina is provided by its own trucks, authorized common carriers (primarily Protestant Bowling), customer pickup, and on some occasions unauthorized carriers.

8. United Proteins, Incorporated, ships an average of seven to 10 truckloads per day, five days a week, to points in North Carolina, one or two of which are tendered to common carriers. In the past, three or four truckloads per day were tendered to common carriers, but as the private fleet of United Proteins, Incorporated, has increased, its need for common carriers has decreased.

9. That on occasions, United Proteins, Incorporated, has experienced difficulty in obtaining common carrier shipments on short notice by the customer.

10. Protestant Bowling gives satisfactory service to United Proteins, Incorporated, but on some occasions where unscheduled same-day pickup and delivery has been requested, Bowling has been unable to provide such service.

11. Eastern Minerals, Incorporated, opened its plant near Henderson, North Carolina, on October 2, 1978, and began shipping feed ingredients (trace mineral ingredients) by truck to points in North Carolina during the week of January 31, 1979.

12. The products of Eastern Minerals, Incorporated, are shipped in bags and must be transported in vans or covered grain trailers.

13. Eastern Mineral's present production is at the level of 200 tons/week or 10,000 tons/year, in addition to another 5,000 tons/year which are bought and sold without

processing. Ultimate capacity will be 50,000 tons/year at its Vance County facility.

14. Protestant Riverside is the sole carrier providing intrastate service to Eastern Minerals, Incorporated. Service to date has been satisfactory, but in the opinion of Eastern's president, Applicant's services as a backup carrier will be needed.

15. Eastern Minerals, Incorporated, has also expressed a need for a carrier with both interstate and intrastate authority so that it can handle shipments with stops in and outside North Carolina. Applicant has the requisite interstate authority, and Protestant Riverside has an application pending before the ICC for the requisite interstate authority.

16. Protestant Riverside is an authorized common carrier operating under Certificate No. C-1084 issued by this Commission which authorizes it to transport the commodities involved in this application between all points in the State.

17. Protestant Bowling is an authorized common carrier operating under Certificate No. C-1077 issued by this Commission which authorizes it to transport the commodities involved in this application between all points in the State.

18. Protestant Ezzell is an authorized common carrier operating under Certificate No. C-159 issued by this Commission which authorizes it to transport the commodities involved in this application in truckload lots between points within 125 miles of Tarboro and, by tacking, between points within 125 miles of Tarboro on the one hand and, on the other, points in the rest of the State.

19. Each of the Protestants maintains in its fleet van and dump trailers of the types described as needed by the two supporting shippers in this docket.

Whereupon, the Hearing Commissioner reaches the following

CONCLUSIONS

The application herein for a common carrier certificate is governed by G.S. 62-262(e) which provides that the burden of proof shall be upon the Applicant to show to the satisfaction of the Commission:

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the applicant is fit, willing and able to properly perform the proposed service, and

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

The uncontradicted evidence establishes and the Hearing Commissioner so concludes that Applicant is fit, willing, and able to properly perform the proposed service and that it is solvent and financially able to furnish adequate service on a continuing basis. The only controverted issue raised by the evidence in this docket is whether the public convenience and necessity require the proposed service in addition to existing authorized transportation service. The evidence establishes that each of the three Protestants is authorized under their respective certificates to perform the proposed service and maintains equipment of the necessary types required, and that each has expressed a desire to perform the proposed service. The Protestant Riverside is presently performing service for Eastern Minerals, Incorporated, and the Protestant Bowling is providing service for United Proteins, Incorporated.

Despite the fact that both Protestants Bowling and Riverside are providing service to the two supporting shippers in this docket, the Hearing Commissioner is of the opinion and so concludes that public convenience and necessity requires the proposed service in addition to the existing authorized transportation services only with respect to service from the facilities of United Proteins, Incorporated, near Sanford, North Carolina, and Eastern Minerals, Incorporated, near Henderson, North Carolina, and that the application in this docket, as amended, should be granted accordingly.

IT IS, THEREFORE, ORDERED:

1. That Richard Dahn, Inc., be, and the same is hereby, granted common carrier operating authority in accordance with Exhibit B attached hereto and made a part hereof.

2. That Richard Dahn, Inc., file with this Commission evidence of the required insurance, a list of equipment, a tariff schedule of rates and charges, designation of a process agent and otherwise comply with the Rules and Regulations of the Commission, all of which should be accomplished within 30 days from the date this Recommended Order becomes effective and final, unless such time is hereafter extended by the Commission.

3. That unless Richard Dahn, Inc., complies with the requirements set forth in Decretal Paragraph 2 above and begins operating as herein authorized within a period of 30 days after this Recommended Order becomes final, unless such time is extended by the Commission upon written request for such an extension, the operating authority granted herein will cease.

4. That Richard Dahn, Inc., shall maintain his books and records in such a manner that all of the applicable items of

information required in its prescribed Annual Report to the Commission can be used by the Applicant in the preparation of such Annual Report. A copy of the Annual Report form shall be furnished to the Applicant upon request made to the Accounting Division, Public Staff, North Carolina Utilities Commission.

5. That this Recommended Order, upon becoming final, shall constitute a certificate until a formal certificate has been issued and transmitted to the Applicant authorizing the transportation herein described and set forth in Exhibit B attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-1950 RICHARD DAHN, INC.
SPARTA, NEW JERSEY

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B Transportation of Group 21, animal and poultry feed and animal, poultry and pet food ingredients and cracklings, except liquid commodities in tank vehicles, from the respective plant sites and facilities of United Proteins, Incorporated, near Sanford, Lee County, North Carolina, and Eastern Minerals, Incorporated, near Henderson, Vance County, North Carolina, to all points and places within the State of North Carolina.

DOCKET NO. T-1330, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Home Transportation Company, Inc., 1425 Franklin Road, Marietta, Georgia 30067 - Application for Authority to Transport Group 21, Mobile Homes, Statewide	) RECOMMENDED ORDER GRANTING COMMON CARRIER AUTHORITY

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 12, 13, and 14, 1978, beginning at 9:30 a.m.

BEFORE: Hearing Examiner Carolyn D. Johnson

APPEARANCES:

For the Applicant:

David H. Permar, Hatch, Little, Bunn, Jones & Few, Attorneys at Law, Box 527, Raleigh, North Carolina 27602

Robert E. Born and Jeffrey Kohlman, Born, May, Kohlman & Duvall, P.C., Attorneys at Law, Suite 508, 1447 Peachtree Street, N.E., Atlanta Georgia 30309

For the Protestants:

Thomas S. Harrington, Harrington, Stultz & Maddrey, Attorneys at Law, P.O. Box 535, Eden, North Carolina 27288
For: Morgan Drive Away, Inc.

Ron Perkinson, Staton, Betts, Perkinson & West, P.A., Attorneys at Law, P.O. Box 1320, Sanford, North Carolina 27330
For: Boyd Brafford

Dan Lynn, Attorney at Law, 5 Carolina Bank Building, Cary, North Carolina 27511
For: Cooper's Mobilehomes Moving Service, Inc.

JOHNSON, HEARING EXAMINER: By application filed on May 3, 1978, Home Transportation Company, Inc. (Home or Applicant), seeks authority to amend its existing Certificate No. C-896 to include the operating authority as follows:

Group 21, mobile homes, single wide and double wide, used for residential and commercial purposes, including furniture, fixtures and personal effects of owner, and all other types of prefabricated building units and related materials over irregular routes between all points and places within the State of North Carolina.

Notice of the application was posted on the Calendar of Hearings, North Carolina Utilities Commission issued May 10, 1978.

By Order of the Commission issued June 12, 1978, the hearing date was scheduled for 9:30 a.m., September 12, 1978.

Protests were filed, and intervention permitted, by three Protestants: Boyd Brafford, protest filed May 22, 1978, and allowed by Order of June 8, 1978; Morgan Drive Away, Inc., protest filed July 5, 1978, and allowed by Order of June 8, 1978; and Cooper's Mobilehomes Moving Service, Inc., protest filed on July 13, 1978, and allowed by Order of June 12, 1978.

A Motion filed September 7, 1978, by David H. Permar, Attorney for the Applicant, pursuant to G.S. 84-4.1, for the appearance of out-of-state counsel, Robert E. Born and Jeffrey Kohlman, of Atlanta, Georgia, was allowed by Order of the Commission issued September 8, 1978.

On September 7, 1978, the Applicant filed a Motion, pursuant to NCUC Rule R1-7,[1] moving the Commission to order the Protestant, Morgan Drive Away, Inc., to file with the Commission and provide to all parties copies of its written "investigation to determine the adequacy of its service in the area for which mobile home authority is sought" as required by the judgment of the United States District Court for the District of Columbia (Civil Action No. 74-1781). The Commission served Notice on September 8, 1978, that the parties would be heard on the aforesaid Motion upon calling of the case on September 12, 1978.

[1] Rule R1-7, in pertinent part provides: Motions - (a) Purpose - Motions may be addressed to the Commission: (5) For postponement of a hearing, or of the effective date of an order, or for an extension of time within which to comply with an order of the Commission, or for such other relief as may be appropriate.

When the matter came on for hearing, the Protestant Morgan Drive Away, Inc. (Morgan), moved to dismiss the motion to produce for failure to give adequate notice to the Protestant. This motion was denied and parties argued as follows:

Applicant, Home Transportation Company, Inc. (Home), asserts that in a suit instituted by the U.S. Government, Morgan entered into a consent judgment and agreed, inter alia, to prepare a written report of their investigation into the adequacy of their service in the affected area prior to filing a protest of any state application for mobile home authority or within 30 days after the filing of protests. Applicant contends that this subject deals specifically with the issue in this hearing, i.e., the adequacy of existing service.

Protestant Morgan asserts that the motion is not a proper motion within the purview of NCUC Rule R1-7, and that it is neither verified nor supported by affidavit as required when the motion is based on matters which do not appear of record. Further, that the burden is on the Applicant to prove additional need and that compliance or noncompliance by Protestant with an order of the Federal Court is not a proper matter to be considered.

Upon rebuttal, Applicant states that the Commission is not being asked to enforce the judgment of the Federal District Court, but asked that the results of the investigation be made available to be used by the Commission to the extent the information is relevant to the issues in this proceeding.

The Hearing Examiner allowed the Motion to Produce, whereupon the Protestant Morgan provided copies to all parties and the Applicant submitted to all parties verification of Motion to Produce. In granting this motion, no inference has been accepted that Protestant's appearance herein is violative of any law or improper in any way. This examiner merely finds that the fact of preparation of the adequacy study and information contained therein is properly discoverable and its production does not harm or prejudice Protestant.

APPLICANT'S EVIDENCE

Jack Kent, General Manager, Home Transportation Company, Inc., Mobile Home Division, Charlotte, North Carolina, offered a prepared written statement in support of the application. His testimony tended to show the following: Kent has been responsible for the home transportation activities within the State of North Carolina since his employment by the Applicant in January 1978. He was District Manager for Morgan in North Carolina during the period August 1971 to June 1976 and had worked for that company 10 years. Kent, while employed by Morgan, appeared before the Commission on numerous occasions and testified that there was more than adequate existing authority in the State of North Carolina. But now states, "that has been over two years ago and things have changed." Kent did not know how many authorized mobile home carriers are in North Carolina, but suggested many authorized carriers are not operating the authority. He developed the advertising for Morgan and thinks it is adequate.

Home is now certificated to provide services in interstate commerce transporting single wide and double wide mobile homes from all points in North Carolina to all points in the United States, except only those in Hawaii; and from all other points in Alabama, Florida, Georgia, Indiana, Louisiana, Mississippi, and South Carolina to all points in North Carolina. In addition, Home holds interstate authority to transport single wide mobile homes from specified points in Virginia, Tennessee, and Missouri to points in North Carolina.

Mr. Kent states that since his employment by Home he has called on every mobile home manufacturer and numerous mobile home dealers in the State of North Carolina. He knows of 12 authorized statewide carriers. But, he maintains that existing carriers have fewer trucks today than in 1976. Applicant's Mobile Home Division now operates 47 mobile home toters, all of which are properly licensed to operate in North Carolina. Home operates five terminals in North Carolina dedicated exclusively to mobile home operations. These are located at Marion, Charlotte, Gastonia, Ash, and Salisbury. Eight toters are based at these locations. If the application is granted Home will immediately base an additional 20 toters in North Carolina and will open eight additional terminals, to be located at Jacksonville,

Lumberton, Fayetteville, Raleigh, Henderson, Greensboro, Asheville, and Statesville.

Home submitted financial data including a balance sheet and operating statement as of December 31, 1978, and for the year ended December 31, 1977. Home also described its regular safety and maintenance program. Home asserts that this evidence of previous and continuing intrastate and interstate operation affecting North Carolina demonstrates its ability and fitness, financially and otherwise, to provide the services proposed in this application.

Gene Hewitt, Assistant Sales Manager, North Carolina Division, Champion Homes, testified that Champion manufactures single wide and double wide mobile homes[2] at Lillington and Dunn, North Carolina. Production numbers about 1,200 floors per year at the Dunn facility and the company expects to build approximately 1,300 floors at Lillington in 1978. Thirty-five percent of the finished homes are for Champion's intrastate business with the remainder moving in interstate commerce. Champion operates a private carriage system of eight trucks and utilizes common carriers for approximately 10% of its shipments. Champion projects an increase of approximately 25% in its production in the near future due to government programs for financing mobile home purchases. For the transportation of this added production, Champion would prefer to increase its use of common carriers rather than add more trucks to its private fleet. This is due in part to its belief that common carriers are more efficient and that Champion would rather not get involved directly with the regulatory process. Because of difficulties Champion has experienced in securing common carrier service, which are further explained below, it does not believe that it could avoid supplementing its private fleet should the application be denied.

[2] In mobile home manufacturing parlance, a floor represents a completed single wide or a completed section or half of a double wide. Each floor requires one tractor for movement.

Champion would prefer not to own trucks and considers them a burden. The company has tried to use Morgan, but has been displeased with the service. Hewitt related that on one occasion Morgan took three days to complete a move a distance which Champion drivers could have moved in one day. Champion does not call Morgan because of the poor service received in the North Carolina Division.

Should Home receive operating authority, Champion has stated that it would give it business due to the satisfactory service received in the past. The business given to Home would not detract from the business given to other carriers.

Mr. Hewitt stated he knows Boyd Brafford is in mobile home business and operates one or two trucks. He did not know the extent of Brafford's authority, but understands Brafford solicited business from Champion within the last week or so. Hewitt states, as assistant sales manager, it is his job to see that homes are delivered in a saleable condition. Champion moves approximately 100 mobile homes a month.

Mr. Hewitt has heard the name Cooper's Mobilehomes Moving Service, Inc., and understands he runs one or two trucks. Most of the dealers to whom Champion sells own their trucks. Since Champion is responsible for getting the mobile home to dealer in a saleable condition, the company would prefer not to request the dealer to move it. He testified to having peak periods causing drivers to be idle at times and having more moves than they can make at other times.

Becky Cridlebaugh is administrative assistant to the Division Manager of Mobile Home Industries (MHI) in Greensboro. Mobile Home Industries operates 12 retail sale centers in North Carolina and Ms. Cridlebaugh heads the repossession department in the Greensboro Division. MHI markets single wide and double wide mobile homes. The company moved 1,000 homes during the period January 1977 through August 1978. Company-owned trucks were used to deliver 60% of the new homes. Moves are generally made within a 50-mile to 75-mile radius from the different sales locations. The common carriers used most frequently for the remaining deliveries are Southern Recovery and Jack Lynch. Both provide what is considered adequate service approximately 80% of the time. Company policy is to pick up a repossessed home within three days in an attempt to avoid pilferage.

MHI has had problems obtaining satisfactory service without delays particularly for the movement of repossessed homes. Specifically, Morgan Drive Away and Jack Lynch have been unable to provide prompt service. MHI testified that it has found it must normally wait at least a week to secure service from Morgan, and that due to that experience it rarely calls on them anymore. Should Home be granted operating authority, MHI states that it would utilize their services, but by doing so would not take any business away from the other carriers presently hired.

Bill Bowden is Traffic Manager and Service Manager for Carolina Mobile Homes, Rockwell, North Carolina, a division of Carolina International. Carolina manufactures both single and double wide mobile homes. Its production capacity is eight floors per day. From June 1977 through May 1978 its actual production was 1,023 homes. Approximately 700 homes were sold through its 120 dealers to points in North Carolina. Carolina owns five trucks which transported 85% of the intrastate deliveries during this period. The remaining 15% was moved by common carrier. Carolina has operated two and one-half years in Rockwell, having been purchased from Guerdon Industries. Bowden

states that Carolina has four terminals within 70 miles of Morgan and 75% of the time Morgan did not have trucks available. Carolina had not been solicited by Cooper or Brafford.

Of the common carriers used, Carolina Mobile Homes has had several bad experiences of unsatisfactory service with Morgan. Morgan would either fail to send a truck to pick up the finished home or would perform only after lengthy delays. As an example, Carolina Mobile Homes testified that it requested Morgan to supply three trucks on August 24 and was promised this service. On August 24, however, only one truck arrived. Carolina Mobile Homes called back to Morgan and was promised the other two trucks would arrive the next day. The trucks did not show up, and finally the order was cancelled. It is estimated that delays in use of Morgan occur 75% of the time they are called. Because of its inability to secure what it considers adequate common carrier service, Carolina Mobile Homes is considering adding to its private carrier fleet.

Larry Prosser is Sales Manager for Festival Homes in Marshville, North Carolina. Festival, a subsidiary of Fleetwood Enterprises, manufactures single and double wide mobile homes. The company manufactured approximately 575 floors in the calendar year 1977 and the company is presently manufacturing three per day. Fifty-five percent of the 575 manufactured were sold in North Carolina. Ninety-eight percent of the transportation is performed by common carriers. He generally gives a two-day notice to common carriers to pick up. Transit Homes and Morgan are the two carriers used by Festival to move their intrastate deliveries. Festival had been displeased with the service provided by them, citing numerous delays in providing service and often being promised trucks by both and not receiving them. A specific incidence is cited whereby Morgan promised six trucks and delivery within three days. Actual delivery, however, was delayed for one and one-half weeks.

Festival strongly feels there is a need for additional carriers for its intrastate business. It indicates a 23% increase in the number of mobile home shipments in North Carolina as further indication of the need for additional services.

While Festival indicated that its present facilities at Marshville are being discontinued, it states that North Carolina represents one of its better markets and that a new facility will be constructed to serve North Carolina.

Eugene Butts is the operator of Crestview Mobile Manor in Midway Park, North Carolina. He rents out 50 lots to mobile home owners. He indicated having some experience with his tenants preparing to move from his park to another. Mr. Butts stated in his opinion that there is a need for additional common carrier service.

Dale Miller is a major stockholder and President of Gemini Homes in Henderson, North Carolina. Gemini manufactures single and double wide mobile homes and modular homes. Gemini has capacity to build eight floors per day. It is presently building eight to 10 floors per week with 70% distributed to its 25 retail dealers in North Carolina. Gemini leases two trucks which handle 90% of the deliveries to their dealers. The company does not wish to increase this fleet since it believes common carriers are more economical. He expressed dissatisfaction with several common carriers utilized in the past.

Carriers used in the past are Morgan Drive Away, Inc., Cooper's Mobilehomes Moving Service, Transit, National, Barrett, and Pop's. Gemini maintained and testified with reference to a list it made of service problems it has encountered. As examples of these problems, Gemini indicated that on October 4, 1977, Morgan, National, Barrett, and Chandler were called, and not one of them was able to provide service. On October 10, 20, and 31 and November 2, 7, and 10, 1977, these carriers were all called again and no service was available. These instances among others lead Gemini to the conclusion that there is inadequate common carrier service now available to meet its intrastate needs.

Gemini has used services provided by Home in interstate commerce and states satisfaction. It desires that this service be made available to handle its increasing volume of intrastate traffic.

Kenneth Marinier is Vice President and General Manager of Bonanza Mobile Homes, a retail dealer in Lumberton. Bonanza shipped approximately 215 homes during the past 12 months. The majority of the moves were within Robeson and Bladen Counties, with 21 transported to other counties in North Carolina and two going out of State. Bonanza owns and operates two trucks. Over the past 12 months, although common carriers were called to transport 40 units, service was rendered 19 times. All or most of the carriers listed in the yellow pages of the Lumberton and Fayetteville areas have been called for service. He stressed the importance of removing repossessed homes swiftly to avoid vandalism and other damages to the home. The industry experienced a market recession during the past three years but seems to be on the upsurge, with sales in August the greatest since the start of business in September 1969. A trend in North Carolina indicates increased demand for 14 wide and double wide mobile homes. Rules conditioned on size of units dictate when mobile homes can be moved.[3]

[3] In North Carolina, 14 foot wide floors can be moved from 9:30 in the morning until 2:30 in the afternoon when school is in session, Monday through Thursday. Mobile homes cannot be moved on a holiday or the day before or after a holiday. On the other hand, 12 foot wide mobile

homes can be moved during daylight hours any day, Monday through Friday, except on a holiday.

Bonanza expects its sales to increase 75% over the next three years, on the heels of a 100% jump in the past three years. It states that there is a definite trend in the industry toward production of 14 foot wide units, which, due to highway regulations, can only be transported 20 hours during a week. This will require Bonanza to utilize common carriers to a greater extent because overall volume is increasing at the same time that hours of use of its private fleet is reduced. For economic reasons Bonanza would rather expand its use of common carriers than add to its fleet, provided service becomes available. Bonanza states that it believes that it is now using available service to their capacity and that therefore a granting of this application will give it a portion of the additional service it requires.

Carson McDaniel testified that he is employed by Vintage Enterprises of Atlanta, Georgia, which operates eight retail sales lots for mobile homes in North Carolina under the name of Colonial Mobile Homes. Colonial sells both single and double wide mobile homes, most of which move in intrastate commerce to destinations in North Carolina. The lots are located in Wilmington, Fayetteville (two lots), Sanford, Monroe, Newton, Marion, and Fletcher.

The Fletcher lot, of which McDaniel is manager, sells and arranges delivery for 10 to 12 units per month and arranges for inbound delivery of 10 to 12 repossessed units per month. It will also arrange transportation for two or three units a month to be moved between the Fletcher lot and one of the other Colonial lots. Colonial operates only one truck and relies on common carrier service quite often. McDaniel stated service from common carriers has been inadequate. He stated that he called Morgan on one occasion and was informed that they do not move mobile homes in North Carolina. He has been in the mobile nome business four months.

William L. Vincent, Jr., is Administrative Manager for Homes by Fisher, Inc., subsidiary of Oakwood Homes Corporation with manufacturing facilities in Richfield and Rockwell, North Carolina. These plants manufacture 12 and 14 wide mobile homes, double wide mobile nomes, and plan to get into modular homes this fall. Both Richfield and Rockwell are located in the central part of North Carolina. Richfield is approximately 45 miles northeast of Charlotte and Rockwell is within 10 miles of Richfield. Richfield has a capacity of 14 floors per day and is producing 10 floors a day, with plans to produce 12 floors a day by February 1979. Rockwell is producing six floors a week and by February 1979 plans to produce 10 floors per week. Homes by Fisher sells its homes through 30 dealers spread throughout North Carolina. Fifty percent of last year's production was transported intrastate. Seventy percent of the moves were

performed by the 12 company trucks. Oakwood does not desire to increase its private carriage operation. Vincent testified as to delays and damages experienced when utilizing common carriers. The company has not been satisfied with the service provided by Morgan. Vincent stated that Morgan, if called upon to provide four or five trucks will normally provide only two. He complained that about half the homes Morgan delivers arrive with damage both to exterior and interior. The company has used Home for interstate moves and has found their service satisfactory. Should Home be granted authority for North Carolina, Homes by Fisher would utilize their service.

Leonard (Butch) Lane is employed by Oakwood Homes Corporation retail sales center in Wilkesboro as Sales Manager. He sells approximately 10 new homes and four used homes per month. Repossessions are low in the Wilkesboro area. Sales are generally made within a 100-mile radius of Wilkesboro. Lane owns one truck and knows of two common carrier services available in the area: Eller's Mobile Home Movers and Doug Pearce Mobile Home Movers. He characterizes the work of Pearce as unsatisfactory and of Eller as being "very satisfactory except that he is never available." He testified that he has no objection to giving other common carriers an opportunity to provide service to him.

Tommy Tyler is a dispatcher for All American of Virginia, a manufacturer of mobile homes with a plant located in Whiteville, North Carolina. The company manufactures 12 and 14 foot wide single wide and double wide mobile homes. Its production level is five floors per day. All American sells its homes to 35-40 independent dealers in the State of North Carolina which accounts for 60% of its production. Its private fleet of two owned and four leased trucks provide 90% of its transportation needs.

National Trailer Convoy and Morgan have been called on numerous occasions but have failed to provide any service. During the last week in August, Morgan was called several times for service. They promised All American that a truck would arrive within two days. However, the truck did not arrive for nine days at which time the driver for Morgan informed All American that the home to be moved did not meet his specifications and would not move it. After an argument, the driver told All American it did not wish to transport anything for them, so All American was forced to move the home itself.

All American is actively soliciting new dealers in North Carolina in an effort to expand its market. It states that it will require additional common carrier service to serve its expanding needs. It further states that should adequate common carrier service become available, it would consider reducing its private carriage operations.

Stacy Tucker operates a dealership for Tucker Mobile Home Sales and Pines Mobile Home Park and Service Company, Inc.,

in Gastonia, North Carolina. Most of the intrastate sales are within a 25-mile radius. During the past five years he transported homes from one used lot to a second used lot approximately twice a month.

Mr. Tucker has three trucks, two of which are kept usable at all times. The company has used Morgan, National, and other common carriers during the past years. Recently he has had no necessity for a common carrier. In the past year, 10 spaces were refilled after having been cleared at the Pines Mobile Home Park. Accordingly, 20 moves were made. Tucker arranges transportation for the moves. It has called on Morgan for intrastate moves and on Home for interstate moves. In the past, it also called on Don Hudson, a common carrier, to move its homes, but Hudson no longer has operating rights and cannot be used.

Robert Lee Browning is manager of Oakwood Mobile Homes of Raleigh, a retail sales center of 12 and 14 foot wide mobile homes and modular homes. Its sales territory encompasses a 100-mile radius. Sales vary between six and 14 houses per month. Oakwood owns one truck and has used Bryant's Trailer Convoy occasionally, i.e., when truck is out of order or driver is unable to work. During the 15 months Browning has been with Oakwood, he estimated having requested a common carrier six times. Oakwood called Cooper's Mobilehomes once in early March 1978. Cooper was unable to supply a truck.

Jesse Lawrence Long sells mobile homes in Brunswick County doing business as Long's Factory Outlet Mobile Homes. Long is also associated with Sea Trail Corporation. They have 1300 acres under development in mobile home lots and cottage lots. Long supplies 5% of homes being set up. He testified that recently the tax books showed 4800 mobile homes in the Brunswick County area. He stated there are no mobile home movers listed in the Shallotte (Brunswick County) telephone directory. Long believes there is a need for mobile home movers in the Brunswick County area. He has no experience with Home Transportation.

PROTESTANTS' EVIDENCE

Boyd Brafford, a Protestant, of Sanford, North Carolina, is a certificated mobile home mover who purchased authority from Dreamland Mobile Home Movers 18 months ago. He operates under Certificate No. C-888 with authority as follows:

> Between points in Lee County. From points in Lee County to points in North Carolina and reverse. Between points in Johnston, Harnett, Robeson, Scotland, Hoke, Moore, Chatham, Davidson, Montgomery, Stanly, Union, Anson, Randolph, and Orange Counties and from the above-named counties to points in North Carolina and reverse.

He has one truck and one back-up truck.* The 1975 Chevrolet truck which he operates is a 15 footer capable of moving 14 wide mobile homes.

* "Back-up" truck has no insurance, but insurance can be switched from primary truck to the back-up truck in the event of breakdown of the primary truck.

Mr. Brafford could complete 15 moves within a week but has averaged three moves a week during the past 12 months. He runs an ad "call collect" and is listed in 28 telephone books in the 15 counties in which he has authority. He has a 24-hour-a-day answering service. Brafford seeks out business by calling on factories and mobile home dealers. He states that he solicited business from Champion Mobile Homes near Lillington, approximately 15 miles away and was told they do their own moves but would call if they need an outside mover. Brafford indicated that he is ready, willing, and able to render more service than he is called on to render. There are six mobile home manufacturers in the counties in which Brafford holds authority, all of whom manufacture 14 wide mobile homes. The average distance of hauls he has made over the past six months is 15 miles. Brafford provides set-up service to his customers. He expressed the opinion that presently authorized carriers give good service.

Cooper's Mobilehomes Moving Service, Inc., a Protestant, of Clayton, North Carolina, holder of Certificate No. C-821, acquired statewide authority in 1964. Cooper testified that his equipment consists of three 1600 Internationals capable of moving single wide and double wide mobile homes. He estimates having made 10 moves per week last year using two trucks per day and indicated that he could perform 15 moves per week. One truck is not being used due to a lack of business. Cooper indicated most of his business is for individuals rather than for companies. He solicits business by advertising in telephone directories, newspapers, and with business cards.

Mr. Cooper testified that when he cannot furnish service, he refers the request to other authorized carriers including Bryant's and Morgan. None of the referred customers have expressed dissatisfaction with the authorized carriers. In his opinion, service is adequate at the present time.

W.G. Ricks of Selma, North Carolina, Johnston County, testified as a corroborating witness for Cooper. He has a small trailer park and holds authority to transport mobile homes within Johnston County and from Johnston County to all points and places in North Carolina and from all points and places in North Carolina to Johnston County. Ricks stated that his mobile homes moving business has been very slow. In August 1978 he handled 14 moves. He is equipped to move 12 wide mobile homes.

Allen Hughes is Division Manager in North Carolina for Protestant Morgan Drive Away, Inc., holder of Certificate No. C-762, with authority as follows:

Statewide - Mobile Homes by the "truck away method" and modular motel, apartment, housing, and office building units and all other types of prefabricated building units and related materials - statewide.

Mr. Hughes has held this position since 1976, but has been in the mobile home business since 1971. Jack Kent preceded Hughes as a division manager for Morgan and Hughes has known him since 1971. He testified that Kent tried unsuccessfully to start his own mobile home business. According to Mr. Hughes, Mr. Kent stated to him that he went out of the business because it was difficult to obtain business and difficult to get contractors to work due to the lack of business.

Hughes gave extensive testimony, which is capsulized below, tending to rebut several of the shipper allegations of poor service. Generally, he contends that problems have been minimal and unavoidable. Morgan is sensitive to its customers' needs at all times and eager to correct problems when they do occur. Although complaints would come through his office, he has received no complaints from witnesses who appeared here.

Hughes, in response to testimony of Applicant's witnesses, indicated:

1. Applicant's witness, Gene Hewitt, only went to work for Champion Homes on Monday prior to this hearing and the difficulty described by Hewitt occurred prior to Hewitt's employment. The delays resulted from defective and faulty construction of the units. Gene Holland, a liaison between Hughes and the factory, instructed Morgan drivers to leave the homes in Virginia to be picked up by Champion drivers. Morgan has worked with Champion before and is willing to meet the needs described by Hewitt.

2. The delays described by Bill Bowden of Carolina Mobile Homes occurred because the requests were not made to a Morgan agent until after hours. Specifically, Morgan was called on Tuesday afternoon and requested to pick up three units on Thursday morning. Morgan is presently providing service to Carolina Mobile Homes and is willing to provide any service needed.

3. Problems which occurred involving Festival Homes were due to failure by Festival to have the unit ready to be moved upon arrival of the Morgan driver. Hughes met with Applicant's witness Larry Prosser and there have been no further difficulties.

4. As to the testimony of the Applicant's witness Dale Miller, Hughes indicated that following a credit check on

Gemini Homes, Morgan required payment at pickup or delivery and Gemini did not request Morgan's services after being informed of this requirement.

5. Mr. Hughes received no complaints from Homes by Fisher, Inc., and he was unaware of any delays until he heard testimony by Applicant's witness, Mr. Vincent. The described delays were caused by weather conditions in Virginia and not by Morgan.

6. Morgan has a driver located within 20 to 30 miles of the witness Lane and other available drivers within 60 miles. Arrangements have been made to have a contractor contact Mr. Lane in order to furnish service to him.

7. The testimony of Tommy Tyler to the effect that Morgan refused to move mobile homes related to a home with inoperable brakes and defective A frames on two homes. These defects would have made movement dangerous.

8. Morgan has a driver located in Cary and is in a position to furnish any services needed by the witness Robert Lee Browning.

Mr. Hughes asserts that Morgan is now performing only 60% of the business it is capable of providing in North Carolina. He has solicited customers throughout North Carolina and is seeking additional traffic. Morgan advertises in the Woodall Directory, several national trade publications, telephone directories, mailouts, and solicits business at trade shows, by telephone, and by personal approaches.

Morgan operates terminals in Cary, Jacksonville, Charlotte, Marshville, Statesville, Mocksville, Spring Lake, Goldsboro, and Salisbury, North Carolina. There are 40 drivers available to transport homes for intrastate deliveries. They are assigned to the various terminals.

The witness expressed the opinion that service is more than adequate. He emphasized the capability of Morgan to transport all of the various mobile homes and the proficiency of Morgan drivers in performing related services. Morgan is in a position to add additional drivers and equipment if the need arises.

Based upon the foregoing and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. North Carolina General Statute 62-262(e), which sets forth the standard to be applied in passing upon this application, provides that:

If the application is for a certificate, the burden of proof should be upon the applicant to show to the satisfaction of the Commission:

(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) That the applicant is fit, willing and able to properly perform the proposed service, and

(3) That the applicant is solvent and financially able to furnish adequate service on a continuing basis.

2. A "common carrier by motor vehicle" is defined in G.S. 62-3(7) as "any person which holds itself out to the general public to engage in the transportation of persons or property for compensation, including transportation by train, bus, truck, boat or other conveyance, except as exempted in G.S. 62-260."

3. Rule R2-15(a) requires proof that "if the application is for a certificate to operate as a common carrier, the applicant shall establish by proof (i) that a public demand and need exists for the proposed service,..." "Uncorroborated testimony of the applicant is generally insufficient to establish public demand and need."

4. By the instant application, Home Transportation Company, Inc., seeks authority to transport single wide and double wide mobile homes and related items, as a common carrier, over irregular routes, statewide, in intrastate commerce in North Carolina.

5. That testimony was presented by a representative of the Applicant, and 14 supporting shippers, who are manufacturers, and retailers of mobile homes, or mobile home park operators.

6. That three parties actively protest this application: Morgan Drive Away, Inc., Boyd Brafford, and Cooper's Mobilehomes Moving Service, Inc.

7. That each of the three Protestants and one corroborating witness for Protestant Cooper, presented testimony in opposition to the granting of the application.

8. That mobile home manufacturers operating facilities in North Carolina, mobile home retailers dealing in new and used mobile homes, and mobile home owners, demand transportation services for the movement of substantial numbers of single wide and double wide mobile homes.

9. That the demand for transportation services moving mobile homes exists throughout the entire State of North Carolina.

10. That the transportation services Applicant proposes to provide are responsive to the demand for service expressed on this record.

11. That the volume of mobile homes, for which transportation services will be required, is increasing.

12. That, currently, manufacturers and retailers of mobile homes rely to a substantial extent on private carriage systems to meet their transportation requirements; and that a significant number of these shippers prefer to reduce, or, at least, limit the growth of private carriage use by increasing their use of common carrier service.

13. That because of the expected increases in available traffic, and because of shipper desires to increase their usage of common carrier service, additional transportation services of the type here proposed are needed, and the authorization of such will have a lesser effect on existing carriers than would otherwise be the case.

14. That shippers are now encountering difficulties in securing an adequate quality of common carrier service, and these problems are more than occasional or sporadic.

15. That Protestants have not on this record demonstrated that their ability to continue providing service will be unduly impaired by the authorization of an additional carrier.

16. That Protestants have failed to show that an increase in competition will be harmful or have such deleterious effects that outweigh the benefits likely to accrue to the public from the availability of additional services.

17. That Home has five existing mobile home terminals located in counties extending from Brunswick County to McDowell County. Home proposes to establish eight additional terminals from Onslow County to Buncombe County. Morgan has eight existing terminals between Onslow and Davie Counties.

18. That Applicant, by virtue of its previous operations within North Carolina, proven financial abilities, safety program, and current operations, appears fit, willing, and able to provide the services it herein proposes.

19. That a granting of this application is in furtherance of the public convenience and necessity, will serve real and substantial needs for additional motor common carrier service, and will, while serving such needs, not be unduly harmful to existing carriers.

DISCUSSION AND CONCLUSIONS

The essential question for resolution in this proceeding is whether the proposed additional motor common carrier

services for the transportation of mobile homes statewide will serve the public convenience and necessity. An affirmative answer found justified by evidence of record demands that authority issue. See G.S. 62-262(e). Applicant, as the proponent of the affirmative finding, shoulders the initial burden of proof. It must, in order to meet success, present sufficient evidence to allow this Examiner to balance the competing interests of Applicant and existing carriers; and, predicated on such evidence, conclude (1) that there exists a real and substantial public need or demand for the services proposed, (2) that fulfillment, by Applicant, of the demonstrated need for service will not unduly impair the continued operations of existing carriers to the public detriment, and (3) that Applicant is fit, financially and otherwise, willing and able to provide the services it proposed in accordance with all applicable rules and regulations. See, generally, Utilities Commission v. American Carrier Corp., 8 N.C. App. 358 (1970); and Utiltiies Commission v. McCotter, 16 N.C. App. 475 (1972). After review of the evidence here presented, which is summarized in the preceding sections of this opinion, and consideration of the arguments advanced orally at the conclusion of the hearing and subsequently on brief, this Examiner reaches the conclusion that Applicant, Home Transportation Company, Inc., has fully satisfied its assigned burden of proof, and amply demonstrated, in accordance with the overall governing principles outlined above, that a granting of this application will be in furtherance of the public convenience and necessity. Therefore, this Examiner, for reasons that will now be further discussed, recommends an Order granting the common carrier authority sought.

Applicant has presented evidence in the form of oral testimony adduced from some 14 supporting shipper public witnesses. These shippers are manufacturers of mobile homes, retailers of mobile homes, operators of mobile home parks, and those involved with repossessing mobile homes. The witnesses, each, either directly arrange for the transportation of mobile homes, or, particularly in the case of the mobile home park operators, are intimately familiar with the needs and difficulties of the individual consumer of transportation services. The testimony relates to the transportation needs for movement of new and used mobile home units, single wide units and double wide units, and to lesser extent, so-called modular prefabricated buildings. The witnesses indicate actual shipping origin points and destinations for their shipments located throughout every quadrant of the State. The witnesses, most by very specific evidence, have indicated the volume of traffic they have shipped in the recent past, and have established an adequate foundation for acceptance of their forecasts of volume, frequency, and pattern of transportation demands in the immediate and longer range future. The conclusion appears unchallenged that a substantial demand for the type of service Applicant proposes actually exists. That is, without for the moment facing the question of whether

existing services are adequately meeting the transportation needs of the public, it must be concluded that a real and substantial need exists for transportation of mobile homes statewide. Accordingly, this Examiner has stated Findings of Fact numbered 1 through 10.

The regulatory scheme demands that this Examiner consider, not only public expression of need for the type of service proposed, but also whether, and to what extent, the authorization of an Applicant to serve those needs will affect protestants. It must be borne in mind, nonetheless, that the function of this Commission is not to insulate existing carriers from the effects of competition, but rather to safeguard the public from the deleterious effects of undue, harmful, or destructive competition. As the North Carolina Supreme Court stated in Utilities Commission v. Coach Company, 261 N.C. 384 (1964):

> There is no public policy condemning competition as such in the field of public utilities, the public policy only condemns unfair or destructive competition.

It should be obvious, even to those most anxious to protect their current standing within the transportation industry, that evidence of increasing needs for service creates a strong justification for the authorization of additional service. Where increasing demand for service exists as a circumstance, it is clear that protestants stand less endangered by the authorization of new competition than would otherwise be the case. Accordingly, a finding of increasing public demand for transportation service weighs heavily in Applicant's favor. This Examiner reaches just that finding, and such is set forth as Findings of Fact numbered 11, 12, and 13.

Several of the supporting shippers, and most particularly those shippers engaged in manufacturing mobile homes, have indicated that production has been expanding and this expansion is likely to continue. Champion Homes, with manufacturing facilities at Lillington and Dunn, was one manufacturer testifying to the circumstance of increasing production. It is projecting a 25% increase, due in part to the institution of government programs facilitating the financing of mobile homes. Festival Homes, operating a plant in Marshville, similarly indicated a projected 23% increase. Bonanza Mobile Homes, Lumberton, has experienced a 100% increase in sales over the past three years and expects a 75% increase over the next three years. After considering this testimony and other testimony of record, this Examiner is convinced that a substantial increase in demand for transportation services is now occurring and may be reasonably expected to continue occurring.

It also appears an important fact to this decision that a substantial amount of the mobile home traffic now moving is being transported by private carrier operations. Virtually every manufacturer and retailer here testifying indicated

some reliance on private carriage. In some cases, up to 90% of the mobile homes being moved moved by private carriage. While it appears that most of these shippers will to some extent maintain a private carriage system, able to supply particularly flexible service to meet special exigencies, many have clearly stated a preference to decrease or limit reliance on private carriage. Gemini Homes, at Henderson, gave testimony representative of this situation. It now transports 90% of its traffic in private carriage and is using its private system to near capacity levels. Gemini expects production to increase but does not desire to expand its commitment to private carriage operations. The shippers' desires to decrease or limit private carrier reliance, coupled with the expectation of increased production, adds to the pressures for additional common carrier service.

It is also noted by this Examiner that production of 14 foot wide floors is increasing. Because of highway regulations, these wider floors can only be moved over-the-road about 20 hours a week - less hours a week than 12 foot floors. The trend toward 14 foot wide floors has accordingly caused several of the private carrier operations to be less effective in terms of handling a particular number of floors. This, too, has increased the pressures for turning to common carrier service.

There is on this record a large number of complaints that common carriers when called are now unable to respond with dispatch adequate to the shippers' needs. The large scale reliance on private carriage systems appears to result in no small part from shipper experience with attempting to use existing services. While it does not appear necessary to dwell on recitation of the various complaints, and while it is recognized that some problems will inevitably arise between carrier and shipper, the evidence of shipper dissatisfaction with use of existing services still weighs in favor of a grant of additional authority. It is noted that many of the complaints relate to attempts to secure service from Protestant Morgan Drive Away, Inc. Morgan has argued that its equipment is not being used to capacity and new services should not be authorized in such circumstances. The complaints voiced on this record refute that argument. This Examiner concludes that the shipping public is now facing significant problems in acquiring an adequate quantity of common carrier service, that these problems will likely worsen as the pressure for additional service increases, and believes Finding of Fact numbered 14 fully justified.

Findings of Fact numbered 15 and 16 are, in a sense, negative findings. It is stated, essentially, that protestants have failed to carry their burden of proof to defeat Applicant's prima facie case. Any authorization of new service will, of course, create new competition. As above indicated, however, this alone does not justify denying an application. Protestants must show that they

will suffer some real and consequential deleterious effect from the grant of new authority before such grant will be withheld. Protestants have failed on this record to sustain that burden. In fact, it not only appears that common carrier operations are currently insufficient to meet existing shipper needs, let alone increasing future needs, it also appears that the common carriers operate in a market displaying a high degree of economic concentration. The six largest carriers operating in North Carolina, of which Morgan Drive Away, Inc., is the largest, operate more than half of all the equipment now available from common carriers. The status of Morgan as the largest carrier in a highly concentrated market greatly deflates its allegation of suffering from severe competition now and inability to withstand additional competitive pressures. In the circumstances, this Examiner cannot conclude that a grant of additional authority portends undue, unfair, or destructive competition.

The existence of terminals spread throughout the State is inducive to expeditious service in transporting mobile homes intrastate. Whereas Morgan has terminals in eight counties, Home has terminals in five counties and proposes to establish terminals in eight additional counties. Having considered the evidence in its entirety this Examiner finds terminals spread throughout a large geographic area is essential to the public convenience and necessity. For the foregoing reason the Examiner makes Finding of Fact No. 17.

In considering the ability and fitness of Home to provide the service proposed, its record of operations by terms of intrastate and interstate authority affecting North Carolina has been reviewed. Also, the financial data presented, the statements of proposed acquisition of additional equipment and terminal facilities, and evidence of safety and maintenance programs have been reviewed. Home's willingness to provide service is somewhat self-evident, however, it is highlighted by the fact that it now actually serves many of the supporting shippers in handling interstate shipments. It is a fully justified finding of fact that Home is fit, willing, and able to provide the service proposed.

For the foregoing reasons, the Examiner concludes that approval of the proposed authority operations thereunder will be in furtherance of the public convenience and necessity, will not unreasonably impair the use of the highways by the general public, and will be consistent with Chapter 62 of the General Statutes.

IT IS, THEREFORE, ORDERED as follows:

1. That Applicant, Home Transportation Company, Inc., be, and is hereby, granted a common carrier certificate of public convenience and necessity to operate as an irregular route common carrier by motor vehicle in North Carolina intrastate commerce transporting Group 21, mobile homes, single wide and double wide, used for residential and

commercial purposes, including furniture, fixtures, and personal effects of owner, and all other types of prefabricated building units and related materials, between all points and places within the State of North Carolina.

2. That operations shall begin under this authority when the Applicant has filed with the North Carolina Utilities Commission a tariff schedule of rates and charges, evidence of adequate insurance coverage, and has otherwise complied with the rules and regulations of this Commission, all of which should be accomplished within 30 days of the effective date of this Order.

3. 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. A copy of the Annual Report form shall be furnished to the Applicant upon request to the Accounting Division, Public Staff, North Carolina Utilities Commission.

4. That the authorization herein set forth shall constitute a certificate until a formal certificate shall have been issued and transmitted to the Applicant authorizing the transportation herein described, and set forth in Exhibit B attached.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of February, 1979.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

Docket No. T-1330, Sub 2

Home Transportation Company, Inc.
1425 Franklin Road
Marietta, Georgia 30067

Irregular Route Common Carrier Authority

EXHIBIT B

Group 21, mobile homes, single wide and double wide, used for residential and commercial purposes, including furniture, fixtures and personal effects of owner, and all other types of prefabricated building units and related materials over irregular routes between all points and places within the State of North Carolina.

DOCKET NO. T-1672, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Contract Transporter, Inc., P.O. Box 190, Lexington, North Carolina - Application for Contract Carrier Authority to Transport Group 21, Metal Containers and Container Ends Under Contract with Reynolds Metals Company	) FINAL ORDER) ALLOWING) EXCEPTIONS) AND GRANTING) CONTRACT) CARRIER) AUTHORITY

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 12, 1979, at 9:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Tom Steed, Jr., and Noah Huffstetler, Allen, Steed and Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602

For the Protestant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: M.L. Hatcher Pickup & Delivery Services, Inc.

BY THE COMMISSION: On October 25, 1978, Robert P. Gruber, Hearing Examiner, issued a Recommended Order in this docket denying the application of Contract Transporter, Inc., for additional contract carrier authority. The authority sought by Contract Transporter Inc. (Applicant), was as follows:

> Group 21, transportation of metal containers and container ends between the Reynolds Metals Company can plant at or near Salisbury, North Carolina, and warehouses in the State of North Carolina to all points in the State of North Carolina under contract with Reynolds Metals Company.

M.L. Hatcher Pickup & Delivery Service, Inc., Greensboro, North Carolina, was permitted to intervene in this proceeding as a party protestant.

On November 9, 1978, Contract Transporter, Inc., filed Exceptions to the Recommended Order of Hearing Examiner Gruber and requested the Commission the opportunity to

present oral argument on such exceptions. By Order issued November 27, 1978, the Commission set the Exceptions for hearing.

On January 12, 1979, the Commission heard the oral argument on exceptions. The Applicant and the Protestant were present and were represented by counsel.

The evidence presented at the hearing was summarized in the Recommended Order of October 25, 1978, and will not be repeated here.

Upon a review of the entire record in this proceeding, including the testimony and exhibits presented at the hearing, and the arguments of counsel for the parties, the Commission makes the following

FINDINGS OF FACT

1. The Applicant Contract Transporter, Inc., is an authorized carrier holding contract carrier authority from this Commission to transport cans and bottles in bulk.

2. The Applicant by its application in this docket proposes to transport metal containers and container ends from the new can plant of Reynolds Metals Company near Salisbury, North Carolina, and warehouses throughout the State to all points in the State of North Carolina, including the Miller Brewing plant in Eden, pursuant to a written contract with Reynolds Metals. This contract has been filed with the Commission.

3. The new Reynolds Metals plant at Salisbury will have an initial capacity of about 600 million food and beverage cans per year and will serve as a primary source of supply for Reynolds' North Carolina markets and as a backup to the Company's metal container plants in other states.

4. The proposed service for Reynolds Metals requires the use of specialized equipment such as 45- or 48-foot extra-high cube trailers with straight floors and equipped with mechanically self-unloading roller bed systems (the Essex system). This equipment will allow the bottles and cans to be carried on pallets and in tiers and to be unloaded directly onto the Reynolds customer's roller beds installed in its plant.

5. The Applicant can and will provide the specialized equipment required by Reynolds Metals. Adequate service will require five tractors and six trailers.

6. Reynolds' major North Carolina customer for metal containers, the Miller Brewing Facility at Eden, requires deliveries in trailers equipped with the Essex mechanical self-loading system.

7. The agreement between the Applicant and Reynolds Metals provides that the Applicant will dedicate to the exclusive use of Reynolds, at the Reynolds' plant site in Salisbury for an extended period of time, specific pieces of motor vehicle equipment to be identified by make, model, year, serial number, and date of purchase. The bilateral contract has provisions whereby Reynolds will purchase the equipment dedicated to its use in the event the contract is terminated.

8. Reynolds desires Applicant's services as a contract carrier, because Reynolds needs a carrier that can handle container shipments from the Salisbury plant to the Company's warehouses at various locations throughout the State and from these warehouses to Reynolds' customers throughout the State, as well as direct shipments from the Salisbury plant to Reynolds' customers throughout the State, including the Miller brewery at Eden. Although Reynolds presently has a warehouse in Greensboro, the Company anticipates that it will have warehouses elsewhere in North Carolina.

9. Reynolds sells its cans throughout North Carolina, and the Company is actively seeking new customers in the State. Reynolds filed a list of actual or potential customers throughout the State, which will require delivery service from Reynolds plants and warehouses.

10. Reynolds Metals needs a carrier with statewide authority that can pick up and deliver shipments at any point in the State. This kind of carriage will enable Reynolds to provide a service comparable to that of its competitors. (The container market is a competitive one.)

11. The need of Reynolds Metals for a carrier with statewide authority is further shown by the fact that the Salisbury plant will be used to serve those customers in North Carolina that are normally served from the Reynolds out-of-state plants.

12. The only Protestant was M.L. Hatcher Pickup & Delivery Service, Inc., which is an irregular route common carrier operating under Certificate No. C-1015 issued by this Commission. M.L. Hatcher does not have statewide authority and therefore cannot provide the service throughout the State required by shipper Reynolds Metals.

13. The Applicant has the equipment and the necessary expertise to transport the commodities for Reynolds Metals which are involved in this Application.

14. The Protestant and other existing carriers in North Carolina are unable or unwilling to provide the service and the type of equipment that Reynolds Metals needs.

15. The traffic sought to be carried by the Applicant is not moving at the present time. There is no evidence to

support a finding that if the Application is denied, the Protestant or any other common carrier will be tendered the traffic of Reynolds Metals.

CONCLUSIONS

G.S. 62-262(i) sets forth the criteria to be used by the Commission in determining whether a permit is to be granted authorizing an Applicant to operate as a contract carrier. This section states that the Commission shall give due consideration to:

(1) Whether the proposed operations conform with the definition in this chapter of a contract carrier,
(2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,
(3) Whether the proposed service will unreasonably impair the use of the highways by the general public,
(4) Whether the Applicant is fit, willing and able to properly perform the service proposed as a contract carrier,
(5) Whether the proposed operations will be consistent with the public interest and the policy declared in this Chapter, and
(6) Other matters tending to qualify or disqualify the application for a permit.

Rule R2-10 of the Commission, which was adopted pursuant to G.S. 62-31, requires that the proposed service conform to the definition of a contract carrier as defined in G.S. 62-3(8). Rule R2-15(b) of the Commission provides as follows:

> If the application is for a permit to operate as a contract carrier, proof of a public demand and need for the service is not required; however, proof is required that one or more shippers or passengers have a need for a specific type of service not otherwise available by existing means of transportation, and have entered into and filed with the Commission, prior to the hearing or at the time of the hearing, a written contract with the applicant for said service, which contract shall provide for rates not less than those charged by common carriers for similar service.

The Commission is of the opinion, and so concludes, that the Applicant has met the burden as required by statute and by the Commission rules in support of its application.

The Commission finds and concludes that the Applicant's proposed operations conform with the definition of a contract carrier, as defined in G.S. 62-3(8). The evidence in this proceeding establishes that the transportation service required by Reynolds Metals involves the dedication of specific motor vehicle equipment to the exclusive use of Reynolds for a continuing period of time and the furnishing

of transportation services designed to meet the distinct needs of Reynolds, which services are provided for under a bilaterial contract between Applicant and Reynolds. This contract, which is a part of the record herein, provides for the dedication of specific pieces of motor vehicle equipment to be identified by serial number and by date of purchase. This equipment will be placed on the Reynolds' plant site at Salisbury to be devoted exclusively to the use of Reynolds. The contract between Applicant and Reynolds also provides that in the event Reynolds decides to terminate the contract carrier relationship then Reynolds will purchase the dedicated equipment pursuant to the terms set forth in the contract. The services proposed by the Applicant, pursuant to its contract with Reynolds, and the dedication of equipment thereto, is inconsistent with common carriage but conforms to the statutory definition of contract carriage.

The Commission finds and concludes that the Applicant is fit, willing, and able to properly perform the service proposed as a contract carrier. No serious contention was made at the hearing with respect to this issue. The evidence at the hearing shows that Applicant has been operating under contract carrier authority since 1973 to haul cans and bottles. The Applicant entered into the contract with Reynolds to provide Reynolds the service it needs by the use of specialized and dedicated equipment necessary to perform this service.

The Commission finds and concludes that the Applicant's proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates. The Recommended Order had found that the proposed operations will unreasonably impair carriers operating under certificates by diverting traffic from the Protestant M.L. Hatcher, which is a common carrier. As the Applicant pointed out in its Exceptions and in the oral argument, the traffic involved in the contract is not moving at this time, so that there is no diversion of present traffic from the Applicant. Further, there is no evidence in the record that the proposed traffic would be tendered to the Protestant. The testimony of Reynolds' witness clearly indicates that its transportation needs can only be met by the contract carriage service proposed by the Applicant.

The Commission finds and concludes that the shipper Reynolds Metals is in need of specialized service to perform the services proposed by the Applicant, and that this specific service is not otherwise available by existing means of transportation. Reynolds witness Roy H. Grabman, who is Division Manager of Transportation and Warehousing, described in detail the specialized and exacting transportation needs of the company. These needs include the use of high-cube trailers with Essex rollerbed equipment. Mr. Grabman further testified that Reynolds has gotten assurance from the Applicant that it will be in a position to station equipment in Salisbury to meet Reynolds' requirements; this will be valuable to Reynolds since

movements are frequently made on a short notice. The evidence further shows, as discussed above, that Reynolds requires a transportation service which involves the assignment or dedication of specific motor vehicles which is to the exclusive use of Reynolds for a continuing period of time. The Applicant can meet this requirement. A common carrier cannot.

The Recommended Order concluded that Reynolds did not show that it is presently in need of service in a territory not now served by the Protestant; and that the proposed contract and the present location of the Reynolds plant and warehouses would not support statewide authority. An examination of the testimony of Reynolds witness Grabman clearly shows that its transportation needs are not confined to transportation between its Salisbury plant and the Miller Brewing facilities in Eden. This testimony shows that Reynolds has the need to transport cans to points and places throughout the State to serve existing customers or new customers; the Reynolds plant at Salisbury is a new operation and the company hopes to find additional customers in the State. Furthermore, Reynolds anticipates the need from time to time to operate warehouses at other locations in the State besides Greensboro. Witness Grabman further stated: "Since we cannot foretell when or where new sales will be made or the locations of future warehousing operations, we need a carrier who can pick up and deliver shipments at any point in the State of North Carolina. This is one of the primary reasons we are supporting CTI for broad statewide authority in this proceeding." Statewide authority is also needed to enable Reynolds to serve out of its Salisbury plant those customers throughout the State that are normally served from Reynolds out-of-State plans. Reynolds thus needs, as a part of its marketing strategy to meet competition, a carrier that can immediately transport the products of the Salisbury plant to any customer in North Carolina. The Protestant Hatcher does not have statewide authority and consequently cannot provide the service required by Reynolds.

The Commission finds and concludes that the proposed operation is consistent with the public interest and policy declared in Chapter 62 of the General Statutes. The Applicant has asked for contract carrier authority. The concept of contract carriage is specifically provided for in the North Carolina Public Utilities Act in G.S. 62-3(8) and (9), G.S. 62-261(i), and the Rules and Regulations of the Commission. The Commission has found and concluded that there is a need by the shipper Reynolds for a specialized transportation service involving a dedication of specific equipment over a continued period of time to the exclusive use of Reynolds, and that this specific service is not otherwise available by existing means of transportation. Clearly it is consistent with the public interest and the policy of G.S. Chapter 62 to approve the authority sought by the Applicant.

Upon consideration of the Findings and Conclusions set forth above, the Commission concludes that the Exceptions Nos. 1-10 of the Applicant should be allowed, that the Recommended Order of October 25, 1978, should be reversed and set aside, and that the Applicant should be granted the authority sought for in its Application, which is set forth in Exhibit B attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions Nos. 1-10 to the Recommended Order filed by the Applicant on November 9, 1978, be, and the same are hereby allowed.

2. That the Recommended Order of October 25, 1978, be, and the same is hereby, reversed and set aside.

3. That the application of Contract Transporter, Inc., for contract carrier authority be, and the same is hereby, approved, and that the Applicant is granted the contract carrier authority set out in Exhibit A attached to this Order and made a part hereof.

4. That, to the extent it has not already done so, the Applicant shall file with this Commission evidence of the required insurance, list of equipment, schedules of rates and charges, certificate from the Secretary of State to transact business, designation of process agent, and otherwise comply with the rules and regulations, and institute operations under the authority granted herein within 30 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of April, 1979.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

Docket No. T-1672 Sub 2

Contract Transporter, Inc.
P.O. Box 190
Lexington, North Carolina 27292

EXHIBIT A

Contract Carrier Operating Authority

Transportation of group 21, Metal containers and container ends between Reynolds Metals Company can plant at or near Salisbury, North Carolina, and warehouses in the State of North Carolina, to all points in the State of North Carolina under contract with Reynolds Metals Company.

DOCKET NO. T-1966

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Johnny's Transfer Company, Inc., 550 Gulf Drive, Charlotte, North Carolina 28208 - Application for Contract Carrier Authority to Transport Group 21, Empty Fibre Shipping Drums, Parts and Components, Not in Bulk, Statewide	)	RECOMMENDED ORDER GRANTING OPERATING AUTHORITY

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, June 11, 1979, at 2:00 p.m.

BEFORE: Danny C. Stallings, Hearing Examiner

APPEARANCES:

For the Applicant:

Allan W. Singer, Weinstein, Sturges, Odom, Bigger, Jonas & Campbell, P.A., Attorneys at Law, 810 Baxter Street Cul-De-Sac, Charlotte, North Carolina 28202

STALLINGS, HEARING EXAMINER: By application filed with the Commission on April 3, 1979, Johnny's Transfer Company, Inc. (Applicant), 550 Gulf Drive, Charlotte, North Carolina 28208, seeks contract carrier authority as follows

Group 21, Empty Fibre Shipping Drums, Parts and Components, Not in Bulk, Statewide.

Notice of the application, together with a description of the authority sought, along with the time and place of hearing was published in the Commission's Calendar of Hearings issued April 27, 1979.

By Order in this docket dated May 22, 1979, hearing in this matter was continued to June 11, 1979.

No protests or interventions have been filed.

The matter came on for hearing at the time and place designated and Applicant offered the testimony of its President, Johnny C. Rogers, and John C. Ferguson, Transportation Pricing Analyst, Continental Forest Industries, Greenwich, Connecticut.

Based upon the evidence presented and the record in this matter as a whole, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant is an experienced motor carrier of freight operating in interstate commerce as a contract carrier under authority issued by the Interstate Commerce Commission.

2. That Applicant has provided financial statements which establish that it is solvent and financially able to provide the service sought herein.

3. That Applicant maintains a fleet of equipment suitable for transportation of the commodities involved in this application and has the facilities and personnel to service and operate such equipment.

4. That Applicant has entered into a written transportation contract with Continental Forest Industries, The Continental Group, Inc., covering the transportation proposed by this application, a copy of which was introduced in evidence at the hearing.

5. That Applicant has been serving Continental Forest Industries in interstate commerce under authority of the Interstate Commerce Commission and has provided satisfactory service to Continental Forest Industries.

Whereupon the Hearing Examiner makes the following

CONCLUSIONS

1. The proposed operations conform with the definition of a contract carrier as set forth in G.S. 62-3(8).

2. The proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers.

3. The proposed service will not unreasonably impair the use of the highways by the general public.

4. The Applicant is fit, willing, and able to properly perform the service proposed as a contract carrier.

5. The proposed operations will be consistent with the public interest and the policy declared in the Public Utilities Act.

6. The supporting shipper, Continental Forest Industries, has need for a specific type service not otherwise available by existing means of transportation.

7. The Applicant has met the burden of proof prescribed by statute and the application should be granted.

IT IS, THEREFORE, ORDERED:

1. That Johnny's Transfer Company, Inc., be, and is hereby, granted contract carrier authority in accordance with Exhibit A attached hereto and made a part hereof.

2. That Johnny's Transfer Company, Inc., file with the Commission evidence of insurance, lists of equipment, schedules of minimum rates and charges, individual written contract with Continental Forest Industries, The Continental Group, Inc., and designation of process agent to the extent it has not already done so and otherwise comply with the Rules and Regulations of the Commission prior to conducting operations under the authority acquired herein.

3. That unless Johnny's Transfer Company, Inc., complies with the requirements set forth in decretal paragraph 2 above and begins operating, as herein authorized, within a period of 30 days from the date this Order becomes effective and final, unless such time is extended in writing by the Commission upon written request, the operating authority acquired herein will cease and determine.

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 an Annual Report. A copy of the Annual Report form shall be furnished to the Applicant upon request to the Accounting Division - Public Staff.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of August, 1979.

(SEAL) NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. T-1966 - Johnny's Transfer Company, Inc.
Charlotte, North Carolina

Contract Carrier Operating Authority

EXHIBIT A Transportation of Group 21, empty fibre shipping drums, parts and components, except in bulk, between all points and places in the State of North Carolina, under individual bilateral written contract with Continental Forest Industries, The Continental Group, Inc.

DOCKET NO. T-1793, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Arlive Jackson Scoggins, d/b/a AJS Trucking Company, Route 7, Box 368 V, Salisbury, North Carolina 28144 - Motion for Temporary Authority to Transport Beer and Malt Liquor Products Between Schlitz Brewing Company, Winston-Salem, North Carolina, and Mark Four Beverage, Inc., Greensboro, North Carolina	) FINAL ORDER ON EXCEPTIONS

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 19, 1979

BEFORE: Commissioner Sarah Lindsay Tate (Chairman Robert K. Koger, Ben E. Roney, Leigh H. Hammond, John W. Winters, and Edward B. Hipp to Read Record and Participate in Decision)

APPEARANCES:

For the Applicant:

James M. Kimzey, Kimzey, Smith & McNillan, Attorneys at Law, Wachovia Bank Building, P.O. Box 150, Raleigh, North Carolina 27602

For the Protestant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: M.L. Hatcher Pickup & Delivery Service, Inc.

BY THE COMMISSION: On November 10, 1978, after hearing before Commissioners Edward B. Hipp, Presiding, John W. Winters and Leigh H. Hammond, the Commission issued an Order Granting Temporary Contract Carrier Authority to Arlive Jackson Scoggins, d/b/a AJS Trucking Company. Protestant, M.L. Hatcher Pickup & Delivery Service, Inc., on November 21, 1978, filed Exceptions and Request for Oral Argument in accordance with G.S. 62-78. On January 19, 1979, Oral Argument on Exceptions to the panel Order was heard by Commissioner Sarah Lindsay Tate, with the stipulation that all Commissioners would read the record and participate in the final decision. After hearing Oral Argument from counsel for the Applicant and the Protestant and after considering the record as a whole, including the Protestant's Exceptions as filed on November 21, 1978, the Commission is of the opinion that Protestant's Exceptions should be overruled and that the Order Granting Temporary Contract Carrier Authority should be affirmed.

IT IS, THEREFORE, ORDERED that Protestant's Exceptions are overruled and that the November 10, 1978, Order Granting Temporary Contract Carrier Authority issued in this docket be, and hereby is, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-1672, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Contract Transporter, Inc., 320 Northside Drive, Lexington, North Carolina - Motion for Temporary Authority to Transport Group 21, Bottles, Tier Sheets, Pallets, etc., Between the Facilities of Kerr Glass Company, Wilson, North Carolina, and the Facilities of Joseph Schlitz Brewing Company, Winston-Salem, North Carolina	FINAL ORDER ON EXCEPTIONS

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 12, 1979

BEFORE: Chairman Robert K. Koger and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, and Edward B. Hipp

APPEARANCES:

For the Applicant:

Noah H. Huffstetler III and Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602

For the Protestant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: M.L. Hatcher Pickup & Delivery Service, Inc.

BY THE COMMISSION: On November 10, 1978, after hearing before Commissioners Edward B. Hipp, Presiding, John W. Winters and Leigh H. Hammond, the Commission issued an Order Granting Temporary Contract Carrier Authority to Contract Transporter, Inc., Protestant, M.L. Hatcher Pickup & Delivery Service, Inc., on November 21, 1978, filed Exceptions and Request for Oral Argument in accordance with

G.S. 62-78, and on January 12, 1979, the Commission heard Oral Argument on Exceptions to the Panel Order. After hearing Oral Argument from counsel for the Applicant and the Protestant and after considering the record as a whole, including Protestant's Exceptions as filed on November 21, 1978, the Commission is of the opinion that Protestant's Exceptions should be overruled and that the Panel Order should be affirmed.

IT IS, THEREFORE, ORDERED that Protestant's Exceptions as filed on November 21, 1978, are overruled and that the November 10, 1978, Panel Order issued in this docket be, and hereby is, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-521, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Harper Trucking Company, Inc., 300 Hoke Street, Raleigh, North Carolina 27602 - Petition to Amend Certificate/Permit No. CP-38 by Substituting Contracting Shippers) FINAL ORDER

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 10, 1978 (Oral Argument on Exceptions), and on October 4, 1977 (Initial Hearing)

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Robert Fischbach, Leigh H. Hammond and John W. Winters, with Sarah Lindsay Tate, Robert K. Koger, and Ben E. Roney having read the record and participating in the decision.

APPEARANCES:

For the Respondent:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Harper Trucking Company, Inc., Thomas O. Harper, and Nancy M. Harper

For the Intervenors:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602
For: Observer Transportation Company, Inc., and Mid-State Delivery Service, Inc.

Paul F. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding arose upon the issuance by the Commission of an Order dated June 24, 1977, whereby an investigation was instituted into and concerning the lawfulness of the conduct of Harper Trucking Company, Inc. (Harper), operating as a common and contract carrier in North Carolina intrastate commerce under authorities issued to it by the Commission as set forth in Common and Contract Carrier Certificate/Permit No. CP-38. Hearing was held on October 4, 1977, before Commissioner Leigh H. Hammond, Presiding and Commissioners Tenney I. Deane, Jr.*, and Ben E. Roney. On March 22, 1978, the Panel issued a Recommended Order Granting Petition and Requiring Carrier to Comply with Commission's Rules and Regulations.

* Commissioner Tenney I. Deane, Jr., resigned from the Commission on October 17, 1977, and therefore did not participate in the Panel's decision.

On April 6, 1978, Ralph McDonald, attorney for Respondent, filed exceptions to the Recommended Order and Request for Oral Argument in accordance with G.S. 62-78. On May 10, 1978, Oral Argument on Exceptions to the Panel Order was heard by Commissioners Hipp, Fischbach, Hammond, and Winters, with the stipulation that all Commissioners would read the record and participate in the final decision. The Respondent, the Protestants, and the Public Staff were present with counsel for oral argument on the filed exceptions to the Recommended Order.

A complete history of this docket is set out by the Hearing Panel in the Recommended Order dated March 22, 1978, and is herewith adopted and incorporated by reference.

Upon a review of the entire record in this docket, the transcript of the hearings, the Recommended Order and exceptions thereto, and able arguments of counsel, the Commission makes the following

FINDINGS OF FACT

The Commission adopts Findings of Fact numbered 1 through 14 of the Recommended Order as Findings of Fact herein and overrules the exceptions of Respondent to said Findings of Fact, and the Commission further reaches the following

CONCLUSIONS

1. That a full and complete hearing has been held in this matter, Docket No. T-521, Sub 20, wherein evidence was taken and witnesses were heard, and all parties have participated in a review of the Recommended Order at the Oral Argument, and that the Commission concludes that the Findings of Fact found by the Hearing Panel in the Recommended Order of March 22, 1978, were supported by competent, material, and substantial evidence and should be adopted and affirmed.

2. That each and every one of the nine exceptions filed by the Respondent should be overruled and denied.

3. That the Conclusions of the Panel set out in the Recommended Order of March 22, 1978, are correct and proper and are adopted and incorporated herein by reference, except that said Conclusions are corrected to remove an apparent contradiction in terms appearing in the seventh paragraph of said Conclusions, at the top of page 8 of said Recommended Order, by striking out the words "and at one destination" appearing on lines 5 and 6 of said paragraph, so that said paragraph as corrected shall read as follows:

> The Commission concludes further that the "Vernon James" portion of Respondent's authority with respect to the weight limits set forth therein should be further defined as intended to limit transportation to a single shipment from one consignor, on one bill of lading, at one origin, to one consignee, with such shipments being subject to not more than four stop-offs provided the total weight of such shipment shall be no less than 5,000 pounds or 10,000 pounds as set forth and described in said authority and that these weight limits are not subject to the minimum cubic feet content as described in Rule R2-31 or any variation thereof.

1. That all of the nine numbered exceptions filed by the Respondent on April 6, 1978, are hereby overruled and denied.

2. That the Recommended Order issued on March 22, 1978, by the Hearing Panel is hereby adopted and affirmed as the Commission's Final Order as corrected above.

3. That any violation of this Order by Respondent will be prima facie evidence of willfulness and subject Respondent to penalties and actions in accordance with G.S. 62-310 and revocation of Certificate/Permit No. CP-38, pursuant to G.S. 62-112.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-825, SUB 226

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Common Carriers - Suspension and Investigation of Proposed Revision of Certain Rules Regarding Dedicated Service Hours and Detours, Scheduled to Become Effective on February 5, 1978	) RECOMMENDED ORDER CANCELLING SUSPENSION AND INVESTIGATION ORDER AND PERMITTING TARIFF FILING TO BECOME EFFECTIVE ON ONE DAY'S NOTICE

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 2, 1978, at 9:30 a.m.

BEFORE: Hearing Examiner Antoinette R. Wike

APPEARANCES:

For the Protestants:

David H. Permar, Hatch, Little, Bunn, Few and Berry, Attorneys at Law, P.O. Box 527, Raleigh, North Carolina 27602
For: Bird Oil Company, Burke Oil Company, Lamplighter Oil Company, Weil Oil Company, and Norwood Oil Company

For the Respondent:

Thomas W. Steed, Noel Huffstetler, Allen, Steed & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: N.C. Motor Carriers Association, Inc.

For the Using and Consuming Public:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

WIKE, HEARING EXAMINER: On January 5, 1978, the North Carolina Motor Carriers Association (NCMCA or Respondents) filed Supplement No. 8 to Petroleum Tariff No. 5-O, NCUC 110, containing revisions in Item 61 - Detours, Item 90-A - Loading and Unloading Time, and Item 8005-A - Dedicated Service. By Order issued January 23, 1978, the Commission suspended the involved tariff schedule, instituted an investigation concerning the lawfulness thereof, and assigned the matter for hearing on May 10, 1978. Notice of Intervention by the Public Staff was filed on February 8, 1978.

On April 5, 1978, the participating carriers requested permission to withdraw the portion of the tariff schedule

identified as Item No. 61 - Detours, which request was granted by Order issued May 1, 1978.

On April 18, 1978, Weil Oil Company (Weil), Lamplighter Oil Company, Inc. (Lamplighter), Bird Oil Company (Bird), Burke Oil Company (Burke), and Norwood Oil Company (Norwood), filed a joint Protest to the proposed revision in dedicated service rules, Item No. 8005-A of the involved tariff schedule. In addition, these Protestants moved the Commission to conduct an investigation, pursuant to G.S. 62-136, of the existing dedicated service rates, rules, and regulations found in Section 8 (Items 8000 through 8090) of Local Motor Freight Tariff No. 5-0, NCUC No. 110, and to continue the hearing previously set in this docket. A Response to the Protest and Motion was filed on May 2, 1978, by Kenan Transport Company on behalf of itself and the other motor common carrier participants in the revision.

On May 4, 1978, the Commission issued an Order allowing the Protestants to intervene, expanding the investigation into the proposed revision in dedicated service rules to include an investigation of existing dedicated service rates, rules, and regulations, and continuing the hearing to August 2, 1978. This Order also required the motor common carriers participating in the involved tariff publication to file certain data requested by the Protestants and directed all parties to prefile their testimony and exhibits.

The matter came on for hearing as scheduled. The parties were present and represented by counsel.

W. David Fesperman, Traffic Manager of Kenan Transport Company, testified for Respondents in support of the proposed rules revision and the entire dedicated service tariff. Respondents also offered as exhibits their response, including cover letter, to the Protestants' data request.

The Protestants presented the testimony of the following witnesses: Malcolm David Quick, owner-manager of Weil; Gerald Baker, president of Burke; Jack E. Cox, president of Lamplighter; Samuel E. Taylor, Sr., secretary and treasurer of Bird; and Albert Cary Outlaw, president and treasurer of Norwood.

The Public Staff put on no evidence. At the Public Staff's request, however, the Hearing Examiner agreed to take judicial notice of the Order of this Commission in Docket No. T-825, Sub 68, dated September 27, 1963, permitting the involved dedicated service rates, rules, and regulations to become effective.

Upon consideration of the foregoing, the evidence adduced at the hearing, and the entire record in this docket, the Hearing Examiner makes the following

FINDINGS OF FACT

1. By Supplement No. 8 to Petroleum Tariff No. 5-O, NCUC 110, North Carolina Motor Carriers Association, Inc., Agent, seeks to add Paragraph (f) to Item 8005 - Dedicated Service - which then would read as follows:

ITEM 8005-A (Cancels Item 8005 of Tariff)

DEDICATED SERVICE

(a) The rates, charges, rules, regulations and provisions of this Section apply to the operation of a single unit of carrier's equipment assigned to the exclusive and continuous use of one shipper and when a combination of loading and unloading facilities are available to the carrier for the operation of that equipment for a minimum of one hundred hours per week (See Paragraph f), for 20 consecutive weeks.

(b) A calendar week will begin at 12:01 a.m. Monday and run through 12:00 p.m. Saturday.

(c) The shipper will be deemed to be the party paying the freight charges.

(d) Time of arrival and/or departure of points of loading and/or unloading will be furnished shipper or carrier's forms upon request.

(e) Under the application of dedicated service, carrier will put into effect and operation a plan of unattended loading and/or unloading, only after prior written agreement between carrier, shipper and/or consignee.

(f) Hours generated by the dedicated unit of equipment in Interstate Commerce will be applicable in determining the minimum of one hundred hours per week. (PF 624-A).

2. A tariff filing by the NCMCA which proposed dedicated service rates, charges, rules, and regulations for the transportation of certain petroleum products was approved by Commission Order issued September 27, 1963, in Docket No. T-825, Sub 68. In said Order the Commission made the following FINDINGS OF FACT:

* * * *

3. The tariff filing offers a somewhat improved service to shippers who are in a position to utilize transportation service consistently and provides a reduced rate for consistent utilization of carriers' equipment and services, which rates are subject to contract between carrier and shipper.

4. The proposed rates, considered in connection with the consistent utilization of carriers' equipment, will be compensatory and are found to be just and reasonable.

3. There are approximately 80 carriers in North Carolina having intrastate authority to transport petroleum products. At the time of hearing, three of these carriers had equipment dedicated to shippers. The commingling provision was proposed by Kenan Transport Company.

4. The applicable rates for dedicated service on light petroleum products are 15% lower than the applicable mileage rates. If the dedicated equipment is not utilized 100 hours in a given week, the shipper is billed $5.00 per one-half hour or fraction thereof for the number of hours below 100.

5. The purpose of the proposed revision in Item 8005-A is to allow the carrier and the shipper to commingle interstate and intrastate traffic on one unit of equipment, with the hours generated by the interstate portion counting toward the 100 hours minimum required for the dedicated intrastate rate.

6. Dedicated service attracts business. By spreading fixed costs over more business, the carriers have achieved and will continue to achieve lower unit costs. Additional costs such as record keeping, associated with a dedicated unit, are minimal.

7. The availability of dedicated service at lower rates has encouraged many shippers to discontinue private carriage thus resulting in an expansion of common carrier operations involving petroleum products. One hundred hours per week approximates the utilization which the oil company would achieve with its own equipment. The 20-week provision of the tariff is designed to encompass the five-month period (November-March) during which more light petroleum products, i.e., heating fuels, move.

8. Generally, shippers able to take advantage of existing dedicated service rates are major oil companies, such as Exxon, Texaco, Union, Phillips, Gulf, Mobile, Amerada Hess, A.T.C. Petroleum, Kenan, and Direct.

9. For the most part, smaller entities, such as the oil jobbers, are unable to take advantage of dedicated service rates since their facilities are open only 40-50 hours per week and they are either unwilling or unable to enter into unattended loading and unloading arrangements with a common carrier.

10. The price paid by the oil jobbers for gasoline is a delivered price less a freight allowance.

11. When the dedicated rate was first approved in 1963, the oil jobbers were receiving the full common carrier rate as a freight allowance from their suppliers. Many,

therefore, chose to purchase equipment and engage in the private transport of their products from terminals to their bulk holding facilities. At that time, such operations were a lucrative part of the oil jobbers' business.

12. A few years ago, 1972 in some cases, the petroleum suppliers began to use the lower, dedicated rate as the basis for a freight allowance. This, coupled with rising equipment costs, has created an increasingly disadvantageous situation for oil jobbers who are unable to qualify for the dedicated rate.

13. By increasing the use of such lower rates by the larger shippers, the proposed rules revision will tend to exacerbate the competitive disadvantage of the smaller shippers for whom dedicated service rates remain unavailable.

Whereupon the Hearing Examiner reaches the following

CONCLUSIONS

1. The burden of proof is on the NCMCA to show that the proposed revision in dedicated service rules is just and reasonable. The burden of proof is on the Protestants to show that the existing dedicated service rates, rules, and regulations are unjust and unreasonable. G.S. 62-75.

2. The commingling provision contained in the proposed tariff will enable more petroleum shippers to qualify for dedicated service rates. Increased usage of such service will benefit the carriers by creating more traffic and lowering unit costs. The NCMCA has offered evidence showing that the subject rules revision is in the public interest. The oil jobbers have offered no evidence to the contrary. The Hearing Examiner concludes that the tariff should become effective.

3. The Commission previously has determined that existing dedicated service rates, rules, and regulations are just and reasonable. The oil jobbers have shown that not only are they effectively precluded from doing dedicated service by terms of the rules, the price they pay for certain petroleum products often is based on dedicated rates, thus eliminating any incentive to engage in private carriage and in fact raising their costs. Because their competitors more readily qualify for such rates, the oil jobbers contend that they suffer discrimination in the market place. While the oil jobbers' problem is understandable, it cannot be solved by the Commission's declaring unlawful a tariff which is lawful. The NCMCA has shown in this and earlier proceedings that dedicated service is sufficiently distinguishable from other common carrier service to warrant a difference in rates. Moreover, the oil jobbers' testimony shows clearly that their real complaint is not against the NCMCA but against the oil companies from

whom they purchase petroleum products. They must look directly to their own contractural arrangements for relief.

IT IS, THEREFORE, ORDERED as follows:

1. That Supplement No. 8 to Petroleum Tariff No. 5-8, NCUC 110, containing revisions in Item 8005-A - Dedicated Service, applying on petroleum and petroleum products, issued by the North Carolina Motor Carriers Association, Inc., Agent, issued on January 5, 1978, and filed with this Commission be, and the same is hereby, approved and permitted to become effective on one day's notice.

2. That the Order of Suspension and Investigation issued in this matter on January 23, 1978, be, and the same is hereby, cancelled, the investigation discontinued, and the proceeding dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of January, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-825, SUB 226

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Common Carriers - Suspension and Investigation of Proposed Revision of Certain Rules Regarding Dedicated Service Hours and Detours, Scheduled to Become Effective on February 5, 1978) FINAL ORDER ON EXCEPTIONS

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 2, 1979, at 9:30 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate, Robert Fischbach, and John W. Winters

APPEARANCES:

For the Respondent:

Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: N.C. Motor Carriers Association, Inc.

For the Protestants:

David H. Permar, Hatch, Little, Bunn, Jones, Few and Berry, P.O. Box 527, Raleigh, North Carolina 27602
For: Bird Oil Company, Burke Oil Company, Lamplighter Oil Company, Weil Oil Company, and Norwood Oil Company

BY THE COMMISSION: On January 5, 1978, the North Carolina Motor Carriers Association, Inc., filed Supplement No. 8 to Petroleum Tariff No. 5-0, NCUC No. 110, containing revisions in Item 61 (Detours), Item 90-A (Loading and Unloading Time), and Item 8005-A (Dedicated Service). By Order issued January 23, 1978, the Commission suspended the involved tariff schedule, instituted an investigation concerning the lawfulness thereof, and assigned the matter for hearing on May 10, 1978.

On April 5, 1978, the participating carriers requested permission to withdraw the portion of the tariff schedule identified as Item No. 61 - Detours, which request was granted by Order issued May 1, 1978.

On April 18, 1978, counsel on behalf of Weil Oil Company, Lamplighter Oil Company, Inc., Bird Oil Company, Burke Oil Company, and Norwood Oil Company filed a joint Protest to the proposed revision in dedicated service rules, Item No. 8005-A of the involved tariff schedule. In addition, these Protestants moved the Commission to conduct an investigation, pursuant to G.S. 62-136, of the existing dedicated service rates, rules, and regulations found in Section 8 (Items 8000 through 8090) of Local Motor Freight Tariff No. 5-0, NCUC No. 110, and to continue the hearing previously set in this docket.

On May 4, 1978, the Commission issued an Order allowing the Protestants to intervene, expanding the investigation into the proposed revision in dedicated service rules to include an investigation of existing dedicated service rates, rules, and regulations, and continuing the hearing to August 2, 1978.

The matter was thereafter heard as scheduled before Hearing Examiner Antoinette R. Wike, with the parties being represented by counsel. On January 5, 1979, the Hearing Examiner issued a "Recommended Order Cancelling Suspension and Investigation Order and Permitting Tariff Filing To Become Effective On One Day's Notice."

On January 22, 1979, counsel for the Protestants filed certain Exceptions to the Recommended Order and a request for oral argument thereon, setting forth Exceptions 1 through 7 and the reasons and arguments in support thereof.

Oral argument on the Exceptions was heard by the Commission on March 2, 1979.

Based upon a careful consideration of the entire record in this proceeding and the Exceptions to the Recommended Order filed by the Protestants and the oral argument heard thereon, the Commission is of the opinion that the Exceptions do not show sufficient justification or merit to constitute cause for allowing said Exceptions, and each of said Exceptions is hereby overruled and denied. The Commission further makes the following

FINDINGS OF FACT

1. By Supplement No. 8 to Petroleum Tariff No. 5-0, NCUC 110, North Carolina Motor Carriers Association, Inc., Agent, seeks to add Paragraph (f) to Item 8005 - Dedicated Service - which then would read as follows:

ITEM 8005-A (Cancels Item 8005 of Tariff)

DEDICATED SERVICE

(a) The rates, charges, rules, regulations and provisions of this Section apply to the operation of a single unit of carrier's equipment assigned to the exclusive and continuous use of one shipper and when a combination of loading and unloading facilities are available /to the carrier for the operation of that equipment/for a minimum of one hundred hours per week (See Paragraph (f)), for 20 consecutive weeks.

(b) A calendar week will begin at 12:01 a.m. Monday and run through 12:00 p.m. Saturday.

(c) The shipper will be deemed to be the party paying the freight charges.

(d) Time of arrival and/or departure of points of loading and/or unloading will be furnished shipper or carrier's forms upon request.

(e) Under the application of dedicated service, carrier will put into effect and operation a plan of unattended loading and/or unloading, only after prior written agreement between carrier, shipper and/or consignee.

(f) Hours generated by the dedicated unit of equipment in Interstate Commerce will be applicable in determining the minimum of one hundred hours per week (PF 624-A)

2. A tariff filing by the NCMCA which proposed dedicated service rates, charges, rules, and regulations for the transportation of certain petroleum products was approved by Commission Order issued September 27, 1963, in Docket No. T-825, Sub 68. In said Order the Commission made the following FINDINGS OF FACT:

* * * * * *

3. The tariff filing offers a somewhat improved service to shippers who are in a position to utilize transportation service consistently and provides a reduced rate for consistent utilization of carriers' equipment and services, which rates are subject to contract between carrier and shipper.

4. The proposed rates, considered in connection with the consistent utilization of carriers' equipment, will be compensatory and are found to be just and reasonable.

3. There are approximately 80 carriers in North Carolina having intrastate authority to transport petroleum products. At the time of hearing, three of these carriers had equipment dedicated to shippers. The commingling provision was proposed by Kenan Transport Company.

4. The applicable rates for dedicated service on light petroleum products are 15% lower than the applicable mileage rates. If the dedicated equipment is not utilized 100 hours in a given week, the shipper is billed $5.00 per one-half hour or fraction thereof for the number of hours below 100.

5. The purpose of the proposed revision in Item 8005-A is to allow the carrier and the shipper to commingle interstate and intrastate traffic on one unit of equipment, with the hours generated by the interstate portion counting toward the 100 hours minimum required for the dedicated intrastate rate.

6. Dedicated service attracts business. By spreading fixed costs over more business, the carriers have achieved and will continue to achieve lower unit costs. Additional costs such as record keeping, associated with a dedicated unit, are minimal.

7. The availability of dedicated service at lower rates has encouraged many shippers to discontinue private carriage thus resulting in an expansion of common carrier operations involving petroleum products. One hundred hours per week approximates the utilization which the oil company would achieve with its own equipment. The 20-week provision of the tariff is designed to encompass the five-month period (November-March) during which more light petroleum products, i.e., heating fuels, move.

8. Generally, shippers able to take advantage of existing dedicated service rates are major oil companies, such as Exxon, Texaco, Union, Phillips, Gulf, Mobile, Amerada Hess, A.T.C. Petroleum, Kenan, and Direct.

9. For the most part, smaller entities, such as the oil jobbers, are unable to take advantage of dedicated service rates since their facilities are open only 40-50 hours per week and they are either unwilling or unable to enter into

unattended loading and unloading arrangements with a common carrier.

10. The price paid by the oil jobbers for gasoline is a delivered price less a freight allowance.

11. When the dedicated rate was first approved in 1963, the oil jobbers were receiving the full common carrier rate as a freight allowance from their suppliers. Many, therefore, chose to purchase equipment and engage in the private transport of their products from terminals to their bulk holding facilities. At that time, such operations were a lucrative part of the oil jobbers' business.

12. A few years ago, 1972 in some cases, the petroleum suppliers began to use the lower, dedicated rate as the basis for a freight allowance. This, coupled with rising equipment costs, has created an increasingly disadvantageous situation for oil jobbers who are unable to qualify for the dedicated rate.

13. By increasing the use of such lower rates by the larger shippers, the proposed rules revision will tend to exacerbate the competitive disadvantage of the smaller shippers for whom dedicated service rates remain unavailable.

CONCLUSIONS

The Commission concludes from a careful review of the entire record and the Exceptions filed by the Protestants that the findings, conclusions, and ordering paragraphs contained in the Recommended Order of the Hearing Examiner are all fully supported by the record. It is the further conclusion of the Commission that each of the Exceptions 1 through 7 should be overruled and denied and that the Recommended Order dated January 5, 1979, should be affirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the Exceptions 1 through 7 to the Recommended Order herein filed by the Protestants be, and the same are hereby, overruled and denied.

2. That the Recommended Order in this docket dated January 5, 1979, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION
This the 11th day of April, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-825, SUB 231

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Super Trans, Inc., Charlotte, North Carolina - Suspension and Investigation of Proposed Reductions in Rates Applying on Plastic Film and Sheeting, Synthetic Textile Raw Materials, and Textile Waste Materials, Scheduled to Become Effective on May 9, 1978	ORDER APPROVING REDUCED RATES FOR ACCOUNT OF SUPER TRANS, INC.

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 9, 1978

BEFORE: Commissioner Robert Fischbach, Presiding; and Commissioners Sarah Lindsay Tate and Ben E. Roney

APPEARANCES:

For the Respondent:

Eric Meierhoefer, Attorney at Law, Suite 423, 1511 K Street, N.W., Washington, D.C. 20005

Gary S. Parsons, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

Sherman D. Schwartzberg and John W. Joyce, Attorneys at Law, Southern Motor Carriers Rate Conference, 1307 Peachtree Street, N.E., Atlanta, Georgia 30309
For: Motor Carrier Members of the North Carolina Intrastate Regular Route Rate Committee and Southern Motor Carriers Rate Conference

Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27609
For: North Carolina Motor Carriers Association and Southern Motor Carriers Rate Conference

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On April 7, 1978, North Carolina Motor Carriers Association, Inc., Agent, P.O. Box 2977, Raleigh, North Carolina 27602, for and on behalf of Sherman & Boddie, Inc., and Super Trans, Inc., filed with the Commission Supplement No. 11 to its Class and Commodity Tariff No. 10-G, NCUC No. 113, scheduled to become effective May 9, 1978, publishing Item Nos. 156835, 502501 through 502505.08, 600130, and 600520, proposing reductions in certain rates applying on North Carolina intrastate transportation of plastic sheeting, synthetic textile raw materials and textile waste materials and by-products as specifically described in said Items.

On April 28, 1978, Thomas W. Steed, Jr., of Allen, Steed and Allen, P.A., Suite 701, Branch Bank Building, Post Office Box 2058, Raleigh, North Carolina 27602, for and on behalf of member carriers of the Regular Route Rate Committee whose tariff publishing agent is Southern Motor Carriers Rate Conference, Inc., Post Office Box 7219, Atlanta, Georgia 30309, and the Irregular Route Rate Committee whose tariff publishing agent is North Carolina Motor Carriers Association, Inc., Agent, 219 West Martin Street, Raleigh, North Carolina 27602, filed a Petition seeking suspension and investigation of the above-mentioned tariff items. On May 5, 1978, counsel for Super Trans, Inc., filed a reply to the Rate Committee's Petition for Suspension and Investigation.

By Order issued May 11, 1978, the Commission, being of the opinion that the proposed reductions in rates proposed by Applicants are matters affecting the public interest, concluded that an investigation should be instituted into the involved tariff items and the matter assigned for hearing to determine whether said items are just, reasonable, and otherwise lawful.

On June 13, 1978, counsel on behalf of the Public Staff - North Carolina Utilities Commission filed notice of and was permitted to intervene.

On July 31, 1978, North Carolina Motor Carriers Association, Inc., for and on behalf of Sherman and Boddie, Inc., filed Application No. 567 with the Commission requesting that Sherman and Boddie, Inc., be allowed to withdraw its participation in the proposed reduced rates. By Order issued August 15, 1978, the Commission allowed the application by Sherman and Boddie permitting it to withdraw as a respondent in this proceeding.

The matter came on for hearing as previously ordered by the Commission on November 9, 1978, at 9:30 a.m. The Commission received requests from counsel of the Protestants to withdraw its protests to Item 600515 and from counsel of Respondent to withdraw Item 156835 from its application.

The Respondents offered the testimony and exhibits of W.G. Reese, III, President of Super Trans, Inc., which reflect,

among other things, that he requested to become a party to the tariff of Custom Transport, Inc., but was refused, after which he published the rates herein involved; that he had to be competitive rate-wise to obtain traffic; that September 1978 revenues were $30,858 and expenses were $28,049, or a profit of $2,808; for October 1978 revenues were $25,169 and expenses were $23,857, or a profit of $1,312; for July and August 1978, revenues from involved traffic amounts to $3,361 and $6,020, respectively; that his company was losing monies prior to hauling the involved traffic but is now making a profit; that he operates 13 trucks, some of which are owner-operators; and that the owner-operators get 65% of the gross revenues for loads hauled.

The Protestants offered the testimony and exhibits of the following witnesses: Daniel M. Acker, Manager of the Cost and Statistical Department, Southern Motor Carriers Rate Conference; and Bruce Hooks, Assistant Traffic Manager, Thurston Motor Lines, Inc.

Following the hearing and upon a review of the evidence, an examination of the Proposed Findings of Fact and Conclusions submitted by the parties, and the entire Commission record regarding this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That the respondent motor common carrier in this docket is engaged in the transportation of general commodities in North Carolina intrastate commerce and is subject to the jurisdiction of this Commission under the Public Utilities Act.

2. That the tariff filed with the Commission on April 7, 1978, by the North Carolina Motor Carriers Association, Inc., on behalf of respondent and accompanying triplicate notice and letter of transmittal were lawfully filed and in compliance with Rules R4-3 and R4-4 of the Commission's Rules and Regulations.

3. That the tariffs filed and supporting documentations submitted by respondent contain material data necessary for a determination by the Commission of the justness and reasonableness of the reduced rates proposed in this proceeding.

4. That the respondent filed a tariff comparable with the then prevailing rates of Custom Transport, Inc., as published in its Tariff Number 28.

5. That the respondent was allowed to assess the proposed reduced rates upon the applicable intrastate traffic beginning May 9, 1978.

6. That respondent's statement of income for the year ending June 30, 1978, showed a net loss after taxes of $57,457.61.

7. That during August, September, and October 1978, months where the involved traffic moved pursuant to the new rates, the respondent showed a profit of $5,077.61.

8. That respondent experienced an operating ratio of 94.78% and a profit of $1,311.85 for October 1978.

9. That respondent estimated its operating ratio would have exceeded 97% and its profit would have been reduced to $505.61 for October 1978, if the revenues and costs generated by the proposed rates had been subtracted from its income statement for that month.

10. That respondent is a Class III motor common carrier engaged in purely intrastate operations.

11. That the cost statistics presented by the protestants were based upon the operating experiences of selected Class I and Class II motor common carriers engaged in intra- and interstate operations throughout nine southern states.

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

CONCLUSIONS

Super Trans, Inc., is a Class III motor common carrier regulated by this Commission and is required to file with this Commission a tariff of rates and charges applicable to the transportation services described in its Certificate Number C-303.

Super Trans, Inc., has filed and been permitted to assess certain reduced tariff rates on plastic film sheeting, synthetic textile raw material, and textile waste materials as described and set forth in North Carolina Motor Carriers Association, Inc., Tariff No. 10-G, NCUC Item Nos. 156835, 503501-502505.08, 600130, 600515, and 600520.

Super Trans, Inc., has requested permission to withdraw Item 156835 from its proposed tariff application.

Super Trans, Inc., has agreed to amend the commodity description in Item 600130 to read: "synthetic textile raw materials."

Protestants have requested permission to withdraw their protests to Respondent's tariff filing insofar as Item 600515 is concerned.

The Commission is of the opinion that Super Trans, Inc., has proven the proposed reduced rates are compensatory based upon its own operating experiences.

The protestants have failed to establish that the revenues and operating costs presented by them for selected Class I and Class II motor common carriers engaged in intra- and interstate operations throughout nine southern states moving under the proposed reduced rates would be comparable to the actual operating experiences of a single Class III motor common carrier engaged in purely intrastate operations.

The Commission has found there exists for Super Trans, Inc., certain inherent advantages due to its size and type of operation which enables the Respondent to perform the services under the proposed reduced tariff rates and still receive revenues sufficient for it to provide such service without detriment to its overall adequacy or efficiency of service.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application by Respondent be hereby amended by deleting Item 156835 from its tariff filing and amending tariff Item 600130 to apply only to "synthetic textile raw materials."

2. That the Respondent involved herein seeking reduced tariff rates be, and hereby is, authorized to publish the appropriate tariff schedules providing for the reduced rates set forth in its amended application, provided that such tariff filing be in accordance with R4-5(e) of the Commission's Rules and Regulations governing the construction, posting, and filing of transportation tariff schedules.

3. That the publications authorized herein may be made effective on one day's notice to the Commission and the general public.

4. That upon the publications herein authorized having been made, the investigation in this matter be discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-825, SUB 237

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Motor Common Carriers - Suspension and Investigation of Proposed Increases in Rates and Charges Applicable to Shipments of General Commodities, Including Minimum Charges	) ORDER GRANTING INCREASE

HEARD IN: The Hearing Room of the Commission, Dobbs Building, Raleigh, North Carolina, on April 3, 1979, at 9:30 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Lindsay Tate and Ben E. Roney

APPEARANCES:

For the Applicants:

Sherman D. Schwartzberg, John W. Joyce, 1307 Peachtree Street, N.E., Atlanta, Georgia 30309

Thomas W. Steed, Jr., Allen, Steed & Pullen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602

For the Intervenors:

Albert R. Bell, Maupin, Taylor and Ellis, P.A., Attorneys at Law, P.O. Box 829, Raleigh, North Carolina 27602
For: The North Carolina Traffic League, Inc., Drug and Toilet Preparation Traffic Conference, National Small Shipments Traffic Conference, Inc., North Carolina Textile Manufacturers Association, Inc., and The Textile Traffic Association, Inc.

James M. Jones, Jr., Textile Traffic Association, Inc., 400 Wendell Court, S.W., Suite 400, P.O. Box 44068, Atlanta, Georgia 30336
For: North Carolina Textile Manufacturers Association, Inc., and The Textile Traffic Association, Inc.

Daniel J. Sweeney, Belnap, McCarthy, Spencer, Sweeney & Harkaway, 1750 Pennsylvania Avenue, N.W., Washington, D.C. 20036
For: North Carolina Traffic League, Inc., National Small Shipments Traffic Conference, and Drug and Toilet Preparation Traffic Conference

Stephen G. Kozey, Public Staff Attorney, Public Staff - North Carolina Utilities Commission, 430 North Salisbury Street - Dobbs Building, Raleigh, North Carolina
For: The Using and Consuming Public

BY THE COMMISSION: On November 1, 1978, the General Commodities Motor Carriers, through their agents, the North Carolina Motor Carriers Association, Inc., Motor Carriers Traffic Association, Inc., and Southern Motor Carriers Rate

Conference, Inc., filed with the Commission the following North Carolina intrastate tariff supplements:

Supplement No. 4 to Tariff No. 10-H, NCUC No. 117 issued by North Carolina Motor Carriers Association on behalf of its participating carriers; and

Supplement No. 2 to Tariff No. 3-J, NCUC No. 45, issued by Motor Carriers Traffic Association on behalf of its participating carriers.

Supplement No. 5 to Tariff No. 304-B, NCUC No. 304-B issued by Southern Motor Carriers Rate Conference, Inc., on behalf of its participating carriers;

Each supplemental tariff publication provides for increases in rates and charges by amending the present truckload (TL), less-than-truckload (LTL) and any quantity (AQ) commodity rates, accessorial charges and rates and minimum charges. These tariffs were scheduled to become effective on December 15, 1978. The matter was designated as Docket No. T-825, Sub 237. The increases in rates and charges proposed by the carriers are as follows:

FOR SHIPMENTS WEIGHING	PERCENTAGE INCREASE
Less than 5,000 lbs.	20%
5,000 lbs. or more	10%
Volume or Truckload	10% (min. 2¢/Cwt.)
Accessorial Charges and rates	15%

MINIMUM CHARGE:
Where the Rate Basis Number Is:

	The Minimum Charge Will Be	Percentage Increase
1 to 100	$10.25	10.9
101 to 200	$10.80	10.0
201 to 300	$11.50	10.6
301 and over	$12.00	9.4

By Order of the Commission of December 13, 1978, the matter was suspended, and an investigation instituted and assigned for hearing.

On December 4, 1978, the North Carolina Textile Manufacturers Association, Inc., filed a protest and petition for suspension. On December 11, 1978, the North Carolina Traffic League, Inc., filed a similar protest and petition. The Commission received numerous protests to the proposed increases by letter from affected shippers. The Public Staff subsequently gave notice of its intervention.

On March 2, 1979, Daniel M. Acker, as agent for the participating carriers submitted a verified statement to comply with the Commission's requirement in Rule R1-17(b)(9)(g), stating that the rate increases requested were

not violative of the Presidential anti-inflation guidelines.

On March 9, 1979, the following parties filed a protest and petition to intervene:

North Carolina Traffic League, Inc.,;
Drug and Toilet Preparation Traffic Conference, Inc.; and
The National Small Shipments Traffic Conference, Inc.;
(This group of three parties shall hereinafter be referred to as the "Intervenors.")

The North Carolina Textile Manufacturers Association, Inc., and The Textile Traffic Association, Inc.
(This group of two parties shall hereinafter be referred to as the "Textile Intervenors.")

The joint petition to intervene was allowed by Order dated March 21, 1979.

By telegram of April 2, 1979, E.I. Dupont de Nemours & Co., Inc., advised the Commission that it could not enter an appearance at the hearing due to emergencies caused by the national teamster strike, but that it wished to enter a statement into the record that the company did not oppose any increase the Commission found to comply with the Presidential wage and price guidelines.

The matter was called for hearing on April 3, 1979, at 9:30 a.m., in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. The Applicant Motor Carriers, the Public Staff, and the Intervenors were all present and represented by counsel.

Before any testimony was presented, Intervenors moved to dismiss the application on the ground that the proposal resulted from the type of collective carrier action which had been found to violate the Federal antitrust laws in an opinion rendered on March 20, 1979, by the United States District Court in United States v. Southern Motor Carriers Rate Conference, Civil Action No. 76-1909A. Respondents argue that the motion to dismiss based upon this opinion should be denied: (1) because the instant proposal resulted from collective carrier action which occurred several months prior to the issuance of the Court's opinion under a collective rate-making agreement approved by this Commission; (2) because the Court has not yet ordered any specific relief at this stage of the litigation; and (3) because the activities occurring subsequent to the collective carrier action are exempt from the operation of the antitrust laws under the Noerr-Pennington doctrine. The Commission reserved its ruling on the motion and requested the Applicants to furnish copies of any proposed orders which were to be submitted to the Court in the SMCRC case.

On May 18, 1979, Applicants filed a motion to supplement the record with the testimony of Sherman D. Schwartzberg, General Counsel for the Southern Motor Carriers Rate

Conference. The purpose of this motion was to supply the Commission and all parties of record with copies of the proposed order of relief which the plaintiff (United States Department of Justice) indicated would be submitted to the Court in the SMCRC case. This motion is granted, and the supplemental testimony of Sherman D. Schwartzberg, with attached Exhibits A and B, will be accepted as part of the record in this proceeding.

As part of his testimony, Mr. Schwartzberg attached a copy of a rough draft of a proposed order of relief which the plaintiff in the SMCRC case had submitted to the defendants for their comments. Paragraph V(d) of this document indicates that the Department of Justice had originally requested that all presently pending applications before the State regulatory commissions be terminated. However, Mr. Schwartzberg also submitted a copy of a document which the Department of Justice had designated as its proposed final order of relief in the SMCRC case. A letter from plaintiffs' attorney to all parties of record indicates that the proposed final order had been approved by the Department of Justice, antitrust division, and that it represented plaintiffs' final position regarding the appropriate relief to be entered in the SMCRC case. This document indicates that the Department of Justice had eliminated from the proposed final order its initial request that pending intrastate applications be terminated. Applicants on brief point out that the SMCRC case is a civil action, and consequently, the Court would not order any greater relief than requested by the plaintiff.

Based on the foregoing, the Commission finds that the Motion to Dismiss the instant application should be denied. While the Commission is not unmindful of the possible effect of an order in the SMCRC case on collective ratemaking in the future, it appears that the conduct complained of by Intervenors occurred several months prior to the filing of the instant application and was fully in compliance with the law as it was understood to be at that time. In addition, the testimony indicates that a subsequent Court order in the SMCRC case will not reach to disallowing the continuance of pending intrastate applications. The Commission has a statutory duty to ensure that the citizens of this State continue to be provided with a viable common carrier transportation system, and accordingly, the Commission finds that the continuance of this investigation is a necessary adjunct to the fulfillment of its statutory obligations.

At the hearing in this matter, Applicant motor carriers presented the testimony and exhibits of the following witnesses in support of the application:

Robert A. Hopkins, Secretary of the North Carolina Intrastate Rate Committee;
Daniel M. Acker, Manager of the Cost and Statistical Department of Southern Motor Carriers Rate Conference;
Charles R. McGowan, Cost Analyst, Southern Motor Carriers

Rate Conference;
John V. Luckadoo, Director of Traffic, Thurston Motor Lines, Inc.;
Loy J. Foster, Traffic Manager, Frederickson Motor Express Corporation;
W.D. Snavely, Vice President and Traffic Manager, Standard Trucking Company; and
Robert E. Fitzgerald, Vice President-Traffic, Estes Express Lines.

The Intervenors presented the testimony of Gerald W. Fauth, Jr., President of G.W. Fauth & Associates, Consultants on Transportation. The Textile Intervenors presented the testimony of Alvin J. Mullins, Chief Rate Analyst of the Textile Traffic Association.

The Public Staff presented the testimony of James L. Rose, Transportation Rate Specialist, and James C. Turner, Coordinator of the Transportation Section of the Accounting Division, on behalf of the using and consuming public.

Based upon the record in this proceeding, the testimony and exhibits introduced at the hearing, the Commission makes the following

FINDINGS OF FACT

1. That the motor carriers of general commodities which are parties to the tariff publications previously enumerated, all of whom hold certificates from this Commission for operating authority, are properly before this Commission for an increase in their rates and charges pursuant to Chapter 62 of the General Statutes of North Carolina.

2. That the proposed increase does not violate President Carter's Wage and Price Guidelines.

3. That the total present North Carolina intrastate issue traffic expenses, which have been updated to reflect April 1978 labor expenses and August 1978 nonlabor expenses, are $41,874,764 for the study carriers and approximately $56,664,092 for all participating carriers.

4. That tht total present North Carolina intrastate issue traffic revenues are $37,069,301 for the study carriers, and approximately $50,161,435 for all participating carriers.

5. That the proposed increase on an annual basis produces $5,492,252 in additional revenue for the study carriers, and approximately $7,432,005 in additional revenue for all participating carriers.

6. That the present operating ratio with revenues and expenses updated to current levels is 114.29% and the operating ratio which would be generated by the proposed

increase in rates and charges for all carriers would be 99.54%.

7. That the proposed increase has been shown to be just and reasonable.

8. That the cost study carriers' North Carolina intrastate test year revenue and expense relationship described hereinabove are reasonably representative of all North Carolina intrastate general commodity freight carriers that participate in the tariffs at issue in this proceeding.

9. That the application in this proceeding was filed on November 1, 1978, under the rules of the Utilities Commission, prior to the interim judgment in the United States v. Southern Motor Carriers Rate Conference, Inc., et al., supra, entered March 20, 1979, and the application was set for investigation and hearing by Order of the Utilities Commission entered December 13, 1978, and was pending for current investigation and hearing at the time of said interim Federal judgment; that a review of said Federal judgment and the proposed final judgment filed by the plaintiff United States Department of Justice does not indicate any intention to bar needed and necessary State action to preserve essential common carrier motor carrier service to the public in North Carolina.

10. That the uncontroverted facts in this case show that the Applicant Motor Carriers are losing money under the present rates, that they have an obligation to continue to provide service to the public under North Carolina State franchises, and that to further withhold action on the pending application for rate increase and to require continued service at a loss would constitute a confiscation of the Applicants' property in violation of the Constitution of the United States.

11. That the present rates of the Applicant Motor Carriers provide inadequate and insufficient revenue to pay the expenses of providing the service of the Applicants under their intrastate motor carrier franchises and are unjust and unreasonable.

12. That it is necessary in the public interest to increase the Applicants' rates in order to continue to provide essential service to the public by motor common carriers in intrastate service in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding comes from the verified application. The finding is essentially informational, procedural, and jurisdictional in nature and is affirmed by the Commission's denial of the Intervenors' Motion to Dismiss the application.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

By Order dated January 23, 1979, this Commission amended its Rule R1-17 to require all utilities filing rate increase applications with the Commission to certify that the requested increase complies with the anti-inflation standard promulgated by the Council on Wage and Price Stability or to demonstrate why these standards should not apply. In response to this request, Applicants presented the testimony of Mr. Acker which indicated that the price guidelines were not applicable to the instant application because pro forma studies indicated that North Carolina intrastate traffic has been and continues to result in operating losses to the carriers. His testimony indicated that the SMCRC Continuing Traffic Study for the six study carriers produced the following North Carolina intrastate operating results for the last three study years:

STUDY YEAR	NCUC DOCKET NO.	OPERATING RATIOS NORTH CAROLINA TRAFFIC ACTUAL	PRESENT	PROPOSED
1975	T-825, Sub 210	111.8	105.6	98.5
1976	T-825, Sub 225	114.8	112.85	99.1
1977	T-825, Sub 237	117.6	114.29	99.5

The testimony indicated that the price guidelines are applicable only to traffic which contributes to the carriers' profit.

Intervenors' witness Fauth testified that it was incorrect to apply the guidelines solely to North Carolina intrastate traffic indicating that the total system revenues and expenses of the six study carriers would have been utilized. This witness testified that if system data had been utilized as the basis for determining profitability, the proposed increase would be in violation of the price guidelines.

While the Commission is aware that the overall percentage impact of the proposal is greater than would be allowed under the price guidelines, the Commission concludes that the proposed increase is not in violation of such price guidelines. This finding is based on the fact that an increase in compliance with the price guidelines based on total system profitability would continue to generate losses on North Carolina intrastate traffic. To apply the guidelines in this manner would not only prevent the carriers from recovering their expenses on North Carolina intrastate traffic, but would also require this Commission to retreat from its statutory responsibility to ensure that North Carolina intrastate rates are just and reasonable. Accordingly, the Commission concludes that the proposed increases on North Carolina intrastate rates and charges are not subject to the voluntary price guidelines.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3, 4, 5, 6, AND 7

In an effort to demonstrate the relative compensativeness of North Carolina intrastate traffic, the Applicants presented the testimony of Daniel M. Acker and Charles R. McGowan, both employees in the Cost and Statistical Department of Southern Motor Carriers Rate Conference. The purpose of this testimony was to develop cost-revenue comparisons on North Carolina intrastate traffic and to demonstrate the need for additional revenue based on those comparisons.

Mr. Hopkins presented testimony comparing the North Carolina intrastate rate structure with that of neighboring states, and interstate rates. Similarly, the Intervenors offered the testimony of Gerald W. Fauth, Jr., concerning the revenues and expenses for the carriers' systemwide operations. While no objection was made to the submission of this information, the Commission concludes that it may not consider such information in determing just and reasonable rates for intrastate service. Utilities Commission v. Tobacco Association, 2 N.C. App. 657, 163 S.E.2d 638 (1968); accord Utilities Commission v. Motor Carriers' Traffic Association, 16 N.C. App. 515, 517, 192 S.E.2d 580, 581 (1972); See also Utilities Commission v. Lee Telephone Company, 263 N.C. 702, 709, 140 S.E.2d 319, 324-325 (1965); and Smith v. Illinois Bell Telephone Company, 282 U.S. 133, 51 S.Ct. 65, 75 L.Ed. 255 (1930). Consequently, testimony as to higher rate structures in other states and carrier systemwide profitability played no part in this or any other of the Commission's findings.

Mr. Acker testified that the cost-revenue comparisons were based upon the data derived from samples of North Carolina intrastate traffic movements of general commodities based on the experiences of the following six cost study carriers:

1. Estes Express Lines
2. Fredericksons Motor Express Corp.
3. Old Dominion Freight Line
4. Overnite Transportation Company
5. Standard Trucking Company
6. Thurston Motor Lines, Inc.

Mr. Acker testified that the procedures used in gathering and processing of the traffic study data were designed by Dr. W. Edwards Deming, a noted sampling expert and consultant for the traffic study. A substantial body of additional testimony was introduced to demonstrate the measures taken to ensure the accuracy and consistency of the traffic study data. Mr. Acker testified that the six cost study carriers accounted for approximately 73.9% of the total actual general commodity revenue earned within the State of North Carolina in the sample year 1977.

ACTUAL REVENUE AND EXPENSES FOR THE TEST YEAR

Mr. Acker testified that the study year 1977 expenses were arrived at by the each-to-each costing method which applies each carrier's cost to that carrier's own traffic. He testified that the study year 1977 was the latest traffic data available at the time the application was filed.

In Mr. Acker's Appendix DMA-10, Sheet 1, he indicates that for the study year 1977, the cost study carriers realized actual North Carolina intrastate total expenses of $37,813,601 and earned actual revenues of $32,153,037, producing a composite operating ratio of 117.61%.

The Public Staff presented the testimony of James L. Rose, Transportation Rate Specialist, and James C. Turner, Coordinator of the Transportation Section of the Accounting Division, concerning the Continuing Traffic Study and the data generated from that study. Mr. Rose testified that the Public Staff had requested the Applicants to furnish to the Public Staff copies of the Continuing Traffic Study records and the computer tapes utilized in the preparation of the cost-revenue comparisons. Mr. Rose then testified that the Public Staff had processed the Continuing Traffic Study tapes through the Public Staff's automatic traffic costing programs in order to determine that the programs had not been altered materially since the last general rate proceeding, that traffic cost determined through the Public Staff's costing system matched those furnished by the applicant, and that the revenue-expense comparisons testified to by applicants were essentially the same as those produced through the Public Staff's automatic traffic/cost program. Mr. Turner testified that the Public Staff had audited the 1977 annual reports along with certain books and records of the cost study carriers and determined that the basic data used in the automated traffic costing system was reliable for the purpose of this proceeding. The Public Staff witnesses testified that the differences between the actual revenues and expenses for the test year 1977 as presented by the carriers and those generated by the Public Staff through its own independent analysis were insignificant and would have no appreciable effect on the cost-revenue comparisons.

Intervenors' witness Fauth testified that the Commission should measure the need for any additional revenue in this proceeding by the total system operating results of the six traffic study carriers. This witness reasons that because the study carriers' system returns allegedly fail to indicate the need for an additional increase, there is no need to examine the compensativeness of North Carolina intrastate traffic. Applicants point out that North Carolina intrastate traffic contributes only 10.13% of the total system traffic of the study carriers and with an operating ratio well in excess of 100 percent on North Carolina intrastate traffic, they aver that this traffic does not contribute to the system return on equity.

Regarding this issue, the Commission would remind the parties that it has statutory obligation to measure revenue need on North Carolina intrastate traffic by the relative compensativeness of that traffic. For this purpose, the Commission finds that the North Carolina intrastate operating ratio is the dominant measure of revenue need on North Carolina intrastate traffic, and accordingly, the Commission concludes that system operating results are not probative of this issue.

The Commission further concludes that the cost study carriers' traffic/cost revenue data consisting of 73.9% of total North Carolina intrastate revenues is representative of total North Carolina intrastate general commodity traffic experiences for the study year 1977. The Commission further concludes that the actual operating ratio for overall North Carolina intrastate general commodity traffic for the study year was 117.61%.

UPDATED REVENUES AND EXPENSES

Both carrier witnesses, Acker and McGowan, presented testimony concerning the updating of expenses and revenues of the cost study carriers. Mr. McGowan testified that the base year labor expenses had been restated to the present pro forma level by the measurement of the cost effect of wage increases as revealed through special studies conducted by the six North Carolina study carriers. Mr. McGowan testified that the labor restatement was based upon the change in wage and fringe benefit levels from April 1977 to April 1978. This testimony showed that from the study period in April of 1977 to the study period in April of 1978 the carriers incurred an overall increase in labor expenses of 10.46%.

The testimony of witnesses Acker and McGowan indicated that nonlabor expenses in the base year 1977 were updated by measuring the rate of change in the Wholesale Price Index - Industrial Commodities from the midpoint of the study year 1977 to August 1978. Intervenors generally took issue with the use of the WPIIC as a means for restating nonlabor expenses, claiming that the use of such index overstates the carriers' nonlabor costs. The Applicants counter by pointing out that the WPIIC has been utilized and found acceptable in numerous other administrative proceedings as a reliable device for projecting short-term changes in nonlabor expenses. Applicants also point out that efforts are under way to develop a specific motor carrier nonlabor index for this purpose and that the WPIIC is the most accurate tool available at the present time. It appears that this is true since Intervenors have not offered an alternative method of measuring short-term changes in nonlabor expenses.

Intervenors also take issue with the fact that Applicants have failed to make any adjustments in their updated expenses for alleged increases in productivity which

occurred between the base year 1977 and the 12-month period ending June 30, 1978. Intervenors' witness Fauth presented an exhibit prepared by the U.S. Bureau of Labor Statistics which indicated that productivity in intercity trucking enjoyed an average annual increase in productivity of 2.1% for the period between 1954 and 1975. Mr. Fauth testified that the carriers should have reduced their updated expenses by 1.4% to allow for the average increase in productivity from the 1964 - 1975 period. Applicants point out that Mr. Fauth's exhibit indicates that productivity actually declined for five out of the last 10 years covered by the table; that productivity in 1975, the latest year available, was actually below the 1972 level and only 4.8% in excess of the 1965 level; that the Bureau of Labor Statistics had itself cautioned against the use of its index to project short-term changes in productivity; and that the unit cost method employed in updating expenses to the 12-month period ending June 30, 1978, actually allowed for short-term changes in productivity.

After updating the base year 1977 expenses to the April 1978 level for labor expenses and the August 1978 level for nonlabor expenses, witness Acker testified that the present total operating expenses of the cost study carriers is $41,874,764.

Mr. Acker also testifed that the revenues of the cost study carriers were updated by rerating North Carolina intrastate shipments to include all general increases in rates and charges which become effective subsequent to the date on which the shipments were originally billed. Mr. Acker's Appendix DMA-11 indicates that after updating the base year 1977 revenue levels to reflect intrastate rates in effect as of June 12, 1978, the cost study carriers North Carolina intrastate general commodity traffic generated total revenues of $37,069,301.

The Public Staff did not take issue with either the carriers' revenue or expense update. In addition, Mr. Rose testified that a one-day study of traffic handled by the six cost study carriers on October 3, 1978, indicated that the carriers had experienced a small increase in traffic volume in 1978 over 1977 levels. His testimony indicated that there were no significant differences in the traffic consist by weight group.

Based on the record in this proceeding, the Commission concludes that the update procedures employed by the Applicants is an accurate means of restating the 1977 base year revenues and expenses to the present level. Further, the Commission concludes that the cost study carriers' updated level of North Carolina intrastate general commodity revenues is $37,069,031 and that the updated level of North Carolina intrastate general commodity operating expenses is $41,874,764. Based on the cost study carriers' updated revenues and expenses, the Commission finds that the present

operating ratio for North Carolina intrastate general commodity traffic is 114.29%.

ADDITIONAL REVENUE GENERATED BY INCREASE AND RESULTING OPERATING RATIO

Mr. Acker testified that the level of revenues to be generated by the proposed increases was determined by applying the percentage increase requested in each weight group to each shipment included in that individual weight group. His testimony indicates that the overall percentage impact of the proposed increase is 14.82% which produces a proposed operating ratio of 99.54%.

The Commission concludes that the additional issue traffic revenues generated by the proposed increase would be approximately $5,492,252 for the cost study carriers. In addition, the Commission finds that the proposed increase will generate approximately $7,432,005 for all carriers participating in the Applicants' tariffs.

The full amount of the increase generates a proposed operating ratio of 99.54% for all North Carolina intrastate general commodity traffic. The Commission concludes that the additional revenue is no more than is necessary to allow the Applicants to recover their additional expenses of operating in North Carolina intrastate service and that the proposed increase is necessary to the continued maintenance of a viable public transportation system to serve the general public in this State. Consequently, the Commission is of the opinion that the interest of the Applicant carriers and the using and consuming public can best be served by permitting the proposed increase to become effective. Based on the record in this proceeding, the Commission concludes that Applicants have satisfied their statutory burden of demonstrating that the proposed increase is just and reasonable.

The contention that the Applicants' conduct prior to filing their application constitutes a violation of the Sherman Act does not affect the propriety of this application. The basis for this contention is the March 20, 1979, Order (hereinafter the "Order") issued by Judge Freeman of the Federal District Court for the Northern District of Georgia in United States v. Southern Motor Carriers Rate Conference, Inc., et al., CA No. 76-1909A. Judge Freeman found that conduct by the defendants in that suit, who are the Applicants in this rate case, constitutes per se violations of the Sherman Act. Order at p. 27. The conduct at issue involved preapplication communications among carriers sanctioned by G.S. 62-152.1 and other state statutes as part of formulating their intrastate rate case applications. The Motion to Dismiss made by the Intervenors and the Textile Intervenors is directed to the discretionary power of the Commission. Tr.V.I., p. 8. They urge that the Commission should dismiss the carriers' application but do not claim the Commission is required as a matter of law to

dismiss the application.[1] Unfortunately, this does not resolve the problem facing the Commission. That the Applicants' conduct occurred under sanction of state law prior to the March 20th Order does not render it exempt from the antitrust laws, but it does demonstrate that the conduct was not a novel scheme outside the then understood parameters of the federal antitrust laws.

[1] Indeed, the movants could not make such an argument. There is no final judgment in United States v. Southern Motor Carrier's Rate Conference, Inc., et al., CA No. 76-1909A (N.D. Ga.), so there is as yet no holding to be complied with by the parties or stayed pending possible appeal. In addition, since neither the State of North Carolina nor this Commission were defendants in the action, it is axiomatic that no order can issue directing them to take any action. Zenith Radio Corporation v. Hazeltine Research, Inc., 395 U.S. 100, 110, 89 S.Ct. 1562, 1569 (1969).

The Commission believes that the proper body to determine the relief to be accorded in an antitrust case is the district court trying the case as it is the body with the full record of the violation before it. E. g., International Salt Co. v. United States, 332 U.S. 392, 400, 68 S.Ct. 12, 17 (1947). If it is not for appellate courts to substitute their judgment as to what is appropriate, then certainly this Commission should not proceed on the notion that it must provide a remedy when the trial court handling the case has yet to speak. The Commission understands that the only relief the government is seeking in the case is prospective, that it is all directed to the defendants' future conduct, and that no fine or penalty is being sought. See Exhibits A and B to the Applicants' Motion to Supplement Record. Likewise, the Federal government has not sought to enjoin any pending state commission proceedings involving the Applicants. That the option to do so exists is undoubted, as the prohibition on Federal courts enjoining state court proceedings contained in 28 U.S.C. +2283 does not apply to proceedings before administrative agencies. See, e.g., Engleman v. Cahn, 425 F.2d 954 (2d Cir. 1969), cert. denied 397 U.S. 1009, 90 S.Ct. 1238 (1970).

The Commission stresses that it wishes to cooperate with whatever result the Federal district court achieves, yet absent a final decision there is little for the Commission to proceed on. The Commission also has direct statutory responsibilities under G.S. 62-2 and G.S. 62-259 which must be considered before it can exercise its discretion in ruling on the motion. The Commission understands that the broad goal of a remedy in an antitrust case is to cure the ill effects of a violation and at the same time not to erect a barrier to healthy competition. United States v. Crescent Amusement Company, 323 U.S. 173, 186, 65 S.Ct. 254, 261 (1944). These concerns must be blended with the Commission's responsibility to "promote and preserve adequate economical and efficient service to all the

communities of the State." G.S. 62-259. As Finding of Fact 6 in this Order shows the interstate traffic of the cost study carriers is moving at a loss. It is the Commission's belief based upon its experience in regulating intrastate motor carriage that there are numerous smaller carriers in the State that can less easily withstand continued operating losses than the cost study carriers. A further delay in ruling on this rate request either by deferring action or by dismissing the application will weaken these smaller carriers, possibly forcing some to curtail operations. The resultant further concentration of market power in the major carriers is an undesirable end and is inconsistent with the goals set forth in G.S. 62-259. The Commission also is concerned that the smaller communities and smaller shippers typically served by the smaller carriers would also suffer a decline in service. For all the foregoing reasons, the Commission concludes that the Intervenors' and Textile Intervenors' Motion to Dismiss should be denied and that the Applicants are properly before the Commission.

IT IS, THEREFORE, ORDERED:

1. That the Intervenors' and Textile Intervenors' Motion to Dismiss the carriers' application be, and the same hereby is, denied.

2. That the Applicants be, and the same hereby are, authorized to increase their North Carolina intrastate rates and charges applying on transportation of general commodities, involved in this proceeding, as follows:

CLASS, COMMODITY, DISTANCE, OR MILEAGE COMMODITY, EXCEPTION RATES; MINIMUM CHARGES; ACCESSORIAL CHARGES AND ACCESSORIAL RATES.

FOR SHIPMENTS WEIGHING	PERCENTAGE INCREASE
LTL or AQ rates applying on shipments weighing less than 5,000 lbs.	20%
LTL or AQ rates applying on shipments weighing 5,000 lbs. or more	10%
Volume or truckload rates (min. 2& per Cwt.)	10%
Accessorial Charges and Accessorial Rates	15%

Minimum Charge: Where the Rate Basis Number Is:	THE MINIMUM CHARGE WILL BE
1 to 100	$10.25
101 to 200	10.80
201 to 300	11.50
300 and over	12.00

3. That the increases are hereby approved and may become effective after appropriate tariff publications in accordance with the Commission Rules and Regulations governing the construction, filing, and posting of

transportation tariff schedules, upon not less than five days' notice to the Commission and to the public.

4. That the tariff publications hereby authorized shall be constructed in a manner so that all changes shall be included in a single table of class rates and are therefore not subject to further increases.

5. That the proposed increases herein authorized for application in connection with all commodity rates as published may be increased by publication of an appropriate conversion table of increased rates having application only on the commodity rates, accessorial charges, and accessorial rates.

6. That the Respondent motor common carriers participating in the involved tariff publications shall revise and reissue or require their respective tariff publishing agents to revise and republish their present general commodity tariffs so that all rates and charges contained in said tariffs will be the rates authorized in this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of June, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) SANDRA J. Webster, Chief Clerk

DOCKET NO. T-825, SUB 240

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Common Carriers - Suspension and) NOTICE OF
Investigation of Proposed Increases in Rates) DECISION
and Charges, Including Justification Procedures) AND
Applicable on Shipments of Household Goods) ORDER

BY THE COMMISSION: Upon motion of counsel for the Respondents at the close of all the evidence in the hearings in this docket; and having considered the Application and Intervention, the stipulations of counsel for the parties, and the evidence consisting of the testimony of three experts and other transportation witnesses and some 32 exhibits; and finding that the uniform revised rates proposed by the Respondents are not excessive, but are just and reasonable; and further finding that, unless said approved rates are permitted immediate effectiveness, the adequacy, efficiency, and safety of the regulated common carrier transportation of household goods and personal effects for the public in North Carolina intrastate commerce could or might be jeopardized and the certificated carriers irreparably harmed through further impairment of their general financial and operating conditions, the Commission in its discretion has concluded that the Motion of

Applicants should be allowed subject to the issuance of an Order setting forth specific findings and conclusions not inconsistent herewith in the immediate future.

IT IS, THEREFORE, ORDERED:

1. The Motion of counsel for the Respondents to vacate the Order of Suspension and Investigation in this docket be, and hereby is, allowed and said Order is hereby vacated and set aside for the purpose of allowing the rates, rules, and charges herein under suspension to be made effective in the manner and subject to the conditions hereinafter ordered.

2. The application of hourly rates to household goods transportation service be, and hereby is, disapproved and disallowed. In lieu thereof, Applicants shall file and make effective mileage and weight brackets and rates in accordance with Appendix A hereto attached.

3. The uniform rates herein authorized and approved shall become simultaneously effective on April 25, 1979, on one day's notice by publication of appropriate tariff supplements.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of April, 1979.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A
SECTION II

MILES	500 LBS. TO 999 LBS. INCL.	BREAK POINT	1,000 LBS. TO 1,999 LBS. INCL.	BREAK POINT	2,000 LBS. TO 3,999 LBS. INCL.	BREAK POINT	4,000 LBS. TO 7,999 LBS. INCL.
1-15	11.34	684	7.75	1,584	6.14	3,594	5.51
16-20	11.91	682	8.11	1,565	6.34	3,541	5.62
21-30	12.53	673	8.42	1,581	6.66	3,438	5.72

MILES	BREAK POINT	8,000 LBS. TO 11,999 LBS. INCL.	BREAK POINT	12,000 LBS. TO 15,999 LBS. INCL.	BREAK POINT	16,000 LBS. AND OVER
1-15	5,887	4.06	10,924	3.69	14,648	3.38
16-20	5,926	4.16	11,101	3.85	14,487	3.48
21-30	6,110	4.37	11,001	4.00	14,546	3.64

DOCKET NO. T-825, SUB 240

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Motor Common Carriers - Suspension and Investigation of Proposed Increases in Rates and Charges, Including Justification Procedures Applicable on Shipments of Household Goods	) ORDER VACATING SUSPENSION AND GRANTING INCREASES

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on April 20, 1979, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Leigh H. Hammond and Robert Fischbach

APPEARANCES:

For the Applicants:

Thomas R. Eller, Jr., Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611

For the Intervenors:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On March 2, 1979, the Commission received for filing by Thomas R. Eller, Jr., Attorney at Law, Raleigh, North Carolina, for and on behalf of North Carolina intrastate motor common carriers of household goods, tariff filings, and an application, along with certain data in support thereof, seeking approval of increased rates and charges, including accessorial rates and charges and hourly transportation charges with these tariff filings being designated as follows:

Supplement No. 55 to Tariff No. 2, NCUC No. 8, issued by North Carolina Movers Association, Inc., on behalf of its participating carriers;

Supplement No. 13 to Tariff No. 18-B, NCUC No. 92, issued by North Carolina Motor Carriers Association, Inc., on behalf of its participating carriers; and

Supplement No. 12 to Tariff No. 5-C, NCUC No. 41, issued by Motor Carriers Traffic Association, Inc., on behalf of its participating carriers.

Each tariff publication was received by the Commission on March 2, 1979; each publication bears an effective date of

April 15, 1979; and each publication provides for an overall increase in rates and charges of approximately 18.51%.

Accompanying the tariff filings and made a part of the application was a motion filed by counsel on behalf of participating carriers seeking to adjust uniform rates and expedite future procedures. The motion included certain proposals for maintaining intrastate rates equal to ICC rate levels applicable on North Carolina intrastate traffic based upon certain data and statements to be submitted by the carriers at the time of filing for future changes in rate levels.

Upon consideration of these tariff filings including the motion to adjust uniform rates and expedite future procedures, and it being of the opinion that the proposed increase in rates and charges and practices in connection therewith, as hereinabove enumerated and described, is a matter affecting the public interest, the Commission issued an Order on April 18, 1979, suspending the tariff filings, instituting an investigation into the lawfulness of the tariff schedules and assigning the matter for hearing on April 20, 1978, at 9:30 a.m. It was stipulated between counsel for the parties that "the only matters which should be considered by the North Carolina Utilities Commission in this Docket...are the current proposed general tariff rate increases, and justification thereof." It was also stipulated that "The parties hereto agree to meet for informal discussion concerning future cost allocations and procedural requirements for future rate cases involving household goods and personal effects common carriers, commencing on May 1, 1979." The parties further stipulated that a report of such meetings would be filed with the Chief Clerk of the Commission.

This docket came on for hearing on April 20, 1979, with parties and counsel present. There were no protestants in this proceeding.

Based upon the testimony of all witnesses, the exhibits filed, and the entire record in this docket, the Commission makes the following:

FINDINGS OF FACT

1. Applicants are duly certificated and actively engaged in the transportation of household goods and personal effects in North Carolina intrastate commerce.

2. The Applicants' line-haul rates were published with Commission approval effective August 1, 1977. The present accessorial charges were published after Commission approval to become effective on June 3, 1974. The Applicants have only requested and been permitted an increase of 6% in line-haul intrastate rates (2.47% overall) in the five years since May 1974.

3. Applicants' operating costs for labor, fuel, taxes, rents, equipment, supervision, and maintenance have increased at a much greater rate, individually and collectively, than have rate revenues.

4. The test year was calendar year 1977 and the approximate operating ratio for the certificated intrastate motor common carriers of household goods and personal effects exceeded 100% under present rates. Based on sample data, it appears that the Applicants' operating ratios did not improve for the most part in 1978. On the basis of events taking place up until the time of hearing in this docket, increases in operating expenses as well as capital costs and inflaction rates have not abated.

5. The data from 10 reasonably representative study carriers, after appropriate accounting and pro forma adjustments, tends to show the following statewide results:

	Present	Proposed	Difference
Revenue	$3,759,358	$4,462,358	$703,000
Operating Ratio	110%	100+%	(9%)

6. Based on the currently available cost/revenue data it is not likely that the intrastate operating ratios of motor common carriers of household goods and personal effects in intrastate commerce will decline to 100% during the 1979 moving season.

7. The motor carriers of household goods and personal effects provide two generic types or classifications of regulated service, line-haul (basic) and accessorial (non-basic). Applicants' rates for these services have been uniform statewide for many years by Order of this Commission. The rates proposed by Applicants in this proceeding continue said uniformity.

8. Applicants traditionally have applied per hundredweight uniform rates to approved mileage scales and weight brackets in providing all line-haul service except in the 0-30 mile distance. In the latter mileage range, Applicants have applied an hourly charge without regard to distance or weight. Through the rates proposed in this docket, Applicants propose to continue to apply hourly rate charges to line-haul service as well as increase hourly rates. The Commission finds that the practice of charging hourly rates for line-haul service is not in accordance with the actual costs of rendering line-haul service, results in inconsistent treatment of line-haul shippers and receivers, is subject to abuse by the carriers, and works against customer acceptability.

9. The proposed hourly rates are in accordance with cost-related bases for providing accessorial services and auxiliary services not involving line-haul service and the same have been justified.

10. The parties hereto stipulated that the only matters which should be considered by the North Carolina Utilities Commission in this docket...are the current proposed general tariff rate increases and justification thereof. The parties agreed to meet for informal discussion concerning future cost allocations and procedural requirements for future rate cases involving household goods and personal effects common carriers, commencing on May 1, 1979, and that a report would be filed with the Chief Clerk.

CONCLUSIONS

G.S. 62-146(g) provides that: "In any proceeding to determine the justness or reasonableness of any rate of any common carrier by motor vehicle, there shall not be taken into consideration or allowed as evidence any elements of value of the property of such carrier, good will, earning power, or the certificate under which such carrier is operating, and such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues, at a ratio to be determined by the Commission...."

Applicants presented numerous exhibits showing the results of a study made of the operating experience of 10 reasonably representative carriers engaged in the regulated transportation of household goods in intrastate commerce and various related activities not regulated by the Commission. The purpose of the study was to obtain information that would enable a separation from the total revenues and expenses of the study carriers, the revenues received and the expenses incurred in the regulated transportation of household goods in North Carolina intrastate commerce. As confirmed by the Public Staff's investigation, analysis and audits of the operations of Applicants, much of this data was unnecessary as well as confusing. The primary reason is that no separations of revenues is needed. Intrastate regulated rate revenues are actual and are recorded separately on Applicants' records of bills of lading. The Public Staff called on Applicants to produce such actual records of intrastate regulated service and compiled them on an actual basis. This revealed many deficiencies and inadequacies in the revenue data filed by applicants. However, a proper calculation of actual revenues revealed that applicants had substantially overstated their present and proposed revenues as well as the amount of the proposed increase. Since the Public Staff's revenue computations and estimates are based on actual, audited amounts for the reasonable representative sample, the Commission has used the Public Staff estimates of revenues in finding that the statewide regulated revenues under present rates are $3,759,358 and that the statewide annualized gross revenue effect of the proposed rates is an annual increase of $703,000 based on the test year, 1977.

The separation of intrastate regulated expense from total study carrier expense is a much more complicated matter. The expense separations performed by Applicants are admittedly inexact. The Public Staff testified that "Although the data used to justify this rate proposal is minimal and must be improved for future rate case proposals, it is the best the carriers could develop under the circumstances...." The Commission has accepted the expense separations in this proceeding for this proceeding only. Our reasons for doing so are: (1) In Utilities Commission v. Attorney General, 2 NC App. 657 (1968), as well as in several other decisions, our courts have made it clear that operating ratios "cannot be determined with mathematical exactitude." Nevertheless, there must be evidence in respect thereto sufficient in probative force to enable the Commission to make findings of fact and issue an appropriate Order. (2) The facts that (a) all expense separations methodologies presented in the case singularly point to the finding that intrastate motor carriers of household goods and personal effects are experiencing an operating ratio in excess of 100% and this ratio is not likely to decline below 100% even with this proposed increase, and (b) a mass of other cost evidence in the case, combined with the Commission's own knowledge and common sense understanding of current economic conditions confirms that these Applicants are incurring more operating expenses than they are collecting revenues to cover. "An operating ratio of 100% means that for every dollar of freight revenue received, the carrier spends a dollar in operating expenses. When the operating ratio exceeds 100%, it means the expenses exceed the revenues." Utilities Commission v. Attorney General, 2 NC App. 657 (1968).

The Commission also notes that by stipulation the parties are meeting at an early future date in an effort to refine and develop more acceptable expense allocations and rate case handling procedures and will report their findings and recommendations to the Commission.

Under the circumstances of this case the Applicants fall within the exceptions of the President's applicable "Wage and Price Standards."

In Utilities Commission v. State, 250 NC 410, the North Carolina Supreme Court stated that the Commission may take statistical evidence of major carriers as typical of all carriers in establishing uniform rates. In this case, the Commission has found and concluded that the statistical evidence and separations of the 10 carrier sample, as verified, audited, and adjusted by the Public Staff, can be, and is, taken to be reasonably representative and typical of all certificated motor common carriers of household goods and personal effects operating in North Carolina intrastate commerce and constitutes a sufficient, probative base for establishing uniform rates for all such carriers in this proceeding, and this proceeding only.

The Commission concludes that the present rates and charges are inadequate and do not provide the carriers with sufficient revenues to maintain, in the public interest, an adequate, efficient, and safe transportation service to the citizens of North Carolina. We further conclude that Applicants have met the minimum tests provided by our statutes and have proved that the suspended rates and charges are not excessive, but are just and reasonable.

The Orders of the Commission suspending and investigating the proposed rates and charges under review herein will be forthwith vacated and the said rates allowed to become effective subject to the conditions hereinafter stated.

IT IS, THEREFORE, ORDERED:

1. That the Order of the Commission dated April 18, 1979, suspending revised uniform rates, rules, regulations and charges, proposed for application on shipments of household goods as set forth in the tariff publications named in said Order, be, and the same hereby is, vacated and set aside for the purpose of allowing the rates, rules, and charges herein under suspension to be made effective in the manner and subject to the conditions hereinafter ordered.

2. That in making publication under the provisions of this Order, Applicants shall provide mileage brackets, weight brackets, and related per hundredweight rates for line-haul service in the 0-30 mile range in lieu of the present or proposed hourly charges. The mileage and weight brackets and the rates shall be as prescribed on Appendix A attached and incorporated. Mileage shall continue to be based on official North Carolina map distances between origin and destination. All hourly charges for basic transportation service are cancelled from the tariffs.

3. That publication authorized herein shall be made on one day's notice but shall otherwise comply with the rules and regulations of the Commission governing the construction and filing of tariff schedules.

4. That in making publication of the uniform tariffs authorized hereby, the three Tariff Publication Agents shall observe a uniform effective date, April 25, 1979.

5. That on or before May 1, 1979, authorized representatives of the Public Staff and the Applicants, and such other persons as may be interested, shall begin conferences and studies of appropriate means of obtaining information that will enable a practical and reasonable separation from total expenses of reasonable representative study carriers, the expenses incurred in the transportation of household goods in North Carolina intrastate commerce as regulated by this Commission and appropriate future rate case procedures for motor common carriers of household goods and personal effects in North Carolina intrastate commerce. The results of said study and any recommendations based

thereon shall be reduced to writing, signed by the parties, and filed with the Commission on or before July 1, 1979.

6. That the respondent motor common carriers participating in the involved tariff publications shall revise and reissue or require their respective tariff publishing agents to revise and republish their present household goods tariffs so that all rates and charges contained in said tariffs will be the rates authorized in this Order.

7. That said revised and reissued tariff publications shall be filed with the Commission on regular statutory notice and shall be scheduled to become effective no later than July 1, 1979.

8. That, upon publication having been made in compliance with the provisions of this Order, this proceeding be discontinued, and the same is hereby considered as discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of May, 1979.

(SEAL) NORTH CAROLINA UTILITIES COMMISSION
Sharon C. Credle, Deputy Clerk

APPENDIX A
SECTION II

MILES	500 LBS. TO 999 LBS. INCL.	BREAK POINT	1,000 LBS. TO 1,999 LBS. INCL.	BREAK POINT	2,000 LBS. TO 3,999 LBS. INCL.	BREAK POINT	4,000 LBS. TO 7,999 LBS. INCL.
1-15	11.34	684	7.75	1,584	6.14	3,594	5.51
16-20	11.91	682	8.11	1,565	6.34	3,541	5.62
21-30	12.53	673	8.42	1,581	6.66	3,438	5.72

MILES	BREAK POINT	8,000 LBS. TO 11,000 LBS. INCL.	BREAK POINT	12,000 LBS. TO 15,999 LBS. INCL.	BREAK POINT	16,000 LBS. AND OVER
1-15	5,887	4.06	10,924	3.69	14,648	3.38
16-20	5,926	4.16	11,101	3.85	14,487	3.48
21-30	6,110	4.37	11,001	4.00	14,546	3.64

DOCKET NO. T-107, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Observer Transportation Company - Supplement No. 14 to Tariff NCUC No. 7 Proposing a General Increase in Rates Scheduled to Become Effective on August 15, 1979	) ORDER VACATING) SUSPENSION AND) ALLOWING INCREASE) IN RATES)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 3, 1979, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Edward B. Hipp and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Ralph McDonald, Jr., Bailey, Dixon, Wooten, McDonald and Fountain, Attorney at Law, Insurance Building, Raleigh, North Carolina 27602

For the Public Staff:

G. Clark Crampton, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: The Commission received a tariff filing by The Observer Transportation Company, 1001 Pressley Road, P.O. Box 34213, Charlotte, North Carolina 28234, proposing a 15% increase upon class rated articles and 35% on newspaper commodity rates applicable on North Carolina intrastate shipments of general commodities, scheduled to become effective on August 15, 1979, and designated as follows:

The Observer Transportation Company, Local Freight Tariff NCUC No. 7, Supplement No. 14 thereto.

By Order of the Commission in this docket dated August 13, 1979, the matter was declared to constitute a general rate case, operation of the subject tariff schedule was suspended, an investigation instituted, and a hearing assigned for September 4, 1979. Pursuant to paragraph (12) of that Order Applicant subsequently caused an appropriate suspension supplement to be filed with the Commission on August 20, 1979.

The matter came on for hearing as scheduled. At the hearing, the Applicant offered the testimony of Joseph F.

Radovanic, Vice-President of Observer. The Public Staff offered the testimony of David Poole, Staff Accountant. At the conclusion of the hearing, the Applicant moved to vacate the suspension Order dated August 13, 1979, and this motion was not opposed by the Public Staff.

Based upon the foregoing, the testimony and exhibits offered during the hearing, the Commission now makes the following

FINDINGS OF FACT

1. The Observer Transportation Company is a North Carolina corporation engaged in the transportation of general commodities in North Carolina intrastate commerce pursuant to common carrier certificate number C-289 and is subject to the jurisdiction of this Commission.

2. The proposed rates would produce $155,897 additional intrastate revenue on an annual basis.

3. Using the adjusted test year of 1978, the Applicant would achieve an operating ratio of 110.4% before taxes on the issue traffic from its present operations. Such a ratio is unreasonably high and indicates a need by Applicant for additional revenues.

4. If the rates proposed by Applicant had been in effect during the adjusted test year of 1978, it would have achieved an operating ratio of 92.2% before the taxes on the issue traffic. This ratio is not unreasonable or excessive.

5. The Application filed in this matter included a statement indicating that the proposed rate increase conformed to overall Federal Wage - Price guidelines. Those guidelines do not specifically speak to situations such as that here involved where the Applicant is, in effect, operating at a loss as is reflected in Finding of Fact No. 3; however, the Commission finds that the proposed increase will not be violative of the spirit of those guidelines.

6. The rates proposed by Applicant in its Supplement No. 14 to Tariff NCUC No. 7 are just and reasonable and should be permitted to become effective on one day's notice.

CONCLUSIONS

The Public Staff presented operating data based on information furnished by Applicant. Our findings are based upon the evidence presented by the Public Staff which shows a before tax operating ratio including the increase sought by Observer of 92.2% upon the issue traffic involved herein. The Public Staff indicated that the North Carolina intrastate common carrier operating ratio it determined would result from the increase in rates was not unjust nor unreasonable. Based upon all of the evidence, the

Commission concludes that the proposed rates are just and reasonable and should be placed into effect by Observer.

IT IS, THEREFORE, ORDERED:

1. That the portion of the Order in this docket dated August 13, 1979, suspending Observer's Supplement No. 14 to Tariff NCUC No. 7 is hereby vacated.

2. That Observer's Supplement No. 14 to Tariff NCUC No. 7 is hereby permitted to become effective on one day's notice upon the publication of an appropriate tariff by the Applicant in accordance with the applicable requirements of Commission Rule R4-5.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of September, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-1317, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of United Parcel Service, Inc. (An Ohio Corporation), Greenwich, Connecticut - Suspension and Investigation of Proposed Increase in Various Rates and Charges, Scheduled to Become Effective May 1, 1979	) ORDER VACATING) SUSPENSION AND) ALLOWING) INCREASE IN) RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 8, 1979, at 9:30 a.m.

BEFORE: Commissioners Sarah Lindsay Tate, Presiding; and Commissioners Ben E. Roney and Robert Fischbach

APPEARANCES:

For the Applicant:

P. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On March 29, 1979, the Commission received for filing Supplement No. 32 to United Parcel

Service, Inc. (an Ohio corporation), Local Parcel Tariff NCUC No. 1 scheduled to become effective May 1, 1979, proposing increased rates applicable on North Carolina intrastate shipments of general commodities in the amount of 10 cents per package, plus 5/10 cents per pound in Zone 2, 6/10 cents per pound in Zone 3, 8/10 cents per pound in Zone 4, and increases of 15 cents in the C.O.D. charge and the wrong address correction charge. Submitted with the application was certain information and data as justification in support thereof.

By Order of the Commission in this docket dated April 30, 1979, the matter was suspended, an investigation instituted, and a hearing assigned for June 8, 1979.

On April 27, 1979, the Commission received a Motion to Amend Application filed by counsel on behalf of United Parcel Service, Inc. (UPS), wherein UPS sought to reduce the amount of the proposed increase. The reduced, proposed rates are applicable on all of its North Carolina intrastate shipments of general commodities in the amount of 8 cents per package, plus 4/10 cents per pound in Zone 2, 5/10 cents per pound in Zone 3, and 6/10 cents per pound in Zone 4. The proposal to increase C.O.D. and wrong address correction charge remains at 15 cents. The proposed rates as amended April 27, 1979, are the same as the rates the Interstate Commerce Commission allowed UPS to file to become effective on May 1, 1979, and are effective in 41 other states on intrastate traffic.

The matter came on for hearing as scheduled. At the hearing, the Applicant offered the testimony of Edwin H. Reitman of the Regulatory and Legal Department of UPS. The Public Staff offered the testimony of Dennis E. Sovel, Acting Director of the Public Staff Transportation Division, and George E. Dennis, Staff Accountant of the Public Staff. At the conclusion of the hearing the Applicant moved to vacate the suspension Order dated April 30, 1979, and this motion was not opposed by the Public Staff.

Based upon the foregoing, the testimony and exhibits offered during the hearing, the Commission now makes the following

FINDINGS OF FACT

1. United Parcel Service, Inc., is an Ohio corporation engaged in the transportation of small packages and articles in North Carolina intrastate commerce pursuant to Common Carrier Certificate No. C-935 and is subject to the jurisdiction of this Commission.

2. The proposed rates would produce $1,025,460 additional intrastate revenue on an annual basis.

3. Using the adjusted test year of 1978, the Applicant would achieve an operating ratio of 104.5% before taxes from

its present operations adjusted for known changes occurring in that base year. Such ratio is unreasonably high and indicates a need by Applicant for additional revenues.

4. If the rates proposed by Applicant had been in effect during the adjusted test year of 1978, it would have achieved an operating ratio of 97.0% before taxes. This ratio is not unreasonable or excessive.

5. The rates proposed by Applicant in Supplement No. 32 as amended by Applicant's motion dated April 27, 1979, to United Parcel Service Local Parcel Tariff NCUC No. 1 are just and reasonable and should be permitted to become effective on one day's notice.

CONCLUSIONS

Both the Company and the Public Staff presented operating data which produced identical results. Our findings are based upon the evidence presented by the Public Staff which shows a before tax operating ratio including the increase sought by UPS of 97.0%. The Public Staff indicated that the North Carolina intrastate operating ratio it determined would result from the increase in rates was not unjust or unreasonable. Based upon all of the evidence, we conclude that the proposed rates are just and reasonable and should be placed into effect by UPS.

IT IS, THEREFORE, ORDERED:

1. That the Order in this docket dated April 30, 1979, suspending Supplement No. 32 to UPS Local Parcel Tariff No. 1 is hereby vacated.

2. That Supplement No. 32 as amended on April 27, 1979, is hereby permitted to become effective on one day's notice upon the publication of an appropriate tariff by the Applicant.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of June, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-1951

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Dependable Feed Service, Inc., Route 1, Bear Creek, North Carolina 27207 - Application for Authority to Purchase and Transfer a Portion of Certificate No. C-789 From Nathaniel Jackson Hudson, 334 Pegram Street, Elkin, North Carolina 28261	) ORDER ALLOWING EXCEPTIONS, REVERSING AND VACATING RECOMMENDED ORDER AND SCHEDULING REHEARING

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 5, 1979, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, John W. Winters, Edward B. Hipp, and A. Hartwell Campbell.

APPEARANCES:

For the Applicants:

Vaughan S. Winborne, Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27601

For the Protestant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Riverside Transportation Co., Inc.

BY THE COMMISSION: On July 18, 1979, Hearing Examiner Robert H. Bennink, Jr., issued a "Recommended Order Denying Certificate Transfer and Ordering Partial Cancellation of Operating Authority" in this docket. On August 2, 1979, counsel for and on behalf of the Applicants filed certain Exceptions to the Recommended Order and requested oral argument thereon. Counsel for both the Applicants and the Protestant subsequently presented oral argument on the Exceptions to the Commission on September 5, 1979.

Based upon a careful consideration of the entire record in this proceeding, including the application, the testimony, and exhibits presented at the hearing, and the Exceptions and oral argument heard thereon, the Commission is of the opinion, finds, and concludes that the Applicants' Exceptions should be allowed; that the findings and conclusions of the Hearing Examiner with respect to the dormancy of the animal and poultry feed portion of Certificate No. C-789 should be reversed; and that the

remainder of the Recommended Order should be vacated and the matter set for rehearing.

Consideration of the entire record in this case leads the Commission to find and conclude that the Hearing Examiner was in error in cancelling that portion of Certificate No. C-789 which authorizes Applicant Hudson to engage in the transportation of animal and poultry feed. In this regard, the Commission is of the opinion, and therefore finds and concludes, that said operating authority was not dormant as of the date the application was filed in this docket on January 25, 1979. To the contrary, Applicant Hudson was even then continuing to offer transportation services to the public under his franchise, as evidenced by certain portions of the hearing testimony offered by witness Randleman and also by the Applicant's listing in the 1979 Elkin-Jonesville Telephone Directory under the headings of "Movers" and "Trucking-Motor Freight." Furthermore, the Commission takes judicial notice of the fact that Applicant Hudson is continuing to maintain insurance and an appropriate tariff schedule of feed rates and charges on file with this Commission. It is further noted that there is no indication in the record that Applicant Hudson has ever refused to handle a shipment of animal and poultry feed which has been offered to him.

The Commission has also been strongly influenced in this matter by evidence indicating that Applicant Hudson is an individual who has a history of health-related problems which may well have adversely affected his ability and desire during recent years to engage in transportation activities for hire. In this regard, the Commission notes that Section 62-112(c) of the North Carolina General Statutes provides, in pertinent part, that in determining whether an individual carrier has made reasonable efforts to perform service under its franchise, the Commission may, in its discretion, give consideration to disabilities of the carrier, including death of the owner and physical disabilities.

Accordingly, a careful review of all of the foregoing leads the Commission to find and conclude that Applicant Hudson's animal and poultry feed operating authority under Certificate No. C-789 was not dormant as of the date of filing of the application at issue herein, since service thereunder had been continuously offered to the public until said filing.

Having decided to reverse those portions of the Recommended Order which deal with the findings and conclusions made by the Hearing Examiner on the issue of dormancy, the Commission is of the further opinion that it should also vacate the remainder of the Recommended Order and set the matter for rehearing. At said rehearing, the Commission will specifically consider the fitness of Dependable Feed Service, Inc., to perform service to the public under the franchise pursuant to G.S. 62-111(e).

IT IS, THEREFORE, ORDERED as follows:

1. That the Exceptions to the Recommended Order filed herein on behalf of the Applicants on August 2, 1979, be, and the same are hereby, allowed.

2. That the animal and poultry feed portion of Certificate No. C-789 held by Applicant Hudson is not dormant.

3. That the Recommended Order dated July 18, 1979, be, and the same is hereby, reversed as it pertains to the issue of dormancy.

4. That the remainder of the Recommended Order dated July 18, 1979, be, and the same is hereby, vacated.

5. That this matter be, to the extent not reversed and decided herein, set for rehearing in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 4, 1979, at 9:30 a.m. At that time, the Commission will, pursuant to G.S. 62-111(e), specifically consider the fitness of Dependable Feed Service, Inc., to perform service to the public under the franchise sought to be transferred herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of September, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) SANDRA J. Webster, Chief Clerk

Commissioner Hammond did not participate.

DOCKET NO. R-66, SUB 97

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rail Common Carriers - Suspension and) RECOMMENDED ORDER
Investigation of Proposed Increases) ALLOWING RATE
in Demurrage Charges Scheduled to) INCREASE
Become Effective February 1, 1979)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 7, 1979, at 9:30 a.m.

BEFORE: Robert P. Gruber, Hearing Examiner

APPEARANCES:

For the Respondents:

Odes L. Stroupe, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: North Carolina Railroads, Southern Railway Company, and Norfolk Southern Railway Company

James L. Howe III, Southern Railway System, P.O. Box 1808, Washington, D.C. 20013
For: North Carolina Railroads, Southern Railway Company, and Norfolk Southern Railway Company

Phyllis A. Joyner, Seaboard Coast Line Railroad Company, P.O. Box 27581, Richmond, Virginia 23261
For: North Carolina Railroads and Seaboard Coast Line Railroad Company

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

GRUBER, HEARING EXAMINER: This matter arose upon the filing on January 5, 1979, with this Commission by H.J. Positano, Alternate Agent, Traffic Executive Association - Eastern Railroads, 2 Pennsylvania Plaza, New York, New York 10001, for and on behalf of rail carriers in North Carolina, of a tariff schedule proposing to increase demurrage charges from $10 for each of the first two chargeable days, $20 for each of the next two chargeable days, and $30 for each day thereafter to $20 for each of the first four chargeable days, $30 for each of the next two chargeable days and $60

for each day thereafter, scheduled to become effective February 1, 1979, and designated as follows:

Freight Tariff 4-K, Supplement 32 thereto, in full.

The Commission, being of the opinion that this was a matter affecting the public interest, by Order dated January 24, 1979, suspended the proposed increases, ordered that an investigation be conducted into and concerning the lawfulness of the tariff schedules suspended, and set this matter for hearing in the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, April 25, 1979, at 9:30 a.m.

On May 24, 1979, the Public Staff filed a motion asking the Commission to require the railroads to supply certain data referred to in the motion. By an Order dated June 15, 1979, the railroads were given additional time within which to analyze the data request. The hearing was rescheduled for Tuesday, August 7, 1979, at 9:30 a.m. and held on that date.

At the time of the hearing, motions were made by James L. Howe III, counsel for the Southern Railway Company, and Phyllis A. Joyner, counsel for Seaboard Coast Line Railroad Company, that they be admitted to practice before the North Carolina Utilities Commission for the sole purpose of appearing for their respective railroad companies in the above-captioned matter. These motions were presented to the Commission by Odes L. Stroupe, Jr., of the firm of Joyner & Howison, Raleigh, North Carolina, who is a resident of North Carolina and duly admitted to practice in the General Courts of Justice in North Carolina. Said motions were allowed.

The Public Staff moved to dismiss for the railroads' failure to produce the data it had previously requested. The railroads responded that upon further analysis of the request, it was determined that most of the relevant data covered by the request was either contained in the prefiled testimony of the railroads' witnesses or available from these witnesses at the hearing. The railroads objected to certain portions of the request on the grounds that the data requested was unavailable and would require unreasonably burdensome manual studies to produce. The Examiner reserved ruling on the motion. Upon consideration of the evidence and testimony presented herein, the Commission now denies the motion. There is sufficient evidence presently in the record for the Commission to render its decision in this proceeding.

At the hearing, the Applicants presented testimony of the following witnesses:

Dewey A. Jones, Senior Assistant Manager, Southeastern Demurrage and Storage Bureau

Edward J. Martin, Senior Market Analyst, Southern Railway System

R.W. Parsons, Jr., Assistant Manager-Commerce, Family Lines System

Hartley W. Hird, Manager-Research Department, Southern Freight Association

The Public Staff presented testimony by J. Phillip Lee, Transportation Rates Division.

A public witness, J.A. Brough, Georgia Pacific Corporation, presented testimony on behalf of his employer.

Mr. Jones of the Southeastern Demurrage and Storage Bureau testified that the purpose of the proposed increase in demurrage charges is to improve car utilization and thereby increase car supply which in turn would help alleviate the acute car shortage. He stated that revenue increases are not sought or desired by the railroads.

Mr. Jones further testified that the proposed level of demurrage charges have been in effect on interstate demurrage since February 1, 1979. Previous to February 1, 1979, ICC Service Order 1315 was applicable to both interstate and intrastate demurrage including North Carolina. As pointed out by Mr. Jones, the Service Order 1315 charges, while not identical to those proposed here, are comparable therewith. In fact, it was Mr. Jones' testimony that the Service Order provisions were more restrictive than the proposed charges.

In this regard, Mr. Jones stated that the service order charges were $10 for each of the first two chargeable days, $20 for each of the next two days, $30 for each of the next two days and $50 for each day thereafter. This compares with the proposed $20 per day for the first four days, $30 per day for the next two days and $60 per day for each day thereafter. However, Mr. Jones pointed out that under the service order, two credits were required to offset one debit under the average demurrage agreement. Under the present proposal, credits offset debits on a one-for-one basis. Another facet of the proposal which Mr. Jones indicated made it less restrictive than the service order was that under the service order, Saturdays, Sundays, and holidays were chargeable days immediately after expiration of free time. The present proposal would not make Saturdays, Sundays, or holidays chargeable days until after at least one chargeable day had occurred.

Mr. Jones presented exhibits demonstrating that with respect to most shippers the railroads' proposal would represent a decrease in demurrage over Service Order 1315 levels notwithstanding the fact that the proposed charges at some levels of detention are actually higher than those under the service order.

In order to demonstrate the likelihood that the proposed charges would be successful in providing an incentive to shippers and receivers to release cars quicker, Mr. Jones compared the systemwide detention experience on the two principal North Carolina railroads for a period before the implementation of Service Order 1315 (when the level of charges were the same as now applicable North Carolina intrastate) with a like period occurring during the pendency of the service order (when the North Carolina intrastate charges were comparable to those being presented here). The comparisons showed better release performance under the service order. The experience in March 1979 showed a continuation of this performance.

Mr. Jones expressed the opinion that the same concerns affect systemwide (interstate and intrastate) detention practices of shippers as those on North Carolina intrastate alone and, therefore, the comparison he made is representative of what could reasonably be expected to happen in intrastate North Carolina as a result of the proposal.

Finally, Mr. Jones pointed out a problem facing shippers located in North Carolina arising out of the difference in levels of demurrage charges interstate vs. intrastate. He stated that a large majority of cars handled under the involved traffic are under the average agreement plan. This plan, as explained by Mr. Jones, allows a shipper to reduce or avoid monthly demurrage payments through a system of offsetting debits and credits. Simply put, a shipper can gain credit days by releasing cars before free time expires which at the end of the month can be used to offset chargeable days. But, as further pointed out by Mr. Jones, when the per day charges are different as is now the case interstate vs. intrastate North Carolina, the shipper's advantage under the average agreement is greatly diluted since interstate debit days cannot be offset by intrastate credit days and vice versa. When the charges were on the same level, i.e., during and before the pendency of Service Order 1315, the shipper could mix intrastate and interstate debits and credits. An analysis by Mr. Jones turned up 63 different demurrage accounts in North Carolina covering a total of 3729 cars (2003 interstate and 1726 intrastate) for the months of February through June 1979 when individual shippers paid anywhere from $10 to $1,540 more demurrage because of the inability to mix intrastate and interstate debits and credits.

Edward J. Martin of Southern Railway testified that his railroad was experiencing a car shortage. He presented an exhibit showing his company's record of inability to fill car orders during weekly periods in the months of January through March 1979. This car shortage existed, Mr. Martin testified, even though Southern has increased its overall car fleet during the past eight years. During that period, for example, Mr. Martin stated that boxcar ownership has increased almost 15% with carrying capacity increasing over

27%. Covered hopper car ownership has increased almost 18% with an increase in carrying capacity of over 19% during the same period.

Mr. Martin noted that Southern is taking delivery of 500 unequipped 70-ton boxcars in 1979 at a cost of $38,423 each. He pointed out that at the time of the last increase in demurrage charges (1971), Southern purchased similar equipment at a cost of $15,618 each. In 1979, Southern is receiving 500 covered hoppers at a cost of $37,893 each. In 1971, Southern acquired similar equipment at a cost of $15,390 each. Mr. Martin expressed the opinion that the 146% increase in the price of this equipment is a good reason to increase demurrage since investment in new equipment is predicated upon the ability of the railroads to earn transportation revenue from loaded car movements. Mr. Martin further observed that the substantial increase in the cost of railroad freight cars makes it imperative that the equipment be utilized to the fullest extent possible, reducing idle car days to a minimum.

Mr. Martin introduced exhibits showing Southern Railway's traffic by commodity group intrastate and interstate North Carolina. He observed that there is no difference in loading or unloading a car whether it has moved or will move interstate or intrastate. He also observed that an inbound interstate car can quickly become an outbound intrastate car or vice versa, so that detention of the car could affect both interstate and intrastate utilization of the car.

In order to demonstrate the better car utilization resulting from the savings in car days produced by an earlier release of loaded or empty cars by shippers, Mr. Martin calculated the additional car days which would be produced if the shippers improved their detention by the amount shown in Mr. Jones' October 1977 vs. October 1978 comparison. This calculation showed that a considerable number of car days would be saved if the shipper improved their detention practices by the same amount shown in Mr. Jones' study.

R.W. Parsons of the Family Lines System (which includes the Seaboard Coast Line Railroad Company) testified that his company, like Southern, is experiencing an extreme car shortage. He presented an exhibit showing unfilled car orders for the weeks in March through June 1979. His opinion is that measures such as the increase in demurrage proposed here will help alleviate the car shortage through encouraging better car utilization.

Mr. Parsons pointed to the large percentage increases in the prices paid by his company for freight cars since 1971 while demurrage charges intrastate in North Carolina are still at the 1971 levels. Mr. Parsons also introduced an exhibit showing separately the North Carolina interstate and intrastate traffic of his railroad by commodity groups.

Hartley W. Hird of the Southern Freight Association testified on behalf of Applicants as to the need for better car utilization by the railroads. In his opinion, the North Carolina railroads' low level of earnings, high and rising interest rates, increased cost of freight cars, and other factors make it mandatory that these railroads maximize the utilization of their freight car fleet. Furthermore, Mr. Hird observed that maximum efficiency in car utilization is economically beneficial not only to the railroads, but to the shippers as well, since shippers must ultimately provide the funds to buy the cars that carry their freight.

Mr. Hird pointed to the acquisition of 19,065 increasingly expensive freight cars by the principal North Carolina railroads between 1972 and 1978 as proof of these railroads' efforts to improve car supply. Mr. Hird further testified that the net investment in freight cars for the principal North Carolina railroads as a proportion of their total investment base used in the normal development of the industry's rate of return has increased from 1972 through 1978. This led Mr. Hird to the conclusion that these railroads presently have a larger portion of their total investment base related to freight cars than was the case only seven years ago. Mr. Hird expressed the opinion that the railroads must use this equipment, which is designed to move the nation's freight, for the purposes intended and not allow this expensive equipment to become unduly immobile.

Mr. Hird pointed to various indicia of productivity gains established by the North Carolina railroads over the recent years and provided an estimate of line-haul transportation revenue loss per day caused by the undue detention of cars by shippers.

J. Phillip Lee of the Public Staff presented testimony setting forth the proposed charges and explaining the difference between special detention charges and regular or normal demurrage charges. Mr. Lee expressed the opinion that he does not believe the increased charges would improve the rail car shortage. Mr. Lee agreed that special detention charges are not included in this proceeding.

J.A. Brough, a public witness representing Georgia Pacific Corporation, testified in opposition to the proposal. He stated that, while his primary interest is in the special detention provisions not involved in this proceeding, he is still opposing the proposal because of its possible effect on the outcome of another proceeding involving special detention charges. He further testified as to the instances of poor railroad service received by his company's facilities in North Carolina and as to some bunching of railroad cars at the loading end of the rail haul.

Based on the testimony given, the exhibits presented and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That the common carriers participating in the tariff schedule under suspension in this proceeding are subject to regulation by this Commission and are properly before the Commission with respect to the charges contained in said publication through the representation of the Traffic Executive Association - Eastern Railroads.

2. That it is the duty of this Commission to make rules and fix, establish, or allow rates governing demurrage and storage charges by common carriers.

3. That one of the principal purposes of demurrage charges is to provide incentive to shippers and receivers for quicker release of freight cars.

4. That there continues to be a chronic shortage of freight cars despite the railroads' efforts to reduce the shortage through acquisition of new equipment.

5. That the cost of freight cars to the railroads has increased considerably since 1971 and that North Carolina intrastate demurrage charges are presently at the 1971 level.

6. That the present levels of demurrage charges are not adequate to provide the necessary incentive to rail shippers and receivers to release cars before the expiration of free time allowed for loading or unloading cars or to release those cars quicker once chargeable days have begun to accrue.

7. That the charges approved herein are likely to provide an incentive to shippers and receivers of rail freight to load and unload quicker and that they are likely to respond to that incentive by a quicker release.

8. That quicker release of freight cars by shippers and receivers of rail freight will produce additional productive car days for the benefit of all users of rail freight service.

CONCLUSIONS

North Carolina G.S. 62-207 fixes a duty upon this Commission to make rules and fix or allow demurrage and storage charges by common carriers. In carrying out this statutory duty the Commission is under the obligation to determine whether demurrage charges such as proposed here are reasonably consistent with the purpose of demurrage to obtain more prompt release of freight cars. In this determination, the Commission must weigh the possible benefits of better freight car availability to the shipping public as a whole against possible hardships to individual members of the shipping public who may have to incur increased charges.

The Examiner concludes that there is a reasonable probability that the charges approved herein will have the desired effect of releasing cars for productive rail service sooner which will benefit the shipping public as a whole through improved freight car availability. There is nothing presented in this record which would rebut the prima facie showing by the railroads on this issue.

The Examiner concludes that the benefits resulting from increased car utilization outweigh possible hardships to individual shippers who may incur increased demurrage charges. The Examiner believes that shippers who exercise due diligence can usually avoid demurrage. However, certain small shippers may have difficulty filling cars within the allotted free time, and therefore, a 100% increase in the present charge of $10 for the first four days is unreasonable. An increase of 50% for the first two days' demurrage and 100% for the second two days' demurrage is a more reasonable increase at this time.

The Examiner concludes that the following demurrage charges should be approved:

$15 for each of the first two chargeable days, which may be offset by credits earned on other cars on a one-for-one basis.

$20 for each of the next two chargeable days, which may be offset by credits earned on other cars on a one-for-one basis.

$30 for each of the next two days.

$60 for each subsequent day.

The $30 debits and $60 debits may not be offset by credits and must be paid except for allowances permitted in Section 1400.

IT IS, THEREFORE, ORDERED as follows:

1. That the tariff schedules designated Freight Tariff 4-K, Supplement 32, thereto in full, shall be amended to include the following demurrage charges:

$15 for each of the first two chargeable days, which may be offset by credits earned on other cars on a one-for-one basis.

$20 for each of the next two chargeable days, which may be offset by credits earned on other cars on a one-for-one basis. $30 for each of the next two days.

$60 for each subsequent day.

2. That said tariff schedule shall in all other respects be approved.

3. That publications authorized hereby may be made on 10 days' notice to the Commission and the public, but in all other respects, shall comply with the rules and regulations of the Commission governing construction, filing and posting of tariff schedules.

4. That upon publication hereby authorized having been made, the investigation in this matter be discontinued and this proceeding and the same is hereby discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of October, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. R-66, SUB 102

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rail Common Carriers - Suspension and Investigation of Proposed Increase in Rates and Charges (X-357-A), Scheduled to Become Effective May 7, 1979) ORDER ALLOWING RATE INCREASE

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, July 23, 1979, at 10:00 a.m.

BEFORE: Comissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Respondents:

Odes L. Stroupe, Jr., Joyner & Howison, P.O. Box 109, Raleigh, North Carolina 27602
For: North Carolina Railroads, Southern Railway Company, and Norfolk Southern Railway Company

James L. Howe III, Southern Railway System, P.O. Box 1808, Washington, D.C. 20013
For: North Carolina Railroads, Southern Railway Company, and Norfolk Southern Railway Company

Albert B. Russ, Jr., Seabord Coast Line Railroad Company, 3600 West Broad Street, Richmond, Virginia
For: North Carolina Railroads and Seaboard Coast Line Railroad Company

Dwight W. Allen, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This matter arose upon the filing with this Commission by Southern Freight Tariff Bureau (SFTB), 151 Ellis Street, N.E., Atlanta, Georgia 30303, on April 3, 1979, for and on behalf of rail carriers in North Carolina, of a tariff schedule proposing a general increase varying by commodities but predominating between 7% and 8% in rates and charges applicable on North Carolina intrastate rail shipments scheduled to become effective May 7, 1979, designated as follows:

SFTB Tariff of Increased Rates and Charges, K-357-A, Supplement No. S-26, thereto in full.

The Commission, being of the opinion that this is a matter affecting the public interest, by Order dated May 1, 1979, suspended the proposed increased rates, declared this matter to be a general rate case under G.S. 62-137, ordered that an investigation be conducted into and concerning the lawfulness of the tariff schedule suspended, and set this matter for hearing in the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, July 23, 1979, at 1:00 p.m.

Notice of Intervention was filed in this docket by the Public Staff on May 29, 1979.

At the hearing the Applicants offered the testimony of the following witnesses:

Hartley W. Hird, Manager-Research Department, Southern Freight Association

R.D. Briggs, Assistant Director-Commerce, Marketing and Planning Division, Southern Railway System

Brooks H. Gordon, Manager-Commerce, Seaboard Coast Line Railroad Company

Ronald G. Butler, Senior Economic Analyst, Seaboard Coast Line Railroad Company

R.A. Robb, Commerce Statistician, Southern Railway System.

The Public Staff presented no witnesses.

Mr. Hird presented evidence relating to the recent increases in costs of doing business by the railroads operating in North Carolina, and as to these railroads' need generally for improved earnings. Mr. Hird indicated that this request on North Carolina intrastate traffic is comparable to an increase designated by the Interstate Commerce Commission as Ex Parte No. 357 which was filed with

that Commission on November 1, 1978, and which became effective December 15, 1978, and February 25, 1979, with respect to interstate traffic. Mr. Hird stated that the cost escalations incurred by the principal railroads operating in North Carolina subsequent to the last general increase (R-66, Sub 93 (Ex Parte No. 349)) were $91.5 million, which amount to 5.63% of their overall freight revenues. He emphasized the fact that the increase was not based on any cost escalations incurred after January 1, 1979, and, as to increases in fuel costs none past October 1, 1978. Mr. Hird indicated that data utilized in his testimony and exhibits for the most part related to the principal railroads operating within North Carolina which are the Southern Railway Company and Seaboard Coast Line Railroad Company. He indicated that the data for these two Class I railroads is representative of the revenue needs of all North Carolina railroads, and is consistent with the approach used in past proceedings before this Commission.

Mr. Hird stated that the ability of the railroads to provide modern facilities to meet North Carolina's and the nation's transportation needs is imperiled if additional revenue is not immediately forthcoming. He indicated that in the 12-month period ending September 30, 1978, the principal railroads operating in North Carolina had realized a rate of return of 7.79% on net investment systemwide. He further stated that in his opinion this is an inadequate rate of return, especially in light of the Interstate Commerce Commission's recent determination in the congressionally mandated revenue adequacy case, Ex Parte No. 353, that 10.6%, the railroads' cost of capital, is a necessary rate of return on net investment.

Mr. Briggs in his testimony recounted the various phases through which the increase tariff went prior to its filing with this Commission. He pointed out that originally the increase, which was proposed to the Interstate Commerce Commission in November 1978, was a selective increase with 8% predominating. In the meanwhile, the President's Council on Wage and Price Stability (COWPS) finalized its guidelines on allowable price increases. The railroads, with the permission of the Interstate Commerce Commission and the approval of COWPS, reduced each of the selective increases by 1% which left the predominant increase at 7%. The Interstate Commerce Commission authorized the increase with certain prescribed holddowns and exceptions to be effective on December 15, 1978. At the same time, that Commission, in recognition of the revenue needs of the railroads, authorized the carriers to publish additional increases so that they could recoup the revenues that would be lost because of the Commission imposed holddowns and exceptions. The carriers accomplished this in a supplement to the X-357-A tariff which contained a number of additional 1% increases. Mr. Briggs, and subsequently Mr. Gordon, stated that it is this X-357-A tariff, as supplemented, which is before this Commission. It still retains the 7% feature in compliance with COWPS guidelines even though some of the 7%

increases were increased to 8% to offset revenue losses caused by the Interstate Commerce Commission imposed holddowns and exceptions.

Brooks H. Gordon of the Seaboard Coast Line Railroad Company adopted the prefiled testimony of George M. Gallamore, also employed by that railroad. Mr. Gordon recounted the history of this increase as it evolved through the Interstate Commerce Commission. His account corroborated Mr. Briggs' testimony on this subject. Mr. Gordon further pointed out that the same commodities handled by his railroad intrastate in North Carolina are also handled in interstate commerce from and to North Carolina. He stated that the increased revenues are needed by the North Carolina railroads to avoid deterioration of their financial position.

The Applicants presented testimony through R.A. Robb of Southern Railway Company and Ronald G. Butler of the Seaboard Coast Line Railroad Company. These witnesses presented the intrastate North Carolina revenues, expenses, rents, taxes, investments, and rates of return for the Southern Railway Company, Norfolk Southern Railway Company, and Seaboard Coast Line Railroad Company. Both witnesses utilized the so-called "Luckett formula" previously approved by the North Carolina Utilities Commission, and the North Carolina Supreme Court, and used for separating North Carolina interstate and intrastate expenses. Mr. Robb stated that the North Carolina railroads are constantly seeking to improve the accuracy of the formula. The modifications were all incorporated in the formula used in the last general increase request, Docket No. R-66, Sub 93, in 1978. Mr. Robb further indicated the formula has been improved in this proceeding by the use of the effective tax rate to separate federal income taxes in order to provide a fairer allocation of this expense. Based on the separation formula, Mr. Robb determined that the combined 1978 North Carolina intrastate operations of Southern Railway Company and its wholly owned affiliate, Norfolk Southern Railway Company, produced a $124,000 deficit in net railway operating income.

Mr. Butler adopted the prefiled testimony of L.L. McLendon also of the Seaboard Coast Line Railroad. Mr. Butler testified that the Seaboard Coast Line's 1978 North Carolina intrastate operations produced a 3.15% rate of return. Mr. Butler stated that in his opinion this rate of return is substandard by any reasonable measure. He stated that a reasonable standard by which railroad earnings should be measured would be either the 10.6% cost of capital found by the Interstate Commerce Commission in the 1978 Ex Parte No. 353 revenue adequacy proceeding before that Commission, or the 12.5% cost shown by the railroads in the interstate phase of this Ex Parte No. 357 increase proceeding.

Based on the testimony given, the exhibits presented and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That the common carriers participating in the tariff schedule under suspension in this proceeding are subject to regulation by this Commission with respect to such rates and charges through the representation of the Southern Freight Tariff Bureau.

2. That the railroads' method of separation of system expenses and North Carolina expenses in the application of the Luckett formula appears reasonable in light of the record in this case and the present requirements of the Commission Rule R1-17(b)(12)g.

3. That the approximate, rateable fair value of the portion of the railroad property used and useful, devoted to intrastate traffic in North Carolina is $37,928,000.

4. That the intrastate rates and charges currently in effect on North Carolina rail traffic are not sufficient to produce revenue adequate to provide the railroads a fair, reasonable, and just rate of return on their North Carolina investment devoted to intrastate use, used and useful in producing revenue.

5. That the increases in rates and charges approved herein will compensate the railroads for their increased expenses and will allow a more reasonable rate of return on their North Carolina investment.

6. That the increase in intrastate rates and charges approved herein is necessary at this time to afford the railroads a fair return on their property used and useful in connection with their intrastate operations in North Carolina.

7. That inflation in many phases of intrastate common carrier operation has actually affected the operating results of the railroads.

8. That the common carriers participating in the tariff schedules under suspension in this proceeding are in need of additional revenues and should be allowed to make an increase in their rates and charges, as approved by this Order. The increases approved herein are just and reasonable and are identical to those increases approved by the ICC in Ex Parte No. 357, as amended.

CONCLUSIONS

1. North Carolina G.S. 62-133 requires that the Commission in this proceeding give due consideration, among other factors, to the fair value of the public utilities' property used and useful in providing the service rendered to the public within this State, the utilities' estimated revenue under the present proposed rates, the public utilities' estimated revenue operating expenses, and

thereafter, requesting this Commission to fix a rate of return on the fair value of the property as will enable the public utilities by sound management to produce a fair profit for its stockholders, considering changing economic conditions and other factors as they then exist to maintain its facilities and services in accordance with the reasonable requirements of its customers and the territory covered by its franchises and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and which are fair to its existing investors.

The railroads in this proceeding have carried the statutory burden of proof to show by material and substantial evidence that their present rates and charges on intrastate operations are not sufficient to permit them to continue to offer adequate and efficient transportation service under these rates.

2. The Commission concludes that the Applicant railroads have shown the need for additional revenues that the increase approved by this Order will produce, that the increases are not excessive, and that the increases should be allowed to become effective on 10 days' notice.

3. While the Commission does not conclude that the formula and method used in making the separations in this case reflect, to a certainty, accurate results, the Commission does conclude that the carriers have, in good faith, attempted to modify said formula and methodology to reflect more accurate results. The respondents herein should continue such efforts. The Commission does conclude that the evidence, when considered in light of the circumstances in this case, demonstrates that the intrastate operations of the carriers by rail operating within the State of North Carolina do not produce sufficient revenues to provide a fair rate of return for such operations.

4. The Commission concludes that it is its duty to protect the public by requiring service at just and reasonable rates and that duty also requires this Commission to fix rates which are just and reasonable to the utility so that the utility might have sufficient earnings to enable it to give reasonable service.

5. The Commission further concludes that the rail common carriers who are the respondents herein, have carried the burden of proof, showing that the proposals herein are just and reasonable.

IT IS, THEREFORE, ORDERED:

1. That the Order of Suspension in this docket dated May 1, 1979, be, and the same is hereby, vacated and set aside and that the Applicant rail carriers herein be, and the same are hereby, authorized to publish and file with the Commission, on 10 days' notice, appropriate tariffs

containing increases in rates and charges identical to those published applicable to interstate commerce in North Carolina, such increases in interstate rates having been approved by the Interstate Commerce Commission in Ex Parte No. 357, as amended.

2. That publication authorized hereby may be made on 10 days' notice to the Commission and the public, and in all other respects shall comply with the rules and regulations of the Commission governing construction, filing, and posting of tariff schedules.

3. That upon publication hereby authorized having been made, this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. R-71, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Seaboard Coast Line Railroad Company - Suspension and Investigation of Proposed Increase in Charges for Use of Special Equipment in Switching Service, Scheduled to Become Effective January 31, 1979	) RECOMMENDED ORDER) GRANTING PROPOSED) INCREASE IN) PENALTY CHARGE

HEARD IN: Commission Hearing Room 214, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Respondent:

Charles B. Neely, Jr., Maupin, Taylor & Ellis, P.A., P.O. Box 829, Raleigh, North Carolina 27602
For: Seaboard Coast Line Railroad Company

Charles M. Rosenberger, Seaboard Coast Line Railroad Company, P.O. Box 27581, Richmond, Virginia 23261
For: Seaboard Coast Line Railroad Company

For the Intervenor:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

PARTIN, HEARING EXAMINER: This matter arose upon the filing with this Commission by C.F. Bell, Jr., General Supervisor-Tariffs, Seaboard Coast Line Railroad Company, 500 Water Street, Jacksonville, Florida 32202, of Supplement 16-F to Seaboard Coast Line Railroad Company Freight Tariff 583-31-C, scheduled to become effective on January 31, 1979. This tariff proposed an increase in the penalty charge for the use of special equipment in intraplant, intraterminal, or interterminal switching from a charge of 5718 cents per car at the Ex Parte 349 level to 16004 cents per car at the Ex Parte 349 level. (An earlier Supplement to Tariff 583-31-C was rejected by the Commission for the failure to comply with G.S. 62-79(b). The filing of Supplement 16-F complies with the statute.)

The Commission, being of the opinion that this was a matter affecting the public interest, by Order dated January 24, 1979, suspended the proposed increase, ordered that an investigation be instituted into and concerning the lawfulness of the tariff schedules suspended, and set this matter for hearing in Raleigh on Tuesday, May 1, 1979.

On February 16, 1979, the Public Staff of the North Carolina Utilities Commission gave notice of its intervention.

On March 5, 1979, the Commission issued an Order rescheduling the hearing in this docket to the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, May 29, 1979, at 2:00 p.m.

On April 23, 1979, respondent Seaboard filed exceptions to the Commission's January 24 Order, particularly to that portion of the Order which directed respondent to furnish the information required by Rule R1-17 of the Commission's Rules of Practice and Procedure, and also to a letter from the Public Staff dated April 5, 1979, requesting certain data. Respondent requested the Commission to vacate the data requirements or in the alternative to withhold action on its exceptions until the Commission and the Public Staff had an opportunity to evaluate respondent's evidentiary filings.

On May 8, 1979, the Public Staff filed a motion for Order to issue which requested the Commission to require respondent to furnish certain accounting data and information.

On May 18, 1979, the respondent filed a reply to the Public Staff's motion requesting that the motion be denied. Thereafter, on May 22, 1979, the Public Staff filed its response to respondent's reply.

On May 30, 1979, the Commission issued an Order as proposed by the Public Staff requiring respondent to file with the Commission certain data on or before June 11, 1979, and rescheduling the hearing in this docket to July 11, 1979, at 9:30 a.m.

On June 14, 1979, respondent Seaboard filed a motion with the Commission for a stay of the May 30 Order requiring data to be filed by June 11, 1979, until the hearing scheduled in this matter was held on July 11 and the Public Staff and the Commission had an opportunity to evaluate the evidence.

On June 25, 1979, the Public Staff filed its motion and response to the motion to stay of respondent. In its motion the Public Staff asked that the motion to stay be denied or, in the alternative, the Public Staff not be required to prefile any testimony or be required to present any evidence at the July 11 hearing.

The Commission issued an Order on this matter on June 27, 1979, granting the respondent's motion to stay pending the hearing which was scheduled in this matter on July 11, 1979. The Commission also granted the alternative motion of the Public Staff not requiring them to prefile any testimony for the July 11 hearing or to offer any evidence at this hearing. The Public Staff was directed to prefile its testimony on or before July 23, 1979, and to present its evidence at a second hearing scheduled for Friday, August 3, 1979, at 9:30 a.m.

At the time of the July 11, 1979, hearing, Charles M. Rosenberger, counsel for Seaboard Coast Line Railroad, was admitted to practice before the Commission for the sole purpose of appearing for his railroad company in this matter.

At the July 11 hearing, respondent presented testimony of the following witnesses:

Brooks H. Gordon
Manager of Commerce
Family Lines System

R.F. Murphy
Assistant General Manager of Car
Distribution and Utilization
Seaboard Coast Line Industries

A public witness, John R. Keimeier, Ralston Purina Company, presented testimony on behalf of his employer.

At respondent's request the second hearing in this docket, scheduled for August 3, 1979, was rescheduled for September 18, 1979, for the purpose of receiving the Public Staff's testimony.

On July 11, 1979, the Public Staff filed a motion to dismiss the application in this docket stating that Applicant had failed to carry its burden of proof, and advising that the Public Staff had no testimony to present in the proceeding.

On July 24, 1979, respondent replied to the Public Staff's motion to dismiss moving that it be denied, or, in the alternative, that oral argument be set on the motion on the September 18, 1979, date already set for hearing in this docket.

On August 8, 1979, the Commission issued an Order setting the motion to dismiss and response of the respondent for oral argument on September 18, 1979, at 9:30 a.m.

Following the oral argument on September 18, 1979, the Hearing Examiner reserved ruling on the motion. The parties filed proposed Orders on October 17 and 18. Upon consideration of the evidence and testimony presented herein, the Examiner now denies the motion of the Public Staff. Respondent has presented sufficient evidence and testimony to sustain the burden of proof under G.S. 62-75 and G.S. 62-134(c).

Based on the entire record in this proceeding and the testimony and exhibits presented at the hearing and after the hearing, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Seaboard Coast Line Railroad Company, the respondent rail carrier participating in the tariff schedule under suspension and investigation in this proceeding, is subject to regulation by this Commission and is properly before the Commission with respect to such tariff schedule.

2. The tariff schedule under suspension proposes to increase the penalty charge for the use of special equipment in intraplant, intraterminal, or interterminal switching from a charge of 5718 cents per car at the Ex Parte 349 level to 16004 cents per car at the Ex Parte 349 level.

3. Respondent is presently experiencing severe car shortages particularly with respect to those types of equipment designated as special equipment in the tariff under suspension, such as covered hopper cars. These shortages are occurring not only in respondent's systemwide operations but in its North Carolina intrastate operations as well.

4. The respondent has found that the present penalty charge is not high enough to deter the use by shippers of special equipment in switching service.

5. The proposed increase in penalty charge is designed to discourage completely the use of special equipment in switching service so this same equipment can be used in more productive line-haul service. The increase is not intended to increase respondent's revenue on this traffic. In fact, the goal of the respondent is to recover zero revenues under the proposed penalty charge increase.

6. The cost of new freight equipment is expensive. Line-haul movements furnish respondent greater revenues, thus allowing the purchase of more new equipment.

7. The penalty charge does not apply to the use in switching service of shipper-owned or leased special equipment, nor does the penalty charge apply when special equipment is provided at the respondent's convenience.

8. In addition to increasing the penalty charge, the respondent will no longer furnish special equipment to shippers for use in switching service. Therefore, the instances in which the penalty charge will be assessed is when a shipper appropriates such a car for use in switching service.

9. The goal of the respondent to discourage the use of special equipment in switching service is in the public interest, since it will result in the improved availability of special equipment for line-haul use.

10. The respondent in this proceeding has satisfied the statutory burden of proof to show that the proposed tariff schedule under suspension is just and reasonable, and that there is a definite need by respondent for the proposed tariff schedule.

CONCLUSIONS

The Hearing Examiner finds and concludes that the tariff schedule proposed by respondent providing for an increase in the penalty charge for the use of special equipment in intraplant, intraterminal, and interterminal switching is just and reasonable, and that there is a need by respondent for the proposed tariff schedule.

In so deciding, the Hearing Examiner notes, among other things, the following:

The purpose of the penalty charge for the use of special equipment in switching service is to discourage the shipper or receiver from using the equipment in that type of service. Respondent already has in effect a penalty charge for using special equipment in switching service; however, it is obviously inadequate since this equipment continues to

be used for switching. The record indisputably shows that, for a five-month period studied between December 1978 and April 1979, it was necessary on at least four occasions to assess the penalty charge for the use of special equipment in switching. This equipment, as is all rail equipment, is extremely expensive and when purchased is intended to be used in the more productive line-haul service. Line-haul service furnishes respondent with greater revenues which in the long run enables respondent to purchase more new equipment.

The Hearing Examiner concludes that the proposed increase in penalty charges is justified by the evidence in this proceeding. As pointed out by the respondent's witness Murphy, the increase will have the desired effect of releasing special equipment from switching service into line-haul service. It is obvious that when this occurs respondent will receive no additional revenue from this proposal since it will not be necessary to assess the penalty charge. The benefits that will accrue will be an improvement in utilization of its rail equipment allowing maximum revenues and the purchase of more new equipment. As the respondent amply demonstrated, there is a severe shortage of rail freight cars in this country.

The Hearing Examiner further concludes that this improvement of car utilization will benefit the shipping public as a whole through improved freight car availability. These benefits which will accrue to the using and consuming public as a whole far outweigh any small hardships which may occur to individual shippers through the increase in the penalty charge.

The Public Staff strenuously contended that the proposed increases should be denied, basically because the respondent did not furnish sufficient cost and revenue data to justify the increase. However, the Hearing Examiner must conclude that, under the evidence in this proceeding, the respondent met the statutory burden of proof to show that the magnitude of the proposed increase is just and reasonable. In so deciding, the Hearing Examiner again calls attention to the following: This proceeding involves a penalty charge, not a revenue-producing rate. The respondent hopes that the revenue under the penalty charge will become zero.* There is a severe shortage nationwide of rail freight cars. The purpose of the proposed increase herein is to completely discourage the use of the special equipment in switching service, so that the equipment will be available to shippers for line-haul traffic. As respondent's witness Murphy pointed out: "If this penalty charge is successful in releasing this equipment completely for line-haul service then in my opinion it is certainly justified." (Mr. Murphy has had 33 years in railroad service and is presently in charge of the respondent's car distribution and utilization.)

* The purpose of the penalty is not to recover costs; it is to deter use of equipment needed elsewhere.

As the record in this proceeding further shows, the special equipment is extremely expensive: a new 100-ton covered hopper car costs the respondent $34,000; a large boxcar costs $45,000. Once again the testimony of Mr. Murphy is pertinent: "It is certainly not practical for SCL to place a covered hopper car costing $34,000, or a large boxcar costing $45,000 in a switching movement, when that same car can be placed in a line-haul movement. This is what the increase in penalty charge is trying to prevent." (emphasis added) The Hearing Examiner concludes that the respondent's evidence is sufficient to show that the proposed increase in the penalty charge is just and reasonable.

IT IS, THEREFORE, ORDERED:

1. That the Order of suspension and investigation in this docket dated January 24, 1979, be, and the same is hereby, vacated and set aside for the purpose of allowing the tariff schedule to become effective.

2. That the publication authorized hereby may be made on 10 days' notice to the Commission and the public, but in all other respects shall comply with the rules and regulations of the Commission governing construction, filing, and posting of tariff schedules.

3. That upon publication hereby authorized having been made, the investigation in this matter be discontinued and this proceeding and the same is hereby discontinued.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. P-75, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Barnardsville Telephone) NOTICE OF
Company for Adjustments and Changes in) DECISION AND
Its Rates and Charges Applicable to) ORDER
Intrastate Telephone Service)

HEARD IN: Auditorium, Barnardsville Elementary School, Barnardsville, North Carolina

BEFORE: Commissioner Robert Fischbach, Presiding; and Commissioners Ben E. Roney and Leigh H. Hammond

APPEARANCES:

For the Applicant:

Philip J. Smith and Albert L. Sneed, Jr., Van Winkle, Buck, Wall, Starnes and Davis, P.A., Attorneys at Law, 18 Church Street, P.O. Box 7376, Asheville, North Carolina

For the Public Staff:

Dwight W. Allen and Ms. Joy R. Parks, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

For the North Carolina Department of Justice:

Frank Crawley, Associate Attorney General, Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On April 23, 1979, Barnardsville Telephone Company (Barnardsville, Applicant, or the Company) filed an application with the Commission seeking to increase its rates and charges to produce additional local service revenues of $59,916 annually.

By Order issued on May 7, 1979, the Commission, believing the application involved a general rate proceeding under G.S. 62-137, suspended the proposed rates, ordered an investigation, and set the matter for hearing in Barnardsville, North Carolina, on June 13 and 14, 1979.

On May 10, 1979, the Public Staff filed a Notice of Intervention in this docket. A similar notice of Intervention was filed by the Attorney General on June 11, 1979. Both interventions were allowed by the Commission.

The matter came on for hearing as scheduled in the Commission's Order Setting Hearing. All parties were present and represented by counsel.

Having considered the Company's application, testimony presented at the hearing, and the record in this docket as a whole the Commission hereby gives notice of its decision to allow Barnardsville Telephone Company the opportunity to earn a fair rate of return of 6.97% on its investment used and useful in providing telephone service in North Carolina. The approved overall rate of return of 6.97% consists of an embedded cost rate of 5% on the debt component of Barnardsville's investment and a return of 16% on the stockholder's equity component of Barnardsville's investment.

In order to be allowed the opportunity to earn a 6.97% return on its investment, the Commission concludes that Barnardsville should increase its local service rates and charges to produce an annual increase in local service revenues of approximately $42,150. The appropriate level of test-period operating revenues under present rates was found to be $124,314 by this Commission and operating revenues after consideration of the revenue increase approved herein will be approximately $166,043.

An Order setting forth findings and conclusions in support of this decision will be issued subsequently.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Barnardsville Telephone Company, be, and hereby is, authorized to adjust its telephone rates and charges to produce an increase in gross revenues of $42,150 on an annual basis.

2. That the Applicant is hereby called upon to propose specific rates, charges, and regulations reflecting the increase in local service revenues approved herein.

3. That upon the Company filing its proposed rates, charges, and regulations the Public Staff shall review such proposals and file comments or exceptions with this Commission within five days.

4. That the rates and charges necessary to increase annual gross revenues to the level authorized in this Order shall become effective upon the issuance of a further order which will include findings and conclusions supporting the decision made herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of June, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. P-75, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Barnardsville Telephone Company for Adjustments and Changes in Its Rates and Charges Applicable to Intrastate Telephone Service	) ORDER SETTING) RATES AND) CHARGES)

HEARD IN: Barnardsville Elementary School Auditorium, Barnardsville, North Carolina, on June 13 and 14, 1979

BEFORE: Commissioner Robert Fischbach, Presiding; and Commissioners Ben E. Roney and Leigh Hammond

APPEARANCES:

For the Applicant:

Philip J. Smith and Albert L. Sneed, Jr., Van Winkle, Buck, Wall, Starnes, and Davis, P.A., Attorneys at Law, 18 Church Street, P.O. Box 7376, Asheville, North Carolina

For the North Carolina Department of Justice:

Frank Crawley, Associate Attorney General, Box 629, Raleigh, North Carolina 27602

For the Public Staff:

Dwight W. Allen and Ms. Joy R. Parks, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On April 23, 1979, Barnardsville Telephone Company (hereinafter Barnardsville, the Company, or the Applicant) filed an application with the Commission for authority to increase its local service rates and charges in its service area. Barnardsville proposed an annual increase in gross revenues of $59,916 based upon the 12 months ended December 31, 1978. Barnardsville Telephone Company alleged in its application that the Company was last granted a rate increase on April 30, 1956, in Docket P-75. This increase was based upon the operating experience of the Company during the 12 months ended December 31, 1955. The Company further alleged that, as a result of the increased cost and additional investment in plant since 1955, the present rates are insufficient to provide the Company a fair reasonable rate of return on the fair value of its property. The Applicant alleged other matters in support of its application.

On May 7, 1979, the Commission issued an Order which declared the application to be a general rate case under G.S. 62-137, suspended the effective date for the proposed rates for a period of 270 days, and set the matter for investigation and hearing. The Order established the test period as the 12 months ended December 31, 1978. The Commission required Barnardsville to publish Notice of the Hearing which was set for June 13 and 14, 1979. On May 31, 1979, the Commission issued an Order Amending Hearing to include a night hearing on June 13, 1979.

On May 10, 1979, the Public Staff, by and through its Executive Director Hugh A. Wells filed Notice of Intervention on behalf of the using and consuming public. The Intervention of the Public Staff was deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations.

On June 11, 1979, the Attorney General filed Notice of Intervention of behalf of the using and consuming public. The Intervention of the Attorney General was recognized by the Commission on June 13, 1979.

The matter came on for hearing as scheduled in the Commission's Order Setting Hearing. Hearings were held in the Barnardsville Elementary School Auditorium on June 13 and 14, 1979, in Barnardsville, North Carolina.

Testifying for the Company were Joseph E. Hicks, President and General Manager of Barnardsville Telephone Company, and Robert A. Kirschner, Revenue and Settlements Manager for Telephone and Data Systems, Inc.

The Public Staff offered the testimony of Ben E. Turner, Communications Engineer, Leslie C. Sutton, Communications Engineer, James D. Panton, Staff Accountant, and William E. Carter, Assistant Director of Accounting.

The following public witnesses appeared at the hearing to offer testimony in opposition to the proposed increases: Carlton R. Harrell, Lois Wilson, William H. Austin, Marcella Morgan, Alma Shuford, Patricia Maney, and Nell Shuford. Other public witnesses offering testimony were Hal Austin, Winfred McGraw, Rupert Dillingham, Lillian Carson, Betty Greene, Mark Rodgers, Dan Carlton, and Ray McGuinn.

The majority of these witnesses expressed concern at the magnitude of the proposed increases particularly in light of the small calling scope enjoyed by the Company's customers. While many witnesses feel that service has improved since the installation of updated equipment, some feel that service could be further improved. Customers with specific problems were referred to appropriate representatives of the Company and Public Staff.

On June 29, 1979, this Commission issued a Notice of Decision and Order which stated that Barnardsville should be allowed the opportunity to earn a fair rate of return of 6.97% on its investment used and useful in providing telephone service in North Carolina. In order to have the opportunity to earn a fair return, Barnardsville was allowed to increase its local service rates to produce increased annual gross revenues of approximately $42,150.

Based upon the foregoing, the testimony and exhibits admitted at the hearing and the entire record in this docket, the Commission now reaches the following

FINDINGS OF FACT

1. That the Applicant, Barnardsville Telephone Company, is a wholly-owned subsidiary of Telephone and Data Systems, Inc., a parent holding company.

2. That Barnardsville is a public utility as defined by G.S. 62-3(23)a.6. and, as such, is subject to the jurisdiction of this Commission and is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its proposed rates and charges.

3. That the Company on April 23, 1979, filed an application for an increase in its basic local service rates and charges of approximately $59,916.

4. That the test period used by all parties in the proceeding and established by the Commission is the 12 months ended December 31, 1978.

5. That the overall quality of service is adequate.

6. That the intrastate original cost of Barnardsville's net telephone plant in service is $601,817. This includes plant additions and retirements as of April 30, 1979. Net plant in service includes telephone plant in service of $667,671 less accumulated provision for depreciation of $60,093 and unamortized investment tax credits of $5,761.

7. That the reasonable allowance for working capital is $11,683.

8. That no evidence was offered by any party concerning the replacement cost of the Company's property used in the provision of telephone service. Therefore, the only evidence of fair value in this proceeding is the original cost of the Company's intrastate plant used and useful in providing telephone service in North Carolina. The Commission finds that the fair value of utility plant devoted to intrastate telephone service is $613,500, which includes a reasonable allowance for working capital of $11,683.

9. That the reasonable level of test year operating revenues after adjustments is $124,314 net of uncollectibles under present rates and under the rates proposed by Barnardsville the reasonable level would have been $183,631.

10. That the appropriate adjusted level of intrastate operating revenue deductions is $115,929. This includes an amount of $26,563 for depreciation expense.

11. That the capital structure for Barnardsville which is appropriate for use in this proceeding is as follows:

Long-term debt	82.14%
Common equity	17.86%
Total	100.00%

12. That the fair rate of return which the Company should have the opportunity to earn is 6.97% which consists of an embedded cost rate of 5.00% on the debt component of Barnardsville's investment and a return of 16.00% on the stockholder's equity component of Barnardsville's investment.

13. That, in order to earn the rate of return found fair by the Commission, Barnardsville should increase its rates and charges so as to produce an increase in its local service revenues of $42,150 annually, based on operations during the test year.

14. That the rates and charges approved herein which will produce an increase in annual local service revenues of $42,150 are just and reasonable.

15. That the wage-price guidelines are not applicable in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

The evidence for these findings is contained in the verified application, in prior Commission Orders in this docket, and in the record as a whole. These findings are essentially procedural and jurisdictional in nature and were not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence regarding the quality of service provided by Barnardsville Telephone Company was presented by Company witness Hicks, Public Staff witness Turner, and several public witnesses.

Mr. Hicks testified concerning the conditions of the Company at the time it was acquired by TDS and the construction which has recently been completed in the Barnardsville exchange. He indicated that these changes

would enable the Company to meet industry and Commission standards.

Mr. Turner testified concerning the Public Staff's investigation of the quality of service being provided to Barnardsville's subscribers. Mr. Turner's evaluation consisted of facility tests conducted in the new Barnardsville central office, an analysis of subscriber trouble reports, and interviews and tests conducted at selected subscriber's stations. He stated that the results of the tests showed that the Company did not meet the Commission's service objectives regarding local intra-office completion tests and directory assistance answer time tests. The results of his tests showed the intra-office failure rate to be 2.8% while the Commission's objective is a failure rate of 1.0% or less. Mr. Turner concluded that the Company would be better able to meet the Commission's objective if Jack Garrison, a Company employee, would attend a school dealing with the new step-by-step equipment. In his rebuttal testimony, Mr. Hicks testified that the Company had scheduled Jack Garrison for a central office equipment school in August 1979. Mr. Turner stated that the Public Staff was discussing the directory assistance answer time problem with officials of Southern Bell. Mr. Turner's ultimate conclusion was that Barnardsville's service was adequate.

Various public witnesses testified concerning the large increase in the local telephone rates proposed by the Company. Most noted an improvement in the service as a result of the new telephone plant construction, although a few were still experiencing problems as a result of some incomplete construction of the outside plant and the cut-over of party line subscriber to one-party service.

The Commission recognizes that prior to the recent massive telephone plant additions, the quality of service provided by Barnardsville Telephone Company was unacceptable. Barnardsville's subscribers experienced numerous service problems during that period. It is apparent that the Company has made a conscientious effort to improve the quality of service. The Commission would like to commend the efforts made by the local employees of Barnardsville. Numerous public witnesses testified to the local employees' diligent attempts to provide adequate service under adverse conditions. While the Company should continue to work towards improvement of service, it is the Commission's conclusion that the overall quality of service currently provided by Barnardsville is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The Commission will now analyze the testimony and exhibits presented by Company witness Kirschner and Public Staff witness Panton concerning the original cost of Barnardsville's telephone plant in service. The following

chart summarizes the amount that each witness contends is proper for this item:

Item	Company Witness Kirschner	Public Staff Witness Panton
Original cost of telephone plant in service	$664,770	$ 640,754
Less: Accumulated depreciation	(31,758)	(121,474)
Unamortized Job Development Investment Tax Credit	-	(5,761)
Net original cost of telephone plant in service	$633,012	$ 513,519

The witnesses disagreed on the appropriate level of telephone plant in service. Company witness Kirschner included an amount of $664,770 as telephone plant in service while Public Staff witness Panton included an amount of $640,754. The differences in the two witnesses' proposals consist of the following adjustments made by the Public Staff.

	Amount
1. Difference due to use of actual additions and retirements by witness Panton	$ 8,301
2. Elimination of old central office equipment and land	(6,890)
3. Correction of an error made by the Company in recording plant additions	(5,400)
4. Elimination of excess plant	(20,027)
Total	$(24,016)

The first difference listed above is an amount of $8,301. This difference is due to Public Staff witness Panton's use of the actual amount of additions and retirements made by Barnardsville between December 31, 1978, and April 30, 1979, rather than the estimated amount of additions and retirements as proposed by Company witness Kirschner.

The Commission concludes that in this instance actual amounts are more accurate than estimates and that the appropriate additions and retirements to include in telephone plant in service are the actual additions and retirements made by the Company. The adjustment proposed by witness Panton to increase plant in service by $8,301 is therefore found to be proper by this Commission.

Secondly, Public Staff witness Panton proposed excluding an amount of $6,890 relating to the old central office building and land on the basis that this property is not presently used and useful. The Company contended in the rebuttal testimony of Mr. Hicks that the old central office building and associated land is presently being used as storage space. Company witness Hicks testified that the Company plans to modify the old central office building to better fulfill the storage function. Hence, the Commission concludes that Barnardsville both needs and intends to use the old central office property for material storage and finds that the investment related to the old central office property of $6,890 should be included in telephone plant in service.

Public Staff witness Panton made a further adjustment to telephone plant in service eliminating an error made by the Company in recording plant additions. During cross-examination, Company witness Kirschner agreed with the adjustment made by Mr. Panton. Consequently, the Commission concludes that the $5,400 adjustment decreasing plant in service is appropriate.

The final difference of $20,027 noted above is related to an adjustment proposed by Public Staff witness Sutton. He recommended excluding 200 lines of Barnardsville's new central office equipment from telephone plant in service on the basis that these lines represented excess plant. Witness Sutton developed a forecasting model which indicated that the assignable portion of the 800-line office would not meet projected growth until late 1988. He further testified that the size of the new central office, based on a three-year maximum engineering period, should be 600 lines and 800 terminals rather than an 800 line-800 terminal office which was installed by the Company.

On rebuttal, Company witness Hicks testified that the 200 lines considered excess by Public Staff witness Sutton would begin to be needed by the Company within a three-year period. His projections indicated the need for 607 lines within the next three years. It was the Company's position that installation of the 800 lines was reasonable since the lines are purchased in 200-line increments and the Company will begin needing the lines in 1981.

It is the Commission's opinion that the 200 lines in question should be considered used and useful by Barnardsville Telephone Company in providing telephone service in North Carolina. While the Commission accepts that a three-year engineering interval is appropriate, testimony given by witnesses Sutton and Hicks indicated that the 200 lines in question would begin to be needed and filled approximately three years subsequent to the hearing in this case. The Commission therefore finds that the 200 lines having an original cost of $20,027 should be included in telephone plant in service. The proper level of end-of-period plant in service for Barnardsville is $667,671 which

is calculated by adding the original cost of the old central office equipment of $6,890 and the original cost of the 200 lines of $20,027 to the telephone plant in service amount testified to by Public Staff witness Panton.

The witnesses were in disagreement as to the appropriate amount of accumulated depreciation to be used in calculating original cost net investment. Company witness Kirschner included an amount of $31,758 as end-of-period accumulated depreciation while Public Staff witness Panton included an amount of $121,474. The proposals of each witness are calculated as follows:

	Item	Company Witness Kirschner	Public Staff Witness Panton
1.	Accumulated depreciation balance at April 30, 1979, before plant retirements and additions	$ 91,961	$ 92,202
2.	Plant retirements and cost of removal net of salvage, charged to depreciation reserve	(60,203)	(53,017)
3.	Accumulated depreciation related to old central office building		(2,238)
4.	Accumulated depreciation related to overcharge in station apparatus account		(302)
5.	Plant additions charged to reserve supported by Company work orders		(295)
6.	Public Staff witness Panton's annual depreciation on plant additions		20,824
7.	Public Staff witness Turner's adjustment to establish a realistic depreciation reserve balance		64,300
8.	Total	$31,758	$121,474

The difference of $241 in the amounts proposed by witness Panton and witness Kirschner for item one above is due to two minor mathematical errors made by Mr. Kirschner. The Commission therefore concludes that the accumulated depreciation balance at April 30, 1979, before retirements and additions should be $92,202 as proposed by witness Panton.

Item 2 represents the plant retirements and cost of removal net of salvage proposals made by each witness. The

$7,186 difference in the proposals results from the use of estimated retirements by Mr. Kirschner and the use of retirements supported by workpapers established subsequent to the filing of the application by Mr. Panton. The Commission finds that the amount of $53,017 proposed by witness Panton is proper for use herein.

Item 3 represents an adjustment made by Public Staff witness Panton to eliminate the accumulated depreciation associated with the old central office. The propriety of including the old central office in plant in service has been previously discussed at length. The Commission concluded that the old central office was used and useful in providing telephone service; consequently, the related accumulated depreciation of $2,238 should be included in accumulated depreciation.

Items 4 and 5 are minor correcting adjustments made by Public Staff witness Panton. The Commission concludes that these adjustments are appropriate.

Item 6 relates to an adjustment made by witness Panton to include in accumulated depreciation the annual depreciation on plant additions. This $20,824 of annual depreciation on plant additions was included in Mr. Panton's end-of-period depreciation expense. Public Staff witness Panton testified that if the depreciation expense is adjusted to an end-of-period level, then the corollary adjustment to the accumulated provision for depreciation should also be made. Company witness Kirschner testified on rebuttal that Mr. Panton's adjustment was improper and that only the accumulated depreciation balance related to retained plant at April 30, 1979, should be used in this proceeding.

The Commission concludes, consistent with previous policy, that it would be inconsistent to allow the Company to increase its depreciation expense to an end-of-period level without also increasing the accumulated depreciation balance. If the ratepayers are required to pay rates to cover an additional amount of depreciation expense that has not actually been incurred by the Company at the end of the test year, then the ratepayers should certainly receive the benefit of this additional depreciation when determining the appropriate level of accumulated depreciation. However, the Commission previously determined the 200 lines considered excess plant by the Public Staff to be used and useful; therefore, the amount of this adjustment should be $21,505. The Commission concludes that $21,505 should be added to accumulated depreciation for purposes of determining the net telephone plant in service.

Finally, Mr. Panton has increased the accumulated depreciation balance by $64,300 in order to reflect an adjustment proposed by Public Staff witness Turner. Mr. Turner proposed this adjustment in order to reflect the accumulated depreciation balance at a level he considered to be more realistic.

Mr. Turner testified that he had made a comparison of the ratio of accumulated depreciation to telephone plant in service or reserve to plant ratio for Barnardsville. He found that the Company's proposed level of telephone plant in service and accumulated depreciation yield a ratio of approximately 9.0%. According to his testimony the reserve to plant ratio for most telephone companies is in the range of 20% to 25%. He further testified that he anticipated this ratio to stabilize for Barnardsville at a higher level than that for most companies because of the composition of Barnardsville's telephone plant (one exchange), the recent replacement of the Company's central office equipment and much of the Company's outside plant, and the expectation of few retirements in the near future. Mr. Turner anticipates a very stable plant balance over the next few years resulting in a reserve to plant ratio increasing to a level of 29.5% by April 1984. He therefore recommended that the reserve be adjusted to reflect a more realistic level of 19.2% which would result in an adjusted net plant balance of $519,280.

In rebuttal testimony, Mr. Kirschner testified that to reduce the rate base below the book amounts would be unreasonable and illogical and that to compare the level of accumulated depreciation at Barnardsville with other telephone utilities would also be incorrect. He testified that the appropriate accumulated depreciation to use in this case is the actual balance on retained plant at April 30, 1979.

Based on the foregoing evidence, the Commission concludes that the adjustment proposed by witness Turner is inappropriate. North Carolina G.S. 62-133(b)(1) states that in fixing the rates to be charged by public utilities the Commission shall "Ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State, considering the reasonable original cost of the property less that portion of the cost which has been consumed by previous use recovered by depreciation expense..." It is apparent to this Commission that the $64,300 accumulated depreciation has not been recovered by the Company through depreciation expense and will not be for a period of time. Further, it is this Commission's opinion that inclusion of the proposed amount of $64,300 in accumulated depreciation would make it extremely difficult if not impossible for Barnardsville to earn the return on its investment found to be fair by the Commission.

Therefore, the Commission finds that the appropriate level of accumulated depreciation is $60,093. This amount can be calculated by adding the above items one, two, four, five, and six with previously discussed modifications which were proposed by Public Staff witness Panton ($92,202 - $53,017 - $302 - $295 + $21,505).

The final item of difference in the two witnesses' net plant in service proposals involves unamortized job development investment tax credits of $5,761. Company witness Kirschner included this item in developing his capitalization structure and assigned it a cost rate of zero. Alternatively, Public Staff witness Panton deducted this item in calculating his proposal of net telephone plant in service.

The Revenue Act of 1971 provided three basic elective options with regard to the rate-making treatment to be accorded this item of cost-free capital. An election was to be made within 90 days after the enactment of the bill; if no option was selected, option one (1) was to apply. By making no election, Barnardsville, in effect, selected option one (1) which provides "that the investment credit is not to be made available to a company with respect to any of its public utility property if any part of the credit to which it would otherwise be entitled is flowed through to income; however, in this case the tax benefits derived from the credit may (if the regulatory commission so requires) be used to reduce the rate base, provided that this reduction is restored over the useful life of the property." The Commission concludes that it is appropriate to deduct unamortized investment tax credits of $5,761 from telephone plant in service to calculate net telephone plant in service.

Thus, the Commission finds that the proper level of net original cost telephone plant in service is $601,817. This amount is achieved by deducting cost-free capital of $5,761 and accumulated depreciation of $60,093 from telephone plant in service of $667,671.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witness Kirschner and Public Staff witness Panton presented testimony and exhibits concerning the appropriate level of working capital to be included by the Commission in determining the Company's original cost net investment. Witness Kirschner, in his prefiled testimony and exhibits, included a working capital allowance of $11,511, determined by use of a formula method. The working capital formula consists of a cash allowance of 1/12 of operating expenses, excluding depreciation and amortization expenses, and average material and supplies, less average tax accruals. Under cross-examination, witness Kirschner accepted the average tax accruals of $1,742 proposed by Public Staff witness Panton. This reduces his working capital allowance from $11,511 to $11,409. Witness Panton also used the formula method to determine his working capital allowance. He also included average prepayments in his proposal. The following chart summarizes the amount that each witness contends should be properly included in the working capital allowance.

Item	Company Witness Kirschner	Public Staff Witness Panton
Cash (1/12 of operating expenses)	$ 6,698	$ 6,305
Average materials and supplies	6,453	6,453
Average prepayments	-	600
Less: Average tax accruals	(1,742)	(1,742)
Working capital allowance	$11,409	$11,616

The cash component of working capital differs between the two witnesses because their operating expenses, excluding depreciation and amortization expenses, are different. The Commission finds neither of these amounts to be appropriate and concludes that 1/12 of $76,458, or $6,372, is the proper cash allowance to be included in the working capital allowance in this proceeding.

The Commission accepts the $6,453 average materials and supplies and the $1,742 of average tax accruals advocated by both parties. In addition, in accordance with previous Commission policy, the Commission includes average prepayments, in the amount of $600, in the computation of the working capital allowance.

Hence, the Commission concludes that the fair and reasonable working capital allowance for use in this proceeding is $11,683.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

G.S. 62-133(b)(1) requires the Commission to ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this state. In ascertaining fair value, the statute requires that the Commission consider evidence offered which tends to show the replacement cost of the property. Such replacement cost may be determined either by trending the depreciated original cost to current cost levels or by any other reasonable method.

None of the parties to this proceeding offered evidence regarding replacement cost or trended original cost. The Commission notes that the burden of proof (or risk of non-persuasion) on fair value lies with the Applicant.

Since no replacement cost evidence was introduced by the Applicant and since 79.12% of telephone plant in service represents new plant additions, the Commission concludes that fair value in this case must be determined by adding the reasonable allowance for working capital of $11,683 (determined in Finding of Fact No. 7 above) to the reasonable net original cost telephone plant in service of $601,817 (determined in Finding of Fact No. 6 above). It is thus concluded that the reasonable fair value of Barnardsville's property in service is $613,500.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Kirschner and Public Staff witness Panton presented testimony and exhibits concerning the representative end-of-period level of operating revenues. The exhibits of both parties reflect operating revenues after accounting, pro forma, and after-period adjustments. The following tabular summary shows the amounts presented by each witness:

	Company Witness Kirschner	Public Staff Witness Panton
Local service revenues	$ 32,888	$ 32,888
Toll service revenues	85,662	91,508
Miscellaneous revenues	1,174	1,174
Uncollectibles	(1,197)	(1,256)
Total operating revenues	$118,527	$124,314

Since the two witnesses agreed that the appropriate level of local service and miscellaneous revenues is $32,888 and $1,174, respectively, the Commission concludes that local service and miscellaneous revenues of $32,888 and $1,174, respectively are proper.

The area of difference in determining operating revenues between the two witnesses concerns the appropriate level of toll service revenues. Company witness Kirschner included toll service revenues of $85,662, while Public Staff witness Panton included toll service revenues of $91,508. This difference of $5,846 results from the Public Staff and the Company using different annualization factors. Both the Company and the Public Staff adjusted test-period toll service revenues by $27,208 to reflect the actual toll revenues level, depicted by use of the monthly test year toll settlements. The addition of this $27,208 adjustment to toll service revenues per Company books of $57,859 equals $85,067. The Company increased this amount by an annualization factor based on main station growth of .7% to reflect end-of-period toll service revenues of $85,662. In contrast, the Public Staff used regression analysis techniques to establish an annualization factor of 2.5%. Initially the Public Staff applied this annualization factor to the adjusted test-period toll revenues. However, in revised testimony Public Staff witness Panton updated his toll revenue proposal by applying the annualization factor to adjusted toll revenues for the year ended April 30, 1979. The Public Staff increased the amount proposed by the Company of $85,067 by $6,441 to reflect end-of-period toll service revenues of $91,508.

While Barnardsville might be expected to experience a slower growth in toll revenues than the industry average, the Commission concludes that the .7% toll revenues annualization factor is unreasonably low. The Commission

concludes that the annualization factor of 2.5% proposed by the Public Staff is proper. With regards to appropriate level of toll revenues on which to apply the annualization factor of 2.5%, the Commission finds that the April 30, 1979, level should be used. Consequently, toll revenues of $91,508 proposed by Public Staff witness Panton should be included in the calculation of test-period operating revenues.

In summary, the Commission concludes that the appropriate level of end-of-period operating revenues is $124,314, which consists of $125,570 gross operating revenues less uncollectibles of $1,256.

It therefore follows that operating revenues under the Company's proposed rates would be $183,631, which consists of operating revenues under present rates of $124,314 and the Company's proposed revenue increase of $59,317 shown on Panton Exhibit I, Schedule 3, Page 1 of 2, Line 6, Column (f).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The amounts presented below reflect the original and rebuttal testimony and exhibits of Company witness Kirschner and the revised testimony and exhibit of Public Staff witness Panton, with respect to the level of operating revenue deductions they believe appropriate for this proceeding:

Item	Company Witness Kirschner (a)	Public Staff Witness Panton (b)
Operating expenses	$ 79,651	$ 75,656
Depreciation	26,720	25,752
Amortization	7,964	3,126
Operating taxes - other than income	9,455	9,782
Income taxes - State and Federal	-	-
Operating Revenue Deductions	$123,790	$114,316

Company witness Kirschner testified that the appropriate level of operating expenses should be $79,651, while Public Staff witness Panton testified that the appropriate level of operating expenses should be $75,656. These differences are explained in the following schedule:

Item No.	Item		Amount (a)
1. a.	Mr. Kirschner's adjusted materials and supplies charged to maintenance expense	$4,436	
b.	Mr. Panton's adjusted materials and supplies charged to maintenance expense	1,327	
c.	Difference		$3,109
2.	Mr. Panton's adjustment to maintenance and commercial expense to reflect Jack Garrison's increased salary		(793)
3.	Mr. Kirschner's adjustment to General Office Expense to reflect amortization of $1,500 of additional legal expenses over a three-year period		500
4.	Mr. Kirschner's adjustment to Other Operating Expenses to reflect amortization of $600 of educational expenses over a three-year period		200
5.	Mr. Panton's various adjustments to Other Operating Expenses		979
6.	Total		$3,995

The first adjustment of $3,109 results from Public Staff witness Panton's adjustments to materials and supplies charged to maintenance expense. The test year amount must be adjusted to a normalized level since it contains charges related to the flood cleanup and extensive replacements connected with the present upgrading of telephone service. Since the new central office building is located above the flood plain and the outside plant is generally underground, flood damage is not anticipated for Barnardsville in the future. The flood cleanup expenses can reasonably be considered a nonrecurring item. Though the Commission recognizes that some level of material and supplies will be necessary to maintain the Company's plant, the extensive replacements expensed to maintenance during the test year should not recur annually. Therefore, the Commission adopts Public Staff witness Panton's normalized level of materials and supplies charged to maintenance expense of $1,327. This results in total maintenance expense of $27,858, composed of $26,531 of loaded payroll charged maintenance, which will be discussed hereafter, and the $1,327 of materials and supplies. This maintenance expense of $27,858 results in a maintenance to plant ratio of 4.3%, which is 22.9% greater than the average of 3.5% for REA Telephone Company borrowers in North Carolina in 1977, as shown on page 10 of Mr. Panton's testimony.

Mr. Panton increased loaded payroll maintenance expense by $763 and commercial payroll expenses by $31, to reflect Jack Garrison's annual wage of $13,996, implemented on May 1, 1979. This annual wage is determined on a straight salary basis, established after the Company filed its application, rather than the overtime weighted rate utilized by Mr. Kirschner. The Company did not contest this change, and the Commission considers it appropriate to include this known change in test-period operating expenses.

The next two adjustments relate to expenses reported to the Commission in Company witness Kirschner's Rebuttal Testimony. Company witness Kirschner reported that expenses to send Jack Garrison to school, as recommended by Public Staff witness Turner, will cost $600. Also, Company witness Kirschner stated that the Company attorneys had incurred an additional $1,500 of copying fees, due to the extensive filing requirements. Company witness Kirschner suggested a three-year amortization period for both of these items. The Public Staff did not contest these expenses. The Commission concludes that these expenses are reasonable and that 1/3 of the total cost of these expenses should be included in operating expenses for the purpose of determining cost of service.

Finally, Mr. Panton adjusted Other Operating Expenses by various adjustments totalling $979. These adjustments include an increase of $120 to building rental expense, the elimination of $305 related to an out-of-period excise tax, the elimination of $494 related to a Company adjustment to accounts receivable, which was included in test-period expenses, and a decrease of $116 to pole rental expense. In addition, these adjustments include a decrease of $177 to property insurance expense to reflect removal of the old central office building and equipment from utility property, and a $7 decrease in the Company's annualization expense related to the Public Staff adjustments to Other Operating Expenses. The Company did not directly contest any of these adjustments, but, as previously discussed, the Company did contest the exclusion of the old central office building from utility property. Therefore, the Commission concurs with all of these adjustments to Other Operating Expenses, except for the elimination of property insurance associated with the old central office building. This adjustment will also affect the $7 annualization adjustment. Since the building is to be used for storage and is included in telephone plant in service, the related annualized property insurance expense of $96 should be included in Other Operating Expenses. This will also reduce the annualization adjustment from $7.00 to $1.00.

Thus, the Commission concludes that neither the Company's operating expenses of $79,651, nor the Public Staff's operating expenses of $75,656 is appropriate. Rather, the Commission concludes that $76,458 is the appropriate level of end-of-period operating expenses. This $76,458 consists of Public Staff witness Panton's operating expenses of

$75,656, Company witness Kirschner's adjustments of $700 shown in Items 3 and 4 above, the $96 annualized property insurance related to the old central office building, and the $6.00 difference in the annualization adjustment.

Company witness Kirschner and Public Staff witness Panton disagree on the appropriate amount of end-of-period depreciation expense to be included in operating revenue deductions. Company witness Kirschner's end-of-period depreciation expenses of $26,720 exceeds Public Staff witness Panton's end-of-period depreciation expense of $25,752 by $968. This difference results from the use of different levels of telephone plant in service by the witnesses. In Evidence and Conclusions of Finding of Fact No. 6, the Commission established $667,671 as the proper amount of end-of-period telephone plant in service. This amount of $667,671 is $26,917 greater than the telephone plant in service amount of $640,754 shown in Panton Exhibit I, because the Commission considered it proper to include the old central office building and 200 central office lines in utility property. Consequently, depreciation expense of $26,563 is appropriate for use herein. The end-of-period depreciation expense of $26,563 may be calculated by adding the annual depreciation on the old central office building of $131 ($5,240 x 2.5%) and the annual depreciation on the 200 lines of $680 ($20,027 x 3.4%) to depreciation expense of $25,752 proposed by Public Staff witness Panton.

The next item of disagreement concerns extraordinary retirement expense. Mr. Kirshner testified that $7,964 should be included for this item while Mr. Panton testified that extraordinary retirement expense should be $3,126, a difference of $4,838, which results from two factors. The first difference results from the use of different plant retirement amounts by the two witnesses. Previously, the Commission found the retirements of $108,965 proposed by witness Panton to be appropriate. Of this $108,965, $53,017 was charged to the depreciation reserve by Mr. Panton. He charged the remaining retirements of $55,948 to extraordinary retirements. The $55,948 of retirements plus cost of removal (net salvage) of $8,500, shown on Panton Exhibit I, Schedule 3-4, Line 8, Column (e), results in the appropriate level of extraordinary retirements of $64,448.

The second difference concerning the extraordinary retirement amortization is the proper amortization period over which to amortize extraordinary retirements to operations. Evidence concerning the appropriate period over which to amortize the extraordinary retirement was presented by Company witness Kirschner and Public Staff witness Turner.

In his direct testimony, Mr. Kirschner testified that the amortization period should be nine years. In his rebuttal testimony, Mr. Kirschner testified that the period should be seven instead of nine years and stated that the method used by the Company is the same method recommended in

Depreciation Practices for Small Telephone Utilities. During cross-examination, however, Mr. Kirschner admitted that he was unaware that this text does not allow extraordinary retirements for the upgrading of existing telephone plant.

Mr. Turner recommended that the estimated life of the plant accounts from which the plant was retired be used as the amortization periods for the extraordinary retirements using the following life estimates:

	Plant Accounts	Estimated Life (Years)
1.	Central Office Equipment	29.4
2.	Station Apparatus	17.9
3.	Station Connections	20.0
4.	Pole Lines	19.2
5.	Aerial Cable	22.2
6.	Aerial Wire	12.0

During cross-examination Mr. Turner explained that the method he proposed would allow the Company to recover the retirements at the rate applied to depreciate the old plant and that the reduced revenue impact would have a beneficial effect on the ratepayer.

Although the Commission believes that the extensive rebuilding done by Barnardsville justifies the amortization over some period, the Commission notes that the allowance of extraordinary retirements for the upgrading of existing telephone plant is not required but involves a matter for the Commission's discretion. Accordingly, while the Company should receive some reward for its efforts, the impact on its ratepayers should be kept to a minimum.

The Commission concludes that both present and future ratepayers will be benefitted by the retirement of the old plant. The benefits will be enjoyed by customers utilizing the Company's service for at least the next 20 years. Therefore, the Commission concludes that the retired plant should be amortized at a rate consistent with the depreciation rates applied to the retired plant, thereby allowing the Company to recover its investment at a rate equal to the rate applied before the retirement and further concludes that test period amortization expense should be $3,126.

Company witness Kirschner's Taxes Other Than Income of $9,455 is $327 less than the amount included by Public Staff witness Panton of $9,782. This difference of $327 results from two items. First, Public Staff witness Panton's North Carolina Gross Receipts Tax is $289 greater than that of Mr. Kirschner due to differences in the revenue proposals of the witnesses. Second, Public Staff witness Panton increased Social Security Taxes by $38 to reflect the adjustment he made for increased wages. Since the Public Staff's adjustments to Taxes Other Than Income are related to adjustments previously found appropriate by this Commission,

the adjustments should be used in this case. The Commission determines that $9,782 is the appropriate level of Taxes Other Than Income.

The Commission finds that the appropriate level of operating revenue deductions is $115,929, consisting of operating expenses of $76,458, depreciation of $26,563, amortization of $3,126, and Taxes Other Than Income of $9,782.

The Commission has concluded that the appropriate level of end-of-period operating revenues is $124,314 and that the appropriate level of end-of-period operating revenue deductions before income taxes is $115,929. This results in a net operating income before taxes of $8,385. Since the Company's interest expenses of $25,196 on long-term debt exceeds this amount, the Company has no applicable end-of-period income taxes under the present rates. Hence, the Company's end-of-period net operating income for return is $8,385.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Public Staff witness Panton and Company witness Kirschner disagreed on the proper capital structure to be considered in setting rates in this proceeding. The capital structure proposed by the two witnesses is shown below:

	Company Witness Kirschner		Public Staff Witness Panton	
Item	Amount	%	Amount	%
Long-term debt	$584,244	81.99%	$539,555	81.49%
Common equity	122,569	17.20	122,569	18.51
Cost-free capital	5,761	.81	-	-
Total	$712,574	100.00%	$662,124	100.00%

Both witnesses utilize the same common equity component; therefore, the Commission concludes that $122,569 of common equity is the proper component of the Company's capital structure to be used in this proceeding.

Since the Commission previously concluded that the $5,761 of cost-free capital related to the unamortized Job Development Investment Tax Credit should be deducted from the rate base, it follows that this amount should be excluded from the capital structure, as Mr. Panton has done.

Company witness Kirschner included $584,244 of long-term debt in the Company's capital structure, while Public Staff witness Panton used $539,555 of long-term debt. This long-term debt represents REA load funds made available to the Company to support the construction costs of telephone plant in service. Since the Company's application was filed before the construction program was completed, as discussed previously, Mr. Kirschner had to estimate the amount of REA funds that would be needed by the Company to support the

plant upon completion. Mr. Panton's calculation of $539,555 was based on a detailed balance sheet analysis which allowed Mr. Panton to closely determine the final amount of REA funds needed by the Company. Mr. Panton also considered the time lag which results when contracts are verified by REA officials before the funds are finally released to the Company. In this balance sheet analysis, the Company's balance sheet at December 31, 1978, was adjusted to reflect plant additions and retirements and the substitution of REA funds for both the short-term debt owed to the parent company, Telephone and Data Systems, Inc., and the accounts payable of $71,932 owed to affiliated companies. This short-term debt and accounts payable were replaced, since their purpose was to support construction work in progress until the REA funds became available.

The Commission concludes that Mr. Panton's methodology is the most reasonable in determining the appropriate level of long-term debt to be included in the Company's capital structure. Mr. Panton excluded the depreciated old central office property and 200 lines considered excess plant by the Public Staff from his balance sheet analysis in determining the long-term debt requirements of the Company. Since the Commission has earlier found the old central office property and the 200 lines to be used and useful utility property, the related nondepreciated amount of $23,998 should be added to Mr. Panton's long-term debt of $539,555 to achieve the appropriate long-term debt of $563,553.

Finally, the Commission concludes that the proper capital structure for Barnardsville Telephone Company consists of $122,569 common equity, and $563,553 of long-term debt. This results in capitalization ratios of 82.14% long-term debt and 17.86% common equity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Evidence related to the cost of capital and fair rate of return for Barnardsville was presented by Company witness Kirschner. Mr. Kirschner testified that the interest rate for funds provided by the Rural Electrification Administration is fixed at 5%. He further testified that at the time the application was filed interim short-term debt was outstanding but that it was anticipated that this short-term debt would be replaced with REA long-term debt on or around the hearing date. Public Staff witness Panton concurred with the long-term interest rate of 5%. Since there was no disagreement between the witnesses on this item, the Commission finds the appropriate interest rate on the long-term debt to be 5%.

Company witness Kirschner recommended that Barnardsville be allowed a 16% return on common equity. While Mr. Kirschner did not make specific studies to determine Barnardsville's cost of equity capital, he did discuss economic factors which he believes affect the utility industry in general and Barnardsville in particular. He

states that the return on equity capital should be greater than the return on debt due to the greater risk associated with equity capital. He cited such factors as attrition, regulatory lag, a highly leveraged capital structure, and the location and size of Barnardsville's service area as affecting Barnardsville's cost of capital.

The Public Staff did not offer any witness to testify concerning a fair rate of return on Barnardsville's equity capital.

The Commission therefore concludes that setting rates so as to give Barnardsville the opportunity to earn a 16% return on the equity component of its investment is appropriate. In making this decision the Commission recognizes that Barnardsville provides service for a small rural community in the mountains of North Carolina, that Barnardsville has a highly leverage capital structure, and that these factors indicate that an equity return of 16% is fair for Barnardsville Telephone Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Based upon the previous findings and conclusions contained in this Order, the Commission concludes that Barnardsville's present rates and charges should be increased by $42,150 in order to allow the Company a reasonable opportunity to achieve the rates of return previously determined to be just and reasonable.

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve based upon the increase approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
BARNARDSVILLE TELEPHONE COMPANY
DOCKET NO. P-75, SUB 23
STATEMENT OF RETURN
TWELVE MONTHS ENDED DECEMBER 31, 1978

	Present Rates	Increase Approved	After Increase Approved
Operating Revenues			
Local service	$ 32,888	$ 42,150	$ 75,038
Toll service	91,508	-	91,508
Miscellaneous	1,174	-	1,174
Uncollectibles	(1,256)	421	(1,677)
Total operating revenues	124,314	41,729	166,043
Operating Revenue Deductions			
Maintenance	27,858	-	27,858
Depreciation	26,563	-	26,563
Amortization	3,126	-	3,126
Traffic	1,420	-	1,420
Commercial	12,043	-	12,043
General office	14,597	-	14,597
Other expenses	20,540	-	20,540
Operating taxes - other than income	9,782	2,504	12,286
Total operating revenue deductions before income taxes	115,929	2,504	118,433
Income taxes - State and Federal	-	4,883	4,883
Total operating revenue deductions	115,929	7,387	123,316
Net operating income for return	$ 8,385	$ 34,342	$ 42,727

Investment in Telephone Plant			
Telephone plant in service	$667,671	-	$667,671
Less: Accumulated provision for depreciation	60,093	-	60,093
Unamortized investment tax credit	5,761	-	5,761
Net investment in telephone plant in service	601,817	-	601,817
Allowance for Working Capital			
Cash	6,372	-	6,372
Materials and supplies	6,453	-	6,453
Average prepayments	600	-	600
Less: Average tax accruals	(1,742)	-	(1,742)
Total working capital allowance	11,683	-	11,683
Net investment in telephone plant in service plus the working capital allowance	$613,500	-	$613,500
Fair value rate base	$613,500	-	$613,500
Rate of return on fair value rate base	1.37%	-	6.97%

SCHEDULE II
BARNARDSVILLE TELEPHONE COMPANY
DOCKET NO. P-75, SUB 23
STATEMENT OF RETURN ON FAIR VALUE COMMON EQUITY
TWELVE MONTHS ENDED DECEMBER 31, 1978

Capitalization	Fair Value Rate Base	Ratio %	Embedded Cost or Return on Fair Value Equity %	Net Operating Income for Return
Present Rates - Fair Value Rate Base				
Long-term debt	$503,929	82.14	5.00	$ 25,196
Common equity	109,571	17.86	(15.34)	(16,811)
Total	$613,500	100.00	-	$ 8,385
Approved Rates - Fair Value Rate Base				
Long-term debt	$503,929	82.14	5.00	$ 25,196
Common equity	$109,571	17.86	16.00	17,531
Total	$613,500	100.00	-	$ 42,727

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Company witness Hicks testified regarding the Applicant's proposed rate structure. He proposed offering only one-party service to future customers while grandfathering existing four-party customers. His proposal would allow two-party customers to either upgrade to one-party or downgrade to four-party. He justified his proposals by the absence of cost savings to the Company by continuing to provide four-party service and the difficulties in matching four-party subscribers within reasonable proximity of each other.

Mr. Hicks proposed to eliminate all zone charges and color charges for standard manufacturers' colors. He proposed increasing Key System and Private Branch Exchange Trunk rates to 1.25 and 1.75 times the Business one-party rate, respectively.

Other tariff revisions by Mr. Hicks include a new format for a multielement service connection tariff which will allow a subscriber to pay only for the services he requests and a change in the method of measuring private line mileage from route to airline.

Mr. Hicks proposed a flat rate for semipublic telephone service equal to the business one-party rate and increased charges for additional directory listings.

Based on the testimony and exhibits of Mr. Hicks, the Commission reaches the following conclusions with regard to tariff provisions, rates, and charges to be approved for Barnardsville Telephone Company:

1. Basic Rate Schedule

The Commission concludes that the ratios between key trunks and business one-party rates (1.25:1), and PBX trunks and business one-party rates (1.75:1) proposed by Barnardsville are just and reasonable and that basic local service rates contained in Appendix A attached to this Order should be approved.

2. Service Charges

The Commission concludes that the service charge schedule proposed by the Company should be implemented because it provides a more equitable basis for the application of service charges. The Commission concludes that the level of charges proposed by Barnardsville is reasonable.

3. Other Local Services

The Commission concludes that the rates and charges for other proposed changes should be adjusted to the levels proposed by the Company.

4. Elimination of Charges

The Commission concludes that the proposed elimination of zone charges and color charges for standard manufacturers' colors are in the public's interest and should be allowed.

5. Multiparty service

It is the Commission's conclusion that the elimination of multiparty service which was proposed by the Company is proper. Further, the methodology of achieving all one-party service proposed by the Company is a reasonable means of accomplishing this goal.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Public Staff witness Carter testified on the Wage and Price Standards issued by the Council on Wage and Price Stability. Mr. Carter testified that for a company to be in compliance with the wage and price standards (1) its program year profit margin must not exceed the weighted average of the average of the highest two annual profit margins during the three fiscal years ending prior to October 2, 1978, and (2) its total profits during the program year should not exceed profits of the base year, adjusted for any increase

in volume and an allowable 6.5% increase for general inflation. He determined the allowable program profit to be $21,600.

In Evidence and Conclusions for Finding of Fact No. 14, this Commission found the end-of-period level of interest expense to be $25,196. Clearly an income before interest on long-term debt of $21,600 will not be sufficient to cover the actual interest expense of the Company.

The Commission concludes that the Wage and Price Guidelines do not apply in this rate proceeding. In making this decision the Commission recognizes that Barnardsville has not had a local rate increase since 1956 and that Barnardsville's cost of providing service has substantially increased due to the replacement of approximately 80% of its plant in service.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the rates, charges, and regulations set forth in Appendix A and otherwise approved herein which will produce, based upon stations in service on April 30, 1979, an increase in gross revenues of approximately $42,150 be, and hereby are, approved to be charged and implemented by the Applicant. The recurring rates, charges, and associated regulations will become effective on service to be rendered on and after the date of this Order. All other rates, charges, and regulations not herein adjusted remain in full force and effect.

2. That two-party and four-party services will be obsolete following the date of this Order.

3. That Barnardsville shall file the necessary revised tariffs reflecting changes in rates, charges, and regulations shown in Appendix A and otherwise approved herein within 10 days from the date of this Order.

4. That Barnardsville shall notify all customers of these rate increases by inserting the notice shown in Appendix B in all bills rendered on or after the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
BARNARDSVILLE TELEPHONE COMPANY

BASIC LOCAL SERVICE

LOCAL EXCHANGE SERVICE RATES

	MONTHLY RATE
RESIDENCE CLASS OF SERVICE	
One-Party	$ 9.55
Four-Party	7.65
BUSINESS CLASS OF SERVICE	
One-Party	15.75
Four-Party	12.60
OTHER LOCAL SERVICES	
Key Trunk	19.70
PBX Trunk	27.55

All other tariff revisions requested by Barnardsville Telephone Company are approved as requested by the Company.

APPENDIX B
BARNARDSVILLE TELEPHONE COMPANY
NOTICE TO CUSTOMERS

On April 23, 1979, the Barnardsville Telephone Company filed an application with the North Carolina Utilities Commission requesting an increase in its rates and charges to provide an additional $59,916 in revenues annually. Following hearings in Barnardsville Elementary School Auditorium on June 13 and 14, 1979, the Commission has approved an increase in rates and charges that will provide $42,150 in additional revenue annually for Barnardsville Telephone Company.

DOCKET NO. P-7, SUB 624

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Telephone and Telegraph Company for Adjustments and Changes in Its Rates and Charges Applicable to Intrastate Telephone Service	) ORDER SETTING RATES AND CHARGES

HEARD IN: Edgecombe County Superior Courtroom, 2nd Floor, 301 St. Andrews Street, Tarboro, North Carolina, on June 6, 1978

Court Room, 2nd Floor, City Hall, Pollock and Craven Streets, New Bern, North Carolina, on June 7, 1978

Auditorium, Cumberland County Office Building, Highway 301 South, Fayetteville, North Carolina, on June 8, 1978

Commission Hearing Room, 2nd Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 20-23, 26-27, July 10, 17 and 24, and November 29-30, 1978

BEFORE: Chairman Robert K. Koger, Presiding, and Commissioners Leigh H. Hammond and John W. Winters

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., and Edward S. Finley, Jr., Joyner and Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

William W. Aycock, Jr., Taylor, Brinson & Aycock, Attorneys at Law, P.O. Box 308, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company

For the Intervenors:

Mr. Alexander Biggs, Biggs, Meadows, Batts, Etheridge & Winberry, Attorneys at Law, P.O. Drawer 156, Rocky Mount, North Carolina 27801
For: Edgecombe General Hospital, Halifax Memorial Hospital, Craven County Hospital, Pitt County Memorial Hospital, Lenoir Memorial Hospital, and Abbott Laboratories

Thomas R. Eller, Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: Nash General Hospital, Inc., and Wilson Memorial Hospital, Inc.

Robert F. Page and Jane S. Atkins, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Dennis P. Meyers, Special Deputy Attorney General, Frank Crawley and Miles Levine, Associate Attorneys General, Office of the Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On January 19, 1978, Carolina Telephone and Telegraph Company (hereinafter Carolina, the Company, or the Applicant) filed an application with the

Commission for authority to increase its local service rates and charges in its service area. Carolina initially proposed an annual increase in gross revenues of $5,518,734 based upon the 12 months ended June 30, 1977. During the course of the hearing, the Applicant revised its request to consider the toll rate increase approved in Docket No. P-100, Sub 45, and correspondingly decreased its requested increase in gross revenues to approximately $580,000, annually. The rate increase was to become effective on or after February 18, 1978.

On February 13, 1978, the Commission issued an Order which declared the application to be a general rate case under G.S. 62-137, suspended the effective date for the proposed rates for a period of 270 days, and set the matter for investigation and hearing. The Order established the test period to be used by all parties as the 12 months ended June 30, 1977. The Commission required Carolina to publish a Notice of the Hearing which was set for June 6, 1978.

On January 26, 1978, the Attorney General filed Notice of Intervention on behalf of the using and consuming public. On May 23, 1978, the Public Staff, by and through its Executive Director, Hugh A. Wells, also filed Notice of Intervention on behalf of the using and consuming public. The intervention of the Attorney General was recognized by the Commission in its Order dated April 26, 1978. The intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations.

On April 21, 1978, a Petition for Leave to Intervene was filed on behalf of Edgecombe County Memorial Hospital, Craven County Hospital Corporation, Halifax Memorial Hospital, Inc., Pitt County Memorial Hospital, Inc., Lenoir Memorial Hospital, Inc., and Abbott Laboratories. On April 25, 1978, a Petition for Leave to Intervene was filed on behalf of Nash General Hospital, Inc., and Wilson Memorial Hospital, Inc. Orders of the Commission allowing these interventions were issued on April 26, 1978, and April 27, 1978, respectively. These Intervenors hereinafter may be collectively referred to as Centrex customers.

The matter came on for hearing as scheduled in the Commission's Order Setting Hearing. Out of town hearings were conducted in Tarboro, New Bern, and Fayetteville, during the course of which the Commission heard from the following public witnesses: Frederick P. Cooper, Chairman of the Nash County Board of Commissioners; Dr. Milton B. Quigless, a practicing physician of Tarboro, North Carolina; Darwin Richards; Hugo Richert, a member of the American Association of Retired Persons; Mrs. Lambert Horne and Mrs. Sheri Minter, of the Cumberland County Coordinating Council of Older Adults, Inc.; Parkton Community representatives, Tommy Furmage, Luther Herndon (Robeson County Commissioner), Ervin Smith, and A.T. Johnson, Jr.; Mrs. Guila Clark; John

Moulton, Director of the Cumberland County Hospital System; and Mrs. Lois Lambie.

During the field hearings, the Commission also received testimony from the following Company and Public Staff witnesses: T.P. Williamson, Vice-President - Administration for Carolina; Donald M. Gedeon, Director of Headquarters Accounting for ITT North Electric Company; Stanley F. Fisher, President of North Supply Company; Robert E. Baker, Jr., Assistant Vice President of United Telecommunications, Inc. (an employee of United Telecom Service, Inc.); James S. Compton, Telephone Engineer with the Public Staff; Richard Owen, Forecast and Tariff Manager for Carolina Telephone Company; J. Craig Stevens, Director of the Consumer Services Division of the Public Staff; and Benjamin R. Turner, Jr., Telephone Engineer with the Public Staff.

Public witnesses who appeared and testified at the hearings in Raleigh included the following: L.A. Edwards; Bryan T. Aldridge, Administrator of Nash General Hospital, Inc.; James F. Porter, North Carolina Regional Manager of Office and Plant Site Service for Weyerhauser, Inc.; Sam Ebert, Senior Assistant Administrator of Nash General Hospital, Inc.; Jack W. Richardson, Director of Pitt County Memorial Hospital, Inc.; Danny Jackson, Associate Administrator of Craven County Hospital Corporation; James M. Stevenson, Comptroller, Halifax Memorial Hospital, Inc.; Carl E. Nelson, Assistant Director for Fiscal Affairs, Lenoir Memorial Hospital, Inc.; J. Lewis Ridgeway, Executive Director of Edgecombe General Hospital; and Gene A. Harvard, Senior Purchasing Agent with Abbott Laboratories.

Testifying for the Company at the Raleigh hearings were the following: J.R. Owen, Forecast and Tariff Manager; Joseph F. Brennan, President of Associated Utility Service, Inc.; E.O. Wooten, Supervisor of Separations and Settlements; and William C. Morris, Jr., Controller of Carolina Telephone.

The Public Staff offered the testimony and exhibits of the following witnesses at the Raleigh hearings: H. Brantley Powell, Staff Accountant; William E. Carter, Jr., Assistant Director of Accounting; Curtis Toms, Jr., Staff Accountant; William J. Willis, Jr., Rate and Tariff Engineer - Communications Division; Hugh L. Gerringer, Telephone Engineer responsible for settlements and extended area service (EAS); and Dr. John B. Legler, Professor of Banking and Finance at the University of Georgia.

Following the conclusion of hearings on July 24, 1978, the case was continued indefinitely to allow the Company to prepare and prefile its rebuttal evidence, after which hearings would be rescheduled. On October 3, 1978, a proposed Stipulation and Consent Order signed by all parties hereto was filed with the Commission. On October 6, 1978, the Commission convened a recorded conference regarding the proposed Consent Order. Carolina's proposed rebuttal

evidence was prefiled on October 10, 1978, together with an undertaking to refund. Thereafter, on October 13, 1978, the Commission issued an Order rejecting the proposed Consent Order and scheduling further hearings to consider the Company's rebuttal evidence. The Public Staff, on November 22, 1978, prefiled proposed surrebuttal testimony of Dr. Legler.

At the reconvened hearings, the Company offered rebuttal testimony from Mr. Brennan of Associated Utility Service, Inc; Dr. Paul J. Garfield, an economist with the firm of Foster Associates, Inc., Washington, D.C.; T.P. Williamson; William C. Morris, Jr.; J.R. Owen; and Joseph A. Wooten, Jr., Chief Engineer of Carolina. Portions of the proposed rebuttal testimony of witnesses Williamson and Morris were stricken from the record. The proposed surrebuttal testimony of Public Staff witness Legler was not admitted as evidence but was allowed to be included as a portion of the Public Staff's brief. Following receipt of the rebuttal evidence, the hearings in this matter were closed.

Based upon the foregoing, the testimony and exhibits admitted at the hearing, the Commission's Orders in Docket No. P-100, Sub 45, and the entire files and records in this docket, the Commission now reaches the following

FINDINGS OF FACT

1. That the Applicant, Carolina Telephone and Telegraph Company, is a wholly-owned subsidiary of United Telecommunications, Inc., a parent holding company.

2. That Carolina is a public utility as defined by G.S. 62-3(23)a.6. and, as such, is subject to the jurisdiction of this Commission and is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its proposed rates and charges.

3. That the Company, on January 19, 1978, filed an application for an increase in its basic local service rates and charges of approximately $5,518,734, which was subsequently amended to request an increase in rates and charges of $580,032.

4. That the test period used by all parties in the proceeding and established by the Commission is the 12 months ended June 30, 1977.

5. That the overall quality of service provided by Carolina is adequate.

6. That the intrastate allocation factors developed, adjusted, and agreed upon by the Company and Public Staff are the proper factors for determining the appropriate intrastate portion of revenues, expenses, and original cost net investment.

7. That the intrastate original cost of Carolina's telephone plant in service is $416,837,766. The accumulated provision for depreciation is $109,125,648. This telephone plant in service includes cost-free capital of $33,891,417 (comprised of unamortized investment tax credits of $1,652,361, deferred income taxes on intercompany profits of $5,900,243, and accumulated deferred income taxes of $26,338,813), accounts payable of $135,841, and customer deposits of $824,371, which should be deducted in calculating the original cost of net telephone plant in service.

8. That reasonable allowance for working capital is $4,578,569.

9. That no evidence was offered by any party concerning the replacement cost of the Company's property used and useful in providing telephone service. Therefore, the only evidence of fair value in this proceeding is the original cost of the Company's intrastate plant used and useful in providing telephone service in North Carolina. The Commission finds that the fair value of utility property devoted to intrastate telephone service in North Carolina is $277,439,058, which includes a reasonable allowance for working capital of $4,578,569.

10. That the reasonable level of test year operating revenues after accounting, pro forma, and end-of-period adjustments is $134,624,518 net of uncollectibles under present rates and under the rates proposed by Carolina would have been $135,204,550.

11. That the appropriate level of intrastate operating revenue deductions after accounting, pro forma, and end-of-period adjustments, including interest on customer deposits and other interest is $103,858,576. This includes an amount of $21,431,311 for actual investment currently consumed through reasonable actual depreciation on an annual basis. All preceding amounts were calculated prior to consideration of the annualization adjustment.

12. That the proper amount for the annualization adjustment is $704,540, which results in operating income for return of $31,470,482.

13. That the unamortized Job Development Investment Tax Credits should be allowed to earn the overall rate of return.

14. That the capital structure for Carolina which is appropriate for use in this proceeding is as follows:

	Percent
Long-term debt	50.10%
Common equity	49.90%
Total	100.00%

15. That the fair rate of return which the Company should have the opportunity to earn is 10.19% which consists of an embedded cost rate of 7.64% on the debt component of Carolina's investment and a return of 12.75% on the stockholder's equity component of Carolina's investment.

16. That, in order to earn the rate of return found fair by the Commission, Carolina should be required to decrease its rates and charges so as to produce a reduction in local service revenues of $6,723,290 (net of uncollectibles), annually, based on operations during the test year.

17. That rates, charges, and regulations to be filed pursuant to this Order in accordance with the guidelines contained herein, which will produce a reduction in annual revenues of $6,723,290, will be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

The evidence for these findings is contained in the verified application, in prior Commission Orders in this docket, and in the record as a whole. These findings are essentially procedural and jurisdictional in nature and were not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this conclusion is contained in the testimony of the various public witnesses, the testimony and exhibits of Company witness Williamson, and in the testimony and exhibits of Public Staff witnesses Stevens and Compton.

The testimony of Company witness Williamson indicated that, in his opinion, Carolina was providing excellent service and that the monthly reports submitted to the Commission also reflected excellent service. Mr. Williamson cited such factors as promptness of repairs, low trouble reports, satisfactory answer time to customer complaints, good or excellent responses from a majority of the public in subscriber surveys and sensitivity to service complaints as indicating the quality of service provided by Carolina.

Mr. Stevens testified that the level and type of service complaints received by the Public Staff against Carolina for the previous two-year period indicated no identifiable major problem areas. Mr. Stevens also noted that the Company's procedures for handling customer complaints were thorough and efficient.

Mr. Compton testified concerning the Public Staff's field investigation and evaluation of the quality of service by Carolina Telephone Company. He testified that the Public Staff's evaluation was based on the results of field tests conducted from January through April 1978. The witness testified that the evaluation consisted of call completion tests, transmission and noise tests, pay station tests, operator answer time tests, and an analysis of customer

trouble reports, service orders, and subscriber held orders. Based on the results of the Public Staff's investigation, Mr. Compton concluded that the Company, on an overall basis, was meeting the service objectives established by the Commission. These service objectives had been established in prior Commission Orders and represent the minimum levels of adequate service.

Based on the foregoing evidence of record, the Commission concludes that the average quality of service offered by Carolina Telephone and Telegraph Company is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Morris made use of the intrastate allocation factors determined by the Company in his testimony and exhibits. Public Staff witness Gerringer reviewed the allocation factors used by Company witness Morris and with minor exceptions agreed with them. No existing disagreement remains between the parties as to the proper allocation factors; therefore, the Commission finds that the Company's intrastate allocation factors which were altered slightly by Public Staff witness Gerringer are the proper allocation factors to use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Commission will now analyze the testimony and exhibits presented by Company witness Morris and Public Staff witness Toms concerning the original cost of Carolina's intrastate telephone plant in service. The following chart summarizes the amount that each witness contends is proper for this item:

Item	Company Witness Morris	Public Staff Witness Toms
Original cost of telephone plant in service	$416,652,813	$416,652,813
Leasehold improvements	-	184,953
Total original cost of telephone plant in service	416,652,813	416,837,766
Less: accumulated depreciation	107,150,347	107,607,128
Unamortized investment tax credit (pre-1971)	-	1,652,361
Deferred income taxes on intercompany profits	-	5,900,243
Accumulated deferred income taxes	-	26,338,813
Accounts payable - telephone plant in service	-	135,841
End-of-period customer deposits	-	824,371
Net original cost of telephone plant in service	$309,502,466	$274,379,009

Both witnesses agreed that the appropriate level of telephone plant in service is $416,652,813. Public Staff witness Toms made an adjustment of $184,953 to increase telephone plant in service for leasehold improvements made by the Company. He testified that this item represents the unamortized original cost of additions made by Carolina to a building it leases from the United States Government. Company witness Morris included the unamortized balance of leasehold improvements at June 30, 1977, in the prepayment component of his working capital allowance. The Commission concludes that it is appropriate to add the unamortized original cost of leasehold improvements to telephone plant in service because the improvements were made with the Company's funds and for the Company's use in providing telephone service to its subscribers.

The witnesses disagreed as to the appropriate level of accumulated depreciation to be used in arriving at original cost net investment. Company witness Morris used the actual accumulated depreciation balance on the books at the end of the test period adjusted to eliminate some out of period accounting adjustments. Public Staff witness Toms increased the accumulated depreciation proposed by Mr. Morris by $456,781. He testified that if one adjusts depreciation expense to an end-of-period level, then the corollary adjustment to accumulated depreciation should also be made. Company witness Morris testified on rebuttal that Mr. Toms' adjustment was improper and that only the actual accumulated depreciation balance at the end of the test year should be used even though revenues and expenses are determined on a forward-looking basis.

The Commission concludes that it would be inconsistent to allow the Company to increase its depreciation expense to an end-of-period level and not also increase the accumulated depreciation balance; therefore, Mr. Toms' adjustment to accumulated depreciation is proper. The Commission recognizes that the depreciation expense found reasonable before annualization in Finding of Fact No. 11 differs from the amount proposed by witness Toms. In Evidence and Conclusions for Finding of Fact No. 11, the Commission deemed it proper to recognize an increase in depreciation expense due to a change in depreciation rates which became effective November 1978. The Commission finds that the corresponding adjustment to accumulated depreciation should also be made and that the appropriate end-of-period level of accumulated depreciation is $109,125,648 [$107,150,347 + $1,484,524 + ($21,431,311 x 2.29%)].

The next items on which the witnesses disagreed can be collectively referred to as cost-free capital items and include unamortized investment tax credit - pre-1971, deferred income taxes on intercompany profits, and accumulated deferred income taxes. Public Staff witness Toms deducted unamortized investment tax credits - pre-1971 of $1,652,361, deferred income taxes on intercompany profits of $5,900,243, and accumulated deferred income taxes of

$26,338,813 from telephone plant in service in arriving at original cost net investment. Company witness Morris included unamortized investment tax credits - pre-1971 and accumulated deferred income taxes as cost-free capital in determining his capital structure and overall cost of capital. Witness Toms testified that if he had included in the capital structure at zero cost these cost-free funds and had allocated the original cost net investment to each component of the capital structure, it would have had the effect of assigning a portion of this cost-free capital to construction work in progress and other nonrate base assets. Under Company witness Morris' method, Mr. Toms stated, the ratepayers do not receive the full benefit of capital which they have supplied the Company. By deducting these items from the rate base, the ratepayers will receive the full benefit of the capital which they have supplied the Company. Witness Toms also described how such cost-free capital originates. He testified that the unamortized investment tax credits were realized under The Revenue Act of 1962, which provided for a reduction in the income tax liability of utilities to the extent of 3% of the cost of qualifying property acquired during a taxable year and that this Commission issued a general rule-making Order which permitted utilities to follow what is commonly referred to as a "Normalization Accounting" procedure for investment tax credits. Under this accounting procedure, the Company records a Federal income tax expense greater than the amount of tax actually paid. This difference between book income taxes and actual income taxes is recorded as a corresponding credit in the balance sheet account entitled unamortized investment tax credits. Such tax credit is deferred and amortized as a reduction of Federal income tax expense over an appropriate period of time. Witness Toms stated that the balance of this unamortized investment tax credit is a source of cost-free capital which has been provided by the ratepayers and as such should be deducted in calculating the original cost net investment. He further testified that accumulated deferred income taxes result from normalizing the tax effect of accelerated depreciation and intercompany profits. Again, by use of the "Normalization Accounting" procedure the Company reflects, for financial reporting and rate-making purposes, a greater Federal income tax expense than it actually incurs. For example, the Company uses an accelerated method of depreciation to calculate the depreciation deduction in determining its actual income tax liability but calculates income tax expense for rate-making purposes by using a depreciation deduction based on the straight-line method of depreciation. Thus, the income tax expense for rate-making purposes is calculated without giving effect to the accelerated depreciation. The excess of the normalized tax expense based on straight-line depreciation over the actual tax liability based on accelerated depreciation is recorded in the account entitled "Accumulated Deferred Income Taxes - Accelerated Depreciation." Until such time as the actual tax liability based on accelerated depreciation exceeds the book income tax expense based on straight-line depreciation, the Company

has use of this cost-free capital. Witness Toms stated that, in substance, the ratepayer has paid in through the rate structure a cost that the Company has not incurred and will not incur until such time as straight-line book depreciation exceeds tax depreciation. He stated that accumulated deferred income taxes represent a source of cost-free capital and as such should be deducted in calculating the original cost net investment. Company witness Morris included unamortized investment tax credit - pre-1971 and accumulated deferred income taxes as cost-free capital in the capital structure with an embedded cost rate of zero. He viewed cost-free capital as a source of capital funds which the Company uses to purchase nonrate base as well as rate base assets and, further, that deducting the entire amount of cost-free funds from the rate base erroneously implied that these funds are used entirely to purchase rate base assets. Mr. Morris did agree during cross-examination that Mr. Toms' treatment afforded the ratepayers the full benefit of cost-free capital.

Deferred income taxes on intercompany profits were another area of disagreement between the Company and the Public Staff. Company witness Baker testified that deferred income taxes on intercompany profits originated when Carolina purchased assets from its former manufacturing affiliate, North Electric Company. When plant and materials were purchased by Carolina from North Electric, the price of the purchases included an element for Federal income tax expense on profits realized from the sale. By filing a consolidated tax return, the recognition of the profit as taxable income was deferred to later years. Instead of passing the income taxes on the profits realized from the sale of assets back to Carolina, North Electric paid these taxes to United Telecommunications, Inc. UTI calculates a return on these cost-free funds which it remits to its subsidiaries in the form of lower general services and license fees. Company witness Baker made an adjustment to increase the return credit on deferred income taxes on intercompany profits above the amount actually refunded to Carolina by UTI during the test year. He calculated the return credit using the achieved toll settlement ratio for the test period and a return on local operations equivalent to that proposed by the Company which includes a 14% return on common equity.

Public Staff witness Toms deducted deferred income taxes on intercompany profits from telephone plant in service. He testified that this treatment is directly comparable to the treatment proposed by Mr. Baker except that under Mr. Baker's methodology it would have had the effect of assigning the returns found fair on toll and local operations to deferred income taxes on intercompany profits.

The Commission finds that the net result of the methodology proposed by Mr. Baker and that proposed by Mr. Toms are in material respects no different provided the returns used under Mr. Baker's methodology are the returns used by this Commission in establishing the Company's cost

of service. However, the Commission believes the methodology proposed by Mr. Toms is superior in that it is more direct and less complex. The Commission therefore concludes that the methodology proposed by witness Toms is the proper methodology for use herein.

After carefully examining the evidence, the Commission believes that it is entirely equitable and proper to assign 100% of the benefit of the cost-free funds to the customers having provided such funds. Therefore, the Commission concludes that cost-free capital is properly deductible in determining the rate base for use herein.

Public Staff witness Toms and Company witness Morris also disagreed on the treatment of accounts payable - telephone plant in service. In his calculation of original cost net investment, Public Staff witness Toms deducted accounts payable - telephone plant in service from telephone plant in service. He testified that accounts payable - telephone plant in service is a source of capital not supplied by the debt and equity investors and that it was not considered in the lead-lag study done by Public Staff witness Powell to derive his working capital allowance. The Commission concludes that accounts payable - telephone plant in service is an appropriate deduction in determining original net investment. Accounts payable - telephone plant in service represents creditor supplied capital, which is cost-free to the Company. If these cost-free items of capital are not deducted from the rate base, it will have the effect of building into the cost of service a capital cost which does not in fact exist.

Public Staff witness Toms also deducted customer deposits because they represent customer supplied funds. The Company is entitled and should be permitted to recover its actual interest cost associated with these deposits. Accordingly, interest on customer deposits was included as an operating expense. Witness Toms stated that failure to deduct customer deposits in determining the original cost net investment will permit the Company to earn the overall rate of return found fair by the Commission on these funds, instead of the lower interest cost actually incurred on customer deposits. His treatment insures that the Company will recover the actual interest accrued on customer deposits and no more. Company witness Morris deducted customer deposits in determining his working capital allowance, which has the same effect as Mr. Toms' method of reducing telephone plant in service by the amount of customer deposits. The Commisison concludes that the deduction of customer deposits from investment in telephone plant in service as recommended by witness Toms is appropriate.

Based on all the testimony and evidence presented in this case, the Commission concludes that the reasonable original cost of Carolina's telephone plant in service is $272,860,489, consisting of telephone plant in service of

$416,652,813, leasehold improvements of $184,953 less the accumulated depreciation of $109,125,648, unamortized investment tax credits - pre-1971 of $1,652,361, accumulated deferred income taxes of $26,338,813, deferred income taxes on intercompany profits of $5,900,243, accounts payable telephone plant in service of $135,841 and end-of-period customer deposits of $824,371.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Morris and Public Staff witness Powell each presented a different amount for the working capital allowance as shown by the chart below:

	Company Witness Morris	Public Staff Witness Powell
Cash (1/12 of operating expenses)	$4,006,599	$ -
Compensating bank balances	2,074,689	-
Average daily cash balance	-	2,456,022
Materials and supplies	4,912,344	4,401,942
Prepayments	766,220	-
Average tax accruals	(6,430,784)	-
Customer deposits	(824,371)	-
Customer funds advanced through operations	-	(2,771,208)
Accounts payable - materials and supplies	-	(18,589)
Total working capital allowance	$ 4,504,697	$ 4,068,167

Company witness Morris used the traditional formula method in computing his working capital allowance consisting of cash (1/12 of operating expenses) of $4,006,599, compensating bank balances of $2,074,689, prepayments of $766,220 less average tax accurals of $6,430,784, and customer deposits of $824,371. End-of-test-period materials and supplies of $4,912,344 were also included in Mr. Morris' proposed working capital allowance.

Public Staff witness Powell determined a working capital allowance of $4,068,167 by including cash (calculated by including the intrastate portion of average daily bank balances which consisted in part of compensating balances maintained by the Company in various banks) and the average amount of material and supplies which the Company had on hand during the test period. He reduced the cash and material and supplies amounts by "customer funds advanced through operations" and by the average amount of accounts payable associated with material and supplies. Mr. Powell stated that "customer funds advanced through operations" were derived from a lead-lag study which measures the funds furnished by either customers or investors, as the case may be, to meet the day-to-day cost of providing service to the

customers. He testified that the lead-lag study in this particular case shows that intrastate revenues are collected on an average of 6.84 days before expenses are paid, which indicates that the Company has 6.84 days of customer funds which it may use on a continuing basis to finance a portion of the fixed and current investment items shown on the balance sheet. Mr. Powell testified that the Company incurs no cost for funds obtained from customers as a result of the customers paying the cost of service an average of 6.84 days before it is paid by the Company. Mr. Powell testified that he believed it would be inequitable and unfair to permit the Company to earn a return on funds obtained from the customers at zero cost; therefore, he deducted "customer funds advanced through operations" in calculating his working capital allowance. Mr. Powell stated that he further reduced the working capital allowance by deducting accounts payable related to material and supplies because this item represents a source of working capital not supplied by the Company's debt and equity investors. Mr. Powell also testified that the accounts payable related to material and supplies was not given consideration in the lead-lag study.

Mr. Powell next testified that the average amount of material and supplies which the Company had on hand during the test period was more representative of the go-forward level needed by the Company than the end-of-test-period amount included by Mr. Morris because the end-of-test-period amount reflected a seasonal fluctuation due to higher maintenance and construction activity in the summer months. Also, Mr. Powell testified that he reviewed monthly material and supplies balances for the period January 1974 through May 1978 and found seasonal fluctuations and a decline in the average material and supplies balance during this period.

In reaching its conclusion concerning the appropriate amount of working capital allowance to be used in this proceeding, the Commission concludes that working capital allowance should be defined as the amount of capital provided by the Company's debt and equity investors that enables the Company to maintain an inventory of material and supplies and cash necessary to maintain compensating bank balances and, if necessary, to pay expenses of providing telephone service prior to the time revenues for telephone service are received from its customers. A working capital allowance should be included as a component of the rate base only to the extent that it is provided by the Company's debt and equity investors. The Commission is of the opinion that the lead-lag study is the most accurate method of determining the need for working capital because it is based on the customers' actual payment practices for telephone service and the Applicant's actual payment practices for expenses incurred. The lead-lag study is based on factual data. On the other hand, the formula method is entirely an estimate which can result in a company receiving either too much or too little working capital instead of an amount

based upon its actual collection and payment experience. Amounts representing the average daily bank balances, including compensating bank balances, and end-of-test-period materials and supplies less average accounts payable related to material and supplies should be included in the working capital allowance. The accounts payable related to material and supplies represent a source of cost-free working capital not supplied by debt and equity investors, but by creditors. Since this item did not receive consideration in the lead-lag study, it should be deducted in arriving at the working capital allowance.

In Evidence and Conclusions of Finding of Fact No. 17, the Commission found that Carolina should reduce its zone charges by 75%. Persuasive evidence was presented by the Company to the effect that a reduction in zone charges would result in an increase in the request by customers for regrades of service and thereby increase the level of construction work in progress. An increase in the level of construction would, in this Commission's opinion, ultimately result in an increased requirement of materials and supplies. The Commission has considered all the evidence presented concerning the appropriate level of materials and supplies to be used in the working capital allowance and concludes that end-of-test-period materials and supplies of $4,912,344 is more representative of the level of materials and supplies that will be required by the Company in the future.

Based on the testimony and evidence presented in this proceeding, the Commission concludes the appropriate amount of working capital allowance to be included in the rate base is $4,578,569, consisting of cash of $2,456,022, material and supplies of $4,912,344, less customer funds advanced through operations of $2,771,208, and less accounts payable related to material and supplies of $18,589.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

G.S. 62-133 requires the Commission to "ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State." In ascertaining fair value, the statute indicates that the Commission must consider evidence offered which tends to show the replacement cost of the property. Such replacement cost may be determined either by trending the depreciated original cost to current cost levels or by any other reasonable method.

None of the parties to this proceeding offered evidence regarding replacement cost or trended original cost. The burden of proof (or risk of nonpersuasion) on fair value lies with the Applicant. The risk of a detrimentally low finding of fair value or rate base thus may be traced directly to a lack of proof by the Applicant.

For the foregoing reasons, the Commission concludes that fair value in this case must be determined by adding the reasonable allowance for working capital of $4,578,569 (determined in Finding of Fact No. 8 above) to the reasonable original cost less depreciation of $272,860,489 (determined in Finding of Fact No. 7 above). Thus, the Commission finally concludes that the reasonable fair value of Carolina's property in service to North Carolina customers is $277,439,058.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Morris and Public Staff witnesses Gerringer and Toms presented testimony concerning the representative end-of-period level of intrastate operating revenues. Public Staff witness Gerringer presented testimony concerning the appropriateness of the apportionment of the Company's operations between the interstate and intrastate jurisdictions, the status of the Company's intrastate toll settlements with Southern Bell Telephone and Telegraph Company for the test period, the determination of the Company's representative level of end-of-period intrastate toll revenues, and the changes the Company proposed to its EAS component rate plan which was authorized in its last general rate case in Docket No. P-7, Sub 601, which became effective on November 1, 1975. The end-of-period level of toll revenues determined by witness Gerringer were included by witness Toms in his testimony and exhibit. Witnesses Morris and Toms each testified as to the appropriate level of operating revenues after accounting, pro forma, and after-period adjustments. The following tabular summary shows the amounts presented by each witness.

	Company Witness Morris	Public Staff Witness Toms
Local service revenues	$ 73,616,374	$ 73,616,374
Toll service revenues	55,375,121	57,077,120
Miscellaneous revenues	5,706,758	6,114,460
Uncollectibles	663,463	204,111
Total operating revenues	$134,034,790	$136,603,843

The two witnesses were in agreement as to the appropriate level of local service revenues; therefore, the Commission concludes that the appropriate level of local service revenues is $73,616,374. The witnesses were in disagreement as to the proper end-of-period level of intrastate toll service revenues. Company witness Morris, in his supplemental testimony, testified that toll service revenues of $55,375,121 should be included in operating revenues, while Public Staff witness Toms, in the second revision of his testimony, testified that toll service revenues of $57,077,120 should be included in operating revenues.

In his original direct testimony, Company witness Morris included a level of intrastate toll revenues for the test

period of $48,209,336 which was the result of accounting and pro forma (both in period and after-period) adjustments to the booked toll revenues. This level was essentially brought to an end-of-period level by application of a main station annualization factor (0.02290) to the adjusted total intrastate net operating income for the test period. These pro forma adjustments did not give any recognition to the impact of the changes proposed by Southern Bell in the intrastate toll rates which were pending in Docket No. P-100, Sub 45, at the time Carolina filed this rate case. Subsequently, witness Morris filed supplemental testimony just prior to the time of the hearing which included among other adjustments the estimated impact of the approved changes in the level of intrastate toll rates. This impact reflected the use of an intrastate toll settlement ratio of 11.01% which was estimated by Southern Bell to result from the approved changes in intrastate toll rates consistent with the Commission's Order issued March 24, 1978, in Docket No. P-100, Sub 45. The resulting level of intrastate toll revenues was $55,375,121 (excluding the effect of the main station annualization factor to bring such revenues to end of period).

Public Staff witness Gerringer estimated the representative level of end-of-test-period intrastate toll revenues by a normal toll settlement calculation applicable to companies conducting toll settlement on an actual cost basis. This calculation utilized the intrastate toll net investment (settlement rate base), operating expenses, and an intrastate toll settlement ratio, all adjusted or restated to an end-of-test-period level as of June 30, 1977. The estimated intrastate toll settlement ratio used for this calculation in witness Gerringer's prefiled testimony was 11.01%. This ratio reflected the impact of the changes in the intrastate toll rates approved in Docket No. P-100, Sub 45. Using the 11.01% settlement ratio, the representative level of end-of-test-period intrastate toll revenues for Carolina for message toll, WATS, and toll private line services was calculated to be $55,701,787. To arrive at the total intrastate toll revenue level, an amount of toll revenue lost of $35,145 (resulting from the establishment of extended area service (EAS) between Carolina's Parkton and Fayetteville exchanges) had to be subtracted, yielding a revenue level of $55,666,642, the final amount prefiled by this witness.

At the time of the hearing, witness Gerringer presented supplemental testimony which updated the estimated intrastate toll settlement ratio from 11.01% to 12.25%, based on his consideration of the actual achieved intrastate toll settlement ratios for the months of June 1977 through April 1978. In his supplemental testimony, witness Gerringer explains that the 11.01% settlement ratio was derived from two considerations. First, based on the Commission's decisions in the toll rate case in Docket No. P-100, Sub 45, the effects of the additional intrastate toll revenues resulting from the approved intrastate toll rate

changes as reflected in a test period for the 12 months ending May 31, 1977, were computed to produce an increase in the settlement ratio of 4.51 percentage points. Second, based on the information provided by Southern Bell in Docket Nos. P-100, Sub 45, and P-55, Sub 768, a settlement ratio in absence of the effects of toll rate changes was proformed to be 6.50% for the same test period ending May 31, 1977. Therefore, by accepting the 6.50% ratio as a starting point and adding the 4.51 percentage points to reflect the effects of the toll rate changes, the 11.01% settlement ratio resulted. Witness Gerringer further stated, however, that in looking at the actually achieved monthly toll settlement ratios for the 10 months (June 1977 through March 1978) that elapsed since the end of the test period (May 31, 1977) used in the toll rate case and which was the basis for arriving at the proformed settlement ratio of 6.50% in absence of the effects of the toll rate changes, the settlement ratio generally exceeded 8% and showed no tendency to go down to a 6.50% level. He therefore concluded that the 6.50% base settlement ratio without adjustments was inaccurate, was too low, and should be adjusted upward before adding the 4.51 percentage points reflecting the estimated effects of the toll rate changes. Witness Gerringer, in his opinion, indicated that a conservative level of the settlement ratio to use for purposes of this hearing, in lieu of the 11.01% used in Docket No. P-100, Sub 45, was 12.25%. The use of this 12.25% settlement ratio resulted in an end-of-test-period level of intrastate toll revenues for Carolina of $58,626,619 (including the toll loss due to the establishment of Parkton-Fayetteville EAS).

Public Staff witness Toms used this amount on a deannualized basis ($57,314,126) to determine his end-of-period intrastate toll revenues. Mr. Toms decreased the amount determined by Mr. Gerringer by $237,006 for the toll revenue effects of his adjustments to rate base and to operating expenses. This resulted in Mr. Toms' level of toll revenues of $57,077,120 ($57,314,126 - $237,006).

The Commission believes that end-of-period intrastate toll service revenues should be determined using the toll settlement methodology employed by Public Staff witness Gerringer. Such methodology should include the intrastate toll settlement ratio, the intrastate toll net investment and operating expenses which have been adjusted or reinstated to the levels found fair by this Commission. The Commission in Findings of Fact Nos. 7, 8, and 11 established the appropriate levels of investment and expenses to be used in setting local service rates and further concludes that these same levels of investment and expenses should be used in calculating toll revenues.

The majority of the difference in the toll service revenues proposed by the Company and Public Staff results from the use of different toll settlement ratios. The Commission recognizes that future or representative settlement ratios are difficult to predict with accuracy and

that while the ratio did not immediately fall to the level estimated in Docket No. P-100, Sub 45, the wide fluctuations in the ratio that have occurred in recently reported months may also be unreliable. The Commission also recognizes that as general economic activity slows toll usage and the toll settlement ratio likewise fall. Also, general inflationary trends increase expenses and investments necessary to provide toll service which must necessarily erode toll revenues in the future. Considering the increasing prime interest rate, the increasing rate of inflation, and the possible results of governmental endeavors to slow inflation which may themselves result in negative impacts upon business activity, the Commission deems it appropriate to choose a conservative estimate of the future settlement ratio. Finally, recent Commission action in setting local service rates for Southern Bell and Central Telephone and the Commission's flow-through requirements for several of the independent telephone companies have been based upon or consistent with use of a ratio of 11.01%. Consistency requires that the same ratio be used here. The Commission therefore determines that an intrastate toll revenue settlement ratio of 11.01% is proper for estimation in this case and that calculation of toll revenues using the 11.01% toll ratio and the levels of investments and expenses found fair in Findings of Fact Nos. 7, 8, and 11 will result in representative levels of toll service revenues of $55,097,795.

The next difference in operating revenues relates to the treatment afforded miscellaneous revenues. Public Staff witness Toms increased actual test-period revenues as a result of advertising rate increases occurring in January and June of the test year. Mr. Toms testified that use of a main station annualization factor would not have recognized the full annual effect of the directory advertising rate increases occurring during the test year. In Evidence and Conclusions for Finding of Fact No. 11, this Commission found it proper to recognize wage increases, insurance premium increases, and postal rate increases which occurred during test period or after the end of the test year. These costs were included on the basis that an annualization factor would not recognize the full annual effect of these cost increases and failure to include these increased costs would result in an immediate erosion of earnings. Conceptually, the adjustment proposed by Mr. Toms does not differ from these expense adjustments; therefore, the Commission concurs with the adjustment to directory revenues proposed by witness Toms. Next, Mr. Toms made an adjustment to miscellaneous revenues to annualize the interest income related to leasehold improvements. In Evidence and Conclusions for Finding of Fact No. 7, it was determined to be proper to include leasehold improvements in telephone plant in service and, correspondingly, the Commission deems it proper to reflect the related interest income on an annualized basis in miscellaneous revenues. Based on the foregoing, the Commission determines the appropriate level of miscellaneous revenues to be $6,114,460.

The final difference in operating revenues relates to a reduction by the Public Staff to uncollectible revenues. Witness Toms calculated end-of-period uncollectible revenues by multiplying the test-period uncollectible rate of .2560% times the Public Staff's proposed local service and miscellaneous revenues. He testified that because the Public Staff's toll revenues did not include any amounts considered to be uncollectible it was unnecessary for him to include toll revenues in his calculation. He further testified that for rate-making purposes allowance need only be made for those uncollectibles associated with the local service and miscellaneous revenues. Although the Commission did not determine the toll revenues proposed by the Public Staff to be appropriate for use in this case, the methodology proposed by the Public Staff to arrive at the appropriate end-of-period toll revenues was employed. The Commission recognizes that the methodology used herein to calculate toll revenues does not include any toll revenues considered to be uncollectible and for that reason finds the appropriate level of uncollectible revenues to be $204,111.

The Commission determines that based upon all the evidence presented the level of operating revenues for the test year under present rates is $134,624,518, which consists of local service revenues of $73,616,374, toll service revenues of $55,097,795, miscellaneous revenues of $6,114,460, and uncollectibles of $204,111.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 and 12

Company witness Morris and Public Staff witness Toms presented testimony and exhibits showing the level of operating revenue deductions they believe should be used by the Commission for the purpose of fixing rates in this proceeding. The amounts presented below reflect the supplemental testimony and exhibit of Company witness Morris and the revised testimony and exhibit of Public Staff witness Toms.

Item	Company Witness Morris (a)	Public Staff Witness Toms (b)
1. Operating expenses	$ 49,214,313	$ 48,479,151
2. Depreciation	19,946,787	19,946,787
3. Operating taxes - other than income	14,383,406	14,493,049
4. Income taxes - State and Federal	20,018,193	21,057,543
5. Interest on customer deposits	56,004	36,199
6. Other interest	8,821	8,821
	$103,627,524	$104,021,550

The first area of difference in operating revenue deductions involves operating expenses. Company witness Morris testified that the appropriate level of operating

expenses is $49,214,313 (which includes other income charges of $86,013), while Public Staff witness Toms testified that the appropriate level of operating expenses is $48,479,151, a difference of $735,162. The $735,162 difference is comprised of various adjustments made by each witness as follows:

Item No.	Item	Amount Toms	Amount Morris
1.	Toms adjustment to increase operating rents on investment in government owned building	$ 8,367	
2.	Toms adjustment to general services and licenses to eliminate the return credit on deferred income taxes on intercompany profits	1,163,996	
3.	Toms adjustment to remove the Company's end-of-period adjustment on the research and development expenses and elimination of the return on R & D facilities	(6,969)	
4.	Toms adjustment to exclude contributions from general services and licenses	(19,119)	
5.	Toms adjustment to amortize the cost of outside consulting services over a three-year period	(38,056)	
6.	Toms adjustment to exclude charitable contributions and fees and dues from operating expenses	(49,320)	
7.	Morris adjustment to include 1/3 of rate case expenses in other operating expenses		$ 3,334
8.	Morris adjustment to recognize the postal rate increase effective June 6, 1978		83,342
9.	Morris adjustment to increase other operating expenses for a general wage increase effective October 1, 1978		1,373,144
10.	Morris adjustment to increase pension expense for the wage		

increase effective October 1, 1978		115,670
11. Morris adjustment for a hospitalization insurance premium increase		196,081
12. Morris adjustment to increase death benefits for an increase in the accrual rate effective January 1, 1978		15,442
Subtotal of adjustments made by each witness	$ 1,058,899	$ 1,787,013

Difference between adjustments included by Mr. Toms and those included by Mr. Morris ($1,058,899 - $1,787,013)	$728,114
Difference due to deannualization of adjustments made by Mr. Toms	7,048
Total difference in operating expenses proposed by Mr. Morris and Mr. Toms	$735,162

The Commission will now discuss each of the preceding adjustments comprising the $735,162 difference in operating expenses. The first item of difference is an adjustment made by Mr. Toms to increase operating expenses for operating rents on leasehold improvements made to a government-owned building. Mr. Toms testified that this adjustment was necessary due to his related adjustment including leasehold improvements in original cost net investment and his adjustment including interest income on the unrecovered cost of the building in miscellaneous income. In Evidence and Conclusions for Findings of Fact Nos. 7 and 10, the Commission determined that Mr. Toms' adjustments to original cost net investment and miscellaneous revenues for leasehold improvements made by Carolina to a government-owned building were proper; consequently, the Commission finds the related adjustment to operating expenses is also proper.

The next item of difference is an adjustment made by Public Staff witness Toms of $1,163,996 to general services and licenses to eliminate the return credit on deferred income taxes on intercompany profits testified to by Company witness Baker. In Evidence and Conclusions for Finding of Fact No. 7, this treatment of deferred income taxes on intercompany profits was discussed in detail and the Commission for reasons previously discussed adopted the methodology proposed by Mr. Toms. Correspondingly, the Commission finds that Mr. Toms' adjustment adding the return credit calculated by Company witness Baker back to operating expenses is proper.

Mr. Toms made an adjustment of $6,969 to correct the Company's end-of-period adjustment which removed research and development expenses and the return on research and development facilities from operating expenses due to the sale of North Electric's Manufacturing division. The Commission concludes that this adjustment to correct the Company's adjustment to research and development expense proposed by witness Toms is proper.

The next adjustment listed above concerns Public Staff witness Toms' adjustment to exclude contributions totaling $19,119 from general services and license expense. Mr. Toms testified in his prefiled testimony that the inclusion of contributions in operating expenses had the effect of making ratepayers involuntary donors to charitable organizations. He further testified that if the Company chooses to make these contributions, they should be charged to its stockholders instead of its ratepayers. Under cross-examination, Public Staff witness Toms agreed that the Company was obligated to pay contributions that were allocated to the Company as an element of the general services and license fees just as they must pay for any other element of expense that is allocated to the Company as a component of the general services and license fee.

Company witness Morris reinstated these contributions as an operating expense in his rebuttal testimony and exhibit based upon the contention that these contributions are chargeable through the general services and license contract with United Telecommunications, Inc.

The Commission agrees with Public Staff witness Toms' adjustment to exclude contributions totaling $19,119 from test year intrastate operating expenses. While the Commission realizes that these contributions are allocated to the Company as a component of the general services and license contract, the decision to disallow these contributions centers around the substance of the allocation rather than the method of allocation. Even though these payments for charitable contributions are included as part of the general services and license contract, the Commission is under no obligation to recognize these expenditures as reasonable and necessary operating expenses and, in fact, recognizes that they are not reasonable and necessary operating expenses. Carolina's ratepayers may make charitable contributions on their own behalf but should not be required to make charitable contributions through the payment of telephone rates, either to charities selected by Carolina or by its parent, United Telecommunications, Inc.

The next item of difference is an adjustment of $38,056 made by Mr. Toms to amortize the cost of an outside consulting service over a three-year period. Witness Toms testified that this expense was not likely to occur on an annual basis but could conceivably occur in the foreseeable future. Since outside consulting services are not likely to recur on an annual basis but may occur in the future, the

Commission concurs with Mr. Toms' adjustment to amortize this item of expense over a three-year period.

The next difference listed above concerns an adjustment to exclude $49,320 from intrastate other operating expenses. Public Staff witness Toms testified in his prefiled testimony that he removed contributions and membership fees and dues from intrastate other operating expenses because they represent nonutility expenses that should not be included in the cost of service. Mr. Toms testified that inclusion of contributions in operating expenses would make the Company's ratepayers involuntary donors. Consistent with the Commission's earlier conclusion regarding contributions included in general services and license fees, the Commission finds that the adjustment made by Mr. Toms excluding contribution from operating expenses is proper.

Mr. Toms also excluded membership fees and dues from operating expenses. Mr. Toms testified that these fees and dues included payments to a country club and service clubs such as the Kiwanis and Lions Club.

Under cross-examination, Company witness Morris contended that by belonging to civic organizations both the Company and its ratepayers benefit. He stated that by belonging to these organizations the Company is able to obtain information pertaining to new developments, new construction, or any news concerning the demand or the probable demand for telephone service. Mr. Morris further testified that because of this information, the Company is able to plan its construction far in advance of demand. Public Staff witness Toms testified under cross-examination that the Company could obtain this same information at no expense simply by consulting the local town planning commission or industrial council.

Company witness Williamson offered rebuttal testimony supportive of Mr. Morris' contention with regard to these fees and dues. Company witness Williamson testified that from his personal experience, through the Company's membership in these various civic organizations, the subscribers of the Company had received significant and direct benefit. Public Staff witness Toms testified, however, that any benefits which might accrue to the Company would ultimately accrue to the benefit of the stockholders of the Company and, accordingly, should be charged to the stockholders rather than to its ratepayers. The Commission concludes that the Company does derive benefit from information obtained through memberships in these various organizations, and the Commission also believes these benefits will ultimately accrue to the ratepayers as well as stockholders of the Company. Membership fees and dues paid to country clubs are not viewed by this Commission to be of any benefit to the ratepayers of the Company and should not be included in the cost of providing service. The Commission finds that membership fees and dues paid to civic

organizations amounting to $3,734 on an intrastate basis should be included in operating expenses.

The next difference noted above concerns a supplemental adjustment made by Company witness Morris to include additional rate case expenses totaling $3,333 in intrastate operating expenses. Public Staff witness Toms did not include this adjustment in his revised testimony and exhibit but did agree under cross-examination that the additional rate case expenses should be considered reasonable operating expenses for rate case purposes.

The Commission concludes that the supplemental adjustment made by Company witness Morris to increase rate case expenses relative to this rate case proceeding by $3,333 is a reasonable addition to intrastate operating expenses that should be recognized for the purpose of determining cost of service in this proceeding.

The eighth difference listed above involves a supplemental adjustment made by Company witness Morris to increase intrastate operating expenses by $83,342, due to an increase in postal rates from 13& to 15&. Public Staff witness Toms did not incorporate this adjustment in his revised testimony and exhibit but did agree under cross-examination that the adjustment was reasonable for rate-making purposes, since the Company was actually incurring postage expenses of that level at the date of the hearing.

The Commission concludes that the supplemental adjustment made by Mr. Morris to increase intrastate operating expenses due to an increase in postal rates is reasonable but that the proper amount of the adjustment before application of the annualization factor is $81,476. This adjustment recognizes an actual increase in expense that is currently being incurred by the Company and should be allowed for rate-making purposes.

The ninth and tenth differences noted above involve two supplemental adjustments that were made by Company witness Morris to reflect October 1, 1978, increases in wages for bargaining employees and the associated pension expense. Company witness Morris estimated that the annual effect of the increase in wages and pensions would be $1,373,144 and $115,670, respectively. Public Staff witness Toms did not include either of the adjustments in his revised testimony and exhibit and he also took exception to the two adjustments during his cross-examination. Mr. Toms stated that he took exception to the adjustments because of G.S. 62-133(c), which states in general that the Commission shall consider material and competent evidence tending to show actual changes in costs which are based upon circumstances and events occurring through the close of the hearing. When Mr. Toms testified, the wage increase was not in effect, and it appeared at the time he testified that the hearings would be closed before the wage increase took effect. Mr. Toms agreed under cross-examination, however, that the Company

had a contractual obligation to pay these wages on October 1, 1978. Company witness Morris testified during cross-examination that in addition to test year wage expense he had also proformed two other wage adjustments for bargaining employees which became effective on October 1, 1977, and January 1, 1978, respectively.

The Commission concludes that Mr. Morris' two supplemental adjustments increasing general bargaining wages should be allowed as reasonable additions to intrastate other operating expenses. The basis for this conclusion is derived from G.S. 62-133(c), which states in general that "this Commission shall consider such relevant material and competent evidence as may be offered tending to show actual changes in costs, which are based upon circumstances and events occurring up through the time the hearing is closed." While the Commission is mindful of the fact that Company witness Morris has already adjusted intrastate other operating expenses for two other wage increases applicable to general bargaining employees and the related pension expense, the Commission recognizes that the Company has a contractual obligation to pay its bargaining employees these increased wages and was, in fact, paying these increased wage costs at the time the hearings in this docket were closed. The Commission finds that the proper amount of these adjustments before application of the annualization factor is an increase in general bargaining wages of $1,342,403 and an increase in related pension expenses of $113,081.

The next difference listed is a supplemental adjustment made by Mr. Morris to increase intrastate operating expenses by $196,081, due to an increase in hospitalization insurance premiums. Although Public Staff witness Toms did not make this adjustment, he testified under cross-examination that he accepted Mr. Morris' proposed adjustment to intrastate operating expenses.

Consistent with the Commission's earlier conclusions regarding supplemental adjustments proposed by Company witness Morris and subsequently accepted by Public Staff witness Toms under cross-examination, the Commission concludes that the $196,081 adjustment is reasonable for rate-making purposes. However, the Commission concludes that the proper amount of this adjustment to be added to operating expenses is the deannualized amount of $191,691.

The next difference noted above concerns a supplemental adjustment made by Mr. Morris to increase intrastate operating expenses by $15,442, due to an increase in the pension accrual rate from .70% to .75%, relative to death benefits. Public Staff witness Toms did not make this adjustment; however, he did agree under cross-examination that the proposed adjustment represented an expense increase that the Company is now incurring which should be considered in test-period operating expenses.

The Commission concludes that Mr. Morris' adjustment to increase intrastate operating expenses for the effect of an increase in the pension accrual rate relative to death benefits is appropriate. Mr. Morris' adjustment reflects an increase in expenses that the Company is actually experiencing at this time. However, the Commission concludes that the proper amount to include in operating expenses is the deannualized amount of $15,096.

One further item of difference between the witnesses is noted above. This difference of $7,048 is due to deannualization adjustments made by Mr. Toms. These adjustments were made by Mr. Toms to expenses which had been adjusted to an end-of-period level by methods other than the annualization adjustment and were necessary because an annualization factor was applied to net income. The Commission concurs with these deannualization adjustments. The Commission finds that the proper level of operating and maintenance expenses is $50,229,965, which consists of maintenance expenses of $22,089,006, traffic expenses of $7,081,324, commercial expenses of $6,233,941, general office expenses of $4,720,755, and other expenses of $10,104,939.

Company witness Morris and Public Staff witness Toms each included test-period depreciation expense totaling $19,946,787 as a component of operating revenue deductions. Since both witnesses applied an annualization factor to operating income, each witness adjusted test-period depreciation expense to an end-of-period level by use of the same method. While Mr. Morris and Mr. Toms were in agreement as to the appropriate amount of depreciation expense to be included in operating revenue deductions, the Company maintained through the rebuttal testimony of Company witness Williamson that intrastate depreciation expense should be increased. Mr. Williamson testified that the Company had filed the results of its 1978 study of depreciation rates with the Commission in Docket No. P-7, Sub 631, and had requested that the Commission consider its proposed depreciation rate change from 5.2% to 5.5%. Carolina had requested the Commission to allow those rates to become effective October 1, 1978, retroactive to January 1, 1978. On January 8, 1979, the Commission allowed Carolina to increase its depreciation rates from 5.2% to 5.5% and to place the depreciation rates into effect retroactively to November 1, 1978.

The Commission concludes that if a change in the depreciation rates of this magnitude is not recognized in the setting of rates for Carolina, then an immediate attrition in the earnings of the Company will result. Further, this is a known change which will materially affect earnings and, consequently, it is the Commission's opinion that the depreciation rate increase should be recognized. Using average test-period depreciable plant in service and the composite depreciation rate of 5.5%, an increase in depreciation expense of $1,484,524 can be calculated. The

Commission finds the proper intrastate end-of-period level of depreciation expense to be $21,431,311.

The third component of operating revenue deductions listed above concerns the proper amount of intrastate operating taxes - other than income. Company witness Morris included other operating taxes of $14,383,406 while Public Staff witness Toms included other operating taxes of $14,493,049, or a difference of $109,643. This difference results from different proposals made by Mr. Toms and Mr. Morris for payroll taxes and gross receipt taxes. Company witness Morris made a supplemental adjustment to increase payroll taxes by $85,035 for FICA taxes associated with the general wage increase for bargaining employees effective October 1, 1978. As noted earlier in our discussion of intrastate operating expenses, Public Staff witness Toms did not include the adjustment for general bargaining wages and the associated pension expense in his revised exhibit and also took exception to its inclusion in operating expenses during his cross-examination.

Consistent with the Commission's earlier conclusion allowing the inclusion of the adjustment for the general bargaining wage increase and the associated pension expense, the Commission also concludes that the associated FICA tax increase should be allowed as an appropriate addition to intrastate operating taxes - other than income. However, the Commission finds that the proper amount of this adjustment is the deannualized amount of $83,131 and that the end-of-period level of payroll taxes is $2,311,403.

The gross receipts taxes presented by Mr. Toms exceeded the amount presented by Company witness Morris due to the fact that the gross revenues that Mr. Toms used to calculate his gross receipts taxes exceeded the gross revenues of Mr. Morris. The Commission concludes that neither the level of gross receipts taxes presented by Public Staff witness Toms nor Company witness Morris is appropriate because the level of intrastate operating revenues found appropriate by the Commission is different from the level presented by either witness. Under Evidence and Conclusions for Finding of Fact No. 10, the Commission concluded that the appropriate level of intrastate operating revenues is $134,624,518; therefore, the Commission concludes that the appropriate level of gross receipts taxes is $8,077,471, or 6% of $134,624,518.

In summary, the Commission concludes that the appropriate level of operating taxes - other than income is $14,457,420, consisting of payroll taxes of $2,311,403, gross receipts taxes of $8,077,471, property taxes of $4,036,927, and other taxes of $31,619.

The next operating revenue deduction upon which the witnesses disagree involves the appropriate level of State and Federal income taxes. Both witnesses made adjustments to State and Federal income taxes to reflect the income tax effects of adjustments each made to operating revenues and

operating revenue deductions. Since the operating revenues and operating revenue deductions have been discussed previously, they will not be discussed again relative to their income tax effects. Accordingly, since the Commission as previously discussed and will be subsequently discussed herein either accepted or rejected certain adjustments from each witness, it will be necessary for the Commission to compute the appropriate level of State and Federal income taxes to be used in this proceeding.

Company witness Morris and Public Staff witness Toms each made adjustments to State and Federal income tax expense due to the income tax effects of disallowed depreciation, amortization of the reserve for uncollectibles, capitalized wages and benefits, interest expense, amortization of the investment tax credit, and the surtax exemption. The two witnesses disagreed, however, with regard to the appropriate amount of disallowed depreciation, capitalized taxes, interest expense, and the investment tax credit. In his rebuttal testimony and exhibit Mr. Morris increased test-period disallowed depreciation as proposed by Public Staff witness Toms by $12,971, and he also increased capitalized FICA taxes and pensions by $22,032 and $33,478, respectively. While the amounts of capitalized pensions and benefits differ from the amounts presented by Public Staff witness Toms, the difference results because Mr. Toms did not incorporate the wage, pension, and FICA tax adjustments in his testimony and exhibit. As justification for the $12,971 adjustment to disallowed depreciation, Mr. Morris testified in his prefiled rebuttal testimony that if the tax benefits capitalized are treated for rate-making purposes as current operating expenses, consistency requires that depreciation associated with these assets be disallowed.

As to the appropriate level of interest expense to be used to compute State and Federal taxes, each witness utilized the deannualized interest expense associated with the debt capital supporting the original cost net investment.

The final area of difference involves an immaterial difference in the amount of the amortization of the investment tax credit by $82. The intrastate amount derived by Public Staff witness Toms was taken directly from the Company's Response to Minimum Filing Requirements Item 13 and allocated to intrastate allocation factor supplied by Public Staff witness Gerringer.

Based upon the evidence presented by the two witnesses in support of the components used in the computation of State and Federal income taxes, the Commission concludes that the appropriate amount of disallowed depreciation is $700,056, as presented by Public Staff witness Toms; that capitalized taxes should be $1,331,321, as presented by Company witness Morris; that interest expense deannualized should be $10,381,629; and that the appropriate amount of amortization of investment tax credit is $730,909, as presented by Public Staff witness Toms.

The Commission disagrees with the additional $12,971 in disallowed depreciation proposed by Company witness Morris because disallowed depreciation reflects depreciation expense on those taxes and benefits that have previously been capitalized and are now included in the cost of telephone plant in service. Since the capitalized wages, pensions, and FICA taxes from pro forma and after-period adjustments are not added to end-of-period telephone plant in service and, subsequently, depreciated, test-period disallowed depreciation should not be adjusted to reflect depreciation on these items. Disallowed depreciation is added back to income before income taxes and fixed charges because it is taken as a deduction in arriving at book depreciation expense and has previously been recognized for purposes of computing book depreciation expense. The $12,971 which Mr. Morris added to disallowed depreciation expense was not included in the computation of depreciation expense which was deducted in arriving at operating income before income taxes; therefore, it is inappropriate to add this amount back to operating income before income taxes, as he has done. The Commission is in agreement with Company witness Morris' increase in capitalized FICA taxes totaling $22,032 and pensions totaling $33,478, or $55,510 in aggregate, because the Company deducts all taxes and pensions as a current tax deduction. Consequently, the only way that the ratepayers of the Company can get the tax benefit of the additional capitalized taxes and benefits is by deducting them in the year in which they are actually incurred. When increased levels of capitalized taxes and employee benefits are incurred, these amounts are immediately deductible for computing income taxes. However, for tax purposes, depreciation expense on capitalized taxes and benefits is not added back to net operating income until these costs are included in plant in service and depreciation expense is computed on these capitalized taxes and benefits.

As we will note in Evidence and Conclusions for Findings of Fact Nos. 14 and 15 (to be discussed hereafter), the capital structure ratios and embedded debt cost rate as developed by Public Staff witness Legler are appropriate for rate-making purposes. In Finding of Fact No. 9, the Commission also found that the appropriate fair value rate base was $277,439,058. Using the appropriate capital structure, embedded cost of debt, and fair value rate base, the proper interest expense before deannualization is calculated to be $10,619,368. The Commission concludes that the appropriate interest expense to use in the tax computation is the deannualized interest expense of $10,381,629.

There is one other item concerning income taxes which the Commission will discuss. In his rebuttal testimony Company witness Williamson stated that the Federal income tax rate would change from 48% to 46%, effective January 1, 1979. The Commission finds that this tax rate change is a known change which will materially affect earnings and should be

considered in arriving at the appropriate end-of-period amount of Federal income tax expense. The Commission also recognizes that the surtax exemption for Federal income taxes has changed and accordingly will incorporate this change in the income tax calculation.

In summary, the Commission concludes that the end-of-period level of State and Federal income tax expense is $17,694,860 ($2,246,727 + $15,448,133), as shown in the following table:

Item	Intrastate Amount (a)
Operating income before income taxes and fixed charges	$ 48,460,802
Add: Disallowed depreciation	700,056
Deduct: Amortization of reserve for uncollectibles	2,459
Capitalized taxes and benefits	1,331,321
Interest expense - deannualized	10,381,629
Operating income subject to State income tax	37,445,449
State income tax ($37,445,449 x 6%)	2,246,727
Operating income subject to Federal income tax	35,198,722
Federal income tax ($35,198,722 x 46%)	16,191,412
Less: Amortization of investment tax credit	730,909
Surtax exemption	12,370
Federal income tax	$ 15,448,133

The fifth operating revenue deduction noted above concerns interest on customer deposits. Mr. Morris testified that the proper amount of interest on customer deposits was $56,004, the actual test-period amount. Mr. Toms calculated an end-of-period amount of interest on customer deposits of $36,199. From the balance of customer deposits at June 30,1977, he subtracted collections received during April 1977 through June 1977, since interest is payable after 90 days, and applied the rate of 6% to the difference. The Commission finds that Mr. Toms' adjustment is proper since he calculates an end-of-period amount of interest on end-of-period customer deposits, and this Commission in Evidence and Conclusions for Finding of Fact No. 7 found it proper to deduct end-of-period customers' deposits in arriving at original cost net investment. The appropriate intrastate amount of interest on customer deposits is $36,199.

The final operating revenue deduction noted above is other interest expense totaling $8,821. Since there was no disagreement on this item between the two witnesses, the Commission concludes that intrastate other interest expense of $8,821 should be included as an operating revenue deduction.

Finally, the Commission concludes that the proper level of total intrastate operating revenue deductions before application of the annualization factor is $103,858,576,

consisting of operating expenses of $50,229,965, depreciation expense of $21,431,311, operating taxes - other than income tax of $14,457,420, State and Federal income taxes of $17,694,860, interest on customer deposits of $36,199, and other interest of $8,821.

Under Evidence and Conclusions for Finding of Fact No. 10, the Commission concluded that total intrastate operating revenues were $134,624,518 and has just concluded that intrastate total operating revenue deductions are $103,858,576, leaving intrastate net operating income of $30,765,942. The Commission now concludes that the proper annualization adjustment is $704,540, as shown in the following schedule:

	Intrastate Amount (a)
Operating revenues	$134,624,518
Less: Operating revenue deductions	103,858,576
Net operating income	30,765,942
Main station annualization factor	2.29%
Annualization adjustment	$ 704,540

In summary, the Commission concludes that the proper amount for the annualization adjustment is $704,540 and that the proper amount of operating income for return is $31,470,482 ($30,765,942 + $704,540).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witnesses Brennan and Morris and Public Staff witness Carter presented testimony concerning the rate-making treatment to be accorded the Job Development Investment Tax Credits (JDITC). Although witness Morris did not offer direct testimony concerning JDITC, he did present rebuttal testimony on the subject.

Mr. Brennan testified that the unamortized Job Development Credits should earn the common equity rate of return because Congress requires and the Internal Revenue Service insists that a common equity return must be earned on property financed with JDITC generated funds or the credit will be lost to investors and consumers. Mr. Brennan testified that he based his opinion on language contained in informational letters issued by the Internal Revenue Service to Chairman Montoya of the New Mexico Public Service Commission, the City of Dallas, Texas, and a utility company in California. Also, Mr. Brennan testified that his opinion was based on an Administrative Law Judge's decision before the Federal Energy Regulatory Commission involving Carolina Power and Light Company. He further testified that language contained in House and Senate Committee reports requires the common equity return for unamortized JDITC.

Company witness Morris testified that JDITC should be considered as common equity since the IRS informational letters which are subsequent to the proposed regulations should carry the greater weight in view of no action taken on the proposed regulations since 1972.

Public Staff witness Carter testified that the unamortized JDITC should earn the overall rate of return found fair by the Commission, and not the common equity rate of return as requested by Carolina. Mr. Carter stated that he based his testimony on section 46 of the Internal Revenue Code and Internal Revenue Service Proposed Regulation 1.46-5. Mr. Carter testified that the Internal Revenue Code specifies only two ways in which a regulated company would lose the Job Development Credits. One is that the Credit will be lost if the taxpayer's cost of service is reduced by more than a ratable portion of the Credit and the other is that the Credit will be lost if the rate base is reduced by any portion of the Credit. Mr. Carter further testified that the Code says nothing which would indicate that the unamortized Job Development Credits should earn the common equity rate of return.

Mr. Carter testified that Internal Revenue Service Proposed Regulation 1.46-5 requires that nothing more than an overall rate of return be earned on the Job Development Credits. Mr. Carter testified that Internal Revenue Service Proposed Regulation 1.46-5(b)(3) contains the following language which indicates that the overall rate of return is all that is required for the JDITC:

> "Rate base. For purposes of this section, the term 'rate base' means the base to which the taxpayer's rate of return for ratemaking purposes is applied (i.e., the monetary amount which is used as the divisor in calculating rate of return or the amount which is multiplied by the fair rate of return to determine the allowable return in the fixing of rate levels). In determining whether or to what extent a credit allowed under section 38 (determined without regard to section 46(f)) reduces the rate base, reference shall be made to any accounting treatment of such credit that can affect the taxpayer's permitted profit on investment. Thus, for example, assigning a 'cost of capital' rate to the amount of such credit which is less than the permissible overall rate of return (determined without regard to the credit) would be treated as, in effect, a rate base adjustment. What is the overall rate of return depends upon the practice of the regulatory body. Thus, for example, an overall rate of return may be a rate determined on the basis of an average or weighted average of allowable rates of return on investments by common stockholders, preferred stockholders, and creditors."

Mr. Carter testified that an Internal Revenue Service Proposed Regulation is a statement of administrative interpretation of the Code by the Internal Revenue Service.

He testified that Internal Revenue Service Proposed Regulation 1.46-5 is the Internal Revenue Service's interpretation of Section 46(f) of the Internal Revenue Code until such time as a final regulation is published and that Section 46(f) of the Internal Revenue Code pertains to the rate-making treatment to be accorded the Job Development Credit.

In concluding his direct testimony, Mr. Carter testified that it is unfair and inequitable to the ratepayers for the Company to receive any return on these cost-free funds, but that based on the Company's election, the law requires the Commission to allow some return on this cost-free capital if the JDITC is to be available. Mr. Carter further testified that to allow the Company to earn the overall return on capital having no cost is inequitable, although necessary if the Credit is to be available, but allowing the common equity return on these cost-free funds is much more inequitable and goes beyond the requirements of the Internal Revenue Code and Internal Revenue Service Proposed Regulation 1.46-5.

The Commission has carefully analyzed the direct testimony, exhibits, and cross-examination of each of these witnesses. Based on all the evidence presented on JDITC in this proceeding, the Commission concludes that the JDITC should earn the overall rate of return, not the common equity rate of return.

The Commission recognizes that the language contained in Internal Revenue Service Proposed Regulation 1.46-5 is in conflict with certain language contained in the House and Senate Committee Reports and in the informational letter from Mr. Taylor to the Chairman of the New Mexico Public Service Commission which seems to indicate that the common equity rate of return is required.

The Commission is of the opinion that the Proposed Regulation 1.46-5 should be relied on more heavily since it is the only published guideline available to both the general body of taxpayers and tax practitioners concerning the rate-making treatment to be accorded the JDITC. If a final regulation is issued sometime in the future which contradicts the Proposed Regulation 1.46-5, the Commission will at that time consider the appropriateness of any modifications to the policy adopted herein for the treatment of JDITC.

Based on all the testimony and exhibits presented concerning JDITC, the Commission concludes that the JDITC should earn the overall rate of return.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 and 15

Two witnesses were presented in the area of the cost of capital and fair rate of return. The Company offered the testimony of Joseph F. Brennan, President of Associated

Utility Service, Inc., an independent utility consulting firm. The testimony of Dr. John B. Legler, Professor of Banking and Finance at the University of Georgia, was offered by the Public Staff. Additionally, the Company offered the rebuttal of Dr. Legler's double leverage approach to the estimation of the fair rate of return for Carolina Telephone and Telegraph Company by Mr. Brennan and Dr. Paul J. Garfield, an economist and member of the firm of Foster Associates, Inc., an independent economic consulting firm.

Mr. Brennan testified that the Company should be given the opportunity to achieve an overall return of 9.57% which he felt to be Carolina's overall cost of money. In order to achieve this level of return, he recommended that an additional .25% be added to the overall cost of money when setting rates in order to adjust for attrition caused by continuing inflation. His recommendations were based upon a capital structure which consisted of 42.8% debt at a cost rate of 7.60%, 46.8% common equity at a cost rate of 13.5% (14.0% common equity return including the attrition allowance), and 10.4% cost-free capital. Dr. Legler stated that it was his opinion that the overall fair rate of return on the original cost net investment of the Company was in the range of 9.71% to 9.97% based on his use of a capital structure consisting of 50.1% long-term debt and 49.9% common equity with cost rates of 7.64% and 11.79% to 12.30%, respectively, with the lower figures for both equity cost and the overall fair rate of return being based on complete recognition of the relationship between Carolina and its parent corporation, United Telecommunications, Inc. The differences in the recommendations regarding the cost of capital and the fair rate of return for the Company which were made by these witnesses arise from their use of different capital structures, different cost rates for the debt component of capital, and different cost rates for the equity component. The differences in the capital structures can be traced to different treatments of short-term debt, cost-free capital, and Job Development Investment Tax Credits. Mr. Brennan recommended that the estimated December 31, 1978, capital structure, which included short-term debt, cost-free capital, and JDITC in the equity component of the capital structure, be used to determine the revenue requirements of Carolina. Alternatively, Dr. Legler's recommendation was the estimated December 31, 1977, capital structure which did not include JDITC in the common equity component of the capital structure and did not include cost-free capital. A further difference between the witnesses' recommendations was that Dr. Legler only considered permanent capital in his recommended capital structure (i.e. excluded short-term debt). The proper treatments of cost-free capital and JDITC were discussed in the Evidence and Conclusions for Findings of Fact Nos. 7 and 13. The Commission found it proper to deduct cost-free capital from the rate base and to allow JDITC the overall return rather than the common equity return. The Commission

also finds that it is proper to determine the capital structure using only permanent capital.

The capital structure proposed by Dr. Legler, which was the estimated December 31, 1977, capital structure of the Company, adjusted to reflect proper treatment of the cost-free and the JDITC items and further adjusted to reflect the effect of the recent issues of long-term debt by the Company, consists of essentially equal parts debt and equity and does not reflect disproportionate shares of either. Because capital structure ratios vary over time, it is important that the ratios chosen adequately reflect the mix of capital used to finance utility plant, but it is not essential to use the specific mix of capital which existed at any particular date. The Commission believes that the capital structure adopted by Dr. Legler adequately reflects the mix of invested capital which will be in effect in the near future and that this capital structure is appropriate for use in this case.

The difference between the two testimonies regarding the proper cost rate for the debt component is minor (7.64% for Dr. Legler and 7.60% for Mr. Brennan) and is based on the differences in their treatments of short-term debt and their methods of calculation. We have accepted Dr. Legler's treatment (i.e. exclusion) of short-term debt and will likewise accept his calculation of the embedded cost rate for the debt component. This rate reflects the effect of the Company's most recent issue of long-term debt and should adequately reflect the near term cost of the debt dollars invested in utility plant. Therefore, it is appropriate for use in this case.

The final issue of disagreement between the two witnesses lies in the area of their determination of the cost of Carolina's equity capital. Among the factors Mr. Brennan relied upon in making his common equity return recommendation were tests using the earnings price ratio method, the earnings net proceeds ratio method, the bare rent theory, comparable earnings, and the discounted cash flow method. In calculating his recommended return, Mr. Brennan treated Carolina as if it were a completely separate entity not affiliated with UTI. Using his judgment concerning the different equity cost rates he derived with the methodologies previously mentioned, he determined Carolina's required common equity return to be 13.5% and with an allowance for attrition to be 14.%.

Dr. Legler used a double leverage technique to arrive at Carolina's cost of equity whereby the overall cost of capital to UTI became the cost of equity to Carolina. He determined UTI's cost of equity to be 13%, using a bond yield plus risk premium analysis and a dividend yield plus growth rate method. His basic position was that unless the impact of the parent subsidiary relationship was considered in the setting of rates (i.e. the double leverage approach was used) the parent would earn a return in excess of its

cost of capital and the customers would pay rates which exceed the cost of serving them.

Dr. Legler's use of the double leverage approach to determine the proper common equity return was the subject of rebuttal testimony by Mr. Brennan and Dr. Garfield, who argued against the adoption of this approach for several reasons. One reason was what Dr. Garfield felt to be a faulty basic premise upon which the double leverage concept stood - that the parent had purchased the equity of the subsidiary by selling its debt, preferred, and equity securities in equal proportion to the current capital structure ratios of the parent. He felt that because this premise was untrue the entire concept and use of double leverage was invalid. Another reason asserted by the Company witnesses as reason for nonacceptance of double leverage was that double leverage would result in discrimination between investors in Carolina (United) and investors in a similarly situated but unaffiliated telephone utility. One principal argument which they made was that the hypothetical sale of Carolina's equity to another holding company (or some other entity) would require that the cost of equity to Carolina be changed. It was further argued that Dr. Legler employed a defective entity concept in relying on the parent's capital structure to make his recommendations and that the consolidated entity would provide a fairer presentation.

In Appendix A of the Public Staff's brief, a response to the criticisms of double leverage by witnesses Garfield and Brennan was made. As to the criticism that double leverage was based on the faulty premise of Carolina's common stock being purchased by the parent selling its debt, preferred, and common stock in proportions equal to its current capital ratios, a distinction was made between the existence of equity and how its ownership was financed. It was argued that the opportunity cost or relevant cost of equity capital of a subsidiary to its parent is determined by the amount and existence of capital, not by how the capital was produced or purchased. Mr. Brennan's argument that a hypothetical sale of Carolina's equity to another holding company with a different capital structure but perceived by investors to have equal risk would result in a change in the cost of capital was said to be misleading. In the Public Staff brief, it was argued that companies with different capital structures would not be perceived by investors to have equal risk and, for that reason, Mr. Brennan's argument was said to be invalid. The final argument was that Mr. Legler's use of a defective entity concept resulted in an unfair presentation of facts. Dr. Garfield testified that the consolidated financial statements should be used to make a fair presentation of the financial position of United to its present and potential investors. The Public Staff contended that Dr. Legler's purpose in using the parent company's capital structure was not to present fairly the financial position of the Company but to estimate the parent's overall cost of capital. It was also asserted that

use of the consolidated capital structure and cost rates would result in a lower overall return requirement for Carolina.

After considering all the evidence presented by the parties on this issue, it is evident that the central issue to be resolved is whether and to what extent, if any, the impact of the affiliated parent-subsidiary relationship between Carolina and United Telecommunications, Inc., should be recognized as affecting Carolina's cost of equity capital. The Company's recommendation of a 14% return on common equity does not recognize any impact on the return due to the affiliation between Carolina and United. Alternatively, the Public Staff's recommendation of an 11.79% return fully recognizes the parent subsidiary relationship.

In attempting to assess the equity capital cost for a regulated utility such as Carolina, whose shares are wholly-owned by a parent and are not traded on the open market, it is the Commission's opinion that the parent-subsidiary affiliation should be considered. However, the question remains as to what extent the affiliated relationship should affect the cost of equity capital. The Commission is of the opinion that Carolina should be allowed to earn a return on common equity of 12.75%. While this return does not fully recognize the affiliated relationship between Carolina and United, it does reflect this Commission's opinion of the appropriate impact Carolina's affiliation should have on its cost of equity capital.

We therefore conclude that setting rates so as to give the Company the opportunity to earn a return of 10.19% on its rate base as computed earlier (which includes a return allowance of 12.75% for the common equity component) will give the Company the opportunity to meet its obligations to both investor and ratepayer while balancing the interests of both and is therefore a fair and reasonable rate of return as contemplated under G.S. 62-133(b)(4).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Based upon the Commission's previous findings and conclusions (Nos. 7, 8, 9, 10, 11, 12, 13, 14 and 15), the Commission concludes that Carolina's present rates and charges should be reduced by $6,723,290 in order to allow the Company a reasonable opportunity to achieve the rates of return previously determined to be just and reasonable.

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve based upon the decreases approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
CAROLINA TELEPHONE AND TELEGRAPH COMPANY
DOCKET NO. P-7, SUB 624
STATEMENT OF RETURN
TWELVE MONTHS ENDED JUNE 30, 1977

	Present Rates (a)	Decrease Approved (b)	After Approved Decrease (c)
Operating Revenues			
Local service	$ 73,616,374	$(6,723,290)	$ 66,893,084
Toll service	55,097,795	-	55,097,795
Miscellaneous	6,114,460	-	6,114,460
Uncollectibles	(204,111)	17,212	(186,899)
Total operating revenues	134,624,518	(6,706,078)	127,918,440
Operating Revenue Deductions			
Maintenance	22,089,006	-	22,089,006
Depreciation	21,431,311	-	21,431,311
Traffic	7,081,324	-	7,081,324
Commercial	6,233,941	-	6,233,941
General office	4,720,755	-	4,720,755
Other expenses	10,104,939	-	10,104,939
Interest on customer deposits	36,199	-	36,199
Other interest	8,821	-	8,821
Other Operating taxes	14,457,420	(402,365)	14,055,055
Total operating revenue deductions before income taxes	86,163,716	(402,365)	85,761,351
Income taxes - State and Federal	17,694,860	(3,103,948)	14,590,912
Total operating revenue deductions	103,858,576	(3,506,313)	100,352,263
Net operating income	30,765,942	(3,199,765)	27,566,177
Annualization adjustment	704,540	-	704,540
Net operating income for return	$ 31,470,482	$(3,199,765)	$ 28,270,717

SCHEDULE II
CAROLINA TELEPHONE AND TELEGRAPH COMPANY
DOCKET NO. P-7, SUB 624
STATEMENT OF RETURN
TWELVE MONTHS ENDED JUNE 30, 1977

	Present Rates (a)	After Approved Decrease (b)
Investment in Telephone Plant		
Telephone plant in service	$416,652,813	$416,652,813
Leasehold improvement	184,953	184,953
Total plant in service	416,837,766	416,837,766
Less: Accumulated depreciation	109,125,648	109,125,648
Unamortized investment tax credit	1,652,361	1,652,361
Deferred income taxes on intercompany profits	5,900,243	5,900,243
Accumulated deferred income taxes	26,338,813	26,338,813
Accounts payable - plant in service	135,841	135,841
Customer deposits	824,371	824,371
Net investment in plant in service	272,860,489	272,860,489
Allowance for Working Capital		
Cash	2,456,022	2,456,022
Materials and supplies	4,912,344	4,912,344
Customer funds advanced through operations	(2,771,208)	(2,771,208)
Accounts payable - materials and supplies	(18,589)	(18,589)
Total working capital allowance	4,578,569	4,578,569
Net investment in telephone plant in service plus the working capital allowance	$277,439,058	$277,439,058
Fair value rate base	$277,439,058	$277,439,058
Rate of return on fair value rate base	11.34%	10.19%

SCHEDULE III
CAROLINA TELEPHONE AND TELEGRAPH COMPANY
DOCKET NO. P-7, SUB 624
STATEMENT OF RETURN
TWELVE MONTHS ENDED JUNE 30, 1977

Capitalization	Fair Value Rate Base	Ratio %	Embedded Cost or Return on Fair Value Equity %	Net Operating Income for Return
		Present Rates - Fair Value Rate Base		
Long-term debt	$138,996,968	50.10	7.64	$10,619,368
Common equity	138,442,090	49.90	15.06	20,851,114
Total	$277,439,058	100.00	-	$31,470,482
		Approved Rates - Fair Value Rate Base		
Long-term	$138,996,968	50.10	7.64	$10,619,368
Common equity	138,442,090	49.90	12.75	17,651,349
Total	$277,439,058	100.00	-	$28,270,717

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding is contained in the testimony and exhibits of Company witnesses T.P. Williamson, J.R. Owen, E.D. Wooten, and J.A. Wooten and Public Staff witnesses J.S. Compton, B.R. Turner, W.J. Willis, and H.L. Gerringer.

Mr. Owen's direct testimony concerned the distribution of revenue requirements necessary to generate the Company's proposed increase of $5,518,734. Witness Owen proposed to increase rates for such services as directory listings, coin telephone equipment, private branch exchange (PBX) service, miscellaneous equipment and special service arrangement, key systems and equipment, automatic answering service, mobile telephones, U-touch service, extended area service (EAS), Centrex service, and basic local exchange service. He proposed decreases in the present rates for color telephone, business extensions, long-distance trunks, and one base rate exchange area. Mr. Owen noted that the Company's basic philosophy in rate design was to provide the best possible service at the lowest possible rate for basic local exchange service. Competitive considerations were cited as the primary reason for the proposed reductions.

Witness Owen proposed to retain Carolina's existing rate groups, group sizes, and relationships among various grades and classes of service with three exceptions: (1) he proposed a reduction in long-distance trunk rates from two times to one time the local business one-party rate because such trunks provide only outward service and are not connected to the local exchange; (2) he proposed the

establishment of a data trunk line rate equal to the key trunk rate; and (3) he proposed a new "announcement line" service rate which would have a more meaningful relationship to value and cost.

Witness Owen proposed revisions in Carolina's General Exchange Tariff regarding Reclassification and Updating of Groupings, EAS Components, and Base Rate Areas. Such revisions would allow Carolina to automatically place exchanges into a new exchange group when that exchange's own main stations plus EAS components exceeded or fell below the exchange's current group calling scope limitations by at least 5% for six consecutive months. The same, or similar, revisions had previously been proposed by Carolina on two occasions. Under the current proposal, Carolina would not automatically retain the increased revenues from regrouping, but would retain such revenues "...unless sufficient cause is shown not to do so."

While the Company expressed its awareness of the Commission's interest in elimination of zone charges, witness Owen recommended against zone charge reductions. In his view, such reductions would not be cost-justified and could result in lowered service standards in terms of regrades and held orders. During his rebuttal testimony, witness Owen modified his earlier view, in agreeing that a 50% reduction in zone charges would be reasonable and acceptable. Mr. Owen also proposed further reductions in business and residential extension rates.

Witness Owen also recommended that the base rate area of the Washington exchange be extended to include an area which had developed contiguous to the base rate area. He testified that this change would result in a revenue reduction of $11,757.

Public Staff witness Willis offered testimony concerning certain areas of disagreement between the Company and the Public Staff regarding rate design. The areas principally involved Carolina's proposed regrouping tariff and zone charge reductions. Public Staff witness Gerringer offered testimony concerning the difference between Company and the Public Staff with regard to rates for EAS.

Witness Willis recommended the deletion of Paragraph U3.2.4(a) of the Company's regrouping tariff proposal, stating that essentially the same tariff had previously been disapproved by the Commission. He observed that he could find no valid purpose in the proposed tariff other than subparagraph (b), which allows a rate for the establishment of a new EAS to be readily and simply calculated for purposes of polling the customers. Among other criticisms of the proposed tariff, Mr. Willis listed the following: (1) the tariff does not provide for public notice and hearing prior to regrouping; (2) the tariff does not require the Company to furnish audit or financial data regarding the retention of increased reserves; (3) the tariff would not

remove discrimination between customers similarly situated (as the Company contended) because a reasonable amount of discrimination is already built into the present rate structure, which would be maintained if growth rates among individual exchanges are relatively uniform; and (4) there is no correlation between growth of an exchange from one group to another and an increase in Carolina's expenses. Mr. Willis recommended that Carolina's proposed tariff be replaced with tariff section U3.2.4. of the present tariffs of United Telephone of the Carolina's Inc., an affiliated company.

With regard to zone charges, Mr. Willis contended that such charges discriminated against rural subscribers, who were receiving no greater value of service than subscribers in the base rate area. He argued that pricing techniques such as zone charges could be used to limit the rate of development of telephone service in rural areas and would deter rural customers from having the level of service they desire. Mr. Willis testified that no other regulated utilities in North Carolina (i.e. gas or electric companies) use pricing techniques which penalize customers through the rate structure based on mileage from a substation or compressor station. He also pointed out that Carolina accounted for approximately 80% of all telephone zone charge revenue in the State of North Carolina. Witness Willis submitted that, based on the Public Staff's revenue requirement testimony, zone charges for Carolina could be entirely eliminated in the present docket without increasing other basic rates and without creating future problems of shifting zone charge revenue requirements to other customers. The basic position of the Public Staff with regard to rate design in this case was that it would be unfair to increase rates for any customer service in view of an apparently large negative revenue requirement.

Through direct and rebuttal testimony of witnesses Owen and J.A. Wooten, Carolina contended that the 100% elimination of zone charges at this time would place a severe strain on the Company's ability to achieve the Commission's target objectives of reasonable service quality for held orders and regrade requests. This potential problem area was also addressed by Public Staff witnesses Willis and Turner.

Mr. Willis noted that, following a 50% reduction in zone charge revenues in Carolina's last general rate case (Docket No. P-7, Sub 601), the Company had experienced little trouble in achieving the Commission's objectives. He explained that Carolina, which is approximately 88% one-party service now and is planning for 100% one-party service by 1983, was not really comparable to Central Telephone Company, which had only 61% one-party service when all of its zone charges were eliminated. Mr. Willis contended that the short-run problems which might be encountered in held orders and regrades would be preferable to the continuation of zone charges which discriminate against rural customers.

Mr. Willis recommended that Carolina's present zone charges be entirely eliminated in this proceeding.

Mr. Turner commented on Carolina's ability to meet the customer demand for facilities which might result from the elimination of zone charges. He stated that, based upon the percentage of two- and four-party subscribers, the number of lines serving these subscribers, the total cable terminating in central office, and the Company's 1981 and 1983 service objectives, the potential impact of zone charge elimination on Carolina would not be substantial and would be within the Company's ability to handle.

With regard to other tariff revisions proposed by the Company (e.g. elimination of color charges, reduction in business extension rates, and reduction of long-distance trunk rates), Mr. Willis made identical recommendations. As concerns the balance of rate reductions approved by the Commission, Mr. Willis recommended that such reductions come from basic local service rates and charges for all exchange groups, customer classes, and types of service. He recommended that no increases be permitted, in view of the Company's revenue requirement, in either EAS or Centrex rates.

Company witnesses Owen and Wooten and Public Staff witness Gerringer presented testimony regarding the Company's proposed changes in EAS component rates. The current EAS component rate plan, which was approved in Docket No. P-7, Sub 601, consists of the following elements: (1) the main stations and equivalents within the exchange desiring EAS; (2) the total main stations and equivalents of the exchange to be accessed by EAS; and (3) the accumulated interexchange airline mileage between the two exchanges. Once these three items are known, a matrix of component rates is consulted to determine the EAS additive. The EAS component rates apply uniformly to all classes of basic local business and residence services. The total rates for a given EAS exchange are arrived at by adding the EAS component rate to the appropriate basic group rates which are the basic rates for the group determined by the calling scope of the exchanges accessed by EAS.

Company witness Owen testified that the Company herein proposed to increase EAS component rates by approximately 100%. The proposed rates, like the present rates, would be applied uniformly for all classes of basic business and residential local service. The EAS component rates were calculated by Carolina on the basis of a cost study performed by witness Wooten, using principles and procedures similar to toll settlement studies.

Public Staff witness Gerringer testified that, in view of the Staff's recommendations regarding Carolina's overall revenue requirement, he recommended that no increases or decreases be allowed in the Company's present EAS rate components. His testimony, thus, is consistent with

Mr. Willis' recommendation that no increases in any rates be allowed under conditions of negative revenue requirement. There was one specific exception to Mr. Gerringer's EAS recommendations, involving the Parkton-Fayetteville EAS. This service was established on June 4, 1977, using rates that were included in a polling survey mailed in August of 1975, prior to Docket P-7, Sub 601. The rates therein presented to Parkton subscribers were less than the ones which would now apply under the three-component matrix formula described above. When the EAS was switched on, Carolina proposed to charge the matrix formula rates, but the Commission denied this because the customers had been polled on a different set of rates. In this case, Carolina again proposed to charge the matrix formula rates to Parkton subscribers. Witness Gerringer testified, however, that this would result in substantial increases for Parkton subscribers and, thus, would violate the Public Staff's position that no increases in present rates be allowed under conditions of a decrease in total local service revenue requirements. Therefore, witness Gerringer recommended that the present EAS component rates be continued as exceptions to the matrix formula, but that Parkton subscribers not share in any approved reduction in basic local exchange rates, so that the total Parkton rates, including EAS, would be brought closer to the Fayetteville rates. He suggested that the Parkton EAS exception rates could be remedied in a future general rate case wherein Carolina could support a positive increase in local service revenue requirement.

The witnesses offered by Carolina supported an increase in Centrex's rates on the basis of a specific cost study performed by the Company. This Study tended to show that Centrex customers were currently not paying rates to cover the cost of providing such services. For most Centrex customers, such increases could amount to over 40% on an annual basis. The Centrex customer witnesses who testified opposed these increases. The Public Staff also opposed any increase in Centrex's rates on the basis of the large negative revenue requirement determined by the Staff.

Based on the foregoing, the Commission reaches the following conclusions with regard to rate design, service charges, and tariffs:

1. Proposed tariff section U3.2.4. - The Commission concludes that the approval of this tariff would cause a disproportionate amount of the Company's revenue requirements to be shifted to an exchange merely because it outgrew its previous rate grouping. The Commission would be, in effect, approving future rate increases for some of Carolina's customers without sufficient evidence. This type of systematic regrouping, in the absence of a general rate case context, is not in the public interest and the proposed tariff should be disapproved and rejected. A tariff in the form attached hereto as Appendix A should be approved.

2. Zone charges - The Commission concludes that further application of the present relatively high zone charges to customers in rural areas, who receive very similar class, type, and quality of local service as customers in base rate areas, is unduly discriminatory and the Commission also concludes that the extension of the Washington base rate area, as proposed by the Company, is proper.

3. Centrex rates - The Commission concludes that the present Centrex rates are not sufficient to cover the relative share of cost of providing such services. However, in view of the major reduction in annual local service revenues required by this Order, the Commission finds any increase in Centrex rates is not in the public interest and is unjustified.

4. EAS rates - With the exception of the Parkton-Fayetteville EAS, the present EAS rate components should be retained intact, with no increases or decreases allowed. It is contrary to the public interest and in violation of sound rate-making principles to approve massive increases in EAS rates, when overall rates will be substantially reduced. Due to the exception rates presently in effect for Parkton (and the historical reasons for such exception), the Commission concludes that the present exception EAS rates for Parkton should remain, but that none of the reduction in basic local services rates and charges otherwise applicable should be given to Parkton subscribers. Since the overall Parkton rates for basic service (including EAS) will remain unchanged, while those of Fayetteville subscribers will decrease, the present disparity in rates will be reduced.

5. Specific item reductions - The Commission concludes that the specific reductions proposed by Carolina and supported by the Public Staff are in the public interest and should be adopted. Such reductions include decreases in business and residential extension rates, color charges, and long-distance trunk rates. The Commission finds that business extension rates should be reduced by $.75 monthly and residential extension rates by $.20 monthly. The Commission further finds that color charges should be completely eliminated and that long-distance trunk rates should be reduced to one times the local business one-party rate.

6. Basic local service rates - The Commission concludes that, to the extent the decreases heretofore approved in items 2. and 5. above fail to reduce Carolina's local service revenues by the sum of $6,723,290 (previously discussed in Evidence and Conclusions for Finding of Fact No. 16), the remainder of the reduction should come, across-the-board, from basic local service rates. The rate groups and placement of exchanges within groups proposed by Carolina in its application should be allowed.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Carolina Telephone and Telegraph Company, be, and hereby is, authorized to adjust its telephone rates and charges as set forth above to produce, based upon stations and operations as of June 30, 1977, a decrease in annual gross revenues of $6,723,290.

2. That the Applicant and the Public Staff are hereby called upon to propose specific tariffs reflecting the changes in rates and charges ordered herein in accordance with the conclusions set forth above within 10 days from the date of this Order. Exceptions and comments to said proposed tariffs shall be filed within five days thereafter.

3. That the rates, charges, and regulations necessary to reduce annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs filed pursuant to Paragraph 2 above.

4. That, pursuant to its undertaking, Carolina shall make a one-time refund to its customers of an amount equivalent to an annual over collection of $6,723,290, such sum shall reflect the excess monies collected as increased toll rates arising from the Commission's Order in Docket No. P-100, Sub 45. The refund shall be calculated from the effective date of the Order in Docket No. P-100, Sub 45, up to the time of the beginning of the first billing cycle which uses the reduced local service rates approved herein. Within 30 days of the date of this Order, Carolina shall present to the Commission (with copies to all parties of record) its calculation of the total amount of this refund, with interest at the rate of 6%, annually, and its proposed method of making said refund. The Public Staff will have 15 days after receipt of the Company's proposal to make any counter-proposals or exceptions.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of April, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A

U3.2.4 RECLASSIFICATION OF GROUPINGS AND EAS COMPONENTS

When extended area service is to be established, tariffs shall be filed with the North Carolina Utilities Commission at least one month prior to the inauguration date of the service. Unless advised otherwise, the tariff rate shall be those of the correct rate group and EAS component classification for the average number of main stations, PBX trunks, and equivalents for the 12-month period prior to two months before the inauguration date of the service.

Supporting information including units, present and proposed rates and revenues, changes in revenues, and other pertinent information shall be provided necessary for a complete analysis.

DOCKET NO. P-7, SUB 624

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Telephone and Telegraph Company for Adjustments and Changes in Its Rates and Charges Applicable to Intrastate Telephone Service	) ERRATA) ORDER))

BY THE COMMISSION: On April 20, 1979, the Commission issued an Order Setting Rates in the above-captioned docket. It has come to the Commission's attention that certain portions of that Order Setting Rates and Charges are in error and should be modified.

IT IS, THEREFORE, ORDERED as follows:

1. That Page 46, Item 2 Zone Charges be modified to the following:

Zone Charges - The Commission concludes that further application of the present relatively high zone charges to customers in rural areas, who receive very similar class, type, and quality of local service as customers in base rate areas, is unduly discriminatory and finds that zone charges should be reduced by 75%. The Commission also concludes that the extension of the Washington base rate area, as proposed by the Company, is proper.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of April, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. P-21, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Ellerbe Telephone Company for Adjustment and Changes in Its Rates and Charges Applicable to Intrastate Telephone Service	) ORDER) GRANTING) PARTIAL) INCREASE

HEARD IN: Town Hall, Ellerbe, North Carolina, on October 16, 1979; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 17 and 18, 1979

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

G. Clark Crampton, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

David Gordon, Attorney General's Office, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On May 11, 1979, Ellerbe Telephone Company (hereinafter Ellerbe or Company) filed an application with the Commission by which it sought authority to adjust its rates and charges for intrastate telephone service rendered in its service area in and around Ellerbe, North Carolina.

That application proposed an annual increase in gross revenues of approximately $104,000. Specific rate proposals included elimination of two-party and four-party service as well as all zone charges and provision of flat rate one-party service throughout the service area served by the Company. Additionally, the Company proposed in its application to adjust the rates for business extensions and private and semiprivate directory listings to increase the rates on coin-operated telephones from 10 cents to 20 cents and to eliminate the additional charge which it now has for color telephones and for extra retractable cords.

On June 8, 1979, the Commission, following a review of the application of the Company, entered an Order declaring this matter to be a general rate case, setting it for investigation and for public hearing, and suspending the effectiveness of the adjustments to the rates and charges proposed by the Company, pending such hearing.

On July 18, 1979, the Public Staff of the Utilities Commission intervened in this docket by filing Notice of Intervention on behalf of the Using and Consuming Public.

On September 12, 1979, the Attorney General of North Carolina also intervened in this matter on behalf of the Using and Consuming Public by filing Notice of Intervention.

On September 24, 1979, the Town of Ellerbe, North Caorlina, filed a Resolution with the Commission opposing the rate increase. Subsequently, a similar Resolution of the Town of Norman, North Carolina, opposing the rate increase was also received by the Commission.

At various times prior to and during the hearings in this matter several letters and petitions, bearing in the aggregate several hundred signatures, were filed with the Commission by customers of the Company in opposition to the rate increases sought by the Company.

On October 16, 1979, a public hearing upon the matters involved in the application of the Company was held in the Town Hall of Ellerbe, North Carolina. Approximately 125 members of the public attended. Sixteen public witnesses testified at that hearing. The great majority of those public witnesses testified in opposition to the proposed rate increase and in opposition to the Company's proposal to henceforth provide only one-party service. Hearings in this matter were also held on October 17 and 18, 1979, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina.

The Company presented the testimony of its general manager, J.M. Bennett, who testified in regard to the history of the Company, the operations of the Company, the quality of service provided by the Company, the specific rates and charges proposed, and the need and reasons for the rate increase. Additionally, the Company presented the testimony of Thomas Oakley, an accountant and consultant employed by the Company, who assisted in the presentation of Ellerbe's rate case. Mr. Oakley testified with respect to past, present, and anticipated future financial operations of the Company and as to the level of operating revenues, operating expenses, and other accounting matters.

The Public Staff offered the testimony of the following witnesses: Scott C. Spettel, Communications Engineer, who testified with regard to quality of service and certain other engineering matters; Leslie C. Sutton, Communications Engineer, who testified with regard to the Company's toll revenues, toll revenue settlements, and other aspects of the Company's operations; Millard N. Carpenter III, Communications Engineer, who testified regarding an evaluation of the rates and charges proposed by the Company, the proposal of the Company to eliminate all but one-party service, and other matters related to those areas; and William E. Carter, Assistant Director of Accounting for the

Public Staff in charge of its Electric and Communications Accounting Section, who testified with respect to test-period original cost net investment, revenues, expenses, returns on original cost net investment and common equity, and other accounting matters.

Based upon the application, the evidence adduced at the hearings held in this matter, and the entire record in these preceedings, the Commission makes the following

FINDINGS OF FACT

1. That Ellerbe Telephone Company, a North Carolina corporation, is a duly franchised public utility providing telephone service to subscribers in North Carolina, is subject to the jurisdiction of this Commission, and is properly before this Commission in this proceeding for a determination of the justness and reasonableness of the rates and charges proposed by the Company in accordance with the applicable provisions of Chapter 62 of the General Statutes of North Carolina.

2. That the Company sought in its application to increase its rates and charges to produce annual gross revenues of approximately $104,000 based on the test year ended December 31, 1978.

3. That the last rate increase approved for Ellerbe became effective in 1965.

4. That the original cost of Ellerbe's investment in telephone plant used and useful in providing telephone service in North Carolina is $2,001,289. From this amount should be deducted the reasonable accumulated provision for depreciation of $466,833 and cost-free capital comprised of unamortized investment tax credits in the amount of $59,328, resulting in a reasonable original cost less depreciation and cost-free capital of $1,475,128.

5. That Ellerbe's investment in RTB Class B Stock in the amount of $23,750 should be included in the calculation of the original cost net investment.

6. That the reasonable allowance for working capital is $6,084.

7. That no evidence was offered by any party concerning the replacement cost of the Company's property used and useful in providing telephone service to customers in North Carolina. Therefore, the reasonable fair value of Ellerbe's utility plant used and useful in providing telephone service is the reasonable depreciated original cost of the plant plus Ellerbe's investment in RTB stock and a reasonable working capital allowance. The Commission finds that the fair value rate base is $1,504,962, consisting of net telephone plant in service of $1,475,128, RTB stock of $23,750, and an allowance for working capital of $6,084.

8. That the unadjusted end-of-period level of toll revenues for Ellerbe Telephone Company for the 12 months ended December 31, 1978, is $166,637.

9. That the Company's operating revenues after appropriate accounting and pro forma adjustments under present rates are approximately $334,596.

10. That the appropriate level of operating revenue deductions (or expenses) after accounting, pro forma, and end-of-period adjustments, including interest on customer deposits, is $288,617. This amount includes $90,722 for actual investment currently consumed through reasonable actual depreciation on an annual basis.

11. That the capital structure for Ellerbe which is appropriate for use in this proceeding is as follows:

Item	Percent
Long-term debt	71.50
Common equity	28.50
Total	100.00

12. That the overall quality of service provided by Ellerbe Telephone Company has been adequate for the equipment available; however, it was essential for Ellerbe to upgrade the equipment under the new REA loan to continue to offer adequate service.

13. That the fair rate of return which the Company should have the opportunity to earn is 5.88% which consists of an embedded cost rate of 3.71% on the debt component of Ellerbe's investment and a return of 11.32% on the stockholder's equity component of Ellerbe's investment.

14. That in order to earn the level of returns which the Commission finds to be reasonable, Ellerbe should be allowed to increase its rates to produce an additional $60,827 in local service revenues based on operations during the test year.

15. That the Company can and should continue to offer four-party residential service, but only to its present four-party residential subscribers, and no additional investment by the Company will be required in order for the Company to do so. All multiparty business service should be eliminated and all business customers will be served only on a one-party basis. Residential customers currently receiving two-party service will also be required to upgrade to one-party service.

16. That the rates and charges set forth in the schedule shown as Appendix A attached hereto and incorporated herein by reference are just and reasonable, will allow the Company the opportunity to generate the $60,827 in additional annual

revenues which have been approved herein, and should be implemented by the Company in order to accomplish that end.

17. That the increased rates approved herein are consistent with the wage and price guidelines.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 3

The evidence supporting these findings is contained in the verified application of the Company, in prior Commission Orders in this docket, and in the record as a whole. The findings are essentially jurisdictional and were not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4
ORIGINAL COST OF NET TELEPHONE PLANT IN SERVICE

The Commission will now analyze the testimony and exhibits presented by Company witness Oakley and Public Staff witness Carter concerning the original cost of net telephone plant in service. The following chart summarizes the amounts that each witness contends is proper for this item:

Item	Company Witness Oakley	Public Staff Witness Carter
Telephone plant in service	$1,981,186	$2,001,289
Less: Accumulated depreciation	440,330	466,833
Net telephone plant in service	$1,540,856	$1,534,456
Less: Unamortized investment tax credits		59,328
Net telephone plant in service	$1,540,856	$1,475,128

Company witness Oakley's amount for telephone plant in service of $1,981,186 is the per books balance ot this account as of December 31, 1978. This amount includes plant classified as telephone plant under construction at December 31, 1978, in the amount of $161,556; however, Mr. Oakley testified that this plant was actually in service on December 31, 1978.

Public Staff witness Carter testified that the appropriate amount for telephone plant in service is $2,001,289, or an amount of $20,103 more than the amount included by Mr. Oakley. The $20,103 difference results from two adjustments made by Mr. Carter. The first adjustment, which increased telephone plant in service by $26,740, was to include plant additions since the end of the test period associated with the Company's upgrading program. Mr. Carter testified that since this amount represented money spent on the Company's present upgrading program and did not include normal increases in plant accounts that resulted from station growth, the adjustment should be included in the original cost of plant in service.

The Commission concludes that Mr. Carter's adjustment increasing telephone plant in service by $26,740 is

appropriate. G.S. 62-133(c) permits the Commission to "consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the value of the public utility's property used and useful in providing the service rendered to the public within this State which is based upon circumstances and events occurring up to the time the hearing is closed." The inclusion of the $26,740 in plant in service is appropriate because this expenditure represents an actual change which has occurred since the end of the test period and because this plant is used and useful in providing telephone service Also, the Commission agrees that these expenditures were not connected with normal customer growth, but were connected with the Company's general upgrading program.

Public Staff witness Carter's second adjustment was to decrease plant in service by $6,637 in order to eliminate the cost of an apartment which is contained in the general office building and is the residence of the Company's President J.L. Bennett. The Commission concludes that the apartment is not used and useful in providing telephone service; therefore, the cost of the apartment should be deducted from gross plant in service for rate-making purposes. Consequently, the Commission concludes that a reasonable amount of telephone plant in service to use in this proceeding is $2,001,289.

The second area of difference concerns the appropriate amount of accumulated depreciation to deduct from telephone plant in service. Company witness Oakley deducted the per books accumulated depreciation in the amount of $440,330 in determining the net telephone plant in service, while Public Staff witness Carter made two adjustments totaling $26,503 to the per books depreciation reserve. Mr. Carter decreased the depreciation reserve by $2,896 for the amount associated with the apartment of J.L. Bennett, the Company President. Mr. Carter also increased depreciation reserve by $29,399, the amount which his end-of-period depreciation expense exceeded the actual depreciation expense recorded on the books during the test year. Mr. Carter adjusted depreciation expense to an end-of-period level using his adjusted end-of-period plant in service and the depreciation rates currently in effect for each plant account. Mr. Carter testified that this method requires the ratepayers to pay in rates to cover additional depreciation expense as if the adjusted end-of-period plant in service had been in service for the entire test year. Since the ratepayers are required to pay rates to cover depreciation expense which the Company had not, in fact, incurred at December 31, 1978, they should certainly receive the benefit of that depreciation expense adjustment in determining the original cost net investment. Public Staff witness Carter's adjusted end-of-period level of depreciation reserve is $466,833 ($440,330 - $2,896 + $29,399).

The Commission has previously concluded that the cost of the apartment should be excluded from plant in service; consequently, the Commission agrees that the depreciation reserve associated with this apartment should be excluded. The Commission also agrees that the depreciation reserve should be increased to reflect the end-of-period adjustment made to depreciation expense. The Commission concludes that the appropriate depreciation reserve is $466,833.

Public Staff witness Carter testified that unamortized investment tax credits of $59,328 should be deducted from telephone plant in service. Alternatively, Company witness Oakley proposed including a portion of the unamortized investment tax credits in the capital structure with an associated embedded cost rate of zero. Mr. Carter testified that $6,356 of the $59,328 amount represents the cumulative balance of unamortized investment tax credits realized under the Revenue Act of 1962. Such law passed by Congress in 1962 provided for a reduction in the income tax liability of utilities to the extent of 3% of the cost of qualifying property acquired during a taxable year. Mr. Carter further testified that this Commission issued a general rule-making Order permitting utilities to follow an accounting procedure which is commonly referred to as "Normalization Accounting" for investment tax credits. Under this accounting procedure, the company records a Federal income tax expense greater than the amount of tax actually paid to the Government. This difference between book income taxes and actual income taxes is recorded as a corresponding credit in a balance sheet account - unamortized investment tax credits. This investment tax credit related to the Revenue Act of 1962 is deferred and amortized as a reduction of Federal income tax expense over an appropriate period of time. The Commission is of the opinion that the balance of this unamortized investment tax credit represents a source of cost-free capital which has been provided by the ratepayers and should be deducted in calculating the original cost net investment.

Mr. Carter testified that the remaining $52,972 represents the cumulative balance of unamortized investment tax credits realized under the Revenue Act of 1971. This Act provides for a reduction in the income tax liability of utilities to the extent of 4% of the cost of qualifying property acquired during a taxable year. The 4% rate was subsequently increased to 10%. Also, the 1971 Revenue Act prescribes the rate-making treatment which must be followed by regulatory commissions if the credit is to be available to utility companies. The 1971 Revenue Act provides three options for handling the unamortized credits for rate-making purposes.

Mr. Carter testified that Ellerbe does not qualify for option 3, since the Company does not use accelerated depreciation. Also, if a company did not choose between option 1 and option 2 within 90 days after the date of the enactment of the Revenue Act of 1971, option 1 applies. Mr. Carter further testified that Ellerbe did not make an

election within 90 days; therefore, the Company must be treated as an option 1 company for rate-making purposes. In accordance with option 1 treatment, Mr. Carter deducted the unamortized credits from the rate base, but did not reduce income tax expense (flow through to income) by any portion of the credit. The total amount of unamortized investment tax credits which Mr. Carter deducted in determining the original cost net investment totaled $59,328, consisting of $6,356 of pre-1971 investment tax credits and $52,972 of credits under the Revenue Act of 1971. The Commission concludes that the unamortized investment tax credits in the amount of $59,328 should be deducted in determining the rate base in this proceeding. These funds represent cost-free capital provided by the ratepayers. Also, since Ellerbe did not make an election within 90 days of the date of enactment of the Revenue Act of 1971, the Commission is required to treat Ellerbe as an option 1 company. Accordingly, the Company should begin amortizing the credits realized under the Revenue Act of 1971 as a reduction to income tax expense "below the line" instead of "above the line."

The Commission has carefully analyzed the direct testimony, exhibits, and cross-examination of Company witness Oakley and Public Staff witness Carter. Based on the relevant evidence presented at this proceeding and discussed above, the Commission concludes that the net investment in telephone plant is $1,475,128.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5
RURAL TELEPHONE BANK STOCK

Public Staff witness Carter proposed that Ellerbe Telephone Company's investment in Rural Telephone Bank (RTB) Class B stock in the amount of $23,750 be included in the calculation of the original cost net investment. Company witness Oakley did not include this item in his determination of the original cost net investment. Witness Carter testified that all companies borrowing from the RTB are required to purchase RTB Class B stock in an amount equal to 5% of the original amount of the loan. If the RTB Class B stock acquired as a condition of the loan is not considered in determining the cost of service, the Company will not be allowed an opportunity to recover this component of cost.

The Commission concludes, based on the above testimony, that Ellerbe Telephone Company's investment in RTB Class B stock in the amount of $23,750, should be included in the original cost net investment in order to allow Ellerbe an opportunity to recover its total cost of capital.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6
WORKING CAPITAL ALLOWANCE

Company witness Oakley and Public Staff witness Carter presented testimony and exhibits concerning the appropriate level of working capital to be included by the Commission in

determining Ellerbe's end-of-period rate base. Company witness Oakley, in prefiled testimony and exhibits determined a working capital allowance of $18,548 to be proper while Public Staff witness Carter determined the appropriate amount to be $6,084. A schedule of the witnesses' respective working capital allowance is presented below:

Item	Company Witness Oakley	Public Staff Witness Carter
Cash allowance (1/12 of operating expenses)	$17,948	$12,804
Material and supplies	*9,898	9,898
Average prepayments	2,365	1,057
Less: Customer deposits	5,534	6,221
Average tax accruals	6,129	11,454
Total working capital allowance	$18,548	$ 6,084

*Mr. Oakley's Exhibit VII has been changed to include Material and Supplies in the calculation of working capital.

The first difference between the witnesses as shown above concerns the appropriate amount to include as a cash allowance. Mr. Oakley included an amount which is $5,144 larger than the amount included by Mr. Carter. This $5,144 difference results for two reasons. First, the two witnesses recommend different levels of operating expenses on which the 1/12 allowance is computed. Second, Mr. Oakley included 1/12 of taxes other than income in determining his cash allowance. The determination of each witnesses' cash allowance is shown below:

Item	Company Witness Oakley	Public Staff Witness Carter
Maintenance expenses	$ 66,976	$ 64,668
Traffic expenses	2,038	1,407
General office salaries and expenses	62,247	61,049
Other expenses	31,072	26,187
Interest on customer deposits	-	333
Taxes other than income	53,041	-
Total	215,374	153,644
Cash allowance - 1/12 operating expenses	$ 17,948	$ 12,804

The Commission concludes that it is not appropriate to consider taxes other than income in determining the cash allowance. Also, under Evidence and Conclusions for Finding of Fact No. 10, the Commission concludes that the level of operating expenses proposed by Mr. Carter is appropriate; therefore, the Commission finds a reasonable cash allowance (1/12 of operating expenses) to be $12,804.

Since the two witnesses are in agreement in regard to the proper level of material and supplies, the Commission

concludes that the appropriate level of material and supplies is $9,898.

The next area of difference concerns the amount of average prepayments to include in the working capital allowance. Company witness Oakley included an amount of $2,365, whereas Public Staff witness Carter included an amount of $1,057. Under cross-examination, Mr. Oakley testified that he included the total prepayment of insurance expense, instead of the average amount. Mr. Carter testified that his amount was the average prepayments for the test year.

The Commission agrees that the average balance of prepayments of $1,057 is the proper amount to include in the working capital allowance.

Each witness also calculated a different amount for customer deposits. Company witness Oakley used the balance of average customer deposits for the test year in arriving at a figure of $5,534, whereas Public Staff witness Carter used the average balance for the first six months of 1979 in calculating an amount of $6,221. Mr. Carter testified that Ellerbe changed its policy in regard to collection of customer deposits subsequent to the end of the test period. Ellerbe began requiring larger deposits from more of its customers. In Mr. Carter's opinion, the average customer deposits for the first six months of 1979 is more representative than either the average or end-of-test-period amounts since it reflects these new policies.

The Commission concludes that the appropriate level of customer deposits to use in determining the working capital allowance is $6,221, the average for the first six months of 1979. From examining Mr. Carter's testimony and exhibits concerning customer deposits, it is obvious that customer deposits have increased over the average balance during the test period and that this is a known change up through the date of the hearing.

Company witness Oakley and Public Staff witness Carter also differed in the amount of average tax accruals which should be deducted in determining working capital allowance. Mr. Oakley deducted $6,129 while Mr. Carter deducted $11,454, or a difference of $5,325. Mr. Carter testified that the difference is the result of Mr. Oakley's exclusion of property taxes from the calculation of average tax accruals for the test period. On cross-examination, Mr. Oakley testified that he did not deduct average property tax accruals because that would have resulted in a negative working capital allowance, not considering material and supplies.

The Commission concludes that property tax accruals should be deducted in determining the working capital allowance and that such tax accruals were provided by the customers. All tax accruals, including property taxes, represent capital provided by the ratepayers, and should be deducted in

determining the working capital allowance to include in the rate base.

In summary, the Commission concludes that the proper working capital allowance is $6,084.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7
FAIR VALUE OF THE PUBLIC UTILITY'S PROPERTY

G.S. 62-133(b)(1) requires the Commission to "Ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State..." In ascertaining fair value, the statute indicates that the Commission must consider evidence offered which tends to show the replacement cost of the property. Such replacement cost may be determined either by trending the depreciated original cost to current cost levels or by any other reasonable method.

Since none of the parties to this proceeding offered evidence regarding replacement cost or trended original cost, the Commission accepts the original cost of Ellerbe's investment used and useful in providing telephone service as the fair value rate base.

For the foregoing reasons, the Commission concludes that the fair value rate base in this case must be determined by adding the reasonable allowance for working capital of $6,084, determined in Finding of Fact No. 6 above, to the reasonable original cost of telephone plant less the depreciation reserve and cost-free capital of $1,475,128, determined in Finding of Fact No. 4 above, and RTB stock in the amount of $23,750, determined in Finding of Fact No. 3 above. Thus, the Commission concludes that the reasonable fair value of Ellerbe's property is $1,504,962.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8
END-OF-PERIOD LEVEL OF TOLL REVENUES

The evidence as to the appropriate end-of-period level of toll revenues is found in the testimony of Company witness Oakley and Public Staff witness Sutton.

The Company and the Public Staff are in disagreement as to the level of end-of-period toll revenues. The Company's evidence showed the end-of-period level of toll revenues to be $150,556; the Public Staff's evidence showed the end-of-period level of toll revenues to be $166,637, a difference of $16,081. There are three reasons for this disagreement: (1) disagreement as to unadjusted test-period toll revenues, (2) inclusion of two pro forma adjustments by the Public Staff which were not made by the Company, and (3) the fact that different methodologies were used for development of the end-of-period level of toll revenues.

Company witness Oakley testified that unadjusted test-period toll revenues were $142,045 per the Books of the

Company. Public Staff witness Sutton testified that unadjusted test-period toll revenues were $150,604. Mr. Sutton testified that his toll revenues were based upon the monthly settlement summary statements provided to him by Ellerbe Telephone Company. Those statements list the toll usage and toll revenues and how they were distributed between the Independent Company (Ellerbe) and the Bell Company (Southern Bell). Mr. Sutton testified that since Ellerbe and Southern Bell both agree to the toll revenues stated in these reports (A letter of concurrence appears in the Company's minimum filing requirements.), he believed the toll revenues as stated by these reports to be accurate. Mr. Sutton further testified that he asked the Company's CPA (Jim Flynt) to explain this discrepancy. Mr. Sutton stated that Mr. Flynt told him that there were some booking errors and that the correct level of unadjusted toll revenues for the test period was $150,604. Based upon this evidence, the Commission concludes that the correct level of unadjusted test-period toll revenues is $150,604. This accounts for $8,559 of the difference between the toll revenues as stated by the Company and the Public Staff.

In his prefiled testimony, Public Staff witness Sutton proposed two pro forma adjustments to account for changes that occurred during the test year. The first pro forma adjustment was to reflect the effect of an intrastate toll rate increase granted by this Commission effective April 3, 1978. The second adjustment proposed by Mr. Sutton was to account for changes in the nationwide average schedules that were revised effective September 1, 1978. These schedules are the basis for toll settlements between Bell and standard contract companies such as Ellerbe. Company witness Oakley failed to make these adjustments. The Commission concludes that these two adjustments are appropriate and should be included in determination of test year toll revenues. These two adjustments account for $6,128 of the difference between the toll revenues as stated by the Company and the Public Staff.

The final point of disagreement is the determination of an appropriate methodology to bring test-period toll revenue to an end-of-period level. Mr. Oakley forecasted toll revenues utilizing the actual test-period toll revenues per main station and the forecasted 1979 main stations. Alternatively, Mr. Sutton employed simple linear regression to determine the end-of-period level of toll revenues. Although the end-of-period levels of toll revenues as obtained by both witnesses are estimates, the level obtained by Mr. Sutton is in the Commission's opinion preferable since it estimates the end-of-test-period amount based on the end-of-test-period stations.

Based upon the evidence presented in this case as previously discussed, the Commission concludes that the appropriate end-of-period level of toll revenues is $166,637.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9
OPERATING REVENUES

Company witness Oakley and Public Staff witnesses Sutton and Carter presented testimony concerning the appropriate level of operating revenues. Public Staff witness Sutton's testimony specifically concerned the methodology and procedures employed in the determination of the Company's end-of-period level of toll revenues for the test-period. Company witness Oakley and Public Staff witness Carter testified as to the appropriate level of operating revenues after accounting and pro forma adjustments. The following chart presents the amounts proposed by each witness:

Item	Company Witness Oakley	Public Staff Witness Carter
Local service revenues	$150,407	$157,620
Toll service revenues	150,556	166,672
Miscellaneous revenues	24,000	10,896
Less: Uncollectible revenues	(540)	(557)
Total operating revenues	$324,423	$334,631

The $7,213 difference in the amounts included for local service revenue results from Mr. Oakley using the actual test-period amount of $150,407 and Mr. Carter determining an annualized test-period amount of $157,620. In determining his end-of-period level of local service revenue, Mr. Carter divided local service revenues into its three components - monthly rental charge revenue, 5501 revenue, and other local service revenue.

Mr. Carter determined the end-of-period level of rental charges by averaging the actual December 1978 and January 1979 amounts. Mr. Carter testified that he used this method because stations are added throughout the month and the revenue for any month actually represents revenue associated with the stations as of the middle of the month. He further testified that the average of revenue for the months December 1978 and January 1979 represents revenue as of December 31, 1978, the midpoint of the period December 1, 1978, to January 31, 1979. Mr. Carter determined that monthly rental revenue as of December 31, 1978, was $11,913.

Mr. Carter determined that his second component of local service revenue, 5501 revenue, was $358 per month, based on an analysis of the adjusted monthly balances of 5501 revenue for the period January 1978 through June 1979. Mr. Carter testified that the monthly amount has remained at $358 during 1979 except for the month of May, the month in which a retroactive adjustment was made which reduced the $358 amount.

The other local service revenue component of Mr. Carter's local service revenue amount was the average of the monthly balances for the test year. Mr. Carter testified that he used the average because the amount of this component of

local service revenue fluctuates from month to month. Mr. Carter determined the average monthly balance of this component of local service revenue to be $864.

Public Staff witness Carter arrived at his total local service revenue amount of $157,620 by adding the representative monthly amounts for rent of $11,913, 5501 revenue of $358, and other local service revenue of $864 and multiplying the total ($13,135) by 12.

The Commission concludes that Mr. Carter's end-of-period methodology estimates local service revenues which Ellerbe can reasonably be anticipated to experience in the future based on end-of-period stations and is appropriate for use herein. The Commission therefore finds that the appropriate amount of local service revenues is $157,620.

The next revenue item on which the witnesses' proposals differ involves miscellaneous revenues. Company witness Oakley included miscellaneous revenues of $24,000 while Public Staff witness Carter included an amount of $10,896, a difference of $13,104.

Mr. Oakley determined end-of-period miscellaneous revenues by estimating a reasonable monthly amount of miscellaneous revenues to be $2,000 and then multiplying the monthly amount by 12.

Mr. Carter used a different approach in calculating his end-of-period level of miscellaneous revenues. Mr. Carter divided miscellaneous revenues into four components - rental revenue, 5501 revenue included in Account 520, other revenue included in Account 520, and 5501 revenue included in Account 524. The first component is a monthly rent of $25, which is the amount of rent J.L. Bennett, President of Ellerbe Telephone Company, pays for the apartment contained in the general office building. Mr. Carter testified that although he removed the net depreciated cost of the apartment contained in the general office building, he did not remove the rental revenue from operating income because the apartment does not have a separate electric and water meter. He testified that he left the rental revenue of $25 per month in operating revenue to offset a portion of the electric and water bills applicable to the apartment. In annualizing the second component, other miscellaneous revenue included in Account 520, Mr. Carter testified that he used the average monthly amount of $146 experienced during the test-period because these revenues fluctuated from month to month. The third component, 5501 revenue included in Account 520 (consisting primarily of the sale of directories), was also the average adjusted monthly balance experienced during the test-period of $69 per month. Mr. Carter testified that using the average monthly balance for the test-period was the only feasible method to arrive at a representative end-of-period level. The final component consisted of 5501 revenue included in Account 524. Mr. Carter used the adjusted average monthly amount of $668.

The end-of-period monthly amount of miscellaneous operating revenues determined by Mr. Carter is $908 ($25 + $69 + $146 + $668). Mr. Carter multiplied this amount by 12 to arrive at his annualized end-of-period level of $10,896. Mr. Carter testified that much of the $13,104 difference between Mr. Oakley and himself resulted from 5501 revenue recorded in Accounts 520 and 524 during the test-period, which should have been recorded in Account 510 - Toll Service Revenue.

The Commission concludes that miscellaneous operating revenues of $10,896 are appropriate.

Under Evidence and Conclusions for Finding of Fact No. 8, the Commission finds that the end-of-period level of toll revenue is $166,637. The Commission therefore concludes that the appropriate amount of gross operating revenues (local service, toll service, and miscellaneous revenues) is $335,153. This amount is comprised of the following components:

Item	Amount
Local service revenues	$157,620
Toll service revenues	166,637
Miscellaneous revenues	10,896
Gross total revenues	$335,153

Company witness Oakley determined uncollectible revenues to be $540, whereas Public Staff witness Carter determined uncollectibles of $557 for the test period. Mr. Oakley's amount of $540 was the book amount of $526 plus an additional estimate of $14 based on his pro forma revenue adjustment.

Mr. Carter determined the end-of-period level of uncollectibles to be $557 by multiplying the end-of-period level of revenues of $335,153 by .1662%, the ratio of per books uncollectibles to per books gross revenue.

The Commission concludes that the proper amount of uncollectible revenues is $557.

Based on the preceding discussion of the evidence concerning revenue, the Commission concludes that the end-of-period level of operating revenue is $334,596 as shown below:

Item	Amount
Local service revenues	$157,620
Toll service revenues	166,637
Miscellaneous revenues	10,896
Uncollectibles	(557)
Total operating revenues	$334,596

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10
OPERATING REVENUE DEDUCTIONS

Public Staff witness Carter and Company witness Oakley had a net difference of $23,472 in determining operating revenue deductions. A comparative schedule is shown below.

Item	Company Witness Oakley	Public Staff Witness Carter
Operating Expenses:		
Maintenance	$ 66,976	$ 64,668
Depreciation	96,621	90,722
Amortization	681	195
Traffic	2,038	1,407
General office salaries and expenses	62,247	61,049
Other expenses	31,072	26,187
Interest on customer deposits	300	333
Total operating expenses	259,935	244,561
Operating Taxes Other Than Income:		
Property	20,431	20,380
Franchise	15,540	16,182
State unemployment	603	603
Federal unemployment	383	383
Social Security OAB	5,794	5,794
Intangibles	115	115
Total operating taxes other than income	42,866	43,457
Income taxes	9,297	608
Total operating revenue deductions	$312,098	$288,626

The first area of difference listed above is maintenance expenses. Mr. Oakley included an amount of $66,976 for this item while Mr. Carter included $64,668, a difference of $2,308. Company witness Oakley arrived at his end-of-period level by determining an average maintenance expense of $52 per average main station, based on an adjusted end-of-period maintenance expense for the test period of $64,651 divided by 1246 average main stations during the test period. He then multiplied the $52 amount by 1288 projected estimated average main stations for 1979, to arrive at his maintenance expense of $66,976.

Mr. Carter's end-of-period methodology in regard to maintenance expense was basically to increase the test-period amounts by 1.61%, the increase of end-of-period main station over average main stations during the test period. Mr. Carter testified that he started with Mr. Oakley's end-of-period maintenance expense of $66,976 and deducted salaries and wages in the amount of $50,922, which he considered to already be on an end-of-period level. Mr. Carter then deducted Mr. Oakley's pro forma adjustment of $2,526. Mr. Carter also stated that after he deducted these two items he multiplied the resulting amount of $13,528 by

his annualization factor of 1.61% to arrive at his annualization adjustment of $218.

The Commission has consistently in both this proceeding and in other rate proceedings attempted to utilize end-of-period methodologies which approximate the levels of operating revenues and operating revenue deductions which can reasonably be anticipated to occur in the future based on the end-of-test-period level of stations and investment. In this Commission's opinion the methodology used by Mr. Carter to arrive at an end-of-period adjustment for maintenance expenses is proper. The Commission has used this method frequently in the past to annualize items which cannot be annualized by direct calculation.

From the evidence presented and discussed above, the Commission concludes that the appropriate level of maintenance expense is $64,668.

The next area of difference concerns depreciation expense. Company witness Oakley determined an end-of-period level of depreciation expense to be $96,621. He determined this amount by first adjusting the individual plant accounts at December 31, 1978, by the projected weighted average increases in plant during 1979. Mr. Oakley then multiplied the resulting account balances by their respective depreciation rates to determine 1979 annual depreciation expense.

Public Staff witness Carter determined depreciation expense to be $90,722, or $5,899 less than the amount included by Mr. Oakley. Mr. Carter calculated his proposal for depreciation expense by multiplying the December 31, 1978, adjusted plant account balances by the appropriate depreciation rates. From this depreciation expense amount, he deducted amounts properly charged to clearing accounts. Mr. Carter testified that the difference in the Company's and the Public Staff's depreciation expense proposals are due to Mr. Oakley's failure to deduct depreciation on vehicles and work equipment which is normally charged to a clearing account; Mr. Oakley's use of a depreciation rate of 12.5% for Account 261 instead of the appropriate rate of 10%; Mr. Oakley's inclusion of depreciation expense on the apartment used as a residence by the Company's president; and the difference between Mr. Carter's actual additions to plant during 1979 and Mr. Oakley's estimated additions to plant.

Under Evidence and Conclusions for Finding of Fact No. 4, the Commission concluded that the 1979 additions of $26,740 were appropriate; therefore, the Commission concludes that the end-of-period level of depreciation expense is $90,722.

The next area of difference is amortization expense. Company witness Oakley included $681 for the amortization of long-term debt expenses compared to $195 by Mr. Carter. The difference of $486 is correlated directly to the length of

the amortization period used by each witness. Mr. Carter used the period for the associated debt of 35 years as the amortization period and amortized the deferred charges on a straight-line basis ($6,809 original amount of long-term debt expense ÷ 35-year amortization period) to obtain $195 annual amortization of debt expense. Mr. Oakley used a 10-year amortization period, the period the Company is using to amortize the cost on its books.

The Commission concludes that the amortization period for rate-making purposes should be 35 years because debt expense is a cost of borrowing the money just as interest expense. Since the debt expense is just another cost of borrowing the money, it should be amortized over the life of the notes. Accordingly, the Commission concludes that the appropriate amortization expense for rate-making purposes is $195.

The next difference listed above is traffic expenses. Mr. Oakley included an amount of $2,038 while Mr. Carter included $1,407, or $631 less than the amount included by Mr. Oakley. Mr. Oakley derived his end-of-period traffic expenses amount by first taking actual traffic expenses for the test period and divided this amount by the average number of main stations during the test period and arrived at a cost of $1.58 per main station. The $1.58 amount was then multiplied by Mr. Oakley's 1979 projected average main stations of 1,288 to arrive at his adjusted traffic expenses in the amount of $2,038.

Public Staff witness Carter determined traffic expenses to be $1,407. The $631 difference is the result of two adjustments made by Mr. Carter. Some $587 of the difference results from an adjustment to eliminate directory assistance charges from traffic expenses because Public Staff witness Sutton deducted this item determining his end-of-period toll revenues. The remaining $44 difference results from the use of a different annualization factor. Mr. Carter's annualization factor was based on the percentage increase of end-of-period main stations over average main stations during the test period, or 1.61%. The Commission has previously discussed both Mr. Oakley's method and Mr. Carter's method of annualizing expenses to an end-of-period level and has concluded that Mr. Carter's method is appropriate; therefore, the Commission concludes that the adjustment of $44 is reasonable.

The Commission also concludes that Mr. Carter's adjustment eliminating directory assistance charges is appropriate. Although it makes no difference as far as net income or revenue requirements are concerned whether directory assistance charges are treated as a reduction in toll revenues or an increase in traffic expenses, for the purposes of this proceeding the Commission will treat directory assistance charges as a reduction in toll revenue. The Commission concludes that the appropriate end-of-period level of traffic expenses is $1,407.

The next area of difference is general office salaries and expenses. Mr. Oakley included an amount of $62,247 while Mr. Carter included $61,049, or a difference of $1,198. Company witness Oakley determined general office salaries and expenses of $62,247 in the following manner. For salaries and wages, Mr. Oakley increased the actual test-period amount by 7% for the wage increase which actually took place in May 1979. For billing services, postage, forms, and envelopes, Mr. Oakley increased those items by his annualization method which has previously been discussed. For the remaining items comprising this account, Mr. Oakley included the actual test-period amount.

Public Staff witness Carter determined general office and salaries expense of $61,049 by making two adjustments to Mr. Oakley's amount. Mr. Carter eliminated $1,067 of toll message billing charges booked by the Company during the year. These charges were recognized by Public Staff witness Sutton in determining end-of-period toll revenues. Mr. Carter accepted Mr. Oakley's wage increase adjustment. Mr. Carter used his aforementioned annualization factor (1.61%) to adjust the remaining expenses to an end-of-period basis. This accounted for the remaining difference of $131.

The Commission concludes that the adjustment eliminating toll billing charges is appropriate for the same reasons as previously discussed for directory assistance charges. Also, the Commission concludes that the adjustment resulting from different methods used to annualize operating expenses, excluding salaries and wages, is appropriate for the reasons which have previously been discussed. Accordingly, the Commission concludes that the amount of $61,049 is the appropriate amount of general office and salaries expense to be included in this proceeding.

The next area of difference is other expenses. Mr. Oakley included an amount of $31,072 while Mr. Carter included an amount of $26,187, or a difference of $4,885. Company witness Oakley computed other expenses to be $31,072. This amount includes $28,313 of 1978 booked expenses adjusted by a net amount of $2,759 for 1979 projected increases, less the elimination of two nonrecurring items (decals and recapitalization expenses).

Public Staff witness Carter adjusted Mr. Oakley's amount for other expenses by $4,885 to $26,187. A schedule of both Mr. Oakley's and Mr. Carter's adjustments is shown below:

SCHEDULE OF ADJUSTMENTS TO THE OTHER EXPENSES

1978 Amount per books		$28,313
Adjustments made by Company witness Oakley:		
Estimated increase in utility costs	$ 144	
Eliminate nonrecurring recapitalization expenses	(2,413)	
Increase cost of meetings and travel	202	
Increase cost of school expenses	18	
Estimated rate case expenses	5,000	
Eliminate nonrecurring decal expenses	(192)	
Total Adjustments by Company		2,759
Amount included by Mr. Oakley		31,072
Public Staff Adjustments:		
Elimination of additional recapitalization expenses	(451)	
Elimination of gas and coal purchased for Company apartment	(730)	
Adjustment to accounting, audit, and tax service fees	(1,461)	
Adjustment to amortize expense incurred in connection with Docket P-100, Sub 45	(1,097)	
Adjustment to amortize rate case expenses	(1,497)	
Annualization adjustment for exxpenses not brought to an end-of-period level by direct calculation	351	
Total adjustments by Public Staff		(4,885)
Amount included by Mr. Carter		$26,187

Mr. Carter accepted all of Mr. Oakley's adjustments except the recapitalization expense adjustment and the rate case expense adjustment. Mr. Carter eliminated $451 more recapitalization expenses than Mr. Oakley. Mr. Carter testified that the expenses were incurred to benefit the stockholders of the Company and, therefore, should be charged to the stockholders instead of the ratepayers. The $451 amount represents the amount not eliminated by Mr. Oakley. The Commission concludes that the full amount of recapitalization expenses should be eliminated.

Mr. Carter also eliminated $730 of expenditures for gas and coal which was purchased for President J.L. Bennett's apartment which is included in the general office building. Since the Commission has previously concluded that the cost of the apartment should be excluded from the rate base, the Commission also concludes that the cost of the gas and coal purchased for the apartment should not be included in operating expenses.

Another adjustment made by Mr. Carter was $1,461 to decrease fees for accounting, audit, and tax services. Mr. Carter testified that the actual accounting, audit, and tax service fees for the calendar year 1978 were $4,444, and that of this amount, $515 was recorded in 1978 and $3,929 was recorded in 1979. Mr. Carter further testified that 1977 fees for accounting, auditing, tax services, and

recapitalization expenses of $5,390 should not be included as an allowable deduction. The adjustment of $1,461 results from the difference between the recorded amount of $5,905 ($5,390 + $515) and the actual 1978 accounting, audit, and tax service fees of $4,444. The Commission concludes that Mr. Carter's adjustment is appropriate. The test-period amount of audit, accounting, and tax service fees includes an amount for recapitalization expenses. Mr. Carter's adjusted level of this expense is a more representative amount because it is based on the most recent 12-month period (1978) and does not include any amount for recapitalization expenses or rate case expenses, while the test-period amount did include expenses for these items.

The fourth adjustment made by Mr. Carter of $1,097 represents an adjustment to amortize expenses incurred in connection with Docket No. P-100, Sub 45 (the intrastate toll investigation concluded during 1978), over a three-year period. Mr. Carter testified that since there is not an intrastate toll investigation every year, it is not proper to include the entire amount of expenses incurred with that docket in the test year for rate-making purposes. Mr. Carter recommended a three-year amortization period for rate-making purposes. Mr. Carter testified that the total expenses incurred in connection with Docket No. P-100, Sub 45, were $1,645 and that the annual amortization over a three-year period would have amounted to $548 per year, or $1,097 less than the amount charged to expenses during the test year. Mr. Carter further testified that, if an adjustment were not made to eliminate a portion of these expenses, rates would be set to cover a cost of service as if the Company participated in an intrastate toll investigation every year, which is not the case.

Another adjustment made by Mr. Carter to other expenses is an adjustment of $1,497 to amortize estimated general rate case expenses over a three-year period. The $1,497 amount represents the difference between the amortization expense amount of $3,503 ($10,510 total general rate expenses for this proceeding ÷ three-year amortization period) and Mr. Oakley's amount of $5,000. Mr. Carter testified that the most recent estimate of total rate case expenses was $10,510. Mr. Carter further testified that the rate case expenses should be amortized over a three-year period for the same reasons mentioned for amortizing expenses in connection with Docket No. P-100, Sub 45.

The Commission agrees that it is proper to amortize expenses incurred in connection with Docket P-100, Sub 45, and rate case expenses incurred in connection with this proceeding over a three-year period. Ellerbe does not incur these expenses every year; therefore, it would be inappropriate to include the full amount of these expenses in the test year.

Public Staff witness Carter also made an adjustment of $351 to annualize other expenses which had not been directly

calculated on an end-of-period basis. Mr. Carter multiplied his aforementioned annualization factor of 1.61% by other expenses subject to the annualization factor ($21,785) to obtain an annualization amount of $351. The Commission has previously concluded that Mr. Carter's method of annualizing expenses not directly calculated to an end-of-period level is reasonable; therefore, the Commission accepts the adjustment of $351.

Based on all the discussion concerning other expenses, the Commission concludes that the proper amount to be included as other expenses is $26,187.

Company witness Oakley included $300 of interest expense on customer deposits in his determination of operating expenses. The $300 amount is the composite of the $296 book amount and a $4 pro forma adjustment.

Public Staff witness Carter determined interest on customer deposits to be $333. This $333 amount was the product of the aforementioned average customer deposits amount of $6,221 and the per books ratio of interest on customer deposits to average customer deposits during the period (5.348%). Mr. Carter deducted Mr. Oakley's interest on customer deposits amount of $300 from his amount of $333 in arriving at his adjustment of $33.

The Commission has previously concluded that the end-of-period level of customer deposits in the amount of $6,221 is appropriate; therefore, the Commission concludes that the amount of $333 should be included in the calculation of operating revenue deductions.

The Commission concludes that the level of operating expenses to include in this proceeding is $244,561, as follows:

Expense	Amount
Maintenance	$ 64,668
Depreciation	90,722
Amortization	195
Traffic	1,407
General office salaries and expenses	61,049
Other expenses	26,187
Interest on customer deposits	333
Total operating expenses	$244,561

The Commission will now discuss taxes other than income. Company witness Oakley and Public Staff witness Carter agree on the amount of all taxes other than income except property taxes and gross receipts (franchise) taxes.

Company witness Oakley included property taxes of $20,431, whereas Public Staff witness Carter reported $20,380, or a difference of $51. Mr. Oakley determined his amount of property taxes by first determining the appropriate property

tax factor to use. He derived this factor (.010222) by dividing 1978 property taxes ($12,749) by the 1978 average plant value ($1,247,198). Mr. Oakley next multiplied this property tax factor of .010222 by his projected 1979 average plant balance amount of $1,998,741 in arriving at end-of-period property taxes of $20,431.

Public Staff witness Carter calculated end-of-period property taxes in the amount of $20,380 by multiplying his end-of-period level of plant in service of $2,001,289 by .0101832, the ratio of 1978 property taxes to telephone plant in service and plant under construction at December 31, 1977.

The Commission concludes that the proper amount of end-of-period property taxes to be included for this case is $20,380. Since the Commission has previously concluded that $2,001,289 is the appropriate amount to include as plant in service and since the property tax rate is based on both plant in service and plant under construction at the beginning of any taxable year, the Commission concludes that the end-of-period level of property taxes in the amount of $20,380 is appropriate to include in this proceeding.

Company witness Oakley determined franchise or gross receipts taxes to be $15,540 compared to Public Staff witness Carter's determination of $16,182 for franchise taxes, or a difference of $642.

Mr. Carter determined his amount of franchise taxes based on intrastate revenues of $269,706. This amount of intrastate revenue was determined by both Public Staff witnesses Carter and Sutton. Mr. Carter multiplied the $269,706 amount by 6% to obtain the $16,182 amount for end-of-period franchise taxes.

Since the Commission has previously concluded that the level of revenues presented by Mr. Carter is appropriate except for the $35 decrease in toll revenue testified to by Mr. Sutton, of which $26 was applicable to intrastate revenue, the Commission accepts Mr. Carter's level of franchise taxes adjusted for the franchise tax effects of the $26 decrease in revenues which the Commission found appropriate. The Commission concludes that the appropriate amount of franchise taxes is $16,181. [$16,182 - ($26 x 6%)]

Mr. Oakley and Mr. Carter agreed on the remaining amounts of operating taxes other than income. Both witnesses agreed on the amount for State unemployment taxes ($603), Federal unemployment taxes ($383), Social Security OAB ($5,794), and intangibles taxes ($115).

The Commission concludes that the proper amount to be included in this proceeding for operating taxes other than income is $43,456. The amount of $43,456 is comprised of the following components:

Item	Amount
Property taxes	$20,380
Franchise Taxes	16,181
State unemployment taxes	603
Federal unemployment taxes	383
Social Security	5,794
Intangibles	115
Total operating taxes other than income	$43,456

The final area of difference listed above is the appropriate amount to include as income tax expense. Mr. Oakley included an amount of $9,297, while Mr. Carter included $608. The $9,297 included by Mr. Oakley is the actual amount of income taxes shown on the Company's books and records for the test year. Also, this amount of income tax expense was computed using income tax rates in effect during 1978. These income tax rates decreased effective January 1, 1979. Also, Mr. Oakley's income tax expense was determined by amortizing investment tax credits realized under the Revenue Act of 1971 as a reduction in income tax expense "above the line," in accordance with option 2 treatment of these credits.

Since the Commission has accepted the level of revenue and expenses proposed by Mr. Carter, with the exception of the decrease in toll revenue of $35 and the decrease in gross receipt taxes of $1, and has concluded that Ellerbe must be treated as an option 1 company for rate-making purposes under the Revenue Act of 1971, and that Mr. Carter used the Federal income tax rates currently in effect, the Commission concludes that Mr. Carter's level of income taxes in the amount of $608 must be reduced by $8 to recognize the income tax effects of the $34 decrease in taxable income. The Commission concludes that the appropriate level of income tax expense is $600, consisting of State income taxes of $399 and Federal income taxes of $201.

The Commission furthermore concludes that total operating revenue deductions are $288,617. This amount of $288,617 is comprised of the sum of total operating expenses of $244,561, total operating taxes other than income of $43,456, and income taxes of $600 which the Commission has previously concluded is appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11
CAPITAL STRUCTURE

Company witness Oakley and Public Staff witness Carter used different capital structures. The following chart shows these capital structures in comparative form:

Item	Company Witness Oakley	Public Staff Witness Carter
Long-term debt	71.21%	71.50%
Common equity	28.39%	28.50%
Cost-free capital	.40%	-
Total	100.00%	100.00%

The difference in the two capital structures results from the difference in the Company's and the Public Staff's treatment of unamortized investment tax credits. Mr. Oakley included a portion of these cost-free funds, the pre-1971 credits, in the capital structure at zero cost, whereas the Public Staff deducted both the pre-1971 and post-1971 credits in determining the original cost net investment.

The Commission has previously concluded that cost-free capital should be deducted in determining the rate base. Also, the Commission has previously concluded that Ellerbe must be treated as an option 1 company for rate-making purposes under the Revenue Act of 1971; therefore, the full amount of these investment credits may be deducted in determining the rate base or included in the capital structure at zero cost, instead of just the amount related to pre-1971 investment tax credits. However, no portion of the post-1971 investment tax credits may be amortized as a reduction in income tax expense for rate-making purposes. Based on these previous conclusions, the Commission now concludes that a capital structure comprised of 71.50% long-term debt and 28.50% common equity is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12
ADEQUACY OF SERVICE

The evidence regarding the quality of service was offered by Ellerbe Telephone Company witness Bennett and Public Staff witness Spettel.

Mr. Bennett testified that the Ellerbe Telephone Company made every effort to work all service orders within three days after receipt of the order and that, to the best of his knowledge, Ellerbe Telephone Company was meeting all of the Commission's service objectives.

Mr. Spettel testified that Ellerbe met the Commission's service objectives on an overall basis. Mr. Spettel further testified that the Company's trunk routes were properly maintained and that the procedures used to handle customer trouble reports appeared sufficient to maintain trouble reports to level furthers meeting the Commission's service objective.

The Commission concludes that the service provided by Ellerbe Telephone Company to its customers is adequate. The basis for this decision is the testimony of Public Staff witness Spettel which has been previously discussed.

Further evidence of the level of Ellerbe's service was provided by the numerous public witnesses testifying in this proceeding. Without exception, all public witnesses agreed that the service provided by Ellerbe Telephone Company is acceptable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13
RETURN ON EQUITY

The only evidence concerning a fair rate of return on common equity was presented by J.M. Bennett, General Manager of the Company. He testified that the Company's accounting exhibits indicate that the Company will have a return of 11.32% on its common equity and a return of 6.1% on its original cost net investment rate base under the proposed rates and that these returns are not excessive when compared with the returns on investment or the returns on common equity allowed to telephone companies or other public utilities in North Carolina, most of which are much larger and have much more common equity than Ellerbe. Mr. Bennett testified that he believed the Company can successfully operate with returns of this size. Based on the Company's request in this proceeding, the Commission concludes that a fair rate of return on common equity is 11.32%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve, based upon the increases approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings, adjustments, and conclusions heretofore and herein made by the Commission.

SCHEDULE I
ELLERBE TELEPHONE COMPANY
SCHEDULE OF RETURN ON FAIR VALUE RATE BASE
TWELVE MONTHS ENDED DECEMBER 31, 1978

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues:			
Local service	$ 157,620	$60,827	$ 218,447
Toll service	166,637	-	166,637
Miscellaneous	10,896	-	10,896
Less: Uncollectible revenues	(557)	(101)	(658)
Total operating revenues	334,596	60,726	395,322
Operating Expenses:			
Maintenance	64,668	-	64,668
Depreciation	90,722	-	90,722
Amortization	195	-	195
Traffic	1,407	-	1,407
General office salaries and expenses	61,049	-	61,049
Other expenses	26,187	-	26,187
Interest on customer deposits	333	-	333
Total operating expenses	244,561	-	244,561
Operating Taxes Other Than Income:			
Property	20,380	-	20,380
Franchise	16,181	3,644	19,825
State unemployment	603	-	603
Federal unemployment	383	-	383
Social Security OAB	5,794	-	5,794
Intangibles	115	-	115
Total operating taxes other than income	43,456	3,644	47,100
Total operating expenses and taxes other than income	288,017	3,644	291,661
Operating income before income taxes	46,579	57,082	103,661
State income tax	399	3,425	3,824
Federal income tax	201	11,161	11,362
Total income taxes	600	14,586	15,186
Net operating income for return	$ 45,979	$42,496	$ 88,475

Investment in Telephone Plant:			
Gross telephone plant in service	$2,001,289	-	$2,001,289
Less: Depreciation reserve	466,833	-	466,833
Unamortized investment tax credits	59,328	-	59,328
Net telephone plant in service	1,475,128	-	1,475,128
Investment in Rural Telephone Bank Stock	23,750	-	23,750
Allowance for working capital:			
Cash	$ 12,804	-	$ 12,804
Material and supplies	9,898	-	9,898
Average prepayments	1,057	-	1,057
Less: Customer deposits	6,221	-	6,221
Average tax accruals	11,454	-	11,454
Total working capital allowance	6,084	-	6,084
Original cost net investment	$1,504,962	-	$1,504,962
Fair value rate base	$1,504,962	-	$1,504,962
Rate of return on fair value rate base	3.06%	-	5.88%

SCHEDULE II
ELLERBE TELEPHONE COMPANY
SCHEDULE OF RETURN ON FAIR VALUE COMMON EQUITY

Capitalization	Fair Value Rate Base	Ratio %	Embedded Cost or Return on Common Equity - %	Net Operating Income for Return
	Present Rates - Fair Value Rate Base			
Long-term debt	$1,076,048	71.50	3.71	$39,921
Common equity	428,914	28.50	1.41	6,058
Total	$1,504,962	100.00	-	$45,979
	Approved Rates - Fair Value Rate Base			
Long-term debt	$1,076,048	71.50	3.71	$39,921
Common equity	428,914	28.50	11.32	48,554
Total	$1,504,962	100.00	-	$88,475

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15
CONTINUATION OF FOUR-PARTY RESIDENTIAL SERVICE UPON LIMITED BASIS AND ELIMINATION OF TWO-PARTY RESIDENTIAL SERVICE AND MULTIPARTY BUSINESS SERVICE

Approximately 125 members of the public appeared at the hearing in Ellerbe. Sixteen public witnesses having varying occupations and interests testified. Much evidence was presented in the testimony of those public witnesses to the effect that there was an overwhelming desire that existing four-party subscribers be allowed to continue to subscribe to four-party service. Testimony indicated that a substantial number of Ellerbe's customers are elderly, on fixed incomes, or of restricted financial means and are dependent upon the telephone service provided by Ellerbe Telephone Company. The evidence presented further showed that most of those customers believed that the one-party residential rate proposed by the Company would be financially beyond their means and would place a financial burden upon them. The Commission as well as REA has in the past encouraged the provision of one-party service which it considers to be a superior quality of service. However, due to the widespread desire for the continuation of such four-party service and the hardships which the evidence established would be entailed by its elimination, the Commission concludes that such service should continue to be offered to present subscribers only. Two-party residential customers will be required to upgrade to one-party service and all two-party service will be eliminated. Multiparty business service will also be eliminated and the affected customers will be required to upgrade to one-party service.

Further discussion of these matters is contained in Evidence and Conclusions for Finding of Fact No. 16.

The Commission will now analyze the testimony and exhibits as presented by the Company and the Public Staff to determine if an additional investment should be allowed for the continuation of party-line service to existing four-party customers.

Public Staff witness Spettel testified that it would be possible to provide four-party service through the concentrators by replacing the present single-party line cards with four-party line cards; however, he stated that there would be additional cost for providing party-line service in this manner. Public Staff witness Carpenter testified that these additional costs would not be required if the four-party subscribers are not served through the concentrators. He stated that the Company could continue its present arrangement for providing party-line service to existing four-party subscribers without incurring any additional costs. Company witness Bennett stated that the Company was presently providing both one- and four-party service. He further stated that Ellerbe Telephone Company could continue to provide party-line service to existing four-party subscribers over cable facilities as it is

presently doing and not incur the additional investment that would be required if the concentrators were used to serve the four-party subscribers. However, he maintained that there would be record-keeping and maintenance problems associated with continuation of the present situation. When questioned further regarding the possible maintenance problems, Mr. Bennett stated that the Company has not experienced any serious maintenance problems since the concentrators were cut into service in December 1978 and that, on the whole, the Company was very pleased with them.

The Commission is of the opinion that Ellerbe Telephone Company should continue to provide party-line service to its existing four-party subscribers in the same manner in which it is presently providing that service. Accordingly, the Commission concludes that no additional investment allowance for the provision of four-party service is appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16
RATES AND CHARGES APPROVED

Company witness Bennett, Public Staff witness Carpenter, and numerous public witnesses presented testimony regarding the proposed rates.

The Company's proposals presented by Mr. Bennett included large increases in business and residence one-party rates, required upgrading of all party-line subscribers to one-party service, elimination of all zone charges and color charges, and an increase in the business extension rate from $1.75 to $2.00.

Public Staff witness Carpenter testified regarding his evaluation of the Company's rate proposals. Mr. Carpenter pointed out that the zone charges applicable to one- and two-party service would cause the changes in rates experienced by those customers to vary according to their location within the exchange. One-party residence subscribers located in Zones 7 through 10 would receive decreases in their local service rates. All other one-party residence subscribers and all two- and four-party subscribers would receive increases varying from $.35 for all one-party residence subscribers in Zone 6 to $10.85, or 260%, for all four-party subscribers regardless of location.

Mr. Carpenter stated that he felt that an alternate rate should continue to be available to Ellerbe's present four-party subscribers. He preferred continuation of four-party service on a grandfathered basis as an alternate lower cost service.

Mr. Carpenter indicated that Ellerbe's zone charges, which are applicable to two- and four-party service, vary from zero in the base rate area to $15.00 maximum for one-party service and $7.50 for two-party service. Mr. Carpenter indicated that he felt the zone charges were deterring subscribers from upgrading to one- or two-party service and

that if zone charges were eliminated Ellerbe would immediately have requests for upgrades.

Concerning the ratio between the business and residence rates proposed by Ellerbe, Mr. Carpenter stated that the proposed ratio of 1.43 to 1 was very low relative to that of other telephone companies in North Carolina and that he believed a ratio closer to 2.0 to 1 would be more appropriate. Mr. Carpenter also recommended that a differential of 10% to 20% be established between lines terminating in key systems and regular individual lines. Mr. Carpenter favored increasing the local coin charge to 20¢ and eliminating Ellerbe's $10.00 nonrecurring charge for standard color telephones. Mr. Carpenter proposed conversion of Ellerbe's service charge tariff to a multi-element format and an increase in nonrecurring service charge revenue, a reduction in the business and residence extension rates, and increases in rates for mileage services.

A number of subscribers were present at the hearing in Ellerbe and testified in opposition to the large increases in basic rates. Several of the subscribers acknowledged that they could understand that Ellerbe might need an increase in rates but could not understand the need for the large increases which were proposed. Joe Comer, the Mayor of Ellerbe, testified on behalf of the City of Ellerbe in opposition to the rate request. He stated that the area served by the Company was economically depressed and that the proposed increases would create a tremendous hardship on the large number of elderly people and widows in the area, many of whom live on Social Security. Janet Hogan and Clarice Baldwin, who work at government-funded Nutrition Sites in the area, testified that they felt many of the senior citizens who are served by the Sites would not be able to afford telephone service if the proposed increases were granted. Mildred McCall from the Derby area testified on behalf of retired people and people living on fixed incomes, many of whom live alone in relatively isolated areas. She stated that many of these people would be unable to afford telephone service at all if the proposed rate goes into effect. She also stated that they felt they should have a choice of sharing a line with someone or having one-party service.

The Commission concludes that there is sufficient justification in this particular case to warrant retention of four-party residential service on a grandfathered basis. Allowing present four-party subscribers to continue with their present service will to some extent ease the burden created by the large increases which are necessary to produce the required additional revenue. However, as has been previously discussed, two-party residential customers and two- and four-party business customers will be required to upgrade to one-party service.

The Commission concludes that all of Ellerbe's zone charges should be eliminated. This will greatly reduce the differential between one- and four-party service in the outer zones and make the higher grade of service more attractive to the subscribers located in those areas. The Commission feels that this will enable the Company to better utilize the one-party plant which is in-place throughout the exchange. Since this plant is in-place, included in the Company's rate base, and must by some means be covered by operating revenue, it is not reasonable through retention of the present zone charges to deter subscribers from making use of those facilities. The increase in rates to offset the loss of zone charge revenue is an undesirable, yet necessary, consequence.

The Commission agrees with the recommendations of Mr. Carpenter in regard to service charges and related adjustments and mileage services and adopts the Company's proposals for increases in the local coin rate and rates for private and semiprivate numbers.

The Commission is in disagreement with both the Company's and the Public Staff's proposals in regard to color charges and extension rates. It is the Commission's belief that such charges should be retained at the present levels and that the resulting revenue differential should be used to further reduce the basic residential rates.

Although the rates approved herein are substantially below those proposed by the Company and somewhat below those proposed by the Public Staff, the Commission recognizes that these rate increases will be significant for some of Ellerbe's customers, particularly those living in the base area. However, it must be considered that Ellerbe Telephone Company has not had a rate increase since 1965, a considerable period of time. In addition, the rates contemplated herein will allow certain customers living in rural areas who have paid high rates in the past to actually experience a rate decrease.

The Commission therefore concludes that rates and charges attached as Appendix A are just and reasonable and will allow the Company the opportunity to generate $60,827 in additional annual revenues which have been approved herein.

Further, it is the Commission's opinion that the decisions made in this proceeding in regard to the revenue increase and rates approved have considered the interests of both the Company's investors and ratepayers and are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Public Staff witness Carter presented testimony and exhibits relating to the wage and price guidelines which were established by the Council on Wage and Price Stability (COWPS). The two price guidelines applicable to telephone companies are (1) the price deceleration standard and an alternative standard (2) the profit margin limitation. Since the rate increase approved in this proceeding does not comply with the price deceleration standard, the profit margin limitation is applicable.

Carter Exhibit I, Schedule 4(a) indicates that a profit margin for Ellerbe of 25.54% or $105,904 is within the guideline established by COWPS. The Commission finds that since the gross profit margin under the rates approved in this proceeding is $103,661, Ellerbe is in compliance with the profit margin limitation standard of the Wage and Price Guidelines.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates set forth in Appendix A, attached hereto, which will produce, based upon stations in service on December 31, 1978, a net increase in gross annual revenues of approximately $60,827, be, and hereby are, approved to be charged and implemented by the Applicant. The recurring rates and charges will become effective on billings on and after the date of this Order. All other rates, charges, and regulations not herein adjusted remain in full force and effect.

2. That Ellerbe shall file the necessary revised tariffs reflecting changes in rates shown in Appendix A and otherwise approved herein within 10 days from the date of this Order.

3. That Ellerbe shall notify all customers of these rate increases by inserting the Notice in Appendix B, attached hereto, in all bills rendered on or after the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of December, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
ELLERBE TELEPHONE COMPANY

LOCAL EXCHANGE SERVICE RATES

Service[1]	Residence	Business
One-Party	$11.00	$21.00
Four-Party[2]	$ 7.90	

[1]Two-party service is eliminated.
[2]Obsolete service offering

OTHER LOCAL SERVICES

Key trunk	1.1 times the one-party rate
PBX trunk	2.0 times the one-party rate

ZONE CHARGES

All zone charges are eliminated

SERVICE CHARGES

	Residence	Business
Primary Service Order Charge	$12.00	$14.00
Secondary Service Order Charge	6.00	8.00
Premises Visit Charge	5.00	6.00
Central Office Work Charge	3.00	3.00
Inside Wiring Charge	4.00	7.00
Jack Charge[3]	2.00	2.00
Equipment Work Charge	2.00	2.00

[3]The jack charge above will replace the present charge of $7.50. The present $1.00 jack testing charge is eliminated

DIRECTORY LISTINGS

	Monthly Rate
Private number	$1.20
Semiprivate number	1.20

COIN TELEPHONE SERVICE

Public pay station local coin charge	.20
Semipublic pay station local coin charge	.20

LONG CORDS

The present Schedule A and Schedule B charges for long cords are eliminated and the following charges are established:

9-ft. cord	7.00
13-ft. cord	9.00

Appropriate service charges will apply in addition to the above nonrecurring charges.

MILEAGE SERVICES	Monthly Rate
Extension line mileage service	
Between buildings on the same premises or between premises in the same building	
Each 1/10 mile or fraction	$ .70

Between buildings on different premises	
Each 1/4 mile or fraction	1.25
Tie line mileage service	
Between switchboards	
Each 1/4 mile or fraction	1.25
Minimum per line	7.50
Private line service	
Between terminations, different premises	
First 1/4 mile or fraction	1.25
Each additional 1/4 mile or fraction	1.25
Minimum per circuit	7.50
Additional terminations	
Each 1/4 mile	1.25
Terminations in the same building	
Each two-point channel	1.00
Each termination in excess of two	.75

APPENDIX B
ELLERBE TELEPHONE COMPANY
NOTICE TO CUSTOMERS

On May 11, 1979, the Ellerbe Telephone Company filed an application with the North Carolina Utilities Commission requesting an increase in its rates and charges to provide an additional $104,000 in annual revenue. Following hearings in the Courtroom of the Town Hall, Ellerbe, North Carolina, on October 16, 1979, and the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 17 - 18, 1979, the Commission has approved increases in rates that will effect an increase in annual revenues of approximately $60,827 for the Company.

The basic local service rates requested by Ellerbe Telephone Company in its application and those approved by the Commission are as follows:

Types of Service	Rates Requested by the Company	Rates Approved by the Commission
Residence		
One-party	$15.00	$11.00
Four-party	-	7.90
Business		
One-party	21.50	21.00
Key trunk	21.50	23.10
PBX trunk	43.00	42.00

All zone charges which are presently applicable to many services outside of Ellerbe were eliminated and the two-party service offering was discontinued. Present subscribers to two-party service are required to upgrade to one-party service. The four-party offering will be

continued for present four-party residential subscribers only.

The rate adjustments were approved by the Commission to become effective on bills rendered on and after the date of the issuance of the Commission Order setting rates and charges.

Although the rates approved by the Commission are well below those proposed by the Company and somewhat below those proposed by the Public Staff, the Commission recognizes that some customers will experience a significant rate increase. However, it is important to recognize that Ellerbe has not had a rate increase since 1965 and that some customers living in the rural part of Ellerbe's service area who have paid high rates in the past will actually have a rate decrease. Further to minimize the impact of such a rate increase on the economically disadvantaged, the Commission has retained four-party residential service for those customers presently receiving four-party service at a rate considerably less than that approved for one-party residential customers.

DOCKET NO. P-35, SUB 71

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Mebane Home Telephone Company	) ORDER
for Adjustments and Changes in Its Rates	) ESTABLISHING
and Charges Applicable to Intrastate	) REVENUE
Telephone Service	) REQUIREMENTS

HEARD IN: Auditorium of the Municipal Building, 106 East Washington Street, Mebane, North Carolina, on September 25, 1979, and in Raleigh, North Carolina, Commission Hearing Room, Dobbs Building, on September 26, 1979

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners John W. Winters and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

P. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602
For: Mebane Home Telephone Company

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

David Gordon, Attorney General's Office, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On April 23, 1979, Mebane Home Telephone Company (Mebane Home, Applicant, or the Company) filed with the Commission an application for authority to adjust and change its rates and charges applicable to intrastate telephone service to become effective on or after May 24, 1979.

Following a review of the application, the Commission by Order of May 22, 1979, was of the opinion that the matter was a general rate case under G.S. 62-137, that the proposed rates should be suspended, and that the matter should be set for hearing and investigation to determine if the proposed adjustments and charges are just and reasonable.

On May 23, 1979, the Public Staff of the Utilities Commission filed Notice of Intervention, and on September 12, 1979, the Attorney general filed Notice of Intervention.

On September 25, 1979, in the Auditorium of the Municipal Building, Mebane, North Carolina, a public hearing was held. No public witnesses were present and none testified.

The Applicant presented the testimony of the following witnesses: William R. Hupman, President of Mebane Home in regard to corporate operations, growth and demand, and corporate facilities; Edward T. Rutter, Vice President of Associated Utility Services, Inc., concerning the current and prospective status of the financial operations of the Company; Oscar J. Williams, Vice President of Associated Utility Services, Inc., in regard to the level of operating revenues, operating expenses, and other accounting matters; and Paul R. Moul, Assistant Vice President of Associated Utility Services, Inc., in regard to rate of return.

The Public Staff offered the testimony of the following witnesses: Scott C. Spettel, Communications Engineer, in regard to quality of service; Benjamin R. Turner, Jr., Communications Engineer, concerning the reasonableness of

the Company's investments to provide telephone service and cost of those investments; Leslie C. Sutton, Communications Engineer, in regard to toll settlements and toll revenues for the test period; E. Thomas Aiken, Staff Accountant, in regard to test-period original cost net investment, revenues, expenses, and returns on original cost net investment and common equity; Eddie R. Mayberry, Director of Economic Research for the Public Staff, as to cost of capital and rate of return.

Based upon the application, the evidence adduced at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That Mebane Home Telephone Company, a North Carolina corporation is a duly franchised public utility providing telephone service to subscribers in North Carolina and is lawfully before this Commission for a determination as to the justness and reasonableness of its rates and charges pursuant to Chapter 62 of the General Statutes of North Carolina.

2. That the total increase in rates and charges sought by Mebane Home in its application would produce approximately $128,729 in additional annual net operating revenues based on the test period ended December 31, 1978.

3. That the last rate increase approved for Mebane Home became effective March 4, 1977.

4. That the overall quality of service provided by Mebane Home to its customers is good.

5. That the Company's ESC-1 PL2 central office is equipped with 500 lines of excess capacity equal to an excess investment of $87,820 and that this amount should be removed from the Company's investment in telephone plant in service.

6. That the original cost of Mebane Home Telephone Company's investment in telephone plant used and useful in providing telephone service in North Carolina is $5,585,466. From this amount should be deducted the reasonable accumulated provision for depreciation at December 31, 1978, of $1,630,876, resulting in a reasonable original cost less depreciation of $3,954,590.

7. That Mebane Home Telephone Company's investment in Rural Telephone Bank Class B Stock less patronage dividends should be included in the original cost net investment in the amount of $118,500.

8. That the reasonable allowance for working capital is $31,358.

9. The only evidence of fair value in this proceeding is the original cost of the Company's plant used and useful in providing telephone service in North Carolina. The Commission acquiesces and adopts the original cost of the Company's plant as the fair value. The fair value of the Company's property used and useful in providing telephone service is $3,696,693 which includes $3,954,590 of net original cost plant, $118,500 of RTB Class B Stock, less patronage dividends, $31,358 of working capital and $407,755 reduction for cost-free capital.

10. That the end-of-period level of toll revenues for Mebane Home Telephone Company for the 12 months ended December 31, 1978, is $522,461.

11. That Mebane Home Telephone Company's operating revenues net of uncollectibles for the test year after accounting and pro forma adjustments under present rates are approximately $1,303,706, and under proposed rates would be $1,432,435.

12. That Mebane Home Telephone Company's operating revenue deductions after accounting and pro forma adjustments are approximately $1,102,473 which includes an amount of $254,023 for actual investment currently consumed through reasonable actual depreciation.

13. That cost-free capital in the amount of $407,755, arising from deferred income taxes and Investment Tax Credits, including the Job Development Credits, implemented by the Revenue Act of 1971, should be deducted directly from the rate base.

14. That the capital structure for Mebane Home Telephone Company which is appropriate for use in this proceeding is as follows:

Long-term debt	83.08%
Common equity	16.92%
Total	100.00%

15. That the fair rate of return which the Company should have the opportunity to earn is 5.92%, which consists of an embedded cost rate of 3.76% on the debt component of Mebane Home Telephone Company's investment and a return of 16.50% on the stockholders' equity component of Mebane's investment.

16. That in order to earn the rate of return found fair by the Commission, Mebane Home should increase its rates and charges so as to produce an increase in its local service revenues of $36,647 annually based on operations during the test year.

17. That the rates and charges to be filed pursuant to this Order which will produce an increase in annual local

service revenues of approximately $36,647 are just and reasonable.

18. That the increased rates and charges approved herein are consistent with the wage price guidelines.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 3

The evidence for these findings is contained in the verified application, in prior Commission Orders in this docket, and in the record as a whole. These findings are essentially procedural and jurisdictional in nature and were not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence regarding the quality of service was offered by Mebane Home witness Hupman and Public Staff witness Spettel. No public witnesses appeared in the proceeding to testify with regard to the quality of Mebane Home's telephone service.

Company witness Hupman testified that the quality of service provided by Mebane Home is good. In support of this position, Mr. Hupman presented evidence of tests made by Southern Bell Telephone and Telegraph Company of the Direct Distance Dial Toll Network in which Mebane had the lowest number of failures and blockages.

As further indication of the Company's intention to provide adequate service, Mr. Hupman testified that two surveys had been conducted to solicit customer response to questions concerning the quality of service. According to Mr. Hupman any unfavorable responses to the survey were investigated and appropriate action was taken.

Finally, Mr. Hupman indicated that Mebane home is meeting the Commission's objctives in regard to service except during isolated severe storms.

Public Staff witness Spettel also testified that the overall quality of service provided by Mebane Home is good. The basis for Mr. Spettel's opinion was various test results and service data which indicated that not only is Mebane Home meeting the Commission's service objectives but also that the quality of service provided by Mebane Home is good.

The Commission concludes that based on the evidence presented by witnesses Hupman and Spettel, the quality of service provided by Mebane Home Telephone Company is good and, further, that the efforts of both employees and management of Mebane to provide such a high quality of service should be commended.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence regarding the Company's excess plant investment was presented by Company witness Rutter and Public Staff witness Turner. The Commission also takes judicial notice of the record in the Company's last rate case (Docket No. P-35, Sub 64).

In response to cross-examination questions, Mr. Rutter testified concerning the merits of the central office excess plant adjustment in the last rate case. Mr. Rutter testified that he had reviewed the record in the last case and that in his opinion for an investment in plant to be imprudent, it should be clearly demonstrated that the plant is unnecessary. According to Mr. Rutter's criteria, plant should only be considered as excess plant if such plant will never be utilized in the future.

Mr. Turner's testimony in this case considers whether the central office equipment found to be excessive in the last case should be excluded from the rate base in this case. His conclusion is that the excess capacity of 1,000 lines has not been used since the date of original placement (October 1976) and will not be needed, based on recent growth conditions, until July 1981, a period of 4.75 years since the date of placement and 2.5 years from the end of the test period in this case. It is, therefore, his testimony that the investment of $175,639 for 1,000 lines is not useful in providing telephone service and should be removed from the Company's rate base. Mr. Turner also testified that the depreciation which has accrued on the excess investment of $12,880 should be removed from the depreciation reserve.

In reaching a decision regarding the level of central office equipment which is used and useful, the Commission has taken judicial notice of Mebane Home's last rate proceeding, Docket No. P-35, Sub 64, wherein the Commission found that "...Mebane Home has excess central office margin equal to 1,000 lines which is not used and useful in providing telephone service. The amount of this investment is determined to be $175,639, which is the difference between the installed price of the 5500-line central office of $1,170,057 and the quoted price for the alternative 4500-line central office of $994,418. The quantity of lines is based on a reasonably growth forecast of 250 lines per year and a one-year engineering interval for central office line additions."

The Commission recognizes that if one assumes that the 250 lines per year growth forecast deemed reasonable in the last rate proceeding had actually materialized, a total of 4,549 main stations would be in service at September 1979, the date of the hearing. Further, the Commission recognizes that Mebane Home's actual rate of main station growth has been far less than the forecasted level found reasonable in the last proceeding. As is shown in the testimony of Public

Staff witness Turner, a growth rate of 3.9% or an annual increase of approximately 155 main stations can now reasonably be anticipated in the future. Mr. Turner's recommendation to exclude 1,000 lines was based on the 3.9% growth rate.

The Commission concludes that the old saying "one should not change horses in the middle of the stream" is highly appropriate in this instance. It appears to be inappropriate to find that a particular main station growth rate forecast is reasonable at a specific point in time and two years thereafter change the rate to reflect events occurring in the intervening period of time. Prudent business decisions are based on relevant facts known at or around the time of the decision and on reasonable estimates or forecasts of future events. As no one has a crystal ball capable of predicting the future accurately, discrepancies do occur. The Commission's conclusions should likewise be based on relevant facts at the time a decision is entered into and on reasonable forecasts of future events made at that time.

Consequently, the Commission finds that Mebane Home has an excess plant margin of 500 of the 1,000 central office lines and that the 500 lines have an original cost of $87,820, a related accumulated depreciation of $6,440, and annual depreciation expense of $3,513. The primary basis for this decision is the previous discussion which indicated that had the forecasted growth in main stations of 250 annually actually occurred, the 1,000 central office lines would begin to be used at the time of the hearing in this proceeding; therefore, only 500 lines should be considered excess plant margin.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Rutter and Public Staff witness Aiken presented testimony and exhibits concerning the original cost of Mebane Home Telephone Company's net telephone plant in service. The following chart summarizes the amount which each of the witnesses contends is proper for this item:

Item	Company Witness Rutter	Public Staff Witness Aiken
Investment in telephone plant in service	$5,673,286	$5,497,647
Less: Reserve for depreciation	1,637,316	1,629,078
Net telephone plant in service	$4,035,970	$3,868,569

As shown above, the witnesses disagree on the proper level of telephone plant in service. The difference results from the excess plant adjustment of $175,639 proposed by Public Staff witness Turner. In Evidence and Conclusions for Finding of Fact No. 5, the Commission found that central

office plant having an original cost of $87,820 was excessive and should be deducted from plant in service. Accordingly, the Commission finds that plant in service of $5,673,286 proposed by Company witness Rutter should be reduced by $87,820 related to excess plant margin.

During the course of the proceedings in this docket the Attorney General raised several questions concerning the necessity and reasonableness of certain costs incurred by the Applicant in constructing and furnishing an addition to its commercial offices. Moreover, at the request of the Attorney General, the Commission conducted an on premise inspection of the newly constructed addition and an inspection of the furnishings contained therein.

The Commission wishes to acknowledge that the addition to the Applicant's commercial offices has been furnished in exceedingly good taste and might, perhaps, be considered somewhat lavish. However, based upon the evidence presented the Commission is "hard pressed" to determine the degree of impropriety which exists, if any, with respect to the munificence or absence thereof of the commercial office addition and the furnishing contained therein.

The Commission, however, would be remiss if it did not observe that the Public Staff conducted an in-depth, complete and thorough audit and investigation of the reasonableness of the Applicant's test year level of revenues, investment, and expense and that if any improprieties were discovered with respect to the Attorney General's concerns in this regard, such improprieties were not called to the attention of the Commission. More specifically, neither the Attorney General nor the Public Staff nor any other party of record offered or proposed any adjustments to the test year level of operations to reflect any impropriety whatsoever with respect to the addition to the Applicant's commercial offices.

Further, the Commission is not unmindful of the benefits which enure both to the ratepayers and to the Community from favorable impressions reflected by Mebane Home Telephone Company in its endeavors to encourage and attract new industrial prospects to its service area. Such impressions conveyed to the industrial prospect may have a direct bearing on the final decision of where to locate a new plant facility.

The Commission, therefore, concludes based upon the evidence presented that the contentions of the Attorney General are not supported by the record and that no action is warranted at this time.

In summary, the Commission finds that the appropriate level of plant in service is $5,585,466. ($5,673,286 - $87,820)

The witnesses also disagreed on the proper level of depreciation reserve. The difference in the amounts proposed for depreciation reserve is due to the following adjustments proposed by Mr. Aiken.

Item	Amount
Public Staff's adjustment to give effect to the Company's end-of-period adjustment to depreciation expense	$ 6,487
Public Staff's adjustment to depreciation expense applicable to PBX at Dow Badische	(1,845)
Public Staff's adjustment to reserve associated with telephone plant amounting to $175,639 eliminated as excess telephone plant margin by Public Staff witness Turner	(12,880)
Total	$ (8,238)

After examining the testimony and exhibits of both Mr. Rutter and Mr. Aiken concerning the depreciation reserve, it is apparent that the Company's depreciation reserve of $1,637,316, which was Mr. Aiken's starting point, had already been adjusted for the $6,487 and $1,845 amounts shown above. Mr. Aiken again adjusted for these items in determining his depreciation reserve of $1,629,078; therefore, Mr. Aiken's adjustments for these amounts are not proper.

In Evidence and Conclusions for Finding of Fact No. 5, the Commission finds that the Company had 500 excess central office lines having an associated depreciation reserve of $6,440 which should be removed from the depreciation reserve. The Commission therefore concludes the appropriate level of depreciation reserve is $is $1,630,876. ($1,637,316 - $6,440)

Therefore, the Commission finds that net plant in service of $3,954,590 consisting of telephone plant in service of $5,585,466 less depreciation reserve of $1,630,876 is appropriate for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witness Rutter and Public Staff witness Aiken proposed that Mebane Home's investment in Rural Telephone Bank (RTB) Class B Stock in the amount of $118,500 be included in the computation of the original cost net investment. Since there is no controversy among the witnesses on this issue and since the investment has questionable present and future value and is required to obtain RTB financing, the Commission finds that it is proper to include $118,500 in RTB Class B Stock less patronage dividends in its computation of original cost net investment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Commission will now analyze the testimony and exhibits of Company witness Rutter and Public Staff witness Aiken relating to the amount each witness considers properly includable in the original cost net investment as an allowance for working capital.

The following chart presents the amounts proposed by each witness in his testimony and the adjusted amounts of Public Staff witness Aiken:

Item	Company Witness Rutter	Public Staff Witness Aiken
Cash	$66,556	$ 53,377
Materials and supplies	26,095	26,095
Average prepayments	8,422	8,422
Average tax accruals	(51,606)	(47,213)
Customer deposits	(11,677)	(11,677)
Total	$ 37,790	$ 29,004

The difference of $8,786 between the levels of working capital proposed by each witness results from Company witness Rutter's having included operating taxes in his computation of cash working capital, from the Public Staff's adjustments to operating expenses and from the difference in the amount of average tax accruals deducted by the witnesses. Mr. Aiken testified that the $51,606 amount used by Mr. Rutter, which was also shown in Item 3(a), Page 2c of 2 of the Company's response to the minimum filing requirements, was in error because amounts shown for the month of March 1978 and December 1978 were in error. Mr. Aiken further testified that the correct amount of average tax accruals is $47,213, based on his actual analysis of the General Ledger Account No. 166 - Accrued Taxes.

The Commission concludes that the working capital as recommended by Mr. Aiken is appropriate except for the cash portion. Under Evidence and Conclusions for Finding of Fact No. 12, the Commission concludes that the appropriate level of operating expenses is $668,775 excluding depreciation expense and including the expense component of the annualization adjustment in the amount of $11,032. Consequently, the appropriate level of the cash component of working capital is $55,731. ($668,775 x 1/12)

The Commission finds that a reasonable level of working capital amounting to $31,358 which consists of cash (1/12 of operating expenses) of $55,731 materials and supplies of $26,095, prepayments of $8,422 less average tax accruals of $47,213 and customer deposits of $11,677 should be included in original cost net investment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

G.S. 63-133 requires the Commission to "...ascertain the fair value of the public utility's property used and useful in providing the service rendered to the public within this State." In ascertaining fair value, the statute indicates that the Commission must consider evidence offered which tends to show the replacement cost of the property. Such replacement cost may be determined either by trending the depreciated original cost to current cost levels or by any other reasonable method.

None of the parties to this proceeding offered evidence regarding replacement cost or trended original cost. The burden of proof (or risk of nonpersuasion) on fair value lies with the Applicant. The risk of a detrimentally low finding of fair value or rate base thus may be traced directly to a lack of proof by the Applicant.

For the foregoing reasons, the Commission concludes that the fair value of Mebane Home's plant in service less depreciation is $3,954,590 which consists of telephone plant in service of $5,585,466 less accumulated depreciation of $1,630,876. Correspondingly, the Commission finds the fair value rate base to be $3,696,693 consisting of telephone plant in service less accumulated depreciation of $3,954,590 plus working capital of $31,358 and investment in RTB Class B Stock of $118,500 less cost-free capital of $407,755.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence as to the appropriateness of the end-of-period level of toll revenues is found in the testimonies of Company witness Williams and Public Staff witness Sutton.

The main point of disagreement between the Company and the Public Staff is the methodology for determining the end-of-period adjustment. Both the Company and the Public Staff are in agreement that unadjusted test-period toll revenues are $461,580. Company witness Williams proposed two adjustments to these revenues. First of all, he proposed a $4,085 adjustment to reflect the effect upon test-period toll revenues of the reinstatement of the PBX at the Dow Badische Building October 1, 1978. Secondly, he proposed an $1,154 adjustment to bring test-period toll revenues to an end-of-period level using a main station annualization factor of .0025. Thus, end-of-period toll revenues as determined by witness Williams are $466,819. According to Mr. Williams' testimony this represents an annual toll revenue growth rate of 1/2 of one percent.

Public Staff witness Sutton stated that his starting point for determination of the end-of-period level of toll revenues was the monthly settlement summary statements provided to him by Mebane Home Telephone Company. Mr. Sutton proposed several accounting and pro forma adjustments to account for known changes that occurred during the test

year. He proposed four adjustments to reflect changes in the nationwide average schedules that were revised effective September 1, 1978. These changes were: (1) an increase in the "A" schedule settlements per message (SPM) for intrastate toll calls, (2) an increase in the "A" schedule SPM for interstate toll calls, (3) a decrease in the "B" schedule SPM rate, and (4) an increase in the directory assistance message rate charged by Southern Bell. In view of the contractual agreement between Mebane Home Telephone Company and Southern Bell for toll service, the Commission recognizes that a portion of any additional toll revenues produced as a result of schedule revisions would necessarily flow to Mebane Home.

Based upon the results of an internal audit of Mebane's line haul account by Southern Bell, Mr. Sutton also recommended an adjustment to increase "C" schedule toll revenues. He proposed decreasing toll revenues to reflect unbillable toll calls, subscriber denied toll calls, and official toll calls. He recommended acceptance of the Company's proposed adjustment for the reinstatement of the PBX at the Dow Badische Building.

After adjusting toll revenues to reflect these adjustments, Mr. Sutton brought them to an end-of-period level. He developed a representative level of end-of-period toll revenues by using toll revenues for the six months before and after the end of the test period. Basically, his methodology consists of summing the toll revenues for the six months before and after the end of the test period and then dividing the results by 12 to obtain the average monthly revenue which he later showed to be a representative end-of-period level. Mr. Sutton indicated that it would have been possible to use less than 12 months of data. For example, the average monthly end-of-period toll revenues could have been determined by summing the revenues for December 1978 and January 1979 and then dividing by two. If these two months were used, the evaluation period would extend from December 1, 1978, to January 31, 1979. Application of his methodology would indicate that these average revenues would be the monthly level as of the midpoint of the evaluation period, that is December 31, 1978. Witness Sutton indicated that in developing a representative monthly level of toll revenues it is necessary to adjust the selected month to the proper number of days as well as for variations resulting from seasonal usage. He pointed out that revenues could be significantly understated by annualizing a month containing only 28 days. He stated that this biasing could be removed by normalizing the monthly revenues to the level that would be obtained in 30.4 days (365 days divided by 12 months). It is apparent that selection of the month with the highest usage would overstate toll revenues whereas selection of the month with lowest usage would understate toll revenues. He stated that he obtained a more representative level of toll revenues by using 12 months of data since that removed any biasing introduced by the seasonality effect of toll usage.

Having developed the representative end-of-period monthly level of toll revenues, Mr. Sutton annualized these revenues by mulyiplying the monthlt level by 12. He stated that end-of-period toll revenues produced by his methodology for the test period was $522,461 and that his methodology indicated an annual toll growth rate of 13.7%.

During presentation of its case, the Public Staff introduced two exhibits concerning the toll growth rate. The first exhibit was a news release by AT&T stating that toll calling is increasing at an annual rate of 12%. The second exhibit was a feasibility study prepared by a consultant engineer engaged by Nebane Home that indicated an annual toll growth rate of 15.5%.

In reviewing the evidence, it appears to the Commission that there are basically two problems causing the disagreement between the Company and the Public Staff as to the end-of-period level of toll revenues. First of all, there are a number of accounting and pro forma adjustments proposed by Mr. Sutton and Mr. Williams. Secondly, there is a disagreement as to which methodology is more appropriate for development of the end-of-period level of toll revenues.

Concerning the accounting and pro forma adjustments, the Commission concludes the adjustment proposed for the reinstatement of the PBX at the Dow Badische Building is appropriate. The other adjustments proposed by Mr. Sutton are to account for changes that occurred as a result of application of schedule revisions in the standard contract agreement effective September 1, 1978. Since the changes in the schedules occurred during the test year and effect toll revenues, the Commission is of the opinion that the adjustments proposed by Mr. Sutton are proper. The Commission is also of the opinion that toll revenues should be adjusted to reflect the effect of the intrastate toll rate increase granted by this Commission effective April 3, 1978.

The Commission further concludes that the end-of-period methodology employed by Public Staff witness Sutton to calculate toll revenues is reasonable in this case. The ultimate goal of any end-of-period methodology must be to calculate levels of revenues and expenses which can reasonably be anticipated to occur in the future based on the end-of-test-period level of investment and customers. In this Commission's opinion the methodology used by Mr. Sutton achieves this goal. The objective of Mr. Sutton's method is to calculate a reasonable monthly toll revenue amount based on end-of-period customers and normal usage and then to annualize that monthly amount by multiplying by 12. Toll revenues are a function of the number of customers, the usage per customer, and the applicable toll rates. Due to variations in customer usage and unequal days per month, it is unlikely that one month's revenue without adjustment such as December 1978, the end of test period, would be a representative month to annualize. Mr. Sutton provided

several tests supporting his position including an analysis eliminating the unequal days per month which tended to show that average monthly toll revenue annualized by Mr. Sutton was reasonable. He also used regression analysis to indicate that the pattern of toll revenues for the period July 1, 1978, through June 30, 1979, indicated uniform growth. In this Commission's opinion, if the monthly toll revenues for the period six months before and six months after the end of the test period are growing uniformly, then use of these revenue amounts should result in a reasonable level of toll revenues since the average of those amounts would be equivalent to a normal level of December 1978 toll revenue amount. Further, it is reasonable to assume that a regression analysis using actual test-period toll revenue amounts to calculate a normal December 1978 level of toll revenues would not result in an end-of-period amount of toll revenues materially different from that calculated by Mr. Sutton. This is true because both methodologies attempt to estimate a normal level of December 1978 toll revenues.

The Commission is aware that one argument against use of regression analysis is that one must assume that future events will occur as events in the past have or in other words that history will repeat itself. In this Commission's opinion that argument can likewise be used against an historical test year concept and is not of sufficient concern to reject Mr. Sutton's methodology. Therefore, the Commission finds that toll revenues of $522,461 are appropriate for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witness Williams and Public Staff witnesses Sutton and Aiken presented testimony concerning the appropriate level of operating revenues. Public Staff witness Sutton's testimony specifically concerned the methodology and procedures employed in the determination of the Company's end-of-period level of toll revenues for the test period. Company witness Rutter and Public Staff witness Aiken testified as to the appropriate level of operating revenues after accounting and pro forma adjustments. The following chart presents the amounts proposed by each witness:

Item	Company Witness Rutter	Public Staff Witness Aiken
Local Service	$ 726,059	$ 749,753
Toll service	466,819	522,461
Miscellaneous	39,004	48,502
Uncollectibles	(2,574)	(2,644)
Total	$1,229,308	$1,318,072

The difference of $23,694 ($749,753 - $726,059) between the levels of local service revenues proposed by each witness arises from the witnesses having used different

methods in computing the end-of-period level of local service revenues.

Company witness Williams computed the end-of-period level of local service revenues by use of an annualization factor of .0025 which was based on the growth in the main stations during the test period.

Public Staff witness Aiken computed the test year level of local service revenues by taking the actual revenues recorded in the Local Service Revenue accounts for the period July 1, 1978, to December 31, 1978, and adding to it the actual local service revenues recorded for the period January 1, 1979, to June 30, 1979. A monthly average was taken of the results and was then multiplied by 12.

The Commission is of the opinion that even though the methodology used by Public Staff witness Aiken to calculate end-of-period local service revenues is exactly the same as that used by Public Staff witness Sutton to calculate end-of-period toll service revenues, it is inappropriate for use in this case. The reason for this decision is that Mr. Aiken failed to perform any test to indicate that local service revenues during the period July 1, 1978, through June 30, 1979, exhibited a uniform growth pattern. In the absence of uniform growth, the methodology used by both Mr. Sutton and Mr. Aiken is invalid. Further, local service revenues, unlike toll service revenues, are a function of the number of customers and the applicable local rates only and do not vary with customer usage. Consequently, annualization of the revenues for the last month of the test year generally results in a reasonable level of local service revenue which one can anticipate the Company to experience in the future based on the end-of-period level of customers and investment. The Public Staff also failed to show that the methodology it employed was superior to annualization of revenues for the last month of the test period. The Commission therefore finds that local service revenues of $738,144 ($61,512 x 12) are appropriate for use in this proceeding. Further, the rate decrease ordered pursuant to Docket No. P-100, Sub 45, was in effect during December 1978; therefore, no further adjustment is required.

The next area of difference concerns toll service revenues. The Commission in Evidence and Conclusions for Finding of Fact No. 10 discussed in detail toll service revenues. Accordingly, the Commission concludes that the end-of-period level of toll revenue is $522,461.

The evidence shows that the witnesses are not in agreement with regard to the proper level of miscellaneous revenues. The difference of $9,498 results from adjustments made by Public Staff witness Aiken which are summarized below:

		Amount
1.	Increase in miscellaneous revenues as a result of internal audit of Southern Bell	$5,810
2.	Adjustment to bring miscellaneous revenues to end-of-period level	2,788
3.	Adjustment to include rent on antique shop	900
		$9,498

Items 1 and 3 above were not disputed by the Company; therefore, the Commission concludes that the adjustments are proper. These amounts represent revenues which were not recorded on the Company's books during the test period but are applicable to the test period.

The main area of disagreement concerns the appropriate end-of-period methodology. The Company used a main station annualization factor of .0025 to calculate end-of-period miscellaneous revenues. Alternatively, the Public Staff annualized miscellaneous revenues using revenues for the period July 1, 1978, through June 30, 1979.

The Commission finds that the end-of-period methodology employed by the Public Staff to calculate miscellaneous revenues is inappropriate to use in this case. The reasons for this decision are essentially the same as those made with regard to local service revenues. The Public Staff failed to show that monthly miscellaneous revenues for the period July 1978 through June 1979 have a uniform growth pattern.

As discussed previously, uniform growth is necessary to establish the validity of the Public Staff's methodology. A review of miscellaneous revenue indicates that the test period monthly amounts fluctuate widely; consequently, annualization of one particular month appears, without further information, to be inappropriate. In the Commission's opinion use of an annualization factor of 5.93% as discussed in Evidence and Conclusions for Finding of Fact No. 12 is an appropriate end-of-period methodology in regard to miscellaneous revenues. The Commission finds that the proper amount of miscellaneous revenues before annualization is $45,714. ($39,004 + $5,810 + $900)

Finally, the Commission concludes that uncollectibles revenues of $2,613 are reasonable.

Based on the foregoing discussion, the Commission finds that operating revenues of $1,303,706 consisting of local service revenues of $738,144, toll service revenues of $522,461, miscellaneous revenues of $45,714 and uncollectibles of $2,613 are appropriate for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Company witness Williams and Public Staff witness Aiken presented testimony and exhibits concerning the level of operating revenue deductions which they believed should be used for the purpose of fixing the Applicant's rates in this proceeding.

In the following chart the amounts presented by each witness are set forth:

Item	Company Witness Williams	Public Staff Witness Aiken
1. Maintenance	$ 305,824	$ 305,077
2. Traffic	7,938	4,162
3. Commercial	19,513	19,513
4. General office salaries and expenses	156,267	155,489
5. Other operating expenses	162,547	143,852
6. Subtotal	652,089	628,093
7. Depreciation	259,381	250,510
8. Amortization	12,050	4,383
9. Annualization adjustment	464	5,364
10. Operating taxes other than income	136,773	139,230
11. Interest on customer deposits	-	300
12. State and Federal income taxes	8,956	67,425
13. Total	$1,069,713	$1,095,305

The differences between the amounts proposed by the witnesses for items 1 through 5 are due to certain adjustments proposed by Mr. Aiken which are listed below:

Item	Amount
1. Adjustment to salaries and wages	$ 220
2. Adjustment to directory assistance charges	(3,776)
3. Elimination of membership fees and dues	(479)
4. Elimination of American Express charges	(99)
5. Elimination of one year's membership to Burlington-Alamance Chamber of Commerce	(200)
6. Audit fees	(5,200)
7. Rate case expenses	3,000
8. Employees insurance	4,149
9. Pension contributions	(680)
10. Life insurance premiums on officers	(24,340)
11. Insurance on paintings	(374)
12. Vehicles and other work equipment	(1,179)
13. Reclassification of current rate case expenses	7,667
14. Southern Bell toll billing charges	(2,705)
Total	$(23,996)

Items 2, 4, 5, 8, 9, 12, 13, and 14 listed above were uncontested by the Company; therefore, the Commission concludes these adjustments are appropriate.

The Company and Public Staff were in disagreement as to the proper amount of the adjustment to wages and salaries, Item 1 shown above. The disagreement was related to the appropriate overtime factor. Mr. Aiken testified that his adjustment was based on an overtime factor of .015. During cross-examination Mr. Aiken was questioned as to whether the overtime rate should be .035 instead of .015. The Commission concludes that the proper overtime ratio is .035 and, consequently, that the proper adjustment for wages and salaries is $6,836, an amount of $6,616 greater than the amount included by Mr. Aiken.

The next area of disagreement is Mr. Aiken's adjustment to eliminate membership fees and dues. The Public Staff eliminated membership fees and dues from Mebane Home's operating expenses on the basis that such fees and dues were not properly chargeable to operating expenses nor to the customers of the Company. The Commission finds that membership fees and dues of $479 are proper expenses and should be included in the cost of providing service. The basis for this decision is that membership in civic organizations is, in the Commission's opinion, in the public interest and does benefit the ratepayers of Mebane Home Telephone Company.

Audit fees, Item 6 above were the next area of disagreement. Public Staff witness Aiken eliminated audit fees of $5,200 from the test period on the basis that these audit fees were related to 1977 and that the charges involved personal financial services for Mebane Home's stockholders which are not related to providing telephone service.

Alternatively, the Company's position was that the audit fees were related to submission of the Company's proposal to the Commission requesting permission for controlling interest in the Company to be acquired and pledged. The Company contended that the transaction would in fact benefit Mebane Home's customers.

The Commission concludes that audit fees of $5,200 relate to a period prior to the test period and involve charges for personal financial services for Mebane Home's stockholders which are not related to providing telephone service and do not benefit the ratepayers of the Company.

Rate case expenses, Item 7 above, were the next area of disagreement. Although Public staff witness Aiken included rate case expenses of $10,667 in test period operating expenses, the Public Staff during the hearing process indicated the desire to eliminate all rate case expenses on the basis that a rate reduction was appropriate for Mebane Home according to the Public Staff's computations.

As the Commission has found that the Company should be allowed an increase, the Public Staff's argument becomes

invalid. The Commission finds that rate case expenses of $10,667 should be included in operating expenses.

The witnesses were in opposition as to life insurance premiums on the officers, Item 10 shown above. Public Staff witness Aiken eliminated all premiums paid for insurance on the officers of the Company on the basis that any proceeds from the policy would result in benefits accruing to the stockholders rather than the ratepayers of Mebane Home and, consequently, the stockholders of the Company should pay the premiums.

The Company's position was that the life insurance was purchased to protect the Company from additional expenses which would be incurred in the event of death of a key employee and that such insurance premiums are a proper operating expense.

The Commission concludes that life insurance premiums on the President and Secretary of the Company amounting to $24,340 should be excluded from test-period operating expenses. The basis for this decision is that proceeds from life insurance policies would generally be nonoperating or "below-the-line" income items and as such would generally not be considered in the setting of rates for a Company. Thus, the stockholders of Mebane Home would as a rule derive the benefit from such life insurance policies and should be required to pay the related premiums. The Commission does, however, consider premiums on officers under group life insurance plans which are available to other employees of the Company to be a reasonable cost of providing service when such officer's coverage is equivalent to that of other employees.

Insurance on paintings owned by the Company President was the final item of controversy shown above. The Commission finds that such insurance is not a proper operating expense and should not be included in the cost of providing service.

Additional areas of controversy were raised during the course of the hearing and are listed below:

1.	Maintenance on the central office equipment	$35,872
2.	Elimination of directors' fees	(3,000)
		$32,872

Evidence was presented which indicated that Mebane Home has had an ongoing service problem with its central office in periods of severe thunderstorms. Stromberg-Carlson, the seller of Mebane Home's central office equipment, has until recently considered the equipment to be under warranty and the Company has not been charged for repairs necessary due to the lightning problems. However, Stromberg-Carlson as of April 1979 considers the equipment to be out of warranty and

all repairs will be charged to the Company in the future. In discontinuing the warranty, Stromberg-Carlson has asserted that the central office is functioning properly and that all problems have been solved. Alternatively, Mebane Home's position is that the problems have not been solved. Testimony presented by the Company indicated that since no major lightning storms had occurred since April 1979 during a period of high customer usage, the validity of Stromberg-Carlson's claims had not been tested.

Based on the evidence presented, it is the Commission's opinion that some level of maintenance expense related to central office repairs due to lightning should be included in test-period operating expenses. The Commission finds a reasonable amount of such maintenance expense to be $20,872. In arriving at this decision, the Commission concludes that the amount of maintenance expense proposed by the Company is greater than can reasonably be anticipated in the future since the amount was related to a period during which Stromberg-Carlson acknowledged maintenance problems and the equipment was under warranty.

Company witness Hupman testified that Mebane Home now has three members on its Board of Directors and that the monthly compensation for each member is $125 per month. The annual compensation for the present Board of Directors consisting of three members would be $4,500 or $3,000 less than the actual test-period expense. Therefore, the Commission concludes that the test-period operating expense should be reduced by $3,000 to reflect the appropriate level of director's fees.

In summary, the Commission concludes that operating expenses of $653,060 ($628,093 + $6,616 + $479 + $20,872 - $3,000) consisting of maintenance expenses of $331,103, traffic expenses of $4,162, commercial expenses of $19,513, general expenses of $155,968 and other operating expenses of $142,314 are appropriate for use herein.

The next area of difference in the test year level of operating revenue deductions concerns depreciation expense. Company witness Williams testified that the appropriate level of depreciation expense was $259,381, while Public Staff witness Aiken testified that the appropriate level was $250,510. The difference $8,871 results from an adjustment made by Mr. Aiken to eliminate $1,845 of depreciation expense duplicated on a PBX at Dow Badische and the exclusion of $7,026 from depreciation expense recorded for the test year on telephone plant in service eliminated as excess plant margin. Under Evidence and Conclusions for Finding of Fact No. 5, the Commission concludes that the Company had excess plant, having an associated annual depreciation expense of $3,513; therefore, the Commission finds that Mr. Aiken's adjustment to exclude $7,026 from depreciation expense should be decreased by $3,513. Also the Commission accepts Mr. Aiken's adjustment of $1,845 and

concludes that the appropriate level of depreciation expense for the test year is $254,023.

The next area of difference was related to the test year level of operating amortization expense. Mr. Williams testified that the proper amount was $12,050 while Public Staff witness Aiken testified that the appropriate level was $4,383. The difference of $7,667 results from an adjustment made by Public Staff witness Aiken to reclassify the amortization of rate case expenses to other operating expenses, which has no effect on net income. The Commission has previously agreed that Mr. Aiken's adjustment increasing other operating expenses by $7,667 is appropriate and correspondingly concludes that the proper test-period level of amortization expenses is $4,383.

Interest on customer deposits was another area of disagreement among the witnesses. The Company did not include interest on customer deposits in operating revenue deductions while the Public Staff included the actual test-period interest on customer deposits of $300. The Commission concludes that interest on customer deposits is a reasonable cost of providing service and that $300 is the appropriate test-period amount.

Another area of difference in the test year level of operating revenue deductions concerns operating taxes other than income. Company witness Williams testified that the appropriate level of operating taxes was $136,773, while Public Staff witness Aiken testified the appropriate level was $139,230, a difference of $2,457. The difference is found in gross receipt taxes and FICA taxes which are dependent upon the level of revenues and wages respectively. The Commission has previously found the proper levels of revenues and wages and salaries and correspondingly finds that related gross receipt taxes should be decreased by $912 from the amount proposed by witness Aiken and likewise FICA taxes should be increased by $406 from the level proposed by Mr. Aiken. The Commission concludes that the proper test-period amount of other operating taxes is $138,724.

The annualization adjustment was also a matter at issue between the witnesses. The methodology each employed has been previously discussed. One further related area concerns the annualization factor itself. Witness Williams used an annualization factor of .0025 which was based on main station growth during the test period. Mr. Aiken alternatively used an annualization factor of .0366 which is calculated by comparing the Public Staff's adjusted local service and miscellaneous revenues to the Company adjusted level of local service and miscellaneous revenues. During cross-examination of Public Staff witness Aiken, the Company suggested that toll service revenues should also be considered in calculating the appropriate annualization factor. The Commission is in agreement with the Company on this matter. However, due to the differences in the end-of-period methodology employed by the Commission as compared to

that proposed by the Public Staff, the Commission finds an annualization factor of 5.93% to be proper. This annualization factor is based on the ratio of local service and toll service revenues found fair by this Commission to the Company's proposed local and toll revenues before end-of-period adjustment. Using the annualization factor of 5.93% and the methodology employed by witness Aiken on his Exhibit I, Schedule 3-24, the Commission finds that an annualization amount of $8,321 is proper.

The last area of disagreement in operating revenue deductions among the witnesses concerns income taxes. The Commission concludes that the appropriate amount of income taxes based on the level of revenues and operating revenue deductions previously found proper is $43,662.

Based on the foregoing discussion, the Commission finds operating revenue deductions of $1,102,473 appropriate for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

Company witness Moul included deferred income taxes and the unamortized balance of the investment tax credits, including job development credits, as cost-free capital in developing the Company's capital structure, while Public Staff witness Aiken deducted these cost-free funds directly from the rate base.

The Revenue Act of 1971 provided three basic elective options with regard to the rate-making treatment to be accorded the job development credits. An election had to be made within 90 days after the enactment of the bill. If no option was selected, Option No. (1) was to apply. By making no election, Mebane Home Telephone Company, Inc., in effect selected Option No. (1) which provides:

> that the investment credit is not to be available to a company with respect to any of its public utility property if any part of the credit to which it would otherwise be entitled is flowed through to income, however, in this case the tax benefits derived from the credit may (if the regulatory commission so required) be used to reduce the rate base, provided that this reduction is restored over the useful life of the property.

The Commission is of the opinion that the deduction of cost-free capital from the rate base is the most equitable method of treating cost-free capital and has followed this practice in the more recent rate cases presented before this body by telephone and electric utilities. The Commission therefore concludes that cost-free capital consisting of deferred income taxes and unamortized investment tax credits, including the job development investment tax credits, should be deducted directly from the rate base for the purpose of setting rates in this proceeding.

The Commission finds however that the appropriate amounts to deduct from the rate base differ from those proposed by the Public Staff. In the Commission's opinion amounts related to the excess plant margin amounting to $8,782 of unamortized investment tax credit and $2,099 of accumulated deferred income taxes should be eliminated from the amounts deducted from original cost net investment. Correspondingly the proper amounts of unamortized investment tax credits and accumulated deferred income taxes are $138,495 and $269,260, respectively.

The Commission finds the capital structure found in Mayberry Exhibit 4 to be appropriate. This capital structure, which consists of 83.08% long-term debt and 16.92% common equity, excludes cost-free capital from the rate base in keeping with previous decisions of the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Evidence about the cost of capital and fair rate of return was presented by Company witness Moul and by Public Staff witness Mayberry. Both witnesses testified that the embedded cost of debt to Mebane Home is 3.76%. Since there was no disagreement between the witnesses on this matter, the Commission finds the appropriate cost rate on long-term debt to be 3.76%.

As to the cost of common equity, Mr. Moul recommended a rate of return of 18% to 20% while witness Mayberry testified that a return of 15.6% to 16.1% is appropriate. Mr. Moul presented an analysis of the cost of common equity to a group of comparative telephone companies and to AT&T. He placed primary emphasis on the earnings price ratio method which yields cost estimates ranging from 10.3% for Commonwealth Telephone Company to 13.6% for the five largest telephone holding companies taken as a group. Although he stated that the earnings price ratios will not reflect the full cost rate requirement for common equity since they are unadjusted for growth expectations, Mr. Moul presented no explicit analysis of the degree to which growth expectations would affect these estimates. Mr. Moul also presented the results of a DCF analysis for AT&T which indicates a cost of common equity of 12.7%, unadjusted for market pressure and the issuance and selling expense associated with additional sales of common stock.

Mr. Mayberry presented a DCF analysis for a comparative group of 13 telephone companies. He estimated the average cost of common equity to be 14.1%. The Commission notes that this estimate is somewhat above the cost of common equity determined by Mr. Moul for his sample of companies.

Therefore, the principal difference in the cost rates recommended for Mebane Home Telephone Company is in the estimated impact of Mebane Home's lower common equity ratio. Both witnesses testified that Mebane Home's lower common

equity ratio would cause the cost of common equity to be higher to Mebane Home than to their comparative companies. Mr. Moul testified that the lower common equity ratio would cause Mebane Home's cost of common equity to be higher than AT&T, 3 1/2% higher than the five largest telephone holding companies, 5% higher than Rochester Telephone corporation and Lincoln Telephone & Telegraph Company, and 3 1/2% higher than Commonwealth Telephone Company.

To arrive at these estimates Mr. Moul applied the pretax overall rate of return earned by the Standard & Poor's 400 Industrials to the capital structure of several telephone companies. From this he determined what rate of return on common equity the S&P companies would have earned if they had the same capital structure as the telephone companies. Public Staff witness Mayberry pointed out that the 49 S&P companies with common equity ratios between 40 and 55 in 1978 earned an average rate of return on common equity of 10.4%. This is substantially below the lowest hypothetical rate of return of 18.5% found by Mr. Moul for the United States Independent Telephone Association reporting companies.

Public Staff witness Mayberry recommended a risk premium of 1.5% to 2.0%. On cross-examination he stated that he based this conclusion, in part, on the results of a regression analysis which showed that a one percentage point decrease in common equity ratio would increase the cost of common equity by .05 percentage points. Witness Mayberry also pointed out that the stockholders of a company such as Mebane Home benefit from the availability of low cost REA debt financing since they can rely on this method of financing for additional capital rather than selling more common stock, which would dilute their control of the firm. This has the effect of reducing the current stockholder's required rate of return.

After considering all the evidence presented by the witnesses on this issue, the Commission finds that the cost of common equity to Mebane Home Telephone Company is 16.50%. The Commission further concludes that setting rates to give the Company the opportunity to earn a return of 5.92% on its rate base as computed earlier (which includes a return allowance of 16.50% for the common equity component) will give the Company the opportunity to meet its obligations to both investor and ratepayer while balancing the interest of both and is therefore a fair and reasonable rate of return as contemplated under G.S. 62-133(b)(4).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Based upon the Commission's previous findings and conclusions, the Commission concludes that Mebane Home's present rates and charges should be increased by $36,647 in order to allow the Company a reasonable opportunity to achieve the rates of return previously determined to be just and reasonable.

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve based upon the increases approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
MEBANE HOME TELEPHONE COMPANY, INC.
STATEMENT OF RETURN
Twelve Months Ended December 31, 1978

	Present Rates	Decrease Approved	After Approved Decrease
Operating Revenues			
Local service	$ 738,144	$36,647	$ 774,791
Toll	522,461	-	522,461
Miscellaneous	45,714	-	45,714
Uncollectibles	(2,613)	(77)	(2,690)
Total operating revenues	1,303,706	36,570	1,340,276
Operating Revenue Deductions			
Maintenance	331,103	-	331,103
Traffic	4,162	-	4,162
Commercial	19,513	-	19,513
General office salaries and expenses	155,968	-	155,968
Other operating expenses	142,314	-	142,314
Depreciation	254,023	-	254,023
Amortization	4,383	-	4,383
Interest on customer deposits	300	-	300
Operating taxes other than income	138,724	2,194	140,918
Annualization adjustment	8,321	-	8,321
State income taxes	7,961	2,063	10,024
Federal income taxes	35,701	14,864	50,565
Total operating revenue deductions	1,102,473	19,121	1,121,594
Net Operating Income for Return	$ 201,233	$17,449	$ 218,682

Investment in Telephone Plant			
Telephone plant in service	$5,585,466	-	$5,585,466
Less accumulated depreciation	1,630,876	-	1,630,876
Net investment in telephone plant in service	3,954,590	-	3,954,590
Investment in Rural Telephone Bank Class B Stock	118,500	-	118,500
Allowance for Working Capital			
Cash	$ 55,731	-	$ 55,731
Materials and supplies	26,095	-	26,095
Average prepayments	8,422	-	8,422
Less: Average tax accruals	(47,213)	-	(47,213)
Customer deposits	(11,677)	-	(11,677)
Total allowance for working capital	31,358	-	31,358
Cost-Free Capital			
Accumulated deferred income tax	(269,260)	-	(269,260)
Unamortized investment tax credit - pre-1971 and 1971 Act	(138,495)	-	(138,495)
Total cost-free capital	(407,755)	-	(407,755)
Net original cost rate base	$3,696,693	$ -	$3,696,693
Fair value rate base	$3,696,693	$ -	$3,696,693
Rate of return on fair value rate base	5.44%		5.92%

SCHEDULE II
MEBANE HOME TELEPHONE COMPANY, INC.
STATEMENT OF RETURN
Twelve Months Ended December 31, 1978

	Fair Value Rate Base	Ratio %	Embedded Cost on Return on Common Equity %	Net Operating Income
Present Rates				
Long-term debt	$3,071,213	83.08	3.76	$115,478
Common equity	625,580	16.92	13.71	85,755
Total	$3,696,693	100.00	-	$201,233
Approved Rates				
Long-term debt	$3,071,213	83.08	3.76	$115,478
Common equity	625,480	16.92	16.50	103,204
Total	$3,696,693	100.00	-	$218,682

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Company witness Hupman testified regarding the Applicant's proposed rate structure. His proposed rates include changes in service charges, auxiliary equipment, key telephone equipment, additional and foreign listings, nonpublished and nonlisted services, and all local basic services.

Mr. Hupman, in his prefiled testimony, proposed to modify his present service charge tariff by adding a line work charge and by replacing the equipment work and jack charge with a basic installation charge. On August 15, 1979, however, he submitted revisions to his testimony to maintain the equipment work and jack charge descriptions.

He testified that the proposed auxiliary equipment rates were in line with what most other North Carolina telephone companies are charging. Additionally, he commented that many of the charges had not been adjusted in many years. He stated the key station common equipment and station equipment charges represent a new format that is much easier to understand and apply.

He remarked that the key equipment rates were predicated on additional investment, greater usage and larger benefits by the customers.

The Commission concludes that the proposals made by Mr. Hupman in regard to rate design are reasonable and appropriate for use in this proceeding. However, due to the difference between the increase in revenues proposed by the Company and the increase in revenues approved by the Commission, changes are necessary in the rates proposed by Mr. Hupman.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

In response to the Commission's Rule R1-17, Mebane Home filed information relating to the effect of the proposed rate increase on the Wage and Price Guidelines. Williams Exhibit III, Page 1 of 2, indicates that Mebane Home is unable to comply with the price deceleration standard due to uncontrollable price increases in goods and services it buys. However, the proposed rate increase of Mebane Home does comply with the alternative standard, the profit margin limitation. According to the Company's calculations the allowable program year profit margin of 24.97% would allow Mebane Home to increase rates so as to earn $290,720 in gross profits before income taxes and interest expense. The Commission finds that since the gross profit margin under the rates approved in this proceeding is $279,271 Mebane Home is in compliance with the profit margin limitation standard of the Wage and Price Guidelines.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Mebane Home Telephone Company, be, and hereby is, authorized to adjust its telephone rates and charges as set forth above to produce, based upon stations and operations as of December 31, 1978, an increase in annual gross revenues of $36,647.

2. That the Applicant is hereby called upon to propose specific rates, charges, and regulations reflecting the increase in operating revenues ordered herein. Such proposed rates shall be designed to produce an annual level of revenues no greater than $1,340,276, based upon the test year level of operations as reflected herein.

3. That upon the Company's filing its proposed rates, charges, and regulations the Public Staff shall review such proposals and file comments with the Commission within five days.

4. That the rates, charges, and regulations necessary to increase annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs filed pursuant to Paragraph 2 above.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. P-35, SUB 71

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Mebane Home Telephone Company for Adjustments and Changes in Its Rates and Charges Applicable to Intrastate Telephone Service	ORDER APPROVING RATES AND CHARGES

BY THE COMMISSION: On November 26, 1979, the Commission issued an Order Establishing the Revenue Requirements for Mebane Home Telephone Company (Mebane Home or Company) wherein the Company was allowed to increase its rates and charges to produce additional revenues of approximately $36,647 annually. The Company was called upon to file specific rates, charges, and regulations necessary to implement the allowed rate increase. Upon the Company's filing of proposed rates, charges, and regulations, the Public Staff was instructed to review and comment on such proposals.

Pursuant to the Order Establishing Revenue Requirements, Mebane Home proposed tariffs which included increases in basic residential and business rates, in guarantee pay station rates, in key system rates, in extension bells and gongs, and in nonrecurring charges.

On December 4, 1979, following a review of the Company's proposed rates, the Public Staff filed alternate rate schedules. The rate schedules filed by the Public Staff included increases in rates for basic residential and business service, guarantee pay stations, extension bells and gongs, key systems, business and residential extension rates, directory listings, and nonrecurring charges.

Based on the evidence presented by both the Company and the Public Staff regarding this matter and the entire record in this proceeding, the Commission finds that the rates filed by Mebane Home as set forth in Appendix A are reasonable and should be implemented.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates, charges, and regulations filed by Mebane Home on December 5, 1979, which will produce, based upon stations in service on December 31, 1978, a net increase in gross annual revenues of approximately $36,647 be, and hereby are, approved to be charged and implemented by the Applicant as set forth in Appendix A.

The recurring rates and charges will become effective on all service rendered on and after the date of this Order. All other rates, charges, and regulations not herein adjusted remain in full force and effect.

2. That Mebane Home shall file the necessary revised tariffs reflecting the changes in rates within 10 days from the date of this Order.

3. That Mebane Home shall notify all customers of these rate increases by inserting the Notice in Appendix B, attached hereto, in all bills rendered on or after the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of December, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
MEBANE HOME TELEPHONE COMPANY

LOCAL EXCHANGE SERVICE RATES

Service	Residence	Business
One-party	$9.15	$23.00

OTHER LOCAL SERVICE

Key trunk	1.25 times the business one-party rate
PBX trunk	2.00 times the business one-party rate
Guarantee pay stations	1.50 times the business one-party rate

SERVICE CHARGES

Residence Line work	$7.50
Business Line work	$9.50

EXTENSION BELLS AND GONGS

Extension bells	$ .75
Extension gongs	$1.00
Bell/chime combination	$1.00

KEY SYSTEMS

Approved as recommended by Mebane Home Telephone Company in its proposed rates and charges filed December 5, 1979.

APPENDIX B
MEBANE HOME TELEPHONE COMPANY

On April 23, 1979, Mebane Home Telephone Company filed an application with the North Carolina Utilities Commission requesting an increase in its rates and charges to provide additional annual revenues of approximately $129,000. Following hearings in Mebane, North Carolina, on September 25, 1979, and in Raleigh, North Carolina, on September 26, 1979, the Commission has approved increases in Mebane Home's

rates that will result in an annual increase in revenues of $36,647.

The basic local rates proposed by Mebane Home Telephone Company and those approved by the Commission are as follows:

Types of Service	Present Rates	Rates Requested by the Company	Rates Approved by the Commission
Residential			
One-Party	$ 8.65	$10.40	$ 9.15
Business			
One-Party	21.65	26.00	23.00
Other			
Key trunk	27.00	32.50	28.75
PBX trunk	43.30	52.00	46.00
Guarantee pay stations	32.50	39.00	34.50

The increased rates were approved by the Commission to become effective on all billings rendered on and after the date of the issuance of the Commission's Order approving rates and charges filed by the Company.

DOCKET NO. P-60, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application of Service Telephone Company)
and Telephone and Data Systems, Inc., to) ORDER
Permit the Transfer of All of the Outstanding) PERMITTING
Shares of Stock in Service Telephone Company) TRANSFER
to Telephone and Data Systems, Inc.)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 14, 1979, at 1:00 p.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Robert K. Koger and John W. Winters

APPEARANCES:

For the Transferor and Transferee:

John L. Jernigan and Raymond H. Goodmon III, Attorneys at Law, Suite 500, First Union Bank Building, Raleigh, North Carolina

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: Service Telephone Company (Service) and Telephone and Data Systems, Inc. (TDS), filed a Joint Petition with this Commission on April 13, 1979, seeking permission to transfer all of the authorized and outstanding shares of the capital stock (2,149) of Service to TDS in exchange for 3,750 shares of TDS preferred stock having no par value. Upon consummation of the stock exchange agreement described above, TDS would be the sole owner of Service.

In support of the request contained therein, the Joint Petition contains the following information:

1. That Service is duly organized and existing under the laws of the State of North Carolina with its principal office and place of business in Fair Bluff, North Carolina, where it owns and operates a telephone system serving approximately 1,200 telephones.

2. That TDS is an Iowa Corporation with its corporate headquarters in Chicago, Illinois, which is engaged in the business of acquiring and operating as a holding company controlling interests in telephone companies.

3. That Service and TDS seek approval of TDS's acquiring all the shares of Service according to the terms of the agreement filed by the Petitioners on April 13, 1979.

4. That Service is a small company in an area that is now developing and expanding and that TDS will be in a better position than Service to provide the additional service indicated by the anticipated growth in the area.

On May 2, 1979, the Commission issued an Order assigning the matter for hearing on Thursday, June 14, 1979, and requiring that Petitioners publish notice of the proposed transfer.

The Public Staff on May 11, 1979, filed Notice of Intervention in the case. This Intervention is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations.

The public hearing was held at the time and place specified in the Commission's Order. Representatives of both the Transferor and Transferee were present and represented by counsel. The Public Staff was present and represented by counsel.

Mrs. Lucille K. Cutrell, Vice President of Service Telephone Company, testified for the Transferor. Russell D. Thorell, Vice President-Finance of TDS, and Joseph Hicks, Acting Regional Manager, Southeast Region of TDS, testified for TDS, Inc.

Having considered the evidence presented at the hearing, the record in this proceeding as a whole, and the Commission's relevant official files, of which judicial notice is hereby taken, the Commission makes the following

FINDINGS OF FACT

1. That the Transferor, Service Telephone Company, is a corporation duly organized under the laws of the State of North Carolina, and is the owner of a telephone system serving approximately 1,200 telephones in and around Fair Bluff covering a total of 57 square miles, of which 45 square miles are in Columbus County and 12 square miles are in Robeson County.

2. That the Transferee, Telephone and Data Systems, Inc. (TDS), is a corporation 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 45 operating subsidiaries in Wisconsin, Indiana, Minnesota, Mississippi, New Hampshire, Ohio, Oregon, Pennsylvania, Maine, Montana, New York, North Carolina, Washington, Alabama, Michigan, Idaho, Virginia, South Carolina, and Vermont and through a telephone service and supply company and an engineering service company. The acquisition of Service will be the second acquisition for TDS in North Carolina, the first being in Barnardsville, North Carolina, where TDS owns and operates the telephone exchange.

3. That the Transferee, by this Petition, seeks approval of an agreement by and between the Transferor and the Transferee whereby all the shareholders of the Transferor will exchange 2,149 shares of stock for 3,750 special no par value preferred stock to be issued by the Transferee according to an Agreement and plan of reorganization filed with the Commission for Approval.

4. That the stockholders of Service Telephone Company received four offers to buy their stock as follows: (a) TDS, Inc., offered to purchase Service Telephone at a price of approximately $375,000 by way of a stock transfer, (b) Star Telephone Membership Corporation offered to purchase Service Telephone at a cash price of $375,000; (c) Horry Telephone Cooperative, Inc., offered to purchase Service Telephone Company at a cash price of $300,000; and (d) United TeleCommunications, Inc., offered to purchase Service Telephone at a cash price of $200,000.

5. Service serves approximately 1,200 stations in and around the Fair Bluff community. The Fair Bluff exchange provides one-party service to all of its stations. There are five full-time employees of Service. Fair Bluff is a thriving rural community located in Columbus County, North Carolina, which provides consumer services, products, and supplies to the surrounding rural area. The residents of Fair Bluff are primarily employed in local agriculture and light industry. The most common crops grown in the Fair Bluff exchange area are tobacco, corn, soy beans, and potatoes while there is also located in the exchange area a manufacturer of ladies' and children's sports wear, a manufacturer of aluminum windows and doors and a manufacturer of farm equipment.

6. At the present time there are two shareholders of Service, Jonathan L. Cutrell and his wife Lucille K. Cutrell. Mr. Cutrell owns 2,140 shares and Mrs. Cutrell owns nine shares of Service. Mr. Cutrell is in ill health and wishes to retire from the business of telephony.

7. TDS in 1978 had operating revenues of $29,510,126; its net operating income was $6,643,983. The consolidated balance sheet of TDS and its operating subsidiaries as of December 31, 1978, lists total assets of $133,776,087. As of December 31, 1978, there were 45 telephone companies and 162,860 telephones in the TDS system.

8. The existing Service outside plant was built originally in 1958 with an addition in 1974. The building is approximately 20 feet across the front and 52 feet deep. An 11 feet 8 inch by 19 feet 6 inch building addition was attached to the side at the time the central office equipment room was expanded. This building is in good condition. The building is located on a lot approximately 50 feet by 165 feet. The Telephone Company also owns the adjacent lots on both sides of the present facility. The central office equipment consists of Stromberg Carlson step-by-step terminal per station equipment. This equipment was installed originally in 1958 with a major addition in 1975. This central office equipment is presently wired and equipped with 1,000 lines, 900 regular terminals and 100 trunk hunting terminals and automatic number identification. 9 0+ trunks, 11 CMA trunks, 19 incoming toll trunks, 1 pay station trunk, 12 outgoing EAS trunks to Chadbourn, 13 incoming EAS trunks from Chadbourn, and 7 two-way EAS trunks to Floyds, South Carolina, are presently equipped in this office.

The DC power board capacity is 200 amps with a main fuse capacity of 150 amps. The batteries were manufactured by C & D with a rating of 840 ampere hours. These batteries were originally installed in 1975. The ringing is decimonic and bridged. This central office equipment is in good condition and provides a very good level of service.

The outside plant presently in service consists of both aerial and buried cable. Basically, the aerial cable was installed at the time the exchange was converted to dial. The majority of the buried cable was installed during 1974 and 1975 at the time this exchange was upgraded to single party service. H88 loading is utilized throughout the exchange area. The outside plant is in excellent condition.

9. It was the opinion of all of the witnesses for the Petitioners that the telephone plant presently in use by Service is providing a high level of service and that there is no need for significant capital expenditures on the Service exchange in the next five years.

10. TDS has agreed to enter into an agreement with Lucille K. Cutrell, a shareholder and officer of Service, whereby Mrs. Cutrell is to provide management services, as local manager of the exchange, to Service on a daily basis. The executed employment contract with Mrs. Cutrell guarantees her the right to continued employment at Service Telephone for $13,200 per year; or after the first year, to be employed as a consultant to Service Telephone Company for 10 hours per month at a salary of $10,000 per year. TDS will retain the present employees of Service. In addition, Service will have access to a telephone service and supply company and an engineering service company, wholly owned subsidiaries of TDS, which will provide management engineering and purchasing services to Fair Bluff.

11. A witness for the Petitioners testified that there was a plan of organization for Service and TDS should the Agreement and Plan of Reorganization be consummated. The witness testified that Mrs. Cutrell, as local manager of Service, would report directly to the Southeastern Regional Office of TDS in Leesburg, Alabama, and that the Regional Office will assist Mrs. Cutrell in such business functions as short- and long-term planning, budgeting, financing, connecting company matters, commercial and marketing programs, work order procedures and review, construction supervision, inventory control, monthly accounting and financial statements, audit coordination, tax preparation, voucher payment and review, special studies, and help with day-to-day to day operations when requires and/or needed.

One of the witnesses for the Petitioners testified that should the Joint Petition be approved by the Commission TDS would initiate an immediate service improvement project to remove all aerial open wire and old style distribution wire plant, to install a stand-by generator at Service's central office in Fair Bluff in case of interruption of service because of commercial power failure, to construct a combination garage-warehouse on the lot adjacent to Service's central office in Fair Bluff and to place into service the radio dispatch system purchased by Service in 1978.

12. There has been no study as to the effect of the consummation of the Agreement and Plan of Reorganization by and between the Petitioners. A witness for the Petitioners testified, however, that TDS did not have knowledge of any special facts or circumstances that would require TDS to seek a change of the rate structure of Service should the Commission approve the Joint Petition. The present residential R-1 telephone rate of Service is $6.75 per month.

CONCLUSIONS

The Commission is of the opinion that the proposed Agreement and Plan of Reorganization by and between Service, the shareholders of Service and TDS and filed as an exhibit to the Joint Petition filed by Service and TDS 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.

Witness Cutrell testified that she and Mr. Cutrell were the only stockholders of Service Telephone Company and own 2,149 shares between themselves.

She indicated that she and Mr. Cutrell had entered into an agreement with Telephone and Data Systems to purchase their stock by trading 3750 shares of no par convertible preferred stock bearing 7 1/2% interest for the common stock of Service Telephone Company.

Mrs. Cutrell testified that she received three other bids concerning the possible sale of Service Telephone Company. She stated that Carolina Telephone Company made a bid of $200,000 in cash or stock - lowest of all the bids she received. Mrs. Cutrell stated that Star made a $375,000 cash offer which she felt was a goodly amount but that she would incur a large tax liability for her family since it was a cash offer. She also stated that Horry Telephone Cooperative of South Carolina made a $300,000 cash offer.

Testimony given at the Hearing indicates that Service presently provides a high level of service and that significant capital expenditures will not be needed in the immediate future. It is also apparent that TDS either alone or through its wholly owned subsidiaries will have the capacity to provide Service with its large resources in the areas of insurance, computer science, engineering, finance, and such other resources as would benefit the subscribers of Service. TDS is in a position to offer purchasing services that cannot be obtained by Service in its present operations. Furthermore, TDS has made contractual arrangements to employ local management. By this arrangement, it is believed that the needs of the Service customers can be promptly considered and met.

IT IS, THEREFORE, ORDERED as follows:

1. Service 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 Service and TDS requesting that the Commission authorize the acquisition of all the issued and outstanding shares of Service by TDS through the exchange of 3,750 shares of TDS no par value preferred stock is hereby allowed.

3. TDS and Service shall file, in duplicate, with this Commission, within a period of 30 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 Service shall file, in duplicate, with this Commission, all contracts for compensation for service between TDS, its subsidiaries or affiliates, and Service, and no such contract shall be valid or operative until such 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 August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. P-55, SUB 772

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tariff Filings by Southern Bell Telephone and Telegraph Company to Implement Rates for Facilities Furnished to Western Union Telegraph Company	) ORDER) APPROVING) TARIFF)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 18, 1979, at 9:30 a.m.

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners Ben E. Roney and John W. Winters

APPEARANCES:

For the Complainant: None

For the Respondent:

R. Frost Branon, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, P.O. Box 30188, Charlotte, North Carolina 28230

Thomas C. Cartwright, Legal Department, Southern Bell Telephone and Telegraph Company, 1245 Hurt Building, P.O. Box 2211, Atlanta, Georgia 30301

For the Using and Consuming Public:

Theodore, C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter came before the Commission through tariff filings by Southern Bell Telephone and Telegraph Company on August 29, 1978, seeking to implement rates and regulations applicable to facilities furnished to Western Union Telegraph Company for provision of Western Union's intrastate private line service.

On September 29, 1978, in response to a Public Staff Recommendation, the Commission ordered that the tariffs be suspended and that the matter be set for hearing. A Motion was filed on October 4, 1978, by Southern Bell requesting that the Commission Order be declared null and void. The Public Staff of the North Carolina Utilities Commission filed a Notice of Intervention on October 5, 1978.

Western Union filed a Petition to Intervene and filed in opposition to the Motion on October 16, 1978. Also, on October 16, 1978, Southern Bell filed a Motion for Relief Pending Hearing and Final Determination requesting the

Commission to allow the proposed tariff to become effective as of October 1, 1978, subject to refund upon hearing and final determination as to the justness and reasonableness of the tariff.

Hearings on this matter were initially scheduled for October 15, 1978, and were subsequently rescheduled for December 7, 1978. Western Union, on November 16, 1978, moved to postpone the hearings until after January 1, 1979, due to other workload assigned to counsel. By Order dated November 22, 1978, the Commission set the matter for hearing on January 18, 1979, and extended the time for prefiling testimony. The Commission ordered Southern Bell to prefile its testimony on or before December 29, 1978, and ordered Western Union and the Public Staff to prefile their testimony on or before January 11, 1979.

Southern Bell prefiled the testimony of W.W. Jordan on December 29, 1978. Neither Western Union nor the Public Staff prefiled testimony prior to the hearing date.

During the hearing, Southern Bell offered the testimony of W.W. Jordan. Mr. Jordan testified that the tariff in question was just and reasonable and that the basis for this justness and reasonableness is that the facilities provided to Western Union are the same type of facilities provided to private line customers in the State of North Carolina and, accordingly, the rates and charges that are charged to Western Union should be the same as the charges in the North Carolina Private Line Service Tariff. Mr. Jordan described the facilities which Western Union has in the State and the way in which those facilities fit into the private line tariff. Southern Bell has four or five different type channel services for Western Union. The facilities are similar to those provided the alarm companies and the voice grade type channels. Mr. Jordan testified that the telegraph grade channel services provided to Western Union are similar to those provided to telegraph grade customers for private line services in North Carolina and that there are a number of other customers that have similar services to those of Western Union.

Western Union did not make an appearance at the hearing and, as noted earlier, did not prefile any testimony in this matter.

The Public Staff of the North Carolina Utilities Commission was represented by counsel but did not prefile testimony or offer a witness during the hearing.

At the conclusion of Mr. Jordan's direct testimony and cross-examination, counsel for Southern Bell moved that the complaint or opposition filed by the Western Union Company be dismissed and that the Commission declare the rates which were filed by Southern Bell to be just and reasonable.

Based upon the testimony of W.W. Jordan, the fact that Western Union did not appear during the hearing and offer testimony in opposition to the justness and reasonableness of the tariffs, and the fact that the Public Staff did not oppose the tariffs, the Commission concludes that the Southern Bell Motion to dismiss the complaint or filing by Western Union in opposition to the tariffs should be dismissed and that the tariffs are just and reasonable and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Western Union complaint or filing in opposition to the tariffs is hereby dismissed.

2. That tariffs heretofore filed on August 29, 1978, by Southern Bell and allowed to become effective on October 1, 1978, subject to refund, are hereby approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-16, SUB 136

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Concord Telephone Company, Harrisburg -) ORDER
Concord Exchange Boundary Change)

HEARD IN: Cabarrus Bank & Trust Company, Community Room, Harrisburg, North Carolina, on October 3, 1979, at 10:00 a.m. and 2:00 p.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Leigh H. Hammond and A. Hartwell Campbell

APPEARANCES:

For Concord Telephone Company:

Robert C. Howison, Jr., Joyner & Howison, Attorneys at Law, Wachovia Bank Building, P.O. Box 109, Raleigh, North Carolina 27608

John R. Boger, Jr., Williams, Williford, Boger, Grady & Davis, Attorneys at Law, P.O. Box 810, Concord, North Carolina 28029

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, Public Staff, North Carolina Utilities Commission, 430 N. Salisbury Street, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter was initiated by a letter and a Petition from Steve Yarborough filed January 31, 1979. The Petition (Yarborough Petition) bore 120 signatures and was accompanied by letters expressing the desire of residents of the Lower Rocky River Road Concord exchange to receive telephone service from the Harrisburg exchange of Concord Telephone Company. The survey revealed that of the 120 signatures, 104 favored the change, 13 were against the change, and three were neutral. Thus, approximately 89% of the Concord exchange subscribers who signed the Petition desired to receive their services through the Harrisburg exchange.

Following receipt of the Yarborough Petition, Concord Telephone Company (Company) conducted a survey (Company survey) of Concord area residents that included and extended the area surveyed by Mr. Yarborough. This area shall be designated the Lower Rocky River Road Area or Area A as it is labeled on Concord Telephone Company Exhibit 2, Area A. The results of this Company survey indicated that of a total of 258 residents (including 23 nonsubscribers) surveyed, 58 (23%) did not respond and that of the 200 responding, 174 (87%) desired service through the Company's Harrisburg exchange as opposed to continuing to receive service from the Company's Concord exchange.

After consideration of the Yarborough Petition and the Company survey the Commission, being of the opinion that substantial support may exist to justify a boundary change between the Harrisburg and Concord exchanges, issued an Order on August 31, 1979, setting an investigation and scheduling a hearing. The Order made Concord Telephone Company a party to this investigation and ordered the Company to give Notice of the pending hearing to all subscribers in the Lower Rocky River Road Area.

On September 13, 1979, the Public Staff of the North Carolina Utilities Commission by and through its Executive Director filed a Notice of Intervention on behalf of the using and consuming public. This intervention was allowed.

The hearing was held as scheduled October 3, 1979, in the Community Room of the Cabarrus Bank & Trust Company in Harrisburg, North Carolina, and reflected widespread interest on the part of the public, with 75 to 100 people attending, of whom 23 presented testimony. Both the Concord Telephone Company and the Public Staff were represented by counsel and both presented witnesses.

Upon calling of the case for hearing and prior to receiving testimony from any of the witnesses, counsel for the Company and counsel for the Public Staff were allowed to make brief statements summarizing their respective positions.

THE COMPANY'S POSITION

The Concord Telephone Company opposes the Petition. In its opinion the basic reason that the Petitioners desire to change from the Concord exchange to the Harrisburg exchange is to receive Extended Area Service (EAS) to Charlotte. The Concord exchange does not have EAS to Charlotte.

The fundamental basis of the opposition of the Company is twofold. First, the Company interprets its legal duty as being the obligation to serve the geographic areas designated by exchange area boundaries where the Company has undertaken and committed itself to serve. In addition, the Company acknowledges the legal duty to render good and efficient telephone service to anyone who desires and can pay for service within the geographic area which the Company committed itself to serve. The Company asserts, however, that it has not undertaken to render service outside of the geographic exchange area in which the customer is physically located and interprets the United States Constitution and the Constitution of the State of North Carolina as prohibiting and denying power to the Commission to effectuate the requested boundary change. The Company contends that the Commission also lacks the statutory authority to order the change.

Second, it is the view of the Company, and it proposes to produce evidence tending to show, that the shifting of exchange area boundaries is uneconomical and wasteful. Concord Telephone Company contends that to grant the requested boundary change would be discriminatory and would create an economic hardship to the Company and customers.

THE PUBLIC STAFF'S POSITION

The Public Staff supports the Yarborough Petition. In its opinion the following statutes vest in the Commission the power to change the boundary areas: First, G.S. 62-32(a) which provides that "Under the rules herein prescribed and subject to the limitations hereinafter set forth, the Commission shall have general supervision over the rates charged and service rendered by all public utilities in this State." Second, G.S. 62-42. "Compelling efficient service, extensions of service and facilities, additions and improvements. - (a) Whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds: . . .(3) that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, of any two or more public utilities ought reasonably to be made . . .. The Commission shall

enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or affected within a reasonable time prescribed in the order."

Furthermore, the Public Staff contends (1) that since approximately 90% of the people surveyed responded in favor of changing the boundary line the public convenience and necessity dictate that this change be made; (2) that the Company's own economic studies showed that in this particular case, it would be more economical to change the boundary so that those customers presently served in the Concord exchange Area A would be served through the Harrisburg exchange; and (3) that as long as the Company recovers the costs incurred in changing this boundary no constitutional right has been violated.

THE PUBLIC WITNESSES

The Notice to the Public states that the Commission "has instituted an investigation and public hearing to consider the feasibility of transferring the Rocky River Road Area of Concord Telephone Company's Concord exchange to the Harrisburg exchange by means of a boundary change." However, it developed at the hearing that the Company on its own volition notified certain customers who reside outside the Lower Rocky River Road Area. As a result, some of those subscribers who reside in the Concord exchange areas designated on Company Exhibit 2 as Areas B and C (Appendix A) appeared at the hearing and were allowed to present petitions and to testify.

PETITIONERS' EVIDENCE

LOWER ROCKY RIVER ROAD (AREA A)

The residents of Area A, who testified in support of the Petition to change the boundary so that subscribers in the Lower Rocky River Road (Area A) serviced by the Concord exchange can receive services through the Harrisburg exchange, desire the change primarily because the Harrisburg exchange has EAS to Charlotte, whereas, the Concord exchange does not. Concord subscribers have toll-free calling with the exchanges of Harrisburg, Kannapolis, and Mount Pleasant. Harrisburg subscribers have toll-free calling with the exchanges of Concord, Mount Pleasant, and Charlotte, but not including Kannapolis.

The combined testimony of the Area A witnesses who favor the boundary change indicates that they are physically located closer to Harrisburg than they are to Concord. Many services available in Charlotte are not available to the same degree in Concord, thus subscribers incur extra expenses in calling their doctors, hospitals, schools, Duke Power Company, and other businesses in Charlotte. Some witnesses stated that for the most part people who live in

Area A work and shop in the Charlotte area and of necessity must call to and from Charlotte on numerous occasions.

Bill Plumber introduced into evidence Plumber Exhibit 1, plats showing 154 acres of land divided into 118 lots known as Freeman Estates and Squirrel Ridge located in Area A. Some homes are being built on these lots. Plumber stresses that 20 years ago people lived and worked in Cabarrus County. Presently, however, people live in Cabarrus County but frequently work, attend school, and conduct their business in Charlotte. Even though the subscribers' needs have changed, the telephone service remains the same.

Ken Collins, property manager of F.W. Huntley Construction Company, testified that he has built 13 houses and plans to build at least 150 more houses in the Lower Rocky River Area. He reported that prospective buyers desire service through the Harrisburg exchange.

James Funderburk testified that he lives in the Concord area but owns a business in Charlotte and that the Charlotte Police Department has informed him that they will not call him long distance if an emergency arises at his business at night.

Otis Ray Holmes stated that he works for the Highway Department out of Mount Pleasant and prefers to keep the toll-free service to Kannapolis. He indicated that anyone who has an emergency in Cabarrus County can call 782-2123 and that this would serve 80% of the population of Cabarrus County.

James C. Kaiser stated that he opposes the change because he believes he would then be paying for both the Concord and Harrisburg exchanges. He objects to having the yellow page number changed from Concord before the telephone book is published. In addition, he objects to the increased costs of having service provided from the Concord exchange and to losing toll-free service to and from Kannapolis.

Other Area A witnesses include: Joe Austin, Jim Carter, Larry Green, Robert Herlocker, M.K. Hill, Karen Lindsay, Bill Moss, Mary Newell, George Rider, Steve Yarborough, Clinton Alexander, Otis Ray Holmes, and James C. Kaiser, Jr.

AREAS B AND C

Witnesses in Areas B and C who received notice of the hearing by the Company testified that having a Harrisburg address and a Concord telephone number causes problems. A 1976 petition showing that 96% of Area B residents desired a boundary change was received as a pleading. Other petitions which had been assembled following receipt of the Company's letter informing the residents of Areas B and C that Area A residents requested a boundary change were also accepted by the presiding Commissioner as pleadings.

Agnes H. Boger testified that she would oppose a boundary change in her area because she prefers to be able to call Mount Pleasant, Harrisburg, and Kannapolis and would rather have this service than toll-free calling to Charlotte.

Other Area B and C witnesses include: Larry Bond, Shirley Harkey, Boyce Haymer, Dennis Jones, Ron Page, and Ruth Wherry.

COMPANY'S EVIDENCE

George H. Richmond, Jr., Vice President and General Plant Manager for Concord Telephone Company, has responsibility for the planning, operation, and maintenance of the Company's plant. He utilized Concord Telephone Company Exhibit No. 1 to illustrate the location of the Company's nine exchanges.

The witness described the Concord exchange Areas labeled A, B, and C on Company Exhibit 2 as follows: Area A would be on the southeastern boundary line, following it along easterly becoming the northeastern boundary designated as Area B, and continuing in a northwesterly direction to Area C. (Appendix A)

Mr. Richmond believes that most telephone companies generally render local exchange services and consider this method to be economical. He states that the principle upon which telephone service is rendered is based on having one or more switching centers in each exchange area. Concord's policy is to have one central office within each exchange area capable of serving the geographic area and its current and projected population. He defined a switching center as the place where the switching equipment is located within the exchange area and where all the subscriber loops within that exchange area are terminated for purposes of switching.

Mr. Richmond stated that boundaries are necessary for sheer control and economy. The Company needs to know the areas within each exchange in order to plan outside plant and to assure that central office switching equipment is sufficient. The witness asserts that whereas the Company has committed itself to render local telephone exchange service to persons within the geographic boundaries of each exchange, it has not committed itself to render local exchange service to persons not physically located within the service area of the particular boundary established by the Company.

The witness discussed Company Exhibit 2 in detail as follows: The initial Petitioners were located in Area A, but Areas A, B, and C are all in the Concord Telephone Company exchange area. The entire southwestern border of Area B borders on the Harrisburg exchange. No part of Area C borders on the Harrisburg exchange, but borders southwest on Southern Bell's Charlotte exchange. Area C does border on Area B and the witness contends that there is

no more justification for transferring the subscribers in Area A of the Concord exchange to the Harrisburg exchange than justification to transfer Area B to the Harrisburg exchange.

The witness testified that the Concord exchange has Extended Area Service (EAS) which is toll-free service to the Harrisburg, Kannapolis, and Mount Pleasant exchanges. On the other hand, the Harrisburg exchange has EAS to the Concord exchange, Mount Pleasant exchange, and with the Charlotte exchange of the Southern Bell Company.

Mr. Richmond in discussing long-range planning indicated that the primary goal of long-range planning is to develop a series of plans designed to be reviewed, implemented, and updated annually to meet the service requirements of the Company's inside and outside facilities. Secondary to development of the long-range plans is the Company's need to determine and establish a capital budget to support the plan. The changing of exchange area boundaries would adversely affect long-range planning and negate the Company's forecasting efforts. The result would be unanticipated capital requirements and ineffective scheduling of the construction programs.

Mr. Richmond stated that if Area A is transferred to the Harrisburg exchange this addition would require the immediate development of a plant to provide 400 additional lines and cable construction in the Harrisburg office.

Mr. Richmond indicated that the Company polled 258 residents of Area A, this included 235 customers and 23 others who were not customers but lived in the area or owned property there. Out of that 258, 235 were subscribers and a total of 200 responses were received. Of the total polled, 174 (67%) indicated an interest in transferring to the Harrisburg exchange. It should be noted, however, that of the 200 responses, 174 (87%) favored the transfer.

The witness indicated that if the Company's cost of service study reveals that implementation of the proposed boundary change would reduce the Company's operating expense over the next 15 years, the Company would still oppose the change.

The Company has made no economic study to determine whether EAS for Concord to Charlotte is economically justified. He stated that this would be an expensive and tedious thing because it would involve a similar study by Southern Bell.

Mr. Richmond said that unless legally ordered to change the boundary line between the Concord and Harrisburg exchanges the Company will not make the change. If the Commission ordered the boundary change it would take the Company a minimum of two years to effect the transfer.

Reginald Daron Hill, Concord Telephone Company Staff Engineer, is directly responsible for long-range planning. He stated that Area A is served by the Company's central office digital carrier system. He described the digital carrier system as an outside plant approach which concentrates customers into a small number of cable pairs thus enabling the Company to handle in excess of 200 customers on four to six cable pairs. The Company has equipment on order to serve Area B and plans to provide relief in Area C.

The load studies performed each year by the engineering department show the plant utilization for a particular geographic area for a particular cable feed. These load studies are reviewed on a yearly basis. Projects planned by the Company involving increases or decreases in service are adjusted following the yearly review of the Company's load studies.

Hill prepared a cost study to determine the revenue impact if the Area A subscribers are transferred to the Harrisburg exchange. He agreed that if the Area A subscribers are transferred to the Harrisburg exchange, employing present value techniques the revenue requirements would be approximately 6% less than the revenue requirements to continue to serve Area A from the Concord exchange.

The witness stated that Area A is unique because the digital plant there is reusable. Whereas in the case of Areas B and C the plant is not necessarily reusable. Hill acknowledged that he had not analyzed the validity of the Public Staff's study which relates to the loss of toll revenues. His calculations did not include reusability of the digital plant. In the study he included the cost required to operate and reinforce the digital carrier system to service Area A.

Hugh L. Gerringer, Communications Division of the Public Staff, stated the considerations that influenced the staff to support the proposed boundary change: 1. The Yarborough survey. 2. The Company's survey which included and extended the area surveyed by Mr. Yarborough. 3. The results of the broad gauge economic study performed by the Company, which compared the revenue requirements necessary to serve Area A from the Concord exchange versus providing service from the Harrisburg exchange.

The Company informed Area A subscribers that the following changes would occur if transfer to the Harrisburg exchange is implemented: 1. The subscribers would give up EAS to the Kannapolis exchange, but would receive EAS to the Charlotte exchange. 2. They would incur the following monthly rate increases: residence one-party, $1.15; residence two-party, 90¢; residence four-party, 40¢; business one-party, $4.30; business two-party, $4.00; business four-party, $2.75. The results of this survey indicated that out of a total of 258 residents, including 23 nonsubscribers, 58 or 23% did not

respond and that of the 200 responding, 174 or 87% desired service from the Harrisburg exchange as opposed to receiving service from the Concord exchange.

After review of the evidence here presented, which is summarized in the preceding sections of this opinion and consideration of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That Concord Telephone Company is a certificated public utility operating a telephone utility enterprise in the State of North Carolina and franchised in the counties of Stanly, Rowan, and Cabarrus.

2. That the Company established the following nine central office exchanges: Albermarle, Badin, China Grove, Concord, Harrisburg, Kannapolis, Mount Pleasant, New London, and Oakboro.

3. That petitioners reside in the Lower Rocky River Road Area of the Concord exchange which is clearly defined and labeled Area A on Company Exhibit 2. (Appendix A)

4. That petitioners serviced by the Concord exchange have toll-free calling with the exchanges of Harrisburg, Kannapolis, and Mount Pleasant, but not including Charlotte.

5. That subscribers serviced from the Harrisburg exchange have toll-free calling with the exchanges of Concord, Mount Pleasant, and Charlotte, but not including Kannapolis.

6. That petitioners desire to receive service through the Harrisburg exchange in order to have toll-free calling to and from Charlotte.

7. That 89% of the 120 Lower Rocky River Road Area subscribers who signed the Yarborough Petition prefer to receive services through the Harrisburg exchange.

8. That Concord Telephone Company conducted a survey of 258 Area A residents and received 200 responses of which 174 (87%) desired to receive service through the Harrisburg exchange.

9. That 16 of the 23 witnesses who presented testimony reside in Area A and 13 of those 16 witnesses favor the proposed change.

10. That a letter and official notice of the hearing was sent by the Company on its own volition to certain Concord exchange subscribers located near the Harrisburg exchange. These areas are labeled B and C on Company Exhibit 2. (Appendix A)

11. That the present rates for basic residence service are:

	One-Party	Two-Party	Four-Party
Concord	$8.20	$7.05	$5.60
Harrisburg	$9.35	$7.95	$6.00

12. That Concord exchange residents who transfer to the Harrisburg exchange will incur the following monthly rate increase:

	One-Party	Two-Party	Four-Party
Concord	$1.15	$ .90	$ .40

13. That a broad gauge economic study conducted by the Concord Telephone Company showed that the revenue requirements based on serving the area from Harrisburg would be approximately 6% less than the revenue requirements to serve the Area from the Concord exchange.

14. That there is a community of interest within the Area A residents of the Concord exchange and the public schools, health facilities, and businesses in Charlotte, North Carolina.

15. That the Commission has taken judicial notice of the Company's proposal to institute an optional plan for Extended Community Calling.

16. That the proposed change will be consistent with the public interest and policy declared in Chapter 62 of the General Statutes.

17. That there exists on this record competent, material, and substantial evidence that the public's interest would be better served by authorizing the transfer of the Concord exchange Area A subscribers to the Harrisburg exchange.

18. That the changing of this exchange boundary within Concord's service area shall not be interpreted as a general policy of this Commission.

CONCLUSIONS

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 that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy, and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(4) 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 and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

(5) To encourage and promote harmony between public utilities, their users and the environment;

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of Statewide development; and

(8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply.

To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies in this Chapter."

North Carolina General Statutes 62-110 which sets forth the standard to be applied in passing upon the utility franchise provides that:

"G.S. 62-110. 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."

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, 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 affected within a reasonable time prescribed in the order. This section shall not apply to terminal or terminal facilities of motor carriers of property."

The authority granted to the Commission to compel a utility to extend its lines as set forth in G.S. 62-42 is restricted to the area which such utility has undertaken to serve but it does not require that the body served must be physically located in that area. The evidence is clear and uncontroverted that Concord Telephone Company has undertaken to serve the territory involved.

IT IS, THEREFORE, ORDERED as follows:

1. That Concord Telephone Company is hereby ordered and directed to transfer to the Harrisburg exchange those Concord exchange subscribers designated on Company Exhibit 2 as Area A (Appendix A) and to move the exchange boundary between the Harrisburg and Concord exchanges accordingly.

2. That Concord Telephone Company shall file a schedule with the Commission within 30 days from the date of this Order showing the time schedule within which it can make the changes to transfer area A customers from the Concord exchange to the Harrisburg exchange, as described above.

3. That the petitions and evidence received in this docket from residents of Areas B and C on Company Exhibit 2 (Appendix A) are hereby transferred to a new Docket No. P-16, Sub 139, for consideration of the transfer of said Areas B and C customers of Concord Telephone Company from the Concord exchange to the Harrisburg exchange, and Concord Telephone Company is hereby directed to conduct such cost study as may be required to determine the rate required from said residents of Areas B and C to cover the additional cost of serving said customers as customers in Zone B and Zone C, respectively, of the Harrisburg exchange. Concord Telephone Company shall notify the Commission of the time it needs to file said cost study with the Commission within 30 days after the issuance of this Order, and the Commission will serve the proposed rates developed from said cost study on the residents of said Areas B and C and establish further proceedings for appropriate consideration of the question of transfer of said areas from the Concord exchange to the Harrisburg exchange. The Commission will further consider in such proceedings the possible alternative of the Company's proposal for an optional Extended Community Calling plan from the Concord exchange to the Charlotte exchange of Southern Bell Telephone and Telegraph Company.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of November, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: For Appendix A see the official Order in the Office of the Chief Clerk.

DOCKET NO. W-678

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of W. Reid Wright, d/b/a Forest Trail Utility, 6619 Glenwood Avenue, Raleigh, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Forest Trail Estates Subdivision, Wake County, North Carolina, and for Approval of Rates) FINAL ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 16, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ben E. Roney, Leigh H. Hammond, Sarah Lindsay Tate, Robert Fischbach, John W. Winters, and Edward B. Hipp

APPEARANCES:

For the Applicant:

W. Reid Wright, Appearing for Himself

For the Public Staff:

Joy R. Parks, Staff Attorney, Public Staff - North Carolina Utilities Commission
For: The Using and Consuming Public

BY THE COMMISSION: On January 5, 1979, Antoinette R. Wike, Hearing Examiner, issued a Recommended Order in this docket providing for the issuance of a Certificate of Public Convenience and Necessity to Forest Trail Utility upon final approval of that water system by the Division of Health Services and establishing a Schedule of Rates, included as Appendix A of that Order, to be filed with the Commission pursuant to G.S. 62-138.

On January 23, 1978, Reid Wright filed Exceptions to the Recommended Order of Hearing Examiner Wike and requested of the Commission the opportunity to present oral arguments on such Exceptions. By Order dated January 24, 1979, the Commission set the Exceptions for hearing.

On February 16, 1979, the Commission heard the oral argument on the Exceptions. The Applicant, W. Reid Wright, appearing for himself, and the Public Staff, were present.

Upon a review of the entire record in this proceeding, including the testimony and exhibits presented at the hearing, and the oral arguments of both parties, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, W. Reid Wright, d/b/a Forest Trail Utility proposes to furnish water service in Forest Trail Estates Subdivision, Wake County, North Carolina, and has filed a Schedule of Rates for said service.

2. By Order issued August 30, 1978, the Commission granted the Applicant temporary operating authority and established interim rates pending the outcome of this proceeding.

3. Forest Trail Estates Subdivision is a residential subdivision currently consisting of 29 homes located approximately four miles outside the City of Raleigh, North Carolina.

4. The Applicant has installed service taps capable of serving 43 customers; the system has been metered.

5. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

6. The Applicant himself will provide maintenance and repair service to the water system in the subdivision and has indicated that a telephone number where he can be reached will be listed on the monthly statements.

7. There is an established market for water utility service in the subdivision, and service is not 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.

8. The quality of untreated water meets the U.S. Public Health Drinking Water Standards with respect to physical and chemical characteristics.

9. The water system plans have been approved by the division of Health Services; however, final approval of the system itself is contingent upon the installation of a chlorinator at each well lot.

10. Other improvements necessary for effective management of the system include a change in the location of the wiring between the pressure tank and well house and the installation of a sample tap, blow-off and master meter at Well No. 1.

11. A reasonable level of annual expenses for Forest Trail Utility is $3,418 which includes gross receipt taxes of $153 and income taxes of $135.

12. The interim rates approved in the August 30, 1978, Order were $5.00 for the first 3,000 gallons and $1.00 for

each additional 1,000 gallons and these rates will produce gross operating revenues of $3,132 annually. Using the level of operating expenses deemed appropriate herein, the interim rates would produce a net loss on operations of $123 annually which is unreasonable.

13. The Applicant's proposed rates of $7.50 for the first 3,000 gallons and $1.00 for each additional 750 gallons would produce annual revenues of $4,465. The Applicant's proposed rates would produce an operating ratio of 80.54%, an excessive amount, assuming the level of operating expenses approved herein.

14. Rates of $7.00 on the first 3,000 gallons usage and $1.00 on each additional 1,000 gallons will produce operating revenues of $3,828 and an operating ratio of 89.29% which is just and reasonable.

15. The Applicant has failed to bill his customers in accordance with the interim rates established by the August 30, 1978, Order.

16. The Applicant billed one customer for the months of August and September in accordance with meter readings derived from a malfunctioning meter.

17. A tap-on fee of $450 is reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 10

The evidence supporting these Findings of Fact is contained in in the order recommended by Hearing examiner Wike. The Applicant did not make any exceptions to these findings or the conclusions made thereupon; therefore, the Commission hereby adopts and reaffirms these Findings of Fact.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding is contained in the testimony and exhibit of Public Staff witness Panton and in evidence presented by Reid Wright.

The following table shows the level of operating expenses proposed by Mr. Wright and by Mr. Panton.

Operating Expenses	Applicant	Public Staff
Purchased Power	$ 600	$ 600
Repairs and Maintenance	-	100
Depreciation	740	181
Transportation Expense	816	265
Rate Case Expenses	-	50
Office and Other Expenses	5,488	1,000
Taxes Other Than Income	800	191
Income Taxes	-	185
Total Operating Expenses	$8,444	$2,572

As can be seen from the chart above, differences exist in the level of operating expenses proposed by Mr. Panton and Mr. Wright. Both witnesses were in agreement as to the appropriate amount of purchased power expense and no evidence was presented to the contrary; therefore, the Commission concludes that purchased power expenses of $600 are appropriate.

The witnesses were in disagreement as to the proper amount of repairs and maintenance expense. Public Staff witness Panton testified that the books and records of Forest Trail Utility had not been maintained sufficiently to determine the actual test period maintenance expenses. He estimated a reasonable amount to be $100 annually.

In Mr. Wright's initial application he did not include any amount for repairs and maintenance expense. Public Staff witness Panton testified that the books and records of Forest Trail Utility had not been maintained sufficiently to determine the actual test period maintenance expenses. He estimated a reasonble amount to be $100 annually.

In Mr. Wright's initial application he did not include any amount for repairs and maintenance expense. However, during the hearings Mr. Wright indicated that it was necessary to perform repairs and maintenance work to the water system periodically and that the $100 expense amount included by the Public Staff was inadequate.

He testified that, although he performs much of the necessary maintenance and repair work himself, it is at times necessary to call in outside repairman whose average hourly labor rate is approximately $20. The Commission is of the opinion that the expense amount of $100 for maintenance and repairs estimated by the Public Staff is inadequate and that an amount of $200 annually is a more reasonable estimate of the appropriate level of expense.

Depreciation expense is the next item on which the witnesses disagree. Mr. Wright calculated his proposed depreciation expense of $740 using the estimated original cost of an investment in a water tower of $7,400 and the estimated service life of the water tower of 10 years.

Public Staff witness Panton excluded depreciation expense on the water tower on the basis that it was not presently used and useful. A late filed exhibit was filed by the Public Staff at the Commission's request indicating that inclusion of depreciation on the water tower would increase total depreciation expense by $253 annually. This amount was calculated using an investment of $8,840 and an estimated service life of 35 years. The Commission is of the opinion that depreciation on the water tower is a proper operating expense and that $253 is the proper annual amount of that expense. Although the water tower is not presently

in service, evidence was presented to indicate that it can be rendered used and useful in a very short period of time.

Approval of the water system by the Division of Health Services is contingent upon installation of chlorinators at each well lot by Mr. Wright. Installation of chlorinators will require capital expenditures as well as other related expenditures. Failure to erecognize the expenses associated with installation of chlorinators would cause attrition in earnings and would in this Commission's opinion be unreasonable. The estimated capital investment necessary to install chlorinators at each well lot for Forest Trail Utility is $752 and the estimated service life of the chlorinators is 10 years. The appropriate annual depreciation of the chlorinators is $75.

The Commission further concludes that depreciation expense of $181 on an answerphone and meters which was proposed by Public Staff witness Panton is an appropriate operating expense. Therefore, the Commission finds that the appropriate annual depreciation expense is $509 which includes annual depreciation on the water tower of $253, on the chlorinators of $75, on the answerphone of $146 and on the meters of $35.

The next item on which Mr. Wright and Mr. Panton disagree is transportation expense. Mr. Panton included an amount of $265 as transportation expense. This amount was calculated using a rate of 17¢ per mile and an estimate of three trips per week and 10 miles per trip. He estimated this to be a reasonable approximation of the total weekly mileage necessary on average to provide adequate service to the water utility and its customers. Mr. Panton testified that the vehicle used to provide service for the water utility was used for other purposes also.

Mr. Wright included an amount of $816 for transportation expense in his application. He failed to provide adequate evidence to support $816 in transportation expense. The Commission is of the opinion that the amount proposed by witness Panton for transportation expense is appropriate and should be included in operating expense.

The next item of difference is rate case expense. Mr. Wright made no provision for this item in his application. Public Staff witness Panton estimated total rate case expenses to be $150 and testified that this amount should be amortized over a three-year period. The Commission finds that rate case expenses of $50 annually are appropriate.

Mr. Panton and Mr. Wright disagree on the appropriate amount of office and other expenses. The amounts proposed by Mr. Wright and Mr. Panton included the following expenses:

	Wright	Panton
Wages	$2,400	$ 940
Testing Fees	-	34
Interest Expense	888	26
Chemicals	720	-
Answerphone Cost	700	700
Insurance	780	-
	$5,488	$1,000

The witnesses disagreed on the proper level of wages. Evidence was presented during the hearing to indicate that with minor exception all services including maintenance, billing, and repairs are performed by Reid Wright. The Commission is of the opinion that the amount proposed by Mr. Panton and Mr. Wright are inappropriate. The Commission finds that the appropriate amount of annual wage expense is $1,200.

The witnesses disagreed on the appropriate amount of testing fee. Mr. Panton included $34 as the annual testing fee expense. Mr. Wright did not include any amount for this item in his original application. He did however indicate during the hearing that $64 was the appropriate annual amount of this expense. The Commission finds that testing fee expense of $64 should be included in operating expenses.

Mr. Panton included test period actual interest expense of $26 in operating expenses. Mr. Wright included an amount of $888 as interest expense in this application. The Commission concludes that Mr. Wright failed to provide adequate proof of the interest expense he proposed and that interest expense should be the actual test period amount of $26.

The next item on which the witnesses disagree is chemical expense. Mr. Wright included an amount of $720 for this item. Mr. Panton excluded this item from test period expenses on the basis that chemicals were not presently used in the water system. The Commission recognizes that installation of chlorinators is required by this order and that chemicals are a cost associated with installing chlorinators. A reasonable estimate of the cost of chemicals necessary to operate the chlorinators is $.20 per customer per month or $70 annually. The Commission finds that chemical expense of $70 should be included in test period operating expenses.

Answerphone cost of $700 was the next item on which the witnesses disagreed. Mr. Wright expensed the cost of the answerphone in one year rather than treating this item as a depreciable asset as proposed by Mr. Panton. The Commission concludes that the Answerphone is a capital expenditure which should be depreciated.

Insurance expense is the last office and other expense on which Mr. Wright and Mr. Panton disagree. Mr. Wright

included an amount of $780 for this item. Mr. Panton excluded this item from test period expenses on the basis that the water system was not presently insured. The Commission concludes that this item should not be included in operating expense as the water system is presently not insured and the cost does not at this time in fact exist.

Postage is the next item which is in disagreement. The Public Staff did not include any amount for this item in operating expense. Mr. Wright did not include any amount for this item in his original application. He did however offer testimony during the hearing that his postage costs were approximately $80 annually. The Commission finds that postage is a reasonable operating expense, is necessary for billing and other purposes and $80 is a reasonable approximation of the expense.

The final items on which Mr. Panton and Mr. Wright disagree are income taxes and taxes other than income. The Commission concludes that the proper amount of these items is as follows:

Property	$ 66
Gross Receipt Taxes	153
Income Taxes	135
	$354

The Commission finds that the appropriate level of operating expenses is $3,418.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12, 13, AND 14

The evidence to support these findings was presented in testimony, exhibits, and evidence presented during the hearing and is summarized in the following chart:

STATEMENT OF INCOME AND OPERATING RATIOS

	Applicant	Public Staff	Commission Found Fair
Operating revenues	$4,465	$3,132	$3,828
Operating revenue deductions			
Purchased power	600	600	600
Repairs and maintenance	200	200	200
Depreciation	509	509	509
Transportation expense	265	265	265
Rate case expense	50	50	50
Office and other expenses	1,440	1,440	1,440
Taxes other than income	245	191	219
Income taxes	287	-	135
Total operating expenses	3,596	3,255	3,418
Net income (loss)	$ 869	$ (123)	$ 410
Operating ratio	80.54%	103.92%	89.29%

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15 AND 16

The evidence supporting these Findings of Fact is contained in the order recommended by Hearing Examiner Wike. The Applicant did not make any Exceptions to these findings or the conclusions made thereupon; therefore, the Commission hereby adopts and reaffirms these Findings of Fact.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

This finding is based on information contained in the application and on testimony of the Applicant. Public Staff witness Payne recommended a tap-on fee of $200, which reflects the cost of installing the meter, meter box, and the tap-on to the main and this estimate was based on a similar amount established for a water system in Pinehurst, North Carolina. Mr. Wright proposed a tap-on fee of $750. He did not provide any evidence to substiate that the cost involved in providing service for a new customer of Forest Trail Utility is $750. The Commission finds that the tap-on fees proposed by both Mr. Payne and Mr. Wright are inappropriate and that a tap-on fee of $450 is reasonable. The Commission is of the opinion that a tap-on fee of $450 more closely approximates the cost which Forest Trail Utility can reasonable expect to incur when establishing service for a new customer.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant's temporary Operating Authority to provide water utility service in Forest Trail Estates Subdivision is hereby continued pending final approval of the system by the Division of Health Services.

2. That upon notice from the Applicant that the system has been granted final approval by the Division of Health Services, the Commission issue a Certificate of Public Convenience and Necessity.

3. That the Applicant 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 shall be furnished to the Applicant with the mailing of this Order.

4. That the Applicant include in each monthly billing statement the following information: the address where the bill can be paid by mail and in person; meter readings at the beginning and the end of the billing period, and the date of each reading; the amount of service used furing the billing period; the amount due for the current billing period, listed as a separate amount; the amount due from previous billing periods, listed as a separate amount; and

the names and telephone numbers of persons to contact for emergency repair service on a 24-hour per day, seven-day per week basis. At least five days written notice must be given prior to any disconnection of service.

5. That the Applicant credit customer bills at the next regularly scheduled billing for any previous overcharges as follows: (a) each customer durintg the month of August 1978 shall be credited with the difference between the amount charged and the $5.00 flat rate which should have been in effect for all customers during August. (b) Each customer incorrectly charged a minimum of $7.00 in September or October 1978, instead of the charge dictated by the interim rate structure, shall be credited with this difference.

6. That the Applicant credit the bill of Theodore Bachulski at the next regularly scheduled billing with the difference between the amounts he was charged and the minimum flat rate of $5.00 during the months for which he was billed according to a malfunctioning meter.

7. That the Applicant make the following improvements to the water system immediately:

a. Install chlorinators at each well lot;
b. Complete installation of the water tower;
c. Change the location of the wiring between the pressure tank and well house; and
d. Install a sample tap and blow-off.

8. That the Applicant is hereby directed and authorized to place the rates attached hereto as Appendix A into effect after notifying the Commission that the installation of the water tower and chlorinators have been completed and are functioning to serve the water customers of Forest Trail Utility.

9. That the Applicant notify its customers of its new rate schedule by bill insert (attached hereto as Appendix B) in the billing cycle in which the rate increase herein authorized becomes effective.

10. 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.

11. That the Recommended Order of January 5, 1979, be, and hereby is, reversed and set aside except for those portions of that Order which have been adopted and reaffirmed herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of June, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: For Appendix B. see the official Order in the Office of the Chief Clerk.

APPENDIX A
SCHEDULE OF RATES
W. Reid Wright
d/b/a Forest Trail Utility
Forest Trail Estates Subdivision

WATER RATE SCHEDULE

METERED RATES: (Residential Service)
Water: Up to first 3,000 gal. per month - $7.00 minimum
All over 3,000 gal. per month - $1.00 per 1,000 gal.

CONNECTION CHARGES: $450.00 per tap

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

BILLING FREQUENCY: Shall be monthly, for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:
1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-678 on this the 12th day June, 1979.

DOCKET NO. W-169, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Cumberland Water Company, Post Office Box 53646, Fayetteville, North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in all Service Areas in Cumberland County, North Carolina) ORDER GRANTING RATE INCREASE

HEARD IN: Commissioners Room 118, New Court House, Fayetteville, North Carolina

BEFORE: Commissioners Edward B. Hipp, Presiding, Ben E. Roney and Robert Fischbach

APPEARANCES:

For the Applicant:

Robert G. Ray, Rose, Thorp, Rand & Ray, Attorneys at Law, P.O. Box 1239, Fayetteville, North Carolina 28302

For the Using and Consuming Public:

Stephen G. Kozey, Assistant Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

Joy R. Parks, Assistant Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On June 22, 1978, Cumberland Water Company (hereinafter sometimes referred to as the Applicant, the Company, or Cumberland) filed an Application with the North Carolina Utilities Commission for approval of increased rates for water and sewer service in Cumberland County, North Carolina.

By Order dated August 4, 1978, the Commission declared the Application to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates, required the Applicant to give notice of its Application, and set the matter for hearing on Tuesday, October 31, 1978, in the Commissioners Room 118, New Court House, Fayetteville, North Carolina. On August 9, 1978, the Public Staff of the North Carolina Utilities Commission filed Notice of Intervention pursuant to G.S. 62-16 on behalf of the using and consuming public of North Carolina, which was recognized by Commission Order issued August 10, 1978.

Public notice was furnished to each customer by the Applicant and was published in the Fayetteville Observer, Fayetteville, North Carolina, in accordance with the orders of the Commission, advising that anyone desiring to intervene or protest the Application was required to file his intervention or protest with the Commission by the date specified in the notice.

The public hearing was held at the time and place specified in the Commission's Order of August 4, 1978. The Applicant offered the testimony of William L. Oden, CPA, Secretary of Cumberland Water Company, who testified concerning the Applicant's financial position and

R.A. Rumbough, General Manager of Cumberland Water Company, who testified concerning the Applicant's general utility operations and rate structure. William L. Dudley, Staff Accountant, Dr. Richard Stevie, an economist with the Public Staff, and David F. Creasy, Director of the Water Division of the Public Staff, appeared as witnesses for the using and consuming public. No one appeared at the hearing to protest the Application.

Based on the information contained in the Application and the Commission's files and on the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Cumberland Water Company, is a North Carolina corporation and is a public utility as defined in G.S. 62-3, holding a Certificate of Public Convenience and Necessity granted by the North Carolina Utilities Commission to provide water and sewer utility service in certain areas in Cumberland County.

2. The Applicant presently furnished water and sewer utility service utilizing the following rates:

Water:
Up to first 3,000 gallons per month, minimum charge - $3.00
Next 5,000 gallons per month, per 1,000 gallons - $ .55
All over 8,000 gallons per month, per 1,000 gallons - $ .50
Usage over 10,000 gallons per month during summer months, per 1,000 gallons - $ .25

Sewer:
(a) For all areas where sewage is treated by Cumberland Water Company:

Up to first 3,000 gallons per month, minimum charge - $1.50
Next 5,000 gallons per month, per 1,000 gallons - $ .275
All over 8,000 gallons per month, per 1,000 gallons - $ .25
Usage over 10,000 gallons per month during summer months, per 1,000 gallons - $ .125

(b) For all areas where sewage is treated by Fayetteville PWC: $2.00 plus $.75 per 1,000 gallons water usage

3. The Applicant proposes to charge the following rates for water and sewer utility service:

Water:
(a) Metered Rates:

Up to first 3,000 gallons per month, minimum charge - $3.50
All over 3,000 gallons per month, per 1,000 gallons - $ .55

(b) Flat Rates (Apartments, etc.):

Per apartment, per month - $4.00

Sewer:
(a) Metered Rates:

$3.00 plus $.75 per 1,000 gallons water usage per month
Maximum sewer bill, per month - $12.50

(b) Flat Rates (Apartments, etc.):

Per month, per apartment - $5.50

4. That the test period used in this proceeding is the 12-month period ending December 31, 1977.

5. That the quality of service provided by the Applicant is very good.

6. That the operating ratio, the ratio of total expenses to total revenues, will be the basis for the determination of rates in the proceeding.

7. That the annualized test period operating revenues of Cumberland were $373,068 under the rates then in effect and would have been $434,578 under the proposed rates. The breakdown of the Company's revenue between water and sewer under the rates in effect during the test period was as follows: water revenue = $230,837 and sewer revenue = $142,231. A similar breakdown of the revenues under the proposed rates is water revenue, $261,948, and sewer revenue, $172,630.

8. That Cumberland's expenditures for painting during the test period were ordinary and necessary recurring expenses of the utility which were proper operating revenue deductions during the test period.

9. That Cumberland's expenditures for officer's salaries during the test period in the amount of $20,000 were reasonable in amount and ordinary and necessary expenses of a utility, such as Cumberland, that has assets valued at over $2,000,000 and annual income of over $370,000.

10. That the total operating revenue deductions (operating expenses) of the Company during the test period as annualized were $357,940, of which $216,784 was properly allocated to water operations and $141,156 to sewer. Under the proposed rates, the operating revenue deductions total $381,985, of which $229,422 is allocated to water with the remaining $152,563, to sewer.

11. That under the proposed rates, Cumberland's combined water and sewer operations would produce an operating ratio of 87.90% (87.48% for water and 88.38% for sewer) which is found to be reasonable by this Commission for the operations of Cumberland Water Company.

12. That the rates for water and sewer service set forth in the Application of Cumberland Water Company are just and reasonable rates for its customers and the public utility.

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

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The basis for Finding of Fact No. 1 is North Carolina G.S. 62-133 and for Findings of Fact Nos. 2, 3, and 4, Commission Order of August 4, 1978, and the record, generally.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

All evidence elicited regarding the service rendered by Cumberland to its customers indicated that the service was excellent. In particular, testimony of witnesses for both the Company and the Public Staff indicated:

1. That the equipment of the system is maintained in excellent working condition,

2. That the quality of the water of the system meets all acceptable standards,

3. That the Utilities Commission had never received any complaints as to abnormal service interruptions or service of the Company, and

4. That the billing practices of the Company were very accurate.

The Company filed a Certificate of Service indicating that it had personally given notice of its Application for a rate increase to each of its customers. Also, the Company filed an Affidavit of Publication indicating that notice of the Application had been published in the Fayetteville Observer as required by Commission Order. The Notice delivered to the customers and published as aforesaid informed the Company's customers of their right to protest the rate increase and appear at the hearing in opposition to the proposed rate increase. No protests were filed nor did any customer of the Company appear in opposition to the increase.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

All witnesses for the Public Staff and the Applicant testified that the proper method of fixing rates in the case of Cumberland was based on its operating ratio. North Carolina G.S. 62-133.1(a) provides "in fixing rates for any water or sewer utility, the Commission may fix such rates on the ratio of the operating expenses to the operating revenues, such ratio to be determined by the Commission...." The Commission, in taking judicial notice of the prior rate

proceeding involving Cumberland Water Company (W-169, Sub 14), notes that the Public Staff used the ratio of total operating expenses, including gross receipts and income taxes, to total operating revenues in that proceeding and referred to it as the operating ratio. Also, the Applicant based its Application on the operating ratio as set forth in the above referred to statute and the prior proceeding.

In this proceeding Public Staff witness Dr. Stevie testified that, in his opinion, it is more appropriate to treat the Company's gross receipts tax and income taxes as offsets to income rather than as operating expenses in computing the operating ratio. In discarding the position taken by the Public Staff in the earlier proceeding terminated less than 60 days prior to the filing of the Application herein, Dr. Stevie referred to his concept as "a refinement of the procedure used in setting an operating ratio in North Carolina." The net effect of Dr. Stevie's testimony is that neither gross receipts tax nor income taxes should earn a return. While the Commission finds Dr. Stevie's testimony is not without merit, it concludes that as to Cumberland it would be unfair for the Commission to adopt a position inconsistent with that taken by the Public Staff and the Commission less than 60 days before the filing of this Application. In reaching this conclusion, the Commission notes, as explained below, that the difference in Cumberland's operating ratio under the Company's position and that of Dr. Stevie is less than one and one-half percent (1.5%) and is not determinative in this proceeding. Public policy dictates that the law be construed consistently so that those attempting to comply may understand it. This policy is more important in this proceeding than determining the proper treatment of taxes in computing the Company's operating ratio.

Without establishing a precedent for the definition of "operating ratio" in other cases to appear before this Commission, the Commission determines that the proper operating ratio to be considered in this docket is the ratio of total operating expenses to total operating revenues as provided in G.S. 62-133.(a) and as had been used by the Public Staff in Docket No. W-169, Sub 14, relating to Cumberland Water Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Cumberland and the Public Staff agree that the total revenue to be generated under the proposed rates is $434,578 of which $261,948 is water revenue and $172,630, sewer revenue. However, the parties differ by $8,445 as to the annualized revenue during the test period under the rates then in effect. This difference resulted from the computations used in bringing revenue to the end-of-period level under rates in effect during 1977. In particular, the difference arose in determining the average bill for (1) residential water and (2) sewer service in Oakdale subdivision.

The respective computations were as follows:

Residential Water	Average Bill		No. of Customers		Months		
Public Staff (1)	5.63	X	2,995	X	12	=	202,342
Cumberland (2)	5.41	X	2,995	X	12	=	194,435
	Difference						7,907
Oakdale Sewer							
Public Staff (1)	2.50	X	142	X	12	=	4,260
Cumberland (2)	2.18	X	142	X	12	=	3,722
	Difference						538
	Total Difference						8,445

(1) TR. pp. 55 and 74, Dudley Exhibit I, Schedule I-I, page 1 of 3
(2) TR. pp. 125 and 135

The Public Staff determined the average bill used in its computations by dividing the total gallons consumed during the test period by the number of customers and multiplying the result by the rates then in effect. On the other hand, the Company determined the average bill used in its computations by dividing total revenues for the test period by the number of bills it sent out for the year. By using the average number of gallons of water used per customer rather than the actual revenues, the result of the Public Staff computations was that each customer is shown to have paid the maximum amount possible since the rates of Cumberland Water Company are regressive, i.e., the charge per gallon used decreases as usage increases. Thus, for example, in the Oakdale subdivision the Public Staff's computation assumed that every customer paid the maximum rate for sewer service that could be charged. As indicated by the testimony, this was not infact the case.

The Commission concludes that both of the methods used by the Public Staff and by Cumberland are appropriate for use in determining end-of-period revenues but that where rates are regressive, as in the present case, Cumberland's use of actual revenues is more appropriate. The Public Staff has contended that such a computation takes into account a summer rate differential that both parties agree should be eliminated. As pointed out in the testimony, however, Cumberland has a 55 cent rate that drops to 50 cents and then to 25 cents. By using gallons used rather than revenues, all of these differentials are ignored. In addition, the process of annualization itself is based on the rates in effect in the test year.

Based on the above conclusions, the Commission determines that the annualized test period revenue for Cumberland was as follows:

	Per Public Staff	Adjustments	Totals
Water Revenue	$238,744	$(7,907)	$230,837
Sewer Revenue	142,769	(538)	142,231
	$381,513	$(8,445)	$373,068

In the final analysis, the Commission concludes that in a general rate case such as this, the revenue to be generated under the proposed rates, as to which the parties are in agreement, is of far greater importance than the determination of the annualized test period revenue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Applicant expended $7,448 in painting two of its storage tanks and certain other plant. All of this cost was deducted during the test period by the Applicant. The accountant for the Public Staff allowed $820 of such painting expense as an expense of the current year and capitalized the remaining balance of $6,628 for amortization over a period of up to 10 years. The Applicant has five overhead tanks and 11 additional storage tanks. The $6,700 expended in the test period for the painting of the tanks covered two tanks. The Applicant presented testimony that its painting expense for the 1978 year exceeded the expense during the test period. Witnesses for the Applicant further testified that painting expense was incurred to maintain the existing tanks in operation rather than to put an inoperative tank into operation. Further, the accountant for the Public Staff was inconsistent in applying the amortization principles inasmuch as he did not amortize painting expenses from prior years into the test period.

The Commission concludes that the painting expenses in the amount of $7,448 incurred by the Applicant during the test period were ordinary and necessary business expenses that are properly deductible during the test period. The Commission further concludes that as for painting expenses, the proper determination of whether they are deductible in the current year or should be capitalized to be written off over the useful life of the painting is determined by whether the expenses are incurred to maintain existing equipment of the utility (deductible) or are incurred to put an inoperative piece of equipment into operation (capitalize and amortize), so long as such treatment does not distort the operating results of a utility.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The assets of Cumberland Water Company are worth in excess of $2,000,000 and the approximate gross income of the Company for the test period was about $370,000. For the test period the Company paid its officers combined salaries of $20,000. These salary levels had been established shortly after the inception of the Company in 1962 and had remained constant for more than 10 years. All testimony on

the point indicated that Cumberland Water Company was an "exceptionally well-run private water company" and the director of the Water Division of the Public Staff testified that the excellent record of Cumberland Water Company "resulted from good management...." The officers of the Company include William L. Oden, a Certified Public Accountant, and Joseph P. Riddle, its president. The salary that Mr. Riddle received from Cumberland Water Company was not greater on an hourly basis than his salary from other entities with which he is employed.

The Public Staff contended that the appropriate level of executive compensation for the Company was $7,500 per year rather than the $20,000 paid, based primarily on the amount per hour paid to the officers of the Company. Based on an annual salary of $7,500, the total officers' salaries would be less than $150 per week. The Commission concludes that it would be unreasonable for a company with assets of over $2,000,000 and annual income in excess of $370,000 to turn its operations over to a person it could employ for less than $150 per week and further concludes that the sum of $20,000 is a reasonable management compensation level for Cumberland Water Company when taking into account the excellent manner in which this Company has been operating. The Commission concludes that the reasonable management compensation level for utilities is more appropriately determined based on the results shown by Management rather than the time expended in management operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The differences between the Public Staff and Cumberland as to operating revenue deductions have been resolved in Findings of Fact Nos. 4, 6, and 7, except as to their allocation between water and sewer. Hence, total operating revenue deductions of the utility under present and proposed rates are as follows:

	Public Staff		Adjustments	Total Test Period	Proposed Rates	
Operating Revenue Deductions (other than taxes)	316,149	(A) (B)	6,628 12,500	335,277	335,553	(C)
Gross Receipts Tax	17,522	(C)	152	17,674	20,333	(C)
Income Taxes	11,582	(C)	6,593	4,989	26,099	(C)
Total Operating Revenue Deductions (D)	345,253			357,940	381,985	

(A) Finding of Fact No. 6
(B) Finding of Fact No. 7
(C) Adjustments resulting from earlier changes
(D) Finding of Fact No. 4

The allocation of operating revenue deductions on the Application submitted by Cumberland Water Company and as computed by the Public Staff differed materially. Testimony from Cumberland indicated that it only allocated direct expenses to sewer on the theory that sewer was an insignificant part of its operations and all of the indirect expenses would remain the same if its sewer operations were terminated. Cumberland has 3,095 water customers and 1,486 sewer customers. However, of the 1,486 sewer customers, Cumberland services only 148 directly and the remaining 1,338 sewer customers are serviced by the Public Works Commission (PWC) with Cumberland acting essentially as a collection agent. Of the $142,231 sewer revenue during the test period, $106,025 was paid by Cumberland to PWC. Thus, Cumberland had gross sewer revenues, other than those collected for PWC, of $36,206 for the test period in comparison with $230,837 of water revenue. On this basis, sewer revenues accounted for 13.55% of Cumberland's total revenue.

The Public Staff allocated $150,078 of operating revenue deductions to sewer. Of this amount $106,025 went to PWC leaving a balance of $44,053. For the 148 customers serviced directly by Cumberland, this would be a cost in excess of $24 per month.

The Commission concludes that the allocation of operating revenue deductions as filed by Cumberland with its Annual Report and its Application herein is reasonable and appropriate under the circumstances in this case and that Schedule I attached hereto reflects an appropriate allocation of such deductions (other than taxes) both under present and proposed rates. Such an allocation, after adjusting for gross receipts and income taxes, results in operating revenue deductions for Cumberland as follows (see Computations in Evidence and Conclusions for Finding of Fact No. 9):

	Present Rates	Proposed Rates
Deductions Allocated to Water	216,784	229,422
Deductions Allocated to Sewer	141,156	152,563
Total Deductions	357,940	381,985

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 AND 12

Based on the foregoing, the Commission concludes that the operating ratios for Cumberland on a basis combining the water and sewer operations is as follows:

	Under Present Rates	Under Proposed Rates
1. Operating Revenues (A)	$373,068	$434,578
2. Operating Revenue Deductions (B)	357,940	381,985
3. Net Income	$ 15,128	$ 52,593
Operating Ratio (L2 ÷ L1)	95.95%	87.90%

(A) Finding of Fact No. 5
(B) Finding of Fact No. 8

A breakdown and allocation of these operating ratios between water and sewer is as follows:

	Present Rates		Proposed Rates	
Item	Water	Sewer	Water	Sewer
Revenues - Residential	200,123	128,740	231,234	172,630
Revenues - Commercial	18,150	13,491	18,150	-
Management Fees	12,115	-	12,115	-
Reconnection Fees	449	-	449	-
Total Operating Revenues (A)	230,837	142,231	261,948	172,630
Operating Revenue Deductions before taxes (see Schedule I attached)	202,964	132,313	203,240*	132,313
Gross Receipts Tax	9,185	8,489	9,975	10,358
Income Taxes	4,635	354	16,207	9,892
Total Operating Revenue Deductions (B)	216,784	141,156	229,422	152,563
Net Income	14,053	1,075	32,526	20,067
Operating Ratio (Operating Expense ÷ Operating Revenue)	93.91%	99.24%	87.48%	88.38%

*reflects a $276 adjustment per Mr. Dudley's testimony.

(A) Finding of Fact No. 5
(A) Finding of Fact No. 6

As indicated earlier, computation of the operating ratio would differ by less than 1.5% under the methodology used by Dr. Stevie which is illustrated on the proposed rates as follows:

Total Operating Revenue	$434,578
Less: Gross Receipts Tax	(20,333)
Income Taxes	(26,099)
Adjusted Operating Revenue	388,146
Less: Operating Revenue Deductions (other than taxes)	335,553
Net Income	53,593
Operating Ratio	86.45%

This method results in an operating ratio of 86.45% as opposed to a ratio of 87.90% under the method used by Cumberland and approved by the Commission in this case.

The Commission notes that in the prior proceeding the Hearing Examiner found as a fact that an operating ratio of 88.52% determined on the same basis as Cumberland's ratio of 87.90% in this proceeding was "within the range of operating ratios decreed just and reasonable by this Commission." The differential of less than 1% in this proceeding is insignificant and the rates requested by Cumberland are reasonable for both water and sewer customers as well as on a combined basis. The rate increase requested herein should be approved.

SUMMARY

The record in this docket shows that the Applicant Cumberland Water Company has not increased its water rates since the Company was established in 1962. For a typical consumption of 7,000 gallons per month, the water bill of a residential customer will go from $5.20 per month under the old rates to $5.70 per month under the new rates. Even after the increase, the Applicant's water rates are substantially lower than the rates of the average water company in North Carolina. The Commission takes official notice of its records indicating that the approved bill for 7,000 gallons of water from a typical water company in North Carolina would be $9.00.

The increase in the Applicant's sewer rates is somewhat larger, percentagewise. The Public Staff evidence shows that the sewer rates were not producing a reasonable rate of return and the sewer rates proposed by the Public Staff would have been higher than the rates applied for and approved in this Order.

This Application was filed on June 22, 1978, and the hearing completed October 31, 1978, prior to the Application of the Commission's Rule R1-17(b)(9)g. relating to price guidelines. The Commission has nonetheless considered the purpose of the price guidelines and the exceptions or exemptions referred to or implied for small utility companies with no rate increases in 17 years and earning a totally inadequate rate of return and believes that the rates approved here do not conflict with the purpose of the price guidelines.

The record further shows that $2,039,341 of the Applicant's net plant investment of $2,275,921 was contributed property and would not be eligible for depreciation expense allowance in the Company's operating expenses. The Company is therefore not generating a commensurate amount of cash flow from depreciation expense allowance for replacement of its contributed plant as it wears out. This lack of the usual amount of depreciation allowance for this size plant has been considered in

approving the $6,000 expense for painting tanks which the Public Staff questioned. The Commission considers that it is highly important for Cumberland Water Company to carry on the highest level of maintenance and repairs possible as ordinary expenses in order to forestall the ultimate wearing out of the plant without means of replacement.

The operating ratio of 87.9% approved in this case was also considered on the basis that it would allow some retained earnings to be devoted to plant replacement.

IT IS, THEREFORE, ORDERED:

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 and that said Schedule of Rates is hereby authorized to become effective for water and sewer services billed to customers on or after March 1, 1979.

2. That the Applicant notify its customers of its new rate schedule by a bill insert (attached hereto as Appendix B) in the next regular billing.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
DOCKET NO. W-169, SUB 17
Cumberland Water Company

WATER AND SEWER RATE SCHEDULE
For All Service Areas in North Carolina

METERED RATES:
Water:
Up to first 3,000 gallons per month - $3.50 minimum
All over 3,000 gallons per month - $ .55 per 1,000 gal.

Sewer:
Up to first 3,000 gallons per month - $5.25 minimum
All over 3,000 gallons per month - $ .75 per 1,000 gal.
Maximum sewer charge per month (residential only) - $12.50

FLAT RATES (Apartments, Mobile Homes, etc.):
Water:
$4.00 per month per unit (whether or not unit is occupied)

Sewer:
$5.50 per month per unit (whether or not unit is occupied)

CONNECTION CHARGES:
Inside Service Area - $100.00
Outside Service Area - $100.00 plus cost of providing tap

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
If sewer service cut off by utility for good cause (NCUC Rule R10-16(f)): $15.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT: None.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-169, Sub 17, on February 27, 1979.

CUMBERLAND WATER COMPANY
Schedule of Utility Service Areas

Utility Service Areas:

Subdivision or Service Area - Cumberland County

Ponderosa
Woodlea
Oakdale
Hermitage
Sherwood Park
Westchester
Lakecrest
College Downs
Hunters Ridge
Gates Four
Aaron Lakes West

APPENDIX B
DOCKET NO. W-169, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Cumberland Water Company, P.O. Box 53646, Fayetteville, North Carolina, for Approval of Increased Rates for Water and Sewer Utility Service in All Its Service Areas in Cumberland County, North Carolina) NOTICE OF NEW RATES

METERED RATES:
Water:
Up to first 3,000 gallons per month - $3.50 minimum
All over 3,000 gallons per month - $ .55 per 1,000 gal.

Sewer:
Up to first 3,000 gallons per month - $5.25 minimum
All over 3,000 gallons per month - $ .75 per 1,000 gal.

Maximum sewer charge per month (residential only) - $12.50

FLAT RATES - Apartments:
Water:
$4.00 per month per unit (whether or not unit is occupied)

Sewer:
$5.50 per month per unit (whether or not unit is occupied)

CONNECTION CHARGES:
Inside Service Area - $100.00
Outside Service Area - $100.00 plus cost of providing tap

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
If sewer service cut off by utility for good cause (NCUC Rule R10-16(f)): $15.00

BILLS DUE: On billing date

BILLS PAST DUE: Fifteen (15) days after billing date

BILLING FREQUENCY: Shall be monthly, for service in arrears

FINANCE CHARGES FOR LATE PAYMENT: None

ISSUED PURSUANT TO ORDER OF THE UTILITIES COMMISSION.
This the 27th day of February, 1979.

Cumberland Water Company

DOCKET NO. W-173, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Montclair Water Company, Fayetteville, North Carolina, for Approval of Increased Rates of Sewer Utility Service and Street Lighting Service in Cumberland County, North Carolina	FINAL ORDER ON EXCEPTIONS

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, Robert Fischbach, and John W. Winters

APPEARANCES:

For the Applicant:

L. Stacy Weaver, Jr., McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, P.O. Box 2129, Fayetteville, North Carolina 28302

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On October 2, 1978, a Recommended Order was issued in this docket by Hearing Examiner Robert P. Gruber approving a schedule of water, sewer, and street lighting rates for utility customers served by Montclair Water Company (Applicant or Montclair). Said Schedule of Rates was attached to the Recommended Order as Appendix A.

On December 14, 1978, counsel for the Applicant filed certain Exceptions to the Recommended Order and a request for oral argument thereon, setting forth Exceptions 1 through 13 and the reasons and arguments in support thereof.

Oral argument on the Exceptions was heard by the Commission on April 11, 1979.

Based upon a careful consideration of the entire record in this proceeding and the Exceptions to the Recommended Order filed by the Applicant and the oral argument heard thereon, the Commission is of the opinion, finds, and concludes that except for the allowance of certain additional operating expense and gross operating revenue adjustments (which will be hereafter discussed) and the rescission of Ordering Paragraph No. 4, the Recommended Order issued by Hearing Examiner Gruber on October 2, 1978, should be affirmed. With respect to the additional operating expense adjustments proposed by the Applicant in conjunction with its Exception No. 3, the Commission finds and concludes that only the following adjustments to the Applicant's test-period operating expenses would be proper: sewer operating expenses for the test year should be increased by $2,073 to reflect increased power costs actually incurred by the Applicant during calendar year 1977; and the Applicant's test-period water operating expenses should be increased by $9,790 to reflect an actual increase in power costs during 1977 of $3,634 and a 1977 expenditure of $6,156 for caustic soda.

Although a careful review of the entire record in this proceeding has led the Commission to conclude that the above-referenced operating expense adjustments are proper and equitable under the instant factual circumstances, the Commission further concludes that none of the other

operating expense adjustments proposed by the Applicant have been sufficiently documented and substantiated so as to warrant the allowance thereof.

Based upon an allowance of the additional operating expense adjustments detailed above, the Commission therefore concludes that the level of test-period total operating expenses specified in the Recommended Order under the heading "EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19) should be increased by the additional amounts previously specified in this Order. Accordingly, the Applicant's test-period operating expenses, after adjusting for tax effects, would total $245,681, including water system operating expenses of $138,610 and sewer system operating expenses of $107,071. In addition, inclusion of the operating expense adjustments approved herein leads the Commission to further conclude that the level of test-period total operating revenues found by the Hearing Examiner should also be increased to reflect said adjustments. Therefore, the Applicant's test-period operating revenues would total $288,674, including water system operating revenues of $173,073 and sewer system operating revenues of $115,601. The adjusted total operating expenses and revenues discussed above would result in an operating ratio for the Applicant of 85.1%, which is certainly just and reasonable.

With respect to Ordering Paragraph No. 4 of the Recommended Order, the Commission is of the opinion, and therefore concludes, that said Ordering Paragraph should be rescinded. In this regard, the Commission believes that it would not be appropriate at this time to schedule a further hearing in conformity with Ordering Paragraph No. 4 of the Recommended Order for the purpose of determining "appropriate water and sewer rate levels for customers whose sewage is piped to the Loch Lomond sewage treatment plant for treatment." In view of the fact that a test period ending December 31, 1976, was used in conjunction with the pending application, it is the opinion of the Commission that a review of the utility rates applicable to Loch Lomond customers would best be undertaken at some future date, such as the next general rate case filed by Montclair. At that time, use of more current test-period data would better enable the Commission to formulate and determine an appropriate and comprehensive schedule of rates for all customers of Montclair. The Commission is also mindful of the fact that the Applicant's current operating expenses may differ substantially from those expenses which were incurred during the instant test period ending December 31, 1976. Therefore, the Commission rescinds Ordering Paragraph No. 4 of the Recommended Order.

Based upon all of the foregoing, the Commission concludes that, except as herein modified, the Recommended Order dated October 2, 1978, should be affirmed. The Applicant's Exceptions, to the extent not granted herein, are hereby overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates attached hereto as Appendix A is hereby approved for water, sewer, and street lighting service rendered by Montclair Water Company.

2. That said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

3. That a copy of the Notice to Customers of New Rates attached hereto as Appendix B shall be delivered to all customers of the Applicant's water system in conjunction with the Company's next regularly scheduled billing process.

4. That the Exceptions to the Recommended Order herein filed by the Applicant are, to the extent not granted herein, hereby overruled and denied.

5. That the Recommended Order in this docket dated October 2, 1978, is, to the extent not modified by this Order, hereby affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of July, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

Commissioners Hammond and Hipp did not participate. The term of Commissioner Roney expired on June 30, 1979.

NOTE: For Appendix B, see official Order in the Office of the Chief Clerk.

APPENDIX A
MONTCLAIR WATER COMPANY
All Service Areas in North Carolina
WATER AND SEWER RATE SCHEDULE

METERED RATES (Residential and Commercial):
Water:

(1) For all customers whose sewage is piped to the Loch Lomond sewage treatment plant:

Up to first 3,000 gal. per month - $4.50 minimum
Next 7,000 gal. per month - $ .60 per 1,000 gal.
All over 10,000 gal. per month - $ .50 per 1,000 gal.

(2) All other customers:

Up to first 3,000 gal. per month - $3.15 minimum
All over 3,000 gal. per month - $ .50 per 1,000 gal.

Sewer:
(1) For all customers whose sewage is piped to the Loch Lomond sewage treatment plant:

Up to first 3,000 gal. per month - $2.25 minimum
Next 7,000 gal. per month - $ .30 per 1,000 gal.
All over 10,000 gal. per month - $ .25 per 1,000 gal.

(2) All other customers:

Up to first 3,000 gal. per month - $4.00 minimum
All over 3,000 gal. per month - $ .75 per 1,000 gal.

FLAT RATES (Apartments, Mobile Homes, etc.):
Water: $4.00 per month per unit (whether or not unit is occupied)

Sewer: $4.30 per month per unit (whether or not unit is occupied)

STREET LIGHTING (Devonwood, Loch Lomond):
$1.00 per customer per month

CONNECTION CHARGES: (Payable by developers, per contract)

Water:		Sewer:	
$150.00 tap fee		$100.00 tap fee	
$400.00 extension fee		$600.00 extension fee	

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
If sewer service cut off by utility for good cause (NCUC Rule R10-16(f)):	$15.00

BILLS DUE: On billing date

BILLS PAST DUE: Fifteen (15) days after billing date

BILLING FREQUENCY: Shall be monthly, for service in arrears

FINANCE CHARGES FOR LATE PAYMENT: None

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket W-173, Sub 10, on this the 30th day of July, 1979.

DOCKET NO. W-6, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Pinehurst, Incorporated, P.O. Box 4000, Pinehurst, North Carolina 28374, for Approval of Increased Rates for Water and Sewer Utility Service in and Around the Village of Pinehurst in Moore County, North Carolina	) ORDER) SETTING) RATES)

HEARD IN: Room 111, Administration Building, Sandhills Community College, Carthage, North Carolina, on May 24, 1979

BEFORE: Commissioner Robert Fischbach, Presiding; and Commissioners Lindsay Tate and Ben E. Roney

APPEARANCES:

For Pinehurst, Incorporated:

Lee West Movius and John M. Murchison, Jr., Kennedy, Covington, Lobdell and Hickman, Attorneys at Law, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For the Attorney General:

David Gordon, Associate Attorney General, P.O. Box 629, Raleigh, North Carolina 27602

For the Public Staff:

Stephen G. Kozey, Staff Attorney, North Carolina Utilities Commission - Public Staff, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: By application filed with the North Carolina Utilities Commission on November 14, 1978, Pinehurst, Incorporated (Pinehurst or the Company), seeks approval to increase its rates for water and sewer utility service in the Village of Pinehurst in Moore County.

By Order issued December 8, 1978, the matter was declared a general rate case. Pinehurst was required to give public notice of the proposed increase, and the proposed rates were suspended.

By Order issued February 28, 1979, the Commission continued the public hearing to April 27, 1979, upon Motion by the Public Staff and ordered Pinehurst to provide the information requested in Appendix 1 to the Public Staff's Motion and a copy of Pinehurst's nonconsolidated financial statements as soon as they could be made available.

The Public Staff made an additional data request of Pinehurst by letter dated March 5, 1979. By letter of March 28, 1979, counsel for Pinehurst advised the Public Staff of what it could provide and what materials were unavailable or too costly in its opinion to produce.

By Order issued April 18, 1979, the Commission rescheduled the hearing to May 24, 1979, and ordered the hearing to be conducted in Room 111 of the Administration Building at Sandhills Community College, Carthage, North Carolina.

Public Notice was given as specified by the Commission, and the matter was called for hearing at the time and place captioned above. Pinehurst offered the testimony of John Powlerd, Certified Public Accountant; John R. Kelly, Vice-President of Finance and Treasurer of Pinehurst; James Randolph, Sr., Project Manager of Pinehurst; and Max B. Merritt, Assistant Controller of Pinehurst. At the close of the Applicant's direct case, the Attorney General moved for dismissal of the application for failure to present sufficient evidence to justify any increase. The Commission denied the motion. The Public Staff offered the testimony of Jana K. Hemric, Public Staff Accountant, and David Creasy and Rudy Shaw of the Public Staff Engineering Division. Parker Lynch, Public Works Director of Moore County, testified concerning sewage treatment service provided to Pinehurst by Moore County. Joseph Adams, Moore County Fire Marshall, testified to the adequacy of Pinehurst's fire protection facilities. Customers of Pinehurst were present at the hearing to express their opposition to the proposed rate increase. The Commission heard the testimony of the following customers: Irving Lorber, who testified on behalf of the seven condominium associations; L.W. Raichle, representing the Village Council of Pinehurst; Moseley G. Boyette, Jr., attorney for Moore Memorial Hospital; and Robert Lagergren, Ralph Struck, and George Herre.

On June 29, 1979, this Commission issued a Notice of Decision and Order which stated that Pinehurst, Incorporated, should be allowed the opportunity to earn a return of 10% on its investment used and useful in providing water and sewer service in North Carolina. In order to have the opportunity to earn a fair return, Pinehurst was allowed to increase its rates and charges to produce increased annual gross revenues of $187,322.

Based on the prefiled testimony and exhibits, the testimony at the hearing, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, Pinehurst, Incorporated, is a public utility as defined in N.C.G.S. 62-3 and holds a Certificate of Public Convenience and Necessity to furnish water and sewer utility service in certain areas in Moore County.

2. The Applicant presently charges the following rates for its water and sewer utility service:

METERED WATER (per month):

Minimum charge (includes first 333 cubic feet)	$2.00
Next 1,667 cubic feet (per 100 cubic feet)	$ .60
Next 3,000 cubic feet (per 100 cubic feet)	$ .40
Next 15,000 cubic feet (per 100 cubic feet)	$ .25
All over 20,000 cubic feet (per 100 cubic feet)	$ .20

METERED SEWER (per month):

Minimum charge (includes first 333 cubic feet)	$1.00
Next 1,667 cubic feet (per 100 cubic feet)	$ .30
Next 3,000 cubic feet (per 100 cubic feet)	$ .20
Next 15,000 cubic feet (per 100 cubic feet)	$ .125
All over 20,000 cubic feet (per 100 cubic feet)	$ .10

FLAT RATE WATER: $2.00 per month per condominium unit

FLAT RATE SEWER: $1.00 per month per condominium unit

WATER CONNECTION CHARGES:

3/4-Inch Service Line and Meter	$100
1-Inch Service Line and Meter	$140
1 1/2-Inch Service Line and Meter	$250
2-Inch Service Line and Meter	$375
Larger than 2-Inch Service Line and Meter	Actual Cost

SEWER CONNECTION CHARGE: 6-Inch Service Line $100

RECONNECTION CHARGES:

If service discontinued for nonpayment	$ 3.00
If service discontinued at customer's request due to seasonal or intermittent usage	$ 6.00

3. The Applicant proposes to charge the following rates for its water and sewer utility service:

METERED WATER (per month):
Minimum charge (include furst 535 cubic feet) - $5.00
All over 535 cubic feet (per 134 cubic feet) - $ .90

METERED SEWER (per month):
Minimum charge (include first 535 cubic feet) - $6.50
All over 535 cubic feet (per 134 cubic feet) - $1.08

MULTIPLE SERVICE RATES (Water and Sewer):
If meter serves more than 1 unit, such as a multiple unit condominium, the amount of the minimum charge and the amount of usage included in the minimum charge will be multiplied by the number of units served.

LARGE INDUSTRIAL CUSTOMERS:
Applicable to customer which will guarantee by written contract that it will use at least 2,673,800 cubic feet per year.

Water - $ .60 per 134 cubic feet
Sewer - $1.00 per 134 cubic feet

WATER CONNECTION CHARGES:

3/4 Inch Service Line and Meter	- $300
1 Inch Service Line and Meter	- $350
Larger than 1 Inch Service Line and Meter	- Actual Cost

SEWER CONNECTION CHARGES:

4 Inch Service Line	- $350
Larger than 4 Inch Service Line	- Actual Cost

RECONNECTION CHARGES:

If water service discontinued by utility for non-payment or other cause	- $ 5.00
If water service discontinued at customer's request	- $ 5.00
If sewer service discontinued by utility for good cause	- $15.00

AVAILABILITY CHARGES:
Applicable where established by contract in accordance with North Carolina Utilities Commission rules.

Water - $2.50 per month per customer
Sewer - $2.50 per month per customer

4. The test year used in this proceeding is the 12 months ended June 30, 1978.

5. To the extent that Pinehurst, Inc., has recovered the cost of the water and sewer utility system since Diamondhead Corporation's acquisition of the system in 1971 through revenues derived from land sales such costs should not be included in determining the original cost net investment of the system.

6. The reasonable original cost net investment of Pinehurst, Inc., in its utility system is $507,713, which includes an allowance of $27,677 for working capital.

7. Pinehurst, Inc.'s original cost net investment in its utility operations is financed in its entirety by long-term debt.

8. The embedded cost of Pinehurst, Inc.'s long-term debt devoted to its utility operations is approximately 8.4%.

9. The total end-of-period operating revenues, under present rates, of Pinehurst, Inc., are $147,262, consisting of $107,200 of water revenues and $40,062 of sewer revenues.

10. The end-of-period level of annual operating expenses under present rates is $271,639. Of this amount, $96,091 represents operating expenses associated with water operations, of which $16,246 represents actual investment in water plant currently consumed through depreciation. The remaining $175,548 of operating expenses are identifiable with sewer operations and includes $11,042 of depreciation on sewer plant.

11. Pinehurst, Inc., experienced and end-of-period operating loss of $124,377 based upon the test year level of operations, which is neither fair not reasonable.

12. A fair and reasonable rate of return for Pinehurst, Inc., is 10%.

13. Pinehurst, Inc., should be allowed an increase in addition to the annual gross revenues which should be realized under its present rates in an amount not to exceed $187,322. This increase is required in order for the Applicant to have a reasonable opportunity through efficient management to achieve a rate of return of approximately 10%. The increased revenue requirement is based upon the reasonable test year operating revenues and expenses, including interest and taxes, as heretofore determined.

14. The quality of service provided by the Applicant is satisfactory.

15. The Company's rate structure should include a schedule of minimum charges for different size meters.

16. No separate rate for large industrial customers is justified.

17. Pinehurst, Inc., should meter the service to the condominimums as soon as possible wherever feasible.

18. The proposed availability charges are reasonable.

19. The Company's fair and reasonable connection charges should be as follows:

Water Connection Charges:
3/4 Inch Service Line and Meter - $224
Larger Than 3/4 Inch Service Line and Meter - $225 plus actual cost of service pipe

Sewer Connection Charge:
4 Inch Service Line - $175
Larger Than 4 Linch Service Line - $175 plus actual cost of service pipe

20. The Company's proposed reconnection charges are reasonable.

21. All charges for fire hydrants are unreasonable and should be deleted from the Company's rates.

An Order setting forth evidence and conclusions in support of the foregoing findings of fact in this decision will be issued subsequently.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Pinehurst, Incorporated, be, and hereby is, authorized to adjust its rates and charges to produce an increase in gross revenues not to exceed $187,322 on an annual basis.

2. That the Applicant is hereby called upon to propose specific rates, charges, and regulations reflecting the increase in revenues approved herein. Such proposed rates and charges shall be consistent with the findings of fact as found and as stated hereinabove.

3. That upon the filing of the Company's proposed rates, charges, and regulations as required herein the Public Staff shall review such proposals and file comments or exceptions with this Commission within five days thereof.

4. That the rates and charges necessary to increase annual gross revenues to the level authorized in this Order shall become effective upon the issuance of a further order by this Commission. Such Order will include evidence and conclusions supporting the decision made herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of June, 1979.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. W-6, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Pinehurst, Incorporated, P. O. Box 4000, Pinehurst, North Carolina 28374, for Approval of Increased Rates for Water and Sewer Utility Service in and Around the Village of Pinehurst in Moore County, North Carolina	) ORDER) SETTING) RATES))

HEARD IN: Room 111, Administration Building, Sandhills Community College, Carthage, North Carolina, on May 24, 1979

BEFORE: Commissioner Robert Fischbach, Presiding; and Commissioners Lindsay Tate and Ben E. Roney

APPEARANCES:

For Pinehurst, Incorporated:

Lee West Movius and John M. Murchison, Jr., Kennedy, Covington, Lobdell and Hickman, Attorneys at Law, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For the Attorney General:

David Gordon, Associate Attorney General, P.O. Box 629, Raleigh, North Carolina 27602

For the Public Staff:

Stephen G. Kozey, Staff Attorney, North Carolina Utilities Commission - Public Staff, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: By application filed with the North Carolina Utilities Commission on November 14, 1978, Pinehurst, Incorporated (Pinehurst or the Company), seeks approval to increase its rates for water and sewer utility service in the Village of Pinehurst in Moore County.

By Order issued December 8, 1978, the matter was declared a general rate case. Pinehurst was required to give public notice of the proposed increase, and the proposed rates were suspended.

By Order issued February 28, 1979, the Commission continued the public hearing to April 27, 1979, upon Motion by the Public Staff and ordered Pinehurst to provide the information requested in Appendix 1 to the Public Staff's Motion and a copy of Pinehurst's nonconsolidated financial statements as soon as they could be made available.

The Public Staff made an additional data request of Pinehurst by letter dated March 5, 1979. By letter of March 28, 1979, counsel for Pinehurst advised the Public Staff of what it could provide and what materials were unavailable or too costly in its opinion to produce.

By Order issued April 18, 1979, the Commission rescheduled the hearing to May 24, 1979, and ordered the hearing to be conducted in Room 111 of the Administration Building at Sandhills Community College, Carthage, North Carolina.

Public Notice was given as specified by the Commission, and the matter was called for hearing at the time and place captioned above. Pinehurst offered the testimony of John Fowlerd, Certified Public Accountant; John R. Kelly, Vice-President of Finance and Treasurer of Pinehurst; James Randolph, Sr., Project Manager of Pinehurst; and Max B. Merritt, Assistant Controller of Pinehurst. At the close of the Applicant's direct case, the Attorney General moved for

dismissal of the application for failure to present sufficient evidence to justify any increase. The Commission denied the motion. The Public Staff offered the testimony of Jana K. Hemric, Public Staff Accountant, and David Creasy and Rudy Shaw of the Public Staff Engineering Division. Parker Lynch, Public Works Director of Moore County, testified concerning sewage treatment service provided to Pinehurst by Moore County. Joseph Adams, Moore County Fire Marshall, testified to the adequacy of Pinehurst's fire protection facilities. Customers of Pinehurst were present at the hearing to express their opposition to the proposed rate increase. The Commission heard the testimony of the following customers: Irving Lorber, who testified on behalf of the seven condominium associations; L.W. Raichle, representing the Village Council of Pinehurst; Moseley G. Boyette, Jr., attorney for Moore Memorial Hospital; and Robert Lagergren, Ralph Struck, and George Herre.

On June 29, 1979, this Commission issued a Notice of Decision and Order which stated that Pinehurst, Incorporated, should be allowed the opportunity to earn a return of 10% on its investment used and useful in providing water and sewer service in North Carolina. In order to have the opportunity to earn a fair return, Pinehurst was allowed to increase its rates and charges to produce increased annual gross revenues of $187,322.

Based on the prefiled testimony and exhibits, the testimony at the hearing, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, Pinehurst, Incorporated, is a public utility as defined in N.C.G.S. 62-3 and holds a Certificate of Public Convenience and Necessity to furnish water and sewer utility service in certain areas in Moore County.

2. The Applicant presently charges the following rates for its water and sewer utility service:

METERED WATER (per month):

Minimum charge (includes first 333 cubic feet)	$2.00
Next 1,667 cubic feet (per 100 cubic feet)	$ .60
Next 3,000 cubic feet (per 100 cubic feet)	$ .40
Next 15,000 cubic feet (per 100 cubic feet)	$ .25
All over 20,000 cubic feet (per 100 cubic feet)	$ .20

METERED SEWER (per month):

Minimum charge (includes first 333 cubic feet)	$1.00
Next 1,667 cubic feet (per 100 cubic feet)	$ .30
Next 3,000 cubic feet (per 100 cubic feet)	$ .20
Next 15,000 cubic feet (per 100 cubic feet)	$ .125
All over 20,000 cubic feet (per 100 cubic feet)	$ .10

FLAT RATE WATER: $2.00 per month per condominium unit

FLAT RATE SEWER: $1.00 per month per condominium unit

WATER CONNECTION CHARGES:

3/4-Inch Service Line and Meter	$100
1-Inch Service Line and Meter	$140
1 1/2-Inch Service Line and Meter	$250
2-Inch Service Line and Meter	$375
Larger than 2-Inch Service Line and Meter	Actual Cost

SEWER CONNECTION CHARGE: 6-Inch Service Line $100

RECONNECTION CHARGES:

If service discontinued for nonpayment	$ 3.00
If service discontinued at customer's request due to seasonal or intermittent usage	$ 6.00

3. The Applicant initially proposed in its initial application of November 14, 1979, to charge the following rates for its water and sewer utility service:

METERED WATER (per month):

Service charge	$4.00
Usage charge (per 1,000 gallons)	$ .90

METERED SEWER (per month):

Service charge	$4.00
Usage charge (per 1,000 gallons)	$1.08

MULTIPLE SERVICE RATES (Water and Sewer):
If a meter serves more than one unit, such as a multiple unit condominium, the amount of the minimum charge will be multiplied by the number of units served.

WATER CONNECTION CHARGES:

3/4-inch Service Line and Meter	$300
1-inch Service Line and Meter	$350
Larger than 1-inch Service Line and Meter	Actual Cost

SEWER CONNECTION CHARGES:

4-inch Sewer Service	$350
Larger Services	Actual Cost

RECONNECTION CHARGES:

If water service discontinued by utility for nonpayment or other cause	$ 5.00
If water service discontinued at customer's request	$ 5.00
If sewer service discontinued by utility for good cause	$15.00

AVAILABILITY CHARGES:
Applicable where established by contract in accordance with North Carolina Utilities Commission rules.

Water - $2.50 per month per customer
Sewer - $2.50 per month per customer

4. The Applicant proposed in its amended application of February 13, 1979, to charge the following rates for its water and sewer utility service:

METERED WATER (per month):

Minimum charge (includes first 535 cubic feet)	$ 5.00
All over 535 cubic feet (per 134 cubic feet)	$ .90

METERED SEWER (per month):

Minimum charge (includes first 535 cubic feet)	$ 6.50
All over 535 cubic feet (per 134 cubic feet)	$ 1.08

MULTIPLE SERVICE RATES (Water and Sewer):
If meter serves more than 1 unit, such as a multiple unit condominium, the amount of the minimum charge and the amount of usage included in the minimum charge will be multiplied by the number of units served.

LARGE INDUSTRIAL CUSTOMERS:
Applicable to customer which will guarantee by written contract that it will use at least 2,673,800 cubic feet per year.

Water - $ .60 per 134 cubic feet
Sewer - $1.00 per 134 cubic feet

WATER CONNECTION CHARGES:

3/4-Inch Service Line and Meter	$300
1-Inch Service Line and Meter	$350
Larger than 1-Inch Service Line and Meter	Actual Cost

SEWER CONNECTION CHARGES:

4-Inch Service Line	$350
Larger than 4-Inch Service Line	Actual Cost

RECONNECTION CHARGES:

If water service discontinued by utility for nonpayment or other cause	$ 5.00
If water service discontinued at customer's request	$ 5.00
If sewer service discontinued by utility for good cause	$ 15.00

AVAILABILITY CHARGES:
Applicable where established by contract in accordance with North Carolina Utilities Commission rules.

Water - $2.50 per month per customer
Sewer - $2.50 per month per customer

5. The test year used in this proceeding is the 12 months ended June 30, 1978.

6. To the extent that Pinehurst has recovered the cost of the water and sewer utility system since Diamondhead Corporation's acquisition of the system in 1971 through revenues derived from land sales, such costs should not be

included in determining the original cost net investment of the system.

7. The original cost net investment of Pinehurst is $507,713, which includes an allowance of $27,677 for working capital.

8. Pinehurst's original cost net investment in its utility operations is financed in its entirety by long-term debt.

9. The embedded cost of Pinehurst's long-term debt devoted to its utility operations is approximately 8.4%.

10. The total end-of-period operating revenues, under present rates, of Pinehurst are $147,262, consisting of $107,200 of water revenues and $40,062 of sewer revenues, under the rates originally proposed by the Company in its initial application of November 14, 1978, operating revenues would be $469,613 and under the proposed rates filed in the applicant's amended order of February 13, 1979, operating revenues would be $415,843.

11. The end-of-period level of annual operating expenses under present rates is $271,639. Of this amount, $96,091 represents operating expenses associated with water operations, of which $16,246 represents actual investment in water plant currently consumed through depreciation. The remaining $175,548 of operating expenses is identifiable with sewer operations and includes $11,042 of depreciation on sewer plant.

12. Pinehurst experienced an end-of-period operating loss of $124,377 based upon the test year level of operations, which is neither fair nor reasonable.

13. A fair and reasonable rate of return for Pinehurst on its original cost net investment is 10%.

14. Pinehurst should be allowed an increase in addition to the annual gross revenues which should be realized under its present rates in an amount not to exceed $187,322. This increase is required in order for the Applicant to have a reasonable opportunity through efficient management to achieve a rate of return of approximately 10% on its original cost net investment. The increased revenue requirement is based upon the reasonable test year operating revenues and expenses, including interest and taxes, as heretofore determined.

15. The quality of service provided by the Applicant is satisfactory.

16. The Company's rate structure should include a schedule of minimum charges for different size meters.

17. No separate rate for large industrial customers is justified.

18. Pinehurst should meter the service to the condominiums as soon as possible wherever feasible.

19. The proposed availability charges are reasonable.

20. The Company's fair and reasonable connection charges should be as follows:

WATER CONNECTION CHARGES:

3/4-Inch Service Line and Meter	$225
Larger than 3/4-Inch Service Line and Meter (plus actual cost of service pipe)	$225

SEWER CONNECTION CHARGES:

4-Inch Service Line	$175
Larger than 4-Inch Service Line (plus actual cost of service pipe)	$175

21. The Company's proposed reconnection charges are reasonable.

22. All charges for fire hydrants are unreasonable and should be deleted from the Company's rates.

23. The schedule of rates attached hereto as Appendix A should be adopted.

24. The rate increases approved herein are in compliance with Section 705A-6 of the Council on Wage and Price Stability's Voluntary wage and price guidelines.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 5

These findings of fact are based on Pinehurst's initial and amended applications which were filed in this proceeding and on the records and tariffs on file with the Commission.

Pinehurst's present tariffs list metered service rates in cubic feet, while its amended application lists metered service rates in gallons. For consistency, the amended proposed rates contained in its application have been restated here in cubic feet.

Pinehurst's present tariffs do not contain a flat rate charge for service to each condominium unit, although the Company is assessing such a charge to each unit. The revenue calculations in Shaw Exhibit 1 illustrate that each condominium unit is assessed the minimum charge per month for water and sewer service. Therefore, the present rates listed herein include the actual charges being assessed to each condominium unit.

Pinehurst's present tariffs contain charges for fire hydrants, which the Company did not propose to change.

Therefore, hydrant charges have been excluded from the present and the proposed rates listed herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Public Staff witness Henric presented testimony in support of this Finding of Fact. In her direct testimony, witness Henric stated that at the time of acquisition of Pinehurst in 1971, Diamondhead Corporation, Pinehurst's parent, intended to recover the cost of future water and sewer plant additions through the sale of developed lots, as reflected by Diamondhead's accounting policies up to 1974. In 1974 Diamondhead Corporation changed its accounting policies for water and sewer plant additions in order to capitalize such items. Witness Henric pointed out in her testimony that such a change in accounting methods which results in no economic consequences to the Company does not support the Company's contention that the cost of the utility system has not been recovered through cost of land sales. Witness Henric further stated that any plant additions subsequent to 1974 would mostly constitute excess plant and are not used and useful in providing service to the present customers of the system.

In response to Public Staff witness Henric's statements, the Company presented the testimony of John Fowlerd of Peat, Marwick, Mitchell and Company and of John R. Kelly, Vice President of Finance and Treasurer of Pinehurst. Company witness Fowlerd testified concerning the propriety of Pinehurst's present accounting policy which requires capitalization of water and sewer additions. He testified that treating the water and sewer additions as a cost of land sales as the Company had done prior to 1974 was improper. His opinion was that the accounting change made by Pinehurst in 1974 was necessary and proper.

Company witness Kelly also testified in opposition to the Public Staff's position on this issue. He testified that for the years 1971, 1972, and 1973 the water and sewer additions made by Diamondhead were treated as a cost of land sales erroneously for both book and tax purposes. Upon his recommendation, the Company made an accounting change in 1974 and capitalized water and sewer additions. It was his opinion that had the Internal Revenue Service audited Pinehurst's tax returns during the 1971 through 1973 period, the Company's accounting procedures would have been determined to be improper. His opinion was based on the fact that the IRS had examined Diamondhead's tax returns in the year of the accounting change and had found them to be proper. He did not base his belief on any revenue rulings or regulations of the IRS. On cross-examination he admitted that he was not aware of the Internal Revenue Ruling 60-3 which states the cost of installing water lines and meters may be added to the cost of a tract of land and apportioned among various lots for tax purposes.

Mr. Kelly testified that the Company did not pay any additional income taxes due to the accounting change. He stated that from a tax planning standpoint the change was advantageous to the Company. No refund was made to any landowner nor was the price of lots for sale affected in any manner due to this change. The accounting change resulted in a reduction of the 1974 operating loss from $7 million to approximately $2 million.

The Public Staff introduced a copy of a property report provided to prospective land purchasers of Pinehurst. This report indicated that construction of water lines and sewer lines would be performed by the developer at no cost to the buyer except for sewer connection costs. On redirect witness Kelly stated that it was not reasonable to interpret the property report to mean that buyers would not have to pay rates for water and sewer services, but that the only reasonable interpretation was that the statement in the report referred to additional assessments.

Public Staff witness Creasy also offered testimony concerning the plant additions made by Pinehurst between August 31, 1971, and the end of the test period. In his opinion, the majority of these additions should be considered excess plant. He recommended that water and sewer plant of $6,142,913 initially proposed by the Company be reduced to $2,131,636 to reflect underutilized plant. He conditioned his recommendation on the basis that it would be void if the Commission found that the cost of plant additions made subsequent to the acquisition of Pinehurst by Diamondhead was recovered through the sale of lots.

The Commission concludes that the change in accounting for the costs of the utility system from inclusion in cost of land sales to capitalization and depreciation was made due to financial and tax considerations by Diamondhead rather than out of any need to correct a mistake in applying accounting theory. The conversion of carry forward tax losses which would expire to future tax deductible depreciation expense is an obvious tax benefit, and the reduction of a $7 million reported financial loss down to a $2 million loss is, taken alone, justification for making the accounting change. However, justification for a nonregulated business making such a change does not necessitate the change with regard to its regulatory treatment. The Commission further concludes that a change in accounting for a cost does not change the reality of how that cost was recovered. The fact that, for the three years prior to the change, the Company included the cost of additions to the utility system in the cost of land sales must also be considered. Additionally, the Commission is not persuaded that acceptance by the Internal Revenue Service of a change in accounting implies rejection of the prior treatment. This is particularly true when Internal Revenue Ruling 60-3 allows such treatment.

Finally, the Commission rejects any notion that the cost of water utility systems is not frequently recovered in the sale price of lots. The Commission takes judicial notice of its official files which include other water utility company cases in which it has been found that the cost of the utility system was recovered through land sales. The Commission also notes the experience of the New York Public Service Commission in this area as set forth by Alfred E. Kahn in footnote 1 to his Article "Applications of Economics to an Imperfect World," The American Economic Review, Vol. 69, No. 2 (May 1979), pp. 2-3.

Based on all the foregoing, the Commission concludes that the cost of the water and sewer utility system has been recovered through the cost of land sales since Diamondhead's acquisition of the system in 1971 and that such costs are not properly includable in determining the original cost net investment of the system by Pinehurst in this proceeding. While witness Creasy's proposal of excluding underutilized plant additions from plant in service may have merit, consideration of his proposal is unnecessary due to the Commission's conclusion regarding the recovery of plant additions through the sale of developed lots.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Both Public Staff witness Hemric and Company witness Merritt presented calculations of original cost net investment. The following summary presents the differences in their calculations:

	Revised Company	Public Staff	Difference
Utility plant in service	$4,212,825	$1,024,983	$(3,187,842)
Working capital	-	16,139	16,139
Total investment	4,212,825	1,041,122	(3,171,703)
Accumulated depreciation	930,507	544,947	(385,560)
Original cost net investment	$3,282,318	$ 496,175	$(2,786,143)

The first difference between the Company's and Public Staff's calculations is the amount for utility plant in service. Public Staff witness Hemric eliminated $5,117,930 from utility plant in service as included in the Company's initial application. Of this amount, $1,930,088 represents construction work in progress included in the original application as utility plant in service. (The total utility plant in service in the original application amounted to $6,142,913. By subtracting from this number construction work in progress of $1,930,088, utility plant in service becomes $4,212,825.) The remaining $3,187,842 of the adjustment was made to remove from utility plant in service

additions to the water and sewer system since Diamondhead's acquisition of the system. This adjustment, as explained by Public Staff witness Hemric, was made because of the contention that Diamondhead has recovered the cost of the water and sewer system installed since 1971. The remaining $1,024,983 represents the original cost of the system through 1971, the year of acquisition by Diamondhead Corporation. In Evidence and Conclusions for Finding of Fact No. 6, the Commission concluded that the cost of the utility system additions has been recovered through the cost of land sales by Diamondhead Corporation since 1971. The Commission, therefore, concludes that the utility plant in service of $1,024,983 as presented by Public Staff witness Hemric is proper for use herein.

The next difference in the two presentations is the working capital allowance. Public Staff witness Hemric computed a working capital allowance equal to one-eighth of the adjusted end-of-period level of operation and maintenance expense of $16,139. The Company did not include any amount for working capital.

The Commission believes that the methodology employed by witness Hemric in her calculation of working capital is reasonable for purposes of this proceeding. Therefore, the Commission concludes that the proper allowance for working capital for use herein is $27,677. Such sum is equal to one-eighth of the adjusted end-of-period level of operation and maintenance expense as found reasonable herein.

The final difference in the Company's and Public Staff's calculations arises from the accumulated depreciation component of the rate base. Consistent with her treatment of eliminating utility plant additions since 1971, Public Staff witness Hemric also removed accumulated depreciation booked by the Company on such additions. Having accepted Public Staff witness Hemric's adjustment to utility plant in service as reasonable and proper, the Commission concludes that the related adjustment to accumulated depreciation is necessary. Therefore, the Commission concludes that the end-of-period accumulated depreciation is $544,947.

Based on the foregoing evidence and conclusions, the Commission concludes that the original cost net investment of Pinehurst is $507,713.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 AND 9

Although no testimony was offered by any party concerning what constitutes a fair and reasonable rate of return on Pinehurst's investment in utility plant used and useful in providing water and sewer service in North Carolina, evidence was presented to indicate that all of Pinehurst's investment in assets is financed through debt.

The notes to the financial statements of Pinehurst for the year ended December 31, 1978, show that on December 20,

1978, the Company assumed sole responsibility for $73,000,000 in long-term debt. This debt was in the form of bank notes in the amounts of $40,000,000, $21,000,000, and $12,000,000. The embedded cost of this long-term debt is 8.4%.

The Commission concludes that Pinehurst's method of financing its original cost net investment and the cost of that financing are relevant factors to be considered in determining the Company's cost of providing service and should be used to calculate reasonable levels of income tax expense as well as interest expense. The Commission therefore finds that all of Pinehurst's original cost net investment was financed with long-term debt having an embedded cost of 8.4%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Both the Company and the Public Staff presented testimony relating to end-of-period revenues. The Company's presentation consisted of showing the amount of water and sewer revenues booked during the test year. The Public Staff presented adjusted end-of-period levels of annual revenues that the Company should expect to receive under present rates. The following is a comparison between the two presentations:

	Company	Public Staff
Water revenues	$113,748	$107,200
Sewer revenues	31,554	40,062
Total	$145,302	$147,262

The Public Staff made several adjustments to water and sewer revenues as booked by the Company which included an adjustment to allocate a portion of the flat-rate revenues received from condominiums to sewer operations. Although the revenues pertain to both water and sewer service, the Company had recorded these revenues entirely as water revenues during the test year. The Public Staff also made adjustments to the various revenue classes to reconcile booked revenues to the annual levels of revenue according to the Company's billing records. Additionally, the Public Staff made an adjustment to increase both water and sewer revenues as a result of increased annual consumption by the Moore County Hospital and the Manor Care retirement facility. The Company did not contest any of the Public Staff's adjustments to water and sewer revenues.

The Commission concludes that the end-of-period levels of water and sewer revenues of Pinehurst as presented by the Public Staff are reasonable and proper and that such end-of-period revenues consist of $107,200 of water revenues and $40,062 of sewer revenues for a total of $147,262 of utility revenues under present rates.

Further, the Commission finds that operating revenues under the rates proposed in Pinehurst's initial application of November 14, 1978, would be $469,613 and under the rates proposed in Pinehurst's amended application of February 13, 1979, would be $415,843.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 AND 12

Public Staff witness Henric and Company witness Merritt presented different amounts as the end-of-period level of annual operating expenses. The following comparison of the two presentations is made:

	Company		Public Staff	
	Water	Sewer	Water	Sewer
Operations and maintenance	$ 52,228	$128,343	$69,071	$60,037
Depreciation	63,029	91,487	16,246	11,042
Taxes - Other than income	11,580	19,455	10,774	12,161
Total	$126,837	$239,285	$96,091	$83,240
Total water and sewer operating expenses	$366,122		$179,331	

The Company contested the following adjustments made by the Public Staff:

1. The elimination of payments made to Moore County Public Works during the test year for sewage treatment in the amount of $66,242.

2. The adjustment to decrease annual depreciation on the water plant in the amount of $46,783 for additions to plant since Diamondhead's acquisition in 1971.

3. The adjustment to decrease annual depreciation on sewer plant in the amount of $80,445 for additions to plant since Diamondhead's acquisition in 1971.

The remaining adjustments made by the Public Staff were uncontroverted.

Testimony was presented by the Applicant, the Public Staff, and Parker Lynch, Director of Public Works for Moore County, concerning the first item of difference listed above. Evidence presented showed that the communities of Pinehurst, Southern Pines, and Aberdeen entered into an agreement with Moore County in 1973 whereby Moore County was obligated to develop a wastewater treatment facility to serve the three communities. The relevant cost involved in developing and operating this facility were to be paid by the three communities.

Parker Lynch testified that, currently, Pinehurst is required to pay an operating cost of $.65 per 1,000 gallons of treated sewage and approximately 60% of the debt service cost associated with the facility. The usage charge is based upon all sewage generated in the Pinehurst system regardless of whether the sewage is treated in the Moore County facility or in Pinehurst's own lagoon facility. Debt service costs are apportioned on the basis of population estimates made in a study done at the time the contract was entered into. This study estimated the population of Pinehurst to be approximately 59,000 by the year 2005. The population at the current time is approximately 2,000. The outstanding debt for the Moore County facility was estimated by Mr. Lynch to be $3 million and the interest rate associated with the debt to be 5%. Currently, the debt service cost is apportioned to the Pinehurst, Southern Pines, and Aberdeen communities in the ratios of 60%, 23%, and 17%, respectively.

Initially, Company witness Merritt testified that Moore County sewage charges of $77,045 should be included in test-period operating expenses. He later updated his testimony to include a full year of the Moore County sewage treatment expense in test-period operating expense. The annual amount of this expense proposed by Company witness Merritt was $247,608.

Public Staff witness Creasy also testified with regards to the payments made by Pinehurst to Moore County for sewage treatment. His evaluation referred to an engineering report that was made in contemplation of the sewage facility. This engineering report indicated that the Moore County facility was designed with a large reserve capacity at the request of Pinehurst. This evaluation further showed that of total user and debt charges made by Moore County in 1978 Pinehurst was allocated 14% of the user charges and 63% of debt service charges.

Although testimony presented pointed out that eventually Pinehurst may deliver all its sewage to Moore County, presently only a portion is treated by Moore County. The remainder is treated in Pinehurst's own lagoon facility.

Public Staff witness Creasey's final conclusion was that because the Company had made no study to establish the savings associated with treating all the waste in the original lagoon facilities as opposed to the alternative present situation of waste treatment at both facilities, only one situation should be chosen. It was his opinion that only the cost of operating the original lagoon facility should be included in test-period operating expenses as most of the expenses are presently incurred and wastes are treated in the lagoon facilities.

Consistent with this view Public Staff witness Henric made an adjustment to exclude the Moore County sewage treatment costs from test-period operating expenses.

Company witness Randolph, Project Manager for Pinehurst, testified in opposition to the Public Staff's position on the Moore County sewage treatment facility. He testified that the majority of Pinehurst's sewage, or approximately 66%, is currently being treated at the Moore County facility and the remaining 34% at the Pinehurst lagoon facility. He stated that at present usage levels the lagoon facility is used at maximum capacity. His conclusion was that because the Company is obligated to pay all of the Moore County charges and has no ownership role in the Moore County facility, particularly in establishing the apportionment of cost, all Moore County sewage charges should be included in test-period operating expenses.

Although evidence presented by the parties with regards to the portion of waste which is treated at the Moore County facility is contradictory, the Commission is of the opinion that some level of waste is currently being treated at that facility and, consequently, some level of the associated expenses should be included in test-period operating expenses.

In arriving at a reasonable level of cost to be included in operating expenses for the sewage treatment, it is necessary to examine the charges made by Moore County. Testimony indicated that the debt service costs charged to Pinehurst amounted to $9,465 monthly, or $113,580 annually, and that the basis for these charges were population estimates which were grossly overstated in regards to the actual population of Pinehurst. To establish a reasonable apportionment of the debt service related to Moore County sewage treatment, a reasonable apportionment would be made on the basis of the actual population rather than erroneous estimates. Therefore, the Commission concludes that debt service charges associated with the Moore County treatment facility in the amount of $3,850 should be included in test-period operating expenses.

Testimony presented by witnesses showed that the user charges were based on sewage generated within the Pinehurst system regardless of the fact that approximately 34% of Pinehurst's sewage, based on Company witness Randolph's testimony, is treated in Pinehurst's lagoon facility. It is the Commission's conclusion that usage charges should be based on the actual amount of sewage treated by the Moore County facility rather than all sewage generated in the Pinehurst facility and that usage charges of $88,458 should be included in operating expenses. In conclusion, the Commission finds that $92,308 of the Moore County sewage treatment charges should be included in test-period operating expenses.

The final items of difference relate to the annual depreciation on the water plant of $46,783 and sewer plant of $80,445 for additions to plant since Diamondhead's acquisition in 1971. In the Evidence and Conclusions for Finding of Fact No. 6, the Commission found that the costs

of water and sewer plant additions since the acquisition of Pinehurst by Diamondhead Corporation in 1971 have been recovered through the costs of land sales of Diamondhead Corporation. The Commission concludes that annual depreciation should be allowed only on that portion of plant installed prior to the transfer of ownership to Diamondhead Corporation.

Based on the foregoing, the Commission concludes that a reasonable annual level of operating expenses is $271,639 which is calculated by adding the portion of Moore County sewage treatment cost previously found proper by the Commission of $92,308 to the operating expense amount of $179,331 proposed by Public Staff witness Hemric.

In Finding of Fact No. 10 the Commission found the reasonable level of operating revenues under present rates for Pinehurst, Incorporated, to be $147,262. The Commission has previously concluded that the appropriate level of operating revenue deductions is $271,639 consisting of operating expenses of $221,416, depreciation expense of $27,288, and taxes other than income of $22,935. Based on the aforementioned levels of operating revenues and operating revenue deductions, Pinehurst experienced an operating loss of $124,377 for the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

No testimony was presented by any party with regards to a fair and reasonable rate of return for Pinehurst to earn on its original cost net investment. The Commission concludes, in absence of any evidence to the contrary, that Pinehurst should be allowed to increase its rates to allow the Company a return of 10% on its original cost net investment.

Based upon the foregoing, the Commission concludes that Pinehurst's present rates and charges should be increased to produce an increase in revenues of $187,322 annually. Accordingly, this increase in revenues should allow the Company a reasonable opportunity to achieve the rate of return previously determined to be just and reasonable.

The following schedules summarize the gross revenues and rate of return which the Company should have a reasonable opportunity to achieve based upon the increases approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
PINEHURST, INCORPORATED
DOCKET NO. W-6, SUB 6

STATEMENT OF INCOME, ORIGINAL COST NET INVESTMENT AND RATE OF RETURN ON ORIGINAL COST NET INVESTMENT

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues	$ 147,262	$187,322	$ 334,584
Operating Deductions			
Operation labor	42,103	-	42,103
Operating supplies	924	-	924
Maintenance	12,638	-	12,638
Electricity	21,621	-	21,621
Supplies and expenses	97,837	-	97,837
Administrative and general salaries	24,221	-	24,221
Property insurance	4,851	-	4,851
Transportation expense	4,871	-	4,871
Laundry/uniforms	1,953	-	1,953
Group insurance and workmen's compensation	2,472	-	2,472
Supplies and office expense	3,770	-	3,770
Legal expense	4,155	-	4,155
Total	221,416	-	221,416
Depreciation	27,288	-	27,288
Taxes - other than income	22,935	9,885	32,820
Income taxes	-	2,289	2,289
Net operating income	$ (124,377)	$175,148	$ 50,771
Original Cost Net Investment			
Utility plant in service	$1,024,983	-	$1,024,983
Working capital	27,677	-	27,677
Total	1,052,660	-	1,052,660
Less: Accumulated depreciation	544,947	-	544,947
Original cost net investment	$ 507,713	-	$ 507,713
Rate of Return on Original Cost Net Investment	-	-	10.00%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The only service deficiency mentioned in testimony presented at the hearing concerned the capacity of the

system to provide fire protection. Specifically, Joseph Adams, Moore County Fire Marshall, described the storage capacity of the system as less than desirable for a full service water utility. This testimony indicated that the present pump, storage capacity, and elevated tank may not be adequate to fight large fires of long duration.

Pinehurst should evaluate its fire protection facilities periodically in order to provide storage capacity necessary to meet any State and local governmental standards for fire protection. The Commission concludes that the present service appears to be satisfactory from the record in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Public Staff witness Creasy recommended that the Company's rate structure should include a schedule of minimum charges for different size meters based on the different levels of demand which can be placed on the system by the different size service connections. The Company did not oppose the schedule of minimum charges proposed by the Public Staff; therefore, the Commission concludes that it is proper for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The Applicant proposed a separate use rate for large industrial customers (primarily Moore County Hospital) which was lower than those applicable to other metered customers. Public Staff witness Creasy recommended that no such separate rate be established. The Company did not offer testimony or evidence to show that any economy of scale would result from large volume sales or that such economy of scale would occur in the magnitude reflected in the proposed lower rate. The Commission concludes that in the absence of justification in the record the proposed industrial rate should not be allowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

Public Staff witness Creasy testified that some homeowners had complained about the fact that everyone on the system was metered except the condominiums, and he recommended that they be metered as soon as possible wherever feasible. He recommended a flat rate per month per condominium unit, chargeable to each condominium homeowner's association, as an interim charge until such time as master meters could be installed.

Pinehurst proposes to charge the minimum charge applicable to metered users multiplied times the number of condominium units as its monthly flat rate charge to each condominium homeowner's association.

Witness Lorber presented a statement on behalf of the condominium homeowner's associations supporting the proposal

that the condominiums be metered, but opposing the level of the interim flat rates proposed by the Company or the Public Staff. He based his argument on the fact that these condominium units have a 30% occupancy rate and have less outside irrigation area per unit than single family dwellings and that some of the condominiums have their own well for outside irrigation.

In view of the fact that the flat rates per unit proposed by witness Creasy are lower than the minimum charge per metered user proposed by the Company, that the flat rates are intended as interim rates only, and that such rates are similar to flat rates established for apartment dwellings in other rate proceedings involving water and sewer utility companies, the Commission concludes that such flat rates are reasonable interim rates in this case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Public Staff witness Creasy testified that the Company had not yet sold any lots which would be subject to the proposed availability charge. Therefore, any lots sold in the future would be subject to North Carolina Utilities Commission Rule R7-3 regarding availability charges. Witness Creasy also testified that the proposed charges of $2.50 per month for water and sewer would not be excessive. The Commission concludes that Rule R7-3 will satisfactorily deal with the operation of this charge.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

Public Staff witness Creasy testified that the actual cost of making the new connections is approximately $225 for a 3/4-inch water tap and approximately $175 for a 4-inch sewer tap. He also recommended that the cost of new connections larger than these sizes be the same amount as the smaller size plus the actual cost of the larger meter or service pipe itself. The Company offered no testimony or evidence to show otherwise. The Commission concludes that Creasy's testimony is reasonable and should be adopted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The present tariff of the Company contains reconnection charges which are lower in some instances and higher in other instances than those contained in North Carolina Utilities Commission Rules R7-20(f) and (g) and R10-16(f). The proposed rates increase the reconnection charges applicable to service discontinued for nonpayment and decrease the reconnection charges applicable to service discontinued at the customer's request. Neither the Company nor the Public Staff commented on the proposed revisions, and the Commission considers the proposed reconnection charges to be within the range of reasonableness established for such charges in previous rate proceedings involving other water and sewer utility companies.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Hydrants are installed both inside and outside the boundaries of Pinehurst Village. However, charges for hydrants are only assessed against the Pinehurst Village Council, which represents those customers inside the Pinehurst Village boundaries. In addition, the Company has sprinkler systems installed in many of its buildings, and one of the elevated storage tanks on the system is specifically reserved for fire protection service to the Pinehurst Hotel, although no direct charge for fire protection is made for these facilities.

It appears that the best way to allocate the cost of providing fire protection service in this case would be to include such cost in the overall costs of providing general water service and to eliminate separate hydrant charges.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

In its Notice of Decision and Order, the Commission called upon Pinehurst to propose specific rates, charges, and regulations reflecting the annual increase in revenues of $187,322 approved therein. That Order required the Public Staff to review such proposals and to file comments or exceptions with the Commission.

In response to the Notice of Decision and Order, Pinehurst submitted proposed rates with the Commission on July 16, 1979. Consistent with the requirements of the Notice of Decision and Order, the Public Staff filed Comments on the Applicant's proposed rates within five days thereafter. The Public Staff concurred with the majority of the rates, charges, and regulations filed by the Applicant. However, the Public Staff took exception to the Company's proposed $.69 rate per 1,000 gallons (for all usage over 3,000 gallons) per month for water service and the proposed $.73 charge per 1,000 gallons (for all usage beyond 3,000 gallons) for sewer service. The Public Staff's position is that the differential between the Commission's approved revenues and the Public Staff's proposed revenues is wholly attributable to the sewer operations. Consequently, the Public Staff proposed usage charges per 1,000 gallons (for all usage beyond 3,000 gallons) per month of $.50 for water service and $1.06 for sewer service.

Since the difference in the Public Staff's proposal in this proceeding and the decisions made herein by the Commission is largely attributable to the sewer operations, the Commission concludes that the Public Staff's recommendation regarding the usage rates is reasonable. Consequently, the Commission finds that a monthly water usage charge of $.50 per 1,000 gallons and a monthly sewer usage charge of $1.06 per 1,000 gallons should be implemented by Pinehurst for all usage over 3,000 gallons.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

On January 23, 1979, the Commission amended its Rule R1-17 which requires all utilities applying for rate increases before the North Carolina Utilities Commission to certify that the increases requested comply with the anti-inflation standards established by the Council on Wage and Price Stability (COWPS) or to demonstrate why the standards should not apply. As Pinehurst applied to this Commission for an increase in rates prior to the issuance of that requirement, no such information was provided by the Company.

The increase in Pinehurst's water and sewer rates approved herein clearly does not meet either the COWPS' price deceleration standard or the profit margin standard. However, the COWPS makes provision for exceptions to these standards in cases of extreme hardship or gross inequities and outlines certain conditions under which the hardship provision should apply.

Under the rates presently in effect, Pinehurst is operating in a loss position. The Commission is of the opinion that it is not reasonable for a company which is providing adequate service and operating in a reasonably efficient manner to be incurring losses. Since a rate increase which meets either the price deceleration standard or the profit margin limitation would not be sufficient to fully eliminate the loss which the Company is presently incurring, the Commission believes that the hardship provision should apply in this proceeding. The Commission therefore concludes that the rate increases approved herein are in compliance with Section 705A-6 of the COWPS' voluntary wage and price guidelines.

In reaching this decision, the Commission takes note of the fact that Pinehurst has not had an increase in its rates since 1966. Further, the Commission has the statuatory obligation to set rates which are just and reasonable. Setting rates at a level lower than approved herein would in this Commission's opinion not be just and reasonable and would result in an extreme hardship on the Company and ultimately would not be in the best interest of the Company's customers.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Pinehurst, Incorporated, be, and hereby is, authorized to adjust its rates and charges to produce an annual increase in revenues of $187,322 on an annual basis.

2. That the Schedule of Rates attached hereto as Appendix A is hereby approved for water and sewer utility service rendered by Pinehurst, Incorporated, and such rates and charges shall become effective on service to be rendered on or after the date of this Order.

3. That said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62.138.

4. That Pinehurst, Incorporated, is hereby directed to prepare a study showing the cost of installation and a proposed construction timetable for installing master meters on all condominium groups in such a manner as to meter water usage by all condominiums and to submit such study to the Commission for review within 30 days from the date of this Order.

5. That Pinehurst, Incorporated, is hereby directed to continue to install, operate, and maintain all facilities necessary to furnish fire protection service to all of its customers and that the Company is hereby directed to meet with local authorities in order to determine what if any changes or improvements should be made to the system to assure the provision of adequate fire protection to its customers and to submit such findings to the Commission for review within 60 days from the date of this Order.

6. That Pinehurst shall notify all customers of these rate increases by inserting the Notice shown as Appendix B in all bills rendered on or after the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of August, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
DOCKET NO. W-6, SUB 6
PINEHURST, INCORPORATED
WATER AND SEWER RATE SCHEDULE

Individual Service Rates: Applicable to individually metered single family residences, mobile homes, or apartments, or to individually metered single commercial enterprises located entirely on single contiguous premises:

Water: Minimum charge per month (includes first 3,000 gallons per month):

3/4-inch	service line or meter -	$ 4.50
1-inch	service line or meter -	$ 6.50
1 1/2-inch	service line or meter -	$ 12.00
2-inch	service line or meter -	$ 18.00
3-inch	service line or meter -	$ 30.00
4-inch	service line or meter -	$ 50.00
6-inch	service line or meter -	$100.00
8-inch	service line or meter -	$200.00

Usage charge per month:

$.50 per 1,000 gallons for all usage over first 3,000 gallons per month.

Sewer: Minimum charge per month (includes first 3,000 gallons per month):

4-inch service line - $ 4.50
6-inch service line - $10.00
8-inch service line - $15.00
10-inch service line - $25.00

Usage charge per month:

$1.06 per 1,000 gallons for all usage over first 3,000 gallons per month.

Multiple Service Rates: Applicable to multiple dwelling unit premises or premises with multiple commercial enterprises, which are served through a single meter:

Water: $4.00 per month per unit (whether or not occupied)
Sewer: $4.00 per month per unit (whether or not occupied)

Connection Charges:

Water Service:	
3/4-inch Service Line and Meter	$225.00
Larger Service	$225.00 plus actual cost of service pipe
Sewer Service:	
4-inch Service Line	$175.00
Larger Service	$175.00 plus actual cost of service pipe

Reconnection Charges:

If water service cut off by utility for good cause (NCUC R7-20(f)):	$ 5.00
If water service discontinued at customer's request (NCUC R7-20(g)):	$ 5.00
If sewer service cut off by utility for good cause (NCUC R10-16(f)):	$15.00

Availability Charge:
Maximum of $2.50 per month for water and maximum of $2.50 per month for sewer, if established by contract and otherwise in accordance with NCUC rules.

Bills Due: On billing date.

Bills Past Due: Thirty days after billing date.

Billing Frequency: Monthly, for service in arrears.

Late Payment Charge:
1% per month will be applied to the unpaid balance of all bills still past due 30 days after billing date.

APPENDIX B
PINEHURST, INCORPORATED
DOCKET NO. W-6, Sub 6
NOTICE TO CUSTOMERS

On November 14, 1978, Pinehurst, Incorporated, filed an application with the North Carolina Utilities Commission requesting an increase in its water and sewer rates and charges in and around Pinehurst Village in Moore County North Carolina. The increase in water and sewer rates and charges would have produced an annual increase in Pinehurst's revenues of approximately $322,351. The rates requested by Pinehurst are as follows:

	Water	Sewer
Service charge	$4.00	$4.00
Usage charge	$ .90 per 1,000 gallons	$1.08 per 1,000 gallons

The proposed new rates listed above would have increased an average customer's bill from approximately $5.60 for water service and $2.80 for sewer service to approximately $10.30 for water service and $11.55 for sewer service, based on an average monthly consumption of 7,000 gallons.

Following a hearing on May 24, 1979, at Sandhills Community College in Carthage, North Carolina, the Commission has approved an increase in rates and charges that will provide $187,322 in additional revenues annually for Pinehurst. Under the rates approved by the Commission, an average residential customer having an average monthly consumption of 7,000 gallons will pay $6.50 for water service and $8.74 for sewer service monthly. The rates approved by the Commission provide for varying minimum charges based on different size meters and changes in service connection charges. Although the increase in rates is substantial, it should be recognized that rates for Pinehurst's customers have not been increased since 1966 and that the rates herein approved are comparable with the water and sewer rates charged by similiar systems in North Carolina.

DOCKET NO. W-241, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Springdale Water Company of Raleigh, Inc., 8700 Leesville Road, Raleigh, North Carolina, for Approval of Increased Rates for Water Utility Service in Springdale Estates Subdivision in Wake County, North Carolina) ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 16, 1979

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Ben E. Roney and Robert Fischbach

APPEARANCES:

For Springdale Water Company:

Marshall B. Hartsfield, Poyner, Geraghty, Hartsfield & Townsend, Attorneys at Law, 615 Oberlin Road, Raleigh, North Carolina 27605

For the Public Staff:

Joy R. Parks, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

For Springdale Estates Association:

Arch T. Allen, III and Charles D. Case, Allen, Steed & Allen, P.A., P.O. Box 2058, Raleigh, North Carolina 27602

BY THE COMMISSION: By application filed with the North Carolina Utilities Commission on August 25, 1978, Springdale Water Company seeks approval to increase its rates for water utility service in Springdale Estates Subdivision in Wake County.

By Order issued September 13, 1978, the matter was declared a general rate case. Springdale was required to give public notice of the proposed increase, and the proposed rates were suspended.

By Order issued November 28, 1978, the Commission rescheduled the public hearing to January 16, 1979, and allowed the intervention of Springdale Estates Association through their attorneys, Arch T. Allen III and Charles D. Case.

Public Notice was given as specified by the Commission, and the matter was called for hearing at the time and place captioned above. Springdale Water Company offered the testimony of C. Douglas Holland, Certified Public Accountant, who prepared financial statements for Springdale Water Company. Springdale Estates Association offered the testimony of four witnesses: Tom Eddins, Donald R. Mullins, Harrison Jones, and Linda W. Wooten, all of whom are customers of Springdale Water Company. The Public Staff offered the testimony of Judith E. Rowe, Public Staff Accountant; Richard G. Stevie, Public Staff Economist; and David F. Creasy, Director of the Water Division of the Public Staff.

FINDINGS OF FACT

1. The Applicant, Springdale Water Company of Raleigh, Inc., is a North Carolina corporation which holds a

Certificate of Public Convenience and Necessity granted by the North Carolina Utilities Commission to provide water utility service in Springdale Estates Subdivision in Wake County.

2. The Applicant currently charges the following rates in Springdale Estates Subdivision:

Up to first 3,000 gallons per month, minimum charge	$5.25
All over 3,000 gallons per month, per 1,000 gallons	$1.00

3. The Applicant proposes to charge the following rates:

Up to first 3,000 gallons per month, minimum charge	$7.50
All over 3,000 gallons per month, per 1,000 gallons	$1.50

4. The test year used in this proceeding is the 12-month period ending September 30, 1977.

5. The original cost net investment of Springdale Water Company is $95,696, which includes a $3,192 allowance for working capital.

6. The cost of the land currently in use included in this original cost net investment of Springdale Water Company in this and in future rate proceedings is $2,500 per acre.

7. The approximate total operating revenues of Springdale Water Company of Raleigh, under present rates on an end-of-period basis are $38,862, and under Company proposed rates would be $56,530.

8. The level of annual operating expenses under present rates is $35,934, which includes the amount of $4,198 for actual investment currently consumed through actual depreciation.

9. The rate of return methodology is the appropriate basis for fixing rates for Springdale Water Company in this proceeding.

10. A fair and reasonable rate of return on the rate base is 11.85% for Springdale Water Company. This provides an after-tax return of $11,340.

11. Based on the Commission's foregoing findings, Springdale Water Company should be allowed to increase its rates so as to produce $10,370 in additional annual gross revenues in order for the Company to have an opportunity, through efficient management, to achieve a rate of return of 11.85%.

12. The following schedule illustrates the appropriate rate structure which will produce $10,370 in additional annual gross revenues for the Applicant:

(1) Minimum Charge (Includes first 3,000 gallons per month):

3/4" x 5/8" meter	= $ 7.00
1" meter	= $ 10.00
1 1/2" meter	= $ 15.00
2" meter	= $ 25.00
3" meter	= $ 40.00
4" meter	= $ 65.00
6" meter	= $125.00

(2) Usage Charge (for all usage over first 3,000 gallons per month): $1.20 per 1,000 gallons

13. The service furnished by the Applicant is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence for these findings of fact are taken from the application, testimony given at the hearing and the official records on file with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Both the Applicant and the Public Staff presented calculations of original cost net investment. The following summary shows the differences in their computations:

	Applicant	Public Staff	Difference
Utility plant in service	$123,932	$125,333	$ 1,401
Accumulated depreciation	(56,699)	(32,829)	23,870
Net utility plant in service	67,233	92,504	25,271
Working capital allowance	-	3,192	3,192
Original cost net investment	$ 67,233	$ 95,696	$28,463

The $1,401 difference in utility plant is due to three adjustments proposed by Public Staff witness Rowe. First, the Applicant did not include in utility plant any cost for land used as well sites. Witness Rowe increased utility plant by $20,000 (8 acres x $2,500/acre) the original cost of the eight acres of land used and useful as utility property. Public Staff witness Rowe testified that $2,500 was the approximate cost per acre. In addition, Company witness Holland testified (Tr., p. 19) that $2,500 per acre was the original cost of the land to the Applicant. The next component of the utility plant adjustment proposed by witness Rowe was the increase in utility plant to reflect the $6,361 of plant additions made subsequent to the test year, but prior to the hearing. The third element of witness Rowe's utility plant adjustment was the reduction of utility plant by total customer contributed capital in the form of tap-on fees. Witness Rowe testified that the tap-on fees of $24,960 constituted customer capital contributions

to the utility, and that this amount should be removed from utility plant in order that customers not be required to pay a return on investment which they had contributed. These three elements comprise a net increase in utility plant of $1,401. ($20,000 + $6,361 - $24,960)

The Applicant and the Public Staff also presented different amounts for accumulated depreciation. Witness Rowe testified that the Applicant's accumulated depreciation balance of $56,669 was the balance per books which had been computed by using accelerated depreciation methods. She testified that water rates set in previous proceedings of Springdale Water Company had been based on the inclusion of straight-line depreciation expense in the cost of service. Therefore, the accumulated depreciation balance per books reflected a larger plant investment recovery than had actually occurred based on straight-line depreciation. Therefore, witness Rowe recalculated accumulated depreciation to the level of plant cost recovery ($35,829) that has actually occurred from the water rates previously set by the Commission. From this calculated accumulated depreciation balance, witness Rowe removed the $3,000 amount applicable to the contributed property. This treatment is consistent with the removal of contributed property from plant in service. The accumulated depreciation balance is therefore $32,829 ($35,829 - $3,000). Net utility plant in service is $92,504 ($125,333 - $32,829).

The Applicant did not include an allownace for working capital in the determination of original cost net investment. Staff witness Rowe calculated a working capital allowance of $3,192 consisting of one-eighth of adjusted operating expenses less depreciation and purchased power. Witness Rowe explained that the Company did not record prepayments, materials and supplies, tax accruals, nor did it require customer deposits; and therefore, that the working capital allowance consisted of only the one-eighth component.

The Commission has examined the evidence and the adjustments proposed by Staff witness Rowe and finds them to be proper. In addition, the Applicant accepted these adjustments. The Commission, therefore, concludes that the original cost net investment of Springdale Water Company is $95,696, which consists of $92,504 net utility plant in service plus a $3,192 allowance for working capital.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

In its application in this proceeding, Springdale Water Company did not include any cost of land representing well sites in its cost of utility property. Public Staff witness Rowe proposed an adjustment to utilitiy plant to include the cost of land at $2,500 an acre in Springdale's original cost net investment. Company witness Holland testified that (Tr., p. 19) $2,500 was the approximate original cost per acre of the land to the Applicant.

Company witness Holland further testified (Tr., p. 19-20) that, in his opinion, the value of the land substantially increased between the time it was acquired and the time that it was used as well sites. The Applicant stipulated (Tr., p. 110) to the use of the $2,500 per acre original cost of the land in this proceeding, but reserved the right to modify the original cost in future proceedings.

Public Staff witness Rowe testified that the original cost of utility plant in service is $125,333. This amount includes $20,000 as the cost of eight acres of well sites at $2,500 per acre. The Commission is of the opinion that the future write-up of the original cost of the land to appraisal values would not be consistent with generally accepted accounting principles, nor would it be appropriate for rate-making purposes, since the ratepayer would be required to pay a return on an inflated rate base including an amount for investment that has not actually been made by the Applicant. Therefore, the Commission concludes that the cost of the land currently in use included in the original cost net investment of Springdale Water Company is $2,500 per acre in this and in future rate proceedings of the Applicant.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Applicant did not present a calculation of end-of-period revenues under present rates or proposed rates. The Public Staff calculated end-of-period water revenues under present rates of $37,884, and under Company proposed rates of $55,552. These computations were based on 287 customers as of September 30, 1978, and an average consumption of 8,750 gallons per month.

Staff witness Rowe testified that she removed from revenues $4,100 of tap-on fees collected from Springdale customers during the test year. Although the Applicant recorded the $4,100 as revenues, these funds represent customer contributions of capital to the water utility and should be excluded from revenue (Tr., p. 81).

Staff witness Rowe amended her testimony (Tr., p. 81) to include $978 of interest income in revenues. She testified that the Applicant's stated purpose of the interest-bearing investment was to create a replacement fund for utility plant, and as such, the revenue from this fund should be included in operating revenues. The revised end-of-period revenues as presented by the Public Staff under present rates are therefore $38,862 ($37,884 + $978), and under Company proposed rates, $56,530 ($55,552 + $978).

The Applicant agreed that Ms. Rowe's calculation of revenues as amended was proper. The Commission has examined the evidence and concludes that end-of-period revenues under present rates are $38,862, and under Company proposed rates would have been $56,530.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Both the Applicant and the Public Staff presented different amounts for the level of operating expenses upon which to base the setting of rates in this proceeding. Public Staff witness Rowe proposed several adjustments to operating expenses which were accepted by Company witness Holland (Tr., p. 18). The Commission has examined these adjustments and concludes that they are reasonable. The Commission does not deem it necessary to discuss these uncontroverted adjustments in detail and therefore will only describe them briefly:

Repairs and maintenance expense was increased by $1,000 to reflect estimated expenditures on a current level.

Purchased power expense was increased by $1,163 to reflect current purchased power rates and end-of-period number of customers.

Depreciation expense was reduced by $2,373 to conform to the straight-line method of computing depreciation as well as recognizing the estimated useful lives recommended by Public Staff witness Creasy.

Lease expense of water treatment equipment was increased by $2,147 to the annual level of expense as stated in the base contract.

A composite $98 downward adjustment to taxes other than income was based on end-of-period payroll taxes, gross receipts taxes and property taxes.

Wages expense was decreased by $2,715 to reflect the wage level ($10,045) recommended by Staff witness Creasy.

Insurance expense was reduced by $215 representing the premium amount applicable to nonutility property.

Office expense was increased by $100 of common office expenses properly allocable to the water utility.

The Commission concludes, therefore, that $35,934 is the proper level of operating expenses under present rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Counsel for the Applicant requested that the rate base procedure be employed to establish rates for Springdale Water Company (Tr., p. 4). In accordance with G.S. 62-133.1, a water company may request that rates be fixed under G.S. 62-133(b), and, therefore, the ratio of operating expenses to operating revenues is not appropriate in this case. Public Staff witness Stevie also testified that the rate of return on rate base methodology is appropriate for setting rates for Springdale Water Company in this proceeding since the rate base as calculated by Public Staff

witness Rowe is large in comparison to the cost base (Tr., p. 75, 76, 84, and 87).

During cross-examination of witness Rowe (Tr., p. 79) and witness Stevie (Tr., p. 93), the Intervenor inquired about applicability of the operating ratio method if the rate base consisted entirely of contributed capital. Both witnesses replied that under those circumstances, the operating ratio method would be appropriate. However, both added that the return on rate base method is appropriate in this proceeding.

Based upon the Applicant's request, and the supporting testimony of witnesses Rowe and Stevie, the Commission concludes that the rate of return on rate base methodology is the proper basis for setting rates for Springdale Water Company in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The Applicant did not offer testimonoy regarding its proposed rate of return. However at the hearing, Applicant did stipulate to accept the evidence and recommended rates submitted by the Public Staff. Additionally, Applicaint accepted and stipulated to Public Staff's Recommended Order.

Public Staff witness Stevie testified that a reasonable rate of return on the rate base for Springdale Water Company was 11.85% (Tr., p. 91). The determination of this reasonable rate of return, according to witness Stevie, depends upon an estimation of the firm's cost of capital. Witness Stevie's approach for estimating this return is divided into three parts. The first involves estimation of the return on equity which should be earned on investments of comparable risk. This return is estimated by applying a discounted case flow analysis to the current yield and to the growth in dividends and earnings per share of the population of water utility stocks listed in investor service publications. Witness Stevie testified that this group of water utilities was chosen because information on alternate investments of comparable risk was not available (Tr., p. 88-91). The second component of the method is the calculation of Springdale Water Company's debt cost. The third and final part of the method involves estimation of a weighted average return based upon the preceeding two parts and the average debt to equity ratio in the water utility industry. According to witness Stevie, the weighted average return of 11.85% produced by this method provides the water utility with a reasonable return sufficient to preserve its financial integrity.

The determination of a fair rate of return requires a degree of expert judgment; however, traditional methods and procedures have been devised to eliminate as much judgment as possible. The Commission finds that a diversity of methodology is a desirable end and is receptive to all analytical techniques offered to assist the Commission in

determining a fair and reasonable rate of return. (The relevant evidence presented in this case concludes that the Applicant should have an opportunity to earn of its rate base rate of return in the range of 11.5% to 12%, which would require an increase in annual revenues from North Carolina customers of Springdale Water Company of $10,370.00, based upon the test year level of operations.) The Public Staff has recommended a schedule of rates presented subsquently, and these rates have been adopted by the Applicant; therefore, the Commission has determined that such additional revenues will result in a fair rate of return to the Applicant of 11.85%, based upon the test year level of operations.

However, in the final analysis, the determination of a fair rate of return is to be made by this Commission in its own impartial judgment, informed by the testimony of expert witnesses and other evidence of record. Such a determination is, of course, of great importance and must be made with great care. Whatever the return allowed, it will have an immediate impact on the Company and its customers and the Commission is well aware of its statutory responsibility to insure that all parties are fairly and equitably treated. Therefore, the Commission after having considered carefully all of the relevant evidence presented in this case concludes that the Applicant should have an opportunity to earn on its rate base a rate of return in the range from 11.5% to 12%, which requires an increase in annual revenues from its North Carolina customers of $10,370, based upon the test year level of operations. As reflected in the schedule presented subsequently, the Commission has determined that such additional revenues will result in a fair rate of return to the Applicant of 11.85%, based upon the test year level of operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The following schedule summarizes the gross revenues and rate of return on original cost net investment which the Company should have a reasonable opportunity to achieve, based on the increase approved herein. This schedule incorporates the findings, adjustments, and conclusions heretofore made by the Commission.

SCHEDULE I
SPRINGDALE WATER COMPANY OF RALEIGH
STATEMENT OF INCOME, ORIGINAL COST NET INVESTMENT, AND
RATE OF RETURN ON ORIGINAL COST NET INVESTMENT

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Water revenues	$ 37,884	$10,370	$ 48,254
Interest Income	978	-	978
Total operating revenues	38,862	10,370	49,232
Operating Revenue Deductions			
Repairs and maintenance	3,056	-	3,056
Purchase power	6,200	-	6,200
Depreciation	4,198	-	4,198
Lease expense	5,128	-	5,128
Taxes other than income	3,111	415	3,526
Wages	10,045	-	10,045
Legal and Accounting	2,533	-	2,533
Insurance	299	-	299
Rent expense	600	-	600
Office expense and other expenses	764	-	764
Income taxes	-	1,543	1,543
Total operating revenue deductions	35,934	1,958	37,892
Net operating income for return	2,928	8,412	11,340
Interest expense	7,926	-	7,926
Net income	($ 4,998)	$ 8,412	$ 3,414
Original Cost Net Investment			
Utility plant in service	$125,333	$ -	$125,333
Accumulated depreciation	(32,829)	-	(32,829)
Net utility plant in			
Allowance for Working Capital			
One-eighth component	3,192	-	3,192
Total working capital	3,192	-	3,192
Original Cost Net Investment	$ 95,696	$ -	$ 95,696
Rate of return on Original Cost Net Investment	3.06%		11.85%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

This rate structure was proposed by Public Staff witness Creasy, based upon an average consumption of 8,750 gallons per customer per month. The rate structure includes a separate minimum charge for each of the various sized meters which are anticipated to be utilized on the system, and the different levels of such minimum charges reflect the different levels of demand which each meter is designed to accomodate.

Witness Creasy's original rate structure was revised by a late-filed exhibit which was prepared to reflect certain accounting adjustments.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding is contained in the testimony given at the hearing and the official records on file with the Commission. Only one customer complained about service in this proceeding, and the complaint appeared to be related to a film on the water when it was boiled. The company is currently treating the water.

IT IS, THERFO RE, ORDERED as follows:

1. That the Schedule of Rates attached hereto as Appendix A is hereby approved and that said Schedule of Rates is deemed filed with the Commission pursuant to G.S. 62-138.

2. That a copy of the Notice to Customers attached hereto as Appendix B be delivered to all customers of the system along with the next regularly scheduled billing subsequent to the issuance of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of May, 1979.

NORTH CAROLINA UITILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: For Appendix B, see the official Order in the office of the Chief Clerk.

APPENDIX A
SPRINGDALE WATER COMPANY OF RALEIGH, INC.
WATER RATE SCHEDULE
FOR SPRINGDALE ESTATES SUBDIVISION
WAKE COUNTY

METERED RATES: (Residential Service)

(1) Minimum Charge (includes first 3,000 gallons per month):

3/4" x 5/8" meter	= $ 7.00
1" meter	= $ 10.00
1 1/2" meter	= $ 15.00
2" meter	= $ 25.00
3" meter	= $ 40.00
4" meter	= $ 65.00
6" meter	= $125.00

(2) Usage Charge (for all usage over first 3,000 gallons per month): $1.20 per 1,000 gallons

CONNECTION CHARGES: $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.

BILLING FREQUENCY: Shall be monthly, for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:
1% per month will be applied to the unpaid balance of all bills still past due thirty (30) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-241, Sub 2, on May 15, 1979.

DOCKET NO. W-256, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Urban Water Company, Inc., P.O. Box 371, Newton, North Carolina 28658 for Authority to Increase Rates for Water Utility Service in Its Subdivisions in North Carolina and for Certificates of Public Convenience and Necessity for Service to Greenbriar, Whispering Pines, and Pine Burr Subdivisions	) RECOMMENDED) ORDER REQUIRING) IMPROVEMENTS) AND GRANTING) PARTIAL RATE) INCREASE

HEARD IN: Auditorium, Library, 115 West C Street, Newton, North Carolina, on July 19, 1979, beginning at 9:00 a.m.

BEFORE: Allen L. Clapp, Hearing Examiner

APPEARANCES:

For the Applicant:

Jesse C. Sigmon, Jr., Sigmon & Sigmon, P.O. Box 88, Newton, North Carolina 28658

For the Intervenors:

Charles W. Childs, Jr., Rudisill & Brackett, P.O. Box 3506, Hickory, North Carolina 28601
For: Greenbriar and Eastwood Subdivisions

For the Public Staff:

Joy R. Parks, Staff Attorney, North Carolina Utilities Commission, Public Staff, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

CLAPP, HEARING EXAMINER: On February 1, 1979, Urban Water Company, Inc. (Urban or Company), filed an application with this Commission seeking authority to increase rates for water utility service in its subdivisions in North Carolina.

The official file maintained by the Commission's Chief Clerk shows that on February 1, 1979, Urban Water Company filed its application for rate increase. The application requested rate increases in the following subdivisions: Falls Creek Village, Cedar Valley, Delmont Acres, Eastwood Acres, Greenbriar, Hickory Woods, Homestead Park, Oxford Park, Pine Burr, Rock Bridge Heights, Springhaven, and Starmount Village, all in Catawba County; Colliers West in Caldwell County; and Whispering Pines in Lincoln County. On March 8, 1979, the Commission issued its Order establishing general rate case, suspending rates, scheduling hearing, and requiring public notice. The hearing was scheduled for Thursday, June 7, 1979, at 9:00 a.m. in the auditorium of the Library, 115 West C Street, Newton, North Carolina. The Commission received a letter from the Company on March 13, 1979, stating that the Notice to the Public, attached as Appendix A to the March 8, 1979, Order, should be corrected to show the same metered rate in all subdivisions. On May 9, 1979, the Public Staff filed a motion to continue hearing, stating that:

(1) No Certificate of Public Convenience and Necessity had been granted for three subdivisions served by Urban; namely, Greenbriar, Whispering Pines, and Pine Burr;

(2) The notice to the Public which should have been given on or before April 9, 1979, had not been given; and

(3) The Notice to the Public stated the Company's rate structure incorrectly.

On May 25, 1979, the Company filed for a Certificate of Public Convenience and Necessity for the three subdivisions described above. On May 25, 1979, the Commission issued its Order continuing hearing to July 10, 1979, at the same time and place and consolidating the hearing for Certificate of Public Convenience and Necessity for service to Greenbriar, Whispering Pines, and Pine Burr subdivisions with the hearing for the rate increase in this docket. A revised Notice to the Public was ordered to be provided not later than 30 days from that Order.

On June 13, 1979, the Company filed a Certificate of Service of the Notice to the Public pursuant to the May 25, 1979, Order and filed a financial statement of Urban Water

Company. On June 18, 1979, the Commission rescheduled the hearing for July 19, at the above time and place.

On June 29, 1979, the testimony of Jesse Kent, Jr., accountant for the Public Staff, was received by the Commission. The testimony of Henry Payne, Acting Director of the Public Staff's Water Division, was received on July 6, 1979.

J. Steven Brackett of Rudisill & Brackett, attorneys for the Greenbriar and Eastwood subdivisions, filed Notice of Intervention on July 13, 1979.

The Hearing was held at the time and place specified in the Commission Order. The following customers testified, each expressing dissatisfaction with the quality of service provided by Urban: Milton Wrike and Clyde Hanes, Jr., residents of the Greenbriar subdivision; and Jerry Stuart, Roy Burritt, David Lowe, and Phillip Mansfield, residents of the Eastwood subdivision. The customers in Greenbriar presented an Affidavit and Petition stating that "each of the undersigned is dissatisfied with the quality of water service provided by Urban Water" and outlined specific complaints such as frequent outages, difficulties in communications, a lack of proper maintenance and billing problems. Eastwood residents also introduced a petition, complaining of mud in the water, heavy iron deposits, poor water pressure, and poor maintenance. Testimony by the customers supported the allegations in the petitions.

Wade Knox, with the Sanitary Engineering Section of the Division of Health Services, testified regarding his investigations at the systems owned by Urban and made several recommendations for improvements in the systems. Mr. Knox filed a late exhibit in letter form detailing recommendations for action in various of the subdivisions.

Urban Water Company presented three witnesses. Donald Long, General Manager and Secretary-Treasurer, testified regarding billing and office procedures, as well as provisions for repair and regular maintenance. He also discussed some reasons for the problems experienced by the customers of Greenbriar and Eastwood. Diana Long, bookkeeper for Urban, explained the services she performs. James Templeton, who is employed by Resource Group Limited, a general management consulting service, testified regarding his company's efforts in reorganizing the Company and his analysis of Urban's financial data.

The Public Staff presented the testimony of Jesse Kent, Accountant, and Henry Payne, Acting Director of the Water Division. Mr. Kent explained his adjustments to the financial statement of Urban and recommended that no increase in the rates be granted because the Company is earning sufficient revenues under the present rates. Mr. Payne reported the results of his investigations of Urban's Water Systems and strongly recommended several improvements

in the systems he investigated, as well as the implementation of a program of routine maintenance. Mr. Payne also explained the billing analysis he conducted to determine annual revenues.

Based upon the prefiled testimony and exhibits, the testimony at the hearing and the entire record in this matter, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant, Urban Water Company, Inc., is a public utility corporation, organized and existing under the laws of the State of North Carolina.

2. Urban Water Company provides water utility service to approximately 700 customers in 14 subdivisions in North Carolina.

3. The Applicant currently charges $6.00 per month minimum charge for 2,000 gallons, plus $1.00 per 1,000 over the minimum. The Applicant proposed to charge $8.00 per month minimum charge for 2,000 gallons, plus $1.25 per 1,000 gallons over the minimum.

4. The test period used in this proceeding is the 12-month period ending November 30, 1978.

5. The average consumption for the test period was 5,454 gallons per customer per month.

6. The approximate revenues under the present rates for the test period are $70,552.

7. The rate of return methodology is an appropriate basis for determining rates for Urban Water Company in this proceeding. Because of extraordinary debt service requirements, the operating ratio methodology is also appropriate.

8. The original cost net investment, the amount on which the Company should be allowed to earn, is $93,932.

9. Urban has a long history of providing poor service. Although service has improved significantly in recent months, the level of service in some of Urban's service areas is still not acceptable. The subdivisions with the poorest service are Greenbriar, which has been plagued with low pressure and frequent outages, and Eastwood, which has probelms with excessive amounts of iron in the water. In general, the level of maintenance on equipment and upkeep on the well lots and pump houses is poor. Urban should be required to correct the remaining deficiencies as soon as possible. The major problems are listed by subdivision in Appendix A attached hereto and incorporated herein.

10. The Company has a very poor record of submitting the required monthly bacteriological samples from its systems. For the period of February 1978 to April 1979, approximately half of the required samples were not received by the State testing laboratory.

11. Whispering Pines is contiguous with Long Shoals, which has a Temporary Operating Authority, and does not require a separate Certificate. The applications for franchise in Greenbriar and Pine Burr are incomplete. The additional items required include:

(1) Copies of the deeds for the Well Lot #5.

(2) Copies of Division of Health Services Approval.

(3) Copies of any agreements or contracts between Urban and developers in these subdivisions regarding tap-on fees, recovery of construction costs, easements, rights of way, etc.

12. Reporting requirements ordered in Docket No. W-256, Sub 10 and Sub 12, should be continued as modified herein.

13. The extraordinary debt service requirements of the Company should be recognized in consideration of the required rate of return. The necessity for capital improvements at many of the subdivisions should also be considered.

14. The Company should be allowed rates which will produce a 23.5% return on the test year rate base and operating ratios of (1) 73% before interest and taxes, and (2) 92% after interest and before taxes.

15. The rates approved herein ($7.00 minimum for the first 2,000 gallons per month and $1.10 per 1,000 gallons thereafter for metered customers, $7.00 per month for flat rate customers) are just and reasonable and will produce the required return on the test year rate base and expenses.

16. Urban has a poor record of compliance with Commission Orders. Urban is in violation of the Commission Order in the Show Cause proceeding in Docket No. W-256, Sub 12. The rate increase granted herein should not be allowed to become effective in any subdivision until the required actions listed in Appendix A have been accomplished for that subdivision. The rate increase should additionally not be allowed for Greenbriar or Pine Burr until its Certificate of Public Convenience and Necessity has been granted.

17. Urban should be placed on notice that, if the Company violates the provisions of this Order, the Commission will institute proceedings to require penalties of up to $1,000 per day pursuant to G.S. 62-310(a).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence of these findings is taken from the application and testimony in this docket and from the records on file with the Commission.

The Company is operated by (1) Donald Long, an officer and one-third owner, who performs some managerial functions and aids in emergency repair on a part-time basis, (2) Diana Long, wife of Eugene Long (a one-third owner), who performs bookkeeping services, helps to read meters, and performs some day-to-day managerial functions on a part-time basis, and (3) George Pitman, a full-time employee who performs maintenance and installation work.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence for these findings is taken from the testimony of Public Staff witnesses Kent and Payne and from Company witnesses Donald Long and Templeton. This consumption was calculated from the billing records of Urban and reflects correct consumption figures. The average monthly consumption of 5,454 gallons was not contested by Urban. Urban indicated that the $70,552 number in its application was gross initial billings and claimed in its application that approximately $5,000 was bad debt expenses and billing adjustments never collected which should therefore be removed from the gross revenues billed. Mr. Kent's study of actual bad debts indicated that they were small and he recommended that $4,846 be removed from that account as unsubstantiated. The gross revenues estimated by Mr. Payne from a sample which included adjusted bills were above and was within 0.73% of the Company's gross revenue figure of $70,552. Urban filed no study or other verification of the need for additional billing adjustments. The Company and the Public Staff were requested to verify the gross revenue level and file a late-filed affidavit thereto. The Public Staff filed an Affidavit by Mr. Payne verifying that his original sampling of bills included adjustments where they existed. The Commission concludes that $70,552 is the proper level of gross revenues for the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 AND 8

The evidence for these findings is taken from the testimony of Public Staff accountant Kent. G.S. 62-133.1 authorizes but does not require the Commission to select operating ratio as the basis for determining just and reasonable rates. In this case the Commission finds that Urban's investment is greater than its annual operating expenses and is large enough to warrant the setting of rates on the investment. In the absence of testimony regarding fair value, the original cost net investment (OCNI) is considered to be the fair value. The OCNI is composed of water plant in service, meterials and supplies, cash requirements, depreciation reserve, contributed property,

customer deposits, and average tax accruals, and amounts to $93,932 after Public Staff adjustments. The Commission concludes that this is the proper level of original cost net investment. A statement of the adjustments which the Commission found to be reasonable is included later in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding is taken from the testimony of public witnesses Wrike, Hanes, Stuart, Burritt, Lowe, and Mansfield and the testimony of Public Staff Engineer Payne. The problems experienced by residents of Greenbriar Subdivision were periods of low pressure and outages of various lengths. This was caused by deficiencies in the construction of the plant and failures of equipment. In Eastwood Subdivision the water contains excessive amounts of iron. The equipment installed to treat the iron problem was not functional at the time it was inspected by the Water Division of the Public Staff. This has caused economic and psychological hardships on the residents of Eastwood in that they were receiving water which was repugnant, which was not suitable for consumption, and which caused problems with laundry, hot water heaters, ice makers, and plumbing fixtures.

Additional evidence is taken from the testimony of Division of Health Services Engineer Knox and from the late-filed exhibit of Mr. Payne which includes a copy of a report prepared by Mr. Knox on July 27, 1979. The evidence is clear and conclusive that in at least nine of the systems operated by Urban there exist deficiencies severe enough to preclude the Division of Health Services from granting approval, or to rescind previous approval. In Greenbriar and Rock Bridge Heights, the systems were never constructed to meet the plans and specifications approved by the Division of Health Services. In Greenbriar Subdivision, for instance, the plans called for a system approved for up to 40 connections with one well and a 3,000 gallon tank. At the time of an inspection by Mr. Knox in June there were 46 connections being served by a tank of approximately 200 gallons. This example is an illustration of the poor manner in which Urban has been operating and maintaining its water systems.

Mr. Payne testified that there was no evidence of any routine maintenance and that the facilities at the systems he inspected were in need of many small repairs such as the addition of locks, painting of tanks, and repair of leaks or holes in pump house roofs. In addition, the upkeep of the well lots and pump houses is very poor, requiring such things as cutting grass and weeds, cleaning out dirt and debris from the interior of pump houses, and removing overgrown brush to facilitate access to some of the facilities.

The public witnesses complained of billing and service problems of several kinds, including difficulty in contacting Urban. It is apparent that, since Diana Long became associated with the Company in November of 1978, billing problems have slowed considerably. It is expected that such complaints will be fewer in the future as more attention is paid to this area by the Company. It is apparent that customers are having less problems in contacting Company personnel since Mrs. Long began work, but it is also apparent that some better telephone answering method is needed. Although copies of the Commission Rules are in their possession, not one of the operators of the system has read the Commission's Rules for the operation of water utilities. As a result of this lack of knowledge, these personnel have given incorrect information to customers about their rights concerning meter testing and other matters.

Other indications of the general lack of management of the Company are in evidence. Some meter boxes are not covered and are a hazard to walking persons, well lots are not clean, well houses are not locked against unauthorized entrance or in good repair, some water tanks and their foundations are weakened by continual rust, and some electrical wires are unprotected from children and from the weather. The Company has made substantial progress, but has not completed, the changes ordered by the Commission in Docket No. W-256, Sub 10 and Sub 12. These conditions have been the subject of prior complaint by customers without apparent significant response by the Company and should be corrected as quickly as practicable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding is taken from Payne Exhibit 2 which was not materially contested by Urban. This exhibit was compiled from monthly reports prepared by Division of Health Services of water systems that failed to submit samples. The Commission recognizes that, under present recording procedures, some samples received very late in the month or early in the next month would show only as having been received in that next month. No indication is given when samples double up because of mailing time. Because of this, the record of Urban appears worse than it is. However, the record is still poor and this fact was not substantially contested. Urban should be required to submit samples regularly, subject to penalty for noncompliance pursuant to G.S. 62-310.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding is taken from the files and records of the Commission in Docket No. W-356, Sub 14, from the testimony of Public Staff Engineer Payne and from Payne Exhibit 5. This exhibit is a copy of a letter dated June 12, 1979, from Henry Payne to Donald Long, listing the deficiencies in the application and requesting additional

information needed to process the application for franchises in Greenbriar and Pine Burr. Whispering Pines is contiguous with Long Shoals and does not require a separate Certificate. Long Shoals is an old system for which maps are not available and can only be provided at great expense. Without maps, the system cannot be approved by the Division of Health Services and cannot be granted a Certificate. However, Temporary Operating Authority has been granted. The additions in the Whispering Pines area should be approved by Division of Health Services in order to continue the Temporary Operating Authority.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

In the Order from the previous rate case, Sub 10, and the later Show Cause case, Sub 12, Urban was required to report in writing to the Commission each month concerning the following:

1. Current status of finances, including what new debts have been incurred, which debts have been repaid, etc.

2. Current status of arrangements with management consultants, alternate persons to call for emergency service, etc.

Reporting of these items has continued on a sporadic basis. This information is useful to the Commission in monitoring the progress of Urban and should be continued on a quarterly basis.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

Because of financial problems in prior years and consolidation of loans, the debt of Urban exceeds its original cost net investment. This condition requires extraordinary interest payments by the Company. Because of poor cash flow and poor management of the Company, various capital improvements and maintenance expenditures have not been made. In recent months, however, the Company has improved its service performance. With efficient management and prudent maintenance, the Company can provide adequate service to its ratepayers. To do so will require that improvements be made and will require that the Company be assured of the income with which to pay for the improvements. Therefore, it is appropriate to consider the normal expenditures which should be required for maintenance and the extraordinary capital expenditures needed to bring the systems into full regulatory compliance, in addition to the test year expenses, when developing the rate of return required to allow the Company to satisfactorily meet its obligations to its ratepayers and to its creditors. The Commission recognizes that the Colliers West system is in the process of being sold by Urban to Caldwell County.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15 AND 16

The following schedules show the adjustments which the Commission concludes, after examination of the testimony of Messrs. Payne, Kent, and Templeton, should be allowed. Certain of the test year expenses were not representative of present operations as a result of the cessation of outside billing services and employment of a bookkeeper, a pay raise for the full-time employee, and other similar changes in the operation. These schedules reflect (1) a change in the minimum metered rate and the flat rate to $7.00 per month, and (2) a change in the rate for additional usage of metered customers of $1.10 per 1,000 gallons (beyond the first 2,000 gallons which is included in the minimum). These increases of $1.00 per month for all metered customers, $2.00 per month for all flat rate customers, and $0.10/1,000 gallons for additional usage are necessary to allow proper maintenance of the systems and are just and reasonable.

STATEMENT OF INCOME PER BOOK AND AFTER ALLOWED ADJUSTMENTS
For 12 Months Ended November 30, 1978

Item	Per Company Books	Allowed Adjustments	After Allowed Adjustments
Gross operating revenues	$70,552	$10,519*	$81,071
Operating revenue deductions:			
Operation and maintenance expense	45,425	79	45,504
Depreciation expense	12,015	(4,947)	7,068
Taxes - other than income taxes	3,974	1,218	5,192
Taxes - state income	0	458	458
Taxes - federal income	0	1,464	1,464
Interest on customer deposits	0	14	14
Total operating revenue deductions	61,414	(1,714)	59,700
Net operating income	9,138	12,233	21,371
Plus - annualizing factor (3.43%)	313	420	733
Net operating income for return	9,451	12,653	22,104
Interest expense	15,646	0	15,646
Net income	$(6,195)	$12,653	$ 6,458

* Allowed rate increase: 7,705 bills increased $1.00 plus 300 flat rate bills increased additionally $1.00 from that charged during the test year; additional usage beyond minimum increased $0.10/1,000 gallons.

SCHEDULE OF ALLOWED ADJUSTMENTS
For 12 Months Ended November 30, 1978

Item			Amount
Operation and Maintenance Expenses			
To reduce operating expenses to eliminate certain charges made by the Resources Group, Ltd.:			
A.	Professional services	$3,666	
B.	Bookkeeping service	1,200	
C.	Billing service	1,200	
D.	Cut off notices	21	
	Total adjustment		$(6,087)
To allow amortization over a two-year period the balance owed to the Resources Group, Ltd., for services estimated through June 1979 (8,364 ÷ 2)			4,182
To increase operating expenses to include the cost of a new employee for bookkeeping at the rate of $350 per month, to include adjustment to maintenance person's salary of $1,248 per year, and to include salary for part-time management at the rate of $150 per month			7,248
To allow the monthly computer billing charge made by Unifour Medical Management (12 @ $50)			600
To include the cost of water sample testing made by the N.C. Dept. of Health (12 @ $64)			768
To reduce the provision for bad debt expense			(4,846)
To reduce contract labor			(1,455)
To allow the portion of the cost of maintaining an office applicable to water system			600
To exclude payroll taxes shown as miscellaneous expenses			(931)
Total adjustments to operation and maintenance expenses			$ 79
Depreciation Expense			
To decrease the provision for depreciation to exclude depreciation on contributed property			$(4,947)
To increase taxes - other to recognize other adjustments			$ 1,218
Taxes - State Income			
To increase State income taxes following allowed adjustments to operating expenses and taxes			$ 307

Taxes - Federal Income	
To increase Federal income taxes following the allowed adjustments to operating expenses and taxes	$ 961
Interest on Customer Deposits	
To include interest on customer deposits	$ 14

STATEMENT OF ORIGINAL COST NET INVESTMENT
For 12 Months Ended November 30, 1978

Item	Per Company Books	Allowed Adjustments	After Allowed Adjustments
Water plant in service	$294,429	$	$294,429
Materials and supplies	1,200	-	1,200
Cash requirements	4,337	(558)	3,779
Total cost	299,966	(558)	299,408
Deductions:			
Accumulated provision for depreciation	102,709	(51,404)	51,305
Contributed property	5,800	146,860	152,660
Customer deposits	225	-	225
Average tax accruals	1,029	257	1,286
Total deductions	109,763	95,713	205,476
Original cost net investment	$190,203	$(96,271)	$ 93,932

Although Urban filed as a part of its Application a request to increase the tap-on fees, the Company presented no evidence in support of the request and the Commission concludes such change to be unwarranted.

During and since the test year, revenues from water system operations were insufficient to pay a salary of any kind to the manager, Donald Long. The salary of the bookkeeper and office manager, Diana Long, who was not employed by the Company during the test year, has been limited to the $200 per month that was paid for billing services during the test year. Mrs. Long has proved to be an asset to the Company and its ratepayers. Many of the improvements in service to customers can be directly attributed to her action. The need for her continued services is recognized in the allowed expenses.

The Commission has considered the past performance of Urban in complying with the provisions of Commission Orders and concludes that Urban should not be allowed to place the approved increase into effect in any subdivision until the Company has accomplished all the actions required for that subdivision in Appendix A attached hereto. The Company should be compelled to (1) complete the required work, (2) supply to the Commission a written certification from the Division of Health Services or the Commission's Public

Staff that all required work has been performed satisfactorily, and (3) receive from the Commission an Order Allowing Charging of Previously Approved Rates before placing the rates approved herein into effect. The Company should be allowed to complete the approval process for one or more subdivisions independently of the remainder and begin charging the increased rates in those subdivisions only after such independent approval.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

In the past, Urban has not appeared to pay particular attention to the provisions of the Commission's Orders, especially (1) when increasing rates after meeting requirements ordered by the Commission or (2) when routine administrative care was required. For example, even after the Show Cause proceeding of Sub 12, the Company still did not send in routine water samples nor did the Company submit application forms for franchises in Greenbriar and Pine Burr Subdivisions within 30 days of that Order.

The Commission concludes that the Company should be placed on notice that (1) the Company has violated the Commission's Order in Urban's Show Cause proceeding in Docket No. W-256, Sub 12, (2) further violation of that Order will result, in the Commission seeking immediate penalties against the Company in the Superior Court of Wake County pursuant to G.S. 62-310(a). This statute provides:

> Any public utility which violates any of the provisions of this Chapter or refuses to conform to or obey any rule, order or regulation of the Commission shall, in addition to the other penalties prescribed in this Chapter forfeit and pay a sum of up to one thousand dollars ($1,000) for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Utilities Commission; and each day such public utility continues to violate any provision of this Chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the Commission shall be a separate offense.

The Commission recognizes that, although Urban has not fully complied with past Orders, compliance has improved. Urban can be assured, however, that the Commission will take such steps as may become necessary to secure Urban's compliance with this and future orders, rules, and regulations in order to ensure that adequate and reliable water utility service will henceforth be provided to Urban's customers. The Commission concludes that, considering Urban's past performance including Urban's violation of the Commission's Order in Sub 12, the Commission should seek a fine of $500 for each future failure by Urban to send a required water sample for testing to the Division of Health Services, pursuant to G.S. 62-130(a). The Commission further concludes that, considering Urban's past performance

including Urban's violation of the Commission's Order in Sub 10, the Commission should seek a fine of $1,000 for each day the rates approved herein are charged if Urban places the new rates into effect before it has received written authorization from the Commission. In addition, the Commission concludes that it should promptly take whatever steps or seek whatever penalties that may be appropriate as a result of any violations by Urban of the provisions of this Order and hereby places Urban on Notice thereof.

IT IS, THEREFORE, ORDERED:

1. That within 12 months of the date of this Order Urban Water Company is hereby required to perform each of the actions shown on Appendix A attached hereto. Urban shall provide to the Commission within 30 days of the date of this Order a detailed plan and timetable for performing the required work. Immediate attention shall be given to improvements required in Greenbriar and Eastwood. Urban shall provide to the Commission within 120 days of the date of this Order a written report detailing the Company's progress in implementing the actions required.

2. That the rates shown in Appendix B attached hereto are hereby approved for water service in each subdivision served by Urban Water Company, Inc., and are to become effective only upon subsequent Order of this Commission after satisfactory performance by Urban of the required actions shown in Appendix A.

3. That each employee of Urban and each officer of Urban shall read the Commission Rules pertaining to water service and shall within 15 days of the date of this Order provide the Commission with a sworn affidavit attesting that he or she has read those Rules and understands them well enough to advise customers of their rights with respect thereto.

4. That information required for completion of the Application for a Certificate of Public Convenience and Necessity for Greenbriar and Pine Burr shall be filed within 30 days of the date of this Order. A Temporary Operating Authority for operation of Greenbriar and Pine Burr is hereby granted.

5. That electrical inspections and sworn certifications thereto required in Appendix A shall be furnished to the Commission not later than 45 days from the date of this Order.

6. That within 60 days of the date of this Order, each meter box shall be provided with a top substantial enough for a 250-pound person to walk upon without failure and the Commission shall be provided with sworn attestment thereto.

7. That within 30 days of the date of this Order, a telephone answering device or service or method shall be employed by Urban to provide 24-hour emergency service

contact with the Company and Urban shall provide the Commission with sworn attestment thereto.

8. That a copy of the Notice to Customers attached hereto as Appendix C shall be delivered to all customers of the Company along with the next regularly scheduled billing subsequent to the issuance of this Order.

9. That Urban shall file the following in writing on a quarterly basis:

a. Current status of finances, including what new debts have been incurred, which debts have been repaid, what new plant investment has been made, etc.

b. Current status of arrangements with management consultants, alternate persons to call for emergency service, etc.

10. That the Public Staff is requested to offer to Urban its assistance in developing a maintenance program which will allow Urban to bring its systems into compliance with Commission requirements and to maintain the systems in an efficient manner on a day-to-day basis.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of October, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: For Appendices A and C see the official Order in the Office of the Chief Clerk.

URBAN WATER COMPANY, INC.
Water Rate Schedule

METERED RATES: For all subdivisions except the original Long Shoals area

(1) Minimum Charge (includes the first 2,000 gallons per month): $7.00

(2) Usage Charge (for all usage over the first 2,000 gallons per month): $1.10 per 1,000 gallons

FLAT RATE: For the original Long Shoals area only (not including Whispering Pines customers): $7.00

TAP-ON FEE: $325.00

RECONNECTION CHARGES:
If water service was cut off by utility for good cause (NCUC Rule R7-20(f)): $4.00
If water service was disconnected at customer's request $2.00

BILLS DUE: On billing date

BILLS PAST DUE: Fifteen (15) days after billing cycle

BILLING FREQUENCY: Shall be monthly for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due thirty days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission on October 10, 1979, subject to subsequent Orders of the Commission which will set the effective dates for each subdivision.

DOCKET NO. W-263, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application by Wade W. Phillips, Trustee in Bankruptcy for L.A. Reynolds Industrial District, P.O. Box 427, Boone, North Carolina, and Mountain Realty Water Company, 440 West Market Street, Greensboro, North Carolina, for Authority to Transfer the Water Utility System in Seven Devils Resort in Watauga and Avery Counties, North Carolina, from L.A. Reynolds Industrial District to Mountain Realty Water Company, and for Approval of Rates)	RECOMMENDED ORDER GRANTING TRANSFER OF FRANCHISE AND APPROVING RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, August 9, 1979, at 9:30 a.m.

BEFORE: Hearing Examiner Robert P. Gruber

APPEARANCES:

For the Applicant:

Timothy G. Warner, Attorney at Law, Hoyle, Hoyle and Boone, P.O. Box 20324, Greensboro, North Carolina 27420

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

GRUBER, HEARING EXAMINER: Beginning in August of 1978, the Public Staff began receiving numerous complaints from

the residents of Seven Devils Resort. The nature of these complaints involved service problems, outages, and sporadic and unexplained loss of water from a 70,000-gallon storage tank which had been occurring since mid-summer of 1978. Their concerns were both with the outages they were experiencing and the difficulty that they were having in getting these problems resolved by Mountain Realty Company.

The Public Staff corresponded with John Broyhill, manager of the system, on several occasions during August, September, and October of 1978, requesting that he take steps to locate the problems and to effect any needed repairs. There were no improvements of the problems experienced by the customers during this period. At a meeting between Mr. Broyhill and Water Division Engineers on October 4, 1978, Mr. Broyhill stated that he felt that there were no problems and that the complaints from the residents were exaggerated.

After inspections by the Public Staff Engineers and a Division of Health Service Engineer, it was determined that there was a water problem at Seven Devils Resort. It was determined that the problem was probably a large water leak although there was no explanation found why the problem was intermittent nor where the leak was occurring.

A public hearing was held on January 19, 1979, in the Courtroom of the Watauga County Courthouse, Boone, North Carolina, in response to a formal complaint filed with this Commission by residents of Seven Devils Resort. Several public witnesses presented testimony as to their difficulty in contacting Mr. Broyhill when problems arose and to his lack of cooperation in working with them. At the January 19 hearing, attorneys appearing for Mountain Realty Company stated that Mountain Realty Company, a general partnership, had purchased the assets of the L.A. Reynolds Industrial District, Inc., at a bankruptcy sale on February 20, 1978, and had been providing water service to the residents of Seven Devils Resort since that time.

At the conclusion of the public hearing on January 19, counsel for Mountain Realty Company and the residents of Seven Devils Resort were requested by the panel to meet together with one or more principals from Mountain Realty Company to arrange procedures to improve their water service at Seven Devils Resort.

A report of the above-mentioned meeting was received by the Commission on March 12, 1979. The report stated that both Mountain Realty Company and the residents of Seven Devils Resort were satisfied with the water utility operations and service since the January 19 hearing.

Subsequent to the Hearing held on January 19, 1979, an Order was issued on March 28, 1979. Ordering Paragraph No. 3 of that Order required Mountain Realty Company to file an application with the Commission for the transfer of the

water franchise issued to L.A. Reynolds Industrial District, Inc., to Mountain Realty Company or report to the Commission in writing the status of its negotiation for the application for said franchise as a water utility under Chapter 62 of the General Statutes.

On May 23, 1979, a joint application was filed with the North Carolina Utilities Commission by Wade Phillips, Trustee for L.A. Reynolds Industrial District, Inc., and Mountain Realty Water Company seeking approval for the transfer of water utility system in Seven Devils Resort from L.A. Reynolds Industrial District, Inc., to Mountain Realty Water Company.

By Order issued on May 29, 1979, the Commission scheduled the application for public hearing and required that public notice be given by the Applicants. Public notice was furnished to each customer of Seven Devils Resort, advising that anyone desiring to intervene or to protest the application was required to file such intervention or protest with the Commission by the date specified in the notice.

The Commission received three (3) letters in protest to the application. The writers of two (2) of these letters expressed their preference for the utility to be transferred to the recently incorporated Town of Seven Devils. The writer of the third letter implored the Commission to be "very careful" and very "suspicious" in dealing with Mountain Realty.

On July 17, 1978, the Public Staff filed with the Commission a Notice of Intervention in behalf of the Using and Consuming Public.

The public hearing was held at the time and place specified in the Commission's Order. J.D. Broyhill, one of the general partners of Mountain Realty Company and the manager of Mountain Realty Water Company, presented testimony in support of the application. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the records of the proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. Mountain Realty Company purchased Seven Devils Resort on February 20, 1978. The purchase of the resort included the water system.

2. The transferee has been operating the water system since February 20, 1978, and has been charging the rates for which it is seeking approval in this docket.

3. There has been no recurrence of the problems testified to at the January 19, 1979, hearing since that proceeding. Repairs have been made by Mountain Realty Water Company which appear to have corrected the problems.

4. Mr. Broyhill will have full authority from the general partnership to take any necessary actions to see that the proper level of service is maintained to the residents of Seven Devils Resort.

5. Mr. Broyhill has made a tentative proposal to Blue Ridge Well and Pump Company to maintain the system.

6. There has been no repairs to the overflowing, underground storage tank on the system, and the present time clock control is not adequate.

CONCLUSIONS

There is a demand and need for water utility service in Seven Devils Resort which can best be met by Mountain Realty Water Company.

The water problems experienced by the residents of Seven Devils Resort during the summer and fall of 1978 seem to be resolved.

The rates approved by the Commission for water utility service in Seven Devils Resort should be those contained in the Schedule of Rates attached hereto, which are the same rates previously approved for L.A. Reynolds Industrial District, Inc., in Docket No. 263.

The Commission takes note of the severe problems experienced by the residents of Seven Devils Resort in the summer and fall of 1978, and cautions Mountain Realty Water Company that any such future problems should be dealt with as expediently as possible.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Mountain Realty Water Company, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Seven Devils Resort in Watauga and Avery Counties, as described herein and, more particularly, as described in the application made a part of hereby 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 said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

4. That a float valve type cutoff or other electronic water level sensors be installed on the 5,000-gallon underground storage tank to prevent the tank from overflowing.

5. That Mountain Realty Water Company file with the Commission, within thirty (30) days of the date this Order becomes final, a contract or other evidence of arrangement for prompt and dependable maintenance and repair service to the water system.

6. That Mountain Realty shall have printed on their quarterly water bills the name(s) and telephone number(s) of person(s) to contact for emergency repair service on a 24-hour per day, seven-day per week basis.

7. 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. 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 cautioned that, in the event the proposed 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 proposed arrangements and the Applicant shall immediately notify the Commission of such alternate arrangements.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
MOUNTAIN REALTY WATER COMPANY
Seven Devils Resort in Watauga and Avery Counties

WATER RATE SCHEDULE

FLAT RATE: (Residential Service - Including Condominiums, Cottages, Each Motel Inn Room):

Each Residence - $13.50 per month

FLAT RATE: (Commercial Service - Restaurant):

Each Commercial Customer - $40.00 per month

CONNECTION CHARGE: $125.00 tap-on fee

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: Thirty (30) days after billing date

BILLING: Shall be quarterly, for service in arrears

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-263, Sub 5, on September 14, 1979.

DOCKET NO. W-646

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
William L. Carter, Route 6, Monroe, North Carolina, Operating a Public Utility in Sherwood Forest Subdivision, Union County, North Carolina, in Violation of the Public Utility Law in North Carolina	) RECOMMENDED ORDER DECLARING PUBLIC UTILITY STATUS AND REQUIRING SUBMISSION OF APPLICATION

HEARD IN: Multi-Purpose Room 115, Union County Courthouse, Monroe, North Carolina, on May 8, 1979, at 11:00 a.m.

BEFORE: Hearing Examiner Robert H. Bennink, Jr.

APPEARANCES:

For the Respondent:

William L. Carter, Route 6, Monroe, North Carolina
For: Himself

For the Intervenors:

Wilson B. Partin, Jr., Deputy General Counsel, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Commission Staff

Dwight Allen, Staff Attorney, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BENNINK, HEARING EXAMINER: This immediate proceeding was instituted by a Show Cause Order of the Commission, issued April 24, 1979, ordering that the Respondent William L. Carter appear before the Commission on May 8, 1979, and show cause, if any he has, why the Commission should not seek a penalty for willful violations of the Public Utility Act; i.e., failure to obtain a franchise as required by G.S. 62-110, failure to file an annual report as required by Commission Rule R7-3, failure to file a schedule of utility rates as required by G.S. 62-138, and failure to comply with Commission Rule R7-20(e) outlining the procedure for service disconnection.

The hearing in this matter was scheduled on Tuesday, May 8, 1979, at the Union County Courthouse, Monroe, North Carolina. The Respondent Carter was directed to continue water utility service to Sherwood Forest Subdivision and to restore water service to Joseph S. Moore pending the hearing.

The Show Cause Order alleged that the Commission had received customer complaints from the residents of Sherwood Forest Subdivision in Union County, North Carolina, regarding disconnection of water service by William L. Carter, the owner of the water system. The information available to the Commission indicated that Mr. Carter has been providing water service to 10 or more members of the public for compensation without having obtained a Certificate of Public Convenience and Necessity from the Commission.

The Commission's official records show that a copy of the Show Cause Order was personally served on William L. Carter on April 26, 1979, by the Sheriff of Union County.

On May 2, 1979, the Public Staff - North Carolina Utilities Commission filed Notice of Intervention pursuant to G.S.62-15(d).

This matter came on for hearing as scheduled in Monroe on May 8, 1979. The Commission Staff and the Public Staff were present and were represented by counsel. William L. Carter was present and appeared for himself.

The Commission Staff presented the following witnesses: Gerald Young, Route 6, Monroe, a resident of Greenwood Acres; Clyde Hicks, Route 6, Monroe, a resident of Sherwood Forest Subdivision; Joseph Moore, a resident of Sherwood Forest Subdivision; Billy Cox, a resident of Sherwood Forest Subdivision; Clyde Adams, a resident of Sherwood Forest Subdivision; Nancy Nash, a resident Sherwood Forest Subdivision; S.B. Wooten, a resident of Sherwood Forest Subdivision; Henry M. Privette, a resident of Sherwood Forest Subdivision; and Jean Davis, a resident of Sherwood Forest Subdivision. All ten of these witnesses testified that they are customers of the water utility service provided by Respondent Carter in Sherwood Forest and

Greenwood Acres subdivisions. Henry R. Payne, Public Staff Utilities Engineer for the Water Division, offered testimony on his investigations into the complaints of the water customers of Mr. Carter.

The testimony of the ten water customers tended to show that they are customers of the water utility service provided by Respondent Carter in Sherwood Forest and Greenwood Acres subdivisions, Union County, North Carolina; that Mr. Carter cut off the water service to the residents of Sherwood Forest on Friday, April 20, 1979, and that such cut-off lasted through the weekend; that Mr. Carter's billing methods are irregular; that the customers in Sherwood Forest have formed a committee to pay Duke Power Company for the electricity used in supplying the water service; that the residents have had to undertake repair and maintenance on their own initiative; that it is difficult to get in touch with Mr. Carter when there are problems on the water system; that the cutting-off of the water on April 20, 1979, was without warning and caused great inconvenience; and that there have been losses of water service in the past when Mr. Carter failed to pay Duke Power Company for electricity used in the water system.

Mr. Carter did not present testimony.

Based upon the entire record in this proceeding, including the testimony and exhibit offered at the hearing, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Respondent William L. Carter owns and operates water utility systems in Sherwood Forest and Greenwood Acres subdivisions, in Union County, North Carolina, which provide water utility service to more than ten residential customers for compensation. In the Sherwood Forest subdivision alone, the Respondent Carter provides water utility service for compensation to at least 12 customers. Sherwood Forest is a residential subdivision adjoining Highway 84, near Monroe, and has nine single-family dwellings and one three-unit apartment house. The subdivision is provided water from a well and pumphouse located in the subdivision.

2. The Respondent Carter does not hold a Certificate of Public Convenience and Necessity from this Commission to provide water utility service in North Carolina, nor has the Respondent made Application to this Commission for such Certificate. Further, the Applicant has not filed a schedule of rates with the Commission.

3. The Respondent Carter does not bill his customers on a regular basis and there is a lack of uniformity in the rates which he charges to his customers.

4. On Friday, April 20, 1979, Respondent Carter cut off water utility service to all of his customers in the

Sherwood Forest Subdivision without notifying these customers that such cutoff would take place. Water utility service was not fully restored in the subdivision until Monday or Tuesday of the following week. Customer Joseph Moore did not receive full water service until Thursday of that week.

5. The discontinuance of water service by Respondent Carter during the weekend of April 20, 1979, caused great inconvenience to the residents of Sherwood Forest, many of whom have small children.

6. The residents of Sherwood Forest Subdivision have experienced discontinuance of water service on other occasions when the Respondent failed to pay Duke Power Company for the water system's electric bill and Duke cut off power due to the Respondent's failure to pay.

7. The residents of Sherwood Forest Subdivision have agreed among themselves to pay the Duke Power bill when it comes due, in order to prevent further discontinuance of service, and have in fact paid such bills on a rotating basis.

8. As of the date of the hearing in this matter, the Respondent's account with Duke Power Company for service to his water system in Sherwood Forest had an outstanding balance of $89.62, which was due May 10, 1979. This amount represented total bills for service rendered to Respondent from February 6, 1979, to May 10, 1979.

9. The residents of Sherwood Forest have undertaken repairs and maintenance of the water system in order to ensure a steady supply of water. For example, on resident spent $62.40 of his own money to purchase a motor for the well pump; this motor was installed by the residents in order to restore their water utility service when Mr. Carter refused to take action.

CONCLUSIONS

The Hearing Examiner finds and concludes that the Respondent is a public utility within the meaning of G.S. 62-3(23)a.2 and is subject to the jurisdiction of this Commission. The statutory definition of a public utility as set forth in G.S. 62-3(23)a.2 reads as follows:

> "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:...
>
> 2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole

> operation consists of selling water to less than 10 residential customers,...

The evidence presented at the hearing in this matter clearly establishes that Respondent William L. Carter owns and operates water utility systems in Sherwood Forest and Greenwood Acres subdivisions in Union County which provide water utility service to 10 or more customers for compensation. Each element of the statutory definition of a public utility has been met. The Respondent offered no evidence to the contrary. The Hearing Examiner, therefore, can reach only one ultimate conclusion in this matter: the Respondent is a public utility under the law of North Carolina and is consequently subject to the jurisdiction of this Commission. Accordingly, the Hearing Examiner concludes that the Respondent William L. Carter should be required to file forthwith an Application for a Certificate of Public Convenience and Necessity pursuant to G.S. 62-110.

The evidence at the hearing also establishes that the customers of the Respondent have experienced difficulties in receiving adequate and reliable water service. Much of the testimony centered on the Respondent's disconnection of water service to all of his customers during the weekend of April 20, 1979. The Hearing Examiner finds and concludes that the Respondent's action in discontinuing water service to all of his customers on April 20, 1979, without notice to them, did not comply with the Commission's Rules and Regulations. The result of the Respondent's action was to penalize every customer whether or not such customer had properly paid his water bill. This result is clearly arbitrary and discriminatory.

The evidence also establishes that the residents have had to undertake repairs and maintenance of the water system in order to be assured of a reliable supply. Moreover, the customers have formed a committee to pay the Respondent's electricity bills to Duke Power Company, so that they will not be faced with a shutoff of electricity to the water system. The operation and maintenance of the water system is clearly the responsibility of the Respondent, and he cannot evade this duty.

The Hearing Examiner points out, however, that the Respondent is entitled under the Public Utilities Act to reasonable rates so as to recover the costs of providing water utility service to his customers. Moreover, the Respondent can avail himself of the Commission's Rules regarding discontinuance of service to customers who do not pay their bills.

The Hearing Examiner further notes that Duke Power Company has billed Respondent $89.62 for electricity provided to his water utility system in Sherwood Forest from February 6, 1979, to May 10, 1979. This Order will direct the Respondent, if he has not already done so, to pay this

amount and also to pay in a timely manner all future power bills hereafter charged to the water system.

The Respondent is hereby advised that, if he does not comply with the provisions of this Order, the Commission will seek penalties against him in the Superior Court of Wake County pursuant to G.S. 62-310(a). This statute provides:

> Any public utility which violates any of the provisions of this Chapter or refuses to conform to or obey any rule, order or regulation of the Commission shall, in addition to the other penalties prescribed in this Chapter forfeit and pay a sum of up to one thousand dollars ($1,000) of each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Utilities Commission; and each day such public utiltiy continues to violate any provision of this Chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the Commission shall be a separate offense.

The Respondent is further advised that the Commission will hereafter take such other steps as may become necessary to secure compliance with its orders, rules, and regulations in order to ensure that adequate and reliable water utility service will henceforth be provided to the Respondent's customers residing in the Sherwood Forest and Greenwood Acres subdivisions and elsewhere.

The Hearing Examiner also notes that certain customers served by the Respondent's water system indicated at the hearing that, if the Respondent would consent thereto, they would be willing to assume responsibility for the operation of the water system serving the Sherwood Forest Subdivision, including the payment of expenses related to the operation thereof. Accordingly, the Respondent is advised that, if he should elect to do so, he may hereafter request and consent to the appointment of trustee by the Commission pursuant to G.S. 62-118(b) to operate the Sherwood Forest water system. Such a request, if made by the Respondent, should be filed with the Commission in writing.

IT IS, THEREFORE, ORDERED as follows:

1. That the Respondent William L. Carter is hereby declared a public utility as defined in G.S. 62-3(23)a.2.

2. That the Respondent William L. Carter is hereby required to file an Application for a Certificate of Public Convenience and Necessity within 15 days from and after the date of this Order. A copy of the Application is attached as Exhibit A to this Order. The Respondent shall specifically indicate in such Application the name or names of each and every subdivision or service area in this State wherein he is currently providing water utility service and

the county or counties wherein such service is being provided.

3. That, except in accordance with applicable Commission rules, the Respondent shall not hereafter connect or disconnect any present customer of the water systems serving the Sherwood Forest and Greenwood Acres subdivisions without the written approval of the Commission.

4. That the Respondent William L. Carter, within 10 days from and after the date of this Order, shall pay to Duke Power Company, if he has not already done so, the sum of $89.62, which represents the outstanding balance as of May 10, 1979, for electric service provided to the Sherwood Forest Subdivision. The Respondent shall, hereafter, pay his water system electricity bills to Duke Power Company in a timely fashion and in accordance with the regulations of that company.

5. That the Respondent shall not serve any bills or notices on the customers of the water systems serving the Sherwood Forest and Greenwood Acres subdivisions except in accordance with the Schedule of Rates and charges attached hereto as Appendix B and made a part hereof; and in accordance with the Rules and Regulations of the Commission.

6. That the Respondent shall, within 30 days fron the date of this Order, provide the Commission with a list of all customers and subdivisions served by him in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of June, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

NOTE: For Exhibit A, see the official Order in the Office of the Chief Clerk. For Schedule of Rates, see below.

APPENDIX B
SCHEDULE OF RATES
WILLIAM L. CARTER

Subdivision or Service Areas
Sherwood Forest Subdivision
Greenwood Acres Subdivision
Union County, North Carolina

WATER RATE SCHEDULE

FLAT RATES: (Residential Service) $8.00 per month

CONNECTION CHARGES:

No New Taps Authorized without Commission Approval

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.

BILLING FREQUENCY: Shall be monthly for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-646 on June 20, 1979.

DOCKET NO. W-646

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
William L. Carter, Route 6, Monroe, North Carolina, Operating a Public Utility in Sherwood Forest Subdivision, Union County, North Carolina, in Violation of the Public Utility Law in North Carolina	ORDER APPOINTING TRUSTEE AND SETTING RATES

BY THE COMMISSION: This immediate proceeding was instituted by a Show Cause Order of the Commission, issued April 24, 1979, ordering that the respondent William L. Carter appear before the Commission and show cause, if any he has, why the Commission should not seek a penalty for failure to obtain a franchise as a public utility, and for other violations of the Public Utilities Act. The Show Cause Order alleged that the Commission had received complaints from customers of Mr. Carter in Sherwood Forest Subdivision, Union County, North Carolina. Most of these complaints concerned the disconnection of water service, especially during the weekend of April 20, 1979.

The matter came on for hearing in Monroe, North Carolina, on May 8, 1979, before Hearing Examiner Robert H. Bennink, Jr. The Commission Staff and the Public Staff were present and represented by counsel. William L. Carter was present

and appeared for himself. At least 10 customers of Mr. Carter testified that they received water utility service from him and that they have experienced cutoffs of water service, most recently during the weekend of April 20, 1979.

Thereafter, on June 20, 1979, Hearing Examiner Bennink issued his Recommended Order declaring that the respondent William L. Carter is a public utility as defined in G.S. 62-3(23)a.2. The Order required Mr. Carter to file an Application for a franchise within 15 days after the date of the Order.

On August 8, 1979, the Commission received a letter from the attorney for Mr. Carter. The letter stated that Mr. Carter wanted to avoid the filing of an application for a franchise "by consenting to the appointment of a trustee to operate the Sherwood Forest Subdivision water system." The attorney, Mr. Lee, attached to his letter a letter dated August 2, 1979, and signed by Mr. Carter. In his letter Mr. Carter consented for the Commission to appoint a trustee to operate the Sherwood Forest Subdivision water system in Union County pursuant to G.S. 62-118(b).

Based upon the entire record in this Docket, including the Recommended Order of June 20, 1979, and the letter from Mr. Carter consenting to the appointment of a trustee, the Commission makes the following

FINDINGS OF FACT

1. The Respondent William L. Carter owns and operates a water utility system in Sherwood Forest Subdivision, Union County, North Carolina, which provides water utility service to more than 10 residential customers for compensation. Sherwood Forest is a residential subdivision adjoining Highway 84, near Monroe, and has nine single-family dwellings and one three-unit apartment house.

2. Customers of Mr. Carter have experienced problems in the water service, including the discontinuance of service without notice or cause; these problems have caused great inconvenience to these customers, many of whom have small children.

3. Mr. Carter was declared a public utility by Recommended Order of the Commission dated June 20, 1979. As a public utility Mr. Carter is subject to the jurisdiction of this Commission. The findings and conclusions of the June 20, 1979, Order are adopted and incorporated by reference in this Order.

4. The customers in Sherwood Forest have had to undertake repairs and maintenance of the water system in order to ensure a steady supply of water. The customers have also formed a committee to pay the Respondent's electricity bills to Duke Power Company, so that they will

not be faced with a shutoff of electricity to the water system.

5. Mr. Carter by letter dated August 2, 1979, had consented for the Commission to appoint a trustee to operate the Sherwood Forest Subdivision water system in Union County pursuant to G.S. 62-118(b).

6. Customers of the water system testified at the May 8, 1979, hearing that, if the Respondent would consent thereto, they would be willing to assume responsibility for the operation of the water system. A resident of the subdivision, Clyde Hicks, has indicated his willingness to serve as trustee.

7. The appointment of a trustee, with all the powers set forth in the Ordering Paragraphs below, would serve the best interest of the customers of the Sherwood Forest Subdivision water system.

8. The powers given to the trustee by this Order are reasonably necessary to enable the trustee to operate the system in the best interests of the customers, while recognizing the ultimate property rights of Mr. Carter in the water system.

9. The rates approved herein are just and reasonable.

CONCLUSIONS

The entire record in this proceeding amply supports the appointment of a trustee for the Sherwood Forest water system. The Recommended Order of the Hearing Examiner sets forth the problems experienced by the customers. Clearly the customers are entitled to an adequate, safe and reliable source of water for their homes. On the other hand, the customers have a responsibility to cooperate with Mr. Hicks, the trustee appointed herein, and to assist him in making the trusteeship successful. The rates approved herein are just and reasonable and should enable the trustee to meet the expenses of operating the system.

IT IS, THEREFORE, ORDERED:

1. That Clyde V. Hicks, Route 6, Box 414, Monroe, North Carolina, is appointed trustee of the Sherwood Forest Subdivision water system, Union County, North Carolina, pursuant to G.S. 62-118(b).

2. (a) The trustee shall have charge of the daily operation of the Sherwood Forest water system, and his duties and responsibilities shall include, among others, the following:

(i) Regular inspections of the wells, pumps, well house, lines, and plant;

(ii) Meter readings;

(iii) Billing of all customers and collection therefrom;

(iv) Routine maintenance and repair; and

(v) Major replacements and system renovations

(b) The trustee may contract with any person or corporation to carry out any of the duties necessary for operation of the water system, but the trustee alone shall have the ultimate responsibility to see that such duties are carried out.

(c) The trustee, in the performance of his duties, shall be free to seek assistance from customers of the water system, plumbers, sanitary engineers, and other professionals as may be necessary for the performance of his duties and responsibilities.

(d) The trustee shall, when it becomes necessary in the performance of his duties, seek the assistance of the North Carolina Utilities Commission and the Public Staff of the Commission.

(e) The trustee shall collect from the customers of the water system such rates and assessments as may be approved by the Commission and shall be fully authorized to disburse such of these funds as may be necessary to provide reasonable and adequate water utility service to the customers of the subdivision. Any customer who fails to pay his bill or any special assessment which has been approved by the Commission shall be disconnected as provided by the Rules and Regulations of the Commission.

(f) The trustee shall be entitled to be discharged from his duties upon request to the Commission; such request must be accompanied by an acceptable accounting of the funds received, disbursed, and still held by him as trustee.

3. That the trustee shall be authorized to charge the rates set forth in Appendix A attached to this Order and made a part hereof.

4. That the respondent William L. Carter shall not interfere with the trustee in the performance of his duties under the trusteeship approved by this Order; such prohibition from interference shall include the following, among others:

(a) Interfering with the operations of the utility plant of Sherwood Forest water system, including the pumps, wells, treatment tanks, mains, distribution lines, hydrants, storage or holding facilities, meters, filters, or taps;

(b) Causing or allowing electrical service to the pumps to be discontinued without notice to the trustee;

(c) Altering, impairing, or removing any of the aforementioned water utility plant;

(d) Discontinuing service to any customer for any reason;

(e) Intrefering with the trustee or any customer attempting to correct or repair a service outage or problem;

(f) Receiving, or attempting to collect, any water bill payments or monies for water service provided under the trusteeship;

(g) Harassing or threatening the trustee or any customer of the water system.

5. Mr. Carter shall make application to the Commission in writing if he wishes to resume the operation of the water system as a franchised public utility, or if water service becomes available to the customers from a county or municipal governmental authority.

6. That the trustee shall mail or hand deliver to customers of the water system the Notice attached to this Order as Appendix B.

7. That William L. Carter shall, within 30 days from the date of this Order, provide the Commission with a list of all other customers and subdivisions served by him in North Carolina.

8. That William L. Carter shall pay Duke Power Company for electricity provided to the Sherwood Forest water system up to and including August 31, 1979.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of September, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A
SCHEDULE OF RATES
Sherwood Forest Subdivision Water System
Clyde V. Hicks, Trustee
Union County, North Carolina
WATER RATE SCHEDULE

FLAT RATES: (Residential Service) $8.00 per month

CONNECTION CHARGES:
No New Taps Authorized without Commission Approval

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

BILLING FREQUENCY: Shall be monthly for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:
1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-646 on September 5, 1979.

APPENDIX B
NOTICE

TO: Residents of Sherwood Forest Subdivision

FROM: Clyde B. Hicks, Trustee
Sherwood Forest Subdivision Water System

The North Carolina Utilities Commission has issued an Order appointing a trustee to operate the Sherwood Forest Water System. The Order appoints Clyde V. Hicks, a resident of the subdivision, as trustee pursuant to G.S. 62-118. The trustee will perform his duties under authority granted by the Commission and under the general supervision of the Commission.

Monthly water bills should be paid to the trustee. The trustee will send monthly water bills to each resident, beginning October 1, 1979. The first water bill will cover water service rendered for the month of September 1979. The amount of the water bill is a flat rate of $8.00 per month.

Customers of the water system are requested to cooperate with the trustee in the performance of his duties. The Commission appointed the trustee in order that the customers could receive reliable and adequate water service.

All customers using the water system shall be billed for such service. Any customer who fails to pay for the service billed shall be disconnected pursuant to the Rules and Regulations of the North Carolina Utilities Commission.

DOCKET NO. W-340, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Dillard Grading Company, P.O. Box 1024, Sylva, North Carolina, for Authority to Increase Rates for Water Utility Service in Forest Hills Subdivision, Jackson County, North Carolina	) RECOMMENDED ORDER) DIRECTING COMPANY) TO PAY ITS) ELECTRIC BILLS IN) A TIMELY MANNER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, June 15, 1979

BEFORE: Hearing Examiner Robert H. Bennink, Jr.

APPEARANCES:

For the Respondent: None

For the Public Staff:

Paul Lassiter, Staff Attorney, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BENNINK, HEARING EXAMINER: On May 11, 1979, the Public Staff through its Executive Director, filed a Motion in this Docket asking that a Show Cause Order issue ordering William Dillard, owner of Dillard Grading Company and the water utility serving Forest Hills Subdivision in Sylva, North Carolina, to show cause, if any he had, why the Commission should not seek the penalty prescribed in G.S. 62-310 of up to $1,000 per day for each day there was a violation of the Commission's Rules and Regulations. The Public Staff also in its Prayer for Relief requested in the alternative that a Trustee be appointed under the authority contained in G.S. 62-118 and G.S. 1A-1, Rule 65, to operate the water utility as a serious emergency existed because of William Dillard's failure to satisfy certain outstanding water pump electric bills with Western Carolina University, the electric supplier. The Motion alleged these facts:

> On March 15, 1979, the Public Staff was advised by officials of Western Carolina University that Mr. William B. Dillard, operator of the water utility franchised as Dillard Grading Company, had until the end of that business day to pay a past due amount of $494.00 for electric service to the water pumps operated by the utility or electric service would be disconnected. The University reported to the Public Staff later on March 15, 1979, that Mr. Dillard had made a payment on the electric account and signed a promissory agreement for payment of the remaining outstanding balance. The Public Staff requested that it be advised by the University prior to

any future disconnect action affecting the water utility operation of Mr. Dillard.

On May 8, 1979, officials of Western Carolina University reported to the Public Staff that Mr. Dillard had not honored the agreement for payment of the electric bills for his water system, and that disconnection was anticipated. The Public Staff attempted unsuccessfully to contact Mr. Dillard on May 8, 1979. On May 9, 1979, the University reported to the Public Staff that Mr. Dillard had requested that certain payments he had previously made to the University for electric service which had been applied to the balance owed for service to his utility operation be reapplied to another, nonutility account to prevent disconnection of that service. Mr. Dillard contacted the Public Staff on May 9, 1979, and indicated he had paid $146.00 on the water utility account, and that, after the transfer of payment away from the utility account, the outstanding balance for service to the water pumps was approximately $677.00. Mr. Dillard stated he was unable to make any further payment at this time. He proposed that the outstanding balance be paid at the rate of $100.00 per month, along with each month's current bill, beginning after the Commission's order in his pending rate case in Docket No. W-340, Sub 4, is issued. This offer was communicated to Dr. Joe Carter of Western Carolina University on May 9, 1979; Dr. Carter indicated the offer was not acceptable to the University. Disconnection of electric service to Mr. Dillard's water pumps is suspended at this time at the request of the Public Staff.

Based on the facts alleged in the Public Staff's Motion, the Commission issued an Order on May 17, 1979, directing that William Dillard, owner of Dillard Grading Company and the water utility serving Forest Hills Subdivision, in Sylva, Jackson County, North Carolina, appear before the Commission on June 15, 1979, and show cause, if any he had, why the Commission should not seek the penalty as provided in G.S. 62-310 of up to $1,000 per day for each violation of the Public Utilities Act or, in the alternative, to show cause why a trustee should not be appointed in the Superior Court of Jackson County, North Carolina, to operate the water utility under the authority granted in G.S. 62-118 and G.S. 1A-1, Rule 65.

The hearing was held at the time and place scheduled in the Commission's Order dated May 17, 1979. William Dillard did not appear at the hearing. Nor did he send word explaining his absence. Both the Public Staff and this Hearing Examiner made phone calls to Mr. Dillard's office only to be told that Mr. Dillard was neither in his office nor on the way to Raleigh for the hearing.

The Public Staff presented the testimony of Craig Stevens, Director of the Public Staff's Consumer Services Division. Mr. Stevens detailed the poor payment history of Dillard

Grading Company of its electric billings to Western Carolina University for its Forest Hills water utility. He listed Dillard Grading Company's payment record for the last year, showing that Dillard was usually a number of months behind in paying its bills, and had been classified by Western Carolina University in its worst credit classification (i.e., subject to disconnect after one month.) Mr. Stevens further testified that Dillard's electric service for Forest Hills would have been disconnected in May 1979, for nonpayment. Mr. Stevens stated that the Public Staff requested that Western Carolina University not disconnect Dillard until this show cause proceeding could be held. If it had not been for the Public Staff's request, Western Carolina University would have terminated electric service to Dillard's Forest Hills water utility. Mr. Stevens concluded by saying that Dillard made an electric payment on June 9, 1979, and was then current on its electric bills.

Based upon consideration of the evidence adduced at the hearing and the record as a whole, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Dillard Grading Company has compiled a very poor payment record with respect to electric bills incurred for electric services provided to the water system it operates in the Forest Hills Subdivision, Sylva, Jackson County, North Carolina.

2. That the electric services provided to the Respondent in conjunction with the operation of the water system serving the Forest Hills Subdivision would have been terminated in May 1979, if the Public Staff had not intervened and asked Western Carolina University not to terminate said electric service prior to some action being taken by this Commission.

3. That the account of Dillard Grading Company for electrical services rendered by Western Carolina University to its water utility system serving the Forest Hills Subdivision is now current.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The Public Staff has filed as a late exhibit in this docket a letter from Western Carolina University which provides the payment record for Dillard Grading Company for electric service to its water pumps in Forest Hills Subdivision. The data filed by Western Carolina University indicate that for the 14-month period from March 21, 1978, through May 23, 1979, W.B. Dillard Construction Company was rendered bills monthly on two accounts for service to the water utility. The amount of the bills rendered on one account totaled $1,071.72 and on the other $1,255.44. During this same period, Dillard Construction Company made

payments to Western Carolina University on only five occasions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

On March 15, 1979, the Public Staff was advised by officials of Western Carolina University that William B. Dillard, operator of the water utility franchised as Dillard Grading Company, had until the end of that billing day to pay a past due amount of $494.00 of electric service to the water pumps operated by the utility or electric service would be disconnected. Without electric service, Dillard would have been unable to provide water service to its customers. The University reported to the Public Staff later on March 15 that Mr. Dillard had made a payment on the electric account and signed a promissory agreement for payment on the remaining outstanding balance. The Public Staff requested that it be advised by the University prior to any future disconnect action affecting the water utility operations of Mr. Dillard.

On May 8, 1979, officials of Western Carolina University reported to the Public Staff that Mr. Dillard had not honored the agreement for payment of the electric bills for his water system, and that disconnection was anticipated. The Public Staff requested that the University temporarily waive disconnection and attempted unsuccessfully to contact Mr. Dillard on May 8. On May 9, the University reported to the Public Staff that Mr. Dillard had requested that certain payments he had previously made to the University for electric service which had been applied to the balance owed for service to his utility operation be reapplied to another nonutility account to prevent disconnection of that service. Mr. Dillard contacted the Public Staff on May 9, 1979, and indicated he had paid $146.00 on the water utility account, and that, after the transfer of payment away from the utility account, the outstanding balance for service to the water pumps was approximately $677.00. Mr. Dillard stated he was unable to make any further payment at that time. He proposed that the outstanding balance be paid at the rate of $100.00 per month, along with each month's current bill, beginning after issuance of the Commission's Order in his pending rate case in Docket No. W-340, Sub 4. This offer was communicated to Dr. Joe Carter of Western Carolina University on May 9, 1979; Dr. Carter indicated the offer was not acceptable to the University. The Public Staff, by letter of May 10, 1979, again requested that the disconnection of the electric service to the water utility be waived pending a Commission review of the situation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Western Carolina University reported to the Public Staff on June 13, 1979, that Mr. Dillard had made payments on the accounts for his water pumps totaling $882.78, leaving only the current bills unpaid at that time.

FURTHER CONCLUSIONS

The Hearing Examiner wishes to further express a deep concern with respect to the poor payment history compiled by the Respondent in conjunction with the electricity accounts at issue herein and also to express such concern with respect to the fact that Dillard's electric service would have been cut off in May 1979, except for the timely actions taken by the Public Staff. If such electric service had in fact been terminated in May 1979, Dillard would have then been unable to provide continued water service to its customers. This would have caused much hardship to Dillard's water customers and would have also violated Dillard's statutory duty to provide adequate service under its utility franchise.

Accordingly, the Hearing Examiner strongly cautions the Respondent not to allow the above-referenced situation to recur in the future. Section 62-310 of the North Carolina General Statutes specifically grants this Commission the power to seek a penalty of up to $1,000 per day against a utility for violations of the Public Utilities Law or for a refusal to obey any rule, order, or regulation of the Commission. Based upon the foregoing, the Hearing Examiner therefore cautions the Respondent that if water utility service should be hereafter cut off to customers of the Dillard Grading Company as a direct result of the nonpayment of an electric bill, such disconnection will be deemed a violation of this Order sufficient to entitle this Commission to seek the above-discussed penalty of up to $1,000 per day and, in addition or alternatively thereto, the appointment of a Trustee to operate the Forest Hills water system pursuant to G.S. 62-118 and 1A-1, Rule 65.

In concluding this Order, the Hearing Examiner wishes to again reiterate, in the strongest terms possible, the importance of this matter to the Respondent, particularly in view of the extremely grave consequences which would follow if the Respondent should hereafter permit the situation at issue herein to recur.

IT IS, THEREFORE, ORDERED as follows:

1. That the Show Cause Order issued in this docket on May 17, 1979, be and the same is hereby, dismissed.

2. That Dillard Grading Company shall hereafter remain current in the payment of its electric bills for all electrical service provided to its water system serving the Forest Hills Subdivision.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of July, 1979.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. W-536, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Randolph Mills, Inc., P.O. Box 8, Franklinville, North Carolina; Sewer Service to Town of Franklinville	) ORDER TO ESTABLISH) SEPARATE SEWER SYSTEM,) OR, IN THE ALTERNATIVE,) TO LEASE TO FRANKLIN-) VILLE OR SEEK) APPOINTMENT OF TRUSTEE

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, May 4, 1979

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and Leigh H. Hammond

APPEARANCES:

For the Respondent:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This immediate proceeding was instituted by Order of the Commission issued on April 24, 1979, ordering that the Respondent Randolph Mills, Inc. (RANDOLPH MILLS), appear before the Commission on May 4, 1979, and show cause, if any it has, why the Commission should not seek a penalty for failure of said Respondent to comply with the Order of the Commission in this docket dated November 17, 1978, ordering said Respondent to rearrange the plant wiring at Randolph Mills, Franklinville, North Carolina, for a separate delivery from Carolina Power & Light Company (CP&L) to serve the sewer treatment plant operated by said Respondent providing service to the public in Franklinville, North Carolina.

The Respondent Randolph Mills appeared as ordered, represented by counsel, and offered the testimony of its President Walter M. Clark in response to said Show Cause Order.

Mr. Clark adopted as his testimony the opening statement made by his counsel, Thomas R. Eller, Jr., and stood cross-examination on said statement, testifying through such adoption that Randolph Mills operated a flour mill and rayon mill No. 1, finishing mill No. 2, and spinning and weaving

mill No. 3 in Franklinville, together with a large waste treatment plant designed for said mills, and that he had allowed residents of Franklinville and commercial and governmental units in the Town to connect to the system at a charge of $2.00 per month for residential service; that the mill operation closed February 22, 1979; that the present employees of the mill, including himself, had been without salary since January; that there was a mortgage against the mill of $400,000 which was in arrears; that there were approximately 10 judgment creditors against the mill; that the electric bill for the meter serving the sewer plant and mills Nos. 2 and 3 was approximately $2,000 per month; that it was $36,000 in arrears, of which CP&L had a judgment for $28,000; that the unpaid part of said bill had been placed against the meter serving the flour mill and rayon mill No. 1, and the electric service discontinued, which caused the closing of the flour mill. The Respondent made two written offers at the hearing: (1) to sell the sewer system to the Town or a sanitary district, retaining the right to be a customer of said system if the mill resumed business, or (2) in the interim, to lease the sewer system to the Town on lease terms that would satisfy the CP&L bill so the flour mill could reopen. Mr. Clark testified that he had endeavored to comply with the Commission Order of November 17, 1978, and had commenced ordering and installing transformers when he was advised by CP&L that it would not help the electric bill and the cost became too great to complete the conversion without any prospect of reduced billings under the peak ratchet clause. Mr. Clark further stated that Southern Railway had announced it would abandon the railroad to Franklinville unless the flour mill was reopened, and that there were 11 other plants on the branch relying on the rail service.

The Public Staff of the Utilities Commission appeared on behalf of the using and consuming public, including the customers of the sewer service operated by the Respondent Randolph Mills. The Public Staff offered the testimony of Rudy Shaw, Utility Engineer of the Public Staff; Russell Radford, Division of Environment Management of the North Carolina Department of Resources and Community Development; William Crowder, Area Manager of the Central Division of CP&L, Asheboro, North Carolina; and Don Andrews, Mayor of Franklinville, North Carolina.

Mr. Shaw reported the results of the investigation of the sewer service provided by the Respondent and testified that Mr. Clark had shown an interest in abandoning the sewer service and the Public Staff asked him to file for abandonment and the Public Staff could proceed then to this hearing; that the wiring to the sewer system had not been separated from the plant of the Respondent as previously ordered by the Commission; and that the sewer service served 40 customers in Franklinville including the Town of Franklinville which includes the Town Hall, library, Fire Department, a restaurant, the Franklinville school, and a number of businesses.

Mr. Radford described the sewer service in Franklinville offered by the Respondent which included large pumps and motors to operate a sewer system of 600,000 gallons a day capacity designed to serve a large textile mill which needed only a capacity of 30,000 gallons a day to serve customers presently connected in Franklinville. Mr. Radford testified that there were no complaints on the adequacy of the present system for domestic sewer service, as it provided a much larger capacity than needed since the mill had been closed, and that the motors and pumps could be reduced in size for the present customers, with two 5-horsepower floating aerators installed in place of the three 40-horsepower aerators used for industrial waste, at an estimated cost of $15,000.

Mr. Crowder testified that the Respondent had two delivery points at its mill complex in Franklinville and that it had an outstanding bill of $36,000 overdue for electricity at the mill and sewer system combined; that CP&L had transferred the bill for electricity used at the service point serving the sewer to the service point serving the flour mill and rayon mill No. 1, which was cut off for said unpaid bill; that the meter serving spinning and finishing mills Nos. 2 and 3 and the sewer plant was still providing service at the specific request of the Public Staff because of the public customers on the sewer system; that in his opinion the sewer plant's electric service could be rewired through a separate meter for $800 and could serve the sewer plant for approximately $200 per month, if smaller motors were installed for the reduced volume with the mill closed.

Mayor Andrews testified that the Town of Franklinville needed the sewer service at Randolph Mills; that it was the only sewer service available to the Town and the Town Hall and Fire Department, library, restaurant, and to the Franklinville school; that the Respondent was delinquent in its taxes and the Town had attached its bank account and seized $5,000 in said bank account, and was informed that the taking of the $5,000 was the reason the flour mill closed. Mayor Andrews further testified that the Respondent had been serving the town with water from its mill service system, but that because of complaints about said water system the Town had installed a new water system which had begun service to some nine customers and would begin service to the entire Town of 850 to 900 population within a matter of weeks. Mr. Andrews testified that the Town had invested $50,000 of its funds, plus an FHA grant of $284,000 and a 40-year loan for the balance to install said water system, and had adopted rates of a minimum charge of $9.40 per month and an average charge of $11.00 per month to repay said loan which was the maximum borrowing capacity of the town.

Larry Hilliard, Superintendent of the school, testified that the school system had grades from kindergarten through the eighth grade, with 650 students and 58 staff members being served hot meals, and that it needed the sewer system

of the Respondent and had been paying $36.00 per month for the service.

Based upon the entire record, including the testimony and exhibits of the witnesses at the public hearing, the Commission makes the following

FINDINGS OF FACT

1. That the Respondent Randolph Mills, Inc., owns a flour mill and textile mill in Franklinville, North Carolina, which closed on February 22, 1979, with large outstanding indebtedness against the Respondent from judgment creditors, CP&L, and unpaid taxes, and including an attachment by the Town of Franklinville of its bank account.

2. That the Respondent owns a waste treatment plant as part of the flour mill and textile mill system which also serves some 40 residential customers in Franklinville and the Town of Franklinville which includes the Town Hall, library, Fire Department, a restaurant, and the Franklinville school of 650 students and 56 staff members.

3. That the Respondent has a filed tariff of $2.00 per month for residential sewer service but has not billed or collected regularly from many sewer customers and many have not paid for said sewer service, including the Town of Franklinville.

4. That the Respondent notified its sewer customers by letter of April 6, 1979, that it proposed to discontinue the sewer service because it could no longer pay the electric bill which was approximately $2,000 per month.

5. That said sewer customers held a meeting with the President of the Respondent and the Public Staff of the Commission, resulting in a Petition of the Public Staff on April 19, 1979, and an Order of the Commission to show cause and to maintain said sewer service pending a hearing on the Show Cause Order.

6. That Carolina Power & Light Company has estimated that the sewer system could be served separately from the remainder of Respondent's textile and flour mills for an expenditure of $800 and that if the motors of the waste treatment lagoon were of a smaller size the waste treatment could be operated at approximately $200 per month.

7. That the Town of Franklinville has installed its own water service to take over the water service previously provided in the Town by Randolph Mills.

8. That the Town buildings, school building, and some 40 residents need the sewer system operated by Randolph Mills and that the Town cannot afford to install its own sewer system.

9. That the Respondent has agreed to convert the electric system to serve the sewer system separately from its flour plant, spinning mill, and finishing mill, provided that said conversion can be made for a cost of $800, and that the electric bill for the sewer system would not exceed $200 per month, as estimated by the witnesses for the Public Staff.

10. That there is a public demand and need for the sewer system presently owned and operated by the Respondent Randolph Mills in Franklinville, North Carolina; that it is not financially feasible to operate said sewer system under the present electric cost of $2,000 a month; and the revenues estimated by the testimony would be $125 per month.

11. That the Respondent Randolph Mills is financially insolvent, is unable to pay the electric bill or to pay operators of the sewer plant, and has had an attachment of its bank account by the Town of Franklinville.

12. That the present CP&L electric service to the sewer system is being provided by CP&L only upon the request of the Public Staff due to the unpaid electric bill.

CONCLUSIONS

The Utilities Commission has a duty to assist utility customers in securing adequate service at reasonable rates and desires to exercise its full jurisdiction and authority to require continued sewer service to the customers of the sewer system operated by the Respondent Randolph Mills to the extent authorized by law.

At the same time, G.S. 62-118 provides for the abandonment of utility service upon a finding that there is no reasonable probability of a public utility realizing sufficient revenue to meet its expenses. The ordering of utility service which does not pay the expenses of providing the service would result in a confiscation of the property of the person ordered to provide the service and would not be lawful under the Constitution of North Carolina and the United States.

The situation of the sewer system in Franklinville is extremely regrettable and arises from an equally regrettable economic condition in the Town in which the principal industry of the Town has closed and the railroad serving the Town may be abandoned because of the closing of the industry. Due to the closing of said industry, the waste water treatment plant operated by the industry primarily to serve the textile mill, but which had been made available to the Town and certain of its residents, has been placed in jeopardy.

The sewer treatment plant is owned by a corporation, Randolph Mills, Inc., which has closed its manufacturing facilities with large outstanding indebtedness, including

substantial judgment creditors, and its bank account has been attached by the Town. The Utilities Commission does not have the powers of the Superior Court in the case of insolvency and receivership or the Federal Bankruptcy Court to seize the property and allow further borrowing to operate the sewer system. Unless the Respondent is successful in its efforts to secure new business and credit and reopen its mills, it is not the Commission but a State court receivership or a bankruptcy court which must assume jurisdiction to determine the final obligation to operate said sewer system for its public customers.

The Commission can pursue, however, every possible avenue of hope and every possible remedy offered at the hearing for a negotiated cooperative effort between Randolph Mills and the Town of Franklinville to keep the sewer system going for the Town and its residents. Such remedy lies primarily in the estimate of CP&L that the sewer system could be served separately for a $200 per month electric bill if smaller motors were installed and if the wiring were converted at an estimated cost of $800. The Respondent has agreed to this solution if said estimates prove to be correct and reliable.

The Commission therefore orders the parties to proceed with said conversion of the sewer system separately as set out in the ordering paragraphs below, or, in the alternative, the Commission calls upon the Public Staff to proceed in a Superior Court in the name of the Utilities Commission to seek appointment of an operator Trustee pursuant to G.S. 62-118.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the Respondent Randolph Mills, with the guidance and assistance of Carolina Power & Light Company, separate the electric service to the sewer system from the other electric service to Randolph Mills and that said electric service be established on a separate meter in the name of the Randolph Mills Sewer Service, provided that said separation of the sewer system can be accomplished at a cost in the range of $800 and that CP&L verify in writing that the electric bill for said sewer service shall be $200 per month or less.

2. That Randolph Mills file a tariff of sewer rates on one day's notice which equitably distributes the cost of said $200 per month electric bill and the salary of a certified sewer operator and a return on the pro rata plant used and useful in said service among all customers of said service who make application for service by said separated Randolph Mills Sewer Service at the rates necessary to support said service.

3. That Randolph Mills charge and collect all unpaid sewer charges from all users who have been using said system, to apply to the cost of conversion of said electric service on said system.

4. That the Public Staff is requested to cooperate with the Town of Franklinville and Randolph Mills in preparing a tariff that will produce the revenue required to operate the separated sewer system serving the Town of Franklinville and its residents so that sewer service may be operated on a financially feasible basis without threat of insolvency.

5. That in the event the electric system cannot be converted to serve the sewer treatment plant separately for a cost in the range of $800 and a monthly cost of $200 for the power bill, then Respondent Randolph Mills is ordered to meet with and confer with the Town of Franklinville and the Public Staff in an effort to agree upon a temporary lease of the sewer system from Randolph Mills to the Town of Franklinville so that the Town can convert said electric system to serve the sewer system and run the sewer system in conjunction with its water system.

6. That if the Respondent Randolph Mills and the Town of Franklinville cannot reach an agreement for such temporary lease for the Town to operate the sewer system, then the Public Staff is requested to file a suit in the Superior Court in the name of the Utilities Commission pursuant to G.S. 62-118 for appointment of an emergency operator to take over the sewer assets of the Respondent Randolph Mills which have been devoted to public service as a sewer system, with the power to assess customers of said service for said conversions of the electric service and to charge rates sufficient to operate said sewer system as Trustee for Randolph Mills pursuant to G.S. 62-118.

7. That Randolph Mills is ordered to report to the Commission of its progress under this Order, including its report, immediately upon learning whether or not it can convert electric service in the range of $800, as estimated, with written verification from CP&L that the electric service can be provided at $200 per month and that Randolph Mills is ordered to give a progress report on said conversion and, if said conversion cannot be made as estimated, that it report its progress on efforts to lease the sewer system to the Town of Franklinville for operation by the Town of Franklinville.

8. That the Public Staff and the Town of Franklinville appearing through the Public Staff are fully authorized to participate and seek the conversion of said electric service by Randolph Mills in the event that Randolph Mills is unable to secure conversion of said electric service in the range of $800 and to seek an electrical contractor who can perform said work at said price in the event Randolph Mills is not successful in said effort. The Public Staff is requested to report at any time the progress of efforts to continue operation of said sewer service and to reopen this proceeding at any time that it deems said progress is unsatisfactory.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of May, 1979.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Sandra J. Webster, Chief Clerk

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G-21, Subs 186 and 189 (4-25-79)

Public Service Company of North Carolina - Order Approving True-Up of Transportation Revenues and Refunds Through

United Cities Gas Company - Order Approving CTA Rate Effective November 15, 1979
G-1, Sub 47G (11-14-79)

United Cities Gas Company - Order Approving Exploration Tracking Adjustment and Decrease of CTA Rate Effective June 15, 1979
G-1, Subs 73 and 47F (6-1-79)

EMERGENCY PURCHASES

North Carolina Natural Gas Corporation - Order Distributing Benefits of Emergency Purchase and Requiring Reporting
G-21, Sub 204 (10-18-79)

Piedmont Natural Gas Company, Inc. - Order Approving Refund of Excess Emergency Purchased Gas Costs
G-9, Sub 181-3R (8-3-79)

Piedmont Natural Gas Company, Inc. - Order for Authority to Purchase Emergency Gas from East Tennessee Natural Gas Company
G-9, Sub 189 (5-7-79)

Public Service Company of North Carolina, Inc. - Order Distributing Benefits of Emergency Purchase from Washington Gas Light Company and Requiring Reporting
G-5, Sub 150 (7-17-79)

Public Service Company of North Carolina, Inc. - Further Order on Order Dated July 17, 1979
G-5, Sub 150 (8-31-79)

Public Service Company of North Carolina, Inc. - Further Order on Orders Dated July 17, 1979, and August 31, 1979
G-5, Sub 150 (10-17-79)

Public Service Company of North Carolina, Inc. - Order Approving Disposition of Benefits on Additional Purchased Gas
G-5, Sub 150 (12-3-79)

United Cities Gas Company - Order Approving Removal of Emergency Purchase Gas Surcharges Effective February 15, 1979
G-1, Sub 69 (2-28-79)

EXPLORATION AND DEVELOPMENT

North Carolina Natural Gas Corporation - Order Allowing Increase in Rates to Recover Costs of Exploration and Development Programs
G-21, Sub 201 (6-28-79)

North Carolina Natural Gas Corporation - Order Approving Exploration Tracking Adjustment Effective January 1, 1980
G-21, Sub 207 (12-21-79)

North Carolina Gas, Division of Pennsylvania and Southern Gas Company - Order Approving Decrease in Rates January 15, 1979 (Exploration and Development Programs)
G-3, Sub 89 (1-18-79)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) - Order Allowing Increase in Rates to Recover Costs of Exploratoon and Development Programs
G-3, Sub 92 (6-28-79)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) - Order Amending Order Dated June 28, 1979
G-3, Sub 92 (7-18-79)

Piedmont Natural Gas Company, Inc. - Order Allowing Increase in Rates to Recover Costs of Exploration and Development Programs
G-9, Sub 191 (6-28-79)

Piedmont Natural Gas Company, Inc. - Order Approving Increase in Rates to Recover Costs of Exploration and Development Programs
G-9, Sub 195 (2-19-79)

Public Service Company of North Carolina, Inc. - Order Allowing Increase in Rates to Recover Costs of Exploration and Development Programs
G-5, Sub 148 (6-28-79)

Public Service Company of North Carolina, Inc. - Order Approving Exploration Tracking Adjustment Effective January 1, 1980
G-5, Sub 153 (12-19-79)

PURCHASED GAS ADJUSTMENT (PGA)

North Carolina Natural Gas Corporation - Order Approving Purchase Gas Adjustment Increase
G-21, Sub 197 (3-19-79)

North Carolina Natural Gas Corporation - Order Amending Rate Schedule No. 7, Effective April 1, 1979
G-21, Sub 198 (3-16-79)

North Carolina Natural Gas Corporation - Order Approving Purchase Gas Adjustment Increase
G-21, Sub 199 (4-10-79)

North Carolina Natural Gas Corporation - Order Amending Rate Schedule No. 7, Effective May 1, 1979
G-21, Sub 200 (5-1-79)

North Carolina Natural Gas Corporation - Order Establishing Increase in Rates
G-21, Sub 202 (9-14-79)

North Carolina Natural Gas Corporation - Order Approving PGA Reduction Due to Storage Appreciation
G-21, Subs 202 and 203 (10-18-79)

North Carolina Natural Gas Corporation - Order Amending Rate Schedule No. 7, Effective October 1, 1979, and Authorizing Refund.
G-21, Sub 203 (9-18-79)

North Carolina Natural Gas Corporation - Order Allowing PGA Increase, Effective November 15, 1979
G-21, Sub 205 (11-20-79)

North Carolina Natural Gas Corporation - Order Authorizing Withdrawal of PGA Filing of November 5, 1979
G-21, Sub 206 (12-19-79)

North Carolina Natural Gas Corporation - Order Accepting Reduced Tariffs to Reflect Transcontinental Gas Pipeline Corporation's Filing Dated December 10, 1979, in RP76-136, RP77-26, and RP77-108
G-21, Subs 164 and 180 (12-18-79)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) - Order Extending Rate to Allow Refund in Deferred Account to be Extended Through April 15, 1979
G-3, Sub 84 (4-3-79)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) - Order Approving PGA Tracking Increase for Period Beginning March 15, 1979
G-3, Sub 90 (3-14-79)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) - Order Establishing Increase in Rates
G-3, Sub 93 (9-14-79)

Piedmont Natural Gas Company, Inc. - Order Approving PGA Tracking Increase in Part for Period Beginning March 1, 1979
G-9, Sub 186 (3-7-79)

Piedmont Natural Gas Company, Inc. - Order Approving Undertaking and Permitting Rate to Become Effective Pursuant to Undertaking
G-9, Sub 188 (4-24-79)

Piedmont Natural Gas Company, Inc. - Errata Order to Order Dated April 24, 1979
G-9, Sub 188 (4-26-79)

Piedmont Natural Gas Company, Inc. - Order Approving PGA Increase Effective May 1, 1979, and Cancelling Undertaking
G-9, Sub 188 (6-13-79)

Piedmont Natural Gas Company, Inc. - Order Establishing Increase in Rates (Commissioner Fischbach Dissents.)
G-9, Subs 193, 181, and 189 (9-12-79)

VOLUME VARIATION ADJUSTMENT FACTOR (VVAF)

MISCELLANEOUS

Kings Mountain, City of - Order Requiring Compliance with the Natural Gas Pipeline Safety Act
G-35, Sub 1 (7-25-79)

North Carolina Natural Gas Corporation - Order Suspending Unauthorized Rates for Reconnection Fees Greater Than $7.50 and Requiring Refunds
G-21, Sub 177 (1-26-79)

North Carolina Natural Gas Corporation, Piedmont Natural Gas Company, and Public Service Company of North Carolina, Inc. - Order for Modification of Availability Clause Filed by Piedmont Natural Gas Company
G-21, Sub 190; G-9, Sub 184; and G-5, Sub 143 (6-1-79)

North Carolina Natural Gas Corporation - Order Accepting for Filing Revisions to Rules and Regulations Increasing Reconnection Fees
G-21, Sub 194 (3-6-79)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division), Public Service Company of North Carolina, and Piedmont Natural Gas Company - Order Allowing Temporary Sales by Gas Utilities to Duke Power Company
G-3, Sub 91; G-5, Sub 149; G-9, Sub 190; and G-100, Sub 18 (6-1-79)

Piedmont Natural Gas Company, North Carolina Natural Gas Corporation, and Public Service Company of North Carolina, Inc. - Order for Modification of Availability Clause Filed by Piedmont Natural Gas Company
G-9, Sub 184; G-21, Sub 190; and G-5, Sub 143 (6-1-79)

Piedmont Natural Gas Company, Inc. - Order Requiring Monthly Report
G-9, Sub 189 (6-25-79)

Piedmont Natural Gas Company, Pennsylvania and Southern Gas Company (North Carolina Gas Service Division), and Public Service Company of North Carolina, Inc. - Order Allowing Temporary Sales by Gas Utilities to Duke Power Company
G-9, Sub 190; G-3, Sub 91; G-5, Sub 149; and G-100, Sub 18 (6-1-79)

Public Service Company of North Carolina, Inc., North Carolina Natural Gas Corporation, and Piedmont Natural Gas Company - Order for Modification of Availability Clause Filed by Piedmont Natural Gas Company
G-5, Sub 143; G-21, Sub 190; and G-9, Sub 184 (6-1-79)

Public Service Company of North Carolina, Inc. - Order Approving Interim Energy Audit Program
G-5, Sub 145 (7-13-79)

Public Service Company of North Carolina, Inc. - Order Approving Placement of Excess Dollars in Restricted Account 253
G-5, Sub 147 (12-3-79)

Public Service Company of North Carolina, Inc., Pennsylvania and Southern Gas Company (North Carolina Gas Service Division), and Piedmont Natural Gas Company - Order Allowing Temporary Sales by Gas Utilities to Duke Power Company
G-5, Sub 149; G-3, Sub 91; G-9, Sub 190; and G-100, Sub 18 (6-1-79)

MOTOR BUSES

APPLICATIONS/PETITIONS DENIED, DISMISSED, OR WITHDRAWN

Continental Southeastern Lines, Incorporated - Recommended Order Denying Application to Discontinue Transportation Service for Schedule 4901
B-69, Sub 123 (6-15-79)

Resort Management, Inc. - Order Allowing Withdrawal of Application to Transport Passengers and Their Baggage in the Beech Mountain Area
B-349 (2-2-79)

Tar Heel Stage Lines, L. Curtis Tripp, d/b/a - Recommended Order Denying Application to Transport Passengers and Their Baggage in the Elizabeth City, Weeksville, and Nixonton Area
B-350 (7-6-79)

Tar Heel Stage Lines, L. Curtis Tripp, d/b/a - Errata Order to Recommended Order Dated July 6, 1979
B-350 (7-12-79)

Trailways Southeastern Lines, Inc., and Fort Bragg Coach Company - Order Dismissing Petition to Discontinue Commuter Service Between Fayetteville and Fort Bragg
B-69, Sub 124, and B-190, Sub 1 (3-29-79)

Wilson Bus Company - Order Allowing Permission to Withdraw Application
B-296, Sub 5 (3-5-79)

AUTHORITY GRANTED

Folger, Robert C. - Recommended Order Granting Authority for Bus Passenger Service Between Dobson and Mount Airy
B-354 (11-14-79)

Hacaronee Bus Service, Carl Leonard Whitted, d/b/a - Recommended Order Granting Authority to Transport Passengers Between Wilmington, Belville, and Southport
B-355 (12-13-79)

Trailways Southeastern Lines, Inc. - Recommended Order Granting Authority to Transport Passengers Between Hendersonville and Rutherfordton and Approving a Timetable Change Regarding Service Between These Cities
B-69, Subs 126 and 127 (5-8-79)

BROKER'S LICENSE

Johnston Lions Club - Order Suspending Broker's License
B-336, Sub 1 (10-16-79)

Pleasants Travel Service, Flossie C. Pleasants, t/a - Order Suspending Broker's License
B-331 (6-28-79)

Travel Center, Inc. - Order Cancelling Broker's License
B-286, Sub 1 (7-30-79)

COMPLAINTS

Complaints - Bus - Carolina Coach Company vs. Roy L. Rouse, d/b/a Rouse Transportation Company - Recommended Order for Rouse Transportation Company to Cease and Desist from Unlawful Transportation Service
B-271, Sub 5 (2-16-79)

Complaints - Bus - Carolina Coach Company vs. Coastal Plain Charter Service, Inc. - Recommended Order for Coastal Plain Charter Service, Inc., to Cease and Desist from Unlawful Transportation Service
B-271, Sub 6 (6-15-79)

DISCONTINUANCE OF SERVICE

Gaston-Lincoln Transit, Inc. - Order Granting Authority to Discontinue Certain Bus Passenger Service Between Gastonia, Dallas, Stanley, and Lincolnton
B-49, Sub 5 (9-19-79)

Greyhound Lines, Inc. - Recommended Order Granting Petition to Discontinue Bus Passenger Service Over a Portion of Its Route 1 Between the North Carolina/Tennessee State Line and Asheville Over U.S. 25, Amending Certificate No. B-7
B-7, Sub 94 (1-5-79)

Piedmont Coach Lines, Inc. - Order Granting Discontinuance of Certain Passenger Service Between Winston-Salem and Stuart, Virginia, and Cancelling Hearing
B-110, Sub 19 (6-6-79)

Suburban Bus Lines Company - Order Granting Application to Discontinue Certain Passenger Service Between Greensboro and Idols X Roads
B-88, Sub 10 (5-31-79)

LEASE AGREEMENTS

Dillahunt, John T. - Order Approving Supplementary Lease Agreement Contained in Motor Passenger Contract Carrier Permits No. B-116
B-128, Sub 1 (8-21-79)

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Trailways Southeastern Lines, Inc. - Order Approving Change in Name from Continental Southeastern Lines, Inc.
B-69, Sub 125 (2-26-79)

RATES

Kannapolis Transit Company, Inc. - Recommended Order Allowing Rate Increase and Elimination of Certain Routes
B-189, Sub 7 (12-12-79)

Rockingham-Hamlet Bus Line, Frank House and Earl B. Ratliff, d/b/a - Recommended Order Granting Rate Increase
B-73, Sub 11 (10-1-79)

Virginia Dare Transportation Company, Inc. - Recommended Order Granting Rate Increase
B-97, Sub 8 (12-21-79)

SALES AND TRANSFERS

Blue Ridge Lines, Ltd. - Recommended Order Approving Sale and Transfer of Certain Routes in Western North Carolina
B-352 (5-22-79)

Western Carolina Tours, Betsy L. Dunn, d/b/a - Order Approving Sale and Transfer from Smoky Mountain/Highland Tours, Inc.
B-351 (3-15-79)

MOTOR TRUCKS

APPLICATIONS DENIED, DISMISSED, OR WITHDRAWN

Alexander, Rufus Donnell - Order Allowing Withdrawal of Application, Cancelling Hearing, and Closing Docket
T-2001 (11-7-79)

Cloverleaf Mobile Home Park - Recommended Order Denying Application
T-1940 (6-6-79)

Dependable Feed Service, Inc. - Order Denying Motion (Application) for Authority to Purchase and Transfer a Portion of Certificate No. C-789 from Nathaniel Jackson
T-1951 (4-19-79)

East Coast Transport Company, Incorporated - Order Allowing Withdrawal of Application and Closing Docket
T-342, Sub 7 (12-3-79)

Gatlin's Mobile Home Movers - Order Allowing Withdrawal of Application and Cancelling Hearing and Closing Docket
T-1986 (10-15-79)

Gray's, O.B., Moving Co., Orange Breland Gray, d/b/a - Order Allowing Withdrawal of Application and Cancelling Hearing
T-1933 (1-30-79)

Kenan Transport Company, Incorporated - Recommended Order Denying Application
T-127, Sub 12 (1-4-79)

TCB Freight Lines - Recommended Order Reaffirming Motion to Dismiss and Closing Docket
T-1924 (2-22-79)

AUTHORITY GRANTED - COMMON CARRIER

Action Freight Lines, Inc. - Recommended Order Granting Application as Amended
T-1999 (12-11-79)

B & W Grain & Feed Service, Inc. - Recommended Order for Authority to Transport Statewide Group 8, Dry Fertilizer, etc., and Group 21, Grains, Meals, Flours, Fish Meals, etc.
T-1957 (4-30-79)

Benton, James E. - Recommended Order for Authority to Transport Group 21, Mobile Homes Between Points and Places Within Bladen and Columbus Counties
T-1963 (7-6-79)

Brevard Moving and Storage Company - Recommended Order Granting Common Carrier Authority to Transport Group 18, Household Goods Between Points in Transylvania, Polk, Henderson, Haywood, Jackson, Macon, Swain, Clay, Cherokee, and Graham Counties and to and from Points and Places in Those Counties Throughout the State
T-1236, Sub 5 (11-30-79)

Bryson Machinery Movers & Riggers, Inc. - Recommended Order for Authority to Transport Group 2, Heavy Commodities Between Points in Gaston County and Between Points in Gaston County and Points in North Carolina. Restriction: Lowboy or Drop-Deck Type Trailers
T-1964 (6-8-79)

Culberson Motor Lines, Inc. - Recommended Order for Authority to Transport Group 21, Hardboard Sheets, Boards, Panels, Flakeboard, etc., to all Points and Places in Davie County to all Points and Places in North Carolina
T-1414, Sub 5 (1-12-79)

Traffic Consigned to Wholesale Grocery Warehouses and/or Retail and Chain Grocery Stores
T-1974 (8-21-79)

Mobile Truck Service, Inc. - Recommended Order Granting Authority to Transport Group 21, Mobile Homes Within New Hanover, Pender, and Brunswick Counties
T-1959 (7-9-79)

Pick-Up & Delivery Service, Inc. - Recommended Order Granting Authority to Transport Group 15, Retail Store Delivery Service Between all Points and Places Within the Counties of Gaston, Cleveland, Mecklenburg, and Lincoln and to Transport Group 17, Textile Mill Goods and Supplies Between all Listed Above
T-1917, Sub 1 (4-3-79)

Public Transport Corporation - Recommended Order Granting Authority to Transport Group 21, Nitrogen Fertilizer Solutions, from Elmwood Terminal, Statesville, to all Points and places in North Carolina on and West of U.S. Highway 1
T-622, Sub 10 (6-25-79)

Ratley Mobile Home Sales and Service - Recommended Order Granting Authority to Transport Mobile Homes Between Points and Places and from Points and Places in Hoke, Cumberland, Harnett, and Sampson Counties to and from Points and Places Within North Carolina
T-1723, Sub 2 (7-18-79)

Ratley Mobile Home Sales and Service - Final Order Overruling Exceptions and Affirming Recommended Order
T-1723, Sub 2 (10-8-79)

Red Line Courier Service, Marion Devilbiss, d/b/a - Recommended Order Granting Authority to Transport Group 1, General Commodities from Fayetteville to Points and Places in North Carolina. Restriction: No Commodities Weighing in the Aggregate More Than 2,000 Pounds When Moving from One Consignor at One Location to One Consignee at One Location on Any One Day
T-1976 (8-16-79)

Rice's Mobile Home Service, John Rice, d/b/a - Recommended Order Granting Authority to Transport Group 21, Mobile Homes, Between Points in Wake, Franklin, and Granville Counties and Points in North Carolina
T-1997 (12-18-79)

Roberts, C.C., Concrete Construction Co., Inc. - Recommended Order Granting Extension of Authority Under Certificate No. C-1085 to Transport Group 21, Animal and Poultry Feed Ingredients Between Points in North Carolina
T-1874, Sub 1 (7-11-79)

Starling Mobile Home Service, Clyde V. Starling, d/b/a - Recommended Order Granting Authority to Transport Group 21, Mobile Homes Between Points and Places in Durham County
T-1927 (10-3-79)

Tidewater Transit Company, Inc. - Recommended Order Granting Authority to Transport Group 21, Sulfate Black Liquor from Facilities of Weyerhaeuser Company, Craven County, to all Points and Places in North Carolina
T-380, Sub 19 (7-16-79)

Wallace Trucking Company - Recommended Order Granting Authority to Transport Group 21, Intravenous, Saline, Nutritional or Anti-Coagulants Solutions Between Laurinburg and Points in North Carolina
T-1239, Sub 4 (8-27-79)

Wicker Pick-Up & Delivery Service, Inc. - Recommended Order Granting Additional Authority Under Certificate No. C-399 to Transport Group 17, Textile Mill Goods and Supplies Between all Points and Places Within a Radius of 100 Miles of Burlington
T-65, Sub 7 (7-20-79)

Young Transfer, Inc., Young Transfer, d/b/a - Recommended Order Granting Authority to Transport Group 21, Paper Boxes, Corrugated Boxes, Setup Boxes, etc., Statewide
T-182, Sub 4 (7-27-79)

Young Transfer, Inc., Young Transfer, d/b/a - Errata Order to Order Dated July 27, 1979
T-182, Sub 4 (8-2-79)

AUTHORITY GRANTED - CONTRACT CARRIER

AJS Trucking Company, Arlive Jackson Scoggins, d/b/a - Recommended Order for Authority to Transport Group 21, Beer and Malt Liquor Products Between Schlitz Brewing Company, Winston-Salem, and Mark Four Beverages, Inc., Greensboro
T-1793, Sub 2 (4-25-79)

AJS Trucking Company, Arlive Jackson Scoggins, d/b/a - Final Order Overruling Exceptions and Affirming Recommended Order
T-1793, Sub 2 (12-18-79)

Ace Trucking Co., Levis W. Minford IV, d/b/a - Recommended Order Granting Authority to Transport Group 21, Liquid Sweetners, in Bulk, in Tank Vehicles, Statewide
T-1984 (11-7-79)

Boone, The A.C., Company - Recommended Order for Authority to Transport Group 21, Merchandise for Wholesale, Retail, and Chain Grocery and Food Business Houses for National Fruit Products, Inc., Statewide
T-24, Sub 3 (7-11-79)

Chronicle Mills, The, d/b/a R.L. Stowe Mills - Recommended Order for Authority to Transport Group 7, Cotton in Bales, Group 17, Textile Mill Goods, and Group 21, Cotton Yarn from Points in Gaston County to Points and Places in Cleveland, Catawba, Mecklenburg, Cabarrus, Randolph, Surry, and Stanly Counties and from Points and Places in These Counties to Points and Places in Gaston County (Filed in the Chief Clerk's Office Under The Chronicle Mills)
T-1973 (10-5-79)

Chronicle Mills, The, d/b/a R.L. Stowe Mills - Amendment to Recommended Order Dated October 5, 1979.
T-1973 (10-10-79)

Contract Transporter, Inc., - Final Order Reversing Recommended Order of October 25, 1978, and Approving Contract Carrier Authority
T-1672, Sub 2 (4-10-79)

Contract Transporter, Inc. - Recommended Order for Authority to Transport Group 21, Bottles, Tier Sheets, etc., Between Wilson and Winston-Salem for Kerr Glass Company
T-1672, Sub 3 (4-20-79)

Contract Transporter, Inc. - Final Order Overruling Exceptions to Recommended Order Dated April 20, 1979
T-1672, Sub 3 (6-8-79)

Cresco Lines, Inc. - Recommended Order Granting Authority to Transport Group 21, Fire Protection Systems and Devices, Statewide
T-1995 (11-14-79)

Davie Truckers, Inc. - Recommended Order for Authority to Transport Group 21, Brewers' Wet Grains, etc., from Facilities of the Pillsbury Company in Rockingham, Davie, and Forsyth Counties to all Points and Places in North Carolina
T-1472, Sub 2 (3-14-79)

Davie Truckers, Inc. - Recommended Order for Authority to Transport Group 21, Potato and Corn Waste By-Products, etc., from the Frito-Lay Plant in Charlotte to Points in North Carolina Under Contract with The Pillsbury Company
T-1472, Sub 3 (8-7-79)

East Coast Drive-Away, Inc. - Recommended Order for Authority to Transport Group 21, Mobile Homes, House Trailers, etc., from the Facilities of Redman Homes, Inc., in Mebane and Sanford to all Other Points in North Carolina
T-1991 (10-3-79)

Fanelli Brothers Trucking Company - Final Order Overruling Exceptions and Affirming Recommended Order for Authority to

Transport Group 21, Beverage Container Caps, etc., Between Zapata Industries, Inc., in Butner and Points in North Carolina
T-1911 (2-20-79)

Gypsum Haulage, Inc. - Recommended Order for Authority to Transport Group 10, Building Materials and Group 21, Gypsum and Gypsum Products from Facilities of National Gypsum Company from New Hanover County to all Points in North Carolina
T-1947, Sub 3 (3-28-79)

Iredell Milk Transportation, Inc. - Recommended Order Granting Additional Authority Under Permit No. CP-5 to Transport Group 21, Vinegar and Vinegar Stock from Facilities of Speas Company, Charlotte, to Designated and from the Henderson-Asheville Facility to Points in Charlotte
T-1647, Sub 3 (9-11-79)

Jefferson Trucking Company - Recommended Order for Authority to Transport Group 10, Building Materials and Group 21, Gypsum, Gypsum Products, Building Materials, etc., from Facilities of National Gypsum Company in New Hanover County to all Points in North Carolina
T-1946 (3-28-79)

LDF, Inc. - Recommended Order for Authority to Transport Group 21, Refrigerated Foodstuffs from Facilities of the Nestle Company, Inc., in Charlotte to all Points and Places in North Carolina
T-1982 (8-28-79)

Lawrence Transfer and Storage Corporation - Recommended Order for Authority to Transport Group 21, Pianos and Organs, Statewide, for Piano and Organ Keyboards of Carolina, Inc., d/b/a Andrews Music Company, and Stephenson Music Company
T-1765, Sub 1 (2-19-79)

Marine Transport Company - Recommended Order for Authority to Transport Group 21, Wood Pulp, Waste Paper, etc., to and from Facilities of Federal Paper Board Company, Inc., at Riegelwood, Wilmington, Cape Fear, and Roanoke Rapids
T-1960 (5-31-79)

Moore, J.W., Incorporated - Recommended Order for Authority to Transport Group 21, Biomass Fuel from Pullman-Woodex Corporation, Goldston, to all Points in North Carolina and from Goldston to Collins & Aikman Corporation, Albemarle
T-1953 (4-3-79)

Mooresville Oil Company - Recommended Order for Authority to Transport Group 3, Petroleum and Petroleum Products from Petroleum Terminals in the State to Points and Places in the Counties of Davie, Forsyth, Yadkin, Davidson, Union, Cabarrus, Cleveland, Gaston, Lincoln, Iredell, Mecklenburg, Anson, Rowan, Catawba, Burke, Alexander, Caldwell, Buncombe,

Rutherford, Stanly, and McDowell, and Between Points and Places in These Counties Under Individual Bilateral Written Contract with Davie Oil Company, Bumgardner Oil Company, Jordan-Fletcher Oil Company, Mull Oil Company, Rankin-Patterson Oil Company, Patterson Oil Company, and Patterson-Campbell Oil Company
T-1944 (4-18-79)

Mooresville Oil Company, Inc. - Errata Order to Correct Corporate Name
T-1944 (7-5-79)

Ploof Truck Lines, Inc. - Recommended Order for Authority to Transport Group 10, Building Materials and Group 21, Gypsum, Gypsum Products, etc., for National Gypsum Company, Between New Hanover County and all Points in the State
T-1948 (3-28-79)

Pomona Pipe Products - Recommended Order for Authority to Transport Group 21, Steel Bars, Steel Sheets, etc., Between the Facilities of Carolina Steel Corporation at Greensboro, Hickory, Colfax, Charlotte, Wilson, and Winston-Salem and from These Facilities to Points in North Carolina
T-1985 (9-4-79)

Sawyer, Tommy Dean - Recommended Order for Authority to Transport Group 21, Packaged Malt Beverages from Miller Brewing Company, Eden, to Skyland Beer Distributing Company, Inc., Arden, on Specified Highways
T-1923 (3-12-79)

Senn Trucking Company - Recommended Order Denying Common Carrier Authority and Granting Contract Carrier Authority to Transport Group 21, Commodities for Home Improvement, Home Furnishing, and Lumber Stores for Wickes Corporation, Statewide
T-1932 (3-13-79)

Setzer Leasing, Inc. - Recommended Order Granting Authority to Transport Group 21, Gasoline, Kerosene, Heating Oil, and Diesel Fuel from Charlotte to Points in Burke, Caldwell, and Catawba Counties for Broyhill Furniture Industries, Inc., Lenior Ice and Fuel Company, and Nelson Oil Company, Inc.
T-1989 (11-13-79)

Starnes Brothers Milling Company, Wayne W. Starnes, Bedford L. Starnes, Conley E. Starnes, and Dale E. Starnes, d/b/a - Recommended Order for Authority to Transport Group 21, Manufactured Animal, Fish, and Poultry Feed, Insecticides, etc., Manufactured by Ralston Purina Company from Charlotte and Granite Falls to Points in Caldwell, Catawba, Burke, and Alexander Counties
T-1939 (7-5-79)

Task Force of Raleigh, Inc., The - Recommended Order Granting Contract Carrier Authority to Transport Group 21,

Major Appliances Under Contract with General Electric Company
T-2008 (12-27-79)

Thomas, Jimmy Edward - Recommended Order for Authority to Transport Group 6, Agricultural Commodities and Group 21, Soybean Meal, etc., Between Tyson Foods Corporation, Sanford, and Fayetteville, Morehead City, Beaufort, and Southport. Restriction: Only One Tractor-Trailer to be Used
T-1968 (10-5-79)

Timber Trucking Co., Inc. - Recommended Order for Authority to Transport Group 21, Lumber, Timber, and Wood Products Between the Facilities of The Burke-Parsons-Bowlby Corporation, Leland, and Points in North Carolina
T-1983 (8-29-79)

Tol-Co, Inc. - Recommended Order for Authority to Transport Group 21, Refractory and Insulation Materials and Supplies Between all Points and Places in North Carolina Under Individual Bilateral Contract with Flame Refractories, Inc.
T-1970 (8-7-79)

Tuten, Jasper Wayne - Recommended Order Granting Contract Carrier Authority to Transport Group 21, Animal and Poultry Feed from Wilson to Points East of Highway 220
T-2000 (12-18-79)

Waco Drivers Service, Inc. - Recommended Order for Authority to Transport Group 21, Commodities (except in bulk) for Retail Department Stores Under a Continuing Contract with Spiegel, Inc.
T-1994 (10-12-79)

Winston Carriers, Inc. - Recommended Order for Authority to Transport Group 21, Mobile Homes, House Trailers, etc., from the Facilities of Winston Homes of North Carolina in Cleveland County to Points in North Carolina and Return
T-1987 (10-29-79)

CERTIFICATES AND/OR PERMITS AMENDED

Boone, The A.G., Company - Order Granting Authority to Amend Permit NO. P-7 to Add Rainbo Baking Company as a Contracting Shipper
T-24, Sub 2 (2-13-79)

D & L Trucking Company, L.M. Roach, d/b/a - Order Granting Amendment and Allowing Withdrawal of Protests
T-1936 (1-17-79)

Harper Trucking Company, Inc. - Order Granting Petition to Amend Certificate No. CP-38 by Substitution of a Contract with Dr. T.C. Smith Company in Lieu of a Contract with ICN Pharmaceuticals, Inc.
T-521, Sub 26 (3-29-79)

Kindle's Pick-Up and Delivery Service, Horace E. Kindle, d/b/a - Recommended Order Granting Extension of Contract Carrier Authority of Adding Service to Colonial Furniture Company and Blackwelders Furniture Company
T-1682, Sub 2 (6-7-79)

Worsley Transport, Inc. - Order Cancelling Hearing and Granting Petition to Amend Permit No. P-232 to Add Contracts with Craven Oil Company, Inc., and Howard Oil Company, Inc.
T-1545, Sub 2 (11-15-79)

CERTIFICATES AND/OR PERMITS CANCELLED OR REVOKED

Company and Certificate Number	Docket Number and Date	
D.L. Boone (C-96)	T-244, Sub 1	4-18-79
Colonial Building Maintenance Company, Inc. (P-263)	T-1731, Sub 2	10-3-79
Covington's Texaco, Cecil E. Covington, d/b/a (C-1070)	T-1810	4-24-79
Five "C's", Inc. (C-1001) Recommended Order	T-1769, Sub 1	10-25-79
Forest Dale Motors, Inc. (P-269)	T-1754, Sub 1	10-9-79
G & M Used Car Carrier (C-1079) Recommended Order	T-1858, Sub 1	10-17-79
Glover Trucking Corporation (C-1065) Recommended Order	T-1812, Sub 1	10-17-79
McBane-Brown Oil Company, Inc. (C-914)	T-1359, Sub 1	2-26-79
North American Movers of North Carolina, Inc. (C-741) Recommended Order	T-1025, Sub 3	10-17-79
Overcash Transfer, Inc. (P-28) Recommended Order	T-110, Sub 6	11-8-79
Piedmont Movers, Microtron Industries, Inc. (C-372) Recommended Order	T-1771, Sub 1	10-17-79
Ben Felton Potter (C-926) Recommended Order	T-1370, Sub 3	10-17-79
R.C. Motor Lines, Inc. (C-756) Recommended Order - Effective Date 11-14-79	T-1059, Sub 2	10-25-79
Rabon Transfer, Inc. (C-575)	T-796, Sub 5	11-27-79

CHANGE OF CONTROL

LEASES

Rucker Transfer & Storage Co., Inc. - Order Allowing Extension of Lease of Certificate No. C-726 from Haley Transfer & Storage Co., Inc., High Point
T-1887 (12-31-79)

MERGERS

Colonial Refrigerated Transportation, Inc. - Order Approving Merger with Claremont Motor Lines, Inc., Holder of Certificate No. C-409
T-2004 (11-28-79)

Eagle Transport Corporation - Order Approving Application to Merge Eagle Transport Corporation of South Carolina into Eagle Transport Corporation, Holder of Common Carrier Certificate No. C-296
T-151, Sub 13 (2-13-79)

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Act Transport, Inc. - Order Granting Petition to Change Corporate Name from Etheridge Transport, Inc.
T-1979 (5-29-79)

Act Transport, Ltd. - Errata Order to Change Name in Order Dated May 29, 1979, from Inc. to Ltd.
T-1979 (6-14-79)

Action Moving and Storage, Inc. - Order Approving Application to Change Corporate Name from Taylor Bros. Company of Cabarrus County, Inc.
T-2007 (10-23-79)

Carolina Fuel Haulers, Inc. - Order Granting Petition to Void Prior Order Approving Change in Name from Wendell Transport Corporation
T-1935 (2-26-79)

Gaston Pick Up & Delivery, Incorporated - Order Granting Motion to Incorporate and Transfer Certificate
T-1954 (7-24-79)

Gaston Pick Up & Delivery Service, Incorporated - Order Granting Motion to Amend Corporate Name
T-1954 (10-23-79)

Parton's Moving & Storage - Order Approving Application to Acquire the Interest of Monroe M. Hendrix in Certificate No. C-837 and Change Name from Dimsdale Moving and Storage
T-1945 (1-15-79)

Pomona Corporation - Order Granting Petition to Change Trade Name from Ponoma Pipe Products, Division of Pomona Corporation
T-1985, Sub 1 (10-9-79)

Brock's Mobile Home, Shirley Marie Brock, d/b/a, from George David Brock, d/b/a Brock's Mobile Home (C-861)
T-1862, Sub 2 (12-6-79)

Bruner-Lowe's Transfer and Storage, Bruner Transfer and Storage, Inc., d/b/a, from Bobby Joe Johnson, d/b/a Lowe's Transfer Service (C-747)
T-2005 (11-26-79)

Cantrell, Charles, Associates, Inc., from Albert Reece Pope, Jr., d/b/a Pope's Mobile Home Moving (C-1037)
T-1969 (6-20-79)

Carolina Moving Services, Inc., from Research Triangle Moving & Storage, Inc. (C-666)
T-1949 (3-2-79)

Century Movers, Inc., from Willie Rhett Chavis (C-772)
T-2006 (11-26-79)

Cooke Trucking Company, Inc., from Fred Allen Cooke, d/b/a Cook Trucking Company (C-757)
T-1052, Sub 7 (3-2-79)

David's Econo-Move, Robert D. Koch, d/b/a, from Eastern Transit & Storage, Inc. (C-441)
T-1996 (11-28-79)

Dependable Feed Service, Inc. - Recommended Order Denying Transfer from Nathaniel Jackson Hudson and Ordering Partial Cancellation of Operating Authority
T-1951 (7-18-79)

Dependable Feed Service, Inc. - Order Allowing Exceptions to Order Dated July 18, 1979, Reversing and Vacating Recommended Order and Scheduling Rehearing (C-789)
T-1951 (9-19-79)

Dixon, Donnie A., Inc. - a Portion of the Operating Authority in Certificate No. C-1087 from Riverside Transportation Co., Inc.
T-1941 (3-2-79)

Dixon, Donnie A., Inc. - Order Granting Motion and Rescinding Order Approving Transfer Dated March 2, 1979
T-1941 (5-14-79)

Dixon, Donnie A., Inc., from Blair Transit Company (C-30)
T-1941, Sub 1 (9-4-79)

Doug's Mobile Home Towing, Inc., from Walter Douglas Aldridge, d/b/a Doug's Mobile Home Towing
T-1721, Sub 2 (8-21-79)

Eastern Delivery Service, Inc., from Milton and Katherine Moore, d/b/a Eastern Delivery Service (C-1090)
T-1889, Sub 4 (10-9-79)

National Transfer and Storage, Inc., from Wooten Transfer and Storage Co., Inc. (C-625)
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Norris, Elwood, Inc. - from Elwood Norris (P-297)
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Old Dominion Freight Line, Inc., from The Disher Company (C-149)
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Old Dominion Freight Line, Inc. - Errata Order to Order Dated March 2, 1979
T-277, Sub 16 (3-7-79)

Piedmont Mobile Home Movers, Inc., from Hickory Mobile Home Movers, Inc. (C-961)
T-1943 (3-2-79)

Pope's Mobile Home Moving, Albert Reece Pope, Jr., d/b/a, from Clyde L. Weddle, d/b/a Royster & Weddle Housetrailer Towing Service
T-1704, Sub 1 (3-29-79)

Sharpe Transport, Inc., from Etheridge Transport, Inc. (C-1059)
T-1942 (3-30-79)

Shelby Motor Lines, Inc. - Recommended Order Approving Sale of Stock and Transfer of Certificate No. C-755 to B & P Motor Lines, Inc.
T-1055, Sub 2 (4-24-79)

Smith, Aaron, Trucking Company, Inc., a Portion of Certificate No. CP-38 from Harper Trucking Company, Inc.
T-648, Sub 8 (9-19-79)

Tri-County Transport, Incorporated, a Portion of Certificate No. CP-41 from Aaron Smith Trucking Company, Inc.
T-1708, Sub 1 (10-22-79)

Wilmington Express, Inc., a Portion of Certificate No. C-792 from James A. Ezzell, d/b/a Ezzell Farms
T-1937 (2-13-79)

Wilmington Express, Inc. - Errata Order to Order Dated February 13, 1979
T-1937 (2-21-79)

Wilmington Express, Inc., a Portion of Authority in Certificate No. CP-41 from Aaron Smith Trucking Company, Inc.
T-1937, Sub 1 (11-28-79)

Wilson Enterprises, Inc., from Donald Strand Hudson (C-811)
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Contract Transporter, Inc. - Final Order Overruling Exceptions to Order Granting Temporary Contract Carrier Authority to Transport Group 21, Bottles, Tier Sheets, Pallets, etc., Between Kerr Glass Company, Wilson, and Joseph Schlitz Brewing Company, Winston-Salem
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Norfolk Southern Railway Company - Order Allowing Motion to Withdraw Petition to No Longer Have an Agent in Belhaven and to Have an Agent in Chocowinity
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Seaboard Coast Line Railroad Company - Order Granting Authority to Modify the Hours of Operation of Certain Mobile Agencies now Being Operated in North Carolina on a Permanent Basis
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Seaboard Coast Line Railroad Company - Order Granting Authority to Include the Agency Stations of Lewiston and Severn in the Mobile Agency Concept Operating out of Conway on a Permanent Basis and to Modify the Hours of Operation of the Existing Mobile Agency Based at Conway
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Seaboard Coast Line Railroad Company - Order Granting Authority to Modify the Hours of Operations of the Mobile Agency Base Station at Conway
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Norfolk Southern Railway Company - Order Granting Petition to Remove Side Track No. 104-2 at Hudson, North Carolina
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Norfolk Southern Railway Company - Recommended Order Authorizing Removal of Side Track No. 92-2 at Hickory, North Carolina
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Norfolk Southern Railway Company - Recommended Order Authorizing Removal of Side Track No. 59-1 at Long Shoals, North Carolina
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Norfolk Southern Railway Company - Recommended Order Authorizing Removal of Side Track No. 55-11 at Dallas, North Carolina
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Norfolk Southern Railway Company - Errata Order to Order Dated December 11, 1979
R-4, Sub 113 (12-14-79)

Norfolk Southern Railway Company - Order Granting Petition to Remove Side Track No. 49-1 at Dallas, North Carolina
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Norfolk Southern Railway Company - Order Granting Motion to Withdraw Petition for Authority to Remove Side Track at Lincolnton, North Carolina
R-4, Sub 115 (7-6-79)

Norfolk Southern Railway Company - Order Granting Petition to Remove Side Track No. 73-5 at Maiden, North Carolina
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Norfolk Southern Railway Company - Order Granting Petition to Remove Side Track No. 1 at Dallas, North Carolina
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Norfolk Southern Railway Company - Order Granting Petition to Remove Team Track No. 65-1 at Lincolnton, North Carolina
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Southern Railway Company - Order Granting Petition to Remove Side Track No. 360-1 at Concord, North Carolina
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Southern Railway Company - Order Granting Petition to Remove a Portion of Side Track No. 26-26 at Winston-Salem, North Carolina
R-29, Sub 307 (5-24-79)

Southern Railway Company - Order Granting Petition to Remove Side Track No. 2-19 at Charlotte, North Carolina
R-29, Sub 308 (5-24-79)

Southern Railway Company - Order Granting Petition to Remove Side Track at Liberty, North Carolina
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Southern Railway Company - Order Granting Petition to Remove Side Track No. S-1-18 at Salisbury, North Carolina
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Southern Railway Company - Recommended Order Granting Authority to Remove Side Track No. 32-9 at Mebane, North Carolina
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Southern Railway Company - Order Granting Petition to Remove Side Track No. 47-1 at Sylva, North Carolina
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Rail Common Carriers - Order Rejecting Tariff Filing Without Prejudice
R-66, Sub 93 (1-23-79)

Rail Common Carriers - Order Vacating Order of Suspension and Closing Docket
R-66, Sub 96 (6-20-79)

Rail Common Carriers - Errata Order to Order Dated June 20, 1979
R-66, Sub 96 (6-22-79)

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Seaboard Coast Line Railroad Company - Order Authorizing Withdrawal of Proposed Tariff Schedules and Cancellation of Hearing
R-71, Sub 85 (5-16-79)

Seaboard Coast Line Railroad Company - Order Vacating and Cancelling Hearing and Allowing Proposed Changes to Become Effective
R-71, Sub 88 (6-7-79)

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REA Express, Inc. - Order Granting Authorized Suspension of Operations - Bankruptcy
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Southern Railway Company - Order Granting Petition to Donate Old Passenger Station Building at Greensboro to the City of Greensboro
R-29, Sub 313 (5-3-79)

Southern Railway Company - Order Approving Authority to Dispose of the Old Depot Building at Biltmore
R-29, Sub 318 (11-9-79)

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Southern Bell Telephone and Telegraph Company - V.I.P. Formal Wear, Inc., vs. - Recommended Order Dismissing Complaint
P-55, Sub 771 (3-16-79)

Southern Bell Telephone and Telegraph Company - R. Sterling Browne II, vs. - Order Approving Settlement of Complaint
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Carolina Telephone and Telegraph Company and Norfolk Carolina Telephone Company - Order Granting Authority to Merge, Issue Debentures, and Issue Preferred Stock
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Communications Services Company of Wallace, Incorporated - Order Approving Transfer of Ownership and Name Change from Rockfish Radio Telephone Services, Inc.
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Coastal Carolina Communications, Inc. - Order Approving Common Stock Transfer
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Mebane Home Telephone Company, W.R. Hupman, S.M. Hupman, Jr., and Central Carolina Communications - Order Approving Transfer of Controlling Interest of Mebane Home Telephone Company to Central Carolina Communications, Inc., and Pledge 75% of Mebane Common Stock as Security
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Continental Telephone Company of Virginia - Order Granting Authority to Issue and Sell $10,000,000 First Mortgage Bonds
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Queensbury Park Water System, A.D. McGuire, d/b/a - Order Authorizing Abandonment of Water Service in Queensbury Park Subdivision in Forsyth County
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Longleaf, Inc. - Order Allowing Withdrawal of Application, Cancelling Hearing, and Closing Docket
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Bland, Incorporated - South Park and Meadowood Subdivision, Richmond County
W-324, Sub 2 (6-4-79)

Catawba Water Supply, Inc. - 29th Avenue, Hickory, Catawba County
W-179, Sub 6 (9-17-79)

Colfax Water System - Ellenboro, Rutherford County
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Cox, S.M. - White Oaks Subdivision, Union County
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Cox and Short - Twin Meadows Acres Subdivision, Caldwell County
W-311, Sub 2 (12-10-79)

Edgebrook Development Company - Woodfield Estates Subdivision, Johnston County
W-638, Sub 2 (10-11-79)

Gamble, J.R., Jr. - Newcastle Subdivision, Lincoln County
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Gordon Heights Water System, Leonard J. Dover, d/b/a - Gordon Heights Subdivision, Cabarrus County
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H & A Water Services, Inc. - Rolling Hills Subdivision, Stanly County
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Isenhour, W.C. - Golden Hills Subdivision, Cabarrus County
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Love, Wade H. - Wade H. Love Subdivision, Stanly County
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Marion Manufacturing Company - McDowell County
W-57, Sub 2 (3-15-79)

Overhills Water Company, Inc. - Rose Manor Subdivision, Johnston County
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Patrick, John W., II - Walker in the Hills Subdivision, Haywood County
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Rozelle, Fred D. - North Lakes Subdivision, Caldwell County
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Waterco, Inc. - Hickory Hills Subdivision, Davie County
W-80, Sub 26 (9-14-79)

CERTIFICATES GRANTED

Brandywine Bay Utility Company - Recommended Order Granting Certificate for Water and Sewer Service in Oak Bluff Subdivision, Carteret County, and Approving Rates
W-693 (4-23-79)

Burge, Clyde E. - Recommended Order Granting Certificate for Water Service in Riverview Acres Subdivision, Moore County, and Approving Rates
W-667 (3-22-79)

Carolina Water Service, Inc. - Order Granting Certificate for Water Service in Blue Ridge Racquet Club Subdivision,

Watauga County, and Approving Rates
W-354, Sub 5 (9-17-79)

Cherokee Hills Holding Corporation - Order Granting Certificate for Water Service in Hulkey Housing Project, Cherokee County, and Approving Rates
W-643 (12-12-79)

Glendale Water, Inc., John Blankenship, d/b/a - Recommended Order Granting Certificate for Water Service in Glendale No. 2 Subdivision, Wake County, and Granting Authority to Transfer the Water System Serving Chari Heights Subdivision, Wake County, from Heater Utilities, Inc., and Approving Rates
W-691 (5-1-79)

Glendale Water, Inc. - Order Granting Certificate to Furnish Water Service in Glendale #1 Subdivision, Wake County, and Approving Rates
W-691, Sub 1 (12-12-79)

Goss Utilities Company, Goss Pump Specialists, Inc., d/b/a - Recommended Order Granting Certificate for Water Service in Carden's Creek Subdivision, Durham County, and Cedar Terrace Subdivision, Chatham County, and Approving Rates
W-457, Sub 2 (5-29-79)

Hickory Colonial Furniture, Inc. - Recommended Order Granting Certificate for Water Service in Pleasant Gardens Subdivision, Alexander County, and Approving Rates
W-702 (12-12-79)

Hydraulics, Ltd. - Order Granting Certificate for Water Service in Applegate Subdivision, Forsyth County, and Approving Rates
W-218, Sub 21 (3-15-79)

J. & H. Water Company - Recommended Order Granting Certificate for Water Service in Middle Creek Estates Subdivision, Wake County, and Approving Rates
W-686 (5-1-79)

Lafayette Water Corp. - Order Granting Certificate for Water Service in Cliffdale West and Mill Creek Subdivisions, Cumberland County, and Approving Rates
W-43, Sub 11 (3-27-79)

Laurel Woods Water System - Recommended Order Granting Certificate for Water Service in Laurel Woods Subdivision, Gaston County, and Approving Rates
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Millner Water Systems Company, James B. Millner, Jr., d/b/a - Recommended Order Granting Certificate for Water Service in Sprinkle and R.J. Fowlkes Subdivisions, Caswell County, and Approving Rates
W-695 (6-29-79)

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W-274, Sub 23 (10-11-79)

Moss, C.J., T.H. Wingate, vs. - Order Dismissing Motion - Complaint
W-409, Sub 2 (12-14-79)

Piedmont Construction and Water Company, William B. Miller, et al., vs. - Recommended Order Requiring Improvements of Water System
W-262, Sub 20 (4-23-79)

Regalwood Water Company, Charles Griffin, et al., vs. - Recommended Order Requiring Improvements
W-187, Sub 5 (12-18-79)

Reynolds, L.A., Industrial District, Inc. (Seven Devils Resort Area), A. John Beucus, et al., vs. - Interim Order Confirming Service Improvement Procedures
W-263, Sub 4 (3-28-79)

Springdale Water Company - Recommended Order Approving Agreement with Carolina Homestead Associates and Dismissing Complaint
W-241, Sub 3 (8-31-79)

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Associated Utilities, Inc. - Recommended Order Granting Rate Increase
W-303, Sub 3 (11-5-79)

Chapel Hills Utility - Recommended Order Granting Rate Increase
W-310, Sub 2 (7-24-79)

Dillard Grading Company - Recommended Order Granting Rate Increase
W-340, Sub 4 (6-8-79)

Foreman, J.D. - Order Approving Rates
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Goose Creek Utility Company - Recommended Order Denying Rate Increase
W-369, Sub 3 (6-21-79)

Holiday Island Property Owners Association - Recommended Order Granting Partial Rate Increase
W-386, Sub 2 (12-19-79)

Hydraulics, Ltd. - Recommended Order Granting Rate Increase
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W-503, Sub 1 (9-5-79)

Corriher Water Service, Inc. - Recommended Order Approving Transfer of Water System in Quail Hollow Park Subdivision, Cabarrus County, from Gene Aycock Water Company
W-233, Sub 8 (6-26-79)

Fairbrook Utilities Company, J.L. Spencer, L.H. Spencer, and M. H. Dagenhart, d/b/a - Order Approving Transfer of Water System in Fairbrook Subdivision, Catawba County, from Thelmer H. and Emma Jean Foley
W-647 (5-9-79)

Garrard, F., Realty & Insurance, Inc. - Order Approving Transfer and Rates
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Heater Utilities, Inc. - Recommended Order Approving Transfer of Water System in Heather Glen Subdivision, Durham County, to Water Systems Corporation
W-681 (1-8-79)

Huffman, H.C., Water Systems, Inc. - Order Approving Transfer of Water System in Herman Acres Subdivision, Catawba County, from Grover R. Herman and Rachel S. Herman
W-95, Sub 5 (7-17-79)

Huffman, H. C., Water Systems, Inc. - Order Approving Transfer of 100% Stock Ownership to Daniel F. and Horace S. Huffman
W-95, Sub 6 (5-10-79)

Land Harbor Development Association - Order Approving Transfer of Water System in Linville Land Harbors Development from Land Harbor Utility Company
W-598, Sub 4 (6-5-79)

Montclair Water Company - Order Granting Authority for Montclair Water Company to Be Acquired by American Classic Industries, Inc.
W-173, Sub 12 (10-24-79)

Riverbend Estates Water System, Sportsland, Inc., t/a - Final Order on Exceptions Affirming Recommended Order Dated September 15, 1978, with Exception of Connection Fee of $350.00 Instead of $200.00
W-390, Sub 2 (2-23-79)

Sugar Mountain Utility Company - Order Granting Transfer of Sewer Service to Utilities, Incorporated
W-482, Sub 1 (6-29-79)

Tulls Bay Water System, Inc. - Interim Order Denying Petition for Transfer of Operating Authority from Touch and Flow Water Systems
W-367, Sub 1 (6-4-79)

Waterco, Inc. - Recommended Order Granting Transfer of Water and Sewer Systems from Independent Utilities, Inc.
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Brookwood Water Corporation - Order Amending Tariff to Add $5.00 Service Charge on Returned Checks
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Cape Fear Utilities, Inc., et al. - Order Amending Tariff to Add $5.00 Service Charge on Returned Checks
W-279, Sub 8 (4-3-79)

Genoa Water Systems, Inc. - Order Amending Tariff to Adopt Bimonthly Billing Instead of Monthly Billing
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Land Harbor Utility Co. - Order Amending Tariff to Increase Tap Fees
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Montclair Water Company - Order Amending Tariff to Add $5.00 Service Charge on Returned Checks
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Barrier Grain Company - Recommended Order Granting Temporary Authority to Provide Water Service in Green Oaks Subdivision, Cabarrus County, and for Approval of Rates
W-688 (3-29-79)

Forest Trail Utility, W. Reid Wright, d/b/a - Recommended Order Continuing Temporary Authority to Provide Water Service in Forest Trail Estates Subdivision, Wake County, and for Approval of Rates
W-678 (1-5-79)

Hydraulics, Ltd. - Order Granting Temporary Authority to Furnish Water Service in Graystone Forrest Subdivision in Forsyth County, and for Approval of Rates
W-218, Sub 23 (10-23-79)

Kanuga Park Water System, Gerald Dotson, d/b/a - Recommended Order Granting Temporary Authority to Furnish Water Service in Kanuga Park Subdivision, Henderson County, and for Approval of Rates
W-580, Sub 1 (4-18-79)

Sweet Water Mountain Land Company, Inc. - Recommended Order Granting Temporary Authority to Provide Water Service in

Mount Mitchell Lands West Subdivision, Yancey County, and for Approval of Rates
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TPG Utilities, Inc. - Recommended Order Granting Temporary Authority to Provide Water Utility Service in Turkey Pen Gap, Transylvania County, and for Approval of Rates
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Tulls Bay Colony Water Systems, Inc. - Order Granting Emergency Authority (from W.E. Caviness), Currituck County
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Wachovia Banking and Trust Company - Order Cancelling Temporary Authority to Provide Water Service in Shuford Development
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MISCELLANEOUS

Allied Construction Company, Inc. - Recommended Order Requiring Respondent to File Annual Reports
W-607, Sub 1 (10-26-79)

Allied Construction Company, Inc. - Order Cancelling Proceeding Due to Bankruptcy
W-607, Sub 1 (11-30-79)

Fairway Acres Water System, Kenneth Henry Frye, d/b/a - Order Requiring Improvements in Water Utility Service
W-260, Sub 3 (8-24-79)

Garrard, F., Realty & Insurance, Inc. - Recommended Order Requiring Respondent to File Annual Reports
W-508, Sub 1 (10-30-79)

Garrard, F., Realty & Insurance, Inc. - Order Dismissing Proceeding - Death of Respondent
W-508, Sub 1 (11-30-79)

Pinehurst, Incorporated - Order Requiring Installation of Meters
W-6, Sub 6 (10-29-79)

Randolph Mills, Inc. - Order Withdrawing Order of July 10, 1979 - Bankruptcy Court
W-536, Sub 1 (8-28-79)