SEVENTIETH REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1980, through December 31, 1980

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

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.

LETTER OF TRANSMITTAL

December 31, 1980

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, 1980, we hereby present for your consideration the report of the Commission's decisions for the twelve-month period beginning January 1, 1980, and ending December 31, 1980.

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

Douglas P. Leary, Commissioner

Sandra J. Webster, Chief Clerk

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UTILITIES COMMISSION ORDERS FULL REPORT PRINTED

C. GAS

NOTE: Due to a shortage of space in this Annual Report, the Alphabetical Index Listing and the Condensed Index Outline for both List and Print Have Been Omitted.

DOCKET NO. M-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of NCUC Form P-1) RECOMMENDED ORDER REVISING
) NCUC FORM P-1

HEARD IN: Room 617, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 20, 1980

BEFORE: Hearing Examiner Donald R. Hoover

APPEARANCES:

For the Intervenors:

Richard W. Stimson, Attorney at Law, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702
For: General Telephone Company of the Southeast

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

Fred A. Walters, Southern Bell Telephone and Telegraph Company, 1245 Hurt Building, Atlanta, Georgia 30303
For: Southern Bell Telephone and Telegraph Company

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

F. Kent Burns, Attorney at Law, Boyce, Mitchell, Burns & Smith, P.O. Box 1406, Raleigh, North Carolina 27602
For: Mebane Home Telephone Company, Heins Telephone Company, and Randolph Telephone Company

For the Using and Consuming Public:

Theodore C. Brown, Jr., Staff Attorney, North Carolina Utilities Commission, Public Staff, P.O. Box 991, Raleigh, North Carolina 27602

HOOVER, HEARING EXAMINER: On October 5, 1979, in Docket No. M-100, Sub 58, the Commission issued its Order giving notice that it was considering the adoption of a revised NCUC Form P-1. A copy of the Commission's Order was served

on all telephone companies whose rates and charges are regulated by this Commission. Such companies and the Public Staff of the North Carolina Utilities Commission were made parties to this docket and invited to submit written comments with regard to the proposed revisions.

Following receipt of comments and motions to convene a conference, the Commission by Order of January 15, 1980, set this matter for hearing on February 20, 1980, at 9:30 a.m., in Room 617, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

The matter came on for hearing as ordered on January 15, 1980, at 9:30 a.m.

Southern Bell Telephone and Telegraph Company (Southern Bell or Bell) offered the testimony of Charles Johnson, Division Manager of Comptrollers and Bob Rudisil, District Manager, Bell Independent Relations. General Telephone Company of the Southeast (General) offered the testimony of Richard Powell, Regulatory Consultant. Carolina Telephone and Telegraph Company (Carolina) offered the testimony of T.P. Williamson, Jr., Vice President of Administration. Mebane Home Telephone Company (Mebane), Heins Telephone Company (Heins), Randolph Telephone Company (Randolph), and the Public Staff of the North Carolina Utilities Commission offered no witnesses.

All parties to the proceeding were provided an opportunity to file additional written comments. Such comments were required to be filed on or before March 3, 1980.

During the February 20, 1980, hearing the companies presented and explained their proposed amendments to NCUC Form P-1 and the Public Staff was allowed an opportunity to respond to the comments presented by the companies. The Companies' proposed amendments to Form P-1 were as follows:

SECTION A

1. Appendix A, Page 2. Change second to last line in Paragraph 1 to read "30 days" rather than "20 days."

SECTION C

1. Item 5, Page 7. Change requirement from monthly balances to beginning and ending balances for the test year.

2. Item 6.c., Page 9. Eliminate the last sentence in its entirety.

3. Item 8, Page 9. Change requirement from monthly to beginning and ending balances for the test year.

4. Item 10, Page 10. Eliminate the first word "Provide" and substitute "Be prepared to provide on request."

5. Item 12, Page 10. Change requirement in (b) to show balance for test year and one year preceding test year.

6. Item 23, Page 13. Change requirement to show balances for test year and one year preceding test year and require that data be provided for North Carolina combined only.

7. Item 23.h., Page 13. Change to read "a monthly breakdown of Account 530 as requested in Format 23-h for North Carolina combined only."

8. Format 23-h. Eliminate items "Toll Service - Interstate," "Miscellaneous - Intrastate" and Miscellaneous - Interstate" under type of revenue and add items "Interstate" and "Directory."

9. Item 26.f., Page 15. Eliminate the phrase "for the calendar year for all years of common affiliation" at the end of the section and substitute "for the test year and the last 5 calendar years."

10. Item 26.j., Pages 15 and 16. Eliminate subsection j. in its entirety.

11. Item 29, Page 16. (General Telephone requested that it be relieved from this requirement and that data equivalent to that submitted in its last general rate case be accepted in lieu thereof.)

12. Item 30, Page 16. Eliminate second sentence in its entirety.

13. Item 30, Page 16. Eliminate the last sentence immediately preceding subsection a. and substitute "Relevant supporting data and work papers should be provided when requested."

14. Format 30-a. Eliminate asterisk and associated note.

15. Format 30.3.1, Schedule 3. Add note "exchange data only required for those exchanges which are regrouping."

16. Item 31, Pages 17-18. Eliminate in its entirety. (Including associated formats.)

17. Item 32, Page 18. Eliminate the first sentence in subsection b.

18. Item 35, Page 19. Change to read: "Provide weighted units with summaries for each present and proposed rate group, for total Company N.C. operations and for each exchange that is regrouping as required on Format 35, Schedules 1, 2 and 3."

19. Format 36. Schedule 3. Add note "exchange data only required for those exchanges that are regrouping."

20. Item 39, Page 20. Amend requirement so as to require sample tariff pages only when there is a change in the text of the tariff and not when only change is a change in rates.

21. Item 40.d., Page 21. Eliminate in its entirety.

22. Item 40.f., Page 21. Change to read: "...private line (B-I and I-I if appropriate) including foreign exchange, and..."

23. Item 40.g., Page 22. Insert after "I-I private line revenues" the statement, "(not applicable to Southern Bell)."

24. Item 41., Page 22. Eliminate subsections a., b., c., and d. for companies using standard contract which do not separate intrastate and interstate revenues, expenses, and investment.

25. Item 45.c., Page 25. Eliminate subsection c. in its entirety.

26. Item 46.c., Page 26. Eliminate subsection c. in its entirety.

27. Item 47.b., Page 27. Eliminate subsection b. in its entirety.

28. Item 47.c., Page 27. Change "fifteen (15)" in second line to "ten (10)."

29. Item 47.d., Page 27. Change "fifteen (15)" in second line to "ten (10)" and change the word "monthly" in first line to "quarterly." Also, change word "monthly" in subsections i, ii, and iii to "quarterly."

30. Item 48.b., Page 28. Eliminate subsection b. in its entirety.

In addition to the specific proposed revisions to Form P-1 set forth hereinabove several companies requested that the Commission give consideration to the adoption of an abbreviated form applicable to small telephone companies. For this purpose, it was suggested that a small telephone company be defined as one having less than 50,000 telephones in service at the end of the test year. Additionally, General Telephone Company of the Southeast proposed when information for prior years has been provided in past rate case applications, that only updates of that data be required as a part of the current filing.

With respect to Mebane Home Telephone Company's, Heins Telephone Company's, and Randolph Telephone Company's recommendation that the Commission adopt an abbreviated Form P-1 for small telephone companies (a company having less than 50,000 telephones in service), the Public Staff responded as follows:

> The Public Staff is aware that the small telephone companies have a more difficult task in preparing the Form P-1 data than do the large companies; however, the data which is requested in the proposed Form P-1 must be received from the small telephone companies as well as the large telephone companies. The same type investigation must be performed on rate increase requests from small telephone companies as the large telephone companies. The Public Staff's investigation of rate increase filings of the small telephone companies is just as detailed and takes as much time as the investigation of filings of the large companies. Many of the small telephone companies do not have the personnel to develop data needed by the Public Staff during the investigation; therefore, Public Staff employees must develop the needed data, which requires additional time. Conversely, large companies have a sufficient number of employees to develop much of the data needed by the Public Staff to investigate the rate increase applications. If an abbreviated Form P-1 is developed for the small telephone companies, the Public Staff employees will be required to develop this data. The current policy of setting the hearing within four months of the filing date gives the Public Staff just slightly more than three months to analyze the company's filing, perform an examination of the reasonableness of the request, and prepare testimony and exhibits. If an abbreviated Form P-1 is approved for the small telephone companies, the Public Staff will not be able to conduct a thorough examination and prepare testimony and exhibits in approximately three months. Also, several items included in the current Form P-1 are not included in the recommended revised Form P-1 which is the subject of this proceeding. These items were eliminated based on complaints of small telephone companies. The data requested in the new abbreviated Form P-1 is needed from the small telephone companies.

The Commission has very carefully considered the recommendation of the companies in this regard and the comments of the Public Staff in response thereto. Clearly, certain specific data request items set forth in Form P-1 do not apply to all of the companies. For example, Item 26 does not apply to companies who are not a member of a parent-subsidiary affiliation; only Carolina Telephone and Telegraph Company, Central Telephone and Telegraph Company, General Telephone Company of the Southeast, and Southern Bell Telephone and Telegraph Company are required to provide lead-lag studies (Item 29); etc. Therefore, the filing requirements of the smaller companies have been reduced somewhat by virtue of the fact that several of the data

items are not applicable to such companies and, as previously indicated, the smaller companies are not required to prepare and file lead-lag studies.

Except for certain items, such as the aforementioned, which are not applicable to most, if not all, of the smaller companies, the Commission believes that the data requirements set forth in Form P-1 as revised herein are fundamental to a complete and thorough investigation of all telephone utility general rate increase requests. Further, when considering the nature of the companies' requests, the time constraints imposed by the General Statutes and Commission policy in conjunction with the manpower resources available to the Public Staff and the obvious inability of the Commission to control the time of filing of general rate increase requests, the Commission believes that it is both reasonable and proper to require that the underlying data on which the Commission must ultimately base its decision be formulated and developed by the utility seeking such an increase.

Therefore, the Commission concludes that it would be inappropriate for it to adopt a filing requirement for small telephone companies which did not, as a minimum, include the data required by NCUC Form P-1 as revised herein.

While the Public Staff offered no comment with respect to General's proposal that only updates of data submitted in past rate cases be required as a part of the current filing, the Commission believes that if such data is to be used effectively, in most instances, it must first be placed in comparative form. Therefore, the question is raised as to whether this task should be performed by the Companies or by the Public Staff. As previously stated, due to the nature of the Companies' requests, the time constraints imposed by the General Statutes and Commission policy, the manpower resources available to the Public Staff, etc., the Commission believes that it is entirely reasonable and proper to require that the Companies provide the data in the form or format which most readily lends itself to maximum utilization.

The Commission, therefore, will not adopt General's recommendation in this regard.

Carolina, Mebane, Randolph, and Heins proposed that Appendix A, Page 2 of Section A (General Instructions, Utility Testimony, Exhibits, and other Information) be revised to require that all Intervenors or Protestants including the Public Staff be required to file all testimony, exhibits, and other information which is to be relied upon at the hearing 30 days in advance of the scheduled hearing. The Commission Rules currently require that such data be filed 20 days in advance of the hearing.

The Public Staff responded to this proposal as follows:

Insofar as the comments of Carolina, Mebane, Randolph, and Heins concerning Section A, the Public Staff is already in a time bind and cannot afford to lose another ten days. Most companies usually have considerably more than twenty days to examine the Public Staff's testimony and exhibits under current filing requirements because, often, hearings are held in the service area of the company seeking the rate increase before hearings begin in Raleigh. This gives the company additional time to study the Public Staff's testimony and exhibits and prepare cross-examination questions.

The Commission is not unmindful of the burden which may be placed upon the companies as a result of the limited amount of time within which to prepare themselves for the hearing after having received the pre-filed testimony and exhibits of the Intervenors and Protestants. The Commission, however, would be remiss if it did not also observe that other parties to the proceedings, as well as the Commission, are restricted to certain statutory time constraints. Thus, in this regard, to allow one party more time is to allow another party less.

The Commission, having given very careful consideration to the propriety of this filing requirement, believes that it would be inequitable and unduly burdensome on the Intervenors and the Protestants to further restrict the amount of time available to such parties for use in their examination and investigation of the Companies' rate increase request. Therefore, the Commission concludes that it should not adopt the Companies' proposal in this regard.

No party offered any comment with respect to Section B (General Instructions Rate Case Information Report) of NCUC Form P-1. Therefore, the Commission will adopt Section B as reflected in the attachment to the Commission Order issued in this docket on October 5, 1979, without modification.

The remaining comments and proposals presented by the parties relate to Section C (Data Request) of NCUC Form P-1.

PROPOSAL NO. 1

Mebane, Randolph, and Heins proposed that Item 5, Page 7, be changed to require beginning and ending balances in lieu of monthly balances for the test year.

The Public Staff responded as follows:

The Public Staff feels monthly balances are necessary because they give a more reasonable average balance than the average of the beginning and ending balances. The monthly balances enable the Public Staff to determine the reasonableness of the end-of-period balances. If only the beginning and ending balances were submitted, the Public Staff would be unable to determine the reasonableness of the end-of-period amounts. Also, the inclusion of monthly

balances enables the Public Staff to identify months in which significant fluctuations occur and to identify areas which need an in-depth analysis during the field examination.

The Public Staff currently only has a little over three months to investigate rate case applications, and prepare testimony and exhibits concerning the investigation. The monthly data is necessary to conduct a thorough investigation. If the companies do not provide the information, the Public Staff will have to obtain the information itself, which will require additional time.

With respect to the need for monthly test year balances, the Commission is in complete agreement with the Public Staff. With respect to whether this data should be compiled by the Company or by the Public Staff, for reason previously stated concerning time constraints, the Commission believes that such data should be compiled by the Companies. The Commission, therefore, concludes that it should not adopt the Companies' proposal in this regard.

PROPOSAL NO. 2

All Companies except General proposed that the following be deleted from Item 6.c.:

Also provide a description of the method and frequency of computing and recording interest on customer deposits and the method and frequency of refunding customer deposits.

The Public Staff responded as follows:

The Public Staff feels this information is necessary to determine whether the company is complying with Commission Rule R12-4. Also, it assists the Public Staff in determining if the interest on customer deposits recorded on the company's books represents interest accrued on actual customer deposits for the appropriate time held by the company during the test period, or instead represents interest actually paid or credited to a customer's account when the deposit is refunded. The latter situation would not represent the appropriate interest expense for ratemaking purposes.

The Commission believes that the Public Staff's needs in this regard are valid and that they are clearly justified by the comments offered in support thereof. Therefore, the Commission will not adopt the Companies' proposal in this regard.

PROPOSAL NO. 3

Mebane, Randolph, and Heins proposed that Item 8, Page 9, be changed to require beginning and ending balances in lieu of monthly balances for the test year.

For reasons stated with respect to Proposal No. 1, the Commission concludes that it should not adopt the Companies' recommendation in this regard.

PROPOSAL NO. 4

Carolina, Mebane, Randolph, and Heins proposed that Item 10, Page 10, be changed to require that workpapers be provided upon request rather than to require that such workpapers be filed with the application.

The Public Staff responded as follows:

> The Public Staff urges that the work papers are an absolute necessity in evaluating a company's rate increase filing, and are needed when application is filed. If they are not filed with the application, time will be wasted in trying to obtain them.

The Commission agrees with the comments of the Public Staff in this regard and, therefore, will not adopt the recommendation of the Companies.

PROPOSAL NO. 5

Mebane, Randolph, and Heins proposed that Item 12.b. be changed to require that comparative operating expense account balances for the test year and one year preceding the test year be substituted for the requirement that such account balances be presented for the test year and the five preceding years.

The Public Staff responded as follows:

> The Public Staff feels that five years of data is necessary. Five additional years of data will enable the Public Staff to better determine the representative level of expenses than one additional year of data. The data is already compiled by the companies in Schedule 35 of Annual Report Form M. It is just a matter of presenting the information in a comparative format.

The Commission agrees with the comments of the Public Staff in this regard and, therefore, will not adopt the recommendation of the Companies.

PROPOSAL NOS. 6, 7, AND 8

Mebane, Randolph, and Heins requested that this filing requirement be changed to require comparative data for a two-year period rather than for a six-year period.

The Public Staff responded as follows:

> The Public Staff does, however, object to Mebane's, Randolph's, and Heins' request to provide information for only the test year and one year preceding the test year.

The Public Staff feels that five years of data is necessary in order to effectively evaluate the reasonableness of test-period uncollectables. For example, if only two years of data is presented, the effects of such an event as a recession, in which uncollectables usually increase, would probably be reflected in both years' data; whereas, it would almost certainly not be reflected in every year if five years of data is presented.

The Commission agrees with the comments of the Public Staff in this regard and therefore will not adopt the recommendation of the Companies.

Southern Bell proposed that Item No. 23 be changed to require North Carolina combined data only and that several revisions be made to Format 23-h. There were no objections to these proposals. The Commission will therefore adopt the Company's recommendations with respect hereto.

PROPOSAL NO. 9

Carolina, Mebane, Heins, and Randolph proposed that Item 26.f. be changed so as to require affiliated company data for a five-year period rather than for all years of common affiliation.

The Public Staff responded as follows:

The Public Staff says information for all years of common affiliation is needed to determine if affiliated companies have earned excess profits on sales to operating telephone companies. All years of common affiliation are needed to determine the total amount of excess profits, if any.

The Commission is in agreement with the Public Staff in this regard and, therefore, will not adopt the companies' recommendation with respect hereto.

PROPOSAL NO. 10

Carolina, Mebane, Heins, and Randolph proposed that Item 26.j. be eliminated in its entirety.

The information requested by this data item is used in conjunction with and for the same purposes as the data requested in Item 26.f. Therefore, for reasons as previously discussed under Proposal No. 9, the Commission will not adopt the Companies' recommendation in this regard.

PROPOSAL NO. 11

General requested that it be relieved from the requirements of Item 29 (lead-lag study) and that data equivalent to that submitted in its last general rate case be accepted in lieu thereof.

Richard Powell, testifying on behalf of General contended that only a few states require lead-lag studies and that the time and expense involved with such studies are disproportionate to their benefit.

The Public Staff responded as follows:

> The Public Staff says that a lead-lag study produces the most accurate measurement of working capital and General should be required to file one. A lead-lag study was used in General's rate case, Docket No. P-19, Sub 158. Once a lead-lag study is performed, the time and expense of updating the study should be considerably less than the initial preparation of the study.
>
> A working capital allowance should be included in the rate base only to the extent that the capital is provided by the company's debt and equity investors. A lead-lag study will reasonably determine this amount, while the formula method will not.

The Commission is in complete agreement with the Public Staff with respect hereto and therefore will not adopt the recommendation of the Company in this regard.

PROPOSAL NO. 12

Carolina, Mebane, Heins, and Randolph proposed that the following sentence be eliminated from Item 30:

> Data on services or items of equipment in any category of services included in settlements and/or concurrence provisions should be totals for all Companies affected by the proposed charges.

There was no objection to this proposal. Therefore, the Commission will adopt the Companies' recommendation in this regard.

PROPOSAL NOS. 13 AND 14

Southern Bell requested that Item 30, Page 10, be changed to require that workpapers and other relevant data be provided when requested rather than to require that such data be filed with the application. Additionally, Southern Bell requested that Format 30-a be revised to eliminate the following footnote:

> *If changes are proposed in any category of service included in settlements and/or concurrence provisions, give revenue totals for: (1) Total Applicant only, (2) Total All Other Companies, and (3) Total All Companies, in lieu of the simple total requested here.

Southern Bell witness Rudisil testified with respect to these changes as follows:

We're not in disagreement with a lot of the stuff in paragraph 30 but the second paragraph asks for data on services and equipment included in settlements and/or concurrence provisions and it says that it should be totals for all companies affected by the proposed changes. We feel that it would be extremely difficult if we filed a tariff change for a certain item and it would affect Bell and would not be applicable to settlement for us to go in and obtain from all the independent telephone companies the number of units that they might have under a concurring tariff. We are now providing the increased tariff effect for items that are involved in settlements between our two companies but our objection is primarily the reference there to the concurrence provisions because we feel that maybe there may be many small independent companies that instead of developing their own tariff they simply concur in the Bell tariff for an exchange type service and if we follow this to the, ah, literally this paragraph, then we would have to go in and obtain these units in the independent company territory and furnish the Commission with the effect of all those cumulative.

The basis of Mr. Rudisil's proposal to eliminate the footnote reflected in Format 30-a is virtually the same as that stated with respect to Item 30.

The Public Staff responded as follows:

The Public Staff does not agree to any of the changes recommended by Bell in these requirements. The information requested in these items is required only when an Applicant requests a change in rates such as toll rates, which will through settlements or concurrence provisions affect other regulated companies in North Carolina. The information required in these items must be obtained by the Applicant prior to the filing of an application which involves such a change in order for the Applicant to be able to state the total revenue effect of the proposed rate adjustments. The information requested is therefore basic to a proceeding involving toll service or other services concurred in by other companies. Concurrence provisions are presently limited to message toll service, WATS, interexchange private line service, channels and equipment, foreign exchange service and enterprise service which are covered in Southern Bell's tariff Sections A9, A18, and A19 and in its Private Line Service Tariff. All regulated companies concur in each service. The Public Staff submits that the concurrence provisions are well known to those familiar with the tariffs and should not cause the problems suggested by Southern Bell. These requirements will cause the gathering and provision of additional detailed information and will require cooperation between the Applicant and the other regulated companies in the State but the Public Staff submits that the information requested is essential and should be required from the Applicant as a part of the MFR. The Commission should not rely upon the possibility

that this essential information will be provided by the Applicant in its prefiled testimony.

The Commission is in agreement with the Public Staff's comments in this regard and therefore will not adopt the Company's recommendation.

PROPOSAL NO. 15

Southern Bell proposed that Format 30.3.1. be changed as follows:

Add note "exchange data only required for those exchanges which are regrouping."

There was no objection to this proposal. Therefore, the Commission will adopt the Company's recommendation in this regard.

PROPOSAL NO. 16

Southern Bell proposed that Item 31, Pages 17 and 18, and associated formats be eliminated in their entirety. The data requested by this item, in all material respects, relates to toll revenue settlement procedures and/or concurrence provisions.

Southern Bell witness Rudisil testified with respect to this proposal as follows:

We do not object for providing much of the information in here. We feel that it is very necessary in the Public Staff's investigation. But some of the items in here are impractical to provide or either is being provided now on a regular basis when we file a case, so looking at the first one, if we can, 31-A, we do provide this at the present time for settlement purposes. I personally work up and provide in connection with our toll cases this settlement data for each of the independent telephone companies. But as I mentioned previously here again our objection is this present concurrence provisions. We do not have access to the affect on some of the smaller independent telephone companies that are using our rates under the concurrence provision. So that's our objection to paragraph 1 is the, in reference to the concurrence provisions.

On B and C we realize that the Commission Staff needs this information but we furnish that in my testimony in every toll rate case. This information both for the standard contract companies as referred to in paragraph B and the cost companies or division of revenue basis companies are referred to in C is being provided in our testimony in every case...

Of course D just follows B and C and it's just a summary of it so that's our comment on D. On E, a summary of

items B, C and D, there again it's just a summary and would be affected by the disposition of items B and C.

In F is where we have a little bit of a problem and I think our problem here dealt primarily with the interpretation that the Public Staff was putting on the minimum filing requirement item here. Let's look at number 1 under F. It says that we will provide the actual achieved settlement ratio, toll settlement ratio, to the test period.

We are under orders by the Utilities Commission at the present time to provide this. An Order issued, I believe in 1975, requires Bell to furnish each month to the Chairman of the Utilities Commission the Southern Bell and independent company, which of course is the same, intrastate toll settlement ratio and this we do. We're continuing to do that. So we are furnishing this on a monthly basis under Commission directive at the present time.

Now items 2 and 3 we can take together because one is just excluding the effects of the proposed changes and one is including the effect of it. We're not sure what is meant by this. There has been some conversation before that when we proforma an end of test period that we include the proforma items of the various independent telephone companies. Now in our rate case we furnish this information. We furnish 2 and 3. I've had it in my testimony on several occasions, the test period settlement ratio prior to any increases that might be granted and the settlement ratio with the increases that might be granted, but it is based on Southern Bell data and we take the revenues after settlements that will accrue to Bell and then we use the Bell, of course, proformas that we have access to and knowledge of and the Bell investment and we come up with a settlement ratio that will be the one used for settlement purposes, but my point is it's based on Southern Bell data and we will continue to furnish this in rates cases. We have no problem with that, but we just wanted to be sure that on items 2 and 3 the staff wasn't making reference to a total industry proforma settlement ratio and I think it's obvious the problems that would ensue there if you tried to take total revenues that were being generated by the rate case through both the Bell independents through all independent companies and get their proforma expenses, investment, and come up with an industry-wide settlement ratio.

With respect to the manner in which the intrastate toll settlement ratio was used in the last intrastate toll rate case (Docket No. P-55, Sub 48), Mr. Rudisil testified as follows:

I think that they had proposed something basically the same thing whereby we go in and generate an industry-wide settlement ratio. But what we actually used and was

accepted in our case and agreed to was a method of prorating the revenues that did not utilize an end of test period settlement ratio. We simply were able to price out the total dollar affect of the rate increase as proposed. We then, realizing that the toll revenues are allocated between Bell and each of the independents on the basis of the net investment owned by each, we got a percentage relationship of each independent company including Bell also to the total net investment and the total toll revenues that was generated in our last case was then spread and allocated to Bell and each of the independent companies on the basis of each relative net investment and we feel like that this is a much more appropriate way of spreading the toll revenues that will be generated in a toll rate case based on the relative proportion of net investment since this is the vehicle for spreading it in actuality.

Mr. Rudisil further testified that in his opinion the methodology employed by the Commission in spreading the toll revenues to be realized from the approved increase to the independent companies in the last toll rate case is as accurate and possibly is more accurate than the method contemplated by Item 31F.

T.P. Williamson, Jr., Vice President of Administration, Carolina Telephone and Telegraph Company testified concerning the propriety of the data utilized by the Commission in determining the revenue impact of intrastate toll rate increases on the independent telephone companies. Mr. Williamson contended "that the independents were suffering financially simply as a result of the kind of evidence and the kind of information which Bell is in a position to submit and which Bell does submit." Mr. Williamson however offered no specific proposal as to how the Commission might improve upon past practices.

The Public Staff responded collectively to Southern Bell's proposals with regard to data request items concerning toll settlements. The response of the Public Staff in this regard is presented herein under Proposal Nos. 13 and 14. Such comments are equally applicable to Southern Bell's proposal with respect hereto.

The Commission is not unmindful of the perplexities which exist with regard to intrastate toll settlement procedures and the differing points of view with regard to the impact of toll rate increases on the independent companies. However, the Commission believes that the methods and procedures employed in recent years are reasonable and that such methods and procedures should be continued until such time as the Commission can prescribe a more suitable alternative. The data requested under Item No. 31 is essential to the continuation of the Commission's present practices and procedures in this regard. Therefore, after having carefully considered the entire evidence of record,

the Commission concludes that it should not adopt Southern Bell's recommendations with respect hereto.

For purposes of clarification only, the Commission will adopt the Public Staff's proposed revision to Item 31.b. The Commission therefore concludes that Item 31.b. should be changed to read as follows:

> The present, proposed and additional toll settlement revenue produced by the proposed changes for each telephone company in North Carolina settling directly or indirectly with Southern Bell on a standard contract (nationwide average schedules) basis. Provide summary data in accordance with Format 31-b.

PROPOSAL NO. 17

Carolina, Mebane, Randolph, and Heins proposed that Item 32.b., Page 18, be modified by elimination of the following sentence:

> Specifically identify and explain any differences between the station data report filed with the Commission for the last month of the test period and the information used in compiling the data filed in Item 30. Explain the treatment of employee service units and suspended service units in the data filed.

The Public Staff responded as follows:

> The Public Staff does not agree with the change suggested by Carolina Telephone (Carolina's change #7) regarding identification and explanation of differences between the station data report and data used in Item 30. A reconciliation of the station data with monthly reports to the Commission is essential to a complete review of the Applicant's case.

The Commission is in agreement with the Public Staff and therefore concludes that it should not adopt the Companies' recommendation in this regard.

PROPOSAL NO. 18

Southern Bell proposed that Item 35, Page 19, be changed to read as follows:

> Provide weighted units with summaries for each present and proposed rate group, for total Company N.C. operations and for each exchange that is regrouping as required on Format 35, Schedules 1, 2 and 3.

There was no objection to this proposal. Therefore, the Commission will adopt the Company's recommendation in this regard.

PROPOSAL NO. 19

Southern Bell proposed that a footnote be added to Format 36, Schedule 3, to require exchange data only for those exchanges that are regrouping.

There was no objection to this proposal. Therefore, the Commission will adopt the Company's recommendation in this regard.

PROPOSAL NO. 20

Mebane proposed that Item 39, Page 20, be amended so as to require sample tariff pages only when there is a change in the text of the tariff and not when the only change is a change in rates.

The Public Staff responded as follows:

The Public Staff does not agree with the change proposed by Mebane Home (Mebane's change #5) regarding the provision of sample tariffs. Identification of the rate changes as well as regulation changes in the tariff context is necessary for clarity and adequate explanation of the rate proposals.

The Commission is in agreement with the Public Staff's comments and therefore concludes that it should not adopt the recommendation of the Company in this regard.

PROPOSAL NO. 21

Southern Bell requested that Item 40,d., Page 21, be eliminated in its entirety. Such subsection presently reads as follows:

> Furnish sufficient summary sheets from appropriate studies from which all pertinent apportionment factors for determining total intrastate and interstate toll amounts can be verified.

Charles Johnson testifying on behalf of Southern Bell contended that this item should be deleted simply because of the volume of paper involved. Mr. Johnson stated that the information would, of course, be available to the Public Staff and others at Bell's offices in Charlotte, North Carolina.

The Public Staff responded as follows:

> The Public Staff does not agree with the suggested elimination (Southern Bell's change #10) of the requirement of summary sheets for verification of apportionment factors. The verification of these factors is essential to a complete investigation of the Applicant's case and should be required in the MFR as proposed.

The Commission is in agreement with the comments of the Public Staff and therefore concludes that it should not adopt the recommendation of the company in this regard.

PROPOSAL NO. 22

Southern Bell proposed that Item 40.f., Page 21, be changed to read:

...private line (B-I and I-I if appropriate) including foreign exchange, and ...

There was no objection to this proposal. Therefore, the Commission will adopt the Company's recommendation in this regard.

PROPOSAL NO. 23

Southern Bell proposed that Item 40.g., Page 21, be changed as follows:

Insert after "I-I private line revenues" the statement, "(not applicable to Southern Bell)."

The Public Staff responded as follows:

The Public Staff agrees with the intent of Southern Bell's suggested change #12 but submits that to clearly accomplish that objective the item should be rewritten as follows:

> Present the information on Format 40-g for computing toll settlements for message toll, WATS, and private line (B-I and, if appropriate, I-I). (The following requirement is not applicable to Southern Bell.) If I-I private line is not included in cost separation settlements, do not include that contribution in the toll allocation factors but show an end-of-test-period amount for I-I private line revenues.

The Commission, for purposes of clarity, concludes that Item 40.g. should be rewritten in the manner as proposed by the Public Staff.

The Public Staff proposed that Item 40.b. be eliminated in its entirety.

There being no objection to this proposal, the Commission will adopt the Public Staff's recommendation in this regard.

Proposal No. 24

Mebane proposed that Item 41 be amended by eliminating subsections a., b., c., and d. for companies using standard contract for purposes of intrastate toll revenue settlements. Such subsections relate wholly to toll settlement procedures.

The Public Staff responded as follows:

The Public Staff does not totally agree with the change proposed by Mebane Home (Mebane's change #6) concerning information requested from standard contract companies. The Public Staff suggests the following changes as a simplification of Item 41:

(1) Change Item 41.a. to read:

Provide an explanation of the settlement contract(s) or method(s) used with Southern Bell and any other telephone companies (name company or companies) to arrive at Applicant's North Carolina total test period toll revenues and show the resulting amount.

(2) Eliminate Item 41.b.

(3) Change Item 41.c. to read:

Provide explanations of the method(s) used in the division for gross receipts tax purposes of total toll revenues (whether received through settlements or otherwise) into the intrastate and interstate portions and show the resulting revenue amounts.

The Commission, after careful consideration of the evidence presented, concludes that the recommended change as proposed by the Public Staff is both warranted and reasonable and therefore should be adopted for use herein.

PROPOSAL NOS. 25, 26, 27, 28, 29, AND 30

Carolina, Mebane, Heins, and Randolph proposed that the following Items be eliminated in their entirety.

Item 45.c., Page 25 (Proposal No. 25):

Project long-term debt issues by approximate dates and amounts during the 12- and 24-months period mentioned in 44.d. above. Item 45.a., b., and c., above should be provided for the parent and for the subsidiary where applicable.

Item 46.c., Page 26 (Proposal No. 26):

List expected issues of preferred stock in the 12- and 24-months period beyond the most recent year end as mentioned in 44.d. Give approximate dates and amounts of planned issues.

Item 47.b., Page 27 (Proposal No. 27):

Forecast expected issues of common stock during the 24-month period beyond the most recent year end as mentioned in 52.d. Provide expected dates and amounts ($ and number of shares).

Item 48.b., Page 28 (Proposal No. 30):

Make projections for coverage ratios during the next 12- and 24-months period beyond most recent year, assuming the following:

i current rates remain in effect, and that

ii proposed rates are put into effect at the end of the 6-month waiting period and allowed to stand.

For Item 48.b., provide data and assumption, used in arriving at projections. Item 48.a. should be provided for both parent and subsidiary 48.b., should be provided for subsidiary only.

The aforementioned companies proposed that Items 47.c. and 47.d. be amended to require that such data be provided for a 10-year period in lieu of a 15-year period. Further, the companies proposed under Item 47.b. that the data be provided on a quarterly basis in lieu of a monthly basis. These data requirements presently read as follows:

Item 47.c., Page 27 (Proposal No. 28):

Provide the following information on a quarterly and yearly basis for the most recent fifteen (15) year period available, through the latest available quarter:

i. average number of shares of common outstanding,

ii. book value per share at end of period,

iii. period earnings per share,

iv. period declared dividend rate per share,

v. rate of return on average common equity,

vi. rate of return on year end common equity, and

vii. rate of return on North Carolina operation.

Items 47.c. v, vi, and vii refer to yearly figures only.

Item 47.d., Page 27 (Proposal No. 29):

Provide monthly market price information for common stock for each month during the most recent fifteen (15) year period, including the following:

i. monthly high,

ii. monthly low,

iii. monthly closing price, and

iv. note all stock splits by date and type and adjust prices accordingly.

With respect to Proposal Nos. 28 and 29, Carolina argued that the proposed changes should be made simply to reduce the sheer volume of the data requirements. Carolina further contended that a ten-year period would provide adequate historical data from which a meaningful analysis could be conducted.

With respect to Proposal Nos. 25, 26, 27, and 30, Carolina commented as follows:

> These are asking that we make projections about future financings, future borrowings, and the future issuance of stock. And probably more critically, it also asks for interest coverage which would necessitate a projection of future earnings. Now a publicly held company, publicly held by publicly held debt or equity is under SCC requirements that once it makes disclosure it has to make full and complete disclosure and what we don't know is what would be the effect once we project earnings, how much more complete and what other types of projections must be made to the public generally and then to top this off, when things start developing differently than you projected, do you have to keep updating and amending your projections. Now the SCC has published guidelines which are not rules and regulations and which are not altogether clear. It does recognize that regulatory agencies will have an interest in projecting financings of a regulated company and it may be that the company can qualify its filings in such a respect that it will not be required by the SCC to make these further and expensive disclosures and revisions from time to time. But we are concerned at this point about what the law will be and what will be required of companies with public held debt and we're more concerned with projections of future earnings than we are with projections of future debt issues and we would wish that the Commission would consider these unknown to uncertainties in requiring projections or earnings.

The Public Staff did not respond to Proposal Nos. 25, 26, and 30. With regard to Proposal Nos. 27, 28, and 29, the Public Staff commented as follows:

> The Public Staff contends that Item 47 in the Commission's Revision of NCUC Form P-1 is essential to its investigation of a Company's rate increase application. The data provided via Item 47 is crucial in determining a reasonable cost of equity capital and in evaluating the level of selling expense and market pressure occurring with the issue of new shares of common stock. The Public Staff strongly recommends that the full 15 years of data in Item 47 remain in the Commission's Revision of NCUC Form P-1 as issued on October 5, 1978.

The Commission is in agreement with the comments of the Public Staff with respect to the data essential to the determination of the cost of common equity capital. Further, the Commission believes that the existing data requirements (as proposed in the attachment to the Commission Order of October 5, 1978) related to debt and preferred equity capital are equally essential to the determination of their respective costs and the determination of the overall cost of capital. The Commission does not believe that its data requirements with respect hereto violate the rules and/or regulations of the Securities and Exchange Commission or that such requirements are unduly burdensome upon the companies. The Commission therefore concludes that it should not adopt the recommendations of the companies in this regard.

Finally, based upon the foregoing and all of the other evidence of record the Commission finds and concludes that NCUC Form P-1, should be revised to conform with the proposed Form P-1 attached to the Commission Order issued in this docket on October 5, 1979, as modified herein.

IT IS, THEREFORE, ORDERED as follows:

1. That NCUC Form P-1, which must accompany all applications for general rate relief filed by telephone companies subject to the jurisdiction of this Commission, pursuant to Rule R1-17(b)(13)(b) be, and hereby is, revised as reflected in the Attachment appended hereto.

2. That NCUC Form P-1 as attached hereto shall accompany all telephone company applications for general rate relief filed on or after July 1, 1980.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of May 1980.

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

Note: For UCNC Form P-1, See official Order in the Office of the Chief Clerk.

DOCKET NO. M-100, SUB 58

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of NCUC Form P-1) ERRATA ORDER

HOOVER, HEARING EXAMINER: It has come to the attention of the Commission that the following errors exist in its order of May 21, 1980, issued in this docket:

1. The number of copies required of certain items of data contained in NCUC Form P-1, Section B set forth in the chart on Page 4 of said form do not agree with the number of copies of such items displayed in the matrix on Page 5 (Section B) of said form. Further, several items of data contained in Section C of NCUC Form P-1 require a different number of copies than does Section B. Additionally, the chart on Page 4 contains two data items deleted from NCUC Form P-1.

2. Proposal Nos. 12 and 13 were inadvertently transposed during the process of revising NCUC Form P-1.

3. Format 40g should have been renumbered Format 40f.

4. For purposes of clarity, the first sentence of Item No. 13 (Page 11) and Item No. 35 (Page 19) should be rewritten.

The Commission is of the opinion that the aforementioned errors should be corrected.

IT IS, THEREFORE, ORDERED as follows:

1. That the chart attached hereto as Appendix A be substituted in lieu of the chart set forth on Page 4 of NCUC Form P-1 as revised by Commission Order of May 21, 1980; that the matrix attached hereto as Appendix B be substituted in lieu of the matrix set forth on Page 5 of NCUC Form P-1 as revised by Commission Order of May 21, 1980; and that all references to the number of copies required of certain data items contained in Section C of NCUC Form P-1 as revised by Commission Order of May 21, 1980 be deleted.

2. That proposal No. 12 (Page 11) contained in the Commission Order of May 21, 1980, be changed to read as follows:

PROPOSAL NO. 12

Carolina, Mebane, Heins, and Randolph requested that Item 30, Page 10, be changed to require that workpapers and other relevant data be provdied when requested rather than to require that such data be filed with the application.

There was no objection to this proposal. Therefore, the Commission will adopt the Companies' recommendation in this regard.

3. That the first sentence of the first paragraph under Proposal Nos. 13 and 14 contained in the Commission Order of May 21, 1980, be changed to read as follows:

Southern Bell requested that the following sentence be eliminated from Item 30.

> Data on services or items of equipment in any category of services included in settlements and/or concurrence provisions should be totals for all Companies affected by the proposed changes.

4. That consistent with ordering paragraph numbers 2 and 3 above Item 30 of NCUC Form P-1 (Pages 16 and 17 as revised by Commission Order of May 21, 1980, be and hereby is changed to read as follows:

> Provide the information requested in a. and b. below on the proposals for changes in rates, charges and regulations. Data on services or items of equipment in any category of service included in settlements and/or concurrence provisions should be totals for all companies affected by the proposed changes. All data should be appropriately adjusted to reflect end-of-test period levels. Relevant supporting data and workpapers should be provided when requested.
>
> a. A summary of present, proposed and additional annual revenue by category of service as shown in Format 30-a.
>
> b. Details as shown in Formats 30.3.1, 30.3.4 and 30.___, for all services for which changes are proposed. The data should be submitted and labeled according to the categories of service listed in Format 30-a. Data for Item 30.3.1, Basic Local Exchange Service, should be given separately in the proper format. File an item only if changes are proposed for the corresponding category of service.

5. That Format 40g contained in NCUC Form P-1 as revised by Commission Order of May 21, 1980, be renumbered Format 40f; and the reference to Format 40g contained in Item No. 40f of said form (Page 22) be changed to 40f.

6. That the first sentence of Item No. 13 of NCUC Form P-1 (Page 11) as revised by Commission Order of May 21, 1980, be rewritten as follows:

> Provide the following tax data for the test year for total company, total company nonoperating, North

Carolina combined, North Carolina intrastate, other jurisdictions:

7. That Item No. 35 of NCUC Form P-1 (Page 19) as revised by Commission Order of May 21, 1980, be rewritten as follows:

Provide weighted units by exchange for each exchange which is proposed to be regrouped with summaries for each present and proposed rate group and for total Company N. C. operations as required on Format 35, Schedules 1, 2, and 3.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of June 1980.

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

NOTE: For Appendices A and B, see the official Order in the Chief Clerk's Office.

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 ADOPTING ACCOUNTING PRACTICES AND PROCEDURES UNDER THE NORTH CAROLINA RESIDENTIAL CONSERVATION SERVICE PROGRAM

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 11, 1980, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Leigh H. Hammond, Sarah Lindsay Tate, John W. Winters, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Respondents:

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

Steve C. Griffith, Jr., Duke Power Company, 422 S. Church Street, Charlotte, North Carolina 28207
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, Inc., United Cities Gas Company, and Pennsylvania & 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.

For the Intervenors:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, P.O. Box 527, Raleigh, North Carolina 27608
For: North Carolina Oil Jobbers Association

Thomas F. Moffitt, Special Deputy Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: Energy Division - North Carolina Department of Commerce

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, and Vickie L. Moir, 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 June 1, 1979, the North Carolina Utilities Commission issued an Order in this docket requiring the electric and natural gas utilities in this State covered by Part 1 of Title II of the National Energy Conservation Policy Act (NECPA), P.L. 95-619, to begin formulating Residential Conservation Service (RCS) Utility Programs in conformity with Section 215 of NECPA. A Final Rule implementing the RCS Program was published in the Federal Register (Vol. 44, No. 217) on November 7, 1979, by the Department of Energy (DOE). This Rule became effective on December 7, 1979. Section 456.310 of said DOE Rule requires this Commission to make certain determinations with respect to the subjects of accounting, payment of costs, and duplication of audits under the RCS State Plan to be implemented in North Carolina. The Energy Division of the Department of Commerce (Energy Division) has been charged with principal responsibility for developing the RCS State Plan in North Carolina and has been designated as the Lead Agency in this State by Governor James B. Hunt, Jr. Pursuant to said responsibility, the Energy Division has developed a North Carolina Residential Conservation Service Program to be implemented in this State pursuant to NECPA, which Plan must be approved by the Department of Energy.

By Order dated January 8, 1980, the Commission scheduled a public hearing in this docket for March 11, 1980, in order to consider those issues which this Commission is required to decide under NECPA and Section 456.310 of the DOE Rule promulgated thereunder. Carolina Power & Light Company (CP&L), Duke Power Company (Duke Power), Virginia Electric and Power Company (Vepco), North Carolina Natural Gas Corporation (NCNG), Public Service Company of North Carolina, Inc. (Public Service), Piedmont Natural Gas Company, Inc. (Piedmont), and United Cities Gas Company (United Cities) were made parties of record to the proceeding. Said utilities were also required to publish a

"Notice of Hearing" in newspapers having general circulation in their respective North Carolina service areas. The official Commission file in this docket contains Affidavits of Publication submitted by the respondent utilities indicating that public notice of the hearing scheduled for March 11, 1980, was in fact given in compliance with the Commission's directive in its Order dated January 8, 1980.

On February 18, 1980, the Energy Division of the North Carolina Department of Commerce filed a "Petition to Intervene" in this docket, which motion was subsequently allowed by Commission Order dated February 25, 1980.

On February 20, 1980, a "Petition to Intervene" was filed by counsel for and on behalf of the North Carolina Oil Jobbers' Association (Oil Jobbers). This Petition was allowed by Commission Order dated February 25, 1980.

Upon call of the matter for hearing at the appointed time and place, all parties were present and represented by counsel. Testimony at the hearing was presented by the following individuals: James E. Gibson, Jr., Director of the Energy Division of the North Carolina Department of Commerce; Robert Weiss, Public Staff Economist; Linda M. Daniels, Associate with ICF Incorporated (a consulting firm retained by the Public Staff); Norris L. Edge, Manager of Rates and Service Practices for Carolina Power & Light Company; Robert T. Watkins, Senior Vice President of Marketing for Public Service Company of North Carolina, Inc.; Bartlett C. Winkler, Assistant Vice President - Residential and Commercial Sales and Director of Conservation for Piedmont Natural Gas Company, Inc.; Jerry L. Causey, Southern Division Marketing Services Manager for Virginia Electric and Power Company; Donald H. Denton, Jr., Vice President of Marketing for Duke Power Company; and Calvin B. Wells, Senior Vice President for North Carolina Natural Gas Corporation. The prefiled affidavit of Vic Pappas, Vice President for United Cities Gas Company, was introduced in evidence pursuant to G.S. 62-68. No public witnesses appeared at the hearing to offer testimony in this docket.

Based upon a careful consideration of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. All amounts expended or received by a regulated electric or natural gas utility operating in this State, which amounts are attributable to the North Carolina Residential Conservation Service Program, should be accounted for by the utility on its books and records separately from amounts attributable to all other activities of such utility.

2. The estimated cost of providing a Class A on-site residential energy audit under the North Carolina

Residential Conservation Service Program will average between $75.00 and $100.00 per audit.

3. Each electric or natural gas customer in this State who receives a residential Class A on-site energy audit from a regulated utility covered by the North Carolina Residential Conservation Service Program should be required to pay a nominal charge in the amount of $10.00 therefor. Each utility customer in this State who is eligible to receive a Class A energy audit under the North Carolina RCS Program should receive only one subsidized audit. Any customer who requests a second or duplicate residential energy audit under the State RCS Plan should be required to pay in full all of the direct costs associated with providing said duplicate audit, provided, however, that the customer is notified in advance as to the amount of the charge.

4. All amounts expended by each regulated electric and natural gas utility in complying with the requirements of the North Carolina Residential Conservation Service Program, except to the extent recovered through the nominal customer charge referred to in Finding of Fact No. 3 above, should be treated as a current expense of providing utility service and should be charged to all ratepayers of the regulated utility in the same manner as other current operating expenses of providing such utility service. Such operating expenditures, if determined by the Commission to be reasonable in amount, should be recovered by each regulated utility pursuant to G.S. 62-133, rather than by imposition of an annual customer surcharge.

5. All electric and natural gas utilities subject to the North Carolina Residential Conservation Program should provide Class B off-site energy audits to their customers free of charge. Amounts expended in conjunction therewith should be treated as a current expense of providiing utility service and should be charged to all ratepayers of the regulated utility in the same manner as other current operating expenses of providing such utility service and, if determined by the Commission to be reasonable in amount, such expenditures should be recovered pursuant to G.S. 62-133.

6. All amounts expended by each electric and natural gas utility for labor and materials in connection with the purchase or installation of any energy conservation or renewable resource measure under the North Carolina Residential Conservation Program should be charged directly to the residential customer for whom such activity is performed.

7. The interest cost on any loan made to an individual customer by a regulated electric or natural gas utility pursuant to the North Carolina Residential Conservation Service Program should be charged directly to that customer.

8. Duke Power Company should, upon request, perform residential Class A energy audits for its customers who receive service pursuant to its SSI Rate Schedule at no cost to said customers. Other regulated utilities subject to the North Carolina Residential Conservation Service Program should, upon request, also waive collection of the $10.00 audit fee from customers who demonstrate to the utility that they are receiving SSI benefits.

9. The performance of optional services such as the adjustment of water heater thermostats or the installation of showerhead flow restrictors by the electric and natural gas utilities covered by the North Carolina Residential Conservation Program is not warranted at this time, particularly in view of the potential problems which the performance of such services might present with respect to potential utility liability and customer dissatisfaction.

Whereupon, the Commission reaches the following

CONCLUSIONS

Pursuant to the statutorily mandated obligations imposed by the National Energy Conservation Policy Act, this Commission has undertaken an active consideration of those accounting and related issues which it is required to consider pursuant to NECPA and the DOE regulations promulgated thereunder. The Commission strongly believes in the purposes which underlie NECPA, they being to reduce the growth in demand for energy in the United States and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibiting beneficial economic growth. The Commission has reviewed the North Carolina Residential Conservation Service Program developed for implementation in this State and believes such Plan to be both flexible and entirely responsive to the mandates of NECPA. Therefore, based upon a careful consideration of the entire record in this docket, the Commission makes the following determinations which shall become a part of the North Carolina State RCS Plan:

1. Each electric or natural gas customer in this State who receives a residential Class A energy audit from a regulated utility covered by the North Carolina Residential Conservation Service Program will be required to pay a charge in the amount of $10.00 for such audit. The Commission believes that such a charge will serve to discourage frivolous requests for Class A energy audits which might perhaps be made by those individuals who would not otherwise be inclined to give serious consideration to the results thereof or to take positive action thereon. The Commission is of the opinion that a $10.00 customer charge, being nominal in nature in relation to the actual costs associated with such an audit, will be acceptable to those individuals who are serious about conserving energy. Furthermore, imposition of such a charge will not, in the opinion of this Commission, serve to unduly limit customer

participation in the North Carolina Residential Conservation Service Program. Rather, the Commission believes that the program will be enhanced to the extent that a nominal customer charge may chiefly serve to encourage requests for audits by those individuals who will be most likely to take some positive action upon receipt of the results of such audit. Furthermore, pursuant to this Order, Class B off-site energy audits will also be offered to customers free of charge by the electric and natural gas companies covered by the North Carolina State RCS Plan. The Commission believes that the offering of free Class B audits will undoubtedly serve to better effectuate the State RCS Plan and further complement the objectives of said program. In addition, the Commission believes that Duke Power Company should, upon request, perform Class A audits for its customers who receive service pursuant to its SSI Rate Schedule at no cost to those customers and that other regulated utilities subject to the North Carolina Residential Conservation Service Program should, upon request, also waive collection of the $10.00 audit fee from customers who demonstrate to the utility that they are receiving SSI benefits. Furthermore, the Commission is of the opinion, and therefore concludes, that each utility customer in this State who is eligible to receive a Class A energy audit under the North Carolina RCS Program should receive only one subsidized audit and that any customer who requests a second or duplicate residential energy audit under the State RCS Plan should be required to pay in full all of the direct costs associated with providing said duplicate audit, provided, however, that the customer is notified in advance as to the amount of the charge. In this regard, the Commission believes that each regulated electric and natural gas utility subject to the North Carolina Residential Conservation Service Program should take such reasonable steps and institute such procedures as it deems prudent and necessary to ascertain whether a customer requesting a Class A energy audit has previously received a subsidized residential audit under the State RCS Plan.

2. The amounts expended by each regulated electric and natural gas utility in complying with the requirements of the North Carolina Residential Conservation Service Program, to the extent not recovered through the $10.00 customer audit charge discussed above, should be treated as a current expense of providing utility service to be charged to all ratepayers of the regulated utility in the same manner as other current operating expenses of providing such utility service. This premise covers expenditures associated with both Class A and Class B energy audits. This accounting treatment is entirely consistent with the principles and policies which this Commission has historically endeavored to follow in its rate-making deliberations. In addition, the Commission notes that the United States Congress has recently enacted legislation entitled the "Energy Security Act," P.L. 96-294 (effective June 30, 1980), which mandates certain changes in Title II of NECPA, P.L. 95-619. Among other things, the Energy Security Act amends the prior

federally prescribed procedures governing the recovery of utility costs under the Residential Conservation Service Program. In this regard, the Energy Security Act specifically provides that a customer who receives a Class A energy audit under the RCS Program may now be charged no more than $15.00 therefor and that costs incurred under the RCS Program shall be recovered by each regulated utility in such manner as may be specified by the State regulatory authority which has rate-making authority over such utility. Such change in the prior federal law clearly serves to empower this Commission with the discretionary authority to mandate the particular accounting treatment which has been heretofore discussed in this Order.

3. The Commission believes that all amounts expended by a utility for labor and materials in connection with the purchase or installation of any energy conservation measure under the North Carolina Residential Conservation Service Program should be charged directly to the residential customer for whom such activity is performed. Futhermore, such charges will be collected in addition to the basic audit charge of $10.00 heretofore authorized in this Order. The Commisson does recognize, however, that under the recently enacted Energy Security Act, amounts expended for labor and materials could receive a different accounting treatment should the Commission decide, in its discretion and after public notice and hearing, to treat such costs in a different fashion. The Commission also concludes that the interest cost on any loan made to an individual customer by a regulated electric or natural gas utility pursuant to the North Carolina Residential Conservation Service Program should be charged directly to that customer. There is certainly no basis in the record which is presently before this Commission upon which to conclude that treating either or both of the above-referenced costs as a current operating expense for rate-making purposes would be likely to result (by reason of a reduction in demand for energy) in lower rates for residential ratepayers than would otherwise occur if such costs were not treated as a current expense of operating. Accordingly, the Commission concludes that Findings of Fact Nos. 6 and 7 set forth hereinabove are fully supported by the record in this case.

4. The Commission will not require the regulated utilities subject to the North Carolina Residential Conservation Service Program to perform any optional services as part of the Class A energy audits to be offered under the State RCS Plan. The Commission believes that the RCS Class A energy audits will be so extensive that optional services should not be required at this time, particularly during the initial or start-up phase of the RCS Program when many potential problems will have to be dealt with in order to ensure the ultimate success of said Program. The Commission is also cognizant of the potential problems with respect to utility liability and customer dissatisfaction which might perhaps be associated with the performance of

will undoubtedly serve to better effectuate the State RCS Plan and further complement the objectives of said program. In addition, the Commission believes that Duke Power Company should, upon request, perform Class A audits for its customers who receive service pursuant to its SSI Rate Schedule at no cost to those customers and that other regulated utilities subject to the North Carolina Residential Conservation Service Program should, upon request, also waive collection of the $10.00 audit fee from customers who demonstrate to the utility that they are receiving SSI benefits. Furthermore, the Commission is of the opinion, and therefore concludes, that each utility customer in this State who is eligible to receive a Class A energy audit under the North Carolina RCS Program should receive only one subsidized audit and that any customer who requests a second or duplicate residential energy audit under the State RCS Plan should be required to pay in full all of the direct costs associated with providing said duplicate audit, provided, however, that the customer is notified in advance as to the amount of the charge. In this regard, the Commission believes that each regulated electric and natural gas utility subject to the North Carolina Residential Conservation Service Program should take such reasonable steps and institute such procedures as it deems prudent and necessary to ascertain whether a customer requesting a Class A energy audit has previously received a subsidized residential audit under the State RCS Plan.

2. The amounts expended by each regulated electric and natural gas utility in complying with the requirements of the North Carolina Residential Conservation Service Program, to the extent not recovered through the $10.00 customer audit charge discussed above, should be treated as a current expense of providing utility service to be charged to all ratepayers of the regulated utility in the same manner as other current operating expenses of providing such utility service. This premise covers expenditures associated with both Class A and Class B energy audits. This accounting treatment is entirely consistent with the principles and policies which this Commission has historically endeavored to follow in its rate-making deliberations. In addition, the Commission notes that the United States Congress has recently enacted legislation entitled the "Energy Security Act," P.L. 96-294 (effective June 30, 1980), which mandates certain changes in Title II of NECPA, P.L. 95-619. Among other things, the Energy Security Act amends the prior federally prescribed procedures governing the recovery of utility costs under the Residential Conservation Service Program. In this regard, the Energy Security Act specifically provides that a customer who receives a Class A energy audit under the RCS Program may now be charged no more than $15.00 therefor and that costs incurred under the RCS Program shall be recovered by each regulated utility in such manner as may be specified by the State regulatory authority which has rate-making authority over such utility. Such change in the prior federal law clearly serves to empower this Commission with the discretionary authority to

mandate the particular accounting treatment which has been heretofore discussed in this Order.

3. The Commission believes that all amounts expended by a utility for labor and materials in connection with the purchase or installation of any energy conservation measure under the North Carolina Residential Conservation Service Program should be charged directly to the residential customer for whom such activity is performed. Futhermore, such charges will be collected in addition to the basic audit charge of $10.00 heretofore authorized in this Order. The Commisson does recognize, however, that under the recently enacted Energy Security Act, amounts expended for labor and materials could receive a different accounting treatment should the Commission decide, in its discretion and after public notice and hearing, to treat such costs in a different fashion. The Commission also concludes that the interest cost on any loan made to an individual customer by a regulated electric or natural gas utility pursuant to the North Carolina Residential Conservation Service Program should be charged directly to that customer. There is certainly no basis in the record which is presently before this Commission upon which to conclude that treating either or both of the above-referenced costs as a current operating expense for rate-making purposes would be likely to result (by reason of a reduction in demand for energy) in lower rates for residential ratepayers than would otherwise occur if such costs were not treated as a current expense of operating. Accordingly, the Commission concludes that Findings of Fact Nos. 6 and 7 set forth hereinabove are fully supported by the record in this case.

4. The Commission will not require the regulated utilities subject to the North Carolina Residential Conservation Service Program to perform any optional services as part of the Class A energy audits to be offered under the State RCS Plan. The Commission believes that the RCS Class A energy audits will be so extensive that optional services should not be required at this time, particularly during the initial or start-up phase of the RCS Program when many potential problems will have to be dealt with in order to ensure the ultimate success of said Program. The Commission is also cognizant of the potential problems with respect to utility liability and customer dissatisfaction which might perhaps be associated with the performance of optional services as part of a residential Class A energy audit.

Accordingly, for all of the reasons set forth hereinabove, the Commission concludes that the accounting and other related determinations made pursuant to this Order should become part of the North Carolina Residential Conservation Service Program. The Commission will hereafter address at a later date, should it become necessary to do so, any additional issues which may arise with respect to the RCS Program resulting from either the enactment of the Energy

Security Act or the promulgation of regulations implementing same by the Department of Energy.

IT IS, THERFORE, ORDERED as follows:

1. That Carolina Power & Light Company, Duke Power Company, Virginia Electric and Power Company, North Carolina Natural Gas Corporation, Public Service Company of North Carolina, Inc., Piedmont Natural Gas Company, Inc., and United Cities Gas Company shall comply with all provisions set forth in the North Carolina Residential Conservation Service Program.

2. That the regulated utilities subject to this Order shall charge and collect a fee in the amount of $10.00 from each customer who receives a Class A energy audit under the North Carolina Residential Conservation Service Program. Duke Power Company shall, upon request, perform Class A audits for its customers who receive service pursuant to its SSI Rate Schedule at no cost to those customers. Other regulated utilities shall, upon request, also waive collection of the $10.00 audit fee from customers who demonstrate to the utility that they are receiving SSI benefits.

3. That each regulated utility subject to this Order shall take such reasonable steps and shall institute such procedures as it deems prudent and necessary to ascertain whether a customer requesting a Class A energy audit has previously received a subsidized residential audit under the State RCS Plan. Any utility customer who requests a second or duplicate residential energy audit under the North Carolina RCS Program shall be required to pay in full all of the direct costs associated with providing said duplicate audit, provided, however, that the customer is notified in advance as to the amount of the charge.

4. That the regulated utilities subject to this Order shall provide Class B audits under the RCS State Plan free of charge to those customers requesting same.

5. That all amounts expended or received by the regulated utilities subject to this Order pursuant to the North Carolina Residential Conservation Service Program shall be accounted for by each utility on its books and records separately from amounts attributable to all other activities of the regulated utility.

6. That all amounts expended by the regulated utilities subject to this Order in complying with the requirements of the North Carolina Residential Conservation Service Program in providing both Class A and Class B energy audits, to the extent not recovered through the $10.00 customer charge approved herein, shall be treated as a current expense of providing utility service to be charged to all ratepayers of the regulated utility in the same manner as other current operating expenses of providing such utility service.

7. That all amounts expended by the regulated utilities subject to this Order for labor and materials in connection with the purchase or installation of any energy conservation or renewable resource measure under the North Carolina Residential Conservation Service Program shall be charged directly to and collected from the residential customer for whom such activity is performed.

8. That the interest cost on any loan made to an individual customer by a regulated utility subject to this Order shall be charged directly to that customer and collected from same.

9. That the regulated utilities subject to this Order shall not be required to provide any optional services under the Residential Conservation Service Program in addition to those services which are presently specified in the State Plan developed by the Energy Division.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of August 1980.

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		
Filing of Residential Conservation Rate Schedule by Virginia Electric and Power Company	)))	ORDER APPROVING TARIFF

BY THE COMMISSION: On August 26, 1980, Virginia Electric and Power Company filed a new residential conservation rate schedule with the Commission as directed by Order of June 1, 1979, in Docket No. M-100, Sub 78. The rate schedule is actually a revised Schedule 1, except it provides that customers meeting the thermal requirements specified on the rate schedule will be eligible for a 0.258¢/Kwh discount. The thermal requirements are generally the same as those adopted by the other major electric utilities in North Carolina (although there are some differences), and the discount is comparable to the discount offered by the other electric utilities.

The Commission is of the opinion that the proposed revised Schedule 1 should be approved, and that Vepco should notify each of its residential customers of the availability of the discount for meeting certain thermal requirements.

IT IS, THEREFORE, ORDERED:

1. That the revised Schedule 1 filed by Virginia Electric and Power Company on August 26, 1980, in the above captioned matter is hereby approved for service rendered on and after September 1, 1980.

2. That Virginia Electric and Power Company furnish adequate written notice to its residential customers in North Carolina of the availability of the discount for meeting the thermal requirements specified in Schedule 1; that said notice be furnished to its customers as an insert with the regular monthly billing; and that Virginia Electric and Power Company furnish the Commission with a copy of the notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of September 1980.

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

DOCKET NO. M-100, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Investigation and Rulemaking Relating to Advertising Expenditures and What May be Included as a Utility Bill Insert	) ORDER ADOPTING PURPA STANDARDS ON ADVERTISING) AND INVITING COMMENT ON) PROPOSED ADVERTISING AND) BILL INSERT RULES

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 18 and 19, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Leigh H. Hammond, Sarah Lindsay Tate, Edward B. Hipp, and A. Hartwell Campbell

APPEARANCES:

For the Respondnts:

Steve C. Griffith, Jr., and Edward Poe, Attorneys at Law, Duke Power Company, 422 S. Church Street, Charlotte, North Carolina 28242
For: Duke Power Company

William E. Graham, Jr., General Counsel, and Charles B. Robson, Jr., Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Virginia Electric and Power Company

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

Fred A. Walters, Attorney, Southern Bell Telephone and Telegraph Company, 1245 Hurt Building, Atlanta, Georgia 30303
For: Southern Bell Telephone and Telegraph Company

William C. Fleming, Vice President - General Counsel, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27712
For: General Telephone Company of the Southeast

James M. Kimzey, Kimzey, Smith & McMillan, Attorneys at Law, P.O. Box 150, Raleigh, North Carolina 27602

Cheryl K. Hackman, Ross, Hardies, O'Keefe, Babcock & Parsons, Attorneys at Law, Suite 3100 IBM Plaza, Chicago, Illinois 60657
For: Central Telephone Company

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

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27402
For: North State Telephone Company, Concord Telephone Company, 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., Western Carolina Telephone Company, Westco Telephone Company, Heins Telephone Company, Lexington Telephone Company, and Randolph Telephone Company

For the Intervenors:

William C. Lassiter, Lassiter and Walker, Attorneys at Law, P.O. Box 2298, Raleigh, North Carolina 27602
For: North Carolina Press Association

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, 300 Branch Bank Building, Raleigh, North Carolina 27601
For: North Carolina Association of Broadcasters, Inc., and North Carolina Chapters of the American Advertising Federation

For the Attorney General:

David Gordon, Associate Attorney General, Department of Justice, Dobbs Building, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Public Staff:

Robert F. Page and Joy R. Parks, Staff Attorneys, Public Staff - North Carolina

Utilities Commission, P.O. Box 991, Raleigh, North Carolina
For: The Using and Consuming Public

BY THE COMMISSION: By Order dated November 10, 1978, the North Carolina Utilities Commission instituted an investigation and rulemaking in this docket concerning the subject of what materials may properly be included as a utility bill insert. On December 22, 1978, the Public Staff filed a Motion requesting the Commission to enlarge the scope of the hearing in this docket to include the general subject of advertising, which Motion was granted by Commission Order dated January 3, 1979. The Public Staff, the Attorney General, and all regulated electric, natural gas, and telephone companies were invited to file proposed rules, memoranda, and comments on the subjects of bill inserts and advertising by March 1, 1979. On April 24, 1979, the Commission issued an Order scheduling the matter for hearing on September 18, 1979. The standards on advertising by electric and natural gas utilities set forth in Sections 113 and 303 of the Public Utility Regulatory Policies Act of 1978 (PURPA or Act) were also noticed for public hearing in this Order.

The matter subsequently came on for hearing and oral argument at the appointed time and place. The parties heretofore listed in this Order were represented by counsel. Each party to this proceeding was permitted to offer oral argument in the matter. The Commission also received testimony from the following members of the general public: Joseph Reinckens; Jose Berger, representing the North Carolina Public Interest Research Group; and Wells Eddleman. Virginia Electric and Power Company (Vepco) presented the testimony of Henry F. Holloway, its Manager of Advertising and Employee Communications.

Based upon a careful consideration of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. PURPA requires this Commission to consider whether to adopt the standard governing advertising by electric utilities which is set forth in Section 113(b)(5) of said Act. The PURPA standard on advertising provides that no electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in Section 115 (h) of PURPA. Section 115 (h) of PURPA provides as follows:

> (h) ADVERTISING. - (1) For the purposes of this section and section (113(b)(5) -
>
> (A) The term "advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a

substantial number of members of the public or to such utility's electric consumers.

(B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(2) For purposes of this subsection and section 113(b)(5), the terms "political advertising" and "promotional advertising" do not include -

(A) advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy,

(B) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

(C) advertising regarding service interruptions, safety measures, or emergency conditions,

(D) advertising concerning employment opportunities with such utility,

(E) advertising which promotes the use of energy efficient appliances, equipment, or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

2. Pursuant to Section 303 of PURPA, this Commission is also required to consider whether to adopt the standard on advertising by natural gas utilities which is set forth in Section 303(b)(2) of PURPA. The definitions set forth in Section 304(b) of the Act are identical to those set forth in Finding of Fact No. 1 above.

3. Adoption of the standards governing advertising by electric and natural gas utilities as set forth in Sections 113(b)(5) and 303(b)(2) of PURPA (and more fully described in Sections 115(h) and 304(b) of said Act) would be appropriate to carry out the purposes of PURPA and would also be consistent with the historical accounting policies and procedures heretofore followed by this Commission and the applicable laws of the State of North Carolina.

4. The adoption of reasonable rules concerning expenditures for advertising and bill inserts made by regulated electric, natural gas, and telephone utilities is within the authority and power of this Commission.

Whereupon, the Commission reaches the following

CONCLUSIONS

Review of the entire record in this proceeding leads the Commission to conclude that it should propose the adoption of reasonable rules pursuant to G.S. 62-31 concerning expenditures for advertising and bill inserts made by all electric, natural gas, and telephone utilities subject to regulation in North Carolina. Such proposed rules are attached hereto as Appendix A. These proposed rules are believed to be entirely consistent with the accounting policies and procedures which this Commission has historically endeavored to establish and follow with respect to expenditures for advertising and bill inserts made by regulated utilities in this State. Adoption of the aforesaid proposed rules would merely serve to formalize many of the Commission's long-standing practices and procedures. Furthermore, the Commission is of the opinion, and certainly believes, that the proposed rules attached hereto governing advertising by electric and natural gas utilities satisfy the requirements, the spirit, and the intent of PURPA, while also establishing reasonable and equitable accounting procedures on behalf of all electric and natural gas customers residing in North Carolina.

The Commission further believes that the attached proposed rules are also appropriately responsive to the constitutional and other concerns which were expressed at the hearing in this matter by and on behalf of all members of the general public and the formal parties to this proceeding. In this regard, the Commission has endeavored to structure its proposed rules in conformity with the Opinions recently rendered by the United States Supreme Court in the cases of Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, _____ U.S. _____ (1980) and Consolidated Edison Company of New York, Inc. v. Public Service Commission of New York, _____ U.S. ____ (1980). The proposed rules set forth in Appendix A are limited in scope and do not, in any way, attempt to place a total ban or limit on the right of utilities to disseminate their views by way of advertising or by use of bill inserts. Rather, the proposed rules generally serve to merely formalize many of the accounting policies and practices heretofore formulated and followed by the Commission. The proposed rules also adopt in written form the PURPA standards on advertising by electric and natural gas utilities.

The definitions set forth in subsections (a), (b), (c), and (d) of Proposed Rule R12-12 have been adopted in conformity with Sections 115(h) and 304(b) of PURPA. The term "bill insert" is defined in subsection (e) of Proposed Rule R12-12 to mean any written or printed matter included and distributed with a utility bill, other than (1) the bill itself, (2) the envelope or other container for the bill, and (3) any written or printed matter explaining or otherwise directly related to the bill or to the account for which the bill is rendered.

Proposed Rule R12-13 basically adopts and sets forth the PURPA standards on advertising by electric and natural gas utilities. The proposed rule also provides that political, promotional, and other nonoperating advertisements shall be accompanied by the following statement:

> THIS MESSAGE PAID FOR BY THE STOCKHOLDERS OF (the electric or natural gas utility sponsoring the advertisement) AND NOT ITS CUSTOMERS.

Proposed Rule R12-13 further provides that pursuant to G.S. 62-133, the Commission will consider, on a case-by-case basis, the extent to which expenditures for the following types of advertising may have exceeded a reasonable level or amount:

(a) advertising which informs electric and natural gas consumers how they can conserve energy or can reduce peak demand for energy,

(b) advertising required by law or regulation,

(c) advertising regarding service interruptions, safety measures, or emergency conditions,

(d) advertising concerning employment opportunities with such public utility,

(e) advertising which promotes the use of energy efficient appliances, equipment, or services, or

(f) any explanation or justification of existing or proposed rate schedules or billing practices or notifications of hearings thereon.

Subsection (d) of Proposed Rule R12-13 provides that other classifications of advertising will be considered by the Commission on a case-by-case basis to determine what portion, if any, of said expenditures may have represented reasonable operating expenses for rate-making purposes under G.S. 62-133.

Due to the obvious operating dissimilarities which are evident between telephone companies on the one hand, and electric and natural gas utilities on the other, the Commission has structured a separate proposed rule on advertising by telephone utilities. This rule is designated as Proposed Rule R12-14. Such proposed rule basically provides that in ascertaining reasonable operating expenses pursuant to G.S. 62-133, no telephone company will be permitted to recover from any person other than its shareholders (or other owners) any direct or indirect expenditure made by such utility for political advertising or nonoperating advertising. Under the proposed rule, political and nonoperating advertisements sponsored by telephone companies will also be required to be accompanied by a statement indicating that they have been paid for by

the stockholders of the company, rather than by the company's customers.

Subsection (c) of Proposed Rule R12-14 provides that expenditures made by a telephone company for advertising of a type or nature other than that which may be defined as political or nonoperating in nature will be considered by the Commission on a case-by-case basis in order to determine the extent to which such expenditures may have represented reasonable operating expenses for rate-making purposes under G.S. 62-133. In this regard, the Commission believes that expenditures for promotional advertising made by telephone companies should be considered on a case-by-case basis to determine the reasonableness thereof, since any blanket rule indicating that such expenditures would always be charged either to the utility's shareholders or to its customers would be unwise under the operating circumstances prevalent within the telephone industry today. Thus, the Commission has found it advisable to structure proposed rules on advertising and also bill inserts for telephone companies which are separate and apart from those rules which have been proposed for the electric and natural gas utilities in this State.

Proposed Rule R12-15 addresses the subject of bill inserts disseminated by electric and natural gas utilities. Subsection (a) of said proposed rule requires each electric and natural gas utility in this State to maintain records and accountings adequate to identify all costs and expenses reasonably allocable to the preparation, printing, and distribution (including any incremental mailing, handling, and distribution costs) of each bill insert other than bill inserts constituting one or more of the classes of advertising described in Proposed Rule R12-12(d). The proposed rule further provides that such records and accountings, together with copies of the bill insert to which they relate, must be retained by the public utility for a period of at least three years from the date on which the bill insert was last disseminated by the public utility and that such records and accountings will be subject to inspection by members of the Commission, the Commission Staff, and the Public Staff.

Subsection (b) of Proposed Rule R12-15 provides that in ascertaining reasonable operating expenses pursuant to G.S. 62-133, no electric or natural gas utility will be permitted to recover from any person other than its shareholders (or other owners) any direct expenditure made by such utility which is specifically identifiable with the preparation, printing, and distribution of bill inserts containing political or promotional advertising as defined in Proposed Rule R12-12 or other nonoperating advertising. The proposed rule further provides that any incremental or additional mailing, handling, and distribution costs incurred in conjunction with the preparation, printing, and distribution of political, promotional, or nonoperating bill inserts will also be charged to the shareholders (or other owners) of the

public utility distributing such bill inserts. The Commission believes that such direct and incremental costs are not properly includable as a just and reasonable operating expense of an electric or natural gas utility and that they should, therefore, be assigned to a nonoperating expense account or accounts when incurred.

Subsection (c) of Proposed Rule R12-15 provides that nothing in said rule precludes the Commission from examining and determining, on a case-by-case basis, the extent to which any portion of the joint mailing, handling, and distribution costs incurred by an electric or natural gas utility in conjunction with the preparation, printing, and distribution of political, promotional, or nonoperating bill inserts should be charged to the shareholders (or other owners) of the utility disseminating such bill inserts. The Commission also reserves the right under the proposed rule to determine, on a case-by-case basis, the extent to which any portion of the costs incurred in conjunction with the preparation, printing, and distribution of bill inserts of a type other than that which may be defined as political, promotional, or nonoperating in nature may have exceeded a reasonable level or amount for rate-making purposes.

Proposed Rule R12-16 pertains to costs incurred in conjunction with the dissemination of bill inserts by telephone companies. This proposed rule differs from Proposed Rule R12-15 only in its treatment of promotional bill inserts; i.e., costs incurred by telephone companies in conjunction with promotional bill inserts will be considered by the Commission on a case-by-case basis to determine the extent to which any portion of such costs may have exceeded a reasonable level or amount for rate-making purposes under G.S. 62-133.

The Commission concludes that it should solicit comments on the proposed rules concerning advertising and bill inserts from all parties of record who may wish to file written comments thereon. The Commission strongly believes that the proposed rules clearly reflect the statutory duty of this Commission to engage in responsible and reasonable regulation in this State. The proposed rules also serve to adopt the PURPA standards on advertising by electric and natural gas utilities, which course of action will, in the opinion of this Commission, serve to carry out the purposes which underlie PURPA. Adoption of the PURPA standards on advertising is also otherwise appropriate and consistent with the applicable law in this State. Accordingly, for all of the reasons set forth hereinabove, the Commission sets its Proposed Rules R12-12 through R12-16 for comment, which proposed rules are attached to this Order as Appendix A.

IT IS, THEREFORE, ORDERED that the parties to this proceeding shall file comments, if any there be, with respect to the proposed rules set forth in Appendix A not later than October 1, 1980. Upon receipt of those comments which the parties to this proceeding may wish to offer, the

Commission will take such further action as it deems proper in adopting final rules concerning expenditures for advertising and bill inserts made by all electric, natural gas, and telephone companies in this State.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of August 1980.

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

APPENDIX A

Proposed Rule R12-12. Definitions. - For purposes of the rules set forth in this Chapter, the following definitions shall apply:

(a) "Advertising" means the commercial use, by a public utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such public utility's customers.

(b) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(c) "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of any utility or the selection or installation of any appliance or equipment designed to use such utility's service.

(d) The terms "political advertising" and "promotional advertising" as defined hereinabove do not include -

(1) advertising which informs electric and natural gas consumers how they can conserve energy or can reduce peak demand for energy,

(2) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

(3) advertising regarding service interruptions, safety measures, or emergency conditions,

(4) advertising concerning employment opportunities with such public utility,

(5) advertising which promotes the use of energy efficient appliances, equipment or services, or

(6) any explanation or justification of existing or proposed rate schedules or billing practices or notifications of hearings thereon;

(e) "Bill insert" means any written or printed matter included and distributed with a utility bill, other than (1) the bill itself, (2) the envelope or other container for the bill, and (3) any written or printed matter explaining or otherwise directly related to the bill or to the account for which the bill is rendered.

Proposed Rule R12-13. Advertising by Electric and Natural Gas Utilities. - (a) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no electric or natural gas utility shall be permitted to recover from any person other than its shareholders (or other owners) any direct or indirect expenditure made by such utility for political or promotional advertising as defined in Rule R12-12 or for other nonoperating advertising.

(b) Political and promotional advertisements as defined by Rule R12-12 and other nonoperating advertisements shall be accompanied by the following statement:

> THIS MESSAGE PAID FOR BY THE STOCKHOLDERS OF (the electric or natural gas utility sponsoring the advertisement) AND NOT ITS CUSTOMERS.

This statement shall be so located and of such size so as to be readily visible or audible to those individuals who may be exposed to the advertisement or communication.

(c) Expenditures made by an electric or natural gas utility for the types of advertising described in Rule R12-12(d) will generally be deemed to be reasonable operating expenses, provided however, that the Commission shall not be precluded from determining, on a case-by-case basis, the extent to which such expenditures may have exceeded a reasonable level or amount.

(d) Expenditures made by an electric or natural gas utility for advertising of a type or nature other than that described in subsections (b), (c), or (d) of Rule R12-12 or for other nonoperating advertising shall be considered by the Commission to represent reasonable operating expenses to the extent that it can be established, on a case-by-case basis, that -

(1) the advertising is of benefit to the using and consuming public, or

(2) the advertising enhances the ability of the public utility to provide efficient and reliable service, or

(3) the inclusion of such costs and expenses as reasonable operating expenses is otherwise necessary to enable the Commission to determine what are just and reasonable rates.

Proposed Rule R12-14. Advertising by Telephone Companies. - (a) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no telephone company shall be permitted to recover from any person other than its shareholders (or other owners) any direct or indirect expenditure made by such utility for political advertising as defined in Rule R12-12 or for nonoperating advertising.

(b) Political advertisements as defined by Rule R12-12 and other nonoperating advertisements shall be accompanied by the following statement:

> THIS MESSAGE PAID FOR BY THE STOCKHOLDERS OF (the telephone company sponsoring the advertisement) AND NOT ITS CUSTOMERS.

This statement shall be so located and of such size so as to be readily visible or audible to those individuals who may be exposed to the advertisement or communication.

(c) Expenditures made by a telephone company for advertising of a type or nature other than that which may be defined as political or nonoperating in nature shall be considered by the Commission on a case-by-case basis in order to determine the extent to which such expenditures may represent reasonable operating expenses for rate-making purposes.

Proposed Rule R12-15. Bill Inserts for Electric and Natural Gas Utilities. - (a) Each electric and natural gas utility shall maintain records and accountings adequate to identify all costs and expenses reasonably allocable to the preparation, printing and distribution (including any incremental mailing, handling, and distribution costs) of each bill insert other than bill inserts constituting one or more of the classes of advertising described in Rule R12-12(d). Such records and accountings, together with copies of the bill insert to which they relate, shall be retained by the public utility for a period of at least three years from the date on which the bill insert was last disseminated by the public utility and shall be subject to inspection by members of the Commission, the Commission Staff, and the Public Staff.

(b) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no electric or natural gas utility shall be permitted to recover from any person other than its shareholders (or other owners) any direct expenditure made by such utility which is specifically identifiable with the preparation, printing, and distribution of bill inserts containing political or promotional advertising as defined in Rule R12-12 or other nonoperating advertising. Any incremental or additional mailing, handling, and distribution costs incurred in conjunction with the preparation, printing, and distribution of political, promotional, or nonoperating bill inserts shall also be charged to the shareholders (or other owners) of the public utility distributing such bill inserts. Such direct and incremental costs are not properly includable as a just and reasonable operating expense of an electric or natural gas utility and shall be assigned to a nonoperating expense account or accounts when incurred.

(c) Nothing in this rule shall preclude the Commission from examining and determining, on a case-by-case basis, the extent to which any portion of the joint mailing, handling, and distribution costs incurred by an electric or natural gas utility in conjunction with the preparation, printing, and distribution of political, promotional, or nonoperating bill inserts should be charged to the shareholders (or other owners) of the utility disseminating such bill inserts. Nor shall the Commission be precluded from determining, on a case-by-case basis, the extent to which any portion of the costs incurred in conjunction with the preparation, printing, and distribution of bill inserts of a type other

than that which may be defined as political, promotional, or nonoperating in nature may have exceeded a reasonable level or amount for rate-making purposes

Proposed Rule R12-16. Bill Inserts for Telephone Companies. - (a) Each telephone company shall maintain records and accountings adequate to identify all costs and expenses reasonably allocable to the preparation, printing and distribution (including any incremental mailing, handling, and distribution costs) of each bill insert other than bill inserts constituting one or more of the classes of advertising described in Rule R12-12(d). Such records and accountings, together with copies of the bill insert to which they relate, shall be retained by the public utility for a period of at least three years from the date on which the bill insert was last disseminated by the public utility and shall be subject to inspection by members of the Commission, the Commission Staff, and the Public Staff.

(b) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no telephone company shall be permitted to recover from any person other than its shareholders (or other owners) any direct expenditure made by such utility which is specifically identifiable with the preparation, printing, and distribution of bill inserts containing political advertising as defined in Rule R12-12 or other nonoperating advertising. Any incremental or additional mailing, handling, and distribution costs incurred in conjunction with the preparation, printing, and distribution of political or nonoperating bill inserts shall also be charged to the shareholders (or other owners) of the public utility distributing such bill inserts. Such direct and incremental costs are not properly includable as a just and reasonable operating expense of a telephone company and shall be assigned to a nonoperating expense account or accounts when incurred.

(c) Nothing in this rule whall preclude the Commission from examining and determining, on a case-by-case basis, the extent to which any portion of the joint mailing, handling, and distrubition costs incurred by a telephone company in conjunction with the preparation, printing, and distribution of political or nonoperating bill inserts should be charged to the shareholders (or other owners) of the utility disseminating such bill inserts. Nor shall the Commission be precluded from determining, on a case-by-case basis, the extent to which any portion of the costs incurred in conjunction with the preparation, printing, and distribution of bill inserts of a type other than that which may be defined as political or nonoperating in nature may have exceeded a reasonable level or amount for rate-making purposes.

DOCKET NO. M-100, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Investigation and Rulemaking	) ORDER
Relating to Advertising	) ADOPTING
Expenditures and What	) FINAL RULES ON
May Be Included as a	) ADVERTISING AND
Utility Bill Insert	) BILL INSERTS

BY THE COMMISSION: On August 4, 1980, the Commission issued an Order in this docket entitled "Order Adopting PURPA Standards on Advertising and Inviting Comment on Proposed Advertising and Bill Insert Rules." Attached to said Order as Appendix A were certain proposed advertising and bill insert rules upon which the parties to this proceeding were invited to file comments not later than October 1, 1980. Comments on the proposed rules were subsequently filed by Duke Power Company, Utilities Locating Company, and Piedmont Natural Gas Company, Inc., wherein changes in the proposed rules were suggested. Southern Bell Telephone and Telegraph Company filed a Response to the proposed rules affecting telephone companies wherein the Commission was requested to adopt same without revision. No other party to this proceeding filed any comments with respect to the proposed rules on advertising and bill inserts.

Based upon a careful consideration of the entire record in this proceeding, including the comments filed herein in response to the Commission's proposed rules, the Commission is of the opinion, and therefore finds and concludes, that it should now adopt the final rules on advertising and bill inserts attached hereto as Appendix A. In formulating said final rules for adoption, the Commission has incorporated many of the changes proposed herein by the parties who offered written comments on the proposed rules. The Commission strongly believes that the final rules on advertising and bill inserts which are set forth in Appendix A attached hereto are entirely fair and equitable to both the regulated electric, natural gas, and telephone utilities in this State and also to their rate-paying customers. Furthermore, the Commission is of the opinion, and so concludes, that said final rules are clearly responsive to the statutory duty of this Commission to engage in responsive and reasonable regulation in North Carolina.

Accordingly, for all of the reasons set forth hereinabove and in the Order previously issued in this docket on August 4, 1980, the Commission adopts the final rules on advertising and bill inserts as set forth in Appendix A attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R12-12 through R12-16, which rules are attached hereto as Appendix A, be, and the same are hereby, adopted as final rules of this Commission.

2. That Rules R12-12 through R12-16, as set forth in Appendix A attached hereto, shall be effective on and after November 11, 1980.

ISSUED BY ORDER OF THE COMMISSION.

This the 14th day of October 1980.

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

APPENDIX A

Rule R12-12. Definitions. - For purposes of the rules set forth in this Chapter, the following definitions shall apply:

(a) "Advertising" means the commercial use, by a public utility, of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such public utility's customers.

(b) "Political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance.

(c) "Promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of any utility or the selection or installation of any appliance or equipment designed to use such utility's service, where such appliance, equipment, or service would promote or encourage indiscriminate and wasteful consumption of energy contrary to subsection (d)(5) of this rule.

(d) The terms "political advertising" and "promotional advertising" as defined hereinabove do not include -

(1) advertising which informs electric and natural gas consumers how they can conserve energy or can reduce peak demand for energy,

(2) advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

(3) advertising regarding service interruptions, safety measures (including utility location services), or emergency conditions,

(4) advertising concerning employment opportunities with such public utility,

(5) advertising which promotes the use of energy efficient appliances, equipment or services, or

(6) any explanation or justification of existing or proposed rate schedules or billing practices or notifications of hearings thereon;

(e) "Bill insert" means any written or printed matter included and distributed with a utility bill, other than (1) the bill itself, (2) the envelope or other container for the bill, and (3) any written or printed matter explaining or otherwise directly related to the bill or to the account for which the bill is rendered.

Rule R12-13. Advertising by Electric and Natural Gas Utilities. - (a) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no electric or natural gas utility shall be permitted to recover from its ratepayers any direct or indirect expenditure made by such utility for political or promotional advertising as defined in Rule R12-12 or for other nonutility advertising.

(b) Political and promotional advertisements as defined by Rule R12-12 and other nonutility advertisements shall be accompanied by the following statement or a statement substantially to the following effect:

THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF (the electric or natural gas utility sponsoring the advertisement).

This statement shall be so located and of such size so as to be readily visible or audible to those individuals who may be exposed to the advertisement or communication.

(c) Expenditures made by an electric or natural gas utility for the types of advertising described in Rule R12-12(d) will generally be deemed to be reasonable operating expenses, provided however, that the Commission shall not be precluded from determining, on a case-by-case basis, the extent to which such expenditures may have exceeded a reasonable level or amount.

(d) Expenditures made by an electric or natural gas utility for advertising of a type or nature other than that described in subsections (b), (c), or (d) of Rule R12-12 or for other nonutility advertising shall be considered by the Commission to represent reasonable operating expenses to the extent that it can be established, on a case-by-case basis, that -

(1) the advertising is of benefit to the using and consuming public, or

(2) the advertising enhances the ability of the public utility to provide efficient and reliable service.

Rule R12-14. Advertising by Telephone Companies. - (a) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no telephone company shall be permitted to recover from its ratepayers any direct or indirect expenditure made by such utility for political advertising as defined in Rule R12-12 or for nonutility advertising.

(b) Political advertisements as defined by Rule R12-12 and other nonutility advertisements shall be accompanied by

the following statement or a statement substantially to the following effect:

THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF (the telephone company sponsoring the advertisement).

This statement shall be so located and of such size so as to be readily visible or audible to those individuals who may be exposed to the advertisement or communication.

(c) Expenditures made by a telephone company for advertising of a type or nature other than that which may be defined as political or nonutility in nature shall be considered by the Commission on a case-by-case basis in order to determine the extent to which such expenditures may represent reasonable operating expenses for rate-making purposes.

Rule R12-15. Bill Inserts for Electric and Natural Gas Utilities. - (a) Each electric and natural gas utility shall maintain records and accountings adequate to identify all costs and expenses reasonably allocable to the preparation, printing and distribution (including any incremental mailing, handling, and distribution costs) of each bill insert other than bill inserts constituting one or more of the classes of advertising described in Rule R12-12(d). Such records and accountings, together with copies of the bill insert to which they relate, shall be retained by the public utility for a period of at least three years from the date on which the bill insert was last disseminated by the public utility and shall be subject to inspection by members of the Commission, the Commission Staff, and the Public Staff.

(b) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no electric or natural gas utility shall be permitted to recover from its ratepayers any direct expenditure made by such utility which is specifically identifiable with the preparation, printing, and distribution of bill inserts containing political or promotional advertising as defined in Rule R12-12 or other nonutility advertising. Nor shall any of the incremental or additional mailing, handling, and distribution costs incurred in conjunction with the preparation, printing, and distribution of political, promotional, or nonutility bill inserts be charged to the ratepayers of the public utility distributing such bill inserts. Such direct and incremental costs are not properly includable as a just and reasonable operating expense of an electric or natural gas utility and shall be assigned to a nonoperating (or nonutility) expense account or accounts when incurred.

(c) Nothing in this rule shall preclude the Commission from examining and determining, on a case-by-case basis, the extent to which any portion of the joint mailing, handling, and distribution costs incurred by an electric or natural gas utility in conjunction with the preparation, printing, and distribution of political, promotional, or nonutility bill inserts should be excluded as an operating expense of

the utility disseminating such bill inserts. Nor shall the Commission be precluded from determining, on a case-by-case basis, the extent to which any portion of the costs incurred in conjunction with the preparation, printing, and distribution of bill inserts of a type other than that which may be defined as political, promotional, or nonutility in nature may have exceeded a reasonable level or amount for rate-making purposes

Rule R12-16. Bill Inserts for Telephone Companies. - (a) Each telephone company shall maintain records and accountings adequate to identify all costs and expenses reasonably allocable to the preparation, printing and distribution (including any incremental mailing, handling, and distribution costs) of each bill insert other than bill inserts constituting one or more of the classes of advertising described in Rule R12-12(d). Such records and accountings, together with copies of the bill insert to which they relate, shall be retained by the public utility for a period of at least three years from the date on which the bill insert was last disseminated by the public utility and shall be subject to inspection by members of the Commission, the Commission Staff, and the Public Staff.

(b) In ascertaining reasonable operating expenses pursuant to G.S. 62-133, no telephone company shall be permitted to recover from its ratepayers any direct expenditure made by such utility which is specifically identifiable with the preparation, printing, and distribution of bill inserts containing political advertising as defined in Rule R12-12 or other nonutility advertising. Nor shall any of the incremental or additional mailing, handling, and distribution costs incurred in conjunction with the preparation, printing, and distribution of political or nonutility bill inserts be charged to the ratepayers of the public utility distributing such bill inserts. Such direct and incremental costs are not properly includable as a just and reasonable operating expense of a telephone company and shall be assigned to a nonoperating (or nonutility) expense account or accounts when incurred.

(c) Nothing in this rule shall preclude the Commission from examining and determining, on a case-by-case basis, the extent to which any portion of the joint mailing, handling, and distrubition costs incurred by a telephone company in conjunction with the preparation, printing, and distribution of political or nonutility bill inserts should be excluded as an operating expense of the utility disseminating such bill inserts. Nor shall the Commission be precluded from determining, on a case-by-case basis, the extent to which any portion of the costs incurred in conjunction with the preparation, printing, and distribution of bill inserts of a type other than that which may be defined as political or nonutility in nature may have exceeded a reasonable level or amount for rate-making purposes.

DOCKET NO. M-100, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation and Rulemaking Relating to Advertising Expenditures and What May Be Included as a Utility Bill Insert	)	ORDER OF CLARIFICATION

BY THE COMMISSION: On October 14, 1980, the Commission issued an Order in this docket entitled "Order Adopting Final Rules On Advertising And Bill Inserts." The Commission is of the opinion that Rules R12-12(a), R12-15, and R12-16 should now be amended for purposes of clarification to make more explicit the intention of the Commission to require certain bill inserts distributed by electric, natural gas, and telephone utilities to be accompanied by a statement equivalent to the statement presently required by Commission Rules R12-13(b) and R12-14(b).

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R12-12(a) be, and the same is hereby, amended to read as follows:

> (a) "Advertising" means the commercial use, by a public utility, of any media, including newspaper, printed matter, bill insert, radio, and television, in order to transmit a message to a substantial number of members of the public or to such public utility's customers.

2. That Rule R12-15 be, and the same is hereby, amended by the addition of a new subsection (d) as follows:

> (d) Bill inserts containing either political or promotional advertisements as defined by Rule R12-12 or other nonutility advertisements shall be accompanied by the following statement or a statement substantially to the following effect:
>
> THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF (the electric or natural gas utility distributing the bill insert).
>
> This statement shall be so located and of such size so as to be readily visible to those individuals who may be exposed to the bill insert.

3. That Rule R12-16 be, and the same is hereby, amended by the addition of a new subsection (d) as follows:

> (d) Bill inserts containing either political advertisements as defined by Rule R12-12 or other

nonutility advertisements shall be accompanied by the following statement or a statement substantially to the following effect:

> THIS MESSAGE IS NOT PAID FOR BY THE CUSTOMERS OF (the telephone company distributing the bill insert).

This statement shall be so located and of such size so as to be readily visible to those individuals who may be exposed to the bill insert.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of October 1980.

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

DOCKET NO. M-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Request For Administrative Ruling Regarding the Regulation of Double-Wide Mobile Homes Which have been Set up and Assembled	)	RECOMMENDED ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on June 13, 1980, at 9:30 a.m.

BEFORE: Wilson B. Partin, Jr., Hearing Examiner

APPEARANCES:

For the Intervenors:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Thomas R. Mattison, d/b/a Riverside Mobile Home Movers

PARTIN, HEARING EXAMINER: By Order in Docket No. T-1551, dated May 4, 1971, the Commission concluded that the transportation of houses is exempt from franchise and rate regulation under the provisions of G.S. 62-260(a)(17). This Order further defined the term "house" as

> an existing permanent type building or structure and does not include mobile homes, house trailers, modular homes or units of modular homes, components of prefabricated houses or any other house or unit of a house specifically designed to be transported over the highways.

On February 13, 1980, the Commission received a letter from Zennie L. Riggs, Attorney at Law, Jacksonville, North Carolina, requesting an administrative opinion as to whether or not double-wide mobile homes which have been set up and assembled are included within the definition of a house as set forth above or are considered as a mobile home.

By letter dated March 7, 1980, to existing certificated carriers of mobile homes, the Commission invited comments from these carriers on the request for an administrative opinion, the comments to be filed by March 31, 1980. The Commission's letter further stated: "The Commission is of the opinion that double-wide mobile homes which are unassembled are not at issue and are clearly excluded from the above definition of 'house.' Therefore, the Commission is proposing to give consideration only to those double-wide mobile homes which have been set up and assembled generally as a permanent structure."

The Commission's official files show that numerous certificated mobile home carriers filed written objections to the exemption from regulation of double-wide mobile homes which have been set up and assembled. There were a few letters in favor of exemption.

On April 23, 1980, the Commission issued an Order setting for hearing the request for an administrative ruling regarding the regulation of double-wide mobile homes which have been set up and assembled. This Order further provided that all interested parties who desired to be heard might appear at the hearing and offer evidence.

The matter came on for hearing as scheduled. Thomas R. Mattison, d/b/a Riverside Mobile Home Movers, was present and represented by counsel. Also in attendance, and supporting the position of Riverside, were Conald Gray Daniels, d/b/a Daniels Garage, Charles Laughinghouse, and Donald Evans. (The Transcript of Testimony incorrectly states that attorney Zennie L. Riggs made an appearance.) Counsel for Riverside Mobile Home Movers made a statement setting forth his client's objections to the exemption of set-up and assembled double-wide mobile homes from regulation. No other party offered evidence or argument.

Upon consideration of the entire record in this matter, including the Commission Order of May 4, 1971, in Docket No. T-1551, the Hearing Examiner makes the following

FINDINGS OF FACT

1. G.S. 60-260(a)(17) authorizes the Commission to exempt from regulation the transportation of any commodity anywhere of a character not hauled in the ordinary course of business by a common carrier by motor vehicle.

2. The Commission, by Order of May 4, 1971, in Docket No. T-1551, exempted the transportation of houses from regulation. The Order defined "house" as an "existing permanent type building or structure and does not include mobile homes, house trailers, modular homes or units of modular homes, components of prefabricated houses or any other house or unit of a house specifically designed to be transported over the highways."

3. Mobile home common carriers, which are certificated by this Commission, haul double-wide mobile homes in the ordinary course of their business.

4. Mobile home carriers ordinarily transport double-wides as two individual units, but they may have the capacity to haul them as one unit or set-up.

5. Double-wide mobile homes are specifically designed and built to be transported over the highway. They should not, however, be transported over the highway as one, assembled unit. There is no assurance that double-wides are

built to withstand the stress of a move in an assembled condition. When double-wides are moved as one unit, they must be moved at a slow rate of speed, thus tying up the highways, and they require the assistance of escort vehicles and Department of Transportation personnel.

6. Mobile home carriers are subject to the regulation of the Commission and are required to have liability and cargo insurance and to have their moving equipment inspected. House movers are only minimally regulated.

CONCLUSIONS

The Examiner concludes that the transportation of double-wide mobile homes which have been set up and assembled is subject to the regulation of the Commission under the Public Utilities Act. In reaching this conclusion, the Examiner has considered the design and construction of double-wides, the methods and practices of persons engaged in the movement of double-wides, and the interests of the public with respect to highway safety and protection against economic loss.

The Examiner is further of the opinion that the conclusion reached herein is consistent with the Commission Order of May 4, 1971, in Docket No. T-1551. Double-wide mobile homes, for purposes of regulation under the Public Utilities Act, are mobile homes and are not houses.

IT IS, THEREFORE, ORDERED that the transportation in North Carolina intrastate commerce of double-wide mobile homes which have been set up and assembled is subject to regulation by the Commission under the Public Utilities Act.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of September 1980.

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

DOCKET NO. M-100, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Change in Level of Interest To Be Paid by Utilities on Customer Deposits	)) ORDER REVISING) RULE R12-4(c))

BY THE COMMISSION: On June 23, 1980, the General Assembly of the State of North Carolina amended G.S. 24-1 effective July 1, 1980, to increase the legal rate of interest in this State from six percent per annum to eight percent per annum. Commission Rule R12-4(c) presently provides that customer deposits held by utilities for more than ninety (90) days shall draw interest at the rate of six percent per annum. The Commission concludes that Rule R12-4(c) should be revised by incorporating therein the legal rate of interest of eight percent per annum which is presently in effect in this State. The Commission further concludes that an increase in the level of interest to be paid on customer deposits from six percent per annum to eight percent per annum is clearly responsive to the statutory duty of this Commission to engage in responsive and reasonable regulation in the State of North Carolina. The Commission is also of the opinion, and therefore concludes, that the rule revision described hereinabove is both fair and equitable in nature.

Accordingly, for all of the reasons set forth in this Order, Rule R12-4(c) is hereby revised in conformity with Appendix A attached hereto and made a part hereof. The revised rule shall be effective and applicable to all customer monies held for deposit or received for deposit on and after October 1, 1980. Customer monies held for deposit on October 1, 1980, shall draw interest for the period of time prior to October 1, 1980, at the rate of six percent per annum.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R12-4(c) be, and the same is hereby, revised in conformity with Appendix A attached hereto.

2. That revised Rule R12-4(c) shall be effective and applicable to all customer monies held for deposit or received for deposit on and after October 1, 1980. Customer monies held for deposit on October 1, 1980, shall draw interest for the period of time prior to October 1, 1980, at the rate of six percent per annum.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of September 1980.

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

APPENDIX A

Revised Rule R12-4(c)

(c) Each utility shall pay interest on any deposit held more than ninety (90) days at the rate of eight percent 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.

DOCKET NO. M-100, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Change in Level of Interest To Be Paid by Utilities on Customer Deposits	)	ORDER REQUIRING TARIFF FILING

BY THE CHAIRMAN: On September 19, 1980, the Commission issued an "Order Revising Rule R12-4(c)" in this docket. Upon request made orally by the Public Staff, the Commission will require the utilities subject to this Order whose present tariffs are affected by the rule revision set forth in the Commission Order in this docket dated September 19, 1980, to file revised tariffs, where applicable, incorporating and reflecting said rule revision.

IT IS, THEREFORE, ORDERED that the utilties subject to this Order whose present tariffs are affected by the rule revision adopted by the Commission in its Order in this docket dated September 19, 1980, shall file revised tariffs, where applicable, incorporating and reflecting said revision of Rule R12-4(c) to become effective October 1, 1980.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of September 1980.

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

DOCKET NO. M-100, SUB 86
DOCKET NO. M-100, SUB 28
DOCKET NO. M-100, SUB 61

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Change In Level of Interest To Be Paid By Utilities On Customers Deposits	)))))	ORDER RESCINDING RULES R8-19 AND R10-14 IN CONFORMITY WITH ORDER DATED JUNE 6, 1970, IN DOCKET NO. M-100, SUB 28

BY THE COMMISSION: By Order dated June 6, 1970, in Docket No. M-100, Sub 28, the Commission adopted a comprehensive set of uniform rules governing customer deposits for utility services effective on and after July 1, 1970. Decretal paragraph number 2 of the Commission Order provided as follows:

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

It has now come to the attention of the Commission that Rule R8-19 entitled "Deposits from customers and guarantee payment of bills" and Rule R10-14 entitled "Deposits from customers" applicable to electric companies and sewer companies, respectively, although rescinded and superceded by the rules adopted by the Commission in its Order dated June 6, 1970, in Docket No. M-100, Sub 28, have continued to be published by the Commission in its Rules and Regulations.

Based upon a careful consideration of all of the foregoing, the Commission is of the opinion and therefore concludes, that it should now formally rescind Rules R8-19 and R10-14 in conformity with the Order heretofore issued on June 6, 1970, in Docket No. M-100, Sub 28.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R8-19 and R10-14 be, and the same are hereby, rescinded and repealed.

2. That the uniform rules set forth in Chapter 12 of the Commission's Rules and Regulations entitled "Customer Deposits for Utility Services; Disconnecting of Service"

continue in full force and effect and are applicable to all utilities in this State.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of October 1980.

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

DOCKET NO. E-100, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of Rule R8-26	)	ORDER CLOSING
Safety Rules and Regulations	)	DOCKET

BY THE COMMISSION: On October 27, 1972, the Commission issued an Order in this docket entitled "Notice of Rulemaking Procedure," thereby proposing amendment of Commission Rule R8-26 (Safety Rules and Regulations) in conformity with the various safety rules then promulgated and known as the "National Electricl Safety Code."

A composite statement in opposition to the proposed rulemaking was subsequently filed with the Commission on February 28, 1973, by the following electric utilities: Nantahala Power and Light Company; Carolina Power & Light Company; Virginia Electric and Power Company; and Duke Power Company. As therein pertinent, the above-referenced electric utilities alleged in their composite statement that the National Electrical Safety Code, as it then existed, was totally obsolete and did not represent present day technology nor operating practices. Said utilities further suggested that the proposed rulemaking should be withdrawn in view of the fact that the National Electrical Safety Code was then in the process of being reviewed by a Committee of the American National Standards Institute.

A revised edition of the National Electrical Safety Code was subsequently issued in 1977. However, that edition did not include a revision of all Parts comprising said Code. The Commission takes judicial notice of the fact that the National Electrical Safety Code is currently in the process of being completely revised, with issuance of a 1980 Edition now being contemplated. Accordingly, the Commission is of the opinion that the instant docket, which has been open since October 27, 1972, should now be closed. However, the Commission wishes to advise the public and all electric utilities subject to this Order that when copies of the 1980 Edition of the National Electrical Safety Code becomes available for general consideration, the Commission will institute a new rule-making proceeding to consider adoption of such revised rules and regulations.

IT IS, THEREFORE, ORDERED that this docket be, and the same is herby, closed pending issuance of the 1980 Edition of the National Electrical Safety Code.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of January 1980.

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

DOCKET NO. E-100, SUB 35

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of 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 ADOPTING) FORECAST AND PLAN) FOR LONG-RANGE) NEEDS FOR) ELECTRIC GENERATING) FACILITIES IN NORTH) CAROLINA - 1979/80

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, beginning Tuesday, July 17, 1979

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

(Dr. Fischbach resigned as Commissioner to become Executive Director of the Public Staff effective September 13, 1979, and did not participate in the decision in this case.)

APPEARANCES:

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, and 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 Intervenors:

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

George M. Teague, Young, Moore, Henderson and Alvis, 2610 Wycliff Road, Raleigh, North Carolina
For: Carolina Power & Light Company

Steve C. Griffith, Jr., General Counsel, George W. Ferguson, Jr., and W.L. Parker, Attorneys at Law, Duke Power Company, P.O. Box 2178, Charlotte, North Carolina 28211
For: Duke Power Company

Edward S. Finley, Jr., Joyner and Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
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For: The North Carolina Oil Jobbers Association

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For: the Conservation Council of North Carolina, Joseph LeConte Chapter of the Sierra Club, League of Women Voters of North Carolina, Inc., Carolina Environmental Study Group, and North Carolina Coalition for Renewable Energy Resources

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For: Kudzu Alliance

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Allen Mason, Attorney at Law, 915 Birch Avenue, Durham, North Carolina 27701
For: People's Alliance for a Cooperative Commonwealth

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For: The Using and Consuming Public

BY THE COMMISSION: The General Statutes of North Carolina require that the Commission annually analyze and estimate the probable future growth in the use of electricity and the need for future generating capacity in North Carolina. G.S. 62-110.1 provides, in part, as follows:

(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix, and general location of generating plants, and arrangements for

pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction. In developing such analysis, the Commission shall confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Power Commission, the Southern Growth Policies Board, and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making the analysis and developing the plan, the Commission shall conduct one or more public hearings. Each year, the Commission shall submit to the Governor and to the appropriate committees of the General Assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the Commission for the ensuing year in connection with such plan.

On April 4, 1979, the Commission issued an Order setting hearing and inviting participation in this docket. The Order noted that the Public Staff of the North Carolina Utilities Commission was assisting the Commission by developing an independent forecast of electric power demand in North Carolina and the needed generating capacity of the major electric utilities providing electric service in this State. The Order required the Public Staff to file its report with the Commission. The Order also required Carolina Power & Light Company (CP&L), Duke Power Company (Duke), and Virginia Electric and Power Company (Vepco) to file testimony and exhibits in support of their own electricity forecasts. The Order also invited other interested parties to participate in this docket. The Order further directed CP&L, Duke, and Vepco to publish notice of the hearing in newspapers throughout the State for four consecutive weeks.

Notices of intervention from the Public Staff and from the Attorney General of North Carolina were received and recognized by the Commission. The Commission also received petitions for intervention from the following parties: CP&L, Duke, Vepco, David Springer, North Carolina Oil Jobbers Association, Kudzu Alliance, the Conservation

Council of North Carolina, the Joseph LeConte Chapter of the Sierra Club, the Carolina Environmental Study Group, the League of Women Voters of North Carolina, Inc., Citizens Against Nuclear Power, the North Carolina Coalition for Renewable Energy Resources, and People's Alliance for a Cooperative Commonwealth. The Commission granted all of the petitions for intervention and made the petitioners thereto parties of record in this proceeding.

The Public Staff's report, entitled Analysis of Long-Range Needs for Electric Generating Facilities in North Carolina - 1979, was filed with the Commission on May 30, 1979. On June 15, 1979, CP&L and Vepco filed their testimonies and exhibits in this case. On July 6 and 9, 1979, the Kudzu Alliance, the Conservation Council of North Carolina, the Joseph LeConte Chapter of the Sierra Club, the Carolina Environmental Study Group, the League of Women Voters of North Carolina, Inc., Citizens Against Nuclear Power, the North Carolina Coalition for Renewable Energy Resources, and the People's Alliance for a Cooperative Commonwealth prefiled testimonies with the Commission.

The hearing began as scheduled on July 17, 1979. The Public Staff presented the testimony and exhibits of the following witnesses: J. Reed Bumgarner, Public Staff Engineer in the Electric Division, testified on the Public Staff's estimates of the future price of electricity and the Public Staff's evaluation of the cost of higher than anticipated reserves; Dennis J. Nightingale, Public Staff Engineer in the Electric Division, testified concerning the Public Staff's engineering forecasts, generation capacity model and "most likely" and alternative forecast scenarios; Andrew W. Williams, Director of the Electric Division of the Public Staff, testified concerning his overall responsibility for the Public Staff's report; Dr. Eddie R. Mayberry, Director of the Public Staff's Economic Research Division, testified concerning the Public Staff's econometric demand forecasts including the residential econometric equations; Edwin A. Rosenberg, Public Staff Economist, testified concerning the Public Staff's econometric modeling and the forecast of commercial, industrial, and "other" electric energy sales for CP&L, Duke, Nantahala Power and Light Company, and Vepco; T. Michael Kiltie, Economist with the Division of State Budget and Management, North Carolina Department of Administration, testified on his forecast of economic conditions in North Carolina for the period 1979 to 2000; Dr. Robert M. Spann, a Principal of ICF Incorporated, testified concerning the potential impacts of local management programs and active solar heating and industrial cogeneration technologies on the long-range demands for electricity; Kenneth P. Linder, a consultant for ICF Incoporated, testified that he was responsible for day-to-day management of the project culminating in the report prepared by ICF for the Public Staff in this proceeding; Marc D. Daudon, Jr., Research Assistant for ICF Incorporated, testified that he assisted Dr. Spann and Mr. Linder in the development of much of the analysis used in

the Appendix of the Public Staff's report; Dr. David L. Franklin, Economist for the Energy and Environmental Research Division of the Research Triangle Institute (RTI), testified concerning the RTI report which was submitted by the Public Staff in its first Appendix of the Public Staff's load forecast report to the Commission; and Linda Giberson, an Economist for the Energy and Environmental Research Division of the Research Triangle Institute, testified that she assisted Dr. Franklin in his work on the Public Staff report.

CP&L offered the testimony of the following witnesses: Dr. Ralph E. Lapp, a self-employed consulting physicist and author, testified concerning the issue of radiation exposure due to nuclear plants and specifically discussed the accident that Three Mile Island (TMI-2); Wilson W. Morgan, Senior Vice President and Group executive for the Corporate Services Group within CP&L, testified concerning CP&L's current forecast of future electrical load; Lynn W. Eury, Vice President-System Planning and Coordination for CP&L, testified concerning CP&L's current forecast of future electrical load; Patrick W. Howe, Vice President of the Technical Services Department of CP&L, testified concerning CP&L's continued use of nuclear energy for electric generation; Charles H. Moseley, Jr., Manager of the Shearon Harris Visitors Center Section for CP&L, testified concerning CP&L's use of nuclear energy for electric generation; and Leonard I. Loflin, Manager of the Engineering Pool Section of the Power Plant Engineering Department of CP&L, testified concerning CP&L's use of nuclear energy for electric generation.

Duke presented the testimony of the following witnesses: Warren H. Owen, Senior Vice President of Engineering and Construction of Duke, testified concerning Duke's long-range construction schedules and plans and also the safety of Duke's Oconee nuclear station; David Rea, Manager of Forecasting for Duke, testified concerning Duke's new forecasts of system peak load and sales in the Duke service area during the period 1982 - 1994; Donald H. Sterrett, Manager of System Planning for Duke, testified concerning the generating capacity additions that Duke is now scheduling; Donald H. Denton, Jr., Vice President of Marketing for Duke, testified about Duke's load management program and its impact on Duke's future generation requirements; and E.L. Thomas, Manger of Training Services, Steam Production Department of Duke, testified concerning Duke's technical training program for plant operators.

Vepco presented the following witnesses: William L. Proffitt, Senior Vice President - Power Operations of Vepco, testified concerning Vepco's capacity expansion plan and inadequate reserve margins; Dr. Irene M. Moszer, Director of Forecasting and Economic Analysis, summarized Vepco's objectives in the area of load forecasting; John G. Barrie, Jr., Manager Financial and Regulatory Service and Assistant Treasurer in the Accounting and Control Department

of Vepco, testified on Vepco's 10-year financial forecast including an estimate of the future average price of electricity; Johnnie M. Barr, Jr., Supervisor - Rate Design for Vepco, testified about Vepco's present Rate Schedules 1P, 1W, and J; Edmond P. Wickham, Jr., Director of Load Management Applications for Vepco, testified concerning Vepco's time-of-usage rates and load management and energy conservation programs; Paul N. Rappoport, an Economist for Wharton Econometric Forecasting Associates, testified concerning Vepco's economic-electricity consumption and peak forecasting model; Michael McCarthy, Consultant with Wharton Econometric Forecasting Associates, testified he participated in the development of Vepco's economic model; George Pidot, Jr., Consultant with Wharton Econometric Forecasting Associates, testified he participated in and was responsible for the demographic model of the Vepco service area; Richard Koss, Consultant with Wharton Econometric Forecasting Associates, testified that he participated in the development of Vepco's economic model; and David Goldstein, consultant with Wharton Econometric Forecasting Associates, testified he participate in the energy and peak load portion of Vepco's modeling effort.

Herbert L. Hyde, Secretary of the North Carolina Department of Crime Control and Public Safety, testified on the State's contingency plan in case of a radiation emergency. He also discussed the actions of the North Carolina Department of Human Resources who developed the plan.

The League of Women Voters of North Carolina, Inc., the Conservation Council of North Carolina, Inc., the Sierra Club, the Carolina Environmental Study Group, Citizens Against Nuclear Power, and the North Carolina Coalition for Renewable Energy Resources offered the testimony of David H. Martin, an associate professor at North Carolina State University, who testified concerning the safety of nuclear power plants in light of the accident at Three Mile Island.

The Kudzu Alliance offered the following witnesses: Wells Eddleman, Staff Energy Consultant for Carolina Friends School; Stewart Fisher, an educator in Durham; Dr. Harriett Ammann, Associate Professor of Biology at North Carolina Central University; Dr. Lavon B. Page, Associate Professor of Mathematics at North Carolina State University; and Lazaro J. Mandell, Associate Professor of Physiology at Duke University, who all generally testified that CP&L should cancel or delay the Harris generating units due to the dangers of nuclear generation and becuase CP&L has overestimated its expected future growth in demand, as it has not given sufficient weight to the implementation of conservation measures.

The following additional public witnesses appeared and testified at the hearing: Dr. John O. Blackburn, Dr. Ray Weintraub, James Melton, Alice Wilson, Wilbur Earp, Francis Chester, John Hunsinger, Dr. Harvard G. Ayers, Dr. Ronald

P. Strauss, Slater Newman, Beverly Jones, Steve Schewel, Dr. Richard Wilson, Walt Clark, Melanie Spain, John W. Angel, Jr., Nick Holland, James M. Hubbard, Robert Staub, Patricia Smith, Linda Dominoski, Katherine Somerville, Sherri Rosenthal, Majorie Smith, Claudia Toomin, Alvin Moss, William Whitmore, Dr. William D. Walker, Dr. Constance Kalbach, John Platts, James Henderson, Dr. Raymond L. Murray, Susan Randell, Kathleen Dennis, Ray Klimas, Dr. Arthur Eckels, Diane Cameron, Phil Lusk, Carol Lyles, Frank Barringer, Dr. Clyde Edgerton, Tom Pitts, Dr. Jospeh Graedon, Mary Bushnell, Dr. Thomas Wartenberg, Joyce Anderson, Andrew D. Flick, Jr., Sarah Davis, Frank Benford, John A. Bernard, Mitchell Harb, M.L. Byrd, Karen Wilson, Mary Jane Boren Meeker, and Dr. George Reeves.

A number of events have occurred subsequent to the hearing that are directly related to the issues involved in this case. A partial listing of these events is as follows: (1) In October 1979, Report of the President's Commission on the Accident at Three Mile Island was issued detailing the findings of the President s Commission; (2) On October 10, 1979, Duke, as requested during the hearing, filed a late exhibit concerning cost savings resulting from nuclear generation; (3) In December 1979, CP&L revised its forecast and construction schedule; (4) Duke announced that it has revised its load forecast and construction schedule; (5) Vepco announced that it is in the process of reworking its forecast and is considering constructing North Anna Units 3 and 4 as coal-fired units and of selling a portion of its pumped storage project; (6) The National Academy of Sciences released reports concerning the feasibility of solar energy and transition in energy during the years 1985-2010; (7) On August 8, 1979, the Public Staff, as requested during the hearing, filed a late exhibit setting forth a comparison study of coal versus nuclear units assuming alternately 15- and then 30-year lives for nuclear units.

The Commission is of the opinion that, due to the importance and possibly controversial nature of these events, it would be improper to consider these matters in full until such time as they can be addressed with the opportunity for all parties to comment. As these events occurred after the close of the hearing, they are not part of the official transcript nor have parties been given an opportunity to probe such matters on cross-examination. However, they do bear materially on the expectations for the future growth of electricity and its production in North Carolina. As a result, the Commission's findings in this Order will be based on the evidence presented at the hearing but will recognize the events that have occurred since that time. These subsequent filings and events will be addressed during the next annual hearing in this matter.

On November 19, 1979, the Intervenor Kudzu Alliance filed a Motion for Discovery, wherein it requested the Commission to order Duke Power Company to furnish certain information underlying a late Exhibit filed by Duke on October 11,

1979. This Exhibit was supplied at the request of Chairman Koger. The first page of the exhibit compared the costs of Oconee Nuclear Station if the same station were coal-fired generation. The second page was a graph entitled "Oconee: Nuclear vs. Coal - Cumulative Savings Resulting from Nuclear." On November 30, 1979, Duke filed its Response to the Motion for Discovery, asking the Commission to deny the motion. As pointed out in the preceding paragraph, the Commission did not consider Duke's late filed Exhibit in reaching its findings and conclusions in this Order. Consequently, the Commission is of the opinion, and so finds and concludes, that the Motion for Discovery should be denied.

Based upon the foregoing, the testimony and exhibits offered at the hearing, and the Commission's file and record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. Duke and CP&L provide 95% of the electricity consumed in North Carolina. Vepco and Nantahala Power and Light Company supply the remaining 5%.

2. The policy of the State of North Carolina is to encourage the growth of industry in this State to provide additional employment and higher living standards.

3. The average annual historical rates of growth in peak load for CP&L, Duke, and Vepco for the periods 1973-1978 and 1968-1978 have been:

	1973 - 1978		1968 - 1978	
	Summer	Winter	Summer	Winter
CP&L	3.3%	5.8%	6.9%	7.7%
Duke	2.8	5.6	5.8	6.5
Vepco	2.5	7.0	6.3	7.6

4. The probable future range of rates of growth in Kwh sales of CP&L, Duke, and Vepco for the period 1979-1995, taking into account conservation measures and load management as appear likely, are:

	% Annual Growth in Kwh
CP&L	5.1 - 5.6
Duke	5.0 - 5.4
Vepco	4.3 - 4.7

5. The probable future range of rates of growth in peak demand for CP&L, Duke, and Vepco for the period 1979-1995, taking into account conservation measures and load management as appear likely, are:

	% Annual Growth in Demand
CP&L	4.4 - 5.2
Duke	4.6 - 5.4
Vepco	4.0 - 5.0

6. The appropriate generating reserve for CP&L, Duke, and Vepco continues to be 20%.

7. As a result of the accident at Three Mile Island, there is now underway an intensive assessment of nuclear power by the public, the industry, and those agencies of the Federal government charged with the primary responsibility over nuclear power. Consequently, the Commission deems it inappropriate at this time to make new and independent findings on the safety, reliability, and cost of nuclear; and reaffirms its earlier findings, subject to further reevaluation, that the most economical method of electric generation for Duke, CP&L, and Vepco is a combination of hydroelectric generation and coal-fired and nuclear-fueled steam generation. The Commission also reaffirms the need for the presently certificated generating plants in North Carolina during the planning period of this forecast, but recognizes the growing impact of conservation, load management, and alternative energy sources on electricity demand.

8. The economic consequences resulting from the current uncertainty of future requirements for generation capacity can be reduced by proper construction planning.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 3

These findings are based on information contained in the files and records of the Commission, testimony presented at the hearing, and upon findings of the Commission in previous Orders including Docket No. E-100, Subs 22 and 32. These findings are essentially uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4, 5, AND 8

Testimony on probable future growth rates in Kwh sales and Kw demand was presented by the Public Staff and its consultants, RTI and ICF, Mr. Morgan and Mr. Eury of CP&L, Mr. Rea of Duke, Dr. Moszer of Vepco, and Dr. Rappoport of Wharton Econometric Associates on behalf of Vepco. Principal Intervenor witnesses were Mr. Eddleman and Dr. Page.

The Public Staff's analysis consisted of (1) a base case forecast of probable growth of electricity sales from 1979 through 1995, developed primarily from an econometric model, which utilized an engineering model as a secondary check for reasonableness, and (2) an exogenous modification, to account for various load management and conservation alternatives such as time-of-day pricing, active solar systems, cogeneration and direct load management. The

results of the base case forecast were a 5.86% annual increase in Kwh sales for CP&L, 5.56% for Duke, and 4.91% for Vepco. Taking into account the companies' load factors, the Public Staff's analysis then showed that CP&L would have an average annual compound growth rate in demand for the study period of 5.48% in the summer and 4.98% in the winter. For Duke, the corresponding numbers are 5.34% for summer peak demand and 5.12% for winter. For Vepco, a summer peak demand growth of 4.87% was determined. Due to the current difference in winter-summer demand for Vepco, a winter demand forecast was not deemed necessary by the Public Staff.

To accomplish the modifications to the Public Staff's base case, RTI, in association with ICF, developed various combinations of load management and conservation alternatives with high, low, and medium acceptance rates. A combination of alternatives was selected and the incremental impact on 1995 energy and peak demand was then computed for CP&L and Duke. The results showed a decrease of 1/2% in expected annual energy growth rate for both companies. With respect to demand for CP&L, the average annual compound growth rate decreased to 4.99% for the summer peak and to 4.20% for the winter. For Duke, the average annual compound growth rate was reduced to 5.00% for the summer peak and to 4.30% for the winter.

Witnesses Morgan and Eury presented testimony which included the results of CP&L's studies of the effects of conservation, various load management techniques, and solar and other alternative energy sources through 1995. These effects reduced CP&L's base forecast for energy growth from 5.12% per year to 4.72%. For peak demand, the average annual growth rate was reduced from a 4.99% base case estimate to 4.86%. CP&L's forecast for future peak demand assumed that winter peak demand would equal the preceding summer demand.

David Rea presented Duke's forecast which incorporated the effects of load management and conservation for the period 1982 to 1994. Duke projects energy sales to grow at 4.96% annually. Duke further projects that summer peak demand will grow at 4.81% per year and that the winter growth rate will be 4.26%.

Witness Rappoport of Wharton Econometric Forecasting testified that Vepco's energy requirements are expected to grow at 5.1% through 1988. Their winter peak load is estimated to grow at 5.1% and the summer peak at 4.1%. Witness Rappoport's analysis did not take account of anticipated load management and conservation effects. Dr. Moszer's testimony factored Vepco's estimated reductions attributable to load management into the load forecast developed by Wharton Econometric Forecasting. The results for 1979 through 1988 are a summer peak demand growth of 3.77% annually and 4.22% for the winter peak.

Dr. John O. Blackburn and Dr. E. Roy Weintraub, both of whom are professors of Economics at Duke University, criticized some features of the Public Staff Report. These witnesses took particular issue to the Public Staff's treatment of the inflation-adjusted (real) price of electricity between the years 1979-2000. The witnesses were of the opinion that the rising real price of electricity is more likely during this period than stable real prices and that such rising price is the primary variable in restraining electricity demand. The witnesses stated:

> "Therefore, we believe that the various estimates [of the Public Staff] systematically understate real price influences, and thus overstate future demand for electricity in North Carolina. As a consequence, we believe that the Report's forecasts of future general capacity needs will, if implemented, produce an inefficient outcome: too much electric generating capacity for future State needs."

Drs. Blackburn and Weintraub urged the Public Staff to extend its sensitivity analysis by examining 1%, 2%, and 2.5% average annual growth rate in real electricity prices and by also examining at least one larger set of elasticities for the real price change selected. "We have shown that one plausible combination of these [variables] lead to a reduction in estimated demand of approximately 40%."

A comprehensive discussion of energy alternatives was provided by these witnesses as well as by Mr. Eddleman, Dr. Page, and other Intervenor witnesses. One of the primary difficulties faced by all is the separation of the fact of alternatives that are known to be available and efficacious and the belief that other alternatives become efficacious in time to be of significant value during the current planning horizon. The Commission, as is any planner, is placed in the position of having to make firm plans to meet "known" future occurrences at the same time as it works to change those "known" sets of occurrences to more beneficial ones. Thus, the Commission is required as a matter of practicality to plan flexibly.

This docket is one of an annual series of considerations of load forecasts and capacity plans. For various reasons, the load forecasts adopted by the Commission in the previous such docket, Docket No. E-100, Sub 35, were less than those proposed by the major parties. Generally, the Commission had concluded that the major parties had not fully considered future conservation and load management in their projections.

The forecasts proposed by the major parties in this docket are less than those adopted by the Commission in the prior case and are substantial reductions from their predictions in the previous docket. Generally, these reductions resulted from predictions by the parties of

increased conservation and load management and from predictions of changes in the economy. It appears, however, that there is presently an inadequate basis for conclusion that conservation and load management are increasing fast enough to be assured of load growth below those levels adopted by the Commission in Docket No. E-100, Sub 35. Even if the presently projected levels of conservation and load management do occur, there is a strong possibility that their effect may be overshadowed by increases in the previously expected real growth rates of industrial expansion.

There are costs incurred from either overbuilding generation capacity or underbuilding it, both in terms of economics and dislocation of productive capital. The long lead times required to license and construct power generation facilities and the uncertainty of the level of need that will occur at the time that a plant under construction is completed increase the likelihood that the unit will be available for commercial operation either earlier or later than the economically optimal date.

It is critically important that North Carolina have available adequate supplies of electric energy to attract high wage industrial growth to the State. It is also important that construction programs be carefully reviewed both to avoid overbuilding and to avoid having to build oil turbine generation units as intermediate or base load if growth exceeds expectations. The latter would worsen our dependence on foreign oil. During periods of high interest rates, construction from outside financing should be held to the minimum amount possible, to preserve the financial stability of the generating companies and to protect ratepayers. Balanced against this is the possibility that the availability of electric supplies will be as important as its price in attracting desirable industrial growth in North Carolina in the future.

It is a generic, economic decision analysis problem to design construction sequence capabilities which are flexible enough to meet radically changing load requirements, but this problem must be faced squarely by this Commission and by the utilities serving North Carolina. We must plan construction so that it may be shifted in schedule without severe economic penalty when load growth rates change after initial construction is begun. The testimony of various witnesses indicates that this requirement can be accomplished through prior planning.

The Commission concludes that it would be inappropriate to adopt at this time a single set of forecasts which are significantly lower than its previously adopted forecasts. If the Commission were to do so, and the utilities were to so plan their construction, but growth remained at previously expected levels, the resulting shortage of electricity could place a catastrophic burden on the economy of North Carolina. Conversely, the Commission concludes

that the economy of North Carolina will benefit if load management and conservation can be increased to such levels as to effect an even lower rate of load growth and also concludes that effort should be made to effectuate and economically serve such slower load growth.

For these reasons, the Commission concludes that it should adopt a range of expected growth values and should concentrate on helping to effect the lower end of that range of peak growths. In order to cause a lowering of growth rates, the Commission has already taken action to begin institution of a corporation devoted to the development and demonstration of alternatives to electric energy. These alternatives will be absolutely necessary to our economy in future years in order for us to be able to use our limited availability of energy forms efficiently and effectively. The Commission will continue to investigate ways in which the impact of electric utility reliability and cost upon our economy can be improved.

The Commission concludes that the efforts of the Public Staff and the utilities to predict the future growth of CP&L and Duke are credible efforts. The Commission would prefer, however, to see more analysis of the industrial and commercial sectors and understands that the Public Staff has commissioned an industrial sector study by RTI for the next forecast hearings. The Commission recognizes that the Public Staff was unable to go into as much detail in its analysis of Vepco's growth as it did in its analysis of CP&L's and Duke's growth and that the Public Staff forecast of Vepco's loads suffers as a result. However, the Commission is also not convinced that the assumptions and methods employed by Vepco adequately recognize the potential growth of eastern North Carolina or southern Virginia. The Commission does agree with both parties that Vepco should be expected to grow at a lesser rate than Duke and CP&L. However, the Commission concludes that Vepco is not presently planning to construct generation capacity to meet even its minimum expected load growth requirements.

The Commission concludes that the utilities serving North Carolina should plan their respective construction schedules so as to meet the expected range of growth rates shown in Findings of Fact Nos. 4, 5, and 8. With respect to CP&L and Duke, the Commission concludes that the construction schedules recommended by the companies and the Public Staff in this docket and those adopted by the Commission in Docket No. E-100, Sub 35, are acceptable construction schedules to meet their respective target growth rates to the extent that they also meet the required 20% reserve margin. The Commission further concludes that the construction schedule recommended for Vepco by the Public Staff is acceptable with respect to its respective growth rate, but the Commission concludes that the record is insufficient with respect to the construction schedule that would be appropriate to meet the remainder of the adopted range of expectations for growth of the Vepco system.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Testimony on generating reserves was provided by Mr. Nightingale of the Public Staff, Mr. Morgan and Mr. Eury of CP&L, Mr. Sterrett of Duke, and Mr. Proffitt of Vepco.

Witness Nightingale testified that the Public Staff, in its determination of a reasonable generating reserve, analyzed historical reserves, generating capacities available at the times of peak demands, the largest unit in service as a percentage of native peak demand, historical expected loss of capacity for peak seasons, and historical periods of capacity deficiency (periods of voltage reductions, public appeals, and load curtailments). Based upon these analyses, the witness stated that a minimum reserve criterion for electric utilities of 20% through the year 1995 would provide adequate and reliable electric service. The Public Staff also recommended that loss of load probability be used in planning future generating additions.

Witnesses Morgan and Eury testified that CP&L's projected reserves would range from 18.3% to 32.2% between 1980 and 1991. Mr. Sterrett of Duke testified that with the exception of 1980, Duke's reserves through 1983 were adequate and would range from 15.9% to 18.8%; however, reserves during the latter part of the 1980s were lower than desirable (13% to 15%). Mr. Proffitt testified that with Vepco's current construction program and forecasts, Vepco's reserve levels will exceed 20% through 1988. In addition, he testified that Vepco's long-range target is 25%.

The planned reserve margin requirement is a function of the reliability of plants, the seasonal load curve of the system, and the uncertainty of load growth and construction times. Based upon the testimony given herein, the recommendations of the Federal Energy Regulatory Commission, and the past records and conclusions in these forecast dockets, the Commission affirms its earlier conclusions that a 20% reserve margin will be necessary to assure adequate and reliable electric service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The sharp differences of opinion expressed about nuclear power at the hearing in this docket mirror the differences of opinion nationwide. The accident at Three Mile Island last year has intensified the debate about the safety and reliability of nuclear power and the costs associated therewith.

The Public Staff, in its presentation before the Commission, reported estimates of busbar costs for new coal and nuclear generating facilities from 17 different data sources. Of the 17 sources, 13 indicated a distinct economic advantage of building nuclear facilities for base

load operations. The Public Staff's report also contained several analyses of nuclear versus coal generation for base load operation utilizing the Public Staff's best estimates of capital costs, fuel costs, and escalation rates assuming a 30-year service life. The Public Staff witnesses testified that the nuclear units now under construction or planned are expected to be less expensive to build and operate than coal units.

Numerous public witnesses and all of the parties discussed the reliability and safety of coal, nuclear, and alternative energy forms. Special attention was given to nuclear power. A predominant theme throughout the hearing was the Three Mile Island accident, which took place in March 1979. Dr. Raymond L. Murray, a professor of nuclear engineering at North Carolina State University and the author of a textbook on nuclear engineering, offered critical comments on the Three Mile Island incident: "The accident at Harrisburg was due to a combination of causes related to inadequate system design, equipment malfunction, and operation... I feel that in spite of all these problems, the system worked, the emergency system worked, the core did not melt down and no one was injured." On the other hand, David Martin, an Associate Professor of Physics at North Carolina State University, testified that his earlier pessimism with nuclear power was well-founded: at the 1977 load forecast hearing he stated that the safety of nuclear power was unknown. Now, "[i]n light of the human factors brought out by the Three Mile Island accident, we now must conclude that nuclear power is unsafe."

Dr. William Walker, a Professor of Physics at Duke University, testified that the more he studied nuclear power, the more he became convinced that it was safe enough when one assessed the relative dangers, advantages, and disadvantages of nuclear power, coal, and other sources. Dr. Constance Kalbach, a nuclear chemist engaged in independent consulting work, testified that nuclear power is essential to meet the growing need for electrical energy over the next 10 to 20 years. She concluded that nuclear reactors are one of our safest and most economical forms of energy available in the near term.

Steve Schervel, who represented the North Carolina Public Interest Research group and the People's Alliance, testified on the dangers of storing and transporting nuclear wastes and on the decommissioning of a nuclear plan. Stewart Fisher, who appeared on behalf of the Kudzu Alliance, opposed the construction of CP&L's Shearon Harris nuclear units; he presented a petition with 5,000 names in opposition to the plant. Dr. Richard Wilson, a family physician, also opposed the construction of the Shearon Harris units and asked that their completion date be delayed until there has been some progress in resolving the doubts about reactor safety, waste disposal, and the need for the units. Patricia Smith and Linda Dominoski, who resided near Three Mile Island during the events of March 1979, testified

about their experiences during the accident; they described in some detail the uncertainty and the fear which this accident caused around Three Mile Island.

Joseph Graedon, a pharmacologist, and Mary Bushnell, a mother, stated their concern that even low level radiation emitting from a nuclear plant may be harmful both to persons now living and to future generations. Dr. Lavon B. Page, Associate Professor of Mathematics at North Carolina State University, challenged the Public Staff's conclusion that nuclear power has an economic advantage over coal for the planning period. Dr. Page contended that the benefits to be gained from delaying the Shearon Harris units outweigh the risks of a power shortage in the early 1980s if the units are not on line.

Dr. Lazaro J. Mandel, Associate Professor of Physiology at Duke University, testified that the Public Staff Report greatly underestimated the indirect costs of nuclear power. "These costs include the societal costs of: insurance pooling among operators of nuclear power plants, the cost of storing nuclear wastes, the cost of providing police escorts for transports of nuclear material, the costs of decommissioning nuclear power plants, the costs of setting up and rehearsing an appropriate evacuation plan. Added to these, are the social costs of living near a nuclear power plant." Dr. Mandel concluded: "When all the real economic and social costs are added they do not look as attractive any more and we begin to see what the real cost of the additional electricity would be."

Other public witnesses who testified in opposition to nuclear power include: Claudia Toomin, Sherri Rosenthal, Robert Staub, William Whitmore, Alvin Moss, Susan Randell, Kathleen Ann Dennis, Diane Cameron, Phil Lusk, Dr. Clyde Edgerton, Karen Wilson, Wells Eddleman, and Dr. Thomas Wartenburg. The testimony of these witnesses discussed the following matters: the disposal of nuclear wastes; the possibility of a nuclear reactor accident, and the release of radiation into the air; the decommissioning of nuclear plants; the possibility of sabotage to nuclear facilities; the underestimation of the real costs of nuclear power as opposed to alternative fuels; the nature and quality of the risks associated with nuclear power as opposed to other sources of power; the need for nuclear power; and particularly the need for CP&L's Shearon Harris plants.

The electric utilities in this docket also offered testimony on nuclear power. CP&L presented the testimony of Dr. Ralph Lapp, a consulting physicist who worked on the atomic bomb in World War II. His testimony addressed the issues of radiation exposure due to effluents from nuclear power plants, the Three Mile Island accident, the health effects of ionizing radiation, radiation risks other than those associated with nuclear power plants, reactor safety, alternative sources of energy, and energy risks and the probabilistic assessment of reactor risks. Dr. Lapp

concluded that, with respect to the normal radioactive release from CP&L's H.B. Robinson and Brunswick plants, the most recent reports indicate 0.525 man-rem for H.B. Robinson plant and 3.73 man-rem for the two-unit Brunswick Plant. "Thus, the total combined population within 50 miles of the plants receive less than the 5 rem a single individual working at a plant is allowed to receive in a year." Dr. Lapp estimated that the total nonoccupational radiation exposure of all Americans to nuclear power plant effluents in 1979 was about 1,000 man-rem. To put this in perspective, the total United States population exposure in 1979 to natural background radiation, including cosmic rays and radioactivity in earth, water, air, and food was about 22,000,000 man-rem.

CP&L also presented the testimony of Patrick W. Howe, Vice President of the Technical Services Department; Charles H. Moseley, Jr., Manager of the Shearon Harris Visitors Center Section in the Corporate Communications Department; and Leonard I. Loflin, Manager of Engineering Pool Section of the Power Plant Engineering Department. The purpose of their testimony was to demonstrate that CP&L's continued use of nuclear energy for the generation of a portion of its electrical requirements is in the public interest and should be continued. CP&L's three nuclear units generated 47% of the total kilowatt hours produced by CP&L in 1978; the fuel savings from these units amounted to $129 million in 1978 and flowed directly through to the customers. The total fuel savings from these three units from 1971 through 1978 amounted to over $393 million.

The CP&L witnesses were of the opinion that nuclear plants can continue to be safely constructed and operated notwithstanding the Three Mile Island accident. Within a matter of hours after the accident, CP&L's technical staff made initial reviews of the accident and compared its nuclear systems and operating procedures with those employed at the Three Mile Island. The company determined that a shutdown of its plants was unnecessary because of design differences. After the substantial reanalysis of nuclear generation by the industry as a result of the Three Mile Island accident, CP&L remains confident that nuclear power can be produced safely. The witnesses described the "defense-in-depth" philosophy which is employed in the design and operation of a nuclear plant. All of the safety systems and their power sources are physically separated and are designed with different electrical and piping paths so that a failure of one type of safety device wil not lead to a failure of the other redundant safety systems. The witnesses were also of the opinion that any health risks associated with the extremely low level radioactive emissions from nuclear plants are quite minimal when compared with the health and safety risks of other generating systems.

Duke Power Company presented the testimony of Warren H. Owen, Senior Vice President of Engineering and Construction,

and E.D. Thomas, Manager of Training Services, Steam Production Department. The purpose of their testimony was to describe the safety of Duke's nuclear generating stations and the training of its nuclear plant operators. Mr. Owen testified that the only fuels currently available in large quantities for the bulk generation of electricity today are coal and uranium. Nuclear plant reliability compares favorably with conventional generating plants.

Mr. Owen described the safety review undertaken at Oconee immediately after Three Mile Island. Pursuant to an agreement reached with the NRC, the Company implemented in May 1979 certain design and procedure modifications which will assure continued safe operation at Oconee. These changes include the installation of automatic starting for the interconnected emergency feedwater system. All licensed reactor operators and senior reactor operators have completed the TMI - 2 simulated training at the Babcock and Wilcox facilities.

According to Mr. Owen the Three Mile Island incident demonstrated that the design philosophy of defense in depth is a valid concept. "Even though the accident occurred, and the accident sequence was complicated by apparent equipment and operator failures, the redundant systems and safety barriers did function to protect the public."

Mr. Thomas described Duke's technical training program for nuclear and fossil fuel plant operators. Potential plant operators undergo a rigorous selection and training program. During the pre-license segment, trainees take the necessary academic subjects and undergo actual experience at an operating nuclear plant. The working-learning experience continues for three to five years until the trainees have sufficient experience to begin license training. A successful candidate for license training will have completed approximately 2,600 hours of actual classroom instruction.

Duke witness Owen testified to the response of Duke and the nuclear industry to Three Mile Island. The activities of the industry already underway include:

1. The Electric Power Research Institute (EPRI) has been commissioned to form the Nuclear Safety Analysis Center, a group of more than 20 professionals who will make an independent, technical assessment of the Three Mile Island accident and identify key safety issues.

2. Under the auspices of the Atomic Industrial Forum, a committee is coordinating individual utility activities to improve the quality of operator training and their ability to successfully handle serious emergencies.

3. A national emergency plan is underway to coordinate the response to request for assistance by individual utilities.

4. An educational program to help the public and the news media better understand the implications of low level radiation.

The electric utility industry has also established the Institute of Nuclear Power Operations (INPO) to monitor and improve the quality of operations of the nuclear plants. INPO will establish industrywide standards for excellence in the management and operation of nuclear power plants and will assist the utilities in meeting these standards. The President's Report recognized that INPO may be an appropriate vehicle for an industrywide program to improve standards of plant operation.

Subsequent to the hearing in this docket, the Kemeny Commission issued the Report of the President's Commission on the Accident at Three Mile Island. The Report found and concluded:

> To prevent nuclear accidents as serious as Three Mile Island, fundamental changes will be necessary in the organization, procedures, and practices - and above all - in the attitudes of the Nuclear Regulatory Commission and, to the extent that the institutions we investigated are typical, of the nuclear industry.

The Report further found that the accident at Three Mile Island occurred as a result of human, institutional, and mechanical failures. The Report, in assessing the severity of the accident, concluded that "in spite of serious damage to the plant, most of the radiation was contained and the actual release will have a negligible effect on the physical health of individuals. The major health effect was found to be mental stress."

The Report made numerous recommendations concerning the Nuclear Regulatory Commission, the responsibility of the utility and its equipment suppliers, the training of plant operating personnel, technical assessment of equipment and operating practices, worker and public health and safety, emergency planning and response, and the public's right to information.

The Commission has found in earlier dockets, including the 1978 load forecast docket, that the most economical method of electric generation for Duke, CP&L, and Vepco is a combination of hydroelectric generation and coal-fired and nuclear-fueled steam generation. The Commission also noted in its 1978 Report "the increasing opinion among the technical community that the hazards to the public from nuclear generation may be considerably less than the hazards from alternative fossil fuel systems, such as coal."

Upon a careful consideration of all of the evidence in this proceeding with respect to the ongoing and intensive assessment of nuclear power by the public, by the industry,

and by those agencies of the Federal government charged with the primary responsibility over nuclear power, the Commission concludes that it would be inappropriate at this time for it to make new and independent findings with respect to the safety, reliability, and cost of nuclear power. Consequently, the Commission reaffirms its earlier findings subject to further reevaluation following its next load forecast hearing.

The Commission recognizes the need for nuclear power in North Carolina during the planning period of the forecast. The Commission also recognizes however, that conservation, load management, and the development of alternative energy sources will play an increasingly larger role during the latter years of this century. The 1978 load forecast of the Commission was based in large part on the premise that conservation and load management efforts are not a temporary phenomenon but represent permanent changes in the attitude of society toward the use of energy. The downward revisions in the rate of growth of electricity sales and peak demand confirm the Commission's optimism on load management and conservation efforts. More recently, the Commission has issued its Order authorizing the establishment and funding of a North Carolina alternative energy corporation. This Order encouraged the major electric utilities in this State to suport and participate in the formation of such a corporation. The overriding purpose of the corporation is to moderate the rate of growth in electric power demand and to develop more efficient uses of energy resources. By reducing the growth of peak electrical demands, fewer new expensive generating plants will be required and therefore rates to consumers will be less. The Order recognized the variety of alternative energy sources in the State and the need to develop and commercialize these sources.

IT IS, THEREFORE, ORDERED:

1. That the Findings of Fact and Conclusions of this Order are hereby adopted as the Commission's Plan to meet the future requirements for electric service in North Carolina.

2. That in subsequent load forecast proceedings, CP&L, Duke, Vepco, Nantahala Power & Light Company, and the Public Staff file as a minimum a 15-year summer peak demand forecast, a 15-year winter peak demand forecast, a 15-year energy forecast, and proposed construction schedules which would provide adequate, reliable, and economic electric service in North Carolina in the event of the occurrence of the most likely growth rate, the fastest expected growth rate, and the slowest expected growth rate.

3. That the 1980/81 Load Forecast Proceedings, designated as Docket No. E-100, Sub 40, are hereby set for public hearing beginning January 13, 1981, with prefiled reports of the Public Staff, Duke, CP&L, Nantahala, and Vepco due on December 1, 1980, and comments of all

interested parties due on December 19, 1980, with further order of investigation to follow instituting said proceeding and delineating the scope of investigation and the primary issues involved, pursuant to G.S. 62-110.1(c).

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May 1980.

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

DOCKET NO. E-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Establishment of a North Carolina Alternative Energy Corporation	)	ORDER AUTHORIZING THE ESTABLISHMENT AND FUNDING OF A NORTH CAROLINA ALTERNATIVE ENERGY CORPORATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on January 3, 1980

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

APPEARANCES:

For the Respondents:

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For: Virginia Electric and Power Company

James E. Tucker, Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Nantahala Power & Light Company

For the Intervenors:

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For: ElectriCities of North Carolina

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For: ElectriCities of North Carolina

Deborah Greenblatt, 1634 Crest Road, Raleigh, North Carolina 27606
For: Kudzu Alliance and the Duke Faculty Committee for Alternatives to Nuclear Power

David Gordon, Associate Attorney General, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Thomas Moffitt, Special Deputy General, P.O. Box 629, Raleigh, North Carolina 27602
For: Legal Counsel for the Energy Division, Department of Commerce

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

Thomas S. Erwin, Attorney at Law, 115 1/2 W. Morgan Street, Raleigh, North Carolina 27601
For: Conservation Council

BY THE COMMISSION: On October 8, 1979, in Docket No. E-7, Sub 262, involving Duke Power Company's (Duke) general rate case, the Commission found that Duke's test year expenditures for research and development for alternative energy sources were inadequate, and that the approval of increased expenditures for this purpose would inure to the benefit of the ratepayers by decreasing demand for electricity and the need for expensive new generating plants. Consequently, the Commission adjusted Duke's test year expenses by $1,000,000 to cover additional research, development and commercialization of alternative energy sources. In the Order, the Commission also suggested that Duke and all other regulated and nonregulated electric suppliers consider joining together to form a nonprofit North Carolina Alternative Energy Corporation, and requested comments from the electric suppliers and the public regarding this proposal.

On November 2', 1979, the Commission issued an Order instituting a generic investigation into the feasibility of a North Carolina Alternative Energy Corporation to be formed by and funded by the State's major electricity suppliers. The Order made the major electric utilities parties to the proceeding and requested nonregulated cooperative and municipal suppliers to participate in the proceeding. The Commission Order scheduled a public hearing on January 2, 1980, and a prehearing conference on December 15, 1979, and required the parties to file comments and suggestions regarding the proposed corporation on or before December 15, 1979. The Order further directed Duke, Carolina Power & Light Company (CP&L), and Virginia Electric and Power Company (Vepco) to publish notice of the hearing in their respective service territories.

On November 21, 1979, the Chairman of the North Carolina Utilities Commission issued a Memorandum to all electric suppliers and interested parties setting forth an agenda of items to be discussed at the prehearing conference, including a preliminary statement of position by the Commission regarding the main issues.

Interventions were filed and approved for the following parties: The Public Staff of the North Carolina Utilities Commission, the Attorney General, of North Carolina, ElectriCities of North Carolina, the Kudzu Alliance, and the Duke Faculty Committee for Alternatives to Nuclear Power.

The following parties to the proceeding prefiled comments prior to the January 2, 1980, public hearing: The Public Staff, the Attorney General, Duke Power Company, Carolina Power & Light Company, Virginia Electric and Power Company, Nantahala Power and Light Company, ElectriCities of North Carolina, Energy Control Systems, the Kudzu Alliance, the Duke Faculty Committee for Alternatives to Nuclear Power, The Long Branch Environmental Education Center, the North Carolina Coalition for Renewable Energy Resources, the Conservation Council of North Carolina, and the North Carolina Consumers Council.

Public Hearings were held as scheduled on January 2, 1980. All of the aforementioned parties were present and represented by counsel.

The first witness, appearing by letter of invitation from the Commission, was the Honorable James B. Hunt, Governor of the State of North Carolina. In his testimony he stated his enthusiastic and unqualified support for the creation of an Alternative Energy Corporation to promote research, development, and commercialization of new energy sources. He stated that the Commission would receive full cooperation from the State's Energy Division and the Energy Institute in creating the corporation. The Governor recommended that the corporation should have a governing board of 13 members and that a majority of the board members should represent the public and not the power companies.

The following persons testified as a representative of one of the Intervenors or as a member of the public at large. Due to the length of the record in this proceeding their testimony has been summarized and only their main points set forth.

1. Dr. James Bresee, Director of the North Carolina Energy Institute, testified in favor of the proposed corporation. He stated that local initiatives applied to local energy problems can be quite successful. He stated that the Energy Institute sponsors research, development, and demonstration of alternative energy technologies, including the electric utility sector, and that the new corporation would permit almost a tenfold expansion of research in this area. He further stated that the concept of a partnership of utility professionals and public representatives was unique in the United States and could produce special advantages to all citizens of North Carolina. He also suggested that the new corporation be merged with the Energy Institute.

2. Dr. Henry B. Smith, Dean of Research at North Carolina State University, testified that the University is engaged in energy research and technology transfer including the direct conversion of solar energy to electricity, active and passive

solar heating for domestic and agricultural uses, wood and peat as fuels, coal gasification, energy conservation, energy storage, nuclear reactor safety, biomass uses, chemical raw materials from waste wood, and related environmental aspects. He stated that there is a need for funding of development and large scale practical applications of such projects on a local or regional level, but that most of the University's work is funded by Federal agencies and therefore reflects national policies. He stated that the University favored the development of alternative energy resources on a regional level through adequate funding of realistic goals.

3. Dr. Douglas Warf, testified on behalf of the North Carolina Consumers Council. He stated that the corporation should seek to:

a. Provide technical assistance and information for consumers and communities regarding potential alternative energy resources, including conservation;

b. Establish training and education regarding development of such sources;

c. Establish and operate an alternative energy bank;

d. Conduct and support research, development, and demonstration projects; and

e. Consider means by which the corporation can eventually become financially self-supporting.

He also made suggestions regarding budgetary allocations for the new corporation and stated that the corporation should become self-sufficient, possibly from charges for assistance, royalties from patents, interest on loans, etc.

4. Warren Rock, Energy Coordinator for the North Carolina Department of Agriculture, commended the Commission for proposing the corporation, and requested that the Board of Directors of the new corporation include a representative from the North Carolina Board of Agriculture.

5. Frank Benford, representing the Joseph Le Conte Chapter of the Sierra Club, endorsed the concept of an AEC. He stated that conservation is an alternative energy source which needs further development, and he favored localized and decentralized demonstration projects. He stated that consumer education should be a major concern of the AEC. Mr. Benford also recommended that the public have majority representation on the Board of Directors.

6. Dr. Macky Smith, associated with Warren Wilson College, testified that there are many economically feasible means of

conserving electricity which the corporation should encourage. He stated that the public should have majority board representation, and that at least one board member should be directly concerned and familiar with the energy needs of the poor.

7. Robert Boone, a resident of Warne, and a representative of the Mountain Convergence Coalition, testified in favor of increased educational efforts regarding renewable energy technologies.

8. Paul Gallamore, Leicester, North Carolina, testified as a representative of the Long Branch Environmental Education Center. He proposed in detail a wide variety of possible activities for the new corporation including public education regarding renewables, the assessment of end use needs of energy users, the encouragement of the lowering of institutional barriers to public acceptance of renewable energy sources, increased access to investment capital for the public, and the funding of demonstration projects. He also made very specific recommendations as to the constitution of the Board of Directors of the NEC. He stated that the corporation should give attention first to conservation and then to backup systems with renewable imput. The latter would reduce reliance on the electrical grid during extreme weather conditions and would reduce the need for peaking equipment.

9. Robert Eidus of Raleigh, North Carolina, testified as a representative of Sun-Rep, the Southern Unit Network for Renewable Energy Resources and Projects. He expressed a concern that more emphasis needs to be placed on the use of renewables for transportation.

10. Kitty Boniske of Asheville, North Carolina, testified for Mountain Convergency. She stated that there are many people in the State with practical knowledge regarding alternative energy, and the new corporation should make use of this pool of knowledge. She stated the corporation can play a vital role in education regarding renewables and encouragement of their use. She favored a public oriented Board of Directors and an independent staff for the corporation.

11. Roger Weisman, of Chapel Hill, North Carolina, testified for CHANGE, a Chapel Hill antinuclear group. He commended the Commission for its proposal and recommended that the Board of Directors have a majority of public members, and that all members of the Board have technical expertise. He also advocated an independent staff of at least three persons for the corporation.

12. Thomas Gunter, of Durham, North Carolina, testified as a representative of the North Carolina Piedmont Crescent Energy Project and the North Carolina Coalition for Renewable Energy Resources. He recommended broad public representation on the Board of Directors, and stated that the corporation should have a limited life and an annual review of its activities.

13. Reggie Greenwood, of Chapel Hill, North Carolina, and a graduate student, testified in favor of forming the AEC. He stated that the essential role of the AEC should be to make funds available to individuals, nonprofit organizations, small businesses, and local governments who operate small programs which utilize decentralized water, wind, and biological resources.

14. Ben Gravely, of Raleigh, North Carolina, testified as Chairman of the North Carolina Solar Energy Association. He stated that basic research is not the primary need for solar energy development, but rather the need for commercial implementation through cooperative efforts between the growing solar business and the utilities. He stated that the AEC, in this regard, could help stimulate public awareness and acceptance through demonstration programs of ordinary applications and take the lead in establishing joint commercialization efforts.

15. Gary F. Gumz, of Raleigh, North Carolina, testified on behalf of the North Carolina Coalition for Renewable Energy Resources. He testified in detail regarding the purpose of the proposed corporation and stated that the AEC emphasize the development and commercialization of already proven alternative energy resources and systems. He testified that the corporation should have a small, full-time staff.

16. Joyce Anderson, of Raleigh, North Carolina, Energy Director for the League of Women Voters of North Carolina, testified in favor of formation of the AEC. The League proposed a 15-member Board of Directors with nine of the directors to be from the public sector.

17. Geoffrey Wycoff, of Durham, North Carolina, testified as a representative of the People's Alliance and endorsed the proposal to establish the AEC and also stated that a majority of the Board of Directors should be citizens not associated with utilities.

18. Jesse Riley, of Charlotte, North Carolina, testified as a representative of the Carolina Environmental Study Group. He endorsed the formation of the AEC and made detailed recommendations regarding the purposes, functions, and structure of the proposed corporation.

19. Dr. Lavon Page, President of the Conservation Council of North Carolina, testified that the AEC must be independent and free from the power companies. He made numerous structural suggestions intended to accomplish this purpose. For instance, he recommended that no utility employee or major stockholder serve on the Board of Directors, and that the AEC staff members be required to sign a letter preventing them from accepting employment with a utility or utility affiliate for one year after termination of employment with the AEC.

20. Dr. George Reeves, President of Energy Control Company, recommended that the public should have majority control of the

AEC, and that at least three members of the board be "alternative energy business community types."

21. Jerome Kohl, of Raleigh, North Carolina, and Nuclear Engineering Extension Specialist at North Carolina State University, testified as a customer of CP&L and as a North Carolina taxpayer. He testified that the Commission should further examine the possibility of having the regulated utilities research, develop, and commercialize alternative energy on an in-house basis rather than setting up the AEC as a separate and possibly duplicative entity.

22. William G. Gettys, a lecturer in physics at UNC-Asheville, testified in favor of forming the AEC and stated that its role should be to encourage conservation and those energy alternatives that are already economically viable.

The following witnesses testified on behalf of the regulated electric utilities: Donald H. Denton, Vice-President - Marketing - for Duke Power Company; Dr. Thomas S. Elleman, Vice President of Nuclear Safety and Research at Carolina Power & Light Company; and R.D. McIver, Vice President of North Carolina Operations - Vepco, for Virginia Electric and Power Company.

Each utility generally supported the creation of a nonprofit corporation to coordinate the development of alternative energy resources which could lessen the increasing demand for electricity in North Carolina. Duke and CP&L offered specific suggestions regarding the formation of such a corporation.

After the electric utilities presented their comments, the Commission then heard testimony from local Intervenors.

Jack Aulis, Manager of Member Relations for ElectriCities of North Carolina, testified for that organization. He stated that ElectriCities of North Carolina is a voluntary, nonprofit association created in 1965 to serve the interests of North Carolina's municipal electric systems and, of the 72 "electric cities" in the State, 66 are members. One of the largest such electric cities is Fayetteville, which is not a member. He stated that municipally owned electric systems serve one million North Carolinians - about 20% of the State's population - at retail.

ElectriCities supported creation of a nonprofit AEC with a 15-member Board of Directors composed of six members representing electric power entities, four representing the State agencies most involved in electric energy, and five public members to be appointed by the Governor. ElectriCities suggested that the AEC have an Executive Committee of seven to handle day-to-day business, and a series of technical committees to be established by the board. ElectriCities proposed making the staff of the North Carolina Energy Institute (NCEI) the staff for the AEC.

Mr. Aulis also stated that those ElectriCities members which receive wholesale power from Duke are now being charged by Duke for their fair share of contributions to the AEC and that, therefore, the Commission should seek such funds from Duke. It was stated that this situation arises from the basis on which Duke's present wholesale rates were developed in FERC Docket No. E-78-415, wherein it was stated in an approved settlement that the rate for Duke's muncipal customers would be the same as the Schedule I rates applicable to North Carolina's industrial customers. ElectriCities contends that because Duke's industrial rates approved in Docket No. E-7, Sub 262, contain an alternative energy surcharge, it follows that Duke's Schedule 10 wholesale rate which is identical to the Schedule I rate, also contains such a surcharge.

James M. Hubbard testified on behalf of the North Carolina Electric Membership Corporation (NCEMC). The NCEMC recommended that before a final commitment is made to forming the AEC the Commission should consider whether the State's Energy Policy Council could perform the functions of the corporation. The NCEMC stated that if a corporation is formed, it supports the Articles of Incorporation and Bylaws proposed by Duke Power Company except that there should be three distinct categories of membership on the Board of Directors: the investor owned utilities, representatives of the public sector, and representatives of the consuming public, NCEMC, and ElectriCities.

Dr. L.A. (Roy) Winetrap testified on behalf of the Duke Faculty Committee for Alternatives to nuclear power. He commended the Commission for its proposal. He stated that the AEC should engage in the commercialization of currently available energy supplies made through grants or loans and education of the public regarding alternative energy supplies. He stated that the AEC should avoid basic research and focus heavily on commercialization of presently available energy alternatives.

Wells Eddleman, a teacher and energy consultant residing in Durham, testified on behalf of the Kudzu Alliance. He testified generally in favor of the development of alternatives and renewable energy power and stated that the AEC should be helpful in that regard. He testified that the development of alternative energy sources is in the best interest of the power companies, but that majority control of the corporation should be in the public sector.

The Public Staff and the Attorney General prefiled their comments, and by stipulation these comments were copied into the record as if given orally from the witness stand. The Public Staff supported the concept of an AEC and made specific recommendations regarding the purpose and organization of the corporation. The Public Staff recommended that the AEC should fund development of existing or emerging technologies in contrast to basic long-term research. The Public Staff recommended that the board of the corporation should contain no more than 13

members so as not to become unwieldly, and should be structured to ensure accountability to the public. The AEC should be quasi public in nature in order to qualify as a recipient of Federal or corporate grants. Of the 13 members, six should be appointed by electric suppliers and seven public members should be appointed by the Governor. The Public Staff's proposal also made recommendations regarding annual review of the corporation and auditing of the corporation, its funding, and its staffing.

The Attorney General supported the concept of commercializing and utilizing existing alternative energy technologies, but proposed that the function be carried out by a legislatively authorized corporation which involved electric suppliers, natural gas utilities, and petroleum interests. The Attorney General stated that if an AEC were formed, its board should have less than 20 members with a majority being public members, and that the corporation should emphasize the development and commercialization of existing technologies as opposed to basic research.

FINDINGS AND CONCLUSIONS

I. IN ORDER TO CURTAIL INCREASED DEMAND FOR ELECTRICITY AND TO DAMPEN THE NEED FOR ELECTRIC UTILITY RATE INCREASES, THERE IS A NEED FOR GREATER DEVELOPMENT AND COMMERCIALIZATION OF ALTERNATIVE ENERGY SOURCES IN NORTH CAROLINA.

Based on evidence received in the Commission's hearing 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. Adequate, reliable, and reasonably priced electricity must continue to be supplied if North Carolina is to maintain its economic growth.

New coal or nuclear generating plants built in recent years to meet increased power demands have been added at much greater costs than those built in preceding years. Costs of construction for generating units 10 years ago averaged about $150/Kw, while the cost of plants now being designed for the 1990s are estimated to exceed $1,500/Kw. The rapid increase in the cost of new generating capacity is partially responsible for increasing electric rates.

To the extent that the need for additional capacity is lessened, the need for rate increases can be curtailed. For this reason, this Commission has for some time encouraged the utilities to explore load management and peak-load and time-of-day pricing, and will continue strong efforts in this direction. For the most part, however, these programs are primarily oriented toward better utilization of existing coal-fired and nuclear-fired capacity. Too little emphasis is now being placed upon developing alternative energy sources which can be used in coordination with power from the central generating stations.

This Commission believes that at both the State and national levels there is a greater need for the development of alternative energy technologies. Development and commercialization can be best achieved on a local basis which will allow for the adoption and utilization of this State's resources to meet North Carolina's specific needs. North Carolina has different renewable resource characteristics and different industrial, commercial, and residential load characteristics than other states, and at the local level, recognition and emphasis can be given to these differences through the interaction of utilities and their customers. Furthermore, localized testing by competent and well recognized technical entities in North Carolina may be necessary before most North Carolinians will accept a new technology. Objective analysis and person-to-person technical assistance from utilities on local demonstration projects involving direct solar, wood, wind, and biomass energy forms and energy storage systems could greatly accelerate their commercialization in North Carolina.

As set forth in the last Duke rate Order and referred to in the recent CP&L rate Order, some examples of alternative energy technology which need further research, development, and possible commercialization in North Carolina are as follows:

1. Investigation into 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.

II. THE COMMISSION CONCLUDES THAT IN ORDER TO ENCOURAGE THE DEVELOPMENT AND COMMERCIALIZATION OF ALTERNATIVE ENERGY SOURCES, IT SHOULD AUTHORIZE AND ENCOURAGE THE STATE'S MAJOR ELECTRIC UTILITIES TO JOIN WITH THE STATE'S NONREGULATED ELECTRICITY SUPPLIERS TO FORM A NORTH CAROLINA ALTERNATIVE ENERGY CORPORATION.

The concept of developing an independent corporation devoted to demonstration of the feasibility of various alternatives to using electrical energy resulted from the Commission's conclusions reached in recent Duke and CP&L rate hearings that North Carolina's utilities were not fully utilizing their collective resource capability in this area. The Commission moved expeditiously to ensure adequate initial funding for such an organization by first allowing Duke, the State's largest utility, and most recently allowing CP&L to begin collecting such funding in rates while the full concept of such a corporation was being examined and other utility rate cases were being heard.

The evidence received by the Commission in this docket is almost unanimous affirmative support for the concept. The formal parties and public witnesses have examined the potential capabilities of such an organization and have made constructive suggestions as to its organization, its operation, its objectives, and its name.

There is general agreement that the formation of the Alternative Energy Corporation would have to be a voluntary action by the regulated and nonregulated electric utilities. The authority to mandate such formation is reserved for the General Assembly. However, there is also agreement that the Commission has the authority to authorize and to encourage the utilities which it regulates to take actions designed to improve utility service to consumers and reduce the need for future rate increases and to approve or disapprove expenditures for such actions.

While it appears that there would be future benefits from combining the efforts of the suppliers of all energy sources to North Carolina, including coal, gas, oil, and electricity, the Commission concludes that such an organization would require enabling legislation.

The Commission concludes that it would be reasonable for North Carolina's electricity suppliers, both regulated and unregulated, to join together to develop solutions to our electricity problems, to promote efficient uses of electricity, and to promote reduced future load growth appropriate to the actual requirements of the State. It would not be appropriate for such an organization to engage in theoretical research or to duplicate research being undertaken by national or regional agencies, although the organization could utilize the research of those agencies.

While the development and commercialization of alternative energy sources on a localized basis could possibly be achieved by increased in-house funding and development within the individual utilities, the Commission believes that a joint effort on the part of the State's regulated and nonregulated suppliers is more likely to be productive in that it will avoid costly duplication of effort and will allow the pooling of the expertise and funding.

If the utilities serving North Carolina wish to join together voluntarily to plan, coordinate, undertake, and carry out joint programs for the development and demonstration of alternative energy sources and conservation methods which will reduce electricity demand and increase the efficiency of the use of electrical energy, and this is accomplished in a reasonable and effective manner with appropriate representation of interests and control of its actions, the Commission should approve such expenditures.

The Commission concludes that CP&L, Duke, Vepco, and Nantahala should be permitted to join with the State's municipal electric suppliers and electric membership cooperatives to form a quasi public nonprofit corporation to engage in joint alternative energy research, development, and commercialization. This corporation should be known as the North Carolina Alternative Energy Corporation. Through this corporation, there can be a merger of private and public interests which will directly benefit electric ratepayers by decreasing rate increases which would otherwise occur.

By authorizing the utilities to form a corporation whose objective is to reduce growth in electric power demand, the Commission has acted wholly within its powers to fix reasonable rates and require reasonable service.

By authorizing the formation of the AEC, the Commission is carrying out the Legislative policies enunciated in the Public Utilities Act of 1963, which reads as follows:

62-2. Declaration of policy. - Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, 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 set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission. (1963, c. 1165, s. 1; 1975, c. 877, s. 2.) (emphasis added)

The Commission concludes that once the new corporation has been formed, it is clear that transfer of reasonable research and development expense funds by utility suppliers to the corporation as approved by the Commission or the respective boards of unregulated suppliers is a valid method for expenditure of such approved research and development expenses. The cases approving reasonable expenses for research and development relating to rates and services are numerous, and reasonable expenditures for this purpose are properly includable in the cost of service of utilities. For instance the Commission has approved contributions made to the Electric Power Research Institute by Duke, CP&L, and Vepco.

To the extent that funds collected from electric ratepayers are spent for the benefit of all citizens, as opposed to the direct benefit of electric ratepayers, legitimate questions may be raised as to whether the rate is in effect a tax for the general welfare. For this reason, in authorizing the AEC, the Commission has taken care to ensure that all expenditures made by the corporation will directly inure to the benefit of the electric ratepayers who supply the funding. Future reviews of the activities of the corporation by this Commission will be made to determine whether this purpose is being achieved.

III. THE COMMISSION CONCLUDES THAT THE NORTH CAROLINA ALTERNATIVE ENERGY CORPORATION SHOULD BE CREATED IN ACCORDANCE WITH THE ARTICLES OF INCORPORATION AND BYLAWS ATTACHED HERETO AS EXHIBIT A.

In order to allow the expeditious formation of such a corporation, and to ensure that the authorization to form an AEC is done in a manner consistent with the needs and objectives heretofore discussed, the Commission concludes that the corporation should be formed by means of filing the attached Articles of Incorporation and subsequent adoption of the attached Bylaws. These Articles and Bylaws contain provisions regarding corporate purposes, directors, membership, and funding which have been carefully considered by the Commission and which are based upon the following findings and conclusions:

A. CORPORATE PURPOSES

The corporate purposes set forth in the Articles of Incorporation should be as follows:

To the end of moderating the rate of growth in electric power demand and developing the more efficient uses of energy resources, this corporation will promote or fund, or assist in promoting or funding, or engage in, projects, programs, and applied research, development and demonstration, designed and intended to accomplish, or to assist in accomplishing, any one or more of the following objectives:

1. The promotion, support, research, development, demonstration, or commercialization of alternatives to electric power as a source of energy which may be used within the State of North Carolina;

2. The promotion, support, research, demonstration, or development of methods by which electric power can be produced more economically;

3. The promotion of load management and conservation in a manner that improves system load factors and the efficient use of energy;

4. The education and informing of consumers in the use and benefits of alternative energy sources, conservation, and load management; and

5. The moderation for the future cost of electric utility service available or to be available to users of electricity within the State of North Carolina.

B. THE BOARD OF DIRECTORS OF THE AEC

The purposes of the corporation will be carried out by the Board of Directors which has the power and discretion to manage the affairs of the Corporation. In determining structure for the Board of Directors, the Commission has been guided by the following criteria:

1. The size of the board should not be unwieldy, and should allow for decision making without the necessity of numerous executive committees. With a board of limited size, each of the board members can become completely familiar with the policies and operations of the corporation;

2. The board should be structured to ensure public accountability and public confidence. The board should receive the benefit of expertise from the six electric suppliers, but should not be dominated by such suppliers;

3. The board should be sufficiently quasi public in nature to qualify as a recipient for Federal or corporate grants; and

4. The board should contain an odd number of members so as to avoid possible stalemates.

With these paramount considerations in mind, the Commission concludes that the board should have 13 members; with six members being appointed by the regulated and nonregulated electricity suppliers, and the remaining seven members being public members appointed by the Governer. Duke, CP&L, Vepco, Nantahala, ElectriCities of North Carolina, and the North Carolina Electric Membership Corporation should each be entitled to appoint one director each to a one-year term.

The Governor should appoint the seven public directors to the following terms: three for a term of one year, two for a term of two years, and two for a term of three years, and thereafter their respective successors should each serve three-year terms.

The public directors should be prohibited from holding any employment or financial interest in any of the electric suppliers, or their affiliates, and should be prohibited from holding any employment or financial interest in any concern or venture which is engaged in doing business with these suppliers or with the Alternative Energy Corporation.

The Governor should make the appointments to the board in that he is the Chief Executive Officer of the State and he is the elected official charged with the ultimate responsibility for the energy policies of the State. Requesting the Governor to make these appointments is consistent with the appointive powers accorded to the Governor by Executive Order statute and constitutional provisions in this State with respect to many other boards, commissions, and agencies.

C. REVIEW OF CORPORATE ACTIVITIES

Even though the corporation is structured to provide for public accountability, the Commission believes that the corporation should undergo an annual review of its activities by the Commission at the load forecast hearings. The corporation should also have an annual audit made of its finances. This will further ensure that ratepayer funds are expended only for proper corporate purposes.

D. MEMBERSHIP AND FUNDAMENTAL CHANGES

Pursuant to Chapter 55A of the General Statutes, if a nonprofit corporation has members, fundamental corporate changes must be approved by the members. Therefore, in order to ensure that no fundamental changes in the corporation (dissolution, extension, merger, or the sale, lease, or exchange of the corporation's assets) are made without the approval of the Utilities Commission as representatives of the general public interest, the Articles of Incorporation should provide that the corporation has members and that these members be the seven Utilities Commissioners.

The Commission concludes that only those suppliers who contribute to the funding of the corporation should be entitled to membership on the Board of Directors. Contributions of the participating regulated electric suppliers should be on the equitable basis of a standard amount per Kwh of sales. The amount of .003567¢/Kwh determined to be responsible for Duke and CP&L in their recent rate cases is a reasonable amount.

Recognizing that it would be impractical to require 100% participation by the members of ElectriCities and the North Carolina Electric Membership Corporation, the Commission concludes that their required contribution should be 60% of the amount derived by multiplying .003567¢/Kwh times the number of kilowatt-hours sold by all of the cities which are members of ElectriCities and by all the cooperatives which are members of the North Carolina Electric Membership Corporation. The Commission concludes that it would be inequitable to allow these organizations to participate as suppliers without requiring a minimum contribution from them.

In order to allow ElectriCities and the NCEMC adequate time to obtain the necessary authorization for funding from their respective members and governing boards and in order to give each regulated utility time to obtain requested rate increases to

cover funding of the AEC, the Commission concludes that it should allow all suppliers to participate on the Board of Directors until July 1, 1981, irrespective of contributions to the corporation, but thereafter to allow participation only upon their payment of the required contributions.

In regard to contributions to be made by ElectriCities to the North Carolina Alternative Energy Corporation, and whether the Commission should seek such funds from Duke for reason that they are collecting an alternative energy "surcharge" in the present wholesale rate, the Commission concludes that this is a matter for the parties and the FERC, rather than this Commission, in the determination of wholesale rates.

E. POWERS OF THE BOARD

Except to the extent that the Commission will review funding of the corporation and approve any fundamental changes to the Articles of Incorporation, the management of the business and affairs of the corporation should be vested solely in the Board of Directors. The Board should control the selection of projects, contractors, and the disbursement of funds for the corporation.

The board should also have complete discretion as to staffing, including their compensation, except that no member of the staff should be an employee of or have a financial interest in one of the six supplier members or any concern doing business with these suppliers. No staff member should be an employee of or have a financial interest in any party of entity contracting with the AEC.

F. DURATION

The Commission concludes that the Articles of Incorporation should provide for the duration of the corporation to extend through 1985. It is believed that the value of the Corporation can be properly evaluated during this period, and that its life can be extended, if desired. Further, the desirability of expanding the scope of the corporation to include other suppliers of energy can be properly considered by the Legislature. This would place the ultimate decision in the hands of the duly elected representatives of the people of North Carolina as to whether the corporation should be continued, expanded, curtailed, or terminated.

G. COMPENSATION OF DIRECTORS

The Board of Directors should not compensate directors for their services but should provide for the reimbursement of any expense incurred by the directors in performing their duties.

H. MEETINGS OF DIRECTORS

The Board of Directors should have meetings at least every three months at times, dates, and places designated by the Chairman of the Board. The Bylaws of the corporation should authorize informal action by the Board.

I. OFFICERS

The corporation should have officers to be elected by the Board of Directors and to perform duties granted them by the Articles of Incorporation or assigned to them by the Board of Directors.

IT IS, THEREFORE, ORDERED:

1. That Duke Power Company, Carolina Power & Light Company, Virginia Electric and Power Company, and Nantahala Power & Light Company be, and hereby are, encouraged and authorized to support and participate in the formation of the North Carolina Alternative Energy Corporation to be formed using the forms of Articles of Incorporation and Bylaws which are attached hereto as Exhibit A.

2. That ElectriCities of North Carolina as representative of the State's municipal electricity distributors, and the North Carolina Electric Membership Corporation as representative of the State's cooperative electricity suppliers are requested to participate in the formation of said corporation in the manner and to the extent set forth in the Articles of Incorporation.

3. That the Honorable James B. Hunt, Jr., Governor of the State of North Carolina, is to be served with a copy of this Order and he is requested to appoint seven public directors to the Board of Directors of said corporation within 30 days after he receives notice that the Articles of Incorporation have been filed with the Secretary of State.

4. That the Incorporators designated in the Articles of Incorporation within seven (7) days of the issuance of this Order execute the Articles of Incorporation and file the same with the North Carolina Secretary of State; that immediately upon filing the Articles of Incorporation the Incorporators shall send a notice that they have been filed along with an executed original copy of the Articles to the Governor, the Utilities Commission, the Public Staff, ElectriCities of North Carolina, North Carolina Electric Membership Corporation, Duke Power Company, Carolina Power & Light Company, Virginia Electric & Power Company, and Nantahala Power & Light Company.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of April 1980.

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

EXHIBIT A
ARTICLES OF INCORPORATION
OF
NORTH CAROLINA ALTERNATIVE ENERGY CORPORATION
(Name of Corporation)

A NONPROFIT CORPORATION

We, the undersigned natural persons of the age of twenty-one years or more, acting as incorporators for the purpose of creating a nonprofit corporation under the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act," and the several amendments thereto, do hereby set forth:

ARTICLE NAME

1. The name of the corporation is North Carolina Alternative Energy Corporation

ARTICLE DURATION

2. The period of duration of the corporation shall be until December 31, 1985
(May be perpetual or for a limited period)

ARTICLE CORPORATE PURPOSES

3. The corporate purposes set forth in the Articles of Incorporation should be as follows:
To the end of moderating the rate of growth in electric power demand and developing the more efficient uses of energy resources, this corporation will promote or fund, or assist in promoting or funding, or engage in, projects, programs, and applied research, development, and demonstration, designed and intended to accomplish, or to assist in accomplishing, any one or more of the following objectives:

(1) The promotion, support, research, development, demonstration, or commercialization of alternatives to electric power as a source of energy which may be used within the State of North Carolina;

(2) The promotion, support, research, demonstration, or development of methods by which electric power can be produced more economically;

(3) The promotion of load management and conservation in a manner that improves system load factors and the efficient use of energy;

(4) The education and informing of consumers in the use and benefits of alternative energy sources, conservation, and load management; and

(5) The moderation of the future cost of electric utility service available or to be available to users of electricity within the State of North Carolina.

ARTICLE MEMBERS

4. SECTION 1. One Class of Members; Who Shall be Members: The Corporation shall have only

one class of members. The members shall be those persons who are the members of the North Carolina Utilities Commission as representatives of the general public interest. Each such Commissioner shall be a member of this Corporation for only so long as he or she holds office as such a Commissioner. Each new Commissioner, upon taking office as such, shall automatically become a member of this Corporation.

SECTION 2. Powers and Voting Rights of Members: The members shall have no property rights in the Corporation or its assets. The members, in their capacity as such, shall have no vote or control with respect to the management of the affairs of the Corporation. The members shall not participate or vote in the election or appointment of the directors or officers of the Corporation.

The right of the members to vote is and shall be limited to the following four matters:

(A) Each member shall be entitled to vote at an annual or special meeting of the members upon any amendment to these Articles of Incorporation which Amendment has been proposed by the Board of Directors in the manner provided by law. No proposed Amendment to these Articles of Incorporation shall be adopted unless and until two-thirds of the members vote in favor of its adoption.

(B) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors adopting a proposed plan of merger or consolidation. No proposed plan to merge or consolidate this Corporation shall be adopted or implemented unless and until such has been adopted by receiving at least two-thirds of the votes of the members entitled to vote at the meeting of the members where such plan of merger or consolidation is considered.

(C) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors recommending the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all,

of the property and assets of this Corporation. The right to vote accorded to the members by the foregoing sentence shall not extend to resolutions or actions taken by the Board of Directors in order to fund, in whole or in part, one or more programs which are within the scope of the corporate purposes set forth in these Articles and the phrase "other disposition," as it is used in this paragraph of this Section of these Articles, shall be construed accordingly. No proposed sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, of the property and assets of the Corporation shall be effectuated unless and until such proposal has been approved by at least two-thirds of the votes entitled to be cast by the members at the meeting of the members where such proposal is considered.

(D) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors of the Corporation recommending that the Corporation be voluntarily dissolved. There shall be no voluntary dissolution of the Corporation unless and until the resolution of the Board of Directors of the Corporation proposing such has received the approving votes of at least two-thirds of the votes of the members entitled to be cast at the meeting of the members where such proposal is considered.

(E) Each member shall be entitled to vote at an annual or special meeting of the members upon any resolution of the Board of Directors of the Corporation recommending that the period of duration of the Corporation be extended. There shall be no extension of the duration of the Corporation unless and until the resolution of the Board of Directors of the Corporation proposing such has received the approving votes of at least two-thirds of the votes of the members entitled to be cast at the meeting of the members where such proposal is considered.

SECTION 3. Special Meetings of Members: Special meetings of the members of the Corporation may be called by any three members or at

the request of the Chairman of the Board of Directors of the Corporation.

ARTICLE 5. SECTION 1. Number of Directors: The three incorporators of this Corporation shall serve as its initial Board of Directors until the directors provided for hereinafter, or a majority of them, have been appointed in the manner hereinafter provided. The first meeting of the Board of Directors shall be held within 30 days after a majority of the Directors provided for herein have been appointed. There shall be a maximum of thirteen (13) Directors of this Corporation, who shall be appointed in the manner hereinafter specified. The number of Directors and the manner of their appointment shall not be changed except by Amendment of these Articles.

SECTION 2. Public Directors: There shall be seven (7) Public Directors of this Corporation each of whom shall be appointed to such office by the Governor of the State of North Carolina. The seven Public Directors shall be appointed to the following initial terms beginning June 1, 1980: three for one year each; two for two years each; and two for three years each and each shall serve until his or her death, resignation, retirement, removal, or until his or her successor is selected and qualifies. After serving their initial terms, each director or successor shall serve for a term of three years or until his or her death, resignation, retirement, removal, or until his or her successor is selected and qualifies. In order to be qualified to be appointed as a Public Director a person may not be employed by any electric utility company, or employed by ElectriCities of North Carolina, or be employed by North Carolina Electric Membership Corporation or by any business concern which in turn is doing business by any of the foregoing, or is doing business with the North Carolina Alternative Energy Corporation.

SECTION 3. Recommendations Regarding Appointment of Public Directors: At any time there shall be one or more vacancies in the Public Director seats on the Board of Directors of the Corporation, the Public Staff - North Carolina Utilities Commission shall, and any North Carolinian

desiring to do so, may, timely submit its, his, or her recommendation to the Governor of North Carolina for his consideration in filling any such vacancy or vacancies.

SECTION 4. Term of Office and Mechanics of Appointment and Removal of Public Directors: Each Public Director shall be appointed by means of the Governor of the State of North Carolina certifying in writing his or her appointment to the Secretary of the Corporation. Any Public Director may be removed for cause by the Governor of the State of North Carolina, by the Governor certifying in writing to the Secretary of the Corporation that such Public Director has been removed by the Governor.

Each of the initial seven Public Directors shall take office immediately upon the Governor of the State of North Carolina certifying his or her appointment as such to the initial three Directors and incorporators provided for in these Articles.

The appointment or removal of any Public Director which occurs after the first meeting of the Board of Directors shall become effective immediately upon the Governor of the State of North Carolina certifying in writing such appointment or removal to the Secretary or Chariman of the Board of the Corporation.

SECTION 5. Directors Representing Regulated Electric Suppliers Serving in North Carolina: Until July 1, 1981, each of the electric utility companies generating and selling electricity in North Carolina and subject to regulation by the North Carolina Utilities Commission, to wit, Duke Power Company, Virginia Electric and Power Company, Carolina Power & Light Company, Nantahala Power & Light Company shall be entitled to appoint one member to the Board of Directors of this Corporation. After July 1, 1981, only those electric utility companies which are making contributions to the Corporation in the following manner and to the following extent shall be entitled to have a director continue to serve on the Board or to continue to appoint a director to the Board:

The required contribution for each of said regulated electric utilities shall be quarterly payments by that utility to the Corporation in an amount which shall be equal to .003567 cents per kilowatt-hour (.003567¢/Kwh) times the number of kilowatt* hours of electricity sold by it at retail to North Carolina customers during that quarterly period. Each such quarterly payment shall be made no later than sixty (60) days after the end of each quarterly period.

*Corrected by Errata Order dated April 17, 1980.

SECTION 6. Director Representing ElectriCities of North Carolina: Until July 1, 1981, ElectriCities of North Carolina shall be entitled to appoint one director to serve on the Board of Directors of this Corporation. After July 1, 1981, ElectriCities of North Carolina shall be entitled to have a director continue to serve on the Board or to continue to appoint a director to the Board only in the event that it is contributing to the funding of this Corporation in the manner and to the extent as follows: The required contribution for ElectriCities of North Carolina shall be quarterly payments by it to the Corporation in an amount which shall be no less than sixty percent (60%) of the amount derived by multiplying .003567 cents per kilowatt-hour (.003567¢/Kwh) times the number of kilowatt-hours of electricity sold by all of the cities which are members of ElectriCities of North Carolina during that quarterly period. Each such quarterly payment shall be made no later than sixty (60) days after the end of each quarterly period.

SECTION 7. Director Representing North Carolina Electric Membership Corporation: Until July 1, 1981, North Carolina Electric Membership shall be entitled to appoint one director to serve on the Board of Directors of this Corporation. After July 1, 1981, North Carolina Electric Membership Corporation shall be entitled to have a director continue to serve on the Board or to appoint a director to serve on the Board only in the event that it is contributing to the funding of this

Corporation in the manner and to the extent as follows: The required contribution of the North Carolina Electric Membership Corporation shall be quarterly payments by it to the Corporation in an amount which shall be no less than sixty percent (60%) of the amount which is derived by multiplying .003567 cents per kilowatt-hours (.003567¢/Kwh) times the number of kilowatt-hours of electricity sold in North Carolina during that quarterly period by all of the cooperatives which are members of the North Carolina Electric Membership Corporation. Each such quarterly payment shall be made no later than sixty (60) days after the end of each quarterly period.

SECTION 8. Term of Office and Mechanics of the Appointment and Removal of the Directors Representing Electric Suppliers Serving in North Carolina: Each regulated electric utility described in ~~SECTION 5~~ and the entities described in SECTIONS 6 and 7 shall appoint its initial director to the Board by the written certification of its President or Chief Executive Officer to the initial three directors and incorporators of the Corporation, specifying the name of the person thus appointed. The term of each director initially appointed by any electric supplier shall end upon the date which is the first anniversary of the first meeting of the Board of Directors. Each shall hold office for a term of one year or until his or her death, resignation, retirement, removal, or until his or her successor is selected; provided, however, no person thus appointed shall continue to serve as a director if the entity appointing him or her has not or is not making the contribution to the funding of the Corporation required and specified by the applicable provisions of these Articles setting forth the contribution required to be made by that particular entity. Appointments of each of the directors representing the electric suppliers which are made at any time after the first meeting of the Board of Directors of the Corporation shall be made by the President or Chief Executive Officer of such electric supplier certifying such appointment in writing to

the Secretary or Chairman of the Board of this Corporation.

Any director appointed by an electric supplier entitled to appoint such may be removed at any time with or without cause by means of the President or Chief Executive Officer of the entity which appointed him certifying such removal in writing to the Secretary or Chairman of the Board of this Corporation.

SECTION 9. Powers of the Board: Except to the extent as may be specifically limited herein the management of the business and affairs of the Corporation shall be vested solely in the Board of Directors.

The Board of Directors shall not employ, nor cause or permit any officer or agent of this Corporation to employ, any person who is to be a paid employee of this Corporation if such person is employed or financially interested in any electric utility serving in this State or who is employed by ElectriCities of North Carolina or who is employed by North Carolina Electric Membership Corporation. Moreover, no employee of the Corporation shall hold any other full-time employment of any type nor shall any such employee have any part-time employment or financial interest in any concern or venture which is engaged in doing business with any electric utility supplier, this Corporation, or any party or entity contracting with this Corporation. Nothing in the foregoing two sentences shall be construed to limit the power of the Board to employ such permanent staff of this Corporation as may be determined by the Board to be desirable and necessary in order to conduct the business of the Corporation nor shall the foregoing three sentences be construed as prohibiting the Corporation from employing or contracting with any business concern or entity, including any electric supplier, for a purpose consistent with the corporate purposes of this Corporation.

The Board of Directors shall not invest nor cause or permit or allow any funds of the Corporation to be invested in any investment media other than the following: interest bearing federally insured bank

accounts or certificates of deposit, direct obligations of the United States government or obligations guaranteed by either the government of the United States or any of its agencies or by the State of North Carolina or any of its agencies or subdivisions, as such other media as the Treasurer of North Carolina is permitted to invest public funds in. This provision relates solely to the investment of the funds of the Corporation which are not then to be expended in carrying out the purposes of the Corporation as stated in these Articles and nothing herein shall be construed to limit or preclude any expenditure, grant, or gift which is made in order to carry out such purposes of this Corporation.

SECTION 10. Quorum and Voting: A majority of the number of directors who then hold office as such shall constitute a quorum for the transaction of business.

Each director shall be entitled to cast one vote on any matter which shall come before the Board. Voting by a director shall be as prescribed by the Bylaws.

The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, except when the act of a greater number is required by law or by the provisions of these Articles.

SECTION 11. Meetings: The Board of Directors shall meet at least once every three months and shall meet at such additional times as may be provided for in the Bylaws.

In addition to any provision relating to such which may appear in the Bylaws of the Corporation, the Chairman of the Board may call special meetings of the Board by giving at least seven days' advance written notice of the time, date, and place thereof to each member of the Board. The Chairman of the Board, if present, shall preside over meetings of the Board of Directors.

ARTICLE 6. The address of the initial registered office of the Corporation is as follows:

INITIAL REGISTERED OFFICE AND AGENT

Street address (If none so state) _____

P.O. Box 991, Room 501, Dobbs Building

City or Town Raleigh

County Wake, North Carolina 27602

The name of the initial registered agent of the Corporation at the above address is Mr. Robert P. Gruber

ARTICLE INITIAL BOARD OF DIRECTORS

7. The number of directors constituting the initial Board of Directors shall be three (3), and the names and addresses (including street and number, if any) of the persons who are to serve as directors until the first meeting of the Corporation or until their successors are appointed in the manner provided in ARTICLE 5 hereof, are:

NAME	STREET ADDRESS (if none, so state)	CITY OR TOWN
Mr. James E. Gibson, Jr.	6006 Sentinel Dr.	Raleigh, N.C. 27609
Mr. Robert P. Gruber	2730 Riddick Dr.	Raleigh, N.C. 27608
Mr. G. Clark Crampton	708 Coventry Ct.	Raleigh, N.C. 27609

ARTICLE INCORPORATORS

8. The names and addresses (including street and number, if any) of all the incorporators are:

NAME	STREET ADDRESS (if none, so state)	CITY OR TOWN
Mr. James E. Gibson, Jr.	6006 Sentinel Dr.	Raleigh, N.C. 27609
Mr. Robert P. Gruber	2730 Riddick Dr.	Raleigh, N.C. 27608
Mr. G. Clark Crampton	708 Coventry Ct.	Raleigh, N.C. 27609

ARTICLE POWERS

9. In addition to the powers granted corporations under the laws of the State of North Carolina, the Corporation shall have full power and authority by action of its Board of Directors, as it deems necessary or desirable from time to time, to appoint such persons (who are not Board members) as it may choose to various Technical Committees and accord to such Technical Committees the power to make such investigations, studies, or analyses as the Board may specify and to make such reports back to the Board as the Board might request.

ARTICLE RESTRICTIONS AND REQUIREMENTS

10. *SECTION 1. Participation in Annual Review by Utilities Commission: The members of the Board of Directors of the Corporation, beginning in 1981, shall appear at least once annually before the North Carolina Utilities Commission if invited by that Commission to do so and shall participate as witnesses in any proceeding which is scheduled by that Commission for the purpose, in whole or in part, of reviewing

the activities and progress of the Corporation.

SECTION 2. Annual Audit: The Board of Directors shall cause an annual audit of the Corporation's financial affairs and dealings to be made by a certified public accounting firm and shall annually file copies of the resulting audit report with the Governor of the State of North Carolina, the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission.

SECTION 3. Annual Report: The Board of Directors shall also cause to be prepared each year an annual report of its activities and projects and programs funded and undertaken during the year and shall annually file copies of the same with the Governor of the State of North Carolina, the North Carolina Utilities Commission, and the Public Staff of the North Carolina Utilities Commission.

SECTION 4. Chairman of the Board: The Board of Directors shall elect a Chairman from their number. The Chairman shall be one of the Public Directors who has been appointed to the Board by the Governor of the State of North Carolina. The Chairman of the Board shall if present preside over all meetings of the Board of Directors.

ARTICLE II.
RESTRICTIONS UPON DISTRIBUTIONS AND DISSOLUTION OR LIQUIDATION DISPOSITIONS REQUIRED TO ENSURE THE TAX EXEMPT STATUS OF THE CORPORATION

No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its directors, officers, or other private persons, including electric supplier corporations and associations, except that the Corporation shall be authorized and empowered to make such payments, grants, gifts, and distributions as shall be necessary and appropriate to promote and carry out the corporate purposes as set forth in these Articles of Incorporation. Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

Upon the dissolution or final liquidation of the Corporation, in the manner provided in

these Articles and applicable provisions of the N.C. Nonprofit Corporation Act, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for scientific or educational purposes and exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States tax laws), as the Board of Directors shall have recommended to the members of the Corporation and which recommendation shall have received the requisite approval of the members of the Corporation as required by the provisions of these Articles and applicable provisions of the North Carolina Nonprofit Corporation Act.

IN TESTIMONY WHEREOF, we have hereunto set our hands, this the _____ day of April, A.D. 1980.

_____(SEAL)

_____(SEAL)

_____(SEAL)

STATE OF North Carolina
COUNTY OF Wake

This is to certify that on the _____ day of April, A.D. 1980 before me, a Notary Public personally appeared Mr. James E. Gibson, Jr., Mr. Robert P. Gruber, and Mr. G. Clark Crampton who, I am satisfied, are the persons named in and who executed the foregoing Articles of Incorporation, and I having first made known to them the contents thereof, they did each acknowledge that they signed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

In Testimony Whereof, I have hereunto set my hand and official seal, this the _____ day of April, A.D. 1980.

_____

(L.S.) (Notary Public)

My Commission Expires:

*Insert any provisions desired to be included in the Articles of Incorporation such as: regulation of internal affairs of the corporation, any matters required to be set forth in the Bylaws, etc. See Chapter 55A of the General Statutes.

BYLAWS
OF
NORTH CAROLINA ALTERNATIVE
ENERGY CORPORATION

Article I
Offices

SECTION 1. Principal Office: The principal office of the Corporation shall be at such location within the State of North Carolina as the Board of Directors shall select.

SECTION 2. Registered Office: The registered office of the Corporation required by law to be maintained in the State of North Carolina may be, but need not be, identical with the Principal office.

ARTICLE II
BOARD OF DIRECTORS

SECTION 1. Compensation: The Board of Directors may not compensate directors for their services as such but may provide for the payment of some or all of the reasonable expenses actually incurred by directors in attending any meeting of the Board, committee meetings, or in the performance of their official duties as members of the Board of Directors.

ARTICLE III
MEETINGS OF DIRECTORS

SECTION 1. Regular Quarterly Meetings: The Board of Directors shall meet at least once every three months, at such times, dates, and places as shall be designated by the Chairman of the Board. Written notice of the time, date, and place of such quarterly Board meetings shall be given to each director at least fourteen (14) days in advance of the meeting date.

SECTION 2. Other Regular Meetings: The Board of Directors may provide, by resolution, the dates, times, and places for the holding of other regular meetings without other notice than such resolution.

SECTION 3. Special Meetings: Special meetings of the Board of Directors may be called by or at the written request of the Chairman of the Board, or of any three directors, being filed with the Secretary of the Corporation.

SECTION 4. Notice of Meetings: Regular meetings of the Board of Directors may be held without notice other than the resolution required by Section 2 of Article IV, if all directors have 14 days' advance notice.

At least seven days before a special meeting, notice thereof shall be given by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

Attendance by a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

SECTION 5. Quorum: A majority of the directors holding office as provided in the Articles of Incorporation shall constitute a quorum for the transaction of business at any meeting of the Board of Directors; provided, however, the provisions of the Articles of Incorporation with respect to any particular vote required to take action shall be controlling.

SECTION 6. Informal Action by Directors: Any action taken by the Board members which is not contrary to the provisions of the Articles of Incorporation and the North Carolina Nonprofit Corporation Act without a meeting shall nevertheless be Board action if written consent to the action in question is signed by at least the number of directors who would be required to take such action if it were taken at an actual meeting of the Board and filed with the Secretary of the Corporation to be kept in the Corporate Minute Book, whether done before or after the action is taken; provided written notice of the informal action must be given to each Board member five days prior to the taking of such informal action.

ARTICLE IV
OFFICERS

SECTION 1. Number: The officers of the Corporation shall consist of a President and Chairman of the Board, a Secretary, a Treasurer, a Vice President, and such other officers as the Board may designate from time to time. Any two or more offices may be held by the same person, except the offices of Chairman of the Board, President, and Secretary.

SECTION 2. Election and Term: The officers of the Corporation shall be elected by the Board of Directors for a term of one year initially at the first meeting of the Board and thereafter on the anniversary of such first meetings. Each officer shall hold office until his death, resignation, retirement, removal, or until his successor is elected and qualifies.

SECTION 3. Compensation: The Board of Directors may not compensate officers for their services as such.

SECTION 4. Duties: The officers elected by the Board of Directors shall perform such duties, if any, as are granted them by the Articles of Incorporation, or as are assigned to them by the Board of Directors.

SECTION 5. Vacancies: A vacancy in any electric office because of death, resignation, retirement, or otherwise may be filled by the Board of Directors for the unexpired portion of the term of said office; provided, however, a vacancy in the office of

Chairman of the Board shall be filled only by a Public Director who was appointed by the Governor.

ARTICLE V
CONTRACTS, LOANS, CHECKS, AND FUNDS

SECTION 1. Contracts: The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or to execute and deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

SECTION 2. Loans: No loans shall be contracted on behalf of the Corporation and no evidences of indebtedness shall be issued in its name.

SECTION 3. Checks and Drafts: All checks, drafts, or other orders for the payment of money issued in the name of the Corporation shall be signed by such officer or officers, agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

SECTION 4. Deposits: All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such depositories and in such accounts as the Board of Directors shall direct, subject to the applicable restrictions set forth in the Articles of Incorporation.

SECTION 5. Gifts: The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise.

ARTICLE VI
INDEMNIFICATION

The Board of Directors may elect to purchase and maintain insurance on behalf of any person who was or is a director, officer, or agent of the Corporation against any liability asserted against or incurred by such person in such capacity or arising out of such person's status as a director, officer, or agent of the Corporation. In the event the Board does not purchase insurance, as aforesaid, the indemnification of any person who was or is a director, officer, or agent of the Corporation shall be as provided by the North Carolina Nonprofit Act.

ARTICLE VII
MISCELLANEOUS

SECTION 1. Seal: The corporate seal of the Corporation shall consist of two concentric circles between which is the name of the Corporation and in the center of which is inscribed the corporate name and such seal, as impressed on the margin hereof, is hereby adopted as the corporate seal of the Corporation.

SECTION 2. Waiver of Notice: Whenever any notice is required to be given to any director under the provisions of the North Carolina Nonprofit Corporation Act or under the provisions of the Bylaws of this Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

SECTION 3. Amendments: These Bylaws may be altered, amended, or repealed by the Board of Directors by resolution adopted by a two-thirds vote of the directors in office, at any meeting of the directors, whether such be a regular or special meeting.

DOCKET NO. E-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Establishment of a North Carolina) ORDER AUTHORIZING
Alternative Energy Corporation) TRANSFER OF FUNDS

BY THE COMMISSION: Consistent with the Commission Order of April 11, 1980, issued in this docket, Articles of Incorporation of the North Carolina Alternative Energy Corporation were filed with the North Carolina Secretary of State on April 18, 1980. Subsequently, in the manner set forth in the Articles of Incorporation, appointments were made to the Board of Directors of the North Carolina Alternative Energy Corporation, and the first meeting of said Board was held on June 26, 1980. At such meeting Dr. Jimmy J. Wortman was elected Chairman of the Board of Directors.

By letter dated July 14, 1980, Dr. Wortman requested that the Commission authorize Duke Power Company and Carolina Power & Light Company to transfer the balance of funds presently held on behalf of the North Carolina Alternative Energy Corporation (AEC) to said Corporation. The Commission being of the opinion that good cause exists for the authorizing of said transfer of funds

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Power Company and Carolina Power & Light Company be and hereby are authorized to transfer immediately (within five days from the issuance date of this order) the balance of funds presently accrued as of May 31, 1980 and held on behalf of the North Carolina Alternative Energy Corporation to said Corporation. It is further authorized that future transfer of funds be made monthly on or before the 1st day of the second month following the month for which such funds are accrued.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of July 1980.

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

DOCKET NO. E-100, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Information Required to Monitor Activity) ORDER ADOPTING
in Construction Work in Progress) QUARTERLY REPORT

BY THE COMMISSION: The Commission has before it for consideration adoption of a quarterly report to be used in monitoring the activity and level of construction work in progress of the three major electric utilities. This report was presented by the Public Staff at the Commission's regular Monday Conference on February 18, 1980. The Public Staff has discussed this report with Duke Power Company, Carolina Power & Light Company, and Virginia Electric and Power Company. The report has been modified to include all suggestions made by these companies. The companies and the Public Staff agree that the report should be due 45 days from the end of the reporting quarter and that the first report will be due for the quarter ended March 31, 1980.

The Commission concludes that it is in the public interest for the companies to report on a quarterly basis the activity in construction work in progress and that the report attached as Appendix A to this Order will provide the information needed to monitor CWIP. With the inclusion of CWIP in rate base the Commission believes this report will provide a very meaningful basis for evaluating the level of activity and a starting point in evaluating the reasons for changes in costs and delays in projects under construction.

IT IS, THEREFORE, ORDERED:

1. That Duke, CP&L, and Vepco file with the Chief Clerk of the Commission 45 days after the end of each quarter six copies of the report attached herto as Appendix A.

2. That the first report shall be due on May 15, 1980.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of March 1980.

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

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

DOCKET NO. E-100, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Information Required to Monitor Activity	) ERRATA
in Construction Work in Progress	) ORDER

BY THE COMMISSION: The Order Adopting Quarterly Report issued by this Commission in Docket No. E-100, Sub 38, on March 6, 1980, required that, beginning May 15, 1980, Duke, CP&L, and Vepco file with the Chief Clerk of the Commission 45 days after the end of each quarter six copies of the report attached thereto as Appendix A. Appendix A prescribed the format for an analysis of construction work in progress including AFUDC. Schedule 3, reporting instruction 1(h) of this report, instructs Vepco to exclude cost-free capital from instructions 1(c), (d), (e), and (f) in calculating the AFUDC rate. However, pursuant to Item 2 of this Commission Order issued in Docket No. E-100, Sub 27, on June 27, 1977, Vepco is required to calculate AFUDC using the formula prescribed by the Virginia State Corporation Commission. Therefore, Vepco should utilize the AFUDC method prescribed by the Virginia State Corporation Commission in caluclating the AFUDC rate required in the report in Appendix A of the Commission Order of March 6, 1980.

IT IS, THEREFORE, ORDERED:

1. That Vepco be excluded from reporting instruction 1(h) on Schedule 3 of Appendix A of this Commission Order Adopting Quarterly Report issued March 6, 1980.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of April 1980.

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

DOCKET NO. E-100, SUB 39

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Virginia Electric) ORDER APPROVING PARTICIPATION
and Power Company) OF VEPCO IN NUCLEAR ELECTRIC
) INSURANCE LIMITED

BY THE COMMISSION: On March 27, 1980, Virginia Electric and Power Company (Vepco) filed "Application For Authority to Obtain Insurance for Replacement Power in the Event of Accidental Outages of Nuclear Units." In this application Vepco requested that it be authorized to become a member of Nuclear Electric Insurance Limited (NEIL), a mutual insurance company incorporated under the laws of Bermuda and created to provide insurance for replacement power costs resulting from a nuclear accident. The application alleged that such insurance, which is not otherwise available, is intended to spread the risk of replacement power costs over the entire nuclear electric utility industry, and thereby avoid a severe burden for any single utility.

On April 4, 1980, the Public Staff filed "Motion Requesting Delay of Action on Applications" and requested the Commission to "delay any action on Vepco's application in this docket until such time as the matter has been thoroughly examined in Duke's pending rate case" (Docket No. E-7, Sub 289). On June 25, 1980, Applicant filed "Motion to Amend Application" to reflect that utilities procuring insurance under NEIL would have an initial commitment to the program of one year, rather than the three-year commitment recited in the original application. On July 21, 1980, Vepco filed "Response to Public Staff Motion" and renewed its prayer that the Commission approve the Company's participation in NEIL.

On October 7, 1980, following issuance of a Notice of Decision on September 30, 1980, the Commission issued in Docket No. E-7, Sub 289, an "Order Granting Partial Increase in Rates." In that Order the Commission carefully considered evidence offered by Duke and cross-examination by the intervenors pertaining to NEIL, and concluded that it was in the best interest of the Company and its customers to permit Duke to participate in the formation and operation of NEIL. The Commission further concluded that the first-year's premium in the amount of $3,200,000 should be included in the test year cost of service.

Based on the foregoing, the Commission concludes that it is in the best interest of Vepco and its customers that it participate in NEIL and that it should authorize Vepco to take such steps as may reasonably be required of it to become a member of Nuclear Electric Insurance Limited as described in Appendix A to its application filed in Docket

No. E-22, Sub 253, which was subsequently closed and the application transferred to Docket No. E-100, Sub 39.

IT IS, THEREFORE, ORDERED that Virginia Electric and Power Company be authorized to take such steps as may reasonably be required of it to become a member of Nuclear Electric Insurance Limited as described in Appendix A to its application.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of October 1980.

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

DOCKET NO. G-100, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding Concerning	)	ORDER MODIFYING
Load Growth Policies of North Carolina	)	REPORTING
Gas Distribution Utility Company	)	REQUIREMENT

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 natural gas companies. By further Order, issued March 20, 1979, the requirement for case-by-case approval for the addition of new industrial customers was eliminated. However, said order required each company to file a quarterly report of customers and load attachments made pursuant to this order; for customers below

Priority 2, the report was to include the capital cost to connect said customers. The Commission is of the opinion that the reporting of capital cost for customer additions is no longer necessary.

IT IS, THEREFORE, ORDERED that the reporting of capital costs of connecting new customers shall no longer be required in the quarterly reports of customers and load attachments made pursuant to the Commission Order of March 20, 1979.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of October 1980.

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

DOCKET NO. G-100, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On November 7, 1979, the Commission issued an Order in this Docket establishing a final rule whereby certain industrial customers who use natural gas as 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 alternate fuel cost as determined pursuant to section 204(e) of NGPA. The final rule established 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.

On December 27, 1979, the Federal Energy Regulatory Commission (FERC) issued Order No. 49-A in Docket RM79-14 in response to the petitions which were filed requesting rehearing or clarification of Order No. 49 in said Docket. Order No. 49 contained final regulations implementing the incremental pricing program mandated by the NGPA. At the time of issuance of Order No. 49, the FERC issued a proposal to extend the small boiler exemption to facilities constructed since the enactment of the NGPA and this proposal was noticed as Docket No. RM79-48. FERC, in Order No. 49-A, states that although public hearings were held, the record developed as a result of these hearings was not sufficient to allow a ruling on the "new" small boiler exemption. FERC determined that a further notice should be issued in Docket No. RM79-48 on the proposed rulemaking concerning "new" boiler exemptions.

The Commission, upon the recommendation of the Public Staff, is of the opinion that until FERC issues an Order concerning "new" small boiler exemptions, all industrial boiler fuel customers in facilities constructed since the enactment of NGPA (November 9, 1978) cannot be exempted on the basis of being a small boiler user. This will affect those customers classified in the North Carolina Utilities Commission priorities 2.1 and 3.2. The Commission is also of the opinion that the tariffs as filed by Public Service Company of North Carolina, Inc., be approved.

IT IS, THEREFORE, ORDERED:

1. That the tariffs filed by Public Service Company of North Carolina, Inc., on January 24, 1980, to be effective on February 5, 1980, be, and hereby are, approved.

2. That North Carolina Natural Gas Corporation; Piedmont Natural Gas Company, Inc.; North Carolina Gas Service, Division of Pennsylvania & Southern Gas Company; and United Cities Gas Company be, and hereby are, required to file tariffs to be effective on one day's notice upon receipt of this Order reflecting the rates nonexempt boiler fuel industrial users in priorities 2.1 and 3.2 are required to pay for incrementally priced boiler fuel.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of January 1980.

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

DOCKET NO. G-100, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Establishing a Policy for	)	ORDER
Non-exempt Industrial Boiler	)	REVISING
Fuel Users - Rates and Benefits	)	RULE

BY THE COMMISSION: On November 7, 1979, the Commission issued its "Order Establishing Final Rule; Approving Tariffs; Requiring Notice" in Docket No. G-100, Sub 38. On December 4, 1979, the North Carolina Textile Manufacturers Association, Inc. (NCTMA), filed Notice of Appeal and Exceptions to this Order, and requested further hearing. On December 13, 1979, the Commission issued an Order calling for oral arguments on the exceptions of NCTMA on Friday, February 1, 1979. Subsequently, the Commission rescheduled the oral argument for Friday, February 15, 1980.

At the appointed time, oral arguments were heard by the full Commission on behalf on NCTMA, Piedmont Natural Gas Company, United Cities Gas Company, Pennsylvania & Southern Gas Company, Public Service Company of North Carolina, Inc., and the Public Staff of the North Carolina Utilities Commission. Based on the record in this proceeding, the Commission is of the opinion that Rule R6-71 should include several additional conditions.

IT IS, THEREFORE, ORDERED that Rule R6-71 is hereby revised as set forth in Exhibit A.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of March 1980.

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

EXHIBIT A
Revised 3/18/80

REVISED RULE R6-71. PROCEDURES APPLICABLE TO FUNDS COLLECTED FROM NON-EXEMPT 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 (hereafter "non-exempt boiler fuel facility") and which is served under a tariff established for non-exempt boiler fuel.

OPERATION: In any month where a natural gas company sells gas to an industrial customer for use in a non-exempt 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 non-exempt 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 semi-annual basis, the balance in this account shall be included as an offset to Transcontinental Gas Pipe Line Corporation's semi-annual 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 non-exempt boiler fuel facilities or on gas sold to such class(es) of customer(s) as ordered by the Commission.

CONDITIONS: The following conditions are applicable to this Rule:

(1) Any exemptions or administrative relief which the FERC or other federal agency may allow under federal administration of Title II shall apply under this Rule.

(2) This Rule shall automatically terminate upon termination or repeal of the federal plan.

(3) This Rule applies to No. 6 fuel oil price levels at the present time; if the rule goes to other fuel prices by operation of law or regulation, the Commission will promptly require notice of said other fuel price level to customers, and any party shall have a right to protest and request investigation and hearing on said other fuel prices, but said other fuel prices would remain in effect pending such protest, investigation and hearing, and if the Commission should alter or amend the rule or such other fuel prices, the Commission's Order would be prosepective only.

(4) The definitions of "exempt" and "non-exempt" uses shall be the same under this Rule as contained in the federal regulations.

(5) Any user who obtains an exemption or adjustment pursuant to Section 502(c) of NGPA at the federal level will be accorded such relief under this Rule.

DOCKET NO. G-100, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Order Establishing Uniform Procedures for Refund-) ORDER
ing Overcollections to Customers Who Are Entitled) REQUIRING
to Same and Establishing Interest Thereon) REFUND

BY THE COMMISSION: The Commission is in receipt of reports from Transcontinental Gas Pipeline Company (Transco) in which they advise that the North Carolina operating natural gas utilities have received refunds in excess of $18 million as a result of a settlement agreement before the Federal Energy Regulatory Commission in RP76-136, RP77-108, et al. The rates allowed by this Commission which created these refunds cover the period from January 1, 1978, through November 30, 1979. The Public Staff requested that each gas utility file a statement setting forth how they proposed to flow these refunds through to the ratepayers.

Proposals have been received from the gas utilities.

The Public Staff presented their recommendations to the Commission at the regular Monday morning staff conference on January 28, 1980.

The Public Staff recommended the following:

That the refunds be allocated between classes of customers based on class usage during the actual over-collection period ending November 30, 1979.

That the refunds to large industrial and commercial customers be based on the actual individual industrial and commercial consumption over this entire period.

That the refund to all other customers be based on consumption over the 12-month period ending December 31, 1979.

That the refunds be made by a credit to bills or by refund checks if the amount is in excess of one dollar. All money not so refunded shall escheat to the State.

That all the natural gas utilities include interest at 12% on the monies held since receipt from Transco and until paid out as refunds. This rate of interest is a reasonable measure of the current cost of money.

Comments from all five natural gas companies were heard at the conference by and through their respective legal counsel. All the utilities objected to making refunds with interest charged at higher than the legal rate. The Commission was also informed that the over-recovery period

was 23 months rather than 18 months. In addition, the Commission heard several utilities request to deduct from the money to be refunded their legal fees associated with obtaining said refunds.

After full consideration of the letters received by the gas utilities, the recommendations of the Public Staff, and the oral comments expressed on behalf of the companies, the Commission is of the opinion and so finds that the refunds should be made in a manner consistent with Exhibit A, which includes the legal rate of interest as provided in G.S. 24-1 on funds from the day of their receipt by the utilities and computed to the day of their disbursement. However, because of its limited data processing capability and the size of refunds involved, the Commission should allow United Cities Gas Company to make their refunds (including 6% interest) as a prospective rate reduction.

The Utilities Commission plans to institute a rulemaking for the consideration of a Commission rule that would require natural gas utilities receiving refunds to place the refunds in an escrow account or trust account to the benefit of their customers to draw interest at the highest available rate. Such refunds would be refunded to customers at the earliest feasible date, subject to such unusual and extraordinary expense in recovering the refund and administering the trust account as may be approved by the Commission.

IT IS, THEREFORE, ORDERED:

1. That Piedmont Natural Gas Company, Public Service Company of North Carolina, North Carolina Natural Gas Company, and United Cities Gas Company shall each file refund plans consistent with the policy set forth in Exhibit A. Such plans shall include interest at the legal rate provided in G.S. 24-1 and applicable gross receipts taxes.

2. That these plans shall be filed with the Commission within five (5) days of the issuance of this Order.

3. That the companies issue a notice as a bill insert in the next billing cycle explaining the refund.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of February 1980.

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

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

DOCKET NO. G-100, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Order Establishing Uniform Procedures for Refunding Overcollections to Customers Who Are Entitled to Same and Establishing Interest Thereon	)	NOTICE OF RULEMAKING AND ORDER

BY THE COMMISSION: On February 1,1980, the Commission issued an "Order Requiring Refund" in this docket. The proceeding arose when the Commission received reports from Transcontinental Gas Pipeline Company (Transco) advising that the North Carolina operating natural gas utilities had received refunds in excess of $18 million as a result of a settlement agreement before the Federal Energy Regulatory Commission (FERC) in RP76-136, RP77-108, et al. In its "Order Requiring Refund," the Commission directed Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., North Carolina Natural Gas Corporation, and United Cities Gas Company to file refund plans consistent with the guidelines set forth in Exhibit A attached to said Order and further required the Companies to make such refunds subject to the legal rate of interest of 6% as provided in N.C.G.S. 24-1 on the funds from the day of their receipt by the utilities and computed to the day of their disbursement.

The Commission's Order also contained the following statements with respect to the above-referenced interest issue:

> "The Utilities Commission plans to institute a rulemaking for the consideration of a Commission rule that would require natural gas utilities receiving refunds in an escrow account or trust account to the benefit of their customers to draw interest at the highest available rate. Such refunds would be refunded to customers at the earliest feasible date, subject to such unusual and extraordinary expense in recovering the refund and administering the trust account as may be approved by the Commission."

On February 22, 1980, the Public Staff - North Carolina Utilities Commission (Public Staff) filed "Exceptions and Notice of Appeal; Motion for Hearing and Reconsideration." Responses in opposition to the Public Staff's Motion were subsequently filed in this docket by counsel for and on behalf of Piedmont Natural Gas Company, Inc., and North Carolina Natural Gas Corporation on February 28, 1980, and March 4, 1980, respectively.

By Order dated March 14, 1980, the Commission set the matter for oral argument on April 18, 1980, which oral argument was held as scheduled. By separate Order issued today in this docket, the Commission overruled and denied

each of the Public Staff's Exceptions, denied the Public Staff's "Motion for Hearing and Reconsideration," and reaffirmed its "Order Requiring Refund" issued on February 1, 1980.

Based upon a careful consideration of all of the foregoing, the Commission has decided to institute a rule-making proceeding pursuant to G.S. 62-31 to consider adoption of an amendment to Commission Rule R1-17(g)(10) which would require all North Carolina natural gas utilities receiving Transco refunds to place such refunds in an escrow account or trust account for the benefit of their customers, which account would be designed to draw the highest rate of interest then available pending refund of any such amounts to North Carolina retail customers. A copy of the proposed rule revision is attached hereto as Appendix A. The Commission desires to receive comments on the proposed rule from all North Carolina natural gas distribution companies, the Public Staff, and any other interested parties.

IT IS, THEREFORE, ORDERED as follows:

1. That North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., United Cities Gas Company, and the Public Staff are hereby made parties to this rule-making proceeding.

2. That the parties to this proceeding shall file written comments with respect to the proposed rule attached hereto as Appendix A not later than July 18, 1980.

3. That any other interested party who wishes to formally intervene in this proceeding shall file a notice of intervention with the Commission not later than July 3, 1980, and shall also file any comments to the proposed rule amendment on or before July 18, 1980.

4. That the Notice of Rulemaking attached hereto as Appendix B shall be published in newspapers having general circulation in the North Carolina service areas of the respective natural gas companies for two connsecutive weeks beginning not later than 15 days following the date of issuance of this Order.

5. That this docket shall remain open subject to further Orders of this Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 20th day of May 1980.

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

APPENDIX A
DOCKET NO. G-100, SUB 40

PROPOSED AMENDMENT TO COMMISSION RULE R1-17(g)(10):

(10) Whenever the Commission issues an order permitting a rate increase to become effective pursuant to G.S. 62-133(f), said order shall clearly state and identify the wholesale rate increase upon which such retail rate increase is predicated and the effective date of such retail rate increase. Should the amount of the wholesale increase thereafter be reduced or terminated, the Applicant shall immediately file tariffs making corresponding decreases in the North Carolina retail increase. Furthermore, if refunds are received from the wholesale supplier because of such change in rates, or if the tariff filing cannot be made effective on the date when such change occurs, the North Carolina gas utilities shall place these refunds or amounts in an escrow account or trust account for the benefit of their customers, which account shall be designed to draw the highest rate of interest then available. Refunds shall thereafter be made to customers at the earliest possible date pursuant to an order approving refunds issued by this Commission; provided, however, that any funds subject to refund shall also be subject to the deduction therefrom of those unusual and extraordinary expenses which may have been incurred in administering the escrow or trust account as may be approved by the Commission.

This the 20th day of May 1980.

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

APPENDIX B

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Order Establishing Uniform Procedures for Refunding Overcollections to Customers Who Are Entitled to Same and Establishing Interest Thereon	))))	NOTICE OF RULEMAKING

Notice is hereby given that the North Carolina Utilities Commission has instituted a rule-making proceeding to consider adoption of a revised Commission rule which would require all of the natural gas distribution companies in North Carolina who receive wholesale rate refunds from the Transcontinental Gas Pipeline Company (Transco) to place such refunds in an escrow account or trust account for the benefit of their customers, which account would be designed to draw the highest rate of interest then available pending refund of any such amounts to North Carolina retail customers.

The Commission proposes to revise and amend Commission Rule R1-17(g)(10) to read as follows:

(10) Whenever the Commission issues an order permitting a rate increase to become effective pursuant to G.S. 62-133(f), said order shall clearly state and identify the wholesale rate increase upon which such retail rate increase is predicated and the effective date of such retail rate increase. Should the amount of the wholesale increase thereafter be reduced or terminated, the Applicant shall immediately file tariffs making corresponding decreases in the North Carolina retail increase. Furthermore, if refunds are received from the wholesale supplier because of such change in rates, or if the tariff filing cannot be made effective on the date when such change occurs, the North Carolina gas utilities shall place these refunds or amounts in an escrow account or turst account for the benefit of their customers, which account shall be designed to draw the highest rate of interest then available. Refunds shall thereafter be made to customers at the earliest possible date pursuant to an order approving refunds issued by this Commission; provided, however, that any funds subject to refund shall also be subject to the deduction therefrom of those unusual and extraordinary expenses which may have been incurred in administering the escrow or trust account as may be approved by the Commission.

The Commission desires to receive comments on the proposed rule from all parties who may have an interest in this matter. North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., United Cities Gas Company, and the Public Staff - North Carolina Utilities Commission have been made parties of record to this rule-making proceeding.

The Public Staff is authorized by statute to represent the using and consuming public in proceedings before the Commission. Written statements to the Public Staff should include any information which the writer wishes to be considered by the Public Staff in its investigation of the matter, and such statements should be addressed to Honorable Robert Fischbach, Executive Director, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602.

The Attorney General is also authorized by statute to represent the using and consuming public in procedures before the Commission. Statements to the Attorney General should be addressed to Honorable Rufus Edmisten, Attorney General, c/o Utilities Division, P.O. Box 629, Raleigh, North Carolina 27602.

Persons desiring to intervene in this matter as formal parties of record should file a motion under North Carolina Utilities Commission Rules R1-6, R1-7, and R1-19 not later than July 3, 1980. Written comments on the proposed rule

should be filed with the Chief Clerk, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602, on or before July 18, 1980.

This the 20th day of May 1980.

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

DOCKET NO. G-100, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Order Establishing Uniform Procedures for Refunding Overcollections to Customers Who Are Entitled to Same and Establishing Interest Thereon	)))	ORDER DENYING MOTION FOR RECONSIDERATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 18, 1980, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, John W. Winters, Edward B. Hipp, and Douglas P. Leary

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.

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.

L. Stacy Weaver, Jr., McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, 222 Maiden Lane, Fayetteville, North Carolina 28302
For: North Carolina Natural Gas Corporation

For the Intervenor:

Charles C. Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, 414 Fayetteville Street Mall, P.O. Box 389, Raleigh, North Carolina 27602
For: C.F. Industries, Inc.

For the 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: On February 1, 1980, the Commission issued an "Order Requiring Refund" in this docket. The

proceeding arose when the Commission received reports from the Transcontinental Gas Pipeline Company (Transco) advising that the North Carolina operating natural gas utilities had received refunds in excess of $18 million as a result of a settlement agreement before the Federal Energy Regulatory Commission (FERC) in RP76-136, RP77-108, et al.

In its "Order Requiring Refund," the Commission directed Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., North Carolina Natural Gas Corporation, and United Cities Gas Company to file refund plans consistent with the guidelines set forth in Exhibit A attached to said Order and further required the Companies to make such refunds subject to the legal rate of interest of 6% as provided in G.S. 24-1 on the funds from the day of their receipt by the utilities and computed to the day of their disbursement.

On February 22, 1980, the Public Staff - North Carolina Utilities Commission (Public Staff) filed "Exceptions and Notice of Appeal; Motion for Hearing and Reconsideration." In its Exceptions and Motion, the Public Staff basically asserted the position that the Commission should require that an interest rate of approximately 12% rather than 6% be applied to the customer refunds previously ordered in this docket.

Responses in opposition to the Public Staff's Motion were subsequently filed in this docket by counsel for and on behalf of Piedmont Natural Gas Company, Inc., and North Carolina Natural Gas Corporation on February 28, 1980, and March 4, 1980, respectively.

By Order dated March 14, 1980, the Commission set the matter for oral argument on Friday, April 18, 1980, at 10:00 a.m. Upon call of the matter for oral argument at the appointed time and place, all participating parties were represented by counsel.

Based upon a careful consideration of the entire record in this proceeding, including the Public Staff's Exceptions and Motion and the oral argument heard thereon, the Commission is of the opinion, finds, and concludes that its treatment of the issue of the level of interest expense to be paid on refunds required to be made pursuant to its Order dated February 1, 1980, was both correct and fully supported by the record. Accordingly, the Commission further finds and concludes that each of the Exceptions filed in this proceeding by the Public Staff should be overruled and denied and that the Public Staff's "Motion for Hearing and Reconsideration" should also be denied.

In concluding this Order, the Commission notes that it has this day, by separate Order issued in this docket, instituted a rule-making proceeding to consider adoption of a revised Commission rule which would require all North Carolina natural gas utilities receiving Transco refunds to

place such refunds in an escrow account or trust account for the benefit of their customers, which account would be designed to draw the highest rate of interest then available pending refund of any such amounts to North Carolina retail customers.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff's "Motion for Hearing and Reconsideration" filed in this docket on February 22, 1980, be, and the same is hereby, denied.

2. That the "Order Requiring Refund" issued by the Commission on February 1, 1980, be, and the same is hereby, reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May 1980.

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

DOCKET NO. G-100, SUB 40
DOCKET NO. G-21, SUB 164
DOCKET NO. G-21, SUB 180

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Natural Gas) ORDER APPROVING
Corporation for Approval of Refund Plan) PLAN OF REFUND

BY THE COMMISSION: On June 3, 1980, the North Carolina Natural Gas Corporation (N.C.N.G. or Company) filed a letter application with this Commission seeking approval of a plan for refunding $737,297.55 received from the Transcontinantal Gas Pipeline Company (Transco) plus interest at six (6) percent per year for the period of time during which N.C.N.G. has held said refund monies. The details of the proposed refund plan are set forth in Exhibit A which is attached hereto and made a part hereof. The total amount of refunds, including interest, gross receipts taxes, and a refund to Rate 7 customers, is $799,572.87. N.C.N.G. proposes to refund the amount of $145,205.07 to its Rate 7 customers by check. The balance of $654.367.80 is to be refunded by means of a credit to existing customers and by issuance of a check to those individuals who are no longer active customers. N.C.N.G. further proposes to base payment of the refunds on sales during calendar year 1979, since (1) the substantial majority of the refunds in question are applicable to calendar year 1979 and (2) the Company has ready access to customer billing records and the associated date base for that time period. The refund rate proposed for Class 1 Cycle Billed customers is $.0237 per DT, while for Class 2 customers (those billed at the end of each month) the proposed refund rate is $.0226 per DT. The details of this determination are set forth in Exhibit B attached hereto. Refunds will be made by N.C.N.G. beginning on July 1, 1980.

It is further noted that the Commission instituted a rulemaking proceeding in Docket No. G-100, Sub 40, on May 20, 1980, to consider adoption of a revised Commission rule which would require all North Carolina natural gas utilities receiving Transco refunds to place such refunds in an escrow account or trust account for the benefit of their customers, which account would be designed to draw the highest rate of interest then available pending refund of any such amounts to North Carolina retail customers. However, pending completion of the above-referenced rulemaking proceeding, the Commission is of the opinion that the refunds approved herein may include no more than the legal rate of interest as provided in G.S. 24-1 on funds from the day of their receipt by N.C.N.G. and computed to the day of their disbursement.

Therefore, based upon a careful consideration of the filing and the entire record in this proceeding, the Commission is of the opinion, and so concludes, that the

refund plan proposed herein by N.C.N.G. is reasonable and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the refund plan submitted by N.C.N.G. as outlined above be, and the same is hereby, approved.

2. That the customer credit or refunds approved herein shall be made by N.C.N.G. during the month of July 1980.

3. That N.C.N.G. shall issue a bill insert to its customers explaining the refunds approved herein.

4. That N.C.N.G. shall file a report with the Commission on or before September 30, 1980, detailing the disposition of the refunds as authorized herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of June 1980.

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

DOCKET NO. G-100, SUB 40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Order Establishing Uniform Procedures for Refunding Overcollections to Customers Who Are Entitled to Same and Establishing Interest Thereon	))) ORDER REVISING) RULE R1-17(g)(10))

BY THE COMMISSION: On May 20, 1980, the Commission issued an Order in this docket whereby a rule-making proceeding was instituted pursuant to G.S. 62-31 to consider a proposed amendment to Commission Rule R1-17(g)(10). North Carolina Natural Gas Corporation (NCNG), Pennsylvania & Southern Gas Company (P & S), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), United Cities Gas Company (United Cities), and the Public Staff were made parties of record to the proceeding. The parties were required to file written comments with respect to the proposed revision of Rule R1-17(g)(10) not later than July 18, 1980. The proposed rule provided as follows:

> "(10) Whenever the Commission issues an order permitting a rate increase to become effective pursuant to G.S. 62-133(f), said order shall clearly state and identify the wholesale rate increase upon which such retail rate increase is predicated and the effective date of such retail rate increase. Should the amount of the wholesale increase thereafter be reduced or terminated, the Applicant shall immediately file tariffs making corresponding decreases in the North Carolina retail increase. Furthermore, if refunds are received from the wholesale supplier because of such change in rates; or if the tariff filing cannot be made effective on the date when such change occurs, the North Carolina gas utilities shall place these refunds or amounts in an escrow account or trust account for the benefit of their customers, which account shall be designed to draw the highest rate of interest then available. Refunds shall thereafter be made to customers at the earliest possible date pursuant to an order approving refunds issued by this Commission; provided, however, that any funds subject to refund shall also be subject to the deduction therefrom of those unusual and extraordinary expenses which may have been incurred in administering the escrow or trust account as may be approved by the Commission."

By its Order dated May 20, 1980, the Commission also required the natural gas companies who were made parties to this proceeding to publish a "Notice of Rulemaking" in newspapers having general circulation in their respective North Carolina service areas for two (2) consecutive weeks.

On June 9, 1980, CF Industries, Inc. (CFI), and Farmers Chemical Association, Inc. (Farmers Chemical), filed a

Petition seeking leave to intervene in this docket, which motion was granted by Commission Order dated June 12, 1980.

Comments on the proposed rule revision were subsequently filed by all parties of record to this proceeding. Many of those comments offered constructive suggestions which the Commission has decided to incorporate into its final revision of Rule R1-17(g)(10). With respect thereto, the Commission concludes that Rule R1-17(g)(10) should be revised so as to require each regulated natural gas utility in this State receiving refunds from the Transcontinental Gas Pipeline Company (Transco) to place such refunds in a deferred account pending further Order of the Commission. Under the revised rule, the applicant natural gas utility may elect to use the funds reflected in the deferred account to temporarily displace an internal requirement for working capital. Interest will then accrue on those monies at a rate equal to the overall rate of return allowed by the Commission in the applicant's last general rate case. The revised rule further provides that if the applicant does not elect to use the funds reflected in the deferred account for general corporate purposes, said natural gas utility will then hold those monies as a fiduciary on behalf of its customers and must invest same in short-term financial instruments designed to draw the highest rate of interest then available; provided, however, that interest will then accrue on funds reflected in the deferred account at a rate equal to the greater of either the rate of interest then specified in G.S. 24-1 or the actual rate of interest then being earned on those monies.

The revised rule, which is attached hereto as Appendix A, also incorporates certain of the other suggestions made in this proceeding by the parties hereto. The Commission believes that the revisions which have been made with respect to Rule R1-17(g)(10) are entirely fair and equitable to both the regulated natural gas utilities in this State and also to their rate-paying customers. The Commission further believes that the revised Rule R1-17(g)(10), as set forth in Appendix A attached hereto, is clearly responsive to the statutory duty of this Commission to engage in responsible and reasonable regulation in North Carolina.

Accordingly, for all of the reasons set forth hereinabove, Rule R1-17(g)(10) is hereby revised in conformity with Appendix A attached hereto and made a part hereof. The revised rule shall be effective and applicable to all monies held for refund or received for refund on and after September 1, 1980. Monies held for refund on September 1, 1980, shall draw interest for the period of time prior to September 1, 1980, at the legal rate of eight percent (8%) specified in G.S. 24-1.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R1-17(g)(10) be, and the same is hereby, revised in conformity with Appendix A attached hereto.

2. That the revisions to Rule R1-17(g)(10) shall be effective and applicable to all monies held for refund or received for refund on and after September 1, 1980. Monies held for refund on September 1, 1980, shall draw interest for the period of time prior to September 1, 1980, at the legal rate of eight percent (8%) specified in G.S. 24-1.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of August 1980.

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

APPENDIX A

REVISED RULE R1-17(g)(10)

(10) Whenever the Commission issues an order permitting a rate increase to become effective pursuant to G.S. 62-133(f), said order shall clearly state and identify the Federal Energy Regulatory Commission (FERC) docket and the wholesale rate increase upon which such retail rate increase is predicated and the effective date of such retail rate increase. Should the amount of the wholesale increase thereafter be reduced or terminated, the applicant shall immediately file tariffs with the Commission making corresponding decreases in the North Carolina retail increase. Furthermore, if the change is made retroactively and refunds are received from the wholesale supplier because of such change in rates, or if the tariff filing with this Commission cannot be made effective on the date when such change occurs, the applicant North Carolina gas utility shall place these refunds or amounts in a deferred account pending further order of the Commission. The applicant natural gas utility may elect to use the funds reflected in the deferred account to temporarily displace an internal requirement for working capital. Interest shall then accrue on those monies at a rate equal to the overall rate of return allowed by the Commission in the applicant's last general rate case. If the applicant does not elect to use the funds reflected in the deferred account for general corporate purposes, said natural gas utility shall then hold those monies as a fiduciary on behalf of its customers and shall invest same in short-term financial instruments designed to draw the highest rate of interest then available; provided, however, that interest shall then accrue on funds reflected in the deferred account at a rate equal to the greater of either the rate of interest then specified in G.S. 24-1 or the actual rate of interest then being earned on those monies. No later than five (5) days after refunds or amounts have been placed in a deferred account, the North Carolina gas utility shall file a report with the Commission and the Public Staff stating the amount of dollars placed in such deferred account, the NCUC docket number relating to the refunds or amounts, the applicable

FERC docket number relating to the refunds or amounts, the period or periods to which the refunds or amounts apply, and the rate of interest which will be applied to those monies placed in the deferred account. The applicant shall thereafter make refunds to its customers at the earliest possible date pursuant to an order approving refunds issued by the Commission.

DOCKET NO. G-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
New Federal Safety Standards - Liquefied Natural Gas Facilities as Codified in Title 49, CFR Part 193, et seq.	))))	ORDER ADOPTING FEDERAL SAFETY STANDARDS - LIQUEFIED NATURAL GAS FACILITIES

BY THE COMMISSION: The Materials Transportation Bureau of the U. S. Department of Transportation has promulgated new Federal Safety Standards for liquefied natural gas facilities in 49 CFR, Part 193.

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

Under the provisions of G.S. 62-50, the North Carolina Utilities Commission has jurisdiction over all intrastate natural gas pipeline facilities in North Carolina.

The Commission is of the opinion that the existing Federal Safety Standards governing liquefied natural gas facilities used in the transportation of natural gas by pipeline and contained in Sec. 192.12 of Title 49 CFR was adopted only as an interim measure while federally developed regulations 49 CFR, Part 193 were being developed. The Commission concludes that in the interest of cooperative regulation with appropriate federal agencies and in view of the specific legislative mandate under the provisions of G.S. 62-2 and G.S. 62-50, that the new Federal Safety Standards for liquefied natural gas facilities as adopted by the U. S. Department of Transportation in 49 CFR, Part 193 should be adopted and made applicable to such gas pipeline facilities and facilities for transportation of natural gas under the jurisdiction of this Commission. Accordingly, under the authority of G.S. 62-31,

IT IS, THEREFORE, ORDERED as follows:

1. That the Federal Safety Standards pertaining to liquefied natural gas facilities as adopted in 49 CFR, Part 193, as are in effect as of the date of this Order, and all subsequent amendments to Part 193, be, and the same hereby

are, adopted by this Commission to be applicable to all liquefied natural gas facilities under its jurisdiction as an amendment to Rule R6-39(b) of the Commission's Rules and Regulations.

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

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

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of July 1980.

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

DOCKET NO. G-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
New Federal Safety Standards - Liquefied Natural Gas Facilities as Codified in Title 49 CFR, Part 193, et seq.	)))	ORDER ADDING SUBSECTION (c) TO RULE R6-39

BY THE COMMISSION: On July 15, 1980, the Commission issued an Order adopting the new Federal Safety Standards pertaining to liquefied natural gas facilities, which were promulgated by the Materials Transportation Board of the U.S. Department of Transportation, as set forth in 49 CFR, Part 193, and as were in effect as of the date of the Order, and all subsequent amendments thereto. The Standards adopted by the Commission are applicable to all liquefied natural gas facilities under the Commission's jurisdiction.

The Commission is of the opinion that Rule R6-39 should be amended by adding a new Subsection (c) showing the adoption of the above described Standards by the Order of July 15, 1980.

IT IS, THEREFORE, ORDERED that Commission Rule R6-39 be amended by adding thereto Subsection (c) to follow Subsection (b) and to read as follows:

"(c) The Federal Safety Standards pertaining to liquefied natural gas facilities, as adopted in 49 CFR, Part 193, and as were in effect on July 15, 1980, and all subsequent amendments thereto, are adopted and shall be applicable to all liquefied natural gas facilities under the jurisdiction of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of October 1980.

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

DOCKET NO. P-100, SUB 49

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition to Reduce Intrastate Toll Rates for Teletypewriter Messages Made by Deaf, Severely Hearing Handicapped, and Speech Impaired Citizens,	))))	ORDER GRANTING REDUCTION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 18, 1979

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate and Leigh H. Hammond

APPEARANCES:

For the Respondents:

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

Helen H. Aull, Southern Bell Telephone and Telegraph Company, 1445 Monroe Drive, N. E., Apt. F-21, Atlanta, Georgia 30324
For: Southern Bell Telephone and Telegraph Company

W. C. Fleming, Vice President - General Counsel, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702
For: General Telephone Company of the Southeast

Richard W. Stimson, General Attorney, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702
For: General Telephone Company of the Southeast

Dwight W. Allen, General Counsel, Carolina Telephone and Telegraph Company, 122 East Saint James Street, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company

For the Public Staff:

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, North Carolina Council for the Hearing Impaired, North Carolina Division of Vocational Rehabilitation, North Carolina Schools for the Deaf Parents Assn., and Western North Carolina Telecommunications Committee for the Deaf

BY THE COMMISSION: On February 5, 1979, a Petition containing 623 signatures was received from Harry C. Smith, President of Metrolina Deaf Lions Club of Charlotte, North Carolina, requesting that the North Carolina Utilities Commission (hereinafter Commission) reduce rates on long-distance telephone toll charges for messages transmitted on teletypewriters (TTY's) by deaf and severely hearing handicapped citizens.

On May 7, 1979, the Commission issued a Memorandum as recommended by the Public Staff in this docket requesting Southern Bell Telephone and Telegraph Copmpany (hereinafter Southern Bell) to file a provision in its Intrastate Long Distance Message Telecommunications Service Tariff to provide that the charges for an intrastate toll telephone message placed either by or to a hearing or speech impaired customer, through the use of telephone company or customer provided teletypewriter (TTY) equipment, be based on 25% of the actual time consumed for the message.

All other telephone companies providing telephone service in North Carolina and subject to regulation by the Commission (hereinafter Regulated Telephone Companies) were requested to concur in the suggested tariff revision by Southern Bell. Also, Southern Bell was requested to develop administrative procedures for implementing the discount plan using the procedures that apply in the State of Connecticut as a guide.

On July 3, 1979, Southern Bell filed a proposed tariff and administrative procedures which differed from those which the Commission had initially suggested be filed. That filing proposed a 25% discount to be computed on the total charges for an intrastate toll message and to be applied in conjunction with station-to-station direct dial calls made during weekday and evening periods, but not with calls made during night or weekend periods. The filed administrative procedures based the discount on total charges.

The Public Staff placed this matter on the Agenda for the August 27, 1979, Staff Conference and recommended that the Commission renew its request in its Memorandum of May 7,

1979, for all Regulated Telephone Companies and Telephone Membership Corporations to provide a 75% discount in conjunction with intrastate toll TTY messages made by or to deaf, severely hearing handicapped, and speech impaired persons. The Public Staff also recommended that the discount should be applied to total charges determined by the toll rate schedule rather than applied to actual conversation time.

The Commission concluded that the docket should be enlarged so that the Public Staff's recommendation for a 75% discount could be set for hearing as a general rulemaking with all Regulated Telephone Companies made parties of record.

On August 31, 1979, the Commission issued its Order Approving Tariff and Setting Investigation, Notice and Hearing to Increase Discount For Impaired Customers Using Teletypewriters which allowed the tariff, filed by Southern Bell on July 3, 1979, to become effective on September 1, 1979. That Order also instituted this general investigation and rule-making proceeding regarding the level of the discount, if any, which should be accorded to users of TTY devices. All telephone companies subject to Commission regulation were made parties to this rule-making proceeding. Hearings were set for November 29, 1979. Subsequently, the date of the hearing was changed to December 18, 1979, by Order of the Commission issued on September 12, 1979.

On October 29, 1979, the Public Staff gave Notice of Intervention in the docket. Subsequently, the Commission issued Orders allowing the Petitions to Intervene which had been timely filed by each of the following organizations: North Carolina Council for the Hearing Impaired, North Carolina Association of the Deaf, North Carolina Division of Vocational Rehabilitation Services, North Carolina Schools for the Deaf Parents Association, and Western North Carolina Telecommunications Committee for the Deaf.

The matter came on for public hearing at the time and place set by the Commission as mentioned above. Southern Bell and General Telephone Company of the Southeast (hereinafter General Telephone) were represented by counsel and presented witnesses who had prefiled testimony or comments. Carolina Telephone and Telegraph Company (hereinafter Carolina Telephone) filed Comments on November 16, 1979, and was represented by counsel, but did not present any evidence. Similarly, North State Telephone Company filed a Statement of Position on December 3, 1979, but did not present any evidence in the hearing. Except to the extent mentioned, none of the other telephone companies subject to Commission jurisdiction of the telephone membership corporations operating in the State participated in these proceedings. The Public Staff was represented by counsel and presented the testimony of its witness Hugh L. Gerringer. Counsel for the Public Staff also represented each of the Intervenors at the hearing.

THE TELEPHONE COMPANIES' POSITION AND EVIDENCE

Witness David R. Miller presented Southern Bell's position and evidence in this matter. Mr. Miller's testimony reflected four concerns that Southern Bell had with respect to the Public Staff, proposed discount on toll charges for TTY messages made by or to the deaf, severely hearing handicapped, and speech impaired subscribers. First, since intrastate toll charges have been established at levels which generate revenues that provide a contribution to enable basic exchange rates to be maintained at levels lower than would otherwise be possible, it was asserted that any intrastate toll revenues lost through a discount to special groups of customers would have to be made up by higher rates for basic exchange service. Secondly, it was asserted that such discount would constitute a precedent which could result in other special groups seeking "preferential" rates. Thirdly, it was pointed out that the existing intrastate toll charges are already designed with discounts available to all subscribers to encourage them to more efficiently utilize the toll network by calling during off-peak hours. Finally, it was asserted that the costs of the toll network are not sensitive to the amount of information transferred; and that, consequently, implementation of the Public Staff proposal would constitute a type of subsidy and should not be reflected in Southern Bell's charges.

Mr. Miller testified that assuming that some form of discount was appropriate for hearing or speech impaired subscribers, then the tariff which became effective September 1, 1979, providing a twenty-five percent (25%) discount, afforded relief to this group of subscribers with a minimum adverse economic impact on the general subscriber body. Further, Mr. Miller testified that such level of discount embodied in the intrastate toll rate schedule is considered by his Company to be the maximum which can be applied without greatly increasing the risk of pricing a large number of calls below their costs. Mr. Miller opined that he considered the existing 25% discount to be in line with the pricing approach to setting rates at cost (without contribution) for other services available to handicapped customers.

Mr. Miller described Southern Bell's long tradition of recognizing the communication needs of the physically handicapped such as offering volume control headsets and a set which converts sound into sight signals by a flashing light. Mr. Miller testified that Southern Bell had recently established a Customer Assistance Bureau in Charlotte that enables TTY subscribers throughout the State to call toll free to more easily conduct business with Southern Bell.

Under cross-examination, Mr. Miller agreed that on a cost basis, Southern Bell's intrastate toll revenues subsidized local service to some extent. He further agreed that it

takes longer for a deaf person to communicate information over a TTY machine than it takes for a person with normal hearing and speech to communicate the very same information by voice conversation over the telephone and that, consequently, the deaf person would incur a larger toll charge than would the nonhandicapped telephone user for communicating that same information. He, therefore, basically agreed with the proposition that deaf people using TTY machines, by paying larger intrastate toll charges, were in effect disproportionately subsidizing local service.

In response to questions regarding services which deaf people using TTY machines do not get the benefit of, such as making operator-assisted calls and having direct access to local information and repair services, witness Miller indicated that efforts were being made to provide a means of making available operator-assisted calling to TTY users. He further indicated that access to local information and repair services was available toll free through the Customer Assistance Bureau in Charlotte. However, unlike comparable services available to persons with normal hearing, that Bureau provides such services only during normal business hours during the week, and while such services were available to TTY users who know of the existence of such and how to avail themselves of them, the services take longer to provide and are not as readily available as such services are to non-TTY users.

Mr. Miller stated his opinion that the Public Staff's recommendation of a 75% discount would result in the toll calls subject to such discount to be priced below the cost of service with respect to such calls. On recross-examination, and on questions from the Bench, Mr. Miller stated that regarding the question of cost, he relied on most current results of an ongoing embedded direct cost analysis made initially by Southern Bell at the request of the Commission several years ago. He indicated that this analysis provided the relationship on a total basis of total revenues to total costs for various broad categories of service. Even though Mr. Miller presented some cost data, he admitted that he personally had not made any such cost studies or analyses, and that he was totally unfamiliar with the raw data underlying them, but rather that the cost information presented by him was based upon a study or studies done by others who were not identified and who were not available to testify or to be cross-examined.

Witness Marvin Prestridge presented General Telephone's position and evidence in this matter. Mr. Prestridge testified that General Telephone's position was supportive of attempts to help handicapped citizens to obtain an improved quality of life through the use of telecommunications services. At the time of the hearing General Telephone was participating in the 25% discount plan then in effect. The Company suggested that although that plan was a significant recognition of the less efficient means of teletypewritten transmission, if the Commission,

after investigation, deemed it appropriate to raise the discount rate, General Telephone would not oppose that ruling. Mr. Prestridge testified that even though the current means of applying the discount is efficient, effective, and administratively adequate under the present conditions, the Commission needs to set some identifiable criterian for eligibility for this service. Mr. Prestridge indicated that General Telephone would also advocate that the Commission allow companies to have some administrative flexibility in carrying out the discount plan in accordance with each company's billing procedures.

THE PUBLIC STAFF'S POSITION AND EVIDENCE

The Public Staff's position and evidence in this matter was presented through the testimony of its witness Hugh L. Gerringer. Mr. Gerringer listed two considerations in support of the Public Staff's position that a 75% discount be approved by the Commission to apply to all intrastate message toll charges for messages made on any day of the week or at any time of day by and to deaf, severely hearing handicapped, and speech impaired persons through the use of equipment which has the capability to transmit and receive typed information over the telephone network, such equipment being referred to as a teletypewriter (TTY) or a Telecommunications Device for the Deaf (TDD).

Mr. Gerringer testified that a message conveyed on a TTY takes longer to transmit than does the same one when conveyed by normal conversation and thus results in a proportionally higher charge for making a TTY intrastate message toll call regardless of the day of the week or the time of day the call is made. Mr. Gerringer testified that based on an average speaking rate of 165 words per minute for native speakers of American English and an average typing rate for TTY users of 20 words per minute and on the maximum TTY transmission rate of 60 words per minute, it could be expected that a person speaking would normally have an advantage in the range of 2.75 to 8.25 times over a person transmitting the same information via TTY. He further testified that based on that range, it was reasonable to conclude that a four-times factor would be an appropriate basis for computing a discount and, therefore, a discount of 75% would be required to produce equal charges for the same intrastate toll message which takes an average of four times as long to convey by TTY as it does by normal conversation.

Mr. Gerringer further testified that the revenue loss which would result from the implementation of the 75% discount proposed by the Public Staff would be de minimis. Mr. Gerringer testified that Southern Bell estimated a revenue loss of only $20,000 to $30,000 over a three-year period resulting from a 25% discount applicable to the approximately 500 TTY's in use throughout North Carolina for telephone communication by and to deaf, severely hearing handicapped, and speech impaired persons.

Mr. Gerringer, starting with Southern Bell's revenue loss estimate as a basis, estimated that the total aggregate annual revenue loss to all Regulated Telephone Companies resulting from a 75% discount would be only $45,000. For comparison, he next divided that amount by $260,000,000 -the total billed intrastate toll revenues by all telephone companies in North Carolina for the annual period ending August 1979. The result of only 0.017% clearly demonstrated the de minimis impact on revenue loss of applying the 75% discount.

In his testimony, Mr. Gerringer pointed out significant differences between the discount plan provided by Southern Bell's approved tariff and discount plan recommended by the Public Staff. Those differences were as follows:

1. Southern Bell's plan provided for only a 25% discount based on total charges while the Public Staff's recommended plan provided for a 75% discount based on total charges.

2. Southern Bell's plan provided for the discount only on station-to-station direct dial calls whereas the Public Staff's recommended plan provided for the discount on all types of calls.

3. Southern Bell's plan did not provide for the discount on night and weekend rated calls while the Public Staff's recommended plan provided for the discount on all rated calls regardless of the day of the week or time of day the calls are made.

4. The Public Staff and Southern Bell were in agreement regarding the administrative procedures governing the application of the discount. However, upon approval of the Commission, the language in the administrative procedures pertaining to the discount should be revised to reflect the application of the 75% discount to all intrastate toll TTY messages. Finally, Mr. Gerringer testified that, in his opinion, which under cross-examination he stated was formulated by his knowledge of rate-making practices and relative cost considerations for various services, no impermissible preference or discrimination would result from implementing the 75% discount plan proposed by the Public Staff.

THE INTERVENOR'S (PETITIONERS) POSITION AND EVIDENCE

The position and evidence of the Intervenors (Petitioners) was presented through the testimony of the following witnesses: Glenn T. Lloyd, Chairman of the Western North Carolina Telecommunications Committee for the Deaf; Hayward Wright, Sr., President of the North Carolina Association of the Deaf, Inc.; Representative Ruth E. Cook, Representative of the 15th House District and Chairman of the North Carolina Council for the Hearing Impaired; William

H. Peace, State Coordinator of the North Carolina Council for the Hearing Impaired; and Terry Kemp, Specialist for Communicative Disorders with the North Carolina Division of Vocational Rehabilitation Services. In addition, Paul Boynton testified as representative for the Intervenor, the North Carolina Schools for the Deaf Parents Association. Each of these witnesses and the organizations and agencies which they represented supported the Public Staff's position advocating a 75% discount.

Mr. Lloyd described the basic telephone communications devices, TTY's or TDD's, available for deaf people. Several of these devices were displayed at the hearing. He demonstrated the use of a reconditioned TTY to give a rough idea of the time difference between voice communication and typing communication. He stated that the primary source of TTY's for deaf persons was from the telephone companies or from subsidiaries such as Western Electric. However, the availability for this equipment, which is least expensive for deaf persons, continues to decrease. He testified that it requires a deaf person to have paid out an additional $250 to $1,000 just to acquire the mechanical capability to be able to use the telephone, and then he has to pay toll charges from four to eight times as high as charges for voice transmitted messages because of his deafness which is a physical disability that results in a communication handicap. Mr. Lloyd further stated that the basic monthly rental charge which a deaf person must pay for telephone service in North Carolina is the same as the charge which telephone subscribers with normal hearing pay, but that the deaf person receives less service, such as not having available local and long-distance directory assistance and operator-assisted long-distance telephone service and not having direct access to the local business office or to local repair service.

Mr. Wright testified regarding the financial problems encountered by deaf citizens in North Carolina in buying the necessary equipment plus paying the additional long-distance charges of using the telephone. He stated that deaf people have many frustrations in trying to use the telephone, even if they have the necessary equipment, since deaf people receive less service for the same rates a hearing person pays and that, consequently, the telephone rates paid by deaf people discriminate against them.

Representative Cook testified that hearing impaired citizens of North Carolina need the same community services and educational opportunities that all people need, but many times hearing impaired people do not obtain services from traditional outlets due to the frustration of communication. She stated that the 1977 session of the General Assembly recognized the need for legislation to address some of the needs of the hearing impaired by ratifying a bill that provided for the establishment of the North Carolina Council for the Hearing Impaired under the Department of Human Resources. One of the major purposes of the Council

is to advocate the provision of services to assist hearing impaired individuals, especially in the areas of public services, health care, and educational opportunities. Representative Cook stated that a more equitable rate structure should be considered a right of the hearing impaired rather than a privilege granted at the discretion of the telephone companies.

Mr. Peace testified that deafness is a severe disability and noted that deaf people as a group constitute one of the most educationally, socially, and economically disadvantaged segments of the American population. A general lack of communication or accessibility between the deaf and the hearing world is one of the major reasons for these disadvantages. In particular, deaf people often have had difficulty in accessing government agencies in seeking their help. The use of the TTY by deaf people is one of the major breakthroughs allowing them access to the hearing world; however, deaf peole are slow in their use of TTY's because of severe language limitations as a result of being deaf which makes it difficult for them to express themselves in a fluid manner and because relatively few deaf peole ever learn to use a typewriter.

Mr. Kemp testified that progress is being made in increasing the accessibility of the hearing impaired to private and government agencies through the use of TTY's with one impetus being that Federal legislation requires agencies that receive Federal funds to make their services accessible to all handicapped persons. However, deaf persons who make TTY toll calls to governmental agencies pay more than five times the cost which persons not thus handicapped pay to receive governmental information and services because use of TTY's requires a longer time than does normal speech communication over the telephone. Mr. Kemp stated that, in his opinion, deaf people should not have to pay any more or any less than other telephone users based on the time required for them to transmit and receive comparable content in their telephone communication. Under questioning, Mr. Kemp stated that neither he nor any of the deaf peole in attendance at the hearing that he talked to were aware of the toll free number that TTY users could call in Charlotte to avail themselves of Southern Bell's services during business hours only.

Mr. Boynton testified that communication by telephone is essential for parents of deaf children in North Carolina. There are three schools for the deaf regionally located in North Carolina and that, in most cases, telephone communication between parents and children attending schools are long-distance calls (toll). He described other communication situations requiring long-distance calls that occur regularly, such as deaf parents calling teachers or administrative officials, hearing parents calling deaf teachers or counselors regarding their children at these schools, parents calling deaf children who attend the several different colleges that deaf people can go to now,

and brothers and sisters calling each other with one or both being deaf.

THE PUBLIC WITNESSES' POSITION AND EVIDENCE

The position and evidence of the additional public witnesses who had not prefiled any testimony are summarized as follows:

1. James K. Seawell, President of the Triangle Registry of Interpretors for the Deaf (TRID), stated that TRID provides interpreting services to the deaf, including teletype interpreting, and that members of the TRID did vote on and totally support the Public Staff's proposal for a reduction.

2. David Eckstein, a Board Member of the North Carolina Registry of Interpretors for the Deaf, stated that his organization had voted unanimously to endorse the recommendations of the Public Staff for a 75% rate reduction for long-distance intrastate TTY calls.

3. Dale Rambeaut, President of the Raleigh Tar Heel Deaf Lions Club, stated that the members of the Raleigh Tar Heel Deaf Lions Club supported the 75% discount on in-state TTY toll calls.

4. Herb Stout, Chairman of Parents and Professions for Handicapped Children, stated support for the Public Staff's recommendation for a 75% rate break. He stated that since deafness is a low incidence handicap, setting a rate which would supposedly "benefit" a small minority would not be setting a precedent which was going to grow exponentially. He finally stated that, in his opinion, the cost to the utilities of going from a 25% to a 75% discount would be minor and was probably not as great as the cost to those utilities of participating in this case.

5. Lockhard F. Mace, Director of the Governor's Advocacy Council for Persons with Disabilities, stated support of the North Carolina Council for the Hearing Impaired's request for the 75% discount for TTY users in North Carolina and suggested that the Utilities Commission could set an excellent example and make a major leap forward in North Carolina by implementing the Public Staff's proposed rate discount. It would make the communications environment much more accessible to disabled people in North Carolina and would be a protection of their rights.

6. Lillian Wynn stated that she had been deaf since the age of two and had two children, one who was deaf and one who had normal hearing. She also stated that she used the TTY to communicate with deaf friends and relatives and different government agencies and requested that the Commission support the proposal from the Public Staff for the 75% rate reduction.

7. Mike Ernest, Director of the Program for Hearing Impaired Students at East Carolina University, provided two Petitions supporting the Public Staff's recommendation for a 75% reduction, one from the Eastern North Carolina Registry of the Deaf, the other from the East Carolina University Sign Language Club. He cited two examples of precedents in our society for equalizing services to handicapped populations; namely, the free postal service to blind persons because of the bulk of braille and tape materials transmitted by them, and the policy of telephone companies not charging blind customers for directory assistance. He also stated that the proposed reduction, if adopted, would have several salutory effects, including allowing TTY messages to be billed at a fair rate, and assisting deaf people in their communication need, such as accessing emergency warning systems and broadening the range of social activities available to them.

Upon consideration of all of the evidence presented in this proceeding as summarized in the preceding sections and based upon the entire record of this proceeding, the Commission makes the following

FINDINGS OF FACT

1. All Regulated Telephone Companies were properly made parties to this rule-making proceeding.

2. The intrastate toll rate schedule, including any specified discounts embodied or to be embodied in that schedule, is subject to regulation by this Commission whose policy has been and is that such intrastate toll rate schedule be one and the same for all telephone companies subject to regulation by this Commission to be applied uniformly throughout North Carolina.

3. On a cost basis, the intrastate toll rates, or, more precisely, the revenues which they generate, provide a contribution which helps offset the cost of basic local service, all of which results in the basic local telephone service rates being lower than would be possible but for subsidization from intrastate toll revenues.

4. The rates paid by subscribers of telephone companies regulated by this Commission for basic local service, in addition to providing for access to local and direct dial long-distance (DDD toll) calling also provide for access to, among other things, local directory assistance, long-distance directory assistance, the local telephone company business office, local telephone company repair service, and access to operator-assisted long-distance telephone service.

5. The basic telecommunications means available to deaf, severely hearing handicapped, and speech impaired persons and to those communicating with them telephonically is through the use of equipment which has the capability to

transmit and receive typed information over the telephone network which equipment is commonly referred to as either a teletypewriter (TTY) or a Telecommunications Device for the Deaf (TDD).

6. There are only approximately 500 TTY's in use throughout North Carolina for telephone communications by and to deaf, severely hearing handicapped, and speech impaired persons.

7. The maximum (inherent machine capability) transmission rate of a TTY is 60 words per minute, while the average speaking rate for native speakers of American English is approximately 165 words per minute; and the average typing rate for hearing and speech impaired persons is approximately 20 words per minute.

8. A normal hearing or normal speaking person using a telephone to communicate a given message vocally can do so from 2.75 to 8.25 times more quickly than can a deaf, severely hearing impaired, or speaking impaired person using a TTY to communicate the same message.

9. A message transmitted long distance (toll) over a TTY takes approximately on the average at least four times longer than that same one when conveyed by normal long-distance telephone conversation and such TTY toll transmission results in a proportionally high toll charge absent some form of equalizing discount and that this is true regardless of the time of day or the day of the week such calls are made.

10. Deaf and severely hearing and speech impaired persons, using TTY's to make intrastate toll calls and those using TTY's to communicate with such persons, make the disproportionate contribution to the cost of basic local telephone service by virtue of such TTY users paying proportionally higher toll charges to communicate a given message than do telephone toll callers.

11. Despite such greater contribution to the cost of basic local service by hearing and speech impaired persons (and those communicating with them) resulting from intrastate toll revenues paid by such persons, they do not have available the same full service that is available to normal hearing and speaking persons even though both groups pay the same basic local rates.

12. Telephone ratemaking is an inexact art with many rates for various telephone services based upon some concept of the value of the service rather than upon the exact costs of providing these services.

13. The annual revenue loss impact of applying a 50% discount during all hours of the week to direct distance dialed calls will be less than $45,000 and its implementation will not have any significant efffect upon

the financial position of the companies providing service in North Carolina or upon their ratepayers.

14. The administrative procedures now in effect governing the application of the 25% discount on a total charge basis are basically agreed to by all parties which presented evidence and are sufficient to establish eligibility requirements and to guard against potential abuse.

15. The Commission takes judicial notice of Chapter 168 of the North Carolina Statutes, Sections 168-1 through 168-14, dealing with the rights of handicapped people and setting forth public policy of the State as it relates to them.

CONCLUSIONS

Based on the Commission's authority to regulate intrastate toll rates, on the inequity of such present rates to the deaf, severely hearing handicapped, and speech impaired TTY users as demonstrated by the evidence and the Findings of Fact in this proceeding, and taking note of the public policy of this State as set forth in Chapter 168, Sections 168-1 through 168-14, of the North Carolina General Statutes; the Commission, hereby, concludes the following:

1. That the tariff providing a 25% discount that became effective September 1, 1979, is deficient, does not constitute a fair and reasonable rate, and should be revised as hereinafter provided in this Order.

2. That a flat 50% discount from full charges on all direct distance dialed intrastate message toll charges for TTY messages made by and to deaf, severely hearing handicapped, and speech impaired persons regardless of the time of day or the day of the week the messages are made is a necessary and appropriate rate-making device for correcting an aspect of the presently existing rate structure which, in practice, unfairly discriminates against hearing and speech impaired TTY users and those using TTY machines in order to communicate with such persons.

3. That the approval of the 50% discount plan approved herein results in fair and reasonable rates and does not constitute or result in an impermissible preference or discrimination.

4. That future improvements made by the regulated telephone industry in providing full telephone service to hearing and speech impaired persons should be brought to their attention as rapidly as such improvements are available.

5. That the administrative procedures now in effect governing the application of the 25% discount should be

modified accordingly to reflect application of a 50% discount.

IT IS, THEREFORE, ORDERED as follows:

1. Southern Bell shall file a tariff in its Intrastate Long Distance Message Telecommunications Service Tariff Section A18.3.1f with an effective date of April 1, 1980, and with the following language to replace the tariff that became effective September 1, 1979, and to be concurred in by all other telephone companies (and hopefully also by the nonregulated Telephone Membership Corporations) in North Carolina which are subject to regulation by this Commission.

> "A telephone toll message which is communicated using a teletypewriter (TTY) by or to properly certified hearing or speech impaired persons or properly certified business establishments or individuals equipped with TTY's for communicating with hearing or speech impaired persons will receive, upon request, credit on the charges for all intrastate toll calls placed between TTY's. The credit to be given on a subsequent bill for such calls placed between TTY's will be the equivalent of providing a 50% discount from full direct distance dialed charges on all direct distance dialed calls any time of the day or week. The effect of this tariff is to extend the 50% weekend and after 11:00 p.m. night rate to all hours of the week for TTY calls."

2. The administrative procedures attached as Appendix A to this Order shall be adhered to for implementing and applying the 50% discount plan approved herein.

3. The Regulated Telephone Companies in North Carolina shall report to the Commission and to the Specialist for Communicative Disorders with the North Carolina Division of Vocational Rehabilitation Services, all future improvements made in providing full telephone service to hearing and speech impaired persons as rapidly as such improvements are available.

4. The Regulated Telephone Companies shall make appropriate efforts to bring to the attention of the hearing and speech impaired TTY users throughout North Carolina and to those using TTY's to communicate with such persons the availability of and the certification requirements for receiving the 50% discount as specified in the tariff to be filed by Southern Bell with an effective date of April 1, 1980, and shall report to the Commission on or before June 1, 1980, the results of such efforts.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of March 1980.

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

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

DOCKET NO. P-100, SUB 49

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition to Reduce Intrastate Toll Rates for Teletypewriter Messages Made by Deaf, Severely Hearing Handicapped, and Speech Impaired Citizens	)))))	ORDER ON RECONSIDERATION CLARIFYING AND AMENDING EXTENT OF 50% DISCOUNT ALLOWED BY HEARING PANEL

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 15, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate, John W. Winters, A. Hartwell Campbell, and Douglas P. Leary; Chairman Robert K. Koger and Commissioner Leigh H. Hammond participated through reading of the record

APPEARANCES:

On Behalf of Southern Bell Telephone and Telegraph Company:

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

Fred A. Walters, Attorney, Southern Bell Telephone and Telegraph Company, 1245 Hurt Building, Atlanta, Georgia 30303

On Behalf of Carolina Telephone and Telegraph Company:

Dwight W. Allen, Carolina Telephone and Telegraph Company, 122 East Saint James Street, Tarboro, North Carolina 27886

On Behalf of The Using and Consuming Public; Public Staff:

G. Clark Crampton, Staff Attorney - Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On March 24, 1980, a Panel of the Commission issued an Order entitled "Order Granting Reduction" which approved a partial reduction in rates on long-distance telephone toll charges for messages transmitted on teletypewriters (TTY's) by and to deaf and severely hearing and speech impaired citizens. This Order approved for intrastate toll calls placed between TTY's a

50% discount from full direct distance dialed charges on all direct distance dialed calls any time of the day or week. The Panel's Order did not approve any discount for TTY users from night and weekend rates. The Panel's Order effectively extended the regular 50% weekend and after 11:00 p.m. night rate to all hours of the week for TTY calls.

On March 31, 1980, the Public Staff filed a "Motion For Reconsideration" on behalf of itself, the using and consuming public, and several intervenors and requested the Commission to reconsider its Order and approved a 75% discount (rather than a 50% discount) to be applied to all billed charges (rather than to daytime rates only). On April 11, 1980, the Commission set the Motion For Reconsideration for oral argument on May 15, 1980. Southern Bell Telephone and Telegraph Company (Southern Bell or Bell), Carolina Telephone and Telegraph Company (Carolina Telephone), and General Telephone Company of the Southeast each filed a Response to the Public Staff's Motion For Reconsideration.

The matter came on for hearing as scheduled and the Commission heard oral argument of counsel on behalf of the Public Staff, Southern Bell and Carolina Telephone.

Having considered the Motion For Reconsideration, the Responses filed thereto, argument of counsel, and the entire record in this docket, the full Commission concludes that it should reconsider and modify the Panel's "Order Granting Reduction" issued on March 24, 1980, to approve a 50% discount on all billed charges for intrastate toll messages placed between TTY's. The Panel's Order approved a flat 50% discount from the full daytime rate on all direct distance dialed calls placed between TTY machines regardless of time of day, and thereby failed to allow any discount on night or weekend rates for TTY users.

In so modifying the Panel's decision, the Commission expressly adopts and affirms each of the Findings of Fact (1 - 15) set forth in the March 24, 1980, Order, and also adopts and affirms each of the Conclusions (1 - 5) found on pages 19 and 20 of that Order. These Findings and Conclusions, which support the Panel's authorization of a 50% discount from daytime rates for TTY users, also support the full Commission's "Order on Reconsideration Clarifying and Amending Extent of 50% Discount Allowed by Hearing Panel," which approves a 50% discount on all billed charges. The Conclusions expressly find that a flat 50% discount from full charges is reasonable. The full Commission agrees with the Panel's findings that in the absence of an appropriate discount, TTY users are subsidizing basic local service to a greater extent than are other toll users. (All toll users subsidize local services to some extent.) This inequity results from the fact that TTY messages take approximately four times longer to transmit than do voice messages.

The Commission concludes that a flat 50% discount from all billed charges between TTY's is more appropriate than the discount approved by the Panel in that it recognizes and maintains historical rate differentials and gives TTY users an incentive to call at off-peak times, i.e., on nights and weekends. Such rate differentials tend to encourage off-peak usage and lessen the need for expensive new plant, thereby benefiting all customers. Furthermore, a 50% discount from all billed charges between TTY's, although more extensive than the discount approved by the Panel, remains appropriate and well within a range of reasonable and appropriate discounts that could be justified for the TTY rate. This conclusion is supported by the finding that a normal person using a telephone to communicate a given message vocally can do so from 2.75 to 8.25 times more quickly than a handicapped person using a TTY. (Finding No. 8, in March 24, 1980, "Order Granting Reduction.")

During the hearings, Southern Bell took the position that the discounting of TTY toll calls substantially greater than 25% (the discount reflected in their tariff filing effective September 1979) would cause TTY toll calls to be priced below cost. In order to support this argument, Bell made use of the results of embedded direct cost analysis studies which presented relationships among costs, revenues and toll calls on a total aggregate basis. The results showed that for toll, "for every one dollar of cost expended in toll calls that $1.57 in revenue generates." (Testimony of David Miller, Jr., TR., p. 32) Southern Bell concluded that if a 75% discount is applied to these figures, the revenue generated from $1.00 of cost is $.039 which is "clearly, tremendously below cost."

The Commission is not persuaded by Southern Bell's evidence or arguments in this regard. Firstly, the initial cost studies relied upon by Southern Bell, although conducted at the Commission's request, and ongoing since that time (according to Southern Bell), were never thoroughly reviewed by the Commission Staff nor approved by this Commission. The "ongoing" study results alluded to by witness Miller have not been submitted to the Commission for review and audit, and he admits they are imprecise. Mr. Miller admitted that he personally had not made any such cost studies or analysis, and that the cost information presented by him was based upon a study or studies done by others who were not available to testify.

Secondly, even if Southern Bell's cost study is assumed to be valid, it has been applied in a misleading and illogical manner by Southern Bell. The above-mentioned figures of $1.57, $1.00, and $.039 testified to by witness Miller are merely aggregate figures obtained by dividing total revenues and total expenses, by the total number of toll calls. It is erroneous to conclude from such aggregate data that a particular type of call (a discounted TTY call) is priced below cost. Aggregate data, due to an aggregation

and averaging effect, gives no meaningful information regarding a revenue-cost relationship for any one type of toll message. It is misleading to conclude that by discounting only TTY calls by 75% that the aggregate revenue result of $1.57 (as testified to by Miller) will drop to $.039.

In order to determine the revenue cost relationship for discounted TTY calls, or for any other type call, individual, and not aggregate, cost studies would have to be made. Furthermore, since toll revenues greatly subsidize local basic service, those detailed cost studies should include the average excess amounts that TTY users have to pay because of the length of time their toll calls require compared to those of normal users.

Telephone rates have historically been set at levels which give substantial weight to value of service, e.g., business rates are set at about twice the residential rates. The establishing of a 50% discount for TTY users corrects an error in current rate-making policies.

Finally, the statewide annual revenue impact of less than $45,000 is de minimis and will not have any significant effect upon the companies providing service in North Carolina.

For these reasons the Commission concludes that the 50% discount from full direct distance dialed charges approved by the Panel is inadequate, and should be increased to a 50% discount on all billed charges.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell file a tariff in its Intrastate Long Distance Message Telecommunications Service Tariff Section A18.31G. with an effective date of July 1, 1980, and with the following language to replace the tariff that became effective April 1, 1980, and to be concurred in by all other telephone companies in North Carolina which are subject to regulation by this Commission:

> "A telephone toll message which is communicated using a telecommunications device for the deaf (TDD) by or to properly certified hearing or speech impaired persons or properly certified business establishments or individuals equipped with TDD's for communicating with hearing or speech impaired persons will receive, upon request, credit on charges for all intrastate toll calls placed between TDD's. The credit to be given on a subsequent bill for such calls placed between TDD's will be 50% of the billed charges."

2. The administrative procedures attached as Appendix A to this Order shall be adhered to for implementing and applying the 50% discount plan approved herein.

3. That except as modified herein the Panel Order of March 24, 1980, in this docket remains in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1980.

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

COMMISSIONER TATE DISSENTS

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

COMMISSIONER TATE, DISSENTING: I dissent from the majority opinion because I can find no regulatory principle nor any statutory authority that would provide for the Commission to allow special rates to persons with hearing disabilities. It is sound regulatory practice, as well as simple equity, to charge customers the cost of serving them. As Justice Lake said in Utilities Commission vs. Edmisten, 291 NC 451 at p. 468, "The basic theory of utility ratemaking, pursuant to G.S. 62-133, is that rates should be fixed at a level which will recover the cost of the service to which the rate is applied, plus a fair return to the utility." (Emphasis supplied) While in some cases, it has been deemed advisable to subsidize one group of ratepayers by increasing the cost to other customers, this practice should be kept to a minimum and should be scrutinized with great care. Over the years, it has been a practice of this Commission to charge more than the cost for long-distance calls. This can be justified in that long-distance calls are a luxury and the excess revenue is used in order to ameliorate the cost for basic telephone service, a necessity. It should be noted that all subscribers to basic telephone service benefit. In this docket, however, those customers who are to be subsidized are the hearing-impaired and their charges are to be less than cost, requiring that all other customers make up for the lack of revenue. I had agreed in the earlier panel decision in this docket to provide those users of the TTY with a rate which at least covered the cost of serving them, although it did remove that portion of the long-distance charges that exceeded the cost. The Panel Order simply said that we would remove all subsidy and allow TTY users to cover exactly the cost of serving them with the subsidization to universal telephone rates removed. In this decision of the Full Commission, however, the majority has agreed to allow a small group of customers to receive evening services at 25% of the regular daytime rate and according to the evidence, far below what it costs the telephone companies to serve them.

The Commission has decided that a certain group of customers are deserving and should, therefore, be subsidized

by another group of customers. Again, it is sound regulatory practice, and this Commission has so held, that utilities should not make charitable contributions and have these contributions paid for by the ratepayers. What the Commission has done in this instance is to have the Commission decide what is an acceptable charitable contribution and order the other ratepayers to pay for it. I do not believe the Commission has the luxury of choosing which utility customers should be the beneficiaries of its charitable motivations, even though those beneficiaries are needy or deserving. Quite simply, the Commission is exercising the power to tax one group to benefit another and the Legislature has not yet deemed it wise to empower us with the power to tax. Justice Lake said in Utilities Commission vs. Telephone Company 281 NC 318 p. 336, "In fixing rates to be charged by a public utility, the Commission is exercising a function of the legislative branch of the government.... The Commission, however, does not have the full power of the Legislature but only that portion conferred upon it in G.S. Chapter 62. In fixing the rates to be charged by a public utility for its service, the Commission must, therefore, comply with the requirements of that chapter...."

In fact, G.S. 62-2 states: "It is hereby declared to be the policy of the State of North Carolina:...(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages,..." (Emphasis supplied) Additionally, G.S. 62-140(a) states that: "No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage." (Emphasis supplied) However admirable its motivations, the male majority has succumbed to the old temptation to allow its heart to rule its head. While sympathizing with this temptation, I cannot succumb to it and remind the majority that we are a court of limited jurisdiction and must restrain ourselves from exceeding the authority granted to us by statute.

As stated in Utilities Commission vs. Mead Corporation, 238 N.C. 451 at p. 462, "The obligation of a public service corporation to serve impartially and without unjust discrimination is fundamental.... There must be substantial differences in service or conditions to justify differences in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service," and at page 465, "Rates may be fixed in view of dissimilarities in conditions of service, but there must be some reasonable proportion between the variance in the conditions and variances in the charges." In the instant case, the only substantial differences between the services provided to the hearing-impaired and all other customers are the fact that TTY users must use a machine in order to transmit messages and the uncontested fact that it takes a user of the TTY four times longer to transmit the same

message than when conveyed by voice. However, it is to me a distortion of the phrase "substantial differences in service or conditions" to apply this term to the user rather than to the provider of the utility service. This in effect sets rates based upon "value of service" rather than the accepted rate technique of setting charges based upon "cost of service." Value of service is highly subjective and unacceptable as a ratemaking tool simply because there is no way to ascertain or measure the imputed value. The majority asserts that the revenue impact of its decision is de minimis but I remind them of the legal proverb that "Hard cases make bad law." As Justice Bleckley stated: "The hardship of the particular case is no reason for melting down the law. For the sake of fixedness and uniformity, law must be treated as a solid, not as fluid. It must have, and always retain, a certain degree of hardness, to keep its outlines firm and constant. Water changes shape with every vessel into which it is poured; and a liquid law would vary with the mental conformation of judges, and become a synonym for vagueness and instability." Southern Star Lightning Rod Co. v. Duvall, 64 Ga. 262, 268 (1879).

Sarah Lindsay Tate, Commissioner

DOCKET NO. E-2, SUB 381

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Mr. L.L. Wright, III, Complainant	)
	) RECOMMENDED ORDER
vs.	) REQUIRING RELOCATION OF
	) FACILITIES AND CLOSING
Carolina Power & Light Company,	) GAP IN DISTRIBUTION LINE
Respondent	)

HEARD IN: Commission Hearing Room 217, Dobbs Building, Raleigh, North Carolina, on February 28, 1980

BEFORE: Allen L. Clapp, Hearing Examiner

APPEARANCES:

For the Respondent:

Andrew McDaniel, Attorney at Law, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

For the Public Staff:

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 and L.L. Wright, III

CLAPP, HEARING EXAMINER: On December 10, 1979, Mr. L.L. (Sandy) Wright, III filed a complaint against Carolina Power & Light Company (CP&L) in the form of a letter dated December 7, 1979, addressed to Dr. Robert Fischbach, Executive Director of the Public Staff. Mr. Wright's complaint relates to a controversy between him and CP&L regarding the method and route by means of which electrical service was to be provided to his new residence. The gravamen of Mr. Wright's complaint is his contention that CP&L misled him with respect to the alternative methods which it had indicated were available by which the subject property could be provided electrical service and his dissatisfaction with the method and conditions of providing such service which CP&L was proposing at the time the complaint was filed. The method being proposed by CP&L, according to Mr. Wright, would entail the placement of a utility pole and overhead lines so as to harm the aesthetics of his residence and neighborhood and would entail the cutting of certain trees contrary to Mr. Wright's wishes. Mr. Wright requested certain restrictions on the use of a pole he alleges to be located on his property to provide him electric service. The restrictions would prevent damage to certain trees alleged to be on his property.

On December 13, 1979, the Commission issued its Order serving the subject complaint on Carolina Power & Light, Respondent. That order directed the Respondent to satisfy the demands of the Complainant or to file an answer thereto within twenty (20) days after receipt of the order. The Respondent was further directed to refrain from damaging the trees in question located on the Complainant's property or on or near the state's right-of-way until such time as the Commission issued an Order resolving the subject complaint.

Carolina Power & Light filed its answer with the Commission on January 2, 1980. The response was served on the Complainant in the Commission's Notice to Complainant of Answer Filed by Respondent dated January 8, 1980.

On January 31, 1980, the Complainant filed a letter with the Commission which responded to the answer filed by CP&L. In that letter, the Complainant stated that Carolina Power & Light was granted a right-of-way on December 13, 1979, in order that electric service would be supplied to his new residence. Complainant further pointed out that the right-of-way was granted "under protest" as evidenced by his letter dated December 7, 1979, which had been filed December 10, 1979, as a formal complaint. Mr. Wright's letter indicated that he was not satisfied with the Respondent's answer and suggested that he be afforded relief in one of the following ways:

1. locate the primary line on the opposite side of the road from his residence with the Complainant paying the price differential to connect under the road;

2. locate the pole on the property line thereby reducing the obvious eyesore;

3. provide service underground from Lot #32's service at the original stated cost; and

4. have Carolina Power & Light refrain from extending additional lines from pole C to pole A until one of the first three conditions could be met.

On February 5, 1980, the Commission issued its order setting the subject complaint for hearing on Thursday, February 28, 1980, at 11:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

On February 18, 1980, the Public Staff - North Carolina Utilities Commission filed Notice of Intervention.

The hearing in this matter was held at the time and place specified in the Commission's Order of February 5th. Testifying for the Complainant were L.L. Wright, III, and Ms. Carol Kimball Bunn. Gregory A. Cagle, Maxton Radford, and Randy Peebles, employees of CP&L, testified for the

Respondent. Additionally, Respondent called Ms. Bunn to testify.

The transcript was mailed on May 22, 1980, and Carolina Power & Light Company and the Public Staff filed proposed orders on June 16 and June 27, 1980, respectively.

Based upon the testimony and evidence adduced at the hearing and the entire record of this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That L.L. (Sandy) Wright, III, and his wife, Linda S. Wright, are the owners of Lot 33, Section A, Porter's Neck Plantation, Futch Creek Road (N.C.S.R. 1491), Wilmington, North Carolina, as shown recorded in Map Book 5 at Page 122, New Hanover Registry, said property being hereinafter referred to as "Lot 33."

2. During the latter part of 1979 Mr. Wright caused a new home for himself and his family to be built on Lot 33, in which home they have resided since approximately December 28, 1979.

3. That the other homes in the immediate area of Lot 33 are served by CP&L with underground electric service and that this was the case at the time Mr. Wright was planning and building his new home on his Lot 33.

4. That Mr. Wright met with a representative of CP&L in August 1979, prior to beginning construction on his new home to be located on Lot 33, and submitted to that representative a drawing of his Lot 33 showing the location of the (proposed) house on it and indicating that Mr. Wright desired underground electrical service to his new home.

5. That in August of 1979 the architectural plans for Mr. Wright's new home to be constructed on Lot 33 were shown to a CP&L representative, which plans showed that it was contemplated that the electrical service connection to the house would be at the eastern end of the house.

6. That, subsequent to the meeting between Mr. Wright and the representative of CP&L described in Finding of Fact No. 4, and subsequent to Mr. Wright showing a CP&L representative the architectural plans for his house as described in Finding of Fact No. 5, construction on Mr. Wright's house proceeded on the assumption that electrical service to it would be provided underground as Mr. Wright had requested and that such service connection would be to the eastern side of the house.

7. That in the fall of 1979, a few days prior to October 4, 1979, after construction on Mr. Wright's new house had already begun, Mr. Wright was advised by a representative of CP&L that it would not be possible for

CP&L to provide underground service to his new house on Lot 33 in the manner which had been originally contemplated and requested by Mr. Wright. By this time, much of the branch circuit wiring was in place for service on the eastern end of the house.

8. Shortly prior to October 4, 1979, Mr. Wright met with five representatives of CP&L in order to discuss the problems which had arisen with respect to how his new house under construction on Lot 33 was to be provided electric service and the alternative methods which were available.

9. In the course of the meeting between Mr. Wright and the CP&L representatives described in Finding of Fact No. 8 three possible methods of serving Lot 33 were discussed. The first alternative described by the CP&L representatives was to serve Mr. Wright's new home by placing a utility pole on the lot line between Mr. Wright's Lot 33 and Mr. Jeffreys' Lot 32, the lot located immediately to the east of Lot 33. Mr. Wright rejected that option. The CP&L representative then described two additional options by means of which Mr. Wright could obtain electrical service to his new home on Lot 33. Those options were as follows: (1) to provide service from a utility pole located to the east of Lot 33 on the opposite side of Futch Creek Road (Pole A) by going from pole A under Futch Creek Road, going underground across the front of Lot 32 (Jeffreys) and going underground to the east side of the Wright residence on Lot 33 at an estimated cost of $1,084, or (2) to provide service from a utility pole located to the west of Lot 33 on the opposite side of Futch Creek Road (Pole B) to a utility pole (Pole C) to be placed on the property line between Lot 33 and Lot 34 and then go underground from Pole C to the west side of the Wright residence on Lot 33 at an estimated charge to the Complainant of $149. No continuation of this line across the front of Lot 33 to Pole A was shown or discussed at this time.

10. With respect to the option offered by CP&L whereby electric service was to be provided from a utility pole to be located on the property line between Lots 33 (Wright) and 34 (Turner) and from there to the western side of Mr. Wright's house at an estimated cost of $149, a CP&L representative represented to Mr. Wright that the right-of-way required from the owner of Lot 34 in order to locate a utility pole on the property line had been or could be obtained by CP&L. At some point in this process, CP&L placed a stake on the Lot 33/34 property line at the proposed pole location.

11. On or about October 4, 1979, Mr. Wright elected and accepted the option proposed by CP&L whereby electrical service was to be provided to his house on Lot 33 by means of underground service coming from a utility pole to be placed on the property line between Lots 33 and 34 at an estimated charge of $149. He made this decision because this was the cheaper option, even though it necessitated

additional expense to have the house rewired for western side service, and because the location of the utility pole on the property line between Lots 33 and 34 would not be unsightly or entail the undesired cutting of trees.

12. As a result of Mr. Wright having elected the $149 plus rewiring cost option proposed by CP&L, changes were made in the wiring of his house on Lot 33 then under construction in order that the electric service connection might be made at the western side of the house rather than the eastern side of the house as originally contemplated.

13. In late October of 1979, after Mr. Wright had elected the $149 plus rewiring cost option, as described in Finding of Fact No. 11, and after changes had been made in the wiring of his house under construction to accommodate a service connection on the western side, a representative of CP&L advised Mr. Wright that it was having a problem obtaining the right-of-way necessary to locate a utility pole on the property line between Lots 33 and 34 and in fact CP&L was unable to obtain the required permission from the owner of Lot 34 to locate a utility pole on the property line.

14. Mr. Wright learned, subsequent to his election of the $149 plus rewiring cost option described in Finding of Fact No. 11, that CP&L desired and anticipated not only to serve his property from the proposed new Pole C but also to connect a line from Pole C to Pole A located to the east of his property on the opposite side of Futch Creek Road.

15. Due to the inability of CP&L to obtain permission of the owner of Lot 34 to locate a utility pole on the property line between Lots 34 and 33, Mr. Wright ultimately agreed as described in Finding of Fact No. 16 to allow CP&L to place a utility pole on his Lot 33 approximately 8 feet from the common property line between Lots 33 and 34.

16. On November 26, 1979, Mr. Wright and his wife executed and tendered to CP&L an easement to permit the location of a utility pole on their lot 33 approximately 8 feet from the common line with Lot 34, but prohibiting CP&L from running a line from such utility pole to Pole A, a pole located to the east of Lot 33 on the opposite side of Futch Creek Road, which tendered easement CP&L refused to accept.

17. Mr. Wright would have accepted and elected the underground service option estimated to cost $1,084, described in Finding of Fact No. 9, if he had known that the $149 option, as originally proposed and described to him, would not prove to be feasible but rather would entail placing a utility pole 8 feet into his property, rather than on his common line with Lot 34 and would or might entail an overhead line from Pole C to Pole A across the road to the east of Lot 32.

18. As a precondition to obtaining electric service to his house on Lot 33, Mr. Wright and wife were, in effect, forced to sign a CP&L easement agreement which did not contain restrictions on CP&L's right to run a line from the utility pole to be located on Lot 33 across Futch Creek Road to Pole A. That agreement was executed by Mr. and Mrs. Wright under protest.

19. CP&L has experienced reliability problems with the cross-country line serving Pole B (and now Pole C as well).

20. Connecting Pole A and Pole C with an electric line would close a gap in the distribution system of CP&L for the Porters Neck Plantation area, would increase the reliability of service to customers in the area, and would reduce problems of accessibility and cost of maintaining the electric system.

21. Connecting the electric line from Pole C presently located on Mr. Wright's property (Lot 33) with Pole A located across Futch Creek Road to the east of Lot 33, as CP&L proposes to do, would entail severely trimming back or possibly cutting down at least one 20-inch pine tree contrary to Mr. Wright's desires. The evidence in this record regarding whether that 20-inch pine tree is on Mr. Wright's property (Lot 33) or on the State Highway Department's right-of-way is inconclusive.

22. The completion of such gap and the benefits which flow from that would not be possible if Mr. Wright had elected the option proposed by CP&L whereby his property (Lot 33) would have been served by underground service from the east at an estimated cost of $1,084.

23. CP&L is responsible for providing adequate, reliable, and economical electric service to the citizens in its service area.

EVIDENCE AND CONCLUSIONS

The evidence for the above findings is found in the Complaint, the Answer, and exhibits therto, and the testimony of Mr. Wright, Mr. Cagle, Mr. Radford, and Mr. Peebles.

The review of the testimony in this docket, the exhibits introduced, and the pleadings, and the findings of fact made are considered in the light of the following rules and regulations of the Commission and the Company and General Statute:

A. From the Rules of the North Carolina Utilities Commission:

> "Rule R8-22. Utility may withhold service until customer complies with rules and regulations. - Any utility may decline to serve a customer or

prospective customer until he has complied with the State and municipal regulations on electric service, and the rules and regulations of the utility furnishing the service, provided such rules and regulations have been approved by the Commission."

B. From the Service Regulations filed by Carolina Power & Light Company with the Commission and approved by the Commission as follows:

"2. CONDITIONS OF SERVICE

(a) Company is not obligated to supply electricity to customer unless and until: (1) Company's form of Application for Supply of Electricity is executed by Customer and accepted by Company; (2) in cases where it is necessary to cross private property to deliver electricity to Customer, Customer conveys or causes to be conveyed to Company, without cost to Company, a right-of-way easement, satisfactory to Company, across such private property for the construction, maintenance, and operation of Company's lines and facilities, necessary to the delivery of electricity by Company to Customer: provided, however, in the absence of a formal conveyance, Company, nevertheless, shall be vested with an easement over Customer's premises authorizing it to do all things necessary to the construction, maintenance, and operation of its lines and facilities for such purposes;
(3) . . .

"(b) If Company installs a substation or other facilities for service to Customer, any available capacity of such facility not needed to supply Customer may be used by Company to supply others."

C. From the North Carolina General Statutes as follows:

"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 general welfare as expressed in the State;

(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 set forth in this Chapter..."

"62-180. Use of railroads and public highways. Any person operating electric power, telegraph or telephone lines, or authorized by law to establish such lines, has the right to construct, maintain and operate such lines along any railroad or public highway, but such lines shall be so constructed and maintained as not to obstruct or hinder unreasonably the usual travel on such railroad or highway."

This case comes to the Commission as a result of a combination of (1) the reversal of a verbal right-of-way decision by an adjoining property owner and (2) CP&L's definite offer to Complainant of a service alternative which CP&L did not have written permission to offer. The results were exacerbated by the twenty-day delay of CP&L, albeit twenty days in which CP&L was attempting to obtain the necessary right-of-way agreements, before CP&L informed the

Complainant that the alternate that he had accepted was unavailable. During this period, the Complainant's house was rewired at his expense to be fed from the west side. The Complainant was forced by circumstances to take what, to him, was an undesired form of service and appealed to the Commission.

At issue in this case are the responsibilities of the utility toward its customer and the performance of the utility in carrying out those responsibilities.

It is clear that utilities cannot build indiscriminately; their construction must serve a public purpose. Indeed, a utility's reason for existence is to provide to the citizens of North Carolina a set of services which they have deemed desirable and best provided in a coordinated, franchised manner. That provision of services is required to be made efficiently and economically. The level of service is required to be adequate and reliable.

If a utility is to be able to meet its requirements concerning adequacy, reliability, efficiency and economy of service, it must plan ahead. It must be recognized that the level of each of these terms plays a role in the level which can reasonably be achieved in the others and that there must be a reasonable balance between the service provided to an individual location and that provided to ratepayers as a group. Density of customers and terrain features often affect greatly the level of reliability which can be provided economically. It is, therefore, encumbent upon a utility to plan for the growth on its system to ensure that service will be provided in a manner which balances its required goals in an optimum manner.

In this case distribution service to the area in general is provided by one circuit. That circuit splits with the western leg (Leg B) going cross-country, to serve a farming operation and some housing on Futch Creek Road beyond, and the eastern leg (Leg A) following the roadway parallel to the Inland Waterway and turning along Futch Creek Road and approaching the eastern end of Leg B. As the area had become more developed along Futch Creek Road with new residences, the legs had been extended to the point that they were two spans apart.

At this point, the Complainant requested underground service to a new home to be located in the "gap" area in the distribution line on Futch Creek Road. Adjoining neighbors had underground service and he wanted to continue the aesthetic benefits of that type service in the neighborhood. CP&L presented the Complainant with two choices. One was for CP&L to run a long underground service system from an existing Pole A (across the road and one lot east) at a charge of $1,084. The other was for CP&L to place a pole (Pole C) on the Complainant's western lot line, pull primary to it from Pole B (two lots to the west and across the road) and run an underground service to his house at a

charge of $149. In the latter case, the Complainant would have to rewire the house. Since most of the trees in this area were on lot lines, the latter pole location would be protected, would be unobtrusive, and would not require cutting trees on the Complainant's lot. This offer of CP&L was accepted by the Complainant and the Complainant rewired his house at his own expense to accommodate that alternative.

At present, the Complainant has a pole in his front yard located eight feet out from the property line in a gap in the trees. Its position is such as to intrude upon the landscape in an unprotected position and, if the gap in the overhead distribution line is filled, to require cutting of trees in the front property line area. It is not clear if these trees are on highway right-of-way or are on the lot. The Complainant objects to the present location and objects to any extension of the line to fill in the distribution line gap (1) because he does not want wires across the front of his property and (2) because he does not want the trees damaged.

It is obvious that, although CP&L believes that the original two span gap in the line needed to be closed in order to increase reliability, CP&L believed that economics dictated that such closing should not be accomplished until service was requested on intervening lots.

It is also obvious that the least expensive installation to serve the Complainant's lot with underground service was to go overhead to the western lot boundary line and undergrouind from there to the house. Coincidentally, because the only additional facilities required are the conductors to connect Pole A to Pole C, this is also the least expensive solution to the reliability problem which CP&L had been having on the cross-country leg of the distribution line. Thus, the "best" installation which CP&L could have made would have been to place Pole C on the Lot 33/34 property line and complete the distribution loop, serve Lot 33 and provide for future service to Lot 34. The only problem with doing that is that the owner of Lot 34 would not sign a right-of-way agreement as a result of the tree trimming which would occur.

It is at this point that the balance of the aforementioned points becomes critical. If the only reasonable way to provide service to Lot 33 was to condemn the required tree trimming area on Lot 34, the Commission would, acknowledging but overriding CP&L's normal approved Service Regulations, do as the Commission has done in the past and order CP&L to use its eminent domain powers to secure the necessary right-of-way to provide service. The evidence is clear in this case, however, that there is another way to provide service to Lot 33. The question becomes, then, is it reasonable to use the other method? The answer to that question requires looking at the relative attributes of both

methods with respect to CP&L's mandate for adequate, reliable, and economical utility service.

If the only problem at issue was the provision of service to Lot 33 from Pole A on Leg A, and Leg B of the distribution circuit was not available, there would be no question but that CP&L's "$1,084" alternative would be termed reasonable because it would, at least, allow service to the customer. However, the cross-country Leg B does exist, provides a less expensive alternative, and does, according to CP&L, have a reliability problem which needs to be met and can best be solved by using the less expensive alternative of placing Pole C on the Lot 33/34 property line. For these reasons, the initial alternative is unreasonable; it requires the Complainant to pay more money for his service and prevents the customers served on the cross-country leg from having reliable service. Under the the circumstances, and CP&L's obligation to plan ahead, CP&L should not have made that offer but should have proposed the "$149" alternative. If CP&L did not build the "$149" alternative at this time, it would have to do so later for improved reliability and would duplicate facilities uneconomically.

It is normal for poles in residential and other inhabited areas to be placed on property lines insofar as this is practical. This is not merely convention but serves three desirable purposes: (1) it reduces aesthetic problems in many areas, (2) it spreads whatever burden may be imposed by such pole location equally among property owners and, most importantly, (3) it reduces abrasion caused by vehicles, lawn mowers, and the like on pole surfaces, pole and equipment ground wires and guy wires and anchor rods. The latter is most important where transformers are on the pole, as in this case, because the integrity of the separate transformer ground system must be maintained or circuit voltage will be unstable, possibly causing damage to equipment utilized on the circuit, and because the underground service riser on the side of the pole should be protected.

The evidence in this case is clear that the most appropriate action, considering a balance of all items required to be considered, would have been for CP&L to have placed Pole C in a protected position on the property line between Lots 33 and 34 and increased service reliability by completing the gap in the distribution line between Pole A and Pole B by way of conductors to Pole C. It is concluded that CP&L should be directed to relocate its facilities in such a manner within four months of the effective date of this Order. It is further concluded that such relocation should be accomplished without additional cost to the Complainant.

It is a prerequisite for safe and reliable operation of overhead electric lines that tree growth must be removed from contact with those lines. Carolina Power & Light

Company has shown itself to be a responsible company in the past by limiting its tree cutting to only those trees which were necessary to be removed. Even though it is allowed the use of highway rights-of-way for location of its lines, the Company has generally shown its respect for the environment by leaving dogwoods and other desirable trees where possible on rights-of-way and by limiting damage to other trees. It is expected that these practices will continue insofar as practical in the Porters Neck Plantation area.

IT IS, THEREFORE, ORDERED:

1. That CP&L shall, within four months of the effective date of this Order, reconstruct and relocate its facilities on Lot 33 such as to place Pole C and its down guy in a protected position on the property line with Lot 34 and shall close the gap between Poles A and B with a continuous distribution circuit through Pole C.

2. That such relocation shall be accomplished at no cost to the Complainant and, insofar as practical, in a manner not detrimental to the aesthetic environment of Lots 33 and 34.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of July 1980.

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

DOCKET NO. E-2, SUB 381

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Mr. L. L. Wright, III, Complainant	)	
	)	ORDER AFFIRMING
vs.	)	RECOMMENDED ORDER
	)	AND OVERRULING
Carolina Power & Light Company, Respondent	)	EXCEPTIONS

BY THE COMMISSION: On July 23, 1980, Hearing Examiner Allen L. Clapp issued his Recommended Order Requiring Relocation of Facilities and Closing Gap in Distribution Line. The Ordering Paragraphs provided as follows:

1. That CP&L shall, within four months of the effective date of this Order, reconstruct and relocate its facilities on Lot 33 such as to place Pole C and its down guy in a protected position on the property line with Lot 34 and shall close the gap between Poles A and B with a continuous distribution circuit through Pole C.

2. That such relocation shall be accomplished at no cost to the Complainant and, insofar as practical, in a manner not detrimental to the aesthetic environment of Lots 33 and 34.

On August 7, 1980, CP&L filed Exceptions to Ordering Paragraphs 1 and 2 of the Recommended Order. With respect to Paragraph 1 CP&L alleged, in part:

> Decretal paragraph No. 1 orders CP&L to violate the Commission's Rule R8-22 and the Company's Service Regulations, Conditions of Service, as approved by the Commission. The Order further requires CP&L, in what may be an untenable time frame, to secure the necessary authorizations to utilize a portion of Lot 34 for service to Lot 33.
>
> . . . . .
>
> An important prerequisite in complying with the Commission's decretal paragraph No. 1 is the acquisition of necessary right of way from the owner of Lot 34. CP&L representatives have again contacted the owner of Lot 34 (Turner) on July 31, 1980, and August 4, 1980, in an attempt to secure the necessary right of way to relocate Pole C to the common property line between Lots 33 and 34. The owner of Lot 34 has again refused to grant the right of way. It is apparent from these contracts that the necessary right-of-way easement from the owner of Lot 34 cannot be secured without condemnation.

With respect to Paragrpah 2 CP&L alleged, in part, that the paragraph ordered all changes to be made at no cost to

the Complainant, which is a violation of the Company's Service Regulations requiring the customer to secure, without cost to CP&L, the rights-of-way necessary to deliver electricity to the customer.

CP&L did not file exceptions to the Findings of Fact or the Conclusions.

CP&L waived oral argument on its exceptions.

Upon consideration of the Findings and Conclusions set forth in the Recommended Order of July 23, 1980, and the entire record in this proceeding, the Commission is of the opinion, and so concludes, that the Recommended Order should be affirmed, except as hereinafter modified, and that the exceptions of CP&L should be denied. That part of Ordering Paragraph 1, however, which required CP&L to reconstruct and relocate its facilities within four months of the effective date of the Order shall be modified to order CP&L to begin to reconstruct and relocate the facilities within 90 days after the date of this Order and to complete such location as soon as possible thereafter, thereby taking into account the time needed to secure a right-of-way on the common property line between Lots 33 and 34.

Although the Order requires that CP&L, rather than the Complainant, pay the costs for reconstruction and the relocation of the facilities, the Commission concludes that, under the circumstances of this case, as reflected in the unchallenged Findings of Fact and Conclusions, such requirement is not unwarranted. In any event, the Order as affirmed herein will allow CP&L to close the gap between Poles A and B with a continuous distribution circuit through Pole C. This circuit will increase the reliability of service to CP&L's customers in the area and will reduce CP&L's costs of maintaining the electric system.

IT IS, THEREFORE, ORDERED as follows:

1. That the Exceptions to the Recommended Order filed herein on August 7, 1980, by CP&L be, and the same are hereby, overruled and denied.

2. That the Recommended Order in this docket dated July 23, 1980 be, and the same is hereby, affirmed, except that Ordering Paragraph 1 is modified to order CP&L to begin the work of reconstructing and relocating the facilities within 90 days after the date of this Order and to complete such relocation as soon as possible thereafter.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of October 1980.

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

DOCKET NO. E-2, SUB 384

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Hugh E. Naylor, Jr., Complainant vs. Carolina Power & Light Company, Respondent	)))))))
	RECOMMENDED ORDER DISMISSING COMPLAINT

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 23, 1980, at 10:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Complainant:

Vickie L. Moir, Staff Attorney, Public Staff-North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

For the Respondent:

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

BENNINK, HEARING EXAMINER: On January 4, 1980, Hugh E. Naylor, Jr. (Complainant), filed a complaint with the Commission against Carolina Power & Light Company (CP&L or Respondent). In accordance with the rules of practice and procedure of this Commission, a copy of the complaint was thereafter served upon CP&L by Order dated January 17, 1980. On February 7, 1980, the Respondent filed an Answer in response to the complaint at issue herein. This Answer, which was served upon the Complainant pursuant to a Commission Order issued on February 12, 1980, was not satisfactory to the Complainant. Therefore, by letter filed in this docket on March 10, 1980, the Complaint requested the Commission to schedule a public hearing in this matter. By Order dated March 13, 1980, the Commission set the complaint for hearing on Wednesday, April 23, 1980, at 10:00 a.m.

On March 26, 1980, the Public Staff filed a Notice of Intervention in this proceeding on behalf of the using and consuming public.

Upon call of the matter for hearing at the appointed time and place, the Complainant was present and represented by counsel for the Public Staff. The Respondent was also

present and represented by counsel. The Complainant testified in his own behalf. The Respondent offered testimony by David R. Nevil, CP&L's Manager for Rate Development and Administration.

Based upon a careful consideration of the complaint, the testimony and exhibits, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Respondent is a public utility as defined by G.S. 62-3(23)a.1 and, as such, is subject to the jurisdiction of this Commission.

2. The Complainant, who resides at 908 North Glenwood Trail in Southern Pines, North Carolina, has been a customer of CP&L since August 1978.

3. CP&L has not erroneously billed the Complainant under its applicable summer and winter residential rate schedules, which schedules have been approved by this Commission. Rather, CP&L has properly applied said summer and winter rate schedules in conformity with applicable Commission Orders. CP&L's summer residential rates cover the billing months of July through October and the usage months of June through September. Respondent's winter residential rates cover the billing months of November through June and the usage months of October through May. Said summer and winter residential rate schedules have been consistently and correctly applied by CP&L since they were initially authorized by the Commission by Order dated February 20, 1976, in Docket No. E-2, Sub 264.

4. CP&L's billing practices and application of the applicable summer and winter residential rate schedules have not resulted in any retroactive application of new rates which have been authorized and approved by this Commission.

5. CP&L has changed Complainant's credit code classification from a Credit Code 2 to a Credit Code 1, thereby restoring said classification to the level at which it stood before the instant controversy arose.

6. CP&L has removed all late payment charges from the Complainant's account, which late payment charges had previously been assessed against the Complainant as a result of the controversy at issue herein.

7. By Order dated November 14, 1979, in Docket No. M-100, Subs 28 and 61, the Commission revised its service termination rules for residential electric and natural gas customers. These revised procedures became effective on December 1, 1979, and were, therefore, not in effect at the time CP&L issued a Final Notice to the Complainant in mid-November 1979.

8. The record in this case fails to indicate that CP&L has engaged in any improper business practices with respect to its treatment of the Complainant's account or that said public utility has ever erroneously applied its approved summer and winter residential rate schedules.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Section 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 entire record in this proceeding, and the foregoing Findings of Fact, the Hearing Examiner is of the opinion, and so concludes,

1. That the Complainant in this case has failed to carry the burden of proof imposed by G.S. 62-75;

2. That the record in this docket fails to indicate that CP&L has ever erroneously applied its summer and winter residential rate schedules or that CP&L's billing practices and application of rate schedules have ever resulted in any retroactive application of new rates;

3. That CP&L has not engaged in any improper business practices in this matter; and

4. That the complaint in this docket should, therefore, be dismissed.

Notwithstanding the action taken by the Hearing Examiner in dismissing the specific complaint at issue herein, the Complainant is hereby encouraged to participate as a witness in future general rate cases brought by CP&L in order to bring his suggestions and ideas with respect to Respondent's summer and winter residential rate schedules and other such matters before the full Commission. In the opinion of this Hearing Examiner, it is more proper to consider the issues associtated with the complex subject of rate design in the context of a general rate case rather than in a complaint proceeding.

IT IS, THEREFORE, ORDERED that the complaint filed herein on January 4, 1980, by Hugh E. Naylor, Jr., be, and the same is hereby, dismissed and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of June 1980.

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

DOCKET NO. E-2, SUB 384

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Hugh E. Naylor, Jr., Complainant	) FINAL ORDER
	) OVERRULING
vs.	) EXCEPTIONS
	) AND AFFIRMING
Carolina Power & Light Company, Respondent	) RECOMMENDED ORDER

BY THE COMMISSION: On June 27, 1980, Hearing Examiner Robert H. Bennink, Jr., entered a "Recommended Order Dismissing Complaint" in this docket. On July 14, 1980, Complainant filed certain Exceptions to the Recommended Order. The Complainant did not request Oral Argument.

Based upon a careful consideration of the entire record in this proceeding, including the Exceptions which have been filed with respect to the Recommended Order, 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 dated June 27, 1980, should be affirmed and that each of the Exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the Exceptions to the Recommended Order filed herein on July 14, 1980, by Complainant Hugh E. Naylor, Jr., be, and each is hereby, overruled and denied.

2. That the Recommended Order in this docket dated June 27, 1980, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of August 1980.

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

DOCKET NO. E-7, SUB 282

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Arthur David Scott, Complainant	)	RECOMMENDED
	)	ORDER FINDING IN
vs.	)	FAVOR OF COMPLAINANT
	)	
Duke Power Company, Respondent	)	

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 26, 1980

BEFORE: Allen L. Clapp, Hearing Examiner

APPEARANCES:

For the Respondent:

W. Wallace Gregory, Jr., Assistant General Counsel, Duke Power Company, Charlotte, North Carolina

For the Public Staff:

Vickie Moir, 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: This matter resulted from the allegation of the Complainant that on May 1, 1979, he had deposited in a Duke Power Company (Duke) drop box the sum of $182.29 in cash payment for his outstanding bill. Duke alleged that it had no record of ever receiving the payment and had billed the Complainant accordingly. The Complainant is one of approximately 700 customers who use the drop box in Duke's Kannapolis branch office to pay for electric service. Like the Complainant, many of these customers pay in cash.

There are two matters at issue in this case. The first matter is whether the Complainant did indeed make the payment and therefore does not owe Duke for the service rendered. The second matter is whether Duke has made responsible effort to ensure that all payments made by customers in drop boxes or night deposit boxes will in fact be credited to the account of the customer.

The testimony indicates that (1) the Complainant believes that he did make the payment and (2) that Duke does not doubt the Complainant's belief. However, Duke witnesses have stated that they searched the records of the Duke office in question with respect to payments in the amount of

$182.29 and that no such payment was made to any account in that office during the time span in question.

Duke, as a matter of practice, keeps the payment envelopes in which payments are placed into the drop box from each day's receipts for three months in order to be able to verify payments when disputes occur. The cashier writes on the envelope the name of the payer (if not already shown thereon), the account code, and the amount of the payment. Each day's envelopes are bundled separately and stored.

In this particular case, Duke had no record of payment from the Complainant and because the Complainant was past due on other payments, Duke employees went to the Complainant's home to cut off the service. The employees were informed by the Complainant's wife that payment had been made and the Complainant at a later time confirmed that payment to officials at the local Duke office. Duke then searched its records and could not find any payment to the Complainant's account during the time frame in question. (As a result of the request of the hearing officer in this case, Duke employees later searched the records of each account for this time frame and ascertained that no payment of $182.29 had been made to any account in that office.) Duke concluded from its investigations and alleged therefore that the Complainant did in fact not make the payment and that Duke is owed $182.29.

Duke witnesses agreed (1) that the responsibility of a Duke customer who chooses to pay his bill in cash by depositing an envelope with the cash therein in a night deposit or drop box ends upon the deposit of the envelope and (2) that Duke's responsibility begins after the deposit and ends with the proper crediting to the account. It is incumbent upon the Commission therefore to consider whether or not Duke had in place at the time of this dispute sufficient procedures to ensure that deposits made in the drop box were credited to the proper accounts.

The testimony is complete with respect to the construction of the drop box unit itself and to the fact that it is essentially tamper proof from the outside. The drop box has an opening on the outside of the building in which a customer can deposit an envelope. That envelope must go past baffles within the drop box before falling to the bottom of the box. The construction of the baffle system is such that it is impossible to reach in from the outside and pick up an envelope. At the same time, the construction does not allow envelopes to become hung in the mechanism. When the back of the drop box is open from inside the building, the complete baffle system is open to the viewer so that no envelope can be lost within the mechanism. The process used by Duke at the time of this dispute was for a manager of the office to unlock the drop box and take the envelopes found therein to a teller's cage. The teller's window would remain closed to other customers while the teller posted all of the receipts to the appropriate

accounts, made the notations on the envelopes and stored the envelopes.

In order to take the envelopes to the teller, the office manager had to retrieve the envelopes from the drop box and traverse the open lobby of the office to the processing teller's cage. This was done at a time when the office was open to customers so that any envelope dropped on the floor or left on the table by the drop box could have been picked up by a customer. In addition, there was no record system at that time to assure that each envelope brought to the teller was in fact entered into the normal system. For example, if an envelope fell off the teller station into a waste basket, there was no system in place to detect the missing envelope, likewise if an envelope had been left on the table by the drop box or had fallen out of the office manager's hand in transit there was no record system to note that an envelope was missing.

The testimony indicates that this particular case is the first such case in the history of that office and that the system has worked effectively for years. However, Duke witnesses also testified that since the incident in question the system within the office has changed in order to provide for two people to take envelopes out of the drop box and to count them on the spot and record the number of envelopes. Then one individual takes the envelopes to the teller's cage to continue the normal system. At the end of the record keeping, the number of entries is compared to the number of envelopes found in the drop box and verification is made that the contents of each envelope has been recorded.

In order to reach a satisfactory conclusion in this case, it is necessary to consider the responsibility of both the customer and the utility in effecting a satisfactory payment for service rendered in a manner that is burdensome to neither. In this particular case, Duke provided a method by which the customer could pay at night or at some other time when the office was closed. Such payment could be made either in cash or by check.

Duke should be commended for trying to allow customers an effective way to pay their bills without having to use the mail service and stand the chance of incurring late payment charges if payment is made close to the due deadline. Certainly, this case would not have arisen if the customer had paid his bill with a check in the envelope. However, it must be recognized that a number of individuals do not use checking accounts, for a variety of reasons, and therefore just pay bills in cash. For many of these customers a night deposit box or drop box type of arrangement is a necessity if they are not to be burdened with having to take extra time off work to pay their utility bills.

As a result of the testimony of the witnesses, it is concluded that Duke did not have in effect sufficient systems to assure that payments made in a drop box would not

be lost before being credited to the proper account. For that reason Duke's inability to prove that the Complainant did not deposit his payment ranks with the Complainant's inability to prove that he did make the payment. Considering the relative responsibilities of the two, it is concluded that the Complainant should not be required to make the payment.

Because of the significance that this decision may have on future cases, it is important to stress two matters. First, it is not herein suggested that there are further steps which Duke should take to ensure that payments made in drop boxes are properly posted. The system presently employed by Duke to assure that all payments received are credited to accounts is so complete as to virtually eliminate the possibility of payments going astray. It is expected that the new procedure will preclude further such incidents as this. In any event, because of the completeness of the new procedures, a significant burden will be placed on a future Complainant to show credible documentation of payment.

Second, it is important to note that the fact that Duke did change its procedures before adjudication of this matter is not an issue and did not affect the decision in this matter. The record in this case clearly shows, prior to the Duke testimony concerning its changes in operation, that the process used by Duke at the time of this incident did not provide for assurance that envelopes could not be lost inadvertently. On that basis, the Commission finds that Duke did not complete its responsibility to its customers to take every precaution to assure that payments made by customers would be credited to their accounts.

Because sufficient possibility existed at the time of this incident for a proper payment to occasionally go astray and not be recorded, and because of the Applicant's testimony that he did make the payment in a proper manner in the night deposit box and of Duke's statement that it is convinced that the Complainant believes that he made the payment, the Commission concludes that it would not be appropriate to require the Complainant to pay (again?) the bill of $182.29.

IT IS, THEREFORE, ORDERED:

That the Complainant, Arthur David Scott, is absolved of the requirement to pay $182.29 to Duke Power Company to replace that payment of $182.29 alleged by the Complainant to have been made on May 1, 1979, which payment was not recorded as received by Duke Power Company.

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of May 1980.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. E-2, SUB 366

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Carolina Power & Light) NOTICE OF
Company for Authority to Adjust and) DECISION
Increase Its Electric Rates and Charges) AND ORDER

HEARD IN: The Commissioner's Board Room, Room 204, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on January 8, 1980

The Superior Courtroom, New Hanover County Courthouse, Third and Princess Street, Wilmington, North Carolina, on January 9, 1980

The City Hall Courtroom, City Hall, Corner of Pollock and Craven Streets, New Bern, North Carolina, on January 10, 1980

The Town Hall Courtroom, Town Hall, 145 Southeast Broad Street, Southern Pines, North Carolina, on January 10, 1980

The Commission Hearing Room, 2nd Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 15-18, 22-25, and 29-30, and February 4-6, 1980

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

APPEARANCES:

For the Applicant:

R.C. Howison, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

William E. Graham, Jr., Senior Vice President and General Counsel, and Charles B. Robson, Jr., Manager - Legal Department and Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

For the Intervenors:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: The North Carolina Textile Manufacturers Association, Inc.

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Mallinckrodt, Inc., Monsanto North Carolina, Inc., Union Carbide Corporation, and Weyerhaeuser Company

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, P.O. Box 527, 327 Hillsborough Street, Raleigh, North Carolina 27602
For: North Carolina Oil Jobbers Association and David H. Permar

Robert C. Hudson, Office of General Counsel, Department of the Navy, Atlantic Division, Naval Facilities Engineering Command, Norfolk, Virginia 23511
For: Department of the Navy and Consumer Interest of Executive Agencies of the United States Government

For the Using and Consuming Public:

Jerry B. Fruitt, Chief Counsel, and Robert F. Page, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

David Gordon, Office of the Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On August 31, 1979, Carolina Power & Light Company (Applicant, the Company, or CP&L) filed an application with the Commission seeking to adjust and increase electric rates and charges for its retail customers in North Carolina. This increase in retail rates and charges was designed to produce approximately $55,868,000 of additional annual 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 9.25% increase in total North Carolina rates and charges. The Company requested that such increased rates be allowed to take effect for service rendered on and after September 30, 1979. The Company's application alleged that the $55,868,000 of additional annual revenues was necessary in order to improve the Company's earnings and to provide a sufficient rate of return on its investment to support its

construction program, which program is needed to provide adequate service to its retail customers in North Carolina.

The Commission, being of the opinion that the increases in rates and charges proposed by CP&L were matters affecting the public interest, by Order issued on September 27, 1979, declared the application to be a general rate case pursuant to G.S. 62-137, suspended the proposed rate increase for a period of up to 270 days pursuant to G.S. 62-134, set the matter for hearing before the Commission beginning on January 8, 1980, required CP&L to give notice of such hearing by newspaper publication and by appropriate bill inserts, established the test period to be used by all parties in the proceeding, and required protests or interventions to be filed in accordance with Rules R1-6, R1-17, and R1-19 of the Commission Rules and Regulations.

Formal Notices of Intervention or Petitions for Leave to Intervene were filed as follows in this docket:

October 3, 1979	-	by the Attorney General
October 17, 1979	-	by the North Carolina Textile Manufacturers Association, Inc.
October 24, 1979	-	by the Public Staff
November 27, 1979	-	by the North Carolina Oil Jobbers Association and David H. Permar
December 27, 1979	-	by the United States of America, Department of the Navy
December 27, 1979	-	by Mallinckrodt, Inc.; Monsanto North Carolina, Inc.; Union Carbide Corporation; and Weyerhaeuser Company

The above-referenced petitions to intervene were recognized and allowed by various Commission Orders of record herein. The Commission's official files and records in this docket will further reflect various procedural motions and responses made by the parties hereto and the Commission's Orders concerning such procedural matters.

The matter came on for public hearings in the territory served by CP&L as previously noted above. In addition, the Commission scheduled a night hearing in Raleigh on Tuesday evening, January 15, 1980, at 7:00 p.m. The following persons offered testimony at the hearings which were scheduled to receive testimony from interested public witnesses:

Asheville	-	Eleanor H. Lloyd, Katherine Hilz
Wilmington	-	Clarence Sharpe
New Bern	-	no public witnesses
Southern Pines	-	Russell Ayers, Mary P. Stephenson
Raleigh	-	Arthur R. Eckles, Louise Belvin, Florence McFadden, Clara Hillard, Sherwood Scott, Nell Rue, John Fitts, Albert Johnson, George

Renner, Ed Haggerty, Marion Patterson, Mary Bruce, Octavia Smith, and Ron Schackelford

The matter came on for hearing as ordered on January 15, 1980, at 10:00 a.m. for the purpose of presenting the Applicant's evidence. The Applicant offered the testimony and exhibits of the following witnesses:

1. Sherwood H. Smith, Jr., President and Chief Executive Officer of CP&L;

2. Edward G. Lilly, Jr., Senior Vice President and Chief Financial Officer of CP&L;

3. Dr. Robert R. Nathan, Chairman of the Board of Robert R. Nathan Associates, Inc., a firm of consulting economists;

4. Mark P. Luftig, Vice President and Manager of the Utility Research Department at Salomon Brothers, an investment banking firm;

5. Paul S. Bradshaw, Controller and Chief Accounting Officer of CP&L;

6. David R. Nevil, Director - Rate Applications in the Rates and Service Practices Department of CP&L; and

7. Norris L. Edge, Manager of the Rates and Service Practices Department of CP&L.

The Public Staff offered testimony and exhibits of the following witnesses:

1. Dennis J. Nightingale, Director of the Electric Division of the Public Staff;

2. Dr. Eddie Mayberry, Director of the Economic Research Division of the Public Staff;

3. David F. Creasy, a Utilities Engineer with the Electric Division of the Public Staff;

4. M.D. Coleman, Senior Accountant with the Accounting Division of the Public Staff;

5. Dr. Richard G. Stevie, an Economist with the Economic Research Division of the Public Staff; and

6. Curtis Toms, Jr., a Utilities Accountant with the Accounting Division of the Public Staff.

The Intervenor North Carolina Textile Manufacturers Association, Inc., offered the testimony and exhibits of H. Randolph Currin, Jr., President of Currin and Associates,

Inc., a group of utility economic, financial, and rate service consultants. Thereafter, the Applicant offered rebuttal testimony by Mr. Bradshaw (previously identified). Further testimony on rebuttal was offered by James M. Davis, Jr., Vice President of the Fuel and Materials Management Group of CP&L, and Archie W. Futrell, Jr., Director of Energy and Economic Forecasting and Special Studies for CP&L.

All parties to the proceeding were provided an opportunity to file briefs and proposed orders with the Commission. These items were required to be filed on or before Wednesday, March 12, 1980 (two weeks after completion and mailing of the transcript).

Based upon the foregoing, the verified application, the testimony and exhibits received into evidence at the hearings, the briefs and proposed orders filed by the parties hereto, and the Commission s entire files and records with regard to this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That CP&L is a public utility corporation, organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. CP :L is lawfully before this Commission based upon its Application for a general increase in its North Carolina retail rates and charges, pursuant to the jurisdiction and authority conferred upon the Commission by the Public Utilities Act.

2. That CP&L is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public within a broad area of eastern and western North Carolina and CP&L has its principal office and place of business in Raleigh, North Carolina.

3. That the test period for purposes of this proceeding is the 12-month period ended December 31, 1978. CP&L is seeking an increase in its basic rates and charges to North Carolina retail customers of approximately $55,868,000 based upon operations in said test year.

4. That the overall quality of electric service provided by CP&L to its North Carolina retail customers is good.

5. That the summer peak responsibility method for making cost-of-service allocations, as approved by this Commission in prior CP&L dockets, is the most appropriate method for use in this proceeding. In this docket, CP&L proposed to change to use of the peak and average methodology in allocating revenues, expenses, and rate

base. The Public Staff proposed the use of another demand allocation method but utilized CP&L's demand allocation methodology and figures with respect to revenues, expenses, and rate base when proposing adjustments thereto. Certain other Intervenors proposed the use of other demand allocation methods utilizing the Company's revenues, expenses, and rate base. Therefore, the Findings of Fact which follow on levels of rate base, revenues, and expenses have been determined based upon adjustments and reallocations necessitated by use of the summer peak responsibility method of allocation.

6. That, the reasonable original cost of CP&L's property used and useful, or to be used and useful within a reasonable time after the test period in providing the service rendered to the public within this State, less that portion of the cost which has been consumed by previous use recovered by depreciation expense, plus the reasonable original cost of investment in plant under construction (construction work in progress or CWIP) is $1,254,725.

7. That the reasonable allowance for working capital and deferred debits and credits is $65,456,000.

8. That the reasonable original cost rate base is $1,320,181,000. This amount consists of utility plant in service and construction work in progress of $1,254,725,000, plus a reasonable allowance for working capital and deferred debits and credits of $65,456,000.

9. That the Company's approximate gross revenues for the test year, under present rates and after accounting and pro forma adjustments, are $607,930,000. After giving effect to CP&L's proposed rates, such gross revenues are $663,798,000. Under the revenue requirement approved herein, such revenues are $651,294,000.

10. That CP&L's fuel procurement activities and practices are reasonable and are in accordance with similar practices previously reviewed and approved by the Commission.

11. That the reasonable level of test year operating revenue deductions, after normalization and pro forma adjustments, is $487,868,000. This amount includes $54,665,000 for investment currently consumed through reasonable actual depreciation on an annual basis.

12. That CP&L should be allowed to increase its research and developmental expenditures with respect to alternative energy resources available within North Carolina by $628,000 on a jurisdictional basis. Funds for such expenditures are conditional upon establishment of a North Carolina Alternative Energy Corporation and are reflected in the test year level of operating revenue deductions as previously set out hereinabove.

13. That the capital structure which is reasonable and proper for use in this proceeding is as follows:

Item	Percent
Long-term debt	49.5%
Preferred stock	12.5
Common equity	38.0
Total	100.0%

14. That the Company's proper embedded costs of debt and preferred stock are 8.82% and 8.11%, respectively. The reasonable rate of return for CP&L to be allowed to earn on its jurisdictional common equity is 13.90%. Using a weighted average for the Company's costs of debt, preferred and equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 10.66% to be applied to the Company's original cost rate base. Such rate of return will enable CP&L, by sound management, to produce a fair return for its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on terms which are reasonable and fair to the customers and to existing investors.

15. That the reasonable rate of return on the Job Development Investment Credit (JDIC) is the overall rate of return allowed on investment or 10.66%.

16. That, based upon the foregoing, CP&L should be allowed an increase, in addition to the annual gross revenues which would be realized under its present base rates, in an amount not to exceed $43,364,000. This increase is required in order for the Company to have a reasonable opportunity to earn the 10.66% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based upon the original cost of the Company's property and its reasonable test year operating revenues and expenses as previously determined.

17. That the rate structure proposed by CP&L for each rate classification will produce revenues and levels of return which are in excess of those herein approved. To that extent, such rate structure is unjust and unreasonable.

18. That the Applicant is hereby called upon to file within three days of the issuance date of this Order proposed rates and charges designed in accordance with the guidelines attached hereto as Appendix A. Such rates shall be designed to produce an annual level of revenues no greater than $651,294,000, based upon the adjusted test year level of operations as adopted by this Commission. Such adjusted test year level of operations reflects total North

Carolina Retail Kwh sales of 17,613,926,477 (actual: 17,557,943,744 plus growth: 247,670,003 minus weather: 191,687,270).

19. 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.

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve based upon the findings set forth herein.

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED DECEMBER 31, 1978
(000'S OMITTED)

Item	Present Rates	Increase Approved	After Approved Rates
Operating Revenues			
Net operating revenues	$607,930	$43,364	$651,294
Operating Revenue Deductions			
Operation and maintenance expenses - net	313,342	-	313,342
Depreciation	54,665	-	54,665
Taxes - other than income	51,333	2,602	53,935
Income taxes - State and Federal	26,353	20,071	46,424
Investment tax credit - net	20,447	-	20,447
Provision for deferred income tax	21,560	-	21,560
Interest on customer deposits	172	-	172
Adjustment to reflect peak responsibility allocation excluding depreciation expense	(4)	-	(4)
Total operating revenue deductions	487,868	22,673	510,541
Operating income for return - peak responsibility allocation	$120,062	$20,691	$140,753

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED DECEMBER 31, 1978
(000'S OMITTED)

	Present Rates	After Approved Rates
Investment in Electric Plant		
Electric plant in service	$1,613,754	$1,613,754
Net nuclear fuel	29,608	29,608
Construction work in progress	80,717	80,717
Accumulated provision for depreciation	331,975	331,975
Cost-free capital	132,169	132,169
Adjustment to reflect peak responsibility allocation	(5,210)	(5,210)
Net investment in electric plant	$1,254,725	$1,254,725
Allowance for Working Capital and Deferred Debits and Credits		
Cash	$ 7,368	$ 7,368
Materials and supplies - fuel stock	42,313	42,313
Materials and supplies - other	13,016	13,016
Prepayments	1,000	1,000
Investor funds advanced for operations	11,173	11,173
Other additions	11,823	11,823
Less: Customer deposits	3,733	3,733
Other deductions	17,232	17,232
Adjustment to reflect peak responsibility allocation	(272)	(272)
Total	65,456	65,456
Rate base	$1,320,181	$1,320,181
Rate of Return	9.09%	10.66%

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED DECEMBER 31, 1978
(000'S OMITTED)

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$ 653,489	49.5	8.82	$ 57,638
Preferred stock	165,023	12.5	8.11	13,383
Common equity	501,669	38.0	9.78	49,041
Total	$1,320,181	100.00	-	$120,062
	Approved Rates - Original Cost Rate Base			
Long-term debt	$ 653,489	49.5	8.82	$ 57,638
Preferred stock	165,023	12.5	8.11	13,383
Common equity	501,669	38.0	13.90	69,732
Total	$1,320,181	100.00	-	$140,753

An Order setting forth the evidence and conclusions in support of this decision will be issued subsequently. The Commission will consider the time for filing notice of appeal in this proceeding to run from the issuance of such Order.

IT IS, THEREFORE, ORDERED:

1. That the Applicant Carolina Power & Light Company be, and hereby is, authorized to adjust its electric rates and charges to produce an increase in gross revenues of $43,364,000 on an annual basis.

2. That the Applicant is hereby called upon to file within three days of the issuance date of this Order five copies of the proposed rates and charges designed in accordance with the guidelines attached hereto as Appendix A. Such rates shall be designed to produce an annual level of revenues no greater than $651,294,000, based

upon the adjusted test year level of operations as adopted by this Commission. Such adjusted test year level of operations reflects total North Carolina Retail Kwh sales of 17,613,926,477 (actual: 17,557,943,744 plus growth: 247,670,003 minus weather: 191,687,270).

3. That the Applicant shall file at the time of filing its proposed rates five copies of its jurisdictional cost allocation study and five copies of its cost of service study based upon the adjusted test year level of operations as adopted by this Commission utilizing the summer peak responsibility method as required by the rate design guidelines attached hereto.

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.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of March 1980.

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

Commissioner Campbell dissents.

APPENDIX A
GUIDELINES FOR REDUCING PROPOSED RATES TO ALLOWED RATES:

1. Reallocate revenues, expenses and rate base utilizing the summer peak responsibility method previously approved by the Commission.

2. Redesign the proposed rates to the extent necessary to ensure that the rates for the various customer classes and subclasses will produce individual rates of return which are within plus or minus 10% of the overall retail rate of return that will be produced by the allowed revenues.

3. Do not increase any rate in excess of that applied for in the Application.

4. Do <u>not</u> increase any basic customer charge but <u>do</u> use the proposed extra facilities charges.

DOCKET NO. E-2, SUB 366

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Authority to Adjust and Increase Its Electric Rates and Charges	) ORDER GRANTING) INCREASE IN RATES) AND CHARGES

HEARD IN: The Commissioner's Board Room, Room 204, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on January 8, 1980

The Superior Courtroom, New Hanover County Courthouse, Third and Princess Street, Wilmington, North Carolina, on January 9, 1980

The City Hall Courtroom, City Hall, Corner of Pollock and Craven Streets, New Bern, North Carolina, on January 10, 1980

The Town Hall Courtroom, Town Hall, 145 Southeast Broad Street, Southern Pines, North Carolina, on January 10, 1980

The Commission Hearing Room, 2nd Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 15-18, January 22-25, January 29-30, and February 4-6, 1980

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

APPEARANCES:

For the Applicant:

R.C. Howison, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

William E. Graham, Jr., Senior Vice President and General Counsel, and Charles B. Robson, Jr., Manager - Legal Department and Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

For the Intervenors:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: The North Carolina Textile Manufacturers Association, Inc.

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Mallinckrodt, Inc., Monsanto North Carolina, Inc., Union Carbide Corporation, and Weyerhaeuser Company

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, P.O. Box 527, 327 Hillsborough Street, Raleigh, North Carolina 27602
For: North Carolina Oil Jobbers Association and David H. Permar

Robert C. Hudson, Office of General Counsel, Department of the Navy, Atlantic Division, Naval Facilities Engineering Command, Norfolk, Virginia 23511
For: Department of the Navy and Consumer Interest of Executive Agencies of the United States Government

For the Using and Consuming Public:

Jerry B. Fruitt, Chief Counsel, and Robert F. Page, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

David Gordon, Office of the Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On August 31, 1979, Carolina Power & Light Company (Applicant, the Company, or CP&L) filed an application with the Commission seeking to adjust and increase electric rates and charges for its retail customers in North Carolina. This increase in retail rates and charges was designed to produce approximately $55,868,000 of additional annual 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 9.25% increase in total North Carolina rates and charges. The Company requested that such increased rates be allowed to take effect for service rendered on and after September 30, 1979. The Company's application alleged that the $55,868,000 of additional annual revenues was necessary in order to improve the Company's earnings and to provide a sufficient rate of return on its investment to support its construction program, which program is needed to provide adequate service to its retail customers in North Carolina.

The Commission, being of the opinion that the increases in rates and charges proposed by CP&L were matters affecting the public interest, by Order issued on September 27, 1979, declared the application to be a general rate case pursuant to G.S. 62-137, suspended the proposed rate increase for a

period of up to 270 days pursuant to G.S. 62-134, set the matter for hearing before the Commission beginning on January 8, 1980, required CP&L to give notice of such hearing by newspaper publication and by appropriate bill inserts, established the test period to be used by all parties in the proceeding, and required protests or interventions to be filed in accordance with Rules R1-6, R1-17, and R1-19 of the Commission Rules and Regulations.

Formal Notices of Intervention or Petitions for Leave to Intervene were filed as follows in this docket:

October 3, 1979	-	by the Attorney General
October 17, 1979	-	by the North Carolina Textile Manufacturers Association, Inc.
October 24, 1979	-	by the Public Staff
November 27, 1979	-	by the North Carolina Oil Jobbers Association and David H. Permar
December 27, 1979	-	by the United States of America, Department of the Navy
December 27, 1979	-	by Mallinckrodt, Inc.; Monsanto North Carolina, Inc.; Union Carbide Corporation; and Weyerhaeuser Company

The above-referenced petitions to intervene were recognized and allowed by various Commission Orders of record herein. The Commission's official files and records in this docket will further reflect various procedural motions and responses made by the parties hereto and the Commission Orders concerning such procedural matters.

The matter came on for public hearings in the territory served by CP&L as previously noted above. In addition, the Commission scheduled a night hearing in Raleigh on Tuesday evening, January 15, 1980, at 7:00 p.m. The following persons offered testimony at the hearings which were scheduled to receive testimony from interested public witnesses:

Asheville	-	Eleanor H. Lloyd, Katherine Hilz
Wilmington	-	Clarence Sharpe
New Bern	-	no public witnesses
Southern Pines	-	Russell Ayers, Mary P. Stephenson
Raleigh	-	Arthur R. Eckles, Louise Belvin, Florence McFadden, Clara Hillard, Sherwood Scott, Nell Rue, John Fitts, Albert Johnson, George Renner, Ed Haggerty, Marion Patterson, Mary Bruce, Octavia Smith, and Ron Schackelford

The matter came on for hearing as ordered on January 15, 1980, at 10:00 a.m. for the purpose of presenting the Applicant's evidence. The Applicant offered the testimony and exhibits of the following witnesses:

1. Sherwood H. Smith, Jr., President and Chief Executive Officer of CP&L;
2. Edward G. Lilly, Jr., Senior Vice President and Chief Financial Officer of CP&L;
3. Dr. Robert R. Nathan, Chairman of the Board of Robert R. Nathan Associates, Inc., a firm of consulting economists;
4. Mark P. Luftig, Vice President and Manager of the Utility Research Department at Salomon Brothers, an investment banking firm;
5. Paul S. Bradshaw, Controller and Chief Accounting Officer of CP&L;
6. David R. Nevil, Director - Rate Applications in the Rates and Service Practices Department of CP&L; and
7. Norris L. Edge, Manager of the Rates and Service Practices Department of CP&L.

The Public Staff offered testimony and exhibits of the following witnesses:

1. Dennis J. Nightingale, Director of the Electric Division of the Public Staff;
2. Dr. Eddie Mayberry, Director of the Economic Research Division of the Public Staff;
3. David F. Creasy, a Utilities Engineer with the Electric Division of the Public Staff;
4. M.D. Coleman, Senior Accountant with the Accounting Division of the Public Staff;
5. Dr. Richard G. Stevie, an Economist with the Economic Research Division of the Public Staff; and
6. Curtis Toms, Jr., a Utilities Accountant with the Accounting Division of the Public Staff.

The Intervenor North Carolina Textile Manufacturers Association, Inc., offered the testimony and exhibits of H. Randolph Currin, Jr., President of Currin and Associates, Inc., a group of utility economic, financial, and rate service consultants. Thereafter, the Applicant offered rebuttal testimony by Mr. Bradshaw, Controller and Chief Accounting Officer of CP&L. Further testimony on rebuttal was offered by James M. Davis, Jr., Vice President of the Fuel and Materials Management Group of CP&L, and Archie W. Futrell, Jr., Director of Energy and Economic Forecasting and Special Studies for CP&L.

All parties to the proceeding were provided an opportunity to file briefs and proposed orders with the Commission. These items were required to be filed on or before Wednesday, March 12, 1980 (two weeks after completion and mailing of the transcript).

On March 25, 1980, the Commission issued a Notice of Decision and Order in this docket which stated that CP&L should be allowed an opportunity to earn a rate of return of 10.66% on its investment used and useful in providing electric utility service in North Carolina. In order to have the opportunity to earn a fair return, CP&L was

authorized to adjust its electric rates and charges to produce an increase in gross revenues of $43,364,000 on an annual basis. CP&L was also required to file proposed rates and charges necessary to implement the allowed rate increase in accordance with rate design guidelines established by the Commission.

On March 28, 1980, CP&L filed its proposed rates and charges as required by the Commission. On March 31, 1980, the Commission issued an Order Approving Rates and Charges.

Based upon the foregoing, the verified application, the testimony and exhibits received into evidence at the hearings, the briefs and proposed orders filed by the parties hereto, and the Commission's entire files and records with regard to this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That CP&L is a public utility corporation, organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. CP&L is lawfully before this Commission based upon its application for a general increase in its North Carolina retail rates and charges, pursuant to the jurisdiction and authority conferred upon the Commission by the Public Utilities Act.

2. That CP&L is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public within a broad area of eastern and western North Carolina and CP&L has its principal office and place of business in Raleigh, North Carolina.

3. That the test period for purposes of this proceeding is the 12-month period ended December 31, 1978, adjusted for known changes occurring prior to the close of the hearings. CP&L is seeking an increase in its basic rates and charges to North Carolina retail customers of approximately $55,868,000 based upon operations in said test year.

4. That the overall quality of electric service provided by CP&L to its North Carolina retail customers is good.

5. That the summer peak responsibility method for making cost-of-service allocations, as approved by this Commission in prior CP&L dockets, is the most appropriate method for use in this proceeding. In this docket, CP&L proposed to change to use of the peak and average methodology in allocating revenues, expenses, and rate base. The Public Staff proposed the use of another demand allocation method but utilized CP&L's demand allocation methodology and figures with respect to revenues, expenses, and rate base when proposing adjustments thereto. Certain other Intervenors proposed the use of other demand allocation

methods utilizing the Company's revenues, expenses, and rate base. Therefore, the findings of fact which follow on levels of rate base, revenues, and expenses have been determined based upon adjustments and reallocations necessitated by use of the summer peak responsibility method of allocation. CP&L's proposed rates do not reflect (1) the use of the summer peak responsibility allocation of demand related costs and expenses or (2) the level of revenues allowed herein.

6. That the reasonable original cost of CP&L's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, less that portion of the cost which has been consumed by previous use recovered by depreciation expense, plus the reasonable original cost of investment in plant under construction (construction work in progress or CWIP) is $1,254,725,000.

7. That the reasonable allowance for working capital and deferred debits and credits is $65,456,000.

8. That the reasonable original cost rate base is $1,320,181,000. This amount consists of utility plant in service and construction work in progress of $1,254,725,000, plus a reasonable allowance for working capital and deferred debits and credits of $65,456,000.

9. That the Company's approximate gross revenues for the test year, under present rates and after accounting and pro forma adjustments, are $607,930,000. After giving effect to CP&L's proposed rates, such gross revenues are $663,798,000. Under the revenue requirement approved herein, such revenues are $651,294,000.

10. That CP&L's fuel procurement activities and practices are reasonable and are in accordance with similar practices previously reviewed and approved by the Commission.

11. That the reasonable level of test year operating revenue deductions, after normalization and pro forma adjustments, is $487,868,000. This amount includes $54,665,000 for investment currently consumed through reasonable actual depreciation on an annual basis.

12. That CP&L should be allowed to increase its research and developmental expenditures with respect to alternative energy resources available within North Carolina by $628,000 on a jurisdictional basis. Funds for such expenditures are conditional upon establishment of a North Carolina Alternative Energy Corporation and are reflected in the test year level of operating revenue deductions as previously set out hereinabove.

13. That the capital structure which is reasonable and proper for use in this proceeding is as follows:

Item	Percent
Long-term debt	49.5%
Preferred stock	12.5
Common equity	38.0
Total	100.00%

14. That the Company's proper embedded costs of debt and preferred stock are 8.82% and 8.11%, respectively. The reasonable rate of return for CP&L to be allowed to earn on its jurisdictional common equity is 13.90%. Using a weighted average for the Company's costs of debt, preferred stock and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 10.66% to be applied to the Company's original cost rate base. Such rate of return will enable CP&L, by sound management, to produce a fair return for its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital funds on terms which are reasonable and fair to the customers and to existing investors.

15. That the reasonable rate of return on the Job Development Investment Tax Credit (JDIC) is the overall rate of return allowed on investment or 10.66%.

16. That, based upon the foregoing, CP&L should be allowed an increase, in addition to the annual gross revenues which would be realized under its present base rates, in an amount not to exceed $43,364,000. This increase is required in order for the Company to have a reasonable opportunity to earn the 10.66% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based upon the original cost of the Company's property and its reasonable test year operating revenues and expenses as previously determined.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence supporting these findings of fact is found in the verified application, in prior Commission Orders in this docket, the testimony of Company witness Smith, and G.S. 62-3(23)a.1 and G.S. 62-133. The findings are essentially informational, procedural, and jurisdictional in nature and were uncontested and uncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding is contained in the verified application, the Commission's Order Scheduling Hearing of September 27, 1979, the testimony and exhibits of Company witnesses Bradshaw and Nevil, and the testimony and exhibits of Public Staff witness Toms.

The Public Staff reviewed the Company's application and the direct testimony and exhibits of the various Company witnesses, and then gave its own testimony and exhibits concerning actual changes in revenues, expenses, and the cost of the Company's utility property which were based not only upon the test year itself, but upon circumstances and events which took place between the end of the test period and the close of the hearings.

The Commission is of the opinion that G.S. 62-133(c) is intended to reduce "regulatory lag" by allowing the Commission, where reasonable and appropriate, to take notice of known changes that occur after the end of the test period but before the hearings have concluded, where the effects of such changes on the Company's earnings can be demonstrated with a high degree of certainty. If the Commission were unable to take notice of such changes, then its general rate case Orders could be obsolete before they were issued.

The Commission thus concludes that, for purposes of this case, the appropriate test year to be adopted and applied is the 12 months ended December 31, 1978, as normalized to end-of-period levels and as adjusted for certain known changes which occurred prior to the conclusion of hearings in this docket. Such specific changes and adjustments are discussed in subsequent sections of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding is to be found in the testimony of Company witness Smith, Public Staff witness Nightingale, and the public witnesses who appeared in various locations throughout the State. The testimony of most of the public witnesses was devoted primarily to complaints about the basic rates being charged by the Company for its services, the approved fuel charge levels and fluctuations, the monthly customer charge and the Company's operation and construction of nuclear generating plants. Virtually none of the testimony was concerned with the adequacy, quality, or reliability of the electricity being delivered by CP&L. Therefore, the Commission concludes that the quality of electric service being provided to retail customers in North Carolina by CP&L is good.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The Company proposed in this proceeding to use the peak and average method to allocate demand related revenues, rate base, and expenses between the North Carolina and South Carolina jurisdictions and between the various classes and subclasses of customers. In recent years, the Company has allocated demand related rate base and expenses based solely on responsibility for the maximum summer coincident peak.

The Company's proposed peak and average method basically consists of first allocating 61.568% of demand related

expenses based on the respective responsibilities for "average demand" (i.e., Kwh energy usage), and then allocating the remaining 38.432% of demand related expenses based on the respective responsibilities for the system summer coincident peak. The Company derived the 61.568% ratio from the system load factor, whereby "average demand" is 61.568% of the system summer coincident peak.

Company witness Nevil testified that the previous method of allocation, based solely on summer coincident peak, resulted in too much instability of cost allocations from year to year, and that such instability was the principal shortcoming of the previous method. He also advocated a method which recognized that facilities are planned and constructed for use at times other than just the hour of the system coincident peak.

Public Staff witness Creasy testified that the proposed shift from allocating 100% of the demand related expenses based solely on responsibility for a single system peak to allocating only 38.432% of the demand related expenses based solely on responsibility for such system peak represented such a drastic departure from previous practice that it could be a situation of overreacting to the problems described by witness Nevil.

Witness Creasy testified that the proposed peak and average method does not give appropriate weight to class contribution to significant system peaks other than the maximum summer peak and, specifically, that the proposed peak and average method does not give appropriate weight to class contribution to the maximum winter peak. Mr. Creasy also testified that reducing the amount of demand related expenses which are to be allocated based on peak responsibility could result in less differential between "on peak" rates and "off peak" rates, thereby giving less encouragement to customers to shift their load to "off peak" periods or to conserve energy during "on peak" periods.

Intervenor witness Currin, who testified on behalf of the North Carolina Textile Manufacturers Association, discussed what he perceived to be the weaknesses in CP&L's justification for changing its method of allocating demand related costs. Mr. Currin recommended that the Commission continue to use the single coincident peak method of demand cost allocation, at least until more detailed studies can be performed to demonstrate the long-term appropriateness and impact on various customer classes of using a different method.

The Commission concludes that CP&L has not produced sufficient justification for adopting an allocation procedure that allocates the vast majority of demand related items by the energy allocation factor (Kwh usage) and that to adopt such a standard is inconsistent and inappropriate given the evidence in this case. The Commission concludes that the summer peak responsibility method should be used in

this proceeding. However, the Commission recognizes that there may be certain problems with the single peak responsibility method. The Commission is interested in the continued improvement, refinement, and updating of cost-of-service allocation procedures and, consequently, will not preclude the Company or any intervenors from proposing justifiable departures in the existing methodology in future general rate proceedings. In fact, the Commission concludes that appropriate and sufficient electrical usage data should be collected and maintained by the Company so that various cost-of-service methodologies can be analyzed in order to permit the Company to submit cost-of-service studies in future cases showing the results of alternative generally recognized cost-of-service methodologies.

A number of changes in rate design were proposed by CP&L and other parties. Testimony on rate design was given primarily by CP&L witness Edge, Public Staff witness Creasy, and Textile Manufacturers witness Currin. Public Staff witness Creasy testified that the rate increase proposed by the Company for a given rate schedule might be excessive in comparison with the proposed rate increase for another rate schedule if a different method for allocating demand related expenses is used. Therefore, since the Commission is requiring that demand related expenses be allocated based on the summer peak responsibility method in this proceeding instead of the proposed peak and average method, the Commission established in its Notice of Decision and Order of March 25, 1980, guidelines for designing rates to produce the revenues allowed herein.

The Company's proposal to incorporate the effects of the water heater discount of .15¢ per Kwh for up to the 800 Kwh into the total Kwh charge met with no opposition during the hearing and was supported by public witness Dr. Arthur Eckles. There are at least two reasons why this discount is no longer cost justified. One is the increasing use of rapid recovery elements which are of higher wattage and consequently more likely to increase load at times of peak usage. Secondly, over 85% of North Carolina customers presently have electric water heaters. With this high saturation, the additional administrative cost of applying rates differently for customers with and without water heaters is no longer justified.

No opposition was expressed to combining the small general service schedule with the general service schedule into a single general service schedule. Historically, the small general service schedule has been applicable to customers up to 50 Kw, and the general service schedule has been applicable to customers from 50 Kw to 1,000 Kw. This was altered slightly in the last case, after load research suggested that characteristics of customers in these classes are similar. Further analysis of load research conclusions indicates that the schedules should be combined. As a result of the change in the last case, many customers formerly served on the general service schedule have

migrated to the small general service schedule, and only 1,312 customers remain on the general service schedule. A combination of the schedules is cost justified and furthers a goal of the Company and the Commission to simplify the rate structure by combining rate schedules to the extent practical and cost justified.

In its original filing, the Company proposed to add two high-pressure sodium lights to various lighting schedules. These were a 9,500-lumen street light and a 27,500-lumen area light. During December 1979, the Commission ordered the Company to provide high-pressure sodium fixtures in three lumen ranges. The higher range is from 19,000 to 25,000 lumens. Since the 27,500-lumen fixture does not conform to the Commission Order, the Company is requesting that a 22,000-lumen street and area lighting fixture be approved in lieu of the 27,500-lumen fixture proposed in the original application. No opposition was expressed to this proposal.

The Company proposed the following additions and changes, most of which met with little or no opposition: (1) a new residential conservation rate; (2) a revision in the residential thermal storage rate to rename it "Thermal Storage/Alternate Energy Source schedule R-TS/AES/1"; (3) an alternative customer generation service rider; and (4) freezing underground plants R-7 and R-10 and the implementation of new underground plants R-7A and R-10A.

The Company proposed three changes in the application of the monthly facilities charge: (1) to base the charge on the estimated original installed cost of facilities rather than on current prices, including new materials and equipment; (2) to increase the monthly facilities charge on all facilities to 2%, the rate now charged on facilities installed after 1973; (3) to provide an option whereby the customer can pay either 2% on the original cost of the facilities or the original installed cost of the facilities plus a charge of 1% a month.

An analysis was provided the Commission showing that by reverting to original cost the dollar investment is reduced by $214,000 for currently installed facilities. On cross-examination Mr. Edge indicated that totalization of meter data is an additional advantage that the original cost concept will provide customers now using separately metered facilities on the same premises. This offers the potential for a much lower total monthly payment than would be due if the monthly facilities charge continued to be based on current-day costs of those individual facilities. An example is Du Pont, which by consolidating two metering points could have savings of $300,000 annually. This is far greater than the increase in the additional monthly acilities charge of $140,000 as shown in Exhibit 10 that will be applicable to Du Pont at all four of its North Carolina plants.

The total monthly facilities charge, based on an annual cost, is 26.806% and although this is different from the resultant of the 2% per month to be charged, this rounding is reasonable. The 26.806% was derived from a retail cost-of-service study. This is acceptable because the North Carolina jurisdiction is the greater portion of system operations, and therefore controls the system percentage. Any slight variation that would occur if separate jurisdictional studies were developed could not be consequential.

TMA witness Currin testified that each installation should be computed separately based on actual facilities installed. This is unnecessary and would be impossible from a practical standpoint. A total of 134 customers presently have additional facilities. Mr. Currin's proposal would add considerably to the expense of the calculation. Different rates would result in confusion. Variations between customers would make the administration very difficult and very expensive. The method proposed by the Company is consistent with standard rate-making procedure where average costs are used in order to establish a rate for all customers in a given class.

The 1% monthly facilities option provides a plan for customers who prefer to pay the initial investment plus a smaller monthly percentage charge. The proposed 1% monthly charge covers such items as State and Federal income tax, ad alorem tax, administrative and general expenses, operating and maintenance expenses, and an amount to provide for replacing facilities when necessary. Under this plan, since the customer provides the capital, no cost of capital is included. Also, the State and Federal income tax percentage is reduced to cover only taxes applicable to the replacement facilities cost. If approved, the option would be available to new and existing customers based on the original cost of additional facilities.

Witness Currin suggested that the customer have the option to pay the replacement cost on a monthly percentage basis or to pay actual replacement cost. This is not practical administratively since the customer pays the additional investment of the facility actually installed versus what would have been installed if only normal service were supplied. Following is an example of such an installation.

If a customer has two buildings on the same premises and requests service through one meter, a standard procedure would be to install one transformer bank and provide service through one meter and one point of delivery. Any facilities beyond that point would be owned by the customer. If, in order to reduce cost, the customer requests separate facilities to each building through one totalized meter, a system is designed to provide two transformer banks, two meters, and two points of delivery, but metering is totalized on the computer as if only one meter were installed. The additional facilities charge for this

installation is computed by subtracting from the cost of both installations the investment which would have been applicable if only one facility had been installed, and the additional investment computation is the basis for the charge. It is therefore not possible to distinguish which of the facilities should be classified as additional facilities and which as standard facilities. Each service includes investment that is both additional facilities and standard facilities.

A breakdown of the components of the customer charge for the residential class was filed at the request of Commissioner Hipp. It shows that the total cost, including return, is $9.61 of which $7.35 is O&M, depreciation, and taxes. The comparable cost, excluding return, at the time the present rates were approved in 1977 was $6.57. CP&L argued that having a customer charge that includes substantially all of the customer cost allows the number of blocks to be minimized and that, without a separate charge, an initial block in the rate schedule should be higher in order to receive the customer charge at a minimum usage level. CP&L argued further that, should no increase be allowed in the customer charge, some customers (those with little or no usage) would not pay an equitable portion of the cost of providing basic electrical service. Public Staff witness Creasy testified that there is a high degree of resistance by customers to paying a monthly flat fee regardless of whether or not the customer uses any electricity. The Commission, after examination of the evidence in this record, concludes that maintaining the present basic facilities charges would not be unreasonably discriminatory.

A feature of the proposed rate design which needs attention is the matter of the six rate schedules maintained by the Company which are closed to any new customers, but which are still available to customers currently being served under said schedules. They are rate schedules AHS, RFS, SCS, MPS, CSE, and CSG. The Commission takes judicial notice of data contained in the annual report for 1978 filed with this Commission by the Company as a basis for the following discussion of each rate schedule.

Schedule AHS (Apartment House Service) was applicable to approximately 214 customers (0.04% of retail) during 1978. Those customers used approximately 8,500 Mwh (0.05% of retail) at an average of approximately 3,300 Kwh per bill. Schedule AHS has been closed since February 19, 1976.

The Company combines rate schedule AHS with rate class SGS (Small General Service) for the purpose of cost-of-service studies, and no separate rate of return is calculated for schedule AHS. However, the Company proposes rates for schedule AHS which are practically the same as the rates proposed for schedule SGS (assuming an average 3,300 Kwh per bill with 0.6 load factor).

It appears that closing schedule AHS to all customers would have very little impact on the Company's revenues, and that it would not have undue impact on the customers currently being served under schedule AHS.

Schedule RFS (Rural Farm Service) was applicable to approximately 4,100 customers (0.7% of retail) during 1978. Those customers used approximately 28,000 Mwh (0.2% of retail) at an average of 570 Kwh per bill. Schedule RFS has been closed to new customers since February 19, 1976.

The Company combines rate schedule RFS with rate class SGS for the purpose of cost-of-service studies, and no separate rate of return is calculated for schedule RFS. However, the Company proposes rates for schedule RFS which are 12% less than the rates proposed for schedule SGS (assuming an average 570 Kwh per bill).

It appears that continuing to serve customers under schedule RFS is unfairly discriminatory to customers who are served under schedule SGS but would be eligible for service under schedule RFS if it were not closed. It further appears that closing schedule RFS to all customers would have very little impact on the Company's revenues, and that it would not have undue impact on the customers currently being served under schedule RFS.

Schedule SCS (Shopping Center Service) was applicable to approximately 13 customers (0.002% of retail) during 1978. Those customers used approximately 14,000,000 Kwh (0.08% of retail) at an average of approximately 90,000 Kwh per bill. Schedule SCS has been closed since February 19, 1976.

The Company combined rate schedule SCS with rate class SGS for the purpose of cost-of-service studies, and no separate rate of return was calculated for schedule SCS. However, the Company proposes rates for schedule SCS which are 12% greater than the rates proposed for schedule SGS (assuming an average 90,000 Kwh per bill with 0.6 load factor).

It appears that closing schedule SCS to all customers would have very little impact on the Company's revenues, and that it would not have any excessively adverse impact on the customers currently being served under schedule SCS.

Schedule MPS (Municipal Pumping Service) was applicable to approximately 830 customers (0.2% of retail) during 1978. Those customers used approximately 151,500,000 Kwh (0.9% of retail) at an average of approximately 15,000 Kwh per bill. Schedule MPS has been closed since June 30, 1977.

The Company combines rate schedule MPS with rate class SGS for the purpose of cost-of-service studies, and no separate rate of return is calculated for schedule MPS. However, the Company proposes rates for schedule MPS which are practically the same as the rates proposed for schedule SGS

(assuming an average 15,000 Kwh per bill with 0.6 load factor).

It appears that closing schedule MPS to all customers would have very little impact on the Company's revenues, and that it would not have undue impact on the customers currently being served under schedule MPS. However, the contract period for customers served under schedule MPS is five years, so that it may not be reasonable or practical to withdraw the schedule at once.

Schedule CSG (Church and School General Service) and schedule CSE (Church and School All-Electric Service) were applicable to approximately 6,300 customers (10% of retail) during 1978. Those customers used 286,000,000 Kwh (1.6% of retail) at an average of 3,800 Kwh per bill. Schedules CSG and CSE have been closed since June 30, 1977.

There are more customers served under schedules CSE and CSG than any of the other closed schedules, and the Kwh usage of those customers has more impact on Company revenues than any of the other closed schedules. However, continuing to serve customers under schedules CSE and CSG might be discriminatory if the rates under those rate schedules are significantly different from rates applicable under alternate schedules open to those new customers who would otherwise be eligible for service under schedules CSE or CSG if they were not closed.

The Commission is of the opinion that rate schedules AHS, RFS, SCS, and MPS should be closed to all customers as soon as it is reasonable to do so. The Commission is also of the opinion that rate schedules CSE and CSG should be carefully scrutinized at the time of the next general rate application by the Company in order to determine whether or not such rate schedules should be closed to all customers currently being served under said rate schedules.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact consists of the testimony and exhibits presented by Company witnesses Bradshaw and Nevil and the testimony and exhibits of Public Staff witness Toms concerning the original cost of CP&L's retail investment in electric plant. The following chart summarizes the amounts which the Company and the Public Staff, respectively, contend are the proper original cost of CP&L's investment in electric plant in North Carolina:

(000's Omitted)

Item	Company	Public Staff
Electric plant in service	$1,683,079	$1,613,754
Net nuclear fuel	46,950	29,608
Construction work in progress	80,717	68,193
Less: Accumulated provision for depreciation	371,109	331,975
Cost-free capital	-	132,169
Total original cost of investment in electric plant	$1,439,637	$1,247,411

As shown in the above chart, the Company and the Public Staff were in disagreement on the proper amount for all items. The amounts proposed by the Company for electric plant in service, net nuclear fuel, and accumulated depreciation represent the level of such rate base items at September 30, 1979, while the amounts proposed by the Public Staff represent the December 31, 1978, or end-of-test-period levels. Initially, the Company and the Public Staff were in agreement in regard to the appropriate amount of these rate base components; however, during the hearing Company witness Bradshaw updated these items to September 30, 1979, levels which resulted in a total increase in the Company's proposal of $47,533,000.

In support of making the revision to update these items to September 30, 1979, the Company contends that North Carolina law requires that the Commission use the most recent update of data presented to it in evidence until the hearings are closed. The Company pointed out that the Public Staff did not begin its audit until October 1979 at which time it had access to the September 30, 1979, values and that the Public Staff is provided with copies of CP&L's monthly financial and operating reports which include such data.

Public Staff witness Toms would not accept the figures comprising the $47,533,000 increase in selected rate base items since each item had not been subjected to an audit. The Public Staff contended that the Company was improperly attempting to update its filing through Public Staff witness Toms. The Public Staff also argued that the current G.S. 62-133(b) and (c) permit the updating of test-period evidence only when such evidence tends to show actual changes for a reasonable time after the end of the test period.

Based upon the evidence presented by the witnesses, the Commission concludes that the appropriate amount for each of these three items is as follows: electric plant in service - $1,613,754,000; net nuclear fuel - $29,608,000; and the accumulated provision for depreciation - $331,975,000. The Commission bases its decision in part on amended G.S. 62-133(c) which states that "the original cost of the public utility's property, including its construction work in

progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. Although, the Commission is aware that G.S. 62-133(c) further allows the Commission to consider such relevant, material, and competent evidence tending to show actual changes in revenues, expenses, and costs of the public utility's property based on circumstances and events occurring up to the time the hearing is closed, it is the Commission's opinion that adjustments made to recognize additions to electric plant without corollary adjustments to related revenues and expenses are improper. Not only do such adjustments violate the "matching concept" of income determination but they also distort the operating results of the Company in a given period. Moreover, CP&L's Application in this regard does not comply with Commission Rule R1-17, Subsection B, Paragraph 14 which states in part as follows: "In the event any affected utility wishes to rely on G.S. 62-133(c) and offer evidence on actual changes based on circumstances and events occurring up to the time the hearing is closed, such utility should file with any general rate application detailed estimates of any such data and such estimates should be expressly identified and presented in the context of the filed test year data and if possible, in the context of a twelve (12) month period of time ending the last day of the month nearest and following 120 days from the date of the application. Said period of time should contain the necessary normalizations and annualizations of all revenues, expenses and rate base items necessary for the Commission to properly investigate the impact of any individual circumstance or event occurring after the test period cited by the applicant in support of its application. Any estimate made shall be filed in sufficient detail for review by the Commission." For the aforementioned reasons the Commission finds electric plant in service, net nuclear fuel, and the accumulated provision for depreciation proposed by the Public Staff to be appropriate.

Company witness Bradshaw and Public Staff witness Toms initially concurred that the level of construction work in progress (CWIP) to be included in rate base in this proceeding was $68,193,000. Such level of CWIP represents the estimated valuation of certain specific project expenditures made by CP&L between July 1, 1979, and September 30, 1979. During the hearing, Mr. Bradshaw updated CWIP to $80,717,000 to consider additional construction project expenditures made by CP&L during the same period of time which were not considered in the initial estimate.

The Commission considers the update of construction work in progress to $80,717,000 to be proper. In arriving at its decision to include CWIP added between July 1, 1979, and September 30, 1979 (a period after the end of the test period), in the rate base, the Commission recognizes that such CWIP is not yet revenue producing and, therefore,

corollary adjustments to revenue and expenses are neither warranted nor required.

The final item on which the witnesses disagree concerns the appropriate treatment to be given cost-free capital. The following chart summarizes the amounts deducted by each witness:

(000's Omitted)

Item	Company	Public Staff
Accumulated deferred income taxes	$ -	$130,602
Accounts payable - electric plant in service	-	1,567
Total	$ -	$132,169

As the above chart shows, the Company did not deduct cost-free capital in arriving at the original cost of CP&L's net investment in electric plant. Alternatively, Public Staff witness Toms deducted the accumulated provision for deferred income taxes of $130,602,000 and accounts payable - electric plant in service of $1,567,000 in computing the rate base.

The Company and the Public Staff disagree as to whether accumulated deferred income taxes should be deducted from net electric plant in service or be considered as cost-free capital in the capital structure. The Company addressed this subject through the direct testimony of witnesses Smith, Lilly, Bradshaw, Luftig, and Edge and the rebuttal testimony of witness Bradshaw. All Company witnesses recognize this item as cost-free capital. The Company states that this item was included in the capital structure at zero cost consistent with prior Commission Orders. In his rebuttal testimony, Mr. Bradshaw justified the continuation of the practice of including cost-free capital in the capital structure at zero cost on the basis that tax deductions are an interest-free source of capital for new construction provided by the Federal government. Consequently, the accumulated amount of these deferred taxes should follow the investment of those funds. Mr. Bradshaw contends that these funds are initially invested in CWIP, some of which are now a part of electric plant in service, some are included in CWIP prior to July 1, 1979, and some in CWIP after that date. Since only a part of the accumulated deferred tax monies are invested in rate base items, Mr. Bradshaw testified that only that part should benefit rate base items. Mr. Bradshaw further testified that putting these taxes in cost-free capital at zero cost distributes the benefits of the cost-free capital in accordance with where the funds have been invested. Mr. Bradshaw concludes that this largely distributes the benefits to current ratepayers but also benefits future ratepayers by reducing the cost of CWIP through a lower allowance for funds used during construction (AFUDC) rate. Witness Bradshaw stated that the Public Staff's treatment of cost-free funds would

result in replacing current revenues with noncash AFUDC. He contends this would be adversely received by the investment community, and thereby ultimately increase the cost of capital because investors require current dollar earnings in lieu of AFUDC dollar earnings.

It is the Public Staff's position that deducting cost-free capital from the rate base is the only way CP&L's present customers will receive the full benefit of such cost-free capital. If cost-free capital is included in the capital structure at zero cost, a portion of the cost-free capital will be allocated to nonrate base assets, such as nonutility property and investment in subsidiary companies, and the customers will never receive any benefit from that amount of cost-free capital which they have provided.

After carefully examining the evidence, the Commission concludes that it is entirely equitable and proper to assign 100% of this cost-free capital to the Company's utility operations. The Commission believes that CP&L's customers should not be required to pay a return on funds which they have contributed, when such capital has no cost to the Company.

In reaching its decision, the Commission notes that the North Carolina Supreme Court has ruled in Utilities Commission v. Vepco, 285 N.C. 399, 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. Clearly, accumulated deferred income taxes represent funds which CP&L has been permitted to collect from its customers in order to pay income taxes at some date in the future and as such those funds should be excluded from the rate base in this proceeding.

Therefore, for the foregoing reasons, the Commission concludes that cost-free capital should be deducted in calculating the net original cost of property included in its determination of the rate base. The Commission further concludes that the amount of $130,602,000 recommended by the Public Staff is proper and that CP&L should eliminate on a prospective basis the cost-free component from the formula prescribed by this Commission for use in calculating the AFUDC rate.

As shown above, Public Staff witness Toms testified that accounts payable - electric plant in service constitutes cost-free capital which should be deducted in calculating net plant in service. Mr. Toms further testified that accounts payable - electric plant in service was not considered in the Public Staff's lead-lag determination of a reasonable working capital allowance and as such should be deducted from net plant in service. The Company alternatively neither deducted such funds from the rate base

nor included such funds as cost-free capital in the capital structure.

The Commission concludes that accounts payable - electric plant in service does represent cost-free capital and should be deducted in calculating the original cost of CP&L's investment in electric plant. Further, the Commission finds the appropriate end-of-period level of such accounts payable to be $1,567,000.

The Commission therefore concludes that cost-free capital in the total amount of $132,169,000 should be deducted in calculating the Company's investment in North Carolina retail electric plant.

The Commission as previously discussed has found that the summer peak responsibility method of allocating total system revenues, rate base, and expenses to the Company's North Carolina retail operations is the most appropriate allocation methodology for use herein. The peak and average method of allocation was employed by both the Company and the Public Staff; therefore, it becomes incumbent upon the Commission to adjust the level of investment in electric plant set forth hereinabove to the level that is reflected when utilizing the peak responsibility demand allocation method. The Commission has determined this adjustment to be a reduction of approximately $5,210,000.

Thus, the Commission concludes, based upon the foregoing, that the proper level of electric plant in service for use herein is $1,254,725,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Electric plant in service	$1,613,754
Net nuclear fuel	29,608
Construction work in progress	80,717
Accumulated provision for depreciation	(331,975)
Cost-free capital	(132,169)
Adjustment to reflect peak responsibility allocation	(5,210)
Net investment in electric plant	$1,254,725

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witnesses Bradshaw and Nevil and Public Staff witnesses Coleman and Nightingale presented direct testimony and exhibits in regard to the proper allowance for working capital, deferred debits, and deferred credits. Additionally, Company witnesses Bradshaw and Davis (as to fuel inventories) presented rebuttal testimony on this subject. At the outset there is a conceptual difference in what Company witness Bradshaw and Public Staff witness Coleman consider as items properly includable in the working

capital allowance. Company witness Bradshaw used the formula method to compute his proposed allowance for working capital. Further, Mr. Bradwhaw modified the formula method to include balances in selected deferred debit accounts. Witness Bradshaw's reason for including these deferred debits was to allow the investor to earn a return on capital supporting these deferred costs.

Public Staff witness Coleman used a lead-lag study to measure the Company's working capital requirements. Mr. Coleman excluded deferred debits and credits from working capital and presented certain of these items as other additions and deductions to rate base.

The Commission concludes that the method proposed by Public Staff witness Coleman should be adopted. This treatment is consistent with the findings of the Commission in previous cases that an amount should be included for working capital only to the extent that the Company's debt and equity investors have been required to provide capital to maintain an inventory of materials and supplies and to pay the cost of service prior to its collection from the customer.

The level of working capital and other deferred debits and credits proposed by Company witness Bradshaw and Public Staff witness Coleman is set forth in the following chart.

(000's Omitted)

Item	N.C. Retail Company	N.C. Retail Public Staff
Cash	$ 6,043	$ 7,368
Materials and supplies - fuel stock	52,357	42,313
Materials and supplies - nonfuel	13,928	13,016
Prepayments	1,000	1,000
Investor funds advanced for operations	29,292	11,173
Literature and exhibits - Harris Center	-	120
Other additions	11,951	3,570
Less: Customer deposits	3,733	3,733
Other deductions	-	17,232
Total allowance for working capital and other deferred debits and credits	$110,838	$ 57,595

As the above chart shows, the total difference in the allowance for working capital and other deferred debits and credits is $53,243,000. The Commission will now analyze the testimony and exhibits of each witness with respect to the items which cause this difference.

The first item of difference between the parties relates to the amount of cash included for minimum and compensating bank balances. The Company included the test year average

cash balance of $6,043,000, while Public Staff witness Coleman included $7,368,000, which is the sum of the end-of-period cash balance plus the cash activity balance requirement.

The Commission finds that the end-of-period level of cash required for minimum and compensating bank balances of $7,368,000 proposed by the Public Staff is the most reasonable estimate of the level that can be anticipated to occur in the future on an ongoing basis and is appropriate for use herein.

The second item of difference is materials and supplies - fuel inventory. Company witnesses Nevil and Davis and Public Staff witnesses Nightingale and Coleman presented testimony on this item. The difference of $10,044,000 which exists between the Company's and the Public Staff's proposals is due to coal and No. 2 fuel oil inventory adjustments made by both the Company and the Public Staff.

The Company started with the per books, test year figures for coal and oil and adjusted these figures to reflect current quantities and prices. The Company included a 90-day supply of coal equivalent to 1,750,000 tons at a price of $36.06 per ton (December 31, 1979, average delivery cost).

Public Staff witness Nightingale testified that the Company should not be allowed a 90-day supply of coal. In computing the total Company capital requirements for the coal stock of $54,405,000, Mr. Nightingale used a coal stock quantity of 1,573,760 tons and an average price per ton of $34.57. Witness Nightingale testified that a review of the number of days' supply maintained by the Company since 1973 indicates that the level maintained has ranged from slightly under 45 days to just over 81 days. Thus, Mr. Nightingale concluded that the Company had not demonstrated its ability to maintain a 90-day coal supply on average over an extended period.

The Company and the Public Staff were also in disagreement regarding the reasonable level of CP&L's No. 2 fuel oil inventory. While the parties agreed that 23,000,000 gallons of No. 2 fuel oil was an appropriate inventory quantity, the valuation of such fuel oil inventory was in question.

The Commission concludes that the relevant issue in this regard is the level of investment which must be provided by CP&L's investors in order to maintain coal and fuel oil inventories sufficient to ensure the provision of adequate service. In recent years in terms of the number of days of fuel inventories the Company has consistently maintained significantly less than an 80-day supply. Although the Commission believes that the unit costs of both coal and fuel oil proposed by the Company are more representative of prospective costs than the levels proposed by the Public Staff when considered in view of the number of days' supply

of such fuels actually maintained by the Company the Commission believes the total cost (number of days supply x unit cost) proposed by the Public Staff is the most representative. Therefore the Commission finds fuel stock of $42,313,000 appropriate for use in this proceeding.

The next item of difference relates to materials and supplies - nonfuel. The Company included $13,928,000 for nonfuel material and supplies. Alternatively, Public Staff witness Coleman recommended using the per books amount of $13,016,000.

Essentially, the difference in the Company's and the Public Staff's proposals is due to an adjustment for general inflation proposed by the Company. The adjustment was calculated by increasing the amount per books by 7%. Having reviewed the evidence presented regarding materials and supplies - nonfuel, it is apparent that the actual end-of-period balance (proposed by Public Staff witness Coleman) exceeds the actual test-period average balance. Although the increase in the end-of-period balance over average balance of materials and supplies may not be entirely due to price level increases, it is the Commission's opinion that the end-of-period level of $13,016,000 is representative of the level that can be anticipated to occur on an ongoing basis in the future and is, therefore, appropriate for use herein.

The Company and Public Staff were in agreement regarding the propriety of including prepayments in the working capital allowance and regarding the appropriate level of such prepayments. Consequently, the Commission concludes that prepayments of $1,000,000 should be included as component of working capital.

The witnesses do not agree as to the amount which should be included for the allowance of investor funds advanced for operations. The Company employed the traditional formula method and thus derived the amount it included by taking 1/8 of operation and maintenance expense excluding depreciation. After adjustments the cash allowance claimed by CP&L for 1/8 of O&M for North Carolina retail operations was $38,622,000.

The Company included, as an offset to the adjusted cash allowance, average Federal income tax accruals of $9,330,000. Therefore, the adjusted amount included by CP&L for investor funds advanced was $29,292,000 which consists of 1/8 of O&M of $38,622,000 less the average Federal income tax accruals of $9,330,000. In addition to these items, the Company included certain selected deferred debits and added them as components of working capital.

Public Staff witness Coleman testified that he had included $11,173,000 for investor funds advanced. This amount was determined by a lead-lag study which was prepared by witness Coleman after his review and analysis of the lead-lag study filed by the Company. Mr. Coleman testified

that a properly prepared study measures the customers' lag in payment to the Company of its cost of service compared to the lag in payment of that same cost of service which is available to the Company.

The Commission is aware that there are different methods employed to compute the cash allowance or the investor funds advanced component of the working capital allowance. Further, each method provides, at best, an estimated measure of the amount needed for this purpose. However, the use of an estimate does not mean that one should use unrealistic assumptions and guesses. The method employed by the Company has not been shown to have any direct relationship to the Company's day-to-day operations. In its favor, the Commission can only state that the formula method is a simpler approach and easier to understand than some of the other methods. On the other hand, the lead-lag approach does relate to the day-to-day operations of the Company. It clearly identifies the capital required as a result of the customers' payment practices and the capital available from sources other than the investor to meet that need. The Commission believes that an amount based on the actual payment practices of the customers and the Company provides a more reliable measure of the capital investors will be required to provide for this component of working capital and, thus, will utilize the lead-lag approach herein.

The Commission, having determined the lead-lag approach to be proper, must now consider each of the modifying adjustments which Public Staff witness Coleman proposed to make to the lead-lag study prepared by the Company.

In his review of CP&L's lead-lag study, Public Staff witness Coleman found the customer payment lag of 41.43 days to be reasonable. Mr. Coleman, however, did not agree that the number of days' lag in the Company's payment of the cost of service contained in CP&L's study was proper. As measured by that study, the Company's lag in payment of the cost of service was 27.26 days. Witness Coleman testified on four major problems with CP&L's study. Three of these problems related directly to the derivation of the 27.26 days. The fourth problem related to the inclusion of deferred debits and credits as components of the working capital allowance. The Commission, as previously discussed, agrees that deferred debits and credits should not be included as components of working capital.

The three problems which Public Staff witness Coleman had with the Company's derivation of 27.26 days' lag in its payment of cost of service related to the lag days assigned gross receipts taxes, State income taxes, and preferred stock dividends. Witness Coleman testified that the Company had assigned 15 lead days to gross receipts tax. According to the witness, this would mean that, on average, the Company paid the cost 15 days prior to the time the cost was incurred in rendering service. Mr. Coleman testified that no company, including CP&L, treats this tax as being prepaid

in its books and records for either rate-making or financial reporting purposes. It was Mr. Coleman's opinion that gross receipts tax should not be treated as a prepaid item, but rather as a tax paid in arrears.

The result of treating this tax as a tax paid in arrears permits recovery of the tax through rates from the customers prior to the time the Company pays the gross receipts tax. Mr. Coleman assigned 76 lag days to the gross receipts tax; these days were measured from the midpoint of the service period involved to the date the tax was actually paid by the Company. The effect of this change was to increase the Company's lag in payment of its cost of service by 5.43 days.

The Company contends that Mr. Coleman has confused the time frame in which the amount of the tax is measured with the time frame for which the State grants the utility the privilege of doing business. CP&L stated that liability for the tax falls on the owner of the properties on the first day of each calendar quarter, not upon the owner of the properties during the preceding calendar quarter. Therefore, the Company contends there is a prepayment lead of not less than 15 days rather than Mr. Coleman's 76-day lag.

The Commission has considered the testimony and the data filed by the Company with respect to the proposed treatment of gross receipts tax. This data shows that the Company does in fact accrue gross receipts tax on its books. Further, there was no evidence that the Company adjusted the level of gross receipts tax expense downward, yet such an adjustment would be required if the tax were truly a prepaid tax. Accordingly, the Commission after having examined the testimony of witness Coleman concludes that his treatment of gross receipts tax as a tax paid in arrears is the proper adjustment and it is reasonable to assign gross receipts tax a 76 days' lag in the lead-lag study.

The second problem was the lag assigned to State income taxes. Public Staff witness Coleman testified that there were two problems with the Company's computed number of 161.55 lag days assigned State income taxes. First, the Company based its lag on a payment practice which suggests that it would have to pay 35% of its estimated or potential liability on September 15 and 17.5% on December 15 of each year, with the remaining 47.5% being due on March 15 when the return is filed. The second problem area results from the fact that the lag days stipulated by the Company were based on the lag in payment of both North and South Carolina income taxes.

On cross-examination witness Coleman testified that it was not unreasonable to expect the Company to pay 17.5% of its State income tax liability on September 15 and 17.5% on December 15 and the remaining 65% on March 15 when the return is filed. In Mr. Coleman's opinion such a payment

procedure will enable the Company to meet the tests set forth in the rules and regulations for payment of North Carolina corporate income tax and to avoid a payment penalty.

Mr. Coleman testified that CP&L's actual practice during 1977 and 1978 showed that the Company had incurred no problem in meeting the requirements of the statute for paying income taxes without incurring any penalty. The effect of using Mr. Coleman's proposed 209.45 lag days rather the Company's 161.55 lag days assigned to State income taxes increased the Company's number of days' lag in payment of its cost of service by .61 days.

With regard to the second problem area associated with State income taxes, Mr. Coleman contends that it is wrong to determine the lag days based on the payment of both North and South Carolina income taxes. Because the lag in payment is less in South Carolina, the use of a composite lag results in assigning capital supplied by North Carolina ratepayers to South Carolina operations.

With regard to the lag in payment of State income taxes, the Commission concludes from the evidence presented that the Company has been able to pay 17.5% of the current year's income tax liability on September 15 and again on December 15 of the current year and the remaining 65% on March 15 of the following year without incurring any penalty. Also, the Commission contends it is improper to use a composite lag based on the payment of both North and South Carolina income taxes. Thus, the Commission finds that the 209.45 days' lag available to the Company for payment of State income taxes, as proposed by witness Coleman, is proper.

The third area of disagreement involves the Company's lag in payment of preferred stock dividends. Public Staff witness Coleman testified that the Company had assigned zero days to preferred stock dividends in their lead-lag study. Mr. Coleman testified that use of zero days as the lag in payment of preferred dividends implied that preferred dividends were paid on a daily basis and that this simply was not the case. It was Mr. Coleman's testimony that dividends on preferred stock were paid on the first day of each month following the end of each quarter. Therefore, witness Coleman concluded that the real lag was 45 days instead of zero days. The effect of this change in lag days assigned to preferred stock dividends was to increase the Company's number of days' lag in payment of its cost of service by 1.01 days.

The Company contends that it is just as reasonable to assume a 45-day lead as it is to assume, as Mr. Coleman has done, a 45-day lag in the payment of preferred dividends. CP&L advocates zero lead or lag days which it claims is both factually and legally sound and is the happy middle ground between either of the two assumptions. It is pointed out by the Company that the only difference which exists between

the preferred stockholder and the common stockholder is that the preferred stock has priority over the common stock in the payment of dividends and, in the event of liquidation, in the payment of the par value of that stock. In exchange for this priority, the preferred stockholder accepts a fixed dividend rate if a dividend is paid. The Company contends that Mr. Coleman has mistakenly equated preferred stock with long-term debt, refusing to recognize that the holder of CP&L's long-term debt is a creditor of the corporation entitled, by contract, to specific interest payments at specific times.

The Commission believes that dividends paid on any particular payment date are applicable to the previous quarter; thus preferred stock dividends would not be paid in advance. The Commission concludes, based on witness Coleman's testimony, that it is reasonable to assume that the Company pays the preferred stock dividend, on an average, 45 days after it is incurred. After consideration of all the modifying adjustments proposed by witness Coleman to the Company's lead-lag study, which have been previously discussed, the Commission finds investor funds advanced for operations of $42,313,000 to be proper for use herein.

Both Company witness Bradshaw and Public Staff witness Coleman proposed to include certain deferred debits as a component of rate base. Witness Bradshaw included deferred debits of $11,951,000 as a component of the working capital allowance while Public Staff witness Coleman included $3,570,000 as other additions to rate base. The majority of the difference between the witnesses' proposals results from witness Bradshaw's inclusion of the unamortized balance of abandonment cost relating to the South River Project and the unamortized balance of repairs to the Robinson turbines in the rate base; and differing opinions with respect to the proper rate-making treatment to be accorded certain items of cost reflected in Deferred Debits - Retail and Deferred Debits - Miscellaneous.

Relative to the Deferred Debits - Retail account, Public Staff witness Coleman excluded a cost of $128,000 incurred for right-of-way clearing on the Domestic Electric System which was recently acquired by CP&L. Mr. Coleman contended that this cost should not have been deferred but should have been charged to expense in the period incurred.

The Commission concludes that the exclusion of costs deferred in connection with right-of-way clearing on the Domestic Electric System is proper. These costs should have been charged to expense in the period incurred. Therefore, the Commission will exclude the $128,000 from rate base and as discussed in Evidence and Conclusions for Finding of Fact No. 11 will include $128,000 in test-period operating expenses.

The next item of difference relates to the proper amount to be included in the rate base with respect to Deferred

Debits - Miscellaneous. Company witness Bradshaw included an amount of $5,238,978 on a total Company basis and $3,544,000 on a North Carolina retail basis. Alternatively, Public Staff witness Coleman determined the appropriate level of Deferred Debits - Miscellaneous properly includable in the rate base to be $811,000 on a total Company basis and $549,000 on a North Carolina retail basis. The difference relates almost entirely to specific adjustments made by Public Staff witness Coleman.

Mr. Coleman concluded that certain items reflected in Deferred Debits - Miscellaneous were improperly included in the rate base by Company witness Bradshaw. Specifically, witness Coleman excluded such deferred costs as the Uranex controversy, the Brunswick plant generator repair, the Riley Stoker v. CP&L case, the Darlington Plant fire damage, the failure of the McGraw Edison Transformer and the repair to Sutton Unit No. 1. The thrust of Mr. Coleman's testimony was that these items represented claims which the Company anticipated recovering from its insurers or warrantors. It was witness Coleman's opinion that the carrying charges associated with these items should be recovered from those parties who were liable for the claims and not from the customers.

After a review of the individual deferred items excluded by witness Coleman which are enumerated above, the Commission concludes that such items are utility in nature and as such are properly includable in the rate base in this proceeding. Additionally, no evidence was presented to indicate that it is possible to recover carrying charges from the insurers or warrantors.

The witnesses were in agreement regarding the propriety of treating $120,000 (North Carolina retail amount) relating to Literature and Exhibits for the Harris Center as an addition to the rate base. However, Company witness Bradshaw included the amount as a deferred debit while witness Coleman included it as a working capital component. The differing treatments are merely categorization differences. The Commission will include Literature and Exhibits for the Harris Center as a part of other additions.

The next item of difference in deferred charges relates to the costs associated with the South River Project which the Company abandoned in 1978. Company President Smith and Mr. Nightingale of the Public Staff testified on the history of CP&L's proposed South River Nuclear Station from CP&L's 1973 determination of need through CP&L's cancellation of this station in December 1978. In direct testimony Company witness Bradshaw proposed that the cost associated with the South River Project be written off to expense over a five-year period and that the balance, less one year's amortization, be included as a component of the rate base. Mr. Bradshaw testified that writing this cost off in one year would have a material and detrimental impact on earnings per share.

The Company contended that the South River Project expenditure was by no means wasted since it allowed the Company to keep its options open during a period of uncertainty about future generating requirements. As the contract could not be continued indefinitely with only modest financial payments, the Company was faced with a choice between more significant costs or termination.

The Company asserted that there were two significant risks in continuing the contract. One was that according to current demand forecasts the units would not be needed until well into the 1990s, and further delays or extensions of the contract would have been extremely expensive. Mr. Smith testified that the additional cost of renegotiated contracts would have been enormous and could have reached $200 million by the end of 1985. A second risk was that because of the many governmental and regulatory uncertainties and possibilities of construction and operating delays, the cost of constructing the nuclear project would far exceed that of constructing an alternative type of generation.

It was the Company's contention that the risk of cancelling the units were few. Should load growth accelerate and additional base load generation be needed in the early 1990s, the Company could still construct nonnuclear units without similar time problems.

The Public Staff asked that the Company not be allowed to recover South River costs for two reasons. First, according to its load forecast, additional generation units may be needed in the early 1990s, and secondly, nuclear units afford the lowest overall cost for electric energy. In short, the Public Staff says that it was imprudent for the Company to cancel because the units may be needed and because the units were nuclear.

The Commission finds CP&L's decision to abandon the South River Project to be both reasonable, prudent, and in the best interest of the Company and its customers. Consequently, the Commission will amortize the abandonment cost over a five-year period. For rate-making purposes the Commission will include the annual amortization of the abandonment cost of $1,527,000 in test-period operating expenses and the unamortized balance of $6,106,000 in the rate base.

The final item of difference regarding other additions relates to the amount included for the unamortized portion of the Robinson Plant turbine repairs. Witness Toms contends that these repairs were abnormal and nonrecurring and consequently should not be considered for rate-making purposes.

Based on the evidence presented, the Commission concludes that the amount expended for Robinson turbine repairs should be amortized over a three-year period and that the unamortized portion of $925,000 (North Carolina retail

amount) should be considered as an addition to the rate base. The basis for this decision will be discussed subsequently. Further, as will be discussed subsequently, the Commission has adopted the Public Staff's adjustment to test year operation and maintenance expense to reflect amortization of certain preliminary survey and investigation charges. The Commission, however, will not include the balance of such unamortized cost in calculating the Company's rate base for use herein; since, such unamortized cost is more than off-set by the deferred income taxes associated with the deferral of the Robinson turbine repairs and the deferred income taxes associated with the deferral of the preliminary survey and investigation charges. Clearly, such deferred taxes are properly includable by the Commission for use herein.

Based on the foregoing analysis the Commission concludes that the representative level of deferred charges properly includable as other additions to rate base for use herein is $11,823,000, which sum may be calculated as follows:

Item	Amount
Company witness Nevil's working capital adjustment for unamortized projects	$11,026,000
Company rebuttal witness Bradshaw's adjustment to include the unamortized portion of the Robison turbine repairs	925,000
Commission adjustment to exclude the total costs incurred in the right-of-way clearing on the Domestic Electric System (Note: This item of cost has been included in test year operation and maintenance expense.)	(128,000)
Total	$11,823,000

The last remaining item of difference between the Company and the Public Staff is the amount to be included in rate base as other deductions. Public Staff witness Coleman included other deferred credits in the amount of $17,232,000 while the Company did not include these deductions. The Commission concludes that the deferred credits consisting of nuclear insurance reserves and nuclear fuel lease agreements represent cost-free capital available to the Company and as such should be deducted in the calculation of the Company's rate base for use herein.

The Company and the Public Staff were in agreement as to the proper amount of customer deposits; therefore, the Commission finds that customer deposits of $3,733,000 are appropriate for use herein.

The Commission, as previously discussed, has adopted the summer peak responsibility cost allocation method for use in this proceeding. It is, therefore, necessary for the Commission to make an adjustment to the allowance for working capital and deferred debits and credits to reflect

the effect of peak responsibility allocation. The Commission has determined the appropriate amount of this adjustment to be a reduction of $272,000.

The following chart summarizes the amounts which the Commission concludes are proper for each component of working capital and deferred debits and credits:

Allowance for Working Capital and Deferred Debits and Credits	
Cash	$ 7,368,000
Materials & supplies - fuel stock	42,313,000
Materials & supplies - nonfuel	13,016,000
Prepayments	1,000,000
Investor funds advanced for operations	11,173,000
Other additions	11,823,000
Less: Customer deposits	3,733,000
Other deductions	17,232,000
Adjustment to reflect peak responsibility allocation	(272,000)
Total	$65,456,000

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Commission, having previously determined the reasonable original cost of the Company's investment in electric plant for use herein to be $1,254,725,000 (includes $80,717,000 for construction work in progress) (Finding of Fact No. 6) and the reasonable allowance for working capital and deferred debits and credits to be $65,456,000 (Finding of Fact No. 7), concludes that the proper rate base for use herein is $1,320,181,000 ($1,254,725,000 & $65,456,000).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Nevil and Public Staff witness Toms proposed the following amounts with respect to the proper level of CP&L's test year revenues:

(000's Omitted)

Item	Company Witness Nevil	Public Staff Witness Toms
Operating revenues	$604,043	$607,930

Company witness Nevil adjusted book revenues to normalize and annualize operating revenues for the test year ended December 31, 1978. The Public Staff accepted the Company's revenue adjustments pertaining to the fuel clause and base fuel cost. However, the Public Staff proposed the following additional adjustments which account for the difference of $3,887,000 as reflected above:

(000's Omitted)

Item	Amount
Adjustment to revenues due to customer growth	$ (10)
Adjustment to revenues due to weather normalization	3,897
Total	$3,887

Public Staff witness Creasy presented calculations showing that adjustments to operating revenues for customer growth should be $12,276,626 instead of the $12,286,599 proposed by the Company. The Company agreed with the Public Staff's growth adjustment which simply corrected a mathematical error. The Commission, therefore, adopts the Public Staff's adjustment in this regard.

Witness Creasy also presented calculations showing that adjustments to operating revenues for weather normalization should be ($6,494,365) instead of the ($10,391,008) proposed by the Company. The ($6,494,365) revenue adjustment represents the effect of the weather normalization adjustment presented by Public Staff witness Mayberry.

Public Staff witness Mayberry presented the results of a multiple regression model which showed that residential kilowatt-hour sales vary from year to year in response to weather conditions. Dr. Mayberry found that a 1% increase in cooling degree days above the norm increases average electricity consumption by about .14% while a 1% increase in heating degree days increases average electricity consumption by about .29%. Since the test year, 1978, was a year with weather warmer than normal during summer and colder than normal during the heating months, test year residential electricity sales must be adjusted to the level which would have prevailed under normal weather conditions. The results presented by witness Mayberry indicate that average residential sales were 385 kilowatt-hours higher in 1978 than they would have been with normal weather.

Dr. Mayberry also presented evidence which tended to show that variations in weather from year to year have no significant impact on commercial sales.

Based on his econometric results witness Mayberry concluded that variations in weather from year to year have no measurable impact on commercial electricity sales in CP&L's North Carolina service area.

Company witness Nevil presented the adjustment for weather normalization but he did not submit the details of how this adjustment was determined. However, CP&L offered the testimony of Archie Futrell on rebuttal. Witness Futrell presented the results of his monthly analysis of CP&L's residential and commercial sales. Mr. Futrell's study found that weather did have some impact on sales in the commercial

sector and a larger effect on the residential sales than that found by Dr. Mayberry.

In the Commission's view there are several areas of concern in Mr. Futrell's analysis which render it somewhat unreliable for the purpose of adjusting test year sales. (1) Mr. Futrell used data on kilowatt-hour sales per customer of the entire CP&L system. This necessarily assumes that South Carolina customers face the same weather as North Carolina customers and respond to weather in identically the same way as North Carolina customers. This assumption has no substantial evidence to support it and, thus, is inappropriate in this case. (2) By using monthly data, Mr. Futrell attributes all seasonal variations in consumption, aside from those explicitly modeled, to weather. The effect is to overestimate weather effects. (3) By determining normal weather based on the temperature data for the period 1941 to 1970 the Company is ignoring the idea that more recent data might be more reflective of what we expect in the next few years than older data. (4) In using only one weather station, Mr. Futrell assumes that Raleigh weather is an accurate estimation for weather in the entire service area. The Public Staff used three weather station readings and the Commission agrees that the more weather station readings utilized the more accurate the forecast will be.

After considering all the evidence in this matter, the Commission finds that test year residential sales should be adjusted downward by 385 kilowatt-hours per customer and that no adjustment should be made for commercial or industrial sales due to weather normalization. The Commission therefore concludes that the proper weather normalization adjustment should have been a $6,494,365 (385 Kwh/customer x 497,889 customers x $.03388/Kwh) negative adjustment to residential sales only.

Finally, based upon the foregoing discussion, the Commission concludes that the appropriate level of operating revenues for the test year under present rates, and after accounting and pro forma adjustments, to be used in this proceeding, is $607,930,000 ($604,043,000 - $10,000 + $3,897,000).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

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 in the testimony of Public Staff witness Nightingale. The Public Staff's evidence consisted of an analysis of the Company's 23 long-term coal contracts in detail and an examination of a sample of "spot" coal procurement activities proceeding from the determination of spot coal requirements through invitations to bid, receipt of bids, orders, and payment.

Public Staff witness Nightingale testified that the Company's fuel procurement activities appeared reasonable and within the guidelines adopted by the Commission, with the exception of market price adjustment provisions included in three of CP&L's long-term coal contracts and one contract with an adjustment provision associated with CP&L's monthly ordered spot price.

From the evidence presented, the Commission concludes that CP&L's fuel procurement activities and purchase policies are reasonable and are in accordance with practices heretofore reviewed and approved by this Commission. The three contracts which include market price provisions and the contract with a spot price provision should be closely monitored in the future to determine their cost performance relative to CP&L's other long-term coal contracts.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact consists of the prefiled testimony and exhibits of Company witnesses Bradshaw and Nevil, North Carolina Textile Manufacturers Association, Incorporated, witness Currin, Public Staff witness Toms, and the rebuttal testimony and exhibits of Company witness Bradshaw.

Two basic differences exist between the parties with respect to the proper test year level of operating revenue deductions. The first difference exists between the Company, the NCTMA, and the Public Staff. This difference concerns the proper methodology to be employed in the allocation of total system costs to the Company's North Carolina retail operations. The different allocation methodologies proposed by the parties and the Commission's decision in this regard have been previously discussed and need not be repeated here.

The remaining basic difference between the parties exists between the Company and the Public Staff. This difference concerns the propriety of the level of costs included in the test year level of operations exclusive of differences arising from the use of different allocation techniques. The following chart sets forth the amounts proposed by the parties:

(000's Omitted)

Item	Company	Public Staff
Operation and maintenance expense	$311,522	$308,896
Depreciation	54,913	54,913
Taxes other than income	50,975	51,225
Income taxes - State and Federal	24,355	27,433
Investment tax credit	20,447	20,447
Provision for deferred income taxes	21,560	21,560
Interest on customer deposits	172	172
Total	$483,944	$484,646

The first area of difference between the parties concerns operation and maintenance expense totaling $2,626,000. The items comprising this difference are as follows:

(000's Omitted)

Item	Amount
Difference in Company and Public Staff wage adjustment	$2,808
Public Staff adjustment to O&M to reflect weather normalization	(2,118)
Company adjustment reflecting acceptance of Public Staff adjustment to exclude demand related cost from weather related expense adjustment	(502)
Public Staff adjustment to eliminate amortization of South River project	1,527
Company adjustment to reflect amortization of extra-ordinary maintenance at its Robinson facility	463
Public Staff adjustment to amortize preliminary survey and investigation expenses	413
Difference in Company and Public Staff adjustment to reflect cost associated with Domestic Electric Company	35
Total	$2,626

The wage adjustment difference between the parties results from oversight on the part of both parties in each of their respective calculations of the proper annualized level of wage and wage related expense. The Commission after having corrected for such oversight concludes that the level of wage expense proposed by the Public Staff should be increased by $1,793,000.

The Commission, as previously discussed, has adopted the Public Staff's weather related adjustment to operating revenues. Therefore, it is incumbent upon the Commission to make the corollary adjustment to operation and maintenance expense. There is no disagreement between the parties with respect to the calculation of the weather related expense adjustment. The Commission therefore concludes that the Public Staff's adjustment in this regard is proper for use herein.

With respect to the amortization of costs associated with the cancellation of the Company's South River Project, the Commission has previously found that the Company's actions in this regard were prudent and in the best interest of the Company and its customers. The Commission therefore concludes that the proper test year level of operation and maintenance expense should reflect the amortization of $1,527,000 of such cost.

The Company normalized the test year level of expense to include the cost of refueling each of its three nuclear

generating units (exclusive of fuel). During the test year only one unit was actually refueled. The refueling of the other two units (Brunswick units Nos. 1 and 2) was accomplished early in 1979. Public Staff witness Toms proposed a reduction of $199,000 to conform the Company's estimate to the actual costs incurred. This adjustment was uncontested by the Company. The Company does contend, however, that witness Toms should have also adjusted nonfuel expense to include amortization of the turbine repairs at the Robinson nuclear unit in the amount of $1,388,285. In his rebuttal testimony, Company witness Bradshaw proposed that this expense be amortized over a three-year period, which would add $462,762 to the test year level of expense. Public Staff witness Toms disagreed with amortization of this expense on the grounds that it is extraordinary and nonrecurring, and proposed instead that these expenses not be included in the test year cost of service. The Company took exception to this position, contending that it would experience major repairs of comparable costs to some of its generating facilities in any given annual period.

The purpose of the test year concept in the fixing of rates is to arrive at an annual level of revenues and costs that is representative of the level the Company can be expected to experience on an ongoing basis. It is an uncontroverted fact that the Company has over the years experienced unusual or "extraordinary" maintenance costs in the normal course of its operations. Therefore, the question before the Commission with respect to this issue is "What is the normalized level (i.e., the representative level) of extraordinary maintenance cost properly includable in the test year cost of service?"

The Commission, after having carefully considered the entire evidence of record in this regard, concludes that it is both reasonable and proper to include amortization of the Robinson turbine repairs of $463,000 in arriving at the test year level of operations and maintenance expense for use herein.

The issue between the parties with respect to preliminary survey and investigation expense also embraces the test year or normalization concept in the fixing of rates. The Commission after having very carefully considered the evidence in this regard concludes that amortization of this item of cost is required if the test year level of cost is to be representative of the level the Company can be expected to experience on an ongoing basis. Therefore, the Commission concludes that the Public Staff adjustment of $413,000 is proper.

The final item of difference between the parties with respect to operation and maintenance expense results from the Public Staff's having assigned less than 100% of the cost associated with Domestic Electric Company to the Company's North Carolina retail operations. Thus, this

difference relates to the propriety of the allocation of such cost.

The Commission, after careful consideration of the evidence in this regard, concludes that the Domestic Electric cost at issue in this proceeding relates wholly to the Company's North Carolina retail operations. Accordingly, the Commission concludes that the Public Staff's position in this regard is improper and should be rejected.

The inclusion of cost associated with alternative energy research and development will be discussed subsequently.

Based on the foregoing discussion, the Commission concludes that the following calculation of operating and maintenance expense of $313,342,000 is appropriate for use herein:

(000's Omitted)

Item	Amount
Net operation and maintenance expense proposed by the Public Staff	$308,896
Commission correction of wage adjustment	1,793
Public Staff adjustment to eliminate amortization of South River Project	1,527
Company adjustment to reflect amortization of extraordinary maintenance at its Robinson plant facility	463
Difference in Company and Public Staff adjustment to reflect cost associated with Domestic Electric Company	35
Cost associated with alternative energy research and development	628
Total	$313,342

The disagreement between the parties with respect to depreciation expense relates wholly to differences of opinion with respect to the methodology which should be employed in allocating total system cost to the Company's North Carolina retail operations. The Commission, having previously found the summer peak responsibility allocation method to be the most appropriate for use herein, concludes that depreciation expense of $54,665,000, which is based upon such allocation methodology, is therefore properly includable in the test year cost of service.

The next item of difference with respect to operating revenue deductions concerns the appropriate level of taxes - other than income. The Company presented as the proper test year level an amount totaling $50,975,000, while the Public Staff presented an amount totaling $51,225,000, or a net difference of $250,000. The chart below sets forth the two adjustments comprising the difference.

(000's Omitted)

Item	Amount
Public Staff adjustment to gross receipts tax following revenue adjustments for customer growth and weather normalization	$233
Public Staff adjustment to payroll tax expense	17
Total	$250

The Commission has, as previously discussed, adopted the Public Staff's revenue adjustments associated with customer growth and weather normalization. Therefore, it is entirely consistent and proper to make the corollary adjustment to gross receipts tax in the amount of $233,000.

The Commission has, as previously discussed, increased the test year level of wage expense to a level greater than that proposed by the Public Staff. Therefore, it is entirely consistent and proper to increase the test year level of payroll tax expense to a level consistent with the test year level of wage expense as adopted by the Commission. Thus, the Commission adopts the Public Staff's adjustment to payroll tax expense of $17,000. Additionally, however, consistent with the Commission's adjustment to the Public Staff's proposed level of wage expense the Commission will make the related adjustment to payroll tax expense of $108,000.

Based on the foregoing discussion the Commission concludes that the following calculation of taxes - other than income of $51,333,000 is appropriate for use herein.

(000's Omitted)

Item	Amount
Taxes - other than income proposed by the Public Staff	$51,225
Payroll taxes related to Commission correction of Public Staff wage adjustment	108
Total	$51,333

The final area of difference between the parties with respect to the proper test year level of operating revenue deductions concerns State and Federal income tax expense. Since the Commission has not adopted all of the components of taxable income proposed by either party, it has made its own calculation of income tax expense of $68,360,000 (current liability $26,353,000; investment tax credit - net $20,447,000; provision for deferred taxes $21,560,000), which sum it concludes is proper for use herein:

With respect to the computation of State and Federal income tax expense there is one issue which needs to be

addressed by the Commission. This issue concerns the Public Staff's position that the level of interest expense included as a deduction in the income tax calculation should include hypothetical interest expense imputed on funds arising from utilization of the Job Development Investment Tax Credit (JDIC). Company witness Bradshaw offered rebuttal testimony on this issue as follows:

> The way that Mr. Toms has calculated his interest expense does not consider the debt portion of the accumulated job development investment credit that is invested in rate base and has no interest cost. The job development investment credit included in the test year is $102,213,082, the portion applicable to the rate base is $65,749,268 and the portion of that amount applicable to North Carolina retail is $44,479,380. By allocating the North Carolina retail portion to rate base according to the capital structure, the debt portion would be 50.00%, or $22,239,690.... The interest rate of 8.54% would be applied to this amount resulting in a reduction in interest expense of $1,899,270. Applying the appropriate tax rates would result in an additional revenue requirement of $1,960,176. This calculation is shown on Bradshaw Rebuttal Exhibit 2. The comparable value based on the long-term debt ratio and embedded cost from Mr. Toms' Exhibit 1, Schedule 2, would be $2,041,855. This calculation is shown on Toms Cross-Examination 4.

Under cross-examination Public Staff witness Toms agreed that there was in fact no cost associated with that portion of JDIC funds that financed the North Carolina retail rate base. However, he also testified that in order to give the Company an overall return on JDIC funds, it is necessary to recognize the income tax effects of the interest expense imputed on JDIC funds. He testified also that the portion of funds allocated to the debt component of the capital structure must be treated exactly the same as actual debt. In other words, interest expense must be computed on this imputed debt, and this interest expense must be recognized in computing income tax expense for rate-making purposes, even though this imputed interest expense would not actually be deductible in computing actual income taxes. Mr. Toms testified also that the effect of excluding the imputed interest expense related to that portion of debt which financed the rate base would have the effect of increasing revenue requirements, thus resulting in a return on these funds greater than the overall return.

In computing the overall cost, Mr. Toms included the following language from Internal Revenue Service Regulation 1.46-6(b) 3(ii):

> What is the overall cost of capital rate depends upon the practice of the regulatory body. Thus, for example, an overall cost of capital rate may be a rate determined on the basis of an average, or weighted average, of the costs

of capital provided by common shareholders, preferred shareholders, and creditors.

Mr. Toms testified also that this Commission uses a weighted average to compute the overall cost, and that if the ratepayers of Carolina Power & Light Company were going to be required to pay in rates to cover this item of cost, then they should certainly get the advantage of a tax deduction associated with imputed interest expense from JDIC funds.

Although the issues raised herein by the Public Staff concerning the proper rate-making treatment of JDIC may appear somewhat complex upon initial consideration, the Commission believes that, in reality, the issues are rather simple and straightforward. Simply stated, the Public Staff has treated JDIC as if this investment tax credit had been contributed by each component of the Company's capital structure in the same ratio as those components bear to the whole. Therefore, the methodology advocated herein by the Public Staff treats a portion of JDIC as if it were capital supplied by creditors, a portion as if it were capital supplied by preferred stockholders, and the remainder as if it were advanced by the common shareholders. On this basis, the amount of JDIC attributed to the creditors or debt holders multiplied by the embedded cost of debt results in an amount of hypothetical interest expense related to JDIC. This hypothetical interest expense is then used as a deduction in determining the Company's test year level of income tax expense for rate-making purposes.

In contrast to the methodology advocated herein by the Public Staff, the Commission believes that all effects of JDIC should be excluded from the determination of interest expense to be used in developing the level of the Company income tax expense included in the cost of service. Hence, the methodology used by the Commission attributes JDIC entirely to the common shareholders. This treatment is specifically mandated and prescribed by Section 1.46-6 of the Internal Revenue Code of Federal Regulations.

Clearly, under Section 1.46-6 of the Internal Revenue Code, the Commission may only treat JDIC as though it were capital contributed by the common shareholders. Therefore, in computing the Company's tax liability, no imputed interest expense may lawfully be calculated on any portion of JDIC. Rather, JDIC must be treated as capital supplied by common shareholders and must be given a return no less than the overall cost of capital determined to be appropriate by this Commission. In this regard, the Commission strongly believes that this treatment of JDIC is proper, fair, and reasonable and the only treatment which is permissible under Section 1.46-6 of the Internal Revenue Code.

The Commission therefore concludes that imputation of interest expense to that portion of CP&L's investment in rate base supported by JDIC is improper for use herein.

The Commission, as previously discussed, has adopted the summer peak responsibility method of allocating revenues and cost for use herein. Therefore, it is necessary for the Commission to make one further net adjustment of $4,000 (reduction) to the test year level of expense to give full effect to such allocation methodology.

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 $487,868,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Operation and maintenance expense	$313,342
Depreciation	54,665
Other operating taxes	51,333
Federal and State income tax liability	26,353
Provision for deferred income taxes	21,560
Investment tax credit - net	20,447
Interest on customer deposits	172
Adjustment to reflect summer peak responsibility allocation excluding depreciation expense	(4)
Total operating revenue deductions	$487,868

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

By Order dated October 8, 1979, in Docket No. E-7, Sub 262, the Commission called for all electric suppliers in North Carolina to consider joining together to form a nonprofit North Carolina Alternative Energy Corporation to conduct appropriate research, development, and commercialization of alternative energy supply sources. In the above-referenced Order, the Commission found that Duke Power Company should increase its activities in the area of alternative energy sources and earmarked $1,000,000 of Duke's approved rate increase for such purpose. The Commission strongly believes that a similar procedure should be followed in this docket and that CP&L should therefore be encouraged to undertake a more active role in the research and development of alternative energy technologies. Accordingly, the Commission concludes that CP&L should be allowed to increase its research and developmental expenditures with respect to alternative energy resources available within North Carolina by $628,000 on a jurisdictional basis.

The Commission further concludes that the above-referenced funds should be accounted for by CP&L by the establishment

of a subaccount on its books of account entitled "Reserve for Research and Developnemt - 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 $628,000 divided by the adjusted test year level of North Carolina retail Kwh sales multiplied by monthly total North Carolina retail Kwh sales. This reserve account shall be relieved when expenditures are made in the area of alternative energy technologies and when such expenditures have been approved by the Commission.

Furthermore, on April 11, 1980, the Commission issued its "Order Authorizing the Establishment and Funding of a North Carolina Alternative Energy Corporation" in Docket No. E-100, Sub 37. Additional details concerning the concept and creation of a North Carolina Alternative Energy Corporation may be found in that docket.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

In his prefiled testimony, Company witness Luftig recommended a pro forma capital structure effective as of December 31, 1979. This consisted of 45.81% debt, 37.26% common equity (which includes JDIC), 11.52% preferred stock, and 5.41% cost-free capital. At the time of the hearing, Company witness Luftig revised this to a pro forma capital structure effective February 29, 1980. The resulting capital structure ratios are 43.76% debt, 37,44% common equity (including JDIC), 11.94% preferred stock, and 6.86% cost-free capital. Company witness Luftig recommended the revised capital structure because this is what the Company expects to achieve after its next common stock issue.

Public Staff witness Stevie testified that the appropriate capital structure ratios are 50.43% debt, 13.18% preferred stock, and 36.39% common equity. Witness Stevie further testified, upon cross-examination, that the reasonableness of this capital structure recommendation rested not with the date of its occurrence, but rather with its representativeness of CP&L's capital structure in the near term future and its relationship to other utilities having similar bond ratings. Also, this capital structure excluded JDIC and cost-free capital as recommended by Public Staff witness Toms.

Based on the testimony of the witnesses, and the Commission's previous findings, the Commission concludes that the reasonable capitalization ratios for use herein are as follows:

Item	Percent
Long-term debt	49.5
Preferred stock	12.5
Common equity	38.0
Total	100.0

Company witness Luftig stated in his prefiled testimony that the embedded cost of long-term debt is 8.54% and that the embedded cost of preferred stock is 8.11%. At the time of the hearing, witness Luftig updated the debt cost to 8.81% to reflect the cost of recently issued debt and revised the preferred stock cost to 8.16% to incorporate the expected cost of a prospective preferred stock issue.

Public Staff witness Stevie testified that the embedded cost of debt for the Company is 8.82% and that the embedded cost of preferred stock is 8.11% which is not adjusted for the cost of a future preferred stock issue.

The Commission concludes that, since the recommended costs as of the conclusion of the hearings are virtually identical, the reasonable embedded costs of debt and preferred stock are 8.82% and 8.11%, respectively.

Company witness Nathan testified that the rate of return on common equity sought by the Company is reasonable based upon his review of current economic conditions. On cross-examination witness Nathan testified that he had conducted no independent cost of equity capital analysis.

In his prefiled testimony, Company witness Luftig recommended a return on equity of 15.2% - 15.5%. This was revised at the time of the hearing to 16.3% - 16.6%. In arriving at a cost of equity, witness Luftig developed an initial range and then used four methods to substantitate the validity of the range. In his revised testimony witness Luftig determined an initial equity cost range of 15.25% to 15.50% using information on the return requirements of institutional investors with whom he comes in contact on a daily or weekly basis.

The four methods witness Luftig used to substantiate his equity cost range are: comparable earnings, discounted cash flow, a multiple regression equation, and a spread test. In his first method, witness Luftig employed the earnings of the Standard and Poor's 400 industrial firms and Citibank's manufacturing companies as indicators of comparable risk earnings for an electric utility. The second method used by witness Luftig involved the discounted cash flow approach. Here, he developed an equity cost by applying the discounted cash flow model using only data on the Company.

With regard to his third and fourth studies, witness Luftig made brief references to the results obtained via a multiple regression equation model and a spread test for a risk premium over the cost of the Company's bonds.

Upon completing the four methods, witness Luftig adjusted his recommended equity cost range upward by 1.1%. He testified that this is required in order to account for stock flotation costs and market pressure occurring with the sale of new common stock issues.

Public Staff witness Stevie testified that Company witness Luftig's analysis of the cost of equity is incorrect and that the Company's reasonable cost of equity is 13.57%. Witness Stevie stated that witness Luftig did not substantiate his cost of equity recommendation based upon information derived from institutional investors. He testified that there were severe deficiencies with each of witness Luftig's four methods used to substantiate his initial estimation. With regard to the first method, witness Stevie testified that the comparable earnings analysis overestimates the cost of equity because electric utilities have a lower risk than the industrial firms and because the reported earnings relate to book value instead of a market-oriented cost of capital.

Witness Stevie criticized Company witness Luftig's discounted cash flow analysis because it was only based on the Company, CP&L. He further testified that Mr. Luftig's multiple regression analysis was inappropriate as a method for estimating the cost of capital and that the spread test lacked sufficient documentation.

Public Staff witness Stevie further testified that an adjustment to the cost of equity must be made for stock flotation costs, but not for market pressure. Upon completing an analysis designed to estimate the degree of market pressure, witness Stevie testified that the evidence is too contradictory and that, therefore, an adjustment to the cost of equity for market pressure is unreasonable and unjustified.

Finally, witness Stevie recommended that a reasonable cost of equity to the Company is 13.57%. His analysis is based upon the relative risk of earnings from electric utilities versus the Standard and Poor's industrials. Witness Stevie adjusted the book returns of the industrial firms to market returns using the discounted cash flow formula to arrive at a 13.5% market cost of capital. Then, he testified that since the industrial firms are less risky, the Company's cost of equity is below 13.5%. However, after adjusting for stock flotation cost, his final equity cost recommendation was 13.57%.

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. 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. Whatever return allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> [to] enable the public utility by sound management to produce a fair profit for its stockholders, considering

changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

The return allowed must not burden ratepayers any more than is necessary for the utility to continue to provide adequate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133(b)

> ...supports the inference that the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.... State ex rel. Utilities Commission v. Duke Power Co., 285 N.C. 377, 206 S.E. 2d 269 (1974).

The nature of the evidence in a case such as this makes it extremely difficult to balance all the opposing interests, since much, if not all, of the evidence is based on individual witnesses' perceptions and interpretations of trends and data from the capital markets. 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, CP&L is now unable to actually achieve a rate of return on equity as high as that which the Commission allowed in its last rate Order for CP&L in 1977. The Commission also is cognizant of the substantial construction budget and resulting financial requirements which the Company will face in the immediate future. However, the Commission is not unmindful of the benefits inuring to CP&L's debt and equity investors arising from the inclusion of CWIP in the rate base.

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, CP&L 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 CP&L's electric revenues have continued to grow, thereby helping to offset the effect of inflation. In short, the Commission concludes that CP&L will have every reasonable opportunity to earn the rate of return approved herein.

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the fair

rate of return that CP&L should have the opportunity to earn on the original cost of its North Carolina retail rate base is approximately 10.66%. Such fair rate of return will yield a fair return on common equity of approximately 13.90%.

The issue with respect to the proper rate of return to be allowed the Job Development Investment Tax Credit will be discussed subsequently.

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 revenues 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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The remaining issue between the parties with regard to JDIC, which has not been previously discussed, concerns the level of the equity return to be allowed funds arising from utilization of JDIC. The Company contends that such funds should be allowed the full equity return; whereas, the Public Staff contends that such funds should be allowed a return no greater than the overall rate of return. Both parties agree that the Revenue Act of 1971 allows this Commission the discretionary authority to assign either return to such capital. More specifically, the Revenue Act of 1971 established for option 2 companies a minimum equity return which the Commission must allow, that being a return no less than the overall rate of return.

After careful consideration of the entire evidence of record in this regard, the Commission concludes that the most reasonable and lawful allocation of benefits arising from JDIC between the Company and its customers can be accomplished only by assigning such funds an equity return no higher than the overall cost of capital; i.e., the overall rate of return.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The Commission previously has discussed its conclusions regarding the fair rate of return which CP&L should be given the opportunity to earn.

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 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 and conclusions heretofore and herein approved by the Commission.

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED DECEMBER 31, 1978

(000's Omitted)

Item	Present Rates	Increase Approved	After Approved Rates
Operating Revenues			
Net operating revenues	$607,930	$43,364	$651,294
Operating Revenue Deductions			
Operation and maintenance expenses - net	313,342	-	313,342
Depreciation	54,665	-	54,665
Taxes - other than income	51,333	2,602	53,935
Income taxes - State and Federal	26,353	20,071	46,424
Investment tax credit - net	20,447	-	20,447
Provision for deferred income tax	21,560	-	21,560
Interest on customer deposits	172	-	172
Adjustment to reflect peak responsibility allocation excluding depreciation expense	(4)	-	(4)
Total operating revenue deductions	487,868	22,673	510,541
Operating income for return - peak responsibility allocation	$120,062	$20,691	$140,753

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED DECEMBER 31, 1978

(000's Omitted)

	Present Rates	After Approved Rates
Investment in Electric Plant		
Electric plant in service	$1,613,754	$1,613,754
Net nuclear fuel	29,608	29,608
Construction work in progress	80,717	80,717
Accumulated provision for depreciation	331,975	331,975
Cost-free capital	132,169	132,169
Adjustment to reflect peak responsibility allocation	(5,210)	(5,210)
Net investment in electric plant	$1,254,725	$1,254,725
Allowance for Working Capital and Deferred Debits and Credits		
Cash	7,368	7,368
Materials and supplies - fuel stock	42,313	42,313
Materials and supplies - other	13,016	13,016
Prepayments	1,000	1,000
Investor funds advanced for operations	11,173	11,173
Other additions	11,823	11,823
Less: Customer deposits	3,733	3,733
Other deductions	17,232	17,232
Adjustment to reflect peak responsibility allocation	(272)	(272)
Total	65,456	65,456
Rate base	$1,320,181	$1,320,181
Rate of return	9.09%	10.66%

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED DECEMBER 31, 1978

(000's Omitted)

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$ 653,489	49.5	8.82	$ 57,638
Preferred stock	165,023	12.5	8.11	13,383
Common equity	501,669	38.0	9.78	49,041
Total	$1,320,181	100.00	-	$120,062
	Approved Rates - Original Cost Rate Base			
Long-term debt	$ 653,489	49.5	8.82	$ 57,638
Preferred stock	165,023	12.5	8.11	13,383
Common equity	501,669	38.0	13.90	69,732
Total	$1,320,181	100.00	-	$140,753

IT IS, THEREFORE, ORDERED:

1. That the Commission's Notice of Decision and Order dated March 25, 1980, and the Order Approving Rates and Charges dated March 31, 1980, be, and the same are hereby, reaffirmed.

2. That CP&L eliminate on a prospective basis the cost-free component from the formula prescribed by this Commission in Docket No. E-100, Sub 27, and Docket No. E-100, Sub 38, for use in calculating the rate to be used in the capitalization of Allowance for Funds Used During Construction (AFUDC).

3. That CP&L take the steps necessary to close rate schedules AHS, RFS, and SCS at the time of its next general rate application. In addition, CP&L shall take the steps necessary to close rate schedule MPS to each customer currently being served under said rate schedule upon expiration of the five-year contract period for each customer.

4. That CP&L prepare a study of rate schedules CSG and CSE for presentation at the time of its next general rate application. This study shall be undertaken with a view toward eliminating or closing these rate schedules to all

customers now being served. The study shall reflect the rates and monthly revenues at various representative usage levels for rate schedules CSG, CSE, SGS, and any other rate schedule under which customers are served or who would otherwise be eligible for service under rate schedules CSG or CSE.

5. That CP&L begin collecting load, weather, and other data which will enable it in all future general rate cases to identify expected responsibility for both peak demand and minimum demand on each day on which a monthly peak load or a monthly minimum load occurs.

6. That CP&L continue to develop and implement plans for the reduction of system peak through:

a. Continuing education of its customers and the general public in the need for and methods of controlling system peak;

b. Using mass communication to promote conservation of energy during anticipated periods of peak demand, to inform customers of methods to reduce the unnecessary use of electricity, and to postpone nonessential usage; and

c. Promoting effective load management and efficient use of electricity by offering direct assistance to customers.

Such plans should take maximum advantage of the opportunity for public service announcements undertaken in cooperation with service area news media and other such means as may present themselves in order to follow the statutory mandate to employ the most economical means available for notifying and educating the public. In addition, such plans should demonstrate the willingness of the utility to encourage its customers to restrict their consumption of electricity during anticipated periods of peak demand.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of April 1980.

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

Commissioner Campbell dissents.

COMMISSIONER CAMPBELL, DISSENTING: I agree with the Order of the Commission in all particulars with the exception of the Finding of Fact No. 14 which allows a return on common equity of only 13.9%, which I believe is inadequate. To concur in this would require me to disregard the statute,

disallow the evidence, or to abandon my concept of common reason.

General Statute 62-133(b)(4, clearly states as follows:

> "Fix such rate of return on the cost of the property ascertained pursuant to subdivision (1) as will enable the public utility by sound management to produce a fair profit for the stockholders, considering changing economic conditions and other factors, as they may then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to the customers and to its existing investors."
> (Emphasis added.)

In considering the existing and changing economic conditions which presently prevail, a return on common equity of 13.9% will not allow the Company to compete in the marketplace for new capital without a serious dilution of the equity of present shareholders. In this Order, the Commission fails to take into account a decision of the North Carolina Supreme Court which has ruled that in this State the test of a fair rate of return is that laid down by the Supreme Court of the United States in the Bluefield Waterworks & Imp. Co., 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed 1176 (1923); that is, if the company continues to earn such a rate of return, will it be able to attract on reasonable terms the capital it needs for the expansion of its services to the public?

In the last six issues of new stock, the Company has issued stock which has been below the book value of each share. Since November 1, 1972, no issue of stock has been at or above book value. Company witness Robert R. Nathan, an outstanding economist, testified as follows:

> "When a company issues new stock at below book, the earnings per share will tend to decline because the allowed rate of return applies to the rate base, and the rate base per share declines when new shares are sold at less than book value. The addition of such shares dilute the value, as well as earnings per share, of equity already in the hands of shareholders. It makes both existing and potential investors hesitant to buy new issues. Every one of the last five issues of new stock were sold below book value."

Since the testimony of witness Nathan, Carolina Power & Light Company has sold new stock on February 13, 1980, for $16.875 per share while the book value at the end of 1979 was $25.25 per share.

Witness Nathan further testified:

"CP&L's rate of return has fluctuated irregularly. The current level is a little lower than the rate in 1964. But the annual rate of inflation is now about 13.5% in contrast with 1.5% in 1964. The return on equity from July 1, 1978, to June 30, 1979, was less than 1/2 per centage point above the rate in 1960, and more than 1 1/2 below the 1965 level."

To me, this is clear evidence that the rate of return on common equity has been inadequate, and under the proposed allowance of 13.9% will continue to confiscate the property value of the existing stockholders.

Already investors in electric utilities are beginning to join together in class-action suits to prevent this dilution of their equity by selling new shares at below book. (BUSINESS WEEK: April 21, 1980).

Under the construction program of Carolina Power & Light Company, which has received the approval of this Commission in past hearings, and as testimony in this proceeding indicates, the Company will need to generate from 70% to 75% of its construction costs from issuing new debentures, preferred stock, and common equity. In fact, the projected construction program of the Company places it about third in the nation, relative to its size.

Can Carolina Power & Light Company compete in the market for new money on the allowed rate of 13.9% as allowed by this Order? The evidence is to the contrary. In October 1979, the Company was forced to cancel plans to sell common stock because the market conditions would not allow it to sell stock at $17.00 per share. While economic theory can be interesting, it is reduced to mere speculation in the face of market conditions.

At the time of this Order, unusual economic conditions existed because of an artificial distortion in the interest rates, but it must be noted that Certificates of Deposits were offered by no less than five local financial institutions to earn 15.7%. Utility bonds were sold to yield far above the allowed rate of return. Duke Power sold thirty-year bonds to yield 14.91%, Florida Power and Light 14.95%, and Commonwealth Edison sold twenty-year bonds at a rate of 15.62%. United States Treasury bills were commanding a yield of 15.7%.

Company witness Martin Luftig offered undisputed testimony that the last 24 rate decisions for electric utilities by regulatory commissions in 1979 allowed an average rate of return on common equity of 14.3%. (Transcript Vol XIII, P 23, 24.)

Company witness Nathan testified as follows:

"Investors do not provide capital simply because it is needed or is in the public interest. Capital markets

are competitive. CP&L cannot raise debt or equity funds at rates below the market. It cannot, nor can this Commission for that matter, stem the tide of inflation. However, regulatory failure to provide revenues to cover all costs, including capital costs, will in the longer run aggravate inflation. An inadequate rate of return will lead to even higher capital costs and therefore higher user rates."

In 1977, Carolina Power & Light Company had its latest previous general rate case, and the Company was allowed a rate of return on equity at the time of 13.57%. To believe that the high rate of inflation since July 1, 1977, has not driven expectations higher than 13.9% violates my concept of economic reason. The new allowance of 13.9% will produce, if earned, an allowed increase of .33% which must be measured against an increase in the Consumer Price Index of more than 30% in the same period.

Incidentally, the allowed 13.57% in the 1977 decision was made when the stock was selling at 109% of book value in contrast to the existing 77% of book. It should be further noted, that the 13.57% allowable return allowed the Company to earn the rate of common equity of JDIC funds. The current 13.9% disallows this higher rate of value to be placed on JDIC and reduces it to 10.66% which is the overall rate of return. This results in a minus earnings on JDIC of 2.91%. Let it be noted that I did concur with the change in the manner of calculating earnings on JDIC.

Compare further, that an increase from 13.57% to 13.9% represents an earning increase opportunity of less than 2.5%. In contrast, the embedded cost of bonds to this Company has increased by 7.78% during the same period from December 31, 1977, to December 31, 1979.

Finally, the issue resolves down to whether or not such an increase is an extraordinary burden upon the customers of the Company. Considering the rates which were in effect on March 1, 1980, together with the proposed increase in earnings allowable to common equity of some .33% and subtracting the decrease in the fuel adjustment clause which became effective on April 1, 1980, the notice of a news release indicated that the combined effect was a resultant decrease in the average customer's bill. This, in itself, speaks to the fact than an even higher allowable return on common equity would not have been unduly burdensome.

Thus, based upon the statute, court decisions, the evidence presented in the hearing, and economic observations, I find that as a matter of judgment I must dissent from this Order.

A. Hartwell Campbell, Commissioner

DOCKET NO. E-2, SUB 391

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Authority to Adjust and Increase Its Electric Rates and Charges	)	NOTICE OF DECISION AND ORDER

HEARD IN: The Commissioner's Board Room, Room 204, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on September 22, 1980

The Assembly Room, County Administration Building, 320 Chestnut Street, Wilmington, North Carolina, on September 29, 1980

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 24-26, October 2-3, October 6-10, and October 13 and 15, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and Douglas P. Leary

APPEARANCES:

For the Applicant:

R.C. Howison, Jr. and Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

William E. Graham, Jr., Senior Vice President and General Counsel, and Richard E. Jones, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh. North Carolina 27602
For: Carolina Power & Light Company

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.

R.C. Hudson. Office of General Counsel c/o Commander. Atlantic Division. Naval Facilities Engineering Command. Department of the Navy. Norfolk. Virginia 23511
For: Department of the Navy and Consumer Interest of the Executive Agencies of the United States Government

Allen Mason, Attorney at Law, c/o Wells Eddleman, Route 1, Box 183, Durham, North Carolina 27705
For: Kudzu Alliance

Archie A. Messenger, Attorney at Law, 270 Park Avenue, New York 10017
For: Union Carbide Corporation

For the Using and Consuming Public:

Theodore C. Brown, Jr., and G. Clark Crampton, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

David Gordon, Office of the Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On May 9, 1980, Carolina Power & Light Company (Applicant, the Company, or CP&L) filed an Application with the Commission seeking to adjust and increase electric rates and charges for its retail customers in North Carolina. the requested increase in retail rates and charges was designed to produce approximately $91,269,000 of additional annual revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12 months ended September 30, 1979, or approximately a 13.9% increase in total North Carolina rates and charges. The Company requested that such increased rates be allowed to take effect for service rendered on and after June 8, 1980. The Company's Application alleged that the $91,269,000 of additional annual revenues was necessary because present rates would be insufficient to produce either an overall rate of return or a rate of return on common equity which would be just and reasonable so as to enable the Company to continue to attract capital on reasonable terms and to finance its operations and construction program. Included among the reasons set forth in the Application as necessitating the rate relief requested were: the effects of inflation, the additional operating expenses of the Company's new fourth unit at its Roxboro generating facility, and adjustments to reflect the inclusion of both the new Roxboro unit number 4 and certain amounts of construction work in progress in the "rate base" upon which the Company is entitled to earn a return.

The Commission. being of the opinion that the increases in rates and charges proposed by CP&L were matters affecting the public interest, by Order issued on June 5, 1980, declared the Application to be a general rate case pursuant to G.S. 62-137, suspended the proposed rate increase for a period of up to 270 days pursuant to G.S. 62-134, set the matter for hearing before the Commission beginning on

September 22, 1980, required CP&L to give notice of such hearing by newspaper publication and by appropriate bill inserts, established the test period to be used by all parties in the proceeding, and required protests or interventions to be filed in accordance with Rules R1-6, R1-17, and R1-19 of the Commission Rules and Regulations.

Notice of Intervention in this docket was given by the Attorney General of North Carolina and the Public Staff 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.

On May 30, 1980, the Kudzu Alliance filed a Motion to Intervene, and the Commission allowed the Intervention on August 26, 1980.

The North Carolina Textile Manufacturers Association, Inc. (hereinafter called NCTMA), filed a Petition to Intervene on August 4, 1980, and on August 6, 1980, the Commission allowed the Intervention.

By petition filed August 11, 1980, the United States of America, Department of the Navy, petitioned to intervene, and on August 13, 1980, the Commission allowed the Intervention.

Union Carbide Corporation filed a Petition to Intervene on September 2, 1980, and on September 3, 1980, the Commission allowed the Intervention.

On September 10, 1980, the Public Staff filed a motion to prohibit the Company from filing or relying upon updated testimony and exhibits or, in the alternative, to require the Company to file and serve all of its updated supplemental data and exhibits at least 10 days before September 24, 1980. On September 10, 1980, the Public Staff also moved for an Order requiring that all of the Company's rebuttal testimony and exhibits be prefiled and served at least three days before such rebuttal testimony was given at the hearing. The Company filed its response to the Public Staff's motions on September 17, 1980. These motions were taken under advisement by the Commission.

On September 12, 1980, the Intervenor NCTMA filed motions to require CP&L to update all of its costs and revenues for changes occurring after the end of the test period; to require CP&L to determine the revenues and depreciation expense associated with all elements of its rate base which were not used and useful throughout the entire test period; and to revise or eliminate the fuel adjustment clause formula. NCTMA also incorporated the Public Staff's September 10 motion by reference in its motion. The Company filed its response to NCTMA's motions on September 24, 1980. These motions were taken under advisement by the Commission.

except to the extent the Public Staff and NCTMA's motions regarding prefiling of rebuttal testimony were ruled on from the bench on September 25, 1980. In its bench order the Commission required all parties to prefile rebuttal or any further supplemental testimony three days in advance wherever practicable.

On October 8, 1980, NCTMA filed a motion requesting that this proceeding be consolidated with Docket No. E-2, Sub 402; that the 12 months ended August 31, 1980, be designated as the test period for the consolidated proceedings; that CP&L's fuel cost adjustment formula and the reasonableness of its fuel costs be considered in the consolidated proceedings; that the Public Staff be ordered to investigate the reasonableness of CP&L's fuel costs; and that it be granted other relief. By Order of October 10, 1980, the Commission directed that the record in Docket No. E-2, Sub 402, be incorporated into the record in this proceeding, and in all other respects denied NCTMA's motion. The matter came on for public hearings in the territory served by CP&L as noted hereinafter. Night hearings were scheduled and held by the Commission for the specific purpose of receiving testimony from public witnesses in Asheville on Monday, September 22, 1980, in Raleigh on Wednesday, September 24, 1980, and in Wilmington on Monday, September 29, 1980. The following persons appeared and testified at those hearings:

Asheville	-	E.C. Bradley, Sr.
Wilmington	-	Clarence Sharpe, George Hughes, Ronald Shackleford, and Ernest Yost
Raleigh	-	Sherwood Scott, Arthur Eckles, Marceline Hinton, Wells Eddleman. Lucille Hays, Lavone Page. Kerry Webb Davis Brown (September 29, 1980), and Joseph Rankin (October 2, 1980).

The case in chief came on for hearing as ordered on September 29, 1980, at 2:00 p.m. for the purpose of presenting the Applicant's evidence. The Applicant presented the testimony and exhibits of the following witnesses:

1. Sherwood H. Smith, Jr., President and Chief Executive Officer of CP&L (direct and supplemental testimony);

2. Edward G. Lilly, Jr., Senior Vice President and Chief Financial Officer of CP&L (direct and supplemental testimony);

3. Mark D. Luftig. Vice President and Manager of the Utility Group in the Stock Research Department at

Salomon Brothers, an investment banking firm (direct and supplemental testimony);

4. Paul S. Bradshaw, Vice President and Controller of CP&L (direct, supplemental, and rebuttal testimony);

5. Archie W. Futrell, Jr., Director of Energy & Economic Forecasting & Special Studies for CP&L (direct, revised, and rebuttal testimony);

6. David R. Nevil, Manager-Rate Development and Administration in the Rates and Service Practices Department of CP&L (direct and supplemental testimony);

7. Norris L. Edge, Manager of the Rates and Service Practices Department of CP&L (direct and supplemental testimony);

8. John F. Utley, a Partner and National Director - Regulated Business of Deloitte, Haskins & Sells, a firm of Certified Public Accountants (rebuttal testimony); and

9. James M. Davis, Jr., Vice President of Fuel and Materials Management for CP&L (rebuttal testimony).

The Public Staff offered testimony and exhibits of the following witnesses:

1. William E. Carter, Jr., Assistant Director of Accounting of the Public Staff (direct and supplemental testimony);

2. Dennis J. Nightingale, Director of the Electric Division of the Public Staff (direct testimony);

3. Thomas S. Lam, a Utilities Engineer with the Electric Division of the Public Staff (direct testimony);

4. George E. Dennis, a Staff Accountant with the Accounting Division of the Public Staff (direct testimony);

5. Dr. Richard G. Stevie, an Economist with the Economic Research Division of the Public Staff (direct and supplemental testimony);

6. Nancy B. Bright, Director of the Accounting Division of the Public Staff (direct and supplemental testimony);

7. Thomas A. Collins, Jr., a Staff Accountant with the Accounting Division of the Public Staff (direct and supplemental testimony);

8. William F. Watson, Director of the Economic Research Division of the Public Staff (direct testimony); and

9. David F. Creasy, a Utilities Engineer with the Electric Division of the Public Staff (direct testimony).

The Intervenor Kudzu Alliance offered the testimony and exhibits of Wells Eddleman. The Intervenor United States of America, Department of the Navy, offered the testimony and exhibits of Richard A. Raynor, a Public Utility Specialist with the Atlantic Division of the Naval Facilities Engineering Command, Department of the Navy. The Intervenor NCTMA offered the testimony and exhibits of H. Randolph Currin, President of Currin and Associates, Inc., a group of utility economic, financial, and rate service consultants.

All parties to the proceeding were provided an opportunity to file briefs and proposed orders with the Commission. These items initially were required to be filed on or before Thursday, November 20, 1980. But on November 19, 1980, in response to the Public Staff's November 17, 1980, motion for an extension of time on filing draft orders, the Commission issued an Order extending the time within which parties would be allowed to file proposed orders and briefs to and including Monday, November 24, 1980.

Based upon the verified Application, the testimony and exhibits received into evidence at the hearings, and the record as a whole of these proceedings, the Commission, having duly reviewed such briefs and proposed orders as were filed by the parties to these proceedings, now makes the following

FINDINGS OF FACT

1. That CP&L is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public within a broad area of eastern and western North Carolina, and CP&L has its principal office and place of business in Raleigh, North Carolina.

2. That CP&L is a public utility corporation organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. CP&L is lawfully before this Commission based upon its Application for a general increase in its North Carolina retail rates and charges, pursuant to the jurisdiction and authority conferred upon the Commission by the Public Utilities Act.

3. That the test period for purposes of this proceeding is the 12-month period ended September 30, 1979, adjusted for certain changes based upon circumstances and events occurring up to the time of the close of the hearings in

this docket. CP&L by its Application here is seeking an increase in its basic rates and charges to North Carolina retail customers of approximately $91,269,000 based upon operations in said test year as thus adjusted.

4. That the overall quality of electric service provided by CP&L to its North Carolina retail customers is satisfactory.

5. That the peak and average method for making cost-of-service allocations, proposed by the Company in this case, is the most appropriate method for use in this proceeding. Consequently, each finding of fact appearing in this Order which deals with the proper level of rate base, revenues, and expenses has been determined based upon the peak and average methodology.

6. That normalization of the income tax effect of capitalized payroll taxes and pensions, research expenses, property and use taxes, and the repair allowance is proper.

7. That the amount which should properly be included in CP&L's original cost rate base for CP&L's Roxboro Generating Unit No. 4 is $123,565,000.

8. That the reasonable original cost of CP&L's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, less that portion of the cost which has been consumed by previous use recovered by depreciation expense, plus the reasonable original cost of investment in plant under construction (construction work in progress or CWIP) is $1,544,143,000.

9. That the reasonable allowance for working capital and deferred debits and credits is $86,596,000.

10. That CP&L's reasonable original cost rate base is $1,630,739,000. This amount consists of net utility plant in service and construction work in progress of $1,544,143,000, plus a reasonable allowance for working capital and deferred debits and credits of $86,596,000.

11. That CP&L's appropriate gross revenues for the test year, under present rates and after accounting and pro forma adjustments, are $665,964,000. After giving effect to CP&L's proposed rates, such gross revenues are $757,233,000.

12. That CP&L's reasonable level of test year operating revenue deductions, after normalization and pro forma adjustments, is $524,176,000. This amount includes $65,362,000 for investment currently consumed through reasonable actual depreciation on an annual basis.

13. That the Commission approves CP&L's participation in the NEIL (Nuclear Electric Insurance, Limited) program on a

trial basis, but finds that if CP&L does not become a member of NEIL within a reasonable period of time, CP&L shall refund to its customers the cost associated therewith which has been included in operating revenue deductions hereinabove found reasonable.

14. That the capital structure of CP&L which is reasonable and proper for use in this proceeding is as follows:

Long-term debt	51.0%
Preferred and preference stock	13.0%
Common equity	36.0%
Total	100.0%

15. That CP&L's proper embedded costs of long-term debt and preferred and preference stock are 9.10% and 8.16%, respectively. The reasonable rate of return for CP&L to be allowed to earn on its jurisdictional common equity is 14.15%. Using a weighted average for the Company's cost of debt, preferred and preference stock and common equity with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 10.80% to be applied to the Company's original cost rate base. Such rate of return will enable CP&L, by sound management, to produce a fair return for its shareholders, considering changing economic conditions and other factors; to maintain its facilities and service in accordance with the reasonable requirements of its customers in the territory covered by its franchise; and to compete in the market for capital funds on terms which are reasonable and fair to its customers and to existing investors.

16. That, based upon the foregoing, CP&L should be allowed an increase, in addition to the $665,964,000 of annual gross revenues which would be realized under its present base rates, in an amount not to exceed $71,811,000. Thus, the annual revenue requirement approved herein is $737,775,000. This increase is required in order for the Company to have a reasonable opportunity to earn the 10.80% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based upon the original cost of the Company's property and its reasonable test year operating revenues and expenses as previously determined and set forth in these findings of fact.

17. That it is appropriate for the six "closed" rate schedules (AHS, RFS, SCS, MPS, CSG, and CSE) to receive greater than average increases in order to bring them closer to the schedules into which they will be merged at a future date.

18. That it is appropriate to reduce the revenue requirement of the lighting class by $746,000 from that proposed by the Company before this rate and other proposed

rates are reduced proportionately to produce the overall revenue requirement allowed in this Order.

19. That the Company's proposed rate design should be modified to cancel rate schedule RESC and substitute therefor a new section on rate schedule RES which allows a 5% discount on the kilowatt-hour portion of the rate, not including the customer charge, for qualifying residential customers.

20. That it is appropriate to reduce the demand and energy charges in the Company's proposed rates, including the lighting class, by the same percent reduction in order to produce the overall revenue requirement allowed in this Order. The proposed customer charges are just and reasonable.

21. That, except for the modifications found appropriate in the four preceding Findings of Fact, the Company's proposed rate designs are just and reasonable.

22. That the Guidelines for Design of Rate Schedules attached hereto as Appendix A are just and reasonable.

The increase in rates and charges approved herein and designed in accordance with the guidelines attached hereto as Appendix A is consistent with the Voluntary Wage and Price Guidelines 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 upon the findings set forth herein.

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED SEPTEMBER 30, 1979
(000'S OMITTED)

Item	Present Rates	Increase Approved	After Approved Rates
Operating Revenues			
Net operating revenues	$665,964	$71,811	$737,775
Operating Revenue Deductions			
Operation and maintenance expenses - net	327,122	-	327,122
Depreciation	65,362	-	65,362
Taxes - other than income	57,196	4,309	61,505
Income taxes - State and Federal	37,107	33,238	70,345
Investment tax credit - net	12,581	-	12,581
Provision for deferred income tax	24,535	-	24,535
Interest on customer deposits	273	-	273
Total operating revenue deductions	524,176	37,547	561,723
Operating income for return - peak and average responsibility allocation	$141,788	$34,264	$176.052

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED SEPTEMBER 30, 1979
(000'S OMITTED)

	Present Rates	After Approved Rates
Investment in Electric Plant		
Electric plant in service	$1,885,922	$1,885,922
Net Nuclear fuel	47,137	47,137
Construction work in progress	213,792	213,792
Less: Accumulated provision for depreciation	426,782	426,782
Cost-free capital	$ 175,926	$ 175,926
Net investment in electric plant	$1,544,143	$1,544,143
Allowance for Working Capital and Deferred Debits and Credits		
Cash	$ 5,500	$ 5,500
Materials and supplies - fuel stock	49,184	49,184
Materials and supplies - other	16,914	16,914
Prepayments	1,863	1,863
Unamortized retail and miscellaneous projects	6,189	6,189
Investor funds advanced for operations	11,600	11,600
Other additions	3,773	3,773
Less: Customer deposits	4,098	4,098
Other deductions	4,329	4,329
Total	$ 86,596	$ 86,596
Rate Base peak and average responsibility allocation	$1,630,739	$1,630,739
Rate of Return	8.69%	10.80%

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED SEPTEMBER 30, 1979
(000'S OMITTED)

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$ 831,677	51.0	9.10	$ 75,683
Preferred stock	211,996	13.0	8.16	17,299
Common equity	587,066	36.0	8.31	48,806
Total	$1,630,739	100.0	-	$141,788
	Approved Rates - Original Cost Rate Base			
Long-term debt	$ 831,677	51.0	9.10	$ 75,683
Preferred stock	211,996	13.0	8.16	17,299
Common equity	587,066	36.0	14.15	83,070
Total	$1,630,739	100.0	-	$176,052

An Order setting forth the evidence and conclusions in support of this decision will be issued subsequently. The Commission will consider the time for filing notice of appeal in this proceeding to run from the issuance of such Order.

IT IS, THEREFORE, ORDERED:

1. That the Applicant Carolina Power & Light Company be, and hereby is, authorized to adjust its electric rates and charges to produce an increase in gross revenues of $71,811,000 on an annual basis.

2. That the Applicant is hereby required to file within three days of the issuance date of this Order five copies of the proposed rates and charges designed in accordance with the guidelines attached hereto as Appendix A. Such rates shall be designed to produce an annual level of revenues no greater than $737,775,000, based upon the adjusted test year level of operations as adopted by this Commission. Such adjusted test year level of operations reflects total North

Carolina Retail Kwh sales of 18,519,607,496 (actual: 17,888,764,907 Kwh, plus growth: 530,717,339 Kwh, plus weather: 100,125,250 Kwh).

3. That the Applicant shall file at the time of filing its proposed rates five copies of its jurisdictional cost allocation study and five copies of its cost-of-service study based upon the adjusted test year level of operations as adopted by this Commission utilizing the peak and average responsibility method as required by the rate design guidelines attached hereto.

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.

5. That CP&L's participation in the NEIL (Nuclear Electric Insurance, Limited) program be, and the same is hereby, approved on a trial basis; provided, however, that if CP&L does not become a member of NEIL within a reasonable period of time, CP&L shall refund to its customers the cost associated therewith which has been included in operating revenue deductions hereinabove found reasonable.

6. That CP&L shall, within 45 days, file a voluntary time-of-day rate schedule applicable to residential service.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1980.

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

APPENDIX A
DOCKET E-2, SUB 391
GUIDELINES FOR DESIGN OF RATE SCHEDULES

1. Cancel the RESC rate schedule and substitute therefor a section of the RES rate schedule which allows a 5% discount on the kilowatt-hour charges, not including customer charges, for qualifying residential customers.

2. Deduct $746,000 from the revenues proposed by CP&L for the lighting rate class by reducing the revenues proposed for each rate schedule within the lighting rate class in such a manner that the resulting rates of return for each lighting rate schedule will be closer to the overall retail rate of return than they would have been under the rates proposed by the Company.

3. After reducing the revenues proposed by CP&L for the lighting rate class in accordance with Step 2 above, deduct from the remaining revenues in all rate schedules the additional revenues necessary to produce the level of revenues allowed herein. This revenue reduction shall be

applied to all North Carolina rate schedules by reducing the Company's proposed rates in each rate block of each rate schedule (including the reduced lighting rates from Step 2) by the same percent reduction, except as described hereafter. Proposed customer charges shall not be reduced.

4. Round off individual rates to the extent necessary for administrative efficiency, provided said rounded rates do not produce revenues which exceed the total revenues allowed in this Order.

5. Adjust rates in each rate schedule to reflect the differences between the current base fuel component and the 0.876 cents per Kwh base fuel component contained in the rates proposed by CP&L in this proceeding.

6. Include all proposed rate schedule changes not specifically modified or prohibited herein above.

DOCKET NO. E-2, SUB 391

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On December 8, 1980, the Commission issued its Notice of Decision and Order wherein CP&L was allowed to increase its rates and charges to produce additional annual revenues of $71,811,000 based upon the adjusted test year level of operations. On December 10, 1980, CP&L filed rates pursuant to the December 8 Order.

The Commission has reviewed the rates as filed and, with one exception as detailed below, concludes that the rate designs are just and reasonable.

The Commission plans to issue within two weeks a Final Order including discussions of the evidence in this docket and conclusions reached therefrom.

IT IS, THEREFORE, ORDERED that

1. The rates and charges filed by CP&L in this docket on December 10, 1980, are hereby approved for service rendered on and after the date of this Order.

2. The residential rate RES-23 shall specifically show different headings for the Basic Customer Charge and for the Kilowatt-hour Charges, as shown in Appendix B, in order to eliminate the possibility of confusion as to the application of the 5% Energy Conservation Discount.

3. CP&L shall give public notice of the rate increase approved herein by mailing a copy of the notice attached hereto as Appendix A by first class mail to each of its North Carolina retail customers during the first normal billing cycle on and after December 11, 1980.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of December 1980.

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

NOTE: For Appendices A and B, see official Order in the Office of the Chief Clerk.

DOCKET NO. E-7, SUB 289

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for Authority to Adjust and Increase Its Electric Rates and Charges	)	ORDER APPROVING RATES AND CHARGES

BY THE COMMISSION: On September 30, 1980, in Docket No. E-7, Sub 289, the Commission issued its Notice of Decision and Order wherein Duke Power Company (Duke) was allowed an additional increase in its rates and charges so as to produce additional annual revenues of approximately $57,450,000 based upon the Commission's adjusted test year level of operations. Further, Duke was ordered to file proposed rates and charges necessary to implement the allowed rate increase in accordance with rate design guidelines established by the Commission.

Pursuant to the Commission Order, Duke on October 3, 1980, filed its proposed rates and charges.

The Commission after having reviewed the rates filed by Duke on October 3, 1980, finds that with certain modifications such rates are just and reasonable and thus concludes that the rates and charges attached hereto as Appendix A should be implemented.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates and charges attached hereto as Appendix A, which will produce, based upon the adjusted test year level of operations adopted by this Commission, annual gross revenues no greater than $1,010,454,000 be, and hereby are, allowed to go into effect.

2. That effective for service rendered on and after October 3, 1980, Duke be, and hereby is, allowed to place into effect the rates as described in Ordering Paragraph No. 1 hereinabove. Such rates and charges have been adjusted to reflect the level of fuel cost approved by the Commission in its June 16, 1980, Order issued in Docket No. E-7, Sub 295.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of October 1980.

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

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

DOCKET NO. E-7, SUB 302

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Duke Power Company	) ORDER APPROVING
For Authority to Adjust Its	) ADJUSTMENT OF RATES
Electric Rates and Charges Based	) AND CHARGES PURSUANT
Solely Upon Change in Cost of Fuel	) TO G.S. 62-134(e)

HEARD IN: Room 617, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 13, 1980

BEFORE: Commissioner Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Steve C. Griffith, Esq., General Counsel, Edward L. Flippen, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242

For the Using and Consuming Public:

Robert F. Page, Esq., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

David Gordon, Esq., Assistant Attorney General, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 26, 1980, Duke Power Company (Duke) filed an application with the Commission pursuant to G.S. 62-134(c) and Rules R1-36 and R8-46 requesting authority to adjust its rates and charges based solely upon the cost of fuel used in the generation of electric power for the four-month period ended August 1980, by increasing the amount included for fuel expenses in the base retail schedules by 0.2130 cents per kilowatt-hour for bills rendered on and after December 1, 1980. These adjusted rates would be effective for the billing months of December 1980, and January, February, February and March 1981.

On September 29, 1980, the Commission issued an Order which suspended the tariff, set the matter for hearing, and required public notice.

The matter came on for hearing as scheduled on October 13, 1980. Both Duke and the Public Staff were

present and represented by counsel. Duke presented the testimony of the following witnesses: W.R. Stimart, Vice President for Regulatory Affairs, and R.H. Hall, Jr., Vice President-Fuel Purchases, Mill-Power Supply Company. The Public Staff presented the testimony of Thomas L. Lam, Utilities Engineer with the Public Staff Electric Division.

After careful consideration and scrutiny of the evidence and testimony offered by both Duke Power Company and the Public Staff, the Commission is of the opinion, and therefore concludes:

1. That Duke should be allowed to adjust its base retail rates approved in the Commission's Order in Docket No. E-7, Sub 287, by the addition of an amount equal to $.002130 per kilowatt-hour effective for bills rendered on and after December 1, 1980, and for service rendered on and after the effective date of this Order. The authorized base fuel cost included in Duke's rates will then be $.013598 per kilowatt-hour.

2. That the addition of $.002130 per kilowatt-hour should be rolled into each kilowatt-hour block of each rate schedule and that Duke should file amended rate schedules reflecting this revision.

3. That no adjustment to Duke's rates on account of base load power plant performance is warranted by the evidence.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for bills rendered on and after December 1, 1980, and for service rendered on and after the effective date of this Order, Duke shall adjust its base retail rates by the addition of an amount equal to $.002130 per kilowatt-hour and shall roll this amount into each kilowatt-hour block of each rate schedule.

2. That Duke shall file revised rate schedules in accordance with this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of October 1980.

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

DOCKET NO. E-22, SUB 255

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Virginia Electric	) ORDER APPROVING
and Power Company for Authority	) ADJUSTMENT OF
to Adjust Its Electric Rates and	) RATES AND CHARGES
Charges Based Solely on Change in	) PURSUANT TO
the Cost of Fuel	) G.S. 62-134(e)

HEARD IN: Room 617, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 13, 1980

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Guy T. Tripp, III, Esq., Edward M. Roach, Esq., Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212

For the Using and Consuming Public:

Paul L. Lassiter, Esq., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

For the Attorney General:

David Gordon, Esq., Assistant Attorney General, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 30, 1980, Virginia Electric and Power Company (Vepco) filed an application with the Commission pursuant to G.S. 62-134(e) and Rules R1-36 and R8-46 requesting authority to adjust its rates and charges based solely upon the cost of fuel used in the generation of electric power for the four-month period ended August 1980, by reducing the amount included for fuel expenses in the base retail schedules by 0.187 cents per kilowatt-hour for bills rendered on and after December 1, 1980. These adjusted rates would be effective for the billing months of December 1980, and January, February, and March 1981.

On October 1, 1980, the Commission issued an Order which suspended the tariff, set the matter for hearing, and required public notice.

The matter came on for hearing as scheduled on October 13, 1980. Vepco, the Public Staff and the Attorney General were present and represented by counsel. Vepco presented the testimony of the following witnesses: C.L. Dozier, Manager of General Accounting Services; H.M. Wilson, Jr., Manager - Rates; B. Ralph Silvia, Manager of Nuclear Operations and Maintenance; H.M. Hastings, Jr., Director of Oil and Coal Contracts; Tyndall L. Baucom, Manager - Fossil and Hydro Operations; William C. Spencer, Vice President of Power Station Engineering and Construction.

The Public Staff presented the testimony of Timothy J. Carrere, Utilities Engineer with the Public Staff Electric Division. Mr. Carrere testified that the adjustments for heat rate and plant availability found appropriate by the Commission in Docket No. E-22, Sub 236, continue to be appropriate and should be incorporated in this proceeding. According to Mr. Carrere, the proper base fuel cost adjustment in this proceeding for the billing months of December 1980, through March 1981, is a decrease of $.00486 per kilowatt-hour, rather than the $.00187 per kilowatt-hour decrease applied for by Vepco. Mr. Carrere further testified that the new base fuel cost for Vepco would be $.02056 rather than the $.02337 per kilowatt-hour requested.

After careful consideration and scrutiny of the evidence and testimony offered by both Vepco and the Public Staff, the Commission is of the opinion, and therefore makes the following

FINDINGS AND CONCLUSIONS

If the Commission were to make the heat rate and availability adjustments recommended by the Public Staff, and found to be appropriate in Docket No. E-22, Sub 236, et al., the proper base fuel cost adjustment in this proceeding would be $.00486 decrease per kilowatt-hour rather than the $.00187 per kilowatt-hour decrease applied for by Vepco. Thus, the new base would be $.02056 per kilowatt-hour rather than the $.02337 per kilowatt-hour requested if the said heat rate and plant availability adjustment were made. The Public Staff urges the Commission to find the heat rate and plant availability adjustments to be appropriate, and approve the $.02337 base on condition that Vepco file an undertaking to refund any amounts owed after ultimate determination of this case on appeal.

The North Carolina Court of Appeals reversed the Utilities Commission Order issued in Docket No. E-22, Sub 236, et al., by opinion filed August 20, 1980. In its opinion the Court held as follows:

> "We hold that the Commission erred in ordering rate reductions and ordering Vepco to make refunds based on changes made by the Commission in Vepco's fuel costs by

taking into account the factors of heat rate and plant availability."

The Public Staff has filed with the Supreme Court of North Carolina a "Petition For Discretionary Review" seeking to have the Court of Appeals' decision overruled and the Commission Order in Docket No. E-22, Sub 236, affirmed.

Until such time as the Supreme Court grants review of the Decision Judgment of the Court of Appeals, the commission is without power to follow the Public Staff's recommendation. The decision of the Court of Appeals, until reviewed by the Supreme Court and stayed by the Supreme Court precludes this Commission from finding the heat rate and plant availability adjustments to be appropriate.

The Commission does, however, have power pursuant to G.S. 62-134(e) to suspend Vepco's rates up to 90 days, and to grant interim approval of the adjustment applied for by Vepco pending the Supreme Court's ruling on the Petition. By granting interim approval, the Commission reserves the right to condition final approval on the filing of an undertaking. Furthermore, by granting interim approval, the Commission will not delay the effective date of the decrease applied for by Vepco to the detriment of the ratepayers.

Considering the foregoing, the Commission concludes that pursuant to its powers under G.S. 62-134(e), it should approve Vepco's application for a rate decrease of $.00187 per kilowatt-hour on an interim basis pending the Supreme Court's ruling on the "Petition For Discretionary Review," and should reserve the right to issue such further orders as may be appropriate if the Supreme Court grants review, including an order requiring an appropriate undertaking.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for bills rendered on and after December 1, 1980, and for service rendered on and after the effective date of this Order, Vepco is granted interim approval to adjust its base retail rates by the reduction of an amount equal to $.00187 per kilowatt-hour.

2. That this interim approval is subject to such further order of the Commission as may be appropriate if the Supreme Court grants review of the decision of the Court of Appeals.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of October 1980.

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

DOCKET NO. E-2, SUB 323

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Power & Light Company - pplication for Authority to Enter into Various Agreements Relating to Coal Mining	) SUPPLEMENTAL ORDER) GRANTING AUTHORITY) TO GUARANTEE AMENDED) AGREEMENT

BY THE COMMISSION: This cause comes before the Commission upon a Supplemental Application of Carolina Power & Light Company (the Company) filed on April 9, 1980, wherein authority of the Commission is sought by the Company to consent to and guarantee a Second Amendment of the Revolving Credit and Term Loan Agreement (the Credit Agreement) of Leslie Coal Mining Company (Leslie). The original Agreement was approved in Docket No. E-2, Sub 233, Order dated March 5, 1974, and the first Amendment was approved in Docket No. E-2, Sub 323, Order dated March 17, 1978.

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 411 Fayetteville Street, Raleigh, North Carolina, and it is engaged in generating, transmitting, delivering and furnishing electricity to the public for compensation.

2. Leslie Coal Mining Company is a corporation owned 80% by the Company and 20% by Pickands Mather & Company (PM) engaged in the construction and development of a coal mine on properties located in Pike County, Kentucky, with an annual design production capacity of 1,000,000 tons of high quality, low sulfur compliance coal.

3. On March 5, 1974, the Commission issued an Order in Docket No. E-2, Sub 233, which provided for the Company to purchase capital stock of Leslie Coal Mining Company and to make loans, advances, pledges to, and guarantees for the benefit of Leslie for the purposes set forth in the Company's application and exhibits in Docket No. E-2, Sub 233.

4. On April 21, 1975, the Company guaranteed the obligations of Leslie pursuant to the Credit Agreement which provided $15,000,000 of term loan financing used to finance development costs, construction interest, and property not to be leased and $15,000,000 of revolving credit financing used as interim financing for leasable assets. The term loan provided for advances between April 24, 1975, and April 24, 1978, with repayments beginning March 1978. The rates charged to Leslie pursuant to the Credit Agreement prior to the first Amendment were:

Period	Rate as Percent of Prime
4/24/75 to 4/24/76	115
4/25/76 to 4/24/77	116
4/25/77 to 4/24/78	117
4/25/77 to 4/24/80	120
After 4/24/80	122

5. On October 30, 1975, the Company guaranteed the obligations of Leslie pursuant to the terms of a leveraged lease arrangement with Citicorp Lescaman, Inc., and John Hancock Mutual Life Insurance Company for $34,700,000.

6. On February 24, 1978, Citibank, N.A., agreed to amend the April 21, 1975, Credit Agreement to provide for an additional $10,000,000 of term loan funds and to reduce the interest rate to 109% of prime on all funds borrowed pursuant to the terms and conditions of an Amendment to the Credit Agreement dated as of February 24, 1978, attached to and made a part of the application of the Company in Docket No. E-2, Sub 323.

7. In February 1980, Citibank, N.A., agreed to further amend the Credit Agreement to reduce the interest rate to 100% of prime on all funds borrowed through February 28, 1983, and to 103% of prime on all funds borrowed thereafter and to extend the maturity of the loan from December 31, 1984, to December 31, 1986.

8. The Company has no directors or officers which serve on the boards of Pickands Mather & Company or its parent, Moore McCormick Resources, Inc., or Citibank, N.A. The Company has no relationships with any of such companies except for borrowing relationships with Citibank, N.A., and the arrangements disclosed in this Docket and in Docket No. E-2, Sub 302, and Docket No. E-2, Sub 233.

9. The Second Amendment to the Revolving Credit and Term Loan Agreement and the Company's Consent thereto and Guaranty thereof are in the best interest of the public and of the Company because:

A. The arrangements will reduce the interest rate payable by Leslie on the funds presently borrowed from Citibank, N.A., by approximately 8.3% for the period March 1, 1980, through February 28, 1983, and by approximately 5.5% thereafter.

B. The arrangements will postpone the beginning of amortization of the term loan from March 31, 1980, to June 30, 1982, and extend the maturity thereof from December 31, 1984, to December 31, 1986.

C. The extension of maturity will provide additional flexibility in dealing with unforeseen changes in operating conditions at Leslie such as severe weather, prolonged strikes, and new government regulations which could reduce productivity. Leslie will retain the right

to prepay this loan in part or entirely at any time without penalty.

CONCLUSIONS

From a review and study of the application, its supporting data, and the other information contained in the Commission's files, the Commission is of the opinion and so concludes that the Amendment to the Revolving Credit and Term Loan Agreement, and the guaranty of the Company with respect to such obligations of Leslie:

A. Are subject to regulation by this Commission under North Carolina General Statutes 62-160 and 62-161;

B. Are for a lawful objective and are within the corporate purposes of the Company;

C. Are compatible with public interest;

D. Are necessary and appropriate for and consistent with the proper performance by the Company of its service to the public;

E. Will not impair its ability to perform that service; and

F. Are reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED that the transactions proposed by Carolina Power & Light Company pursuant to the Second Amendment to the Revolving Credit and Term Loan Agreement and the execution and delivery by Carolina Power & Light Company of its Consent to the Amendment to the Revolving Credit and Term Loan Agreement and guarantee of the payment by Leslie Coal Mining Company of the obligations pursuant thereto be and hereby are approved.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of April 1980.

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

DOCKET NO. E-2, SUB 392

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Authority to Borrow $45,000,000	) ORDER GRANTING) AUTHORITY TO) BORROW $45,000,000

BY THE COMMISSION: This cause comes before the Commission upon an application of Carolina Power & Light Company (the Company), filed under date of May 6, 1980, wherein authority of the Commission is sought as follows:

To borrow for a period not to exceed seven years up to $45,000,000 from Barclays Bank International Limited, Merrill Lynch International Bank Limited and Swiss Bank Corporation, pursuant to a Loan Agreement substantially in the form of Exhibit C filed with the Application.

FINDINGS OF FACT

1. The Company is a corporation organized and existing under the laws of the State of North Carolina with its principal office at 411 Fayetteville Street, Raleigh, North Carolina, and is a public utility operating in North Carolina and South Carolina, where it is engaged in the business of generating, transmitting, delivering, and furnishing electricity to the public for compensation.

2. The Company's capital stock outstanding at March 31, 1980, consisted of Common Stock having a stated value of $833,001,000, Preferred Stock having a stated value of $356,118,000, and Preference Stock having a stated value of $47,900,000. As of March 31, 1980, the retained earnings of the Company were $307,124,000.

3. The Company's existing long-term debt at March 31, 1980, amounted to principal amounts of $1,420,391,000 in First Mortgage Bonds and $102,888,000 in other long-term debt. The First Mortgage Bonds were issued under and pursuant to an Indenture dated as of May 1, 1940, duly executed by the Company to Irving Trust Company of New York as Corporate Trustee, as supplemented by 27 Supplemental Indentures.

4. The net proceeds to be received from the proposed financing will be used for general corporate purposes, including the repayment of short-term borrowings incurred primarily for the construction of new facilities. Short-term borrowings at March 31, 1980, were $77,790,000 and such borrowings are expected to approximate $90,000,000 immediately prior to the first takedown of the proposed financing in the latter part of May 1980.

5. In the period from January 1, 1980, to March 31, 1980, the Company's construction expenditures for additional

electric plant facilities were $151,633,000. A statement of such construction expenditures on which the source of funds for the payment thereof are shown in Exhibit A to the application.

6. The Company must obtain approximately $494,000,000 or 80% of its $618,000,000 estimated construction and nuclear fuel expenditures for 1980 from outside financing. The Company's most recent long-term financing was the issuance and sale of $125,000,000 of First Mortgage Bonds on April 17, 1980. The Company's capital structure is such that it is appropriate and reasonable to issue and sell the Notes described herein at the present time. The issuance of the Seven Year Notes is a necessary step to obtain a portion of the funds needed in connection with financing the Company's construction program.

7. The Company has the right to prepay the loan on the last day of any interest period in whole or part on seven business days notice without penalty.

8. The Loan Agreement negotiated by the Company and presented to the Commission in said Application is less expensive than the proposals of (i) Barclays Bank by $112,500; (ii) Bankers Trust by $225,000; and (iii) Citybank by $225,000.

9. A one time fee of .125% of the principal amount of the Notes purchased will be payable to Merrill Lynch International Bank in connection with the proposed financing. The Company estimates that the expenses of the transaction including services will not exceed $40,000.

CONCLUSIONS

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

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

(b) Compatible with the public interest;

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

(d) Reasonably necessary and appropriate for such purposes.

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

1. To borrow $45,000,000 for a period not to exceed seven years from Barclays Bank International Limited, Merrill Lynch International Bank Limited, and Swiss Bank Corporation, pursuant to a Loan Agreement substantially in the form of Exhibit C to the application in this proceeding.

2. To apply the net proceeds to be derived from the borrowing of said $45,000,000 to the purposes set forth in the application.

3. To file, within 30 days after the borrowing of said $45,000,000, two copies of the Loan Agreement in final form as a Supplemental Exhibit in this proceeding.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of May 1980.

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

DOCKET NO. E-7, SUB 290

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for Authorization Under North Carolina General Statute 62-161 to Issue and Sell Securities (First and Refunding Mortgage) Bonds and Common Stock)	ORDER GRANTING AUTHORITY TO ISSUE AND SELL SECURITIES

BY THE COMMISSION: On February 18, 1980, Duke Power Company (Company) filed with the Commission an application for authority to issue and sell a maximum of $150,000,000 principal amount of First and Refunding Mortgage Bonds (the Proposed Bonds) and a maximum of 4,000,000 shares of its Common Stock without nominal or par value (the Proposed Stock).

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina, is a public utility engaged in the business of generating, transmitting, distributing, and selling electric power and energy, and in the business of operating water supply systems and urban transportation systems and is a public utility under the laws of this State and in its operations in the State is subject to the jurisdiction of the North Carolina Utilities Commission. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on business and is conduction and carrying on the businesses heretofore mentioned in that State. It is also a public utility under the laws of the State of South Carolina and in its operations in that State is subject to the jurisdiction of The Public Service Commission of South Carolina. It is also a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission.

2. The Company's application demonstrates the intent to issue and sell at negotiated public sale a maximum of $150,000,000 of a new series of its bonds to be designated as the "First and Refunding Mortgage Bonds, ____% Series Due ____," and to issue and sell at negotiated public sale a maximum of 4,000,000 additional shares of its Common Stock without nominal or par value.

THE PROPOSED BONDS: The Company proposes to enter into negotiations with a group of investment bankers to be jointly managed by Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Morgan Stanley & Co. Incorporated to act as underwriters for the public offering for cash of the Proposed Bonds upon such terms as to the rate of interest payable thereon, the price to be paid the Company therefor and the terms upon which the same may be redeemed as may be agreed upon by the Company and said investment bankers. It

was estimated that the interest rate on the Proposed Bonds would have been approximately 13 1/2% to 14% had the bonds been sold on the date of the Application carrying a 30-year maturity or a rate of approximately 13% to 13 1/2% had the bonds carried a five- to seven-year maturity. The Company noted, however, that recent volatile market fluctuations make the accurate projecting of interest rates in advance virtually impossible, and pointed out the rate could reach as high as 15% if the market continues to deteriorate.

The Proposed Bonds will be created and issued under the Company's First and Refunding Mortgage dated as of December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), as Trustee, as heretofore supplemented and as to be further supplemented and amended by a Supplemental Indenture to be executed in connection with the issuance of the Proposed Bonds.

The term of the Proposed Bonds will not exceed 30 years and such bonds will be of the form and tenor as shown in the Supplemental Indenture to be executed in connection with their issuance. They will be subject to all of the provisions of the Mortgage, referred to above, as supplemented, and by virtue of said Mortgage will constitute (together with the Company's outstanding First and Refunding Mortgage Bonds) a first lien on substantially all of the Company's fixed property and franchises.

No fee for services (other than attorneys, accountants, mortgage trustee, and fees for similar technical services) in connection with the negotiation or consummation of the sale of the Proposed Bonds or for services in securing underwriters or purchasers of such securities (other than fees negotiated with the aforesaid investment bankers) will be paid in connection with the issue and sale of the Proposed Bonds.

THE PROPOSED STOCK: Although the application also sought authorization from this Commission to issue and sell a maximum of 4,000,000 shares of Common Stock, the Commission was subsequently advised by the Company that it has indefinitely postponed its planned offering of such Common Stock and, consequently, the Commission takes no action at this time with respect to such proposed sale, but will hold any action in abeyance for a reasonable period of time pending further information from the Company. However, should the Company delay its request for further consideration of this matter until the information set forth in its application becomes outdated, this Commission, in its discretion, may dismiss the application with respect to the sale of the Proposed Stock or may require an amendment to the application providing more current information.

3. The Company has had extended discussions with representatives of its financial advisors with respect to the sale of the Proposed Bonds in the light of current volatile market conditions as well as conditions for the

e of utility securities generally and especially those of utility companies having substantial nuclear programs. Interest rates for U.S. Government securities have been increasing at unprecedented rates as have other long-term debt securities including utility mortgage bonds. As a result, the Company was strongly urged to sell the Proposed Bonds through negotiated sale. Advice and information which the Company obtained through discussions with institutional investors, as well as from its own independent investigation, convinced it that the proposed sale could be handled at this time more economically through negotiation rather than by competitive bidding.

Market resistance has developed to securities of nuclear utilities and the problem is more serious for companies having nuclear generating facilities manufactured by Babcock & Wilcox in view of the alleged uncertainties regarding the safety and continued use of such Babcock & Wilcox equipment. The Company's Oconee Nuclear Station has been the subject of an extended widely publicized evaluation by the Nuclear Regulatory Commission resulting in certain modifications to the system, some of which have been completed while others are still in process. A negotiated sale under existing circumstances is advantageous as it will provide the Company with an opportunity to meet with institutional investors and dispel uncertainties regarding nuclear generation and the use of Babcock & Wilcox equipment and, in addition, a negotiated sale provides substantially more flexibility from a timing standpoint. Timing is extremely important in a market which is changing rapidly. The Company therefore believes that a negotiated sale will result in a lower cost of money than would otherwise be available.

4. According to the application, the net proceeds from the sale of the Proposed Bonds will be applied and used by the Company to finance the cost of construction of additions to its electric plant facilities and the acquisition of nuclear fuel, including the repayment of outstanding short-term obligations (commercial paper and bank loans) incurred for those purposes. Such outstanding obligations are expected to reach about $125,000,000 by the time proceeds from the sale of the Proposed Bonds are available, after giving effect to the application of the proceeds of approximately $49,000,000 from the sale on February 14, 1980, of 500,000 shares of preferred stock.

5. The Company is continuing its construction program of substantial additions to its electric generation, transmission and distribution facilities in order to meet the expected increase in demand for electric service and to construct and maintain an adequate margin of reserve generating capacity. The Company's 1979-1980 winter peak load to date of 9,892,000 Kw, which occurred on February 5, 1980, is the highest peak reached in the history of the Company and represents an increase of 0.5% over the 1978-1979 winter peak load of 9,844,000 Kw which occurred on January 4, 1979, and an increase of 2% over the 1978 peak

load of 9,690,170 Kw which occurred on February 7, 1978. The Company's summer peak load of 9,833,000 Kw occurred on August 9, 1979, an increase of 3.8% over the summer peak load of 9,472,205 Kw which occurred on June 28, 1978. The Company's plant construction costs were $828,308,000 for 1979 and are estimated for 1980 to be about $877,000,000, including about $100,000,000 for the acquisition of nuclear fuel.

CONCLUSIONS

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

1. For a lawful object within the corporate purposes of the Company;

2. Compatible with the public interest;

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

4. Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED:

1. That Duke Power Company be, and it is hereby authorized, empowered and permitted, under the terms and conditions set forth in the application:

   a. To issue and sell at negotiated public sale to a group of underwriters to be jointly managed by Merrill Lynch, Pierce, Fenner & Smith Incorporated, and Morgan Stanley & Co. Incorporated during March 1980, a maximum of $150,000,000 principal amount of a new series of its bonds to be designated as the First and Refunding Mortgage Bonds, ____% Series Due____, which negotiation will determine the interest rate payable thereon, the term thereof, the price to be paid the Company therefor, the terms upon which the same may be redeemed and the underwriting discount applicable thereto;

   b. To execute and deliver a Supplemental Indenture to its First and Refunding Mortgage dated as of December 1, 1927, to Morgan Guaranty Trust Company of New York, as Trustee, to secure payment of such bonds; and

c. To use the net proceeds to be derived from the issuance and sale of the Proposed Bonds for the purposes set forth in the application.

2. That the Company report to the Commission within 30 days after the sale of the Proposed Bonds is consummated, the sale of such bonds (including the interest rate to be borne by them, the terms thereof, the price received by the Company for them, and the expenses of sale) together with the underwriting agreement and the Supplemental Indenture in the final form in which such documents were executed;

3. That should the Company issue and sell less than $150,000,000 principal amount of the Proposed Bonds, it shall file with the Commission, as a part of such report of sale, a balance sheet of a reasonably current date and journal entries showing the effect of the issuance and sale of such lesser amount; and

4. That this proceeding be and the same is continued on the docket of the Commission, without day, for the purpose of receiving the report of issue and sale of the Proposed Bonds as hereinabove provided and for the purpose of receiving additional information from the Company with respect to the proposed issuance and sale of a maximum of 4,000,000 shares of its Common Stock as set forth in the application. Nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of March 1980.

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

DOCKET NO. E-2, SUB 388

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the matter of Application of National Spinning Company, Inc., for Electric Power Service from Carolina Power & Light Company	) ORDER) APPROVING) APPLICATION

HEARD IN: Beaufort County Courthouse, West Second Street, Washington, North Carolina, on July 15, 1980, and the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 1, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611

For the Public Staff:

G. Clark Crampton, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

David Gordon, Special Deputy Attorney General, Dobbs Building, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For Carolina Power & Light Company:

William E. Graham, Jr., Senior Vice President and General Counsel, Carolina Power & Light Company, P.O. Box 1551, Center Plaza Building, 411 Fayetteville Street, Raleigh, North Carolina 27602

Fred D. Poisson, Attorney at Law, Legal Department, Carolina Power & Light Company, P.O. Box 1551, Center Plaza Building, 411 Fayetteville Street, Raleigh, North Carolina 27602

For Virginia Electric and Power Company, Intervenor:

Guy T. Tripp III, Attorney at Law, Hunton and Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212

Robert C. Howison, Jr., Attorney at Law, Hunton and Williams, Attorneys at Law, P.O. Box 109, 906 Wachovia Bank Building, Raleigh, North Carolina 27602

For the City of Washington, Intervenor:

Joseph W. Eason, Attorney at Law, Allen, Steed and Allen, P. A., P.O. Box 2058, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arises on the verified application of National Spinning Company, Inc. (National or Applicant), filed February 11, 1980, requesting that the Commission enter an Order authorizing and requiring CP&L to provide electric service to Applicant's plant in Beaufort County, North Carolina. The application, which was verified by Henry C. Humphreys, Vice President for Manufacturing, National Spinning Company, Inc., was served upon the Executive Director of the Public Staff, on the Attorney General, on Carolina Power & Light Company (CP&L), on Virginia Electric and Power Company (Vepco), and on the City of Washington (City). The application alleged, among other things, that National's Beaufort County plant was not located within the corporate limits of a municipality, was not located in an area previously assigned to an electric supplier pursuant to G.S. 62-110.2, was wholly more than 300 feet from the lines of an electric supplier as defined by the statute, and was not partially within 300 feet of the lines of two or more such suppliers, and that Applicant accordingly had chosen CP&L as its electric supplier pursuant to said statute. The verified application further alleged that, pursuant to a contract entered on August 27, 1977, between National and the City of Washington, the latter was National's exclusive supplier of electricity, but that, by virtue of certain provisions of said contract, the City was contractually bound "to interpose no objections to National's being served by the power company or authority elected by National and shall cooperate with National in ... and obtaining approval thereof by the North Carolina Public Utilities Commission ...." The application further gave National's reasons for choosing CP&L as its electric supplier rather than the service of either the City or Virginia Electric and Power Company, alleging that CP&L is able, financially and otherwise, to provide the service requested on a continuing basis, that no waste of any kind would result from CP&L's serving National's plant, and that existing national and State policies relating to conservation of energy would tend to be promoted by requiring CP&L to serve it.

The application further requested the Commission to take judicial notice of specific public records on file with it.

On March 10, 1980, the Public Staff intervened in support of the application and proposed a shortened procedure to handle the application.

The Commission on March 27, 1980, issued an Order setting the matter for investigation and requiring CP&L to publish Notice to the public. The Order and notice provided that "Unless significant protest to or Intervention opposing the granting of such application is received by the North Carolina Utilities Commission on or before June 1, 1980, the application will be considered and determined by the Commission without a hearing on the basis of the verified representations in the application and public records on file with the Commission. In the event there is significant protest to the granting of National's application, this matter shall be scheduled for hearing by the Commission with public notice being given in advance thereof."

On May 19, 1980, the City of Washington filed a Motion for Intervention and Request for Hearings. On May 30, 1980, Vepco filed a Petition to Intervene asserting that "Vepco protests the granting of the application in the absence of a hearing as provided in Rule R8-31." On June 2, 1980, six customers of the City of Washington - Louis Nassef, Clarence Carowan, Jimmy Fortescue, A. Thomas Stewart, Sam T. Carter, and Phil Willis - filed a joint Motion for Intervention and Request for Hearing.

Pursuant to its earlier Order the Commission on June 6, 1980, issued its Order allowing each of the above Motions for Interventon, granting and setting public hearings on the application for July 15, 1980, in Washington, North Carolina, and requiring CP&L to publish public notice of the date, time, and place of the hearings. No protests and no further Motions for Intervention were filed following publication of the second public notice.

At the call of the case for public hearings on July 15, 1980, in the Superior Courtroom for Beaufort County, the City of Washington, by and through counsel, Joseph W. Eason, appeared and presented a duly adopted, authenticated resolution of the City Council of the City of Washington whereby the City and its officers stated their support of National Spinning Company, Inc., in its efforts to obtain an Order requiring CP&L to provide electric service to it and authorizing the withdrawal by the City of its Motion to Intervene as filed on May 19, 1980. Upon the basis of said resolution, counsel for the City by formal and oral motions requested that the City of Washington be permitted to withdraw its Intervention and not participate further in the proceedings. After making the Resolution of the City Council a part of the Record, the Commission allowed the Motions of the City to withdraw its Intervention and further participation in the proceedings.

Upon the City's withdrawal from the case, five of the six participants in the joint Motion for Intervention filed on June 2, 1980, each individually and in open hearings requested that he be permitted to withdraw from the joint Intervention and participate no further in the proceedings. Upon the individual and separate requests of Louis Nassef, Clarence Carowan, Jimmy Fortescue, Sam T. Carter, and Phil Willis, each was allowed by the Commission to withdraw from the joint Motion for Intervention filed on June 2, 1980, and participate no further in the proceedings. The sub poenae duces tecum previously issued requiring the attendance and productions of records by each of the five named individuals were thereupon quashed by the Commission.

The hearings proceeded on the basis of the application of National Spinning Company, Inc., the Intervention of the Public Staff in support of the Application, the Intervention of the Attorney General, the Intervention of the individual customer of the City, A. Thomas Stewart, and the Intervention of Vepco as filed on May 30, 1980.

The Applicant, National Spinning Company, Inc., presented five witnesses as follows:

1. Joseph Leff, President, National Spinning Company, Inc., 183 Madison Avenue, New York, New York 10016

2. H. Randolph Currin, Jr., President, Currin and Associates, Inc., 4904 Waters Edge Drive, Raleigh, North Carolina 27606

3. William D. Reynolds, Director of Engineering and Utilities Service Procurement, National Spinning Company, Inc., West Third Street Extension, washington, North Carolina 27889

4. Henry C. Humphreys, Vice President-Manufacturing, National Spinning Company, Inc., West Third Street Extension, Washington, North Carolina 27889

5. N. Henry Moore, Jr., Director of Purchasing, National Spinning Company, Inc., West Third Street Extension, washington, North Carolina 27889

Through the above witnesses, the Applicant introduced 35 Exhibits into evidence and submitted six additional Exhibits by reference, of which subject matter the Commission has taken judicial notice pursuant to G.S. 62-65.

The remaining individual Intervenor, A. Thomas Stewart, testified in his own behalf in opposition to the granting of National's application and the City's support thereof.

Virginia Electric and Power Company presented one witness, Randolph D. McIver, Vice President for the Southern

Division, Virginia Electric and Power Company, Roanoke Rapids, North Carolina.

The Attorney General, the Public Staff, and Carolina Power & Light Company were represented by counsel, but did not present evidence.

Based upon the evidence, including the matters of which specific judicial notice was taken at the hearings, the arguments and Briefs of Counsel, and the entire record as a whole taken in the light of applicable law, the Commission makes the following

FINDINGS OF FACT

1. National Spinning Company, Inc., is a New York corporation authorized to do business and doing business in the State of North Carolina as a manufacturer and vendor of natural and dyed yarns to the textile industry as well as craft and other retail vendees. It is a consumer of electric power in the State with a demonstrated preference for regulated electric utility service in the State. As such consumer it has standing to seek CP&L electric power service through application to the Commission and is properly before the Commission pursuant to G.S. 62-110.2.

2. Carolina Power & Light Company is engaged in the generation, transmission, and distribution of electric power to the general public for compensation in North Carolina. It is a public utility as defined by G.S. 62-3(23)(a)(1) and is an electric supplier as defined by G.S. 62-110.2(a)(3). The Commission has jurisdiction over the extension of electric power service by CP&L to meet the reasonable needs and preferences of the electric consumer on the facts in this case, and has jurisdiction over the subject matter of the application.

3. The electric distribution system owned and operated by the City of Washington in Beaufort County, North Carolina, is not a public utility as defined by G.S. 62-3(23)(a)(1) and (d), and is not an electric supplier as defined by G.S. 62-110.2(a)(3).

The Commission has no jurisdiction over the operations, service areas, service policies, rates, practices, or contracts of the City of Washington. The City of Washington purchases all its power from Vepco for resale. This Commission does not have jurisdiction over the rates, practices, or rules by which Vepco sells electric power to the City for resale. The City is simultaneously a resale customer and a retail competitor of Vepco. The Commission does not have jurisdiction over either relationship.

4. National Spinning Company, Inc., has formally declared that it has chosen CP&L as its electric supplier for its manufacturing plant occupying a 39-acre tract with the address of West Third Street, Washington, North

Carolina. This manufacturing plant meets the definition of "premises" at which an electric consumer is authorized to choose an electric supplier pursuant to G.S. 62-110.2 (a)(1).

5. The aforesaid manufacturing premises which National Spinning Company, Inc., requests that CP&L serve is not within the boundaries of a municipality; nor are said premises within an area previously assigned as between electric suppliers by the Commission pursuant to G.S. 62-110.2(c).

6. The manufacturing premises which National Spinning Company, Inc., requests that CP&L serve are not wholly within 300 feet of the lines of an electric supplier as defined by G.S. 62-110.2(a)(3); nor are said manufacturing premises partially within 300 feet of the lines of two or more electric suppliers as defined by said subsection.

7. The manufacturing premises which National Spinning Company, Inc., requests that CP&L serve are presently served by the distribution system owned and operated by the City of Washington. National and the City have executed contracts pursuant to which the City has released National as its customer, consented to CP&L's extension of retail electric service to National in its stead, and has given assurances that, in the event said manufacturing premises are annexed by the City in the future, National's right to have CP&L as its electric supplier, and CP&L's right to provide continuing service to National pursuant to G.S. 160A-331, et seq., will not be adversely affected in any way. The City of Washington by separate Resolution of its governing board fully supports National Spinning Company, Inc., in its efforts to obtain an Order of this Commission authorizing and requiring CP&L to construct to, and thereafter provide electric utility power services on a continuing basis at, National's Manufacturing premises located at West Third Street Extension, Washington, North Carolina.

8. The extension of electric service by CP&L to the manufacturing premises of National and termination of the City's service to said premises, as agreed between the City and National, will not adversely affect any of the remaining customers of the City in any material respect. Nor is the City likely to experience any reduced net utility income or loss of the usefulness of any substantial amount of utility plant now used and useful, and not already fully depreciated, in serving National as its customer.

9. No paralleling, crossing, or duplication of the lines of an electric supplier as defined by G.S. 62-110.2(a)(3) would result from construction by CP&L to serve the premises of National Spinning Company, Inc.

10. The electric load characteristics and requirements of National Spinning Company, Inc., at the premises for which it is seeking CP&L service are as follows:

Minimum Expected 30 Minute Demand	7,000 Kw
Maximum Expected 30 Minute Demand	8,000 Kw
Minimum RKVA	5,100
Maximum RKVA	5,800
Annual Kwh Expected to be Purchased	45,200,000
Service Voltage	480 Volts, 3 Phase
Delivery Points	One
Estimated Annual Load Factor	67%

11. The load requirements of National as found in Finding No. 10 can be met by the construction by CP&L of a three-phase, 23 KV line a maximum distance of seven miles at a maximum line and facilities investment of $515,000.

12. The load characteristics as found in Finding No. 10 are within CP&L's existing, generally applied, Large General Services (LGS) customer classification and CP&L proposes that its LGS rate, as from time-to-time adjusted with the approval of the Commission, be made applicable to National's plant, without contributions-in-aid of construction, extra facilities charges, or other extra or special charges. Under CP&L's retail rate, LGS-17, applicable at the time of hearings, applied to National's load characteristics at its Beaufort County plant would have produced $1,335,652 in revenues for CP&L during the 12 months' period ended May 31, 1980.

13. CP&L's present and projected generating reserves, transmission facilities, technical and maintenance personnel, and service equipment are adequate to absorb National's requirement without necessity of any additional investment or expense.

14. The annual load factor of National's plant is 67%, which is in excess of CP&L's system load factor.

15. Vepco or its customers will not be adversely affected by National's choice of CP&L; nor does Vepco claim or seek the right to serve National's premises. The consumer, National, does not prefer Vepco's service, and has not sought or chosen Vepco's service.

CONCLUSIONS

1. Findings of Fact Nos. 1, 2, and 3 are jurisdictional facts. They justify and support the conclusion that National Spinning Company, Inc., has a right to file its application before the Commission, that it is properly before the Commission, that the Commission has jurisdiction over the public utility, CP&L, against whom relief is sought, that the Commission has jurisdiction over the subject matter presented by the application, and that it is authorized to enter an appropriate Order adjudicating the matter.

2. Findings of Fact Nos. 4, 5, and 6 justify and compel the conclusion that the special provision, subsection (b)(5) of G.S. 62-110.2, establishes the right of National Spinning Company, Inc., to choose CP&L as its electric supplier at its Beaufort County plant and the right of CP&L to serve this plant if National so chose it. Utilities Commission, Duke Power Company, et al. v. Union Electric Membership Cooperative, Inc., 3 N.C. App. 309 (1968); Utilities Commission, CP&L, Acme Corporation, et al. v. Lumbee River Electric Membership Corporation, 275 N. C. 250 (1969).

Although CP&L has not waived its statutory right under G.S. 62-110.2(b)(5) to serve National's plant, and has not opposed an Order of the Commission requiring it to do so, it nevertheless has not exercised its statutory right to serve National. The North Carolina Supreme Court has said, before and after enactment of G.S. 62-110.2(b)(5), that "Unless compelled by some cogent reason, one seeking electric service should not be denied the right to choose between vendors." Utilities Commission, CP&L, Acme Corporation, et al., v. Lumbee River Electric Membership Corporation, 275 N. C. 250; Pitt and Green Electric Membership Corporation v. Carolina Power and Light Company, 255 N. C. 258; Carolina Power and Light Company v. Electric Membership Corporation, 211 N. C. 717.

The record in this case is replete with allegations as well as proof of cogent reasons why National should be permitted to choose and be served by CP&L. There are no allegations or proof in this record of reasons of any kind why National should not be served by CP&L. The record in this proceeding shows that CP&L was properly notified of the hearings in Washington and Raleigh and that CP&L was present at the hearings and offered no objections to its serving National.

The Commission therefore holds that National having exercised its statutory right and having chosen CP&L as its electric supplier pursuant to G.S. 62-110.2(b)(5), CP&L has a statutory right to serve National's premises which it should exercise.

3. Findings Nos. 7 and 8 justify the conclusion that National is free of all private contracts which could or might interfere with its ability to contract with CP&L as a public utility for the provision of service to its Beaufort County plant on a conventional, continuing basis and that CP&L can begin construction to serve National's premises with full assurances that its ability to serve National on a continuing basis will not be affected by annexation of National's premises by the City of Washington, if such should subsequently occur.

4. Findings Nos. 9 and 15 are not necessary or material in this proceeding to the conclusions of the Commission under G.S. 62-110.2(b)(5). Utilities Commission et al. v. Union Electric Membership Corporation supra; Utilities

Commission, et al. v. Lumbee Electric Membership Corporation, supra. However, they are factors justifying the conclusion that construction by CP&L to serve National's premises would not be wasteful of the assets of any electric supplier.

5. Findings Nos. 10, 11, 12, 13, and 14 support and justify the following conclusions:

(a) CP&L is ready, willing, and able, financially and otherwise, adequately and efficiently to meet the demands and needs for electric power service of the Beaufort County plant of National Spinning Company, Inc., on a continuing basis.

(b) It is economically and otherwise feasible for CP&L forthwith to perform the necessary construction and installation of facilities necessary to serve National's plant.

(c) No material waste of the assets of CP&L, or any other electric supplier, will result from CP&L's construction to the plant of National Spinning Company, Inc., in that no paralleling, crossing, or duplication of lines of any electric supplier is required.

(d) It would be beneficial to CP&L's general body of ratepayers, as well as to its stockholders, for CP&L to construct to National's plant and thereafter provide on a continuing basis electric power service at CP&L's applicable large general service rate.

(e) National Spinning Company, Inc., is now able to contract with CP&L under the utility's standard service contract applicable to all other existing industrial customers having substantially the same load and service characteristics.

(f) CP&L is effectively a third party beneficiary to the contract between National and the City of Washington providing that, in the event of annexation of National's premises by the City, CP&L's rights within the corporate limits are assured pursuant to G.S. 110A-331, et seq., and the City has otherwise pledged its support.

The Commission does not presently have before it the question of the right of any electric supplier to have any part of the area in which National's plant is located assigned to it. Therefore, none of the tests provided in subsection (c) of G.S. 62-110.2, which relates to the assignment of service areas by the Commission, are material and applicable here, and it is unnecessary to make findings and conclusions from Applicant's evidence as it relates to said subsections. Utilities Commission, et al. v. Lumbee Electric Membership Corporation, supra. Similarly,

National's premises are not now being served by another electric supplier as defined in subsection (a)(3) of G.S. 62-110.2, nor has it been made to appear that another such electric supplier has the right to serve National's premises pursuant to other provisions of G.S. 62-110.2. Therefore, none of the tests provided in subsection (d) of the statute are material and it is unnecessary to make findings and conclusions from the evidence as it relates to said subsection.

Thus, the question before the Commission is whether National Spinning Company, Inc., as an electric consumer Choosing CP&L as its electric supplier pursuant to subsection (b)(5) of G.S. 62-110.2, has a right to an Order requiring CP&L to exercise the right conferred upon it by that same subsection, in the absence of a showing that the extension of service to National by CP&L would be so wasteful of its own resources as to endanger its future capacity to serve adequately at reasonable rates. There is no question, based upon the Commission's investigation as well as the evidence of record and the findings and Conclusions compelled thereby, but that the Applicant is entitled to such Order.

Accordingly, the Application of National Spinning Company, Inc., in this docket will be approved and an Order issued requiring CP&L forthwith to provide direct electric power service at regularly approved and applicable rates to the manufacturing premises of National in Beaufort County.

IT IS, THEREFORE, ORDERED as follows:

1. The application of National Spinning Company, Inc., or direct electric service from Carolina Power & Light Company at its premises at West Third Street Extension, Washington, North Carolina, be, and the same is, approved.

2. Carolina Power & Light Company shall forthwith perform the necessary construction and installations of facilities to serve the premises of National Spinning Company, Inc., at West Third Street Extension, Washington, North Carolina, on or before May 30, 1981.

3. The premises of National Spinning Company, Inc., at Washington, North Carolina, shall be served on a continuing basis by Carolina Power & Light Company at the same rates, and subject to the same service regulations and the same service contract and conditions, as are applicable to CP&L's other industrial customers having substantially the same load and service characteristics during the time service is provided.

4. Carolina Power & Light Company shall file periodic written reports with this Commission and serve a copy of the same on the Applicant regarding its progress on construction so that the required construction and institution of service

can be assured on or before May 30, 1981, as herein required.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of September 1980.

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

DOCKET NO. E-2, SUB 388

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of National Spinning Company, Inc., for Electric Power Service from Carolina Power & Light Company	) SUPPLEMENTAL) ORDER OF) CLARIFICATION

BY THE COMMISSION: On October 29, 1980, Virginia Electric and Power Company (Vepco) filed Exceptions and Notice of Appeal to the Court of Appeals in this docket. These Exceptions and the Notice of Appeal were filed to the Commission's Order of September 29, 1980, in this docket which approved the application of National Spinning Company, Inc.

Vepco's Exception No. 6 was directed to the Commission's Findings of Fact and Conclusions, "each of which is `based upon the Commission's investigation as well as the evidence of record' as stated on page 10 of the Commission's Order." Vepco's exception No. 6 continues:

> "As grounds for this exception Vepco asserts that by basing an order upon its independent 'investigation' that is not part of the record, the Commission has gone beyond the record in deciding this case which action violates constitutional provisions by depriving Vepco of due process of law, is in excess of the statutory authority and jurisdiction of the Commission, constitutes an unlawful proceeding and is arbitrary and capricious."

The sentence quoted from by Vepco is on page 10 of the Order and reads as follows:

> "There is no question, based upon the Commission's investigation as well as the evidence of record and the findings and conclusions compelled thereby, but that the Applicant is entitled to such Order."

The Commission is of the opinion that it should issue this Supplemental Order to the Order of September 29, 1980, so as to dispel any inference arising from the sentence on page 10 that the Commission based its September 29, 1980, Order upon an independent investigation that was not part of the record in this proceeding. The Commission's Order of March 27, 1980, set the application of National Spinning Company "for investigation," and notice was given to Carolina Power & Light Company, the Town of Washington, Virginia Electric and Power Company, and the public. The Commission's investigation in this matter consisted solely of the proceedings that are a matter of record to all parties in this docket. These proceedings include the formal hearings that were held in Washington, North Carolina, and in Raleigh, and also include the Commission's "jury view" investigation of the premises in question, which was agreed to by the parties herein, including Vepco.

The Commission is further of the opinion that, for purposes of clarification, the last sentence in the last paragraph on page 10 should be rewritten so as to remove any suggestion that the Commission's investigation went beyond the record in deciding this case.

IT IS, THEREFORE, ORDERED that the last sentence in the last paragraph on page 10 of the Commission's Order of September 29, 1980, should be rewritten to read as follows:

> Based upon the entire record in this proceeding and the findings and conclusions compelled thereby, the Applicant is entitled to such Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of December 1980.

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

DOCKET NO. E-7, SUB 303

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company for Authority to Sell a Portion of Its Catawba Nuclear Membership Corporation and Saluda River Electric Cooperative, Inc.	) ORDER) AUTHORIZING) SALE)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 15, 1980, at 11:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, John W. Winters, Edward B. Hipp, A. Hartwell Campbell, and Douglas P. Leary. (Commissioner Leary did not participate in the decision of the Commission.)

APPEARANCES:

For the Applicant:

Steve C. Griffith, Jr., Ellen Ruff, and Shannon Freeman, Attorneys at Law, Duke Power Company, Charlotte, North Carolina 28242

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Intervenor:

Jesse L. Riley, 854 Henley Place, Charlotte, North Carolina 28207
For: Himself

BY THE COMMISSION: On October 1, 1980, Duke Power Company (Duke) filed an application for authority to sell to North Carolina Electric Membership Corporation (NCEMC) a 56.25% undivided ownership interest in Unit 1 and a 28.125% undivided ownership interest in the support facilities of the Catawba Nuclear Station and to sell to Saluda River Electric Cooperative, Inc. (Saluda River), an 18.75% undivided ownership interest in Unit 1 and 9.375% undivided ownership interest in the support facilities of the Catawba Nuclear Station. The application stated that Duke, NCEMC, and Saluda River have reached agreement on the terms and conditions for the proposed sale as contained in the following: (a) The Purchase, Construction, and Ownership

Agreement (the Sales Agreement); (b) The Interconnection Agreement; and (c) The Operating and Fuel Agreement.

Duke alleged that the sale by Duke of a portion of Catawba to NCEMC and Saluda River as set forth in the Agreements is in the public interest, for the reason, among others, that the sale will relieve Duke of the burden to finance that portion of its construction program associated with Catawba.

On November 24, 1980, the Commission issued an Order requiring Duke to publish Notice to the Public of the sale and setting the application for hearing in Raleigh on December 15, 1980.

On December 5, 1980. Jesse L. Riley, a Duke customer, filed notice of Intervention on behalf of himself. On December 11, 1980, the Public Staff filed Notice of Intervention.

The application came on for hearing as scheduled on December 15, 1980, Duke and the Intervenors were present. The Commission heard statements from the following public witnesses: Harvard G. Ayers and John Mackie, members of Blue Ridge EMC. In support of its application Duke presented the testimony of Douglas W. Booth, Executive Vice President of Duke, and W.R. Stimart, Vice President - Regulatory Affairs. Intervenor Riley presented the testimony of himself and Wells Eddleman. The Public Staff did not present any testimony.

Upon consideration of the testimony and exhibits presented at the hearing, the application, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Duke Power Company, a public utility corporation organized and existing under the laws of North Carolina, is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the public in North and South Carolina. Duke is subject to the jurisdiction of this Commission.

2. Duke and NCEMC and Duke and Saluda River entered into three agreements whereby NCEMC shall acquire from Duke a 56.25% undivided ownership intest in Unit No. 1 of the Catawba Nuclear Station, York County, South Carolina, and a 28.125% undivided interest in the Support Facilities of Catawba; and Saluda River shall acquire from Duke a 18.75% undivided ownership interest in Unit No. 1 and a 9.375% undivided ownership in the support facilities of such Station. The three Agreements entered into by Duke and NCEMC and by Duke and Saluda River are (a) The Purchase, Construction, and Ownership Agreement (the Sales Agreement);

(b) The Interconnection Agreement; and (c) The Operating and Fuel Agreement.

3. The Sales Agreement provides, in part, for Duke to sell to NCEMC 56.25% undivided ownership interest in Unit 1 and a 28.125% undivided ownership interest in the support facilities of the Catawba Nuclear Station and to sell to Saluda River an 18.75% undivided ownership interest in Unit 1 and a 9.375% undivided ownership interest in the support facilities of the Catawba Nuclear Station. Duke will continue to construct Catawba in accordance with designs, plans, and specifications contained in the Certificate issued by the Public Service Commission of South Carolina and the Construction Permit issued by the Nuclear Regulatory Commission (NRC) and any amendment and changes authorized by the NRC.

The Interconnection Agreement provides, in part, for Duke to interconnect its generation and transmission system with Catawba in order to wheel electric power and energy to the Participants of NCEMC and Saluda River. Duke will also provide supplemental and backup services for the supply of all of the electric requirements of the member cooperatives of NCEMC and Saluda River and Duke will purchase power and energy from NCEMC and Saluda River's ownership of Cawtaba as provided for in said Agreement.

The Operating and Fuel Agreement provides, in part, for Duke to operate and maintain Catawba. Duke will schedule the output and dispatch the Catawba Units. Duke will, also, procure the fuel to be used in Catawba for itself, NCEMC, and Saluda River. The services to be performed for Duke on behalf of NCEMC and Saluda River shall be at cost plus any applicable fees.

4. NCEMC is composed of twenty-six (26) member cooperatives of whom ten (10) are located within Duke's service area in the State of North Carolina. Those ten (10) member cooperatives will participate in the Catawba Project. Saluda River is composed of five (5) member cooperatives located within Duke's service area in the State of South Carolina, all of whom participate in the Catawba Project.

The membership of NCEMC and Saluda River that will participate in Catawba is located within Duke's service area in North and South Carolina. NCEMC and Saluda River presently receive a majority of its electric power and energy from Duke.

5. On September 18, 1978, the Commission approved the sale of a 75% undivided ownership interest in Unit No. 2 and a 37.5% undivided ownership interest in the support facilities of the Catawba Nuclear Station to North Carolina Municipal Power Agency Number 1. (Docket No. E-7, Sub 195, and Docket No. E-43.)

6. The sales by Duke of portions of Catawba to NCEMC and Saluda River are in the public interest and should be approved. Duke has an extremely heavy construction schedule for expansion of its electric plant to meet the projected needs of its customers. These sales of portions of Catawba will relieve Duke of the burden to raise that portion of financing its construction program, will not result in the construction of additional electric plants, and will not result in significant increase in environmental impact of the facility.

7. The sale of portions of Catawba to NCEMC and Saluda River will not expand Duke's service obligations because the NCEMC and Saluda River cooperatives who are within Duke's service area would remain wholesale customers of Duke without such sale and with such sale will provide for their own needs through Catawba and the supplemental and backup services to be provided by Duke.

8. The accounting proposed by Duke upon the closing of the sales is consistent with that followed in the sale to North Carolina Municipal Power Agency Number 1 (see Finding No. 5) and is consistent with the Uniform System of Accounts adopted by this Commission.

CONCLUSIONS

The Commission, upon consideration of the findings above and the evidence herein, concludes that the sales proposed herein by Duke are in the public interest and should be approved.

Duke in its application and at the hearing stated that it has an extremely heavy construction schedule for expansion of its electric plant to meet the projected needs of its customers. Duke further stated that these sales portions of Catawba will relieve it of the burden to raise that portion of financing its construction program, will not result in the construction of additional electric plants, and will not result in significant increase in environmental impact of the facility.

Duke, in its application and at the hearing, further noted that the membership of NCEMC and Saluda River that will participate in Catawba is located within Duke's service area in North and South Carolina and that NCEMC and Saluda River presently receive a majority of its electric power and energy from Duke. It was also noted that the Company's future construction program of generation facilities (which includes Catawba) and transmission plant was designed to include the members of NCEMC and Saluda River. Duke also stated in its application and at the hearing that the Catawba Nuclear Station is located in South Carolina and Duke has received a certificate to construct a major facility from the Public Service Commission of South Carolina.

The Commission finds and concludes, based upon the above findings and the evidence herein, that the proposed joint ownership of portions of Catawba Unit No. 1 not only benefits the members of NCEMC and Saluda River but also the customers of Duke Power Company. It is also quite evident from NCUC Docket No. E-100, Sub 35, that the capacity associated with the Catawba plant is required in Duke's service area, which includes NCEMC and Saluda River, to provide adequate and reliable electric service in the future. It is apparent from the evidence presented in this proceeding that the sale and acquisition of Catawba Unit No. 1 would promote adequate, reliable, and economical utility service in North Carolina.

The Commission further finds that, based upon the information filed in this proceeding and contained in its files, the sales of these portions of Duke's Catawba Nuclear Station will not adversely affect either Duke Power Company or Duke customers. In addition, the Commission concludes that this sale acquisition should be approved, even though the purchased capacity component of the transaction paid by Duke will probably exceed the cost that Duke would have incurred had it not sold the interest in Catawba because Catawba is needed to serve the expected electric loads of all of Duke's customers.

The Commission further finds and concludes that Duke's proposed accounting treatment of the sale is proper.

IT IS, THEREFORE, ORDERED that Duke Power Company be, and the same is hereby, authorized to sell a 56.25% undivided ownership interest in Unit No. 1 and a 28.125% undivided ownership interest in the support facilities of the Catawba Nuclear Station to NCEMC and to sell to Saluda River a 18.75% undivided ownership interest in Unit No. 1 and a 9.375% undivided ownership interest in the support facilities of such Station on the terms and conditions set forth in the Agreements dated October 14, 1980, between Duke and NCEMC and between Duke and Saluda River.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of December 1980.

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

DOCKET NO. A-26

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Donza Lee Morris, d/b/a Morris Marina, Atlantic, North Carolina - Application for Authority to Transport Passengers and Their Baggage as a Common Carrier by Boat	) RECOMMENDED) ORDER GRANTING) COMMON CARRIER AUTHORITY

HEARD IN: Superior Courtroom, Carteret County Courthouse, Beaufort, North Carolina, on July 17, 1980, at 9:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

L. Patten Mason, Mason and Phillips, P.A., Attorneys at Law, Professional Building, 710 Arendell Street, Morehead City, North Carolina 28557
For: Donza Lee Morris, d/b/a Morris Marina

For the Protestant:

Richard L. Stanley, Attorney at Law, 133 Turner Street, Beaufort, North Carolina 28516
For: Carteret Boat Tours, Inc.

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

BENNINK, HEARING EXAMINER: On June 2, 1980, Donza Lee Morris, d/b/a Morris Marina (hereinafter referred to as Applicant), filed an application with the Commission seeking authority to engage in the transportation of passengers and their baggage as a common carrier by boat over the following route:

> "From Atlantic, North Carolina, to Core Banks, North Carolina, at a point where the Applicant maintains cabins for rent, which area is generally and approximately 5 miles north of Drum Inlet."

By letter filed with the Commission on June 12, 1980, the Applicant requested that the application at issue herein be amended to also encompass the return of passengers from Core

Banks to Atlantic, North Carolina. By Order dated June 23, 1980, the Commission gave notice of the application and set the matter for hearing on July 17, 1980, in Beaufort, North Carolina.

On June 30, 1980, Carteret Boat Tours, Inc. (hereinafter referred to as Protestant), filed a "Protest and Motion To Intervene" in this docket, which motion was allowed by Commission Order dated July 7, 1980.

On July 14, 1980, the Public Staff filed a "Notice of Intervention" in this docket on behalf of the using and consuming public.

Upon call of the matter for hearing at the appointed time and place, the Applicant was present and represented by Counsel. The Public Staff was also represented by counsel. No one appeared at the hearing on behalf of the Protestant. In this regard, the Hearing Examiner takes judicial notice of the Protestant's intent, as set forth in its "Protest and Motion To Intervene" filed herein on June 30, 1980, to protest the instant applicaton only insofar as said application might encompass authority to transport passengers and their baggage to any point on Core Banks south of Drum Inlet (Emphasis supplied).

No witnesses appeared at the hearing in opposition to the Application at issue herein.

Donza Lee Morris testified in support of his application. The Applicant also offered the testimony of Rudolph Mason, who has been the Applicant's accountant since 1961. Counsel for the Applicant and the Public Staff entered into a stipulation for the record whereby it was recognized that the Applicant had present two (2) additional witnesses at the hearing who, if they had been called to testify, would have testified in support of the application and would have corroborated the testimony actually offered in this proceeding by Mr. Morris and Mr. Mason.

Based upon a careful consideration of the application, the testimony and exhibits offered at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant, who is an individual doing business as Morris Marina, proposes to transport passengers and their baggage as a common carrier by boat in North Carolina intrastate commerce. The operating authority being sought by the Applicant is fully described in Exhibit B which is attached to this Recommended Order and made a part hereof.

2. The Applicant is fit, willing, and able to properly perform the transportation service proposed herein.

3. The Applicant is solvent and financially able to furnish adequate service on a continuing basis under the passenger common carrier authority set forth in Exhibit B attached hereto.

4. The public convenience and necessity require the proposed passenger service by boat in addition to existing authorized transportation service.

5. No matters exist which would disqualify the Applicant from being granted a certificate to operate as a common carrier of passengers by boat in this State under the authority set forth in Exhibit B attached hereto and made a part hereof.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Pursuant to Section 62-262(e) of the North Carolina General Statutes and Commission Rule R2-15(a), the ultimate burden of proof in a proceeding before this Commission involving an application for a common carrier certificate of public convenience and necessity must be borne by the Applicant therefor. 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 therefore concludes, (1) that the Applicant in this proceeding has met and carried the burden of proof necessary to warrant issuance by this Commission of a certificate granting said Applicant authority to operate as a common carrier of passengers by boat in intrastate commerce; (2) that the service herein proposed by the Applicant is in the public interest and will not unlawfully affect the service which is presently being rendered to the public by other public utilities; (3) that the Applicant is fit, willing, and able to properly perform the service as herein proposed; (4) that the Applicant is solvent and qualified, financially and otherwise, to operate on an adequate and continuing basis under the authority presently being sought from this Commission; and (5) that the application herein under consideration, being justified by the public convenience and necessity, should be granted.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant be, and is hereby, granted passenger common carrier operating authority in accordance with Exhibit B attached hereto and made a part hereof.

2. That the Applicant shall file with this Commission, to the extent he has not already done so, evidence of the required insurance, a list of equipment, a tariff schedule

of fares, rates, and charges, timetables, and otherwise comply with the Rules and Regulations of the Commission, all of which should be accomplished within thirty (30) days from the date this Recommended Order becomes effective and final, unless such time is hereafter extended by the Commission.

3. That unless the Applicant complies with the requirements set forth in Decretal Paragraph 2 above and begins operating as herein authorized within a period of thirty (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 the Applicant shall maintain his books and records in such a manner that all of the applicable items of information required in the prescribed Annual Report to the Commission can be readily identified from said books and records and 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 service herein described and set forth in Exhibit B attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of August 1980.

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

DOCKET NO. A-26

Donza Lee Morris, d/b/a
Morris Marina
Atlantic, North Carolina

PASSENGER COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of passengers and their baggage by boat between Atlantic, North Carolina, and Core Banks, North Carolina, at a point generally and approximately five (5) miles north of Drum Inlet.

DOCKET NO. G-21, SUB 148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
North Carolina Natural Gas Corporation's Application For Surcharge to Recover Net Cost of Emergency Purchase of Natural Gas	) ORDER REQUIRING REFUND) AND AUTHORIZING) IMPOSITION OF) SURCHARGE

HEARD IN: The Commission Hearing Room, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, April 28, 1980, at 11:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Leigh H. Hammond, Sarah Lindsay Tate, Edward B. Hipp, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Applicant:

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

For the Intervenors:

Henry S. Manning, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27609
For: Aluminum Company of America

William H. McCullough, Charles C. Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, 414 Fayetteville Street Mall, P.O. Box 389, Raleigh, North Carolina 27602
For: Farmers Chemical Association, Inc.

BY THE COMMISSION: In an Opinion filed on August 21, 1979, the North Carolina Court of Appeals held that a portion of an Order issued by this Commission on February 14, 1978, should be "vacated and remanded for a proper order." Utilities Commission v. Farmers Chemical Association, Inc., 42 N.C. App. 606 (1979). In pertinent part, the Court ruled as follows:

"We hold that the Commission exceeded its statutory authority by billing [Farmers Chemical] with a surcharge for emergency gas prior to 7 January 1976. For that reason, the order of the Commission is remanded to conform with the opinion of this Court. All other exceptions of [Farmers Chemical] are overruled..."

On September 25, 1979, Farmers Chemical Association, Inc. (Farmers Chemical) petitioned the North Carolina Supreme Court for discretionary review of the Court of Appeals' decision. By Order dated January 8, 1980, the North Carolina Supreme Court denied said Petition.

On March 16, 1980, Farmers Chemical filed a Motion in this docket requesting the Commission to order North Carolina Natural Gas Corporation (NCNG) to refund to it the sum of $157,621.61 plus applicable interest, said sum representing the amount of the surcharge paid under protest by Farmers Chemical to NCNG during the period December 1, 1975 through January 6, 1976.

On March 21, 1980, NCNG filed a Response to the Motion of Farmers Chemical, therein requesting that the matter be set for hearing on oral argument. By Order dated April 8, 1980, the Commission scheduled oral argument for Tuesday, April 15, 1980, on the Motion of Farmers Chemical and NCNG's Response thereto. By Commission Order dated April 15, 1980, the oral argument in this docket was rescheduled for Monday, April 28, 1980.

Upon call of the matter for hearing at the appointed time and place, oral argument was presented by counsel for and on behalf of Farmers Chemical, NCNG, and the Aluminum Company of America (Alcoa).

Based upon a careful consideration of the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that NCNG should be ordered to refund or credit to Farmers Chemical the amount of $157,621.66 plus interest at the legal rate specified in G.S. 24-1 covering the period of time extending from February 13, 1976 until the date such sum is in fact refunded or credited by NCNG. Both NCNG and Farmers Chemical agree that $157,621.66 represents the total amount paid by Farmers Chemical as a surcharge for emergency gas delivered by NCNG between December 1, 1975, and January 6, 1976. Furthermore, there does not appear to be any dispute in the record with respect to the total amount of the refund or credit due to be made by NCNG to Farmers Chemical as a result of collection of the surcharge on service rendered between December 1, 1975, and January 6, 1976, which procedure was declared to constitute retroactive ratemaking by the North Carolina Court of Appeals. Refund or credit of the above-referenced amount plus applicable interest is clearly consistent with the Opinion rendered by the Court of Appeals.

The Commission is of the further opinion, and therefore finds and concludes, that NCNG should also be required to make similar refunds or credits plus applicable interest to all other customers, including Alcoa, who were assessed and paid the surcharge in question based upon service rendered by NCNG between December 1, 1975, and January 6, 1976. It is clear to the Commission that collection of the surcharge by NCNG based upon service rendered during the above-

referenced period of time constituted retroactive ratemaking with respect to all customers who were so surcharged and not just Farmers Chemical alone. Since retroactive ratemaking is clearly illegal in this State, the Commission believes that it must order a refund or credit to all customers affected by the collection of said illegal surcharge. The Commission believes that such a course of action is both equitable and consistent with the Opinion entered by the North Carolina Court of Appeals, notwithstanding the fact that Farmers Chemical was the only customer to actively pursue an appeal in that case.

The Commission is of the further opinion that a "proper order" in accordance with the Opinion entered by the North Carolina Court of Appeals should also authorize a current imposition of the same surcharge as was previously collected by NCNG until the exact amounts subject to refund (exclusive of applicable interest) have been recollected by NCNG from the same customers to whom refunds or credits are hereby required to be made. In the case of Farmers Chemical, NCNG shall recollect the sum of $157,621.61 by way of imposition of a current surcharge. The amounts to be collected from other customers, such as Alcoa, will depend upon the size of the refunds or credits to which such customers are hereafter found to be entitled. This surcharge shall only be applicable to service rendered by NCNG on and after the date of this Order and for bills rendered after the refunds or credits ordered herein have been made.

Although counsel for Farmers Chemical took the position at the oral argument held before the Commission on April 28, 1980, that Farmers Chemical is no longer a customer of NCNG and that, for that reason, the surcharge in question could not legally be reinstituted and collected from said corporation, the record in this case is clearly insufficient to permit the Commission to make a determination with respect to that issue. The Commission is of the opinion that NCNG should be authorized to reinstitute the surcharge in question on a current basis and to recollect same from only those customers who are entitled to a refund or credit and who are still receiving service from NCNG on a current basis. The Commission believes that any further determination in this matter with respect to the issue of whether or not Farmers Chemical is still receiving service from NCNG or whether or not NCNG could be permitted to collect the surcharge in question from a successor customer is beyond the jurisdiction of the Commission under the present factual circumstances. In sum, the record presently before this Commission contains no evidentiary basis upon which to make such determinations.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG shall refund or credit to Farmers Chemical the sum of $157,621.66 plus interest at the legal rate specified in G.S. 24-1 covering the period of time extending

from February 13, 1976, until the date such sum is in fact refunded or credited by NCNG.

2. That NCNG shall refund or credit to Alcoa and any other customers all sums which may have been paid by such customers as a result of the illegal imposition of the surcharge in question for service rendered to such customers by NCNG between December 1, 1975, and January 6, 1976, which surcharge was retroactively applied contrary to G.S. 62-139(a). Interest shall also be paid on such refunds or credits at the legal rate specified in G.S. 24-1 covering the applicable period of time. NCNG shall file with the Commission no later than thirty (30) days subsequent to the date of issuance of this Order a report detailing the customers to whom refunds or credits hereunder will be made and the amounts of such refunds or credits, plus applicable interest.

3. That NCNG be, and is hereby, authorized to impose a surcharge in the amount of 18.5¢ per Mcf on those present customers found to be entitled to a refund or credit pursuant to the refund provisions set forth in this Order. This surcharge shall be imposed only for service rendered by NCNG to such customers on and after the date of this Order and for bills rendered after the refunds or credits ordered herein have been made. NCNG shall be permitted to recover the sum of $157,621.66 from Farmers Chemical. NCNG shall recover from each customer subject to imposition of the instant surcharge an amount no greater than the total refund or credit, exclusive of applicable interest, required to be made to such customer by reason of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of July 1980.

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

DOCKET NO. G-3, SUB 95

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) for an Adjustment of Its Rates and Charges Due to a General Rate Increase	)))))	ORDER GRANTING INTERIM RATE RELIEF

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on March 31, 1980

BEFORE: Sarah Lindsay Tate, Presiding; and Commissioners Edward B. Hipp and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

T. Carlton Younger, Jr., Brooks, Pierce, McLendon, Humphrey and Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27402

For the Using and Consuming Public:

Jerry B. Fruitt, Chief Counsel, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602

BY THE COMMISSION: On February 25, 1980, Pennsylvania & Southern Gas Company, North Carolina Gas Service Division (N.C. Gas, Applicant, or Company), filed an application with the Commission for authority to increase its rates and charges in North Carolina by $750,000 in gross revenues applied to the 12 months ended December 31, 1979. At the same time of the general rate increase filing, N.C. Gas filed an application for an interim rate increase to be effective March 26, 1980.

On March 24, 1980, the Commission declared the application to be a general rate case pursuant to G.S. 62-137, suspended the proposed increase for up to 270 days, established the test year to be the 12 months ended December 31, 1979, set the request for interim rate relief for investigation and hearing on March 31, 1980, and set the general rate case for hearing on July 8 and 9, 1980.

The hearing on the interim rate relief came on as scheduled. In support of the application for interim rate relief, the Company presented the testimony of E.L. Lohmann, Executive Vice-President, and Marshall Campbell, Assistant

Secretary. The Public Staff did not contest the application for interim rate relief and consequently did not present testimony in this matter.

Based on the foregoing, the verified application, the testimony and exhibits received into evidence at the hearing, and the Commission's entire record with regard to this proceeding, the Commission now makes the following

INTERIM FINDINGS OF FACT

1. That Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) is a duly licensed public utility, subject to the jurisdiction of this Commission, and holds a franchise to furnish gas utility service in the State of North Carolina.

2. That the test period for purposes of this proceeding is the 12-month period ending December 31, 1979. N.C. Gas is seeking an interim increase in rates and charges of $750,000 based on operations in the test period.

3. That under present rates, the Applicant is unable to satisfy the 2.5:1 interest coverage ratio required by existing debt indentures. This condition effectively precludes the Company from the financial debt markets.

4. That the need for interim rate relief has been intensified by an error made by the Applicant in determining net income related to the curtailment tracking adjustment in 1979. This error, which resulted in a revenue deficiency of approximately $280,000, was not discovered until early 1980.

5. That the Applicant has understated its representative level of test-period revenues due to the fact that it has overestimated its representative level of test-period gas volumes.

6. That in order to achieve an interest coverage ratio of at least 2.5:1, which is the minimum required by its indenture agreements, and in order to protect the Company's ability to finance in the debt markets and maintain adequate service, the Applicant needs an interim rate increase of $750,000.

7. That hearings on the Applicant's general rate increase application are now scheduled for July 8, 1980. After allowing the parties adequate time to file proposed orders, and after allowing the Commission time to evaluate the entire record in this case, a final Order is not likely to be issued until August 1980. During the interim period, Applicant's financial condition is likely to continue to deteriorate unless it is afforded the requested relief.

8. That the Applicant has shown good cause to have the proposed rates be made effective immediately subject to refund, investigation, and hearings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 7

The evidence for these findings is contained in the verified application and the Commission's Order Setting Hearing. These findings are essentially informational, procedural, and jurisdictional in nature and were uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding consists of the testimony of Company witness Lohmann.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding consists of the testimony of Company witness Lohmann. Witness Lohmann stated that in connection with one major change produced by the curtailment tracking adjustment the Company had failed to make an income adjustment to defer the repayment of approximately $280,000 associated with heat sensitive customers. Witness Lohmann further stated that discovery of this error resulted in an intensified effort to seek rate relief at the earliest possible time. The Commission concludes that an error of this magnitude substantially impacts the net income of a Company the size of N.C. Gas Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Company witness Campbell testified that because of present economic conditions the Company expects to lose a substantial load (more than .5 BCF) due to customers' curtailing production or switching to alternate fuels. In view of the economy and the recent developments in the oil markets, the Commission concludes that the Company's estimate of potential loss of load is reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6 AND 8

The evidence for these findings is embodied throughout the entire record, and particularly centered in the evidence and conclusions for findings of fact Nos. 3, 4, and 5. It is of utmost importance to realize that the Commission has carefully contemplated the entire record before concluding that the interim rate increase should be allowed. It is only after being satisfied that the Company's evidence reflects dire need for interim rate relief that the Commission is allowing interim relief.

IT IS, THEREFORE, ORDERED as follows:

1. That an interim rate increase not to exceed $750,000 be, and is hereby, approved subject to further investigation and hearing, and upon the condition that the Applicant file with the Commission an executed copy of the approved undertaking form attached hereto as Exhibit A.

2. That upon execution of the undertaking, the Company implement the proposed rates in the filing, to be effective on service rendered on or after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of April 1980.

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

EXHIBIT A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Pennsylvania & Southern Gas Company for an Adjustment of Its Rates and Charges	) UNDERTAKING BY PENNSYLVANIA) & SOUTHERN GAS COMPANY))

Pennsylvania & Southern Gas Company (P&S) hereby undertakes to and with the Commission for the benefit and protection of all persons, firms or corporations receiving from P&S natural gas service of any class described in rate schedules filed in the above captioned docket:

(1) If the Commission enters its Order declaring any rate for any class of service described in the proposed schedules of rates to be excessive, fixing a lower rate to be charged for such service and directing P&S to refund to its customers, who have paid such higher rate on bills rendered on and after April 4, 1980, the excess of such payments over the amounts which would have been paid had the rate now in effect or the rate so fixed by the Commission, whichever such rate is higher, been applied, P&S will make such refund to each such customer within such time and in such manner as the Commission shall prescribe by its Order, together with interest at the rate of six percent per annum upon the amounts so collected by it from such customer and so determined by the Commission to be excessive from the date of the collections of such amounts to the date of the making of such refund;

(2) The word "Order," as used in paragraph (1) above, shall be deemed to mean an Order of the Commission from which no appeal has been taken within the time allowed by law, or an Order of the Commission which, upon such appeal, has been affirmed by final judgment, or an Order of the Commission as modified by or pursuant to such final judgment upon such appeal; and

(3) The approval by the Commission of this undertaking shall not be a bar to the entry by the Commission in the above entitled proceeding of a subsequent Order, otherwise lawful and within its authority, requiring P&S to file with

the Commission a bond with a surety approved by the Commission, or such other arrangement satisfactory to the Commission, for the making of such refunds or other protection of customers of P&S to whom the above proposed increased rates are made applicable.

This the _____ day of April 1980.

PENNSYLVANIA & SOUTHERN GAS COMPANY

By: _____

HIPP, COMMISSIONER, CONCURRING. I concur in the result of the principal opinion, although for different reasons, as explained here.

I agree that the evidence shows an emergency financial condition due to insufficient earnings of the Applicant to cover its interest charges. The insufficient earnings would impair the ability of the Applicant to continue construction of extensions of service which are needed in the national interest, in order to reduce imported energy. I further agree that the emergency is so severe that it warrants interlocutory relief on the peculiar facts of this case. The primary cause of the insufficient earnings on the present record was the unanticipated requirement for refund of $280,000 by the Applicant to its customers from funds that the Applicant mistakenly thought were available for such extensions of service.

The amount of the emergency increase to be allowed, however, is a different issue. The decision today approves an interim increase in the full amount of the entire rate increase applied for in the general rate case; i.e., $750,000 of additional annual revenue.

The reason for this separate concurring opinion is that I believe that the record in the case would have more appropriately supported a reduced interim increase. I do not believe that anything should be authorized in an interim rate Order which has not been clearly established in the record.

The Applicant's testimony was that the principal immediate emergency was to produce earnings sufficient to satisfy its mortgage requirements of 2.5 times interest coverage needed to secure additional financing. The full $750,000 additional annual revenue will produce 3.11 times the interest coverage. A review of the data indicates that an increase of approximately $650,000 additional annual revenue would produce earnings to meet the 2.5 times interest coverage and satisfy the emergency. I recognize that the full $750,000 additional annual revenue would produce earnings which are still within a projected reasonable 12.5%

return on equity, but that determination is for the full hearing and final decision in the docket.

I believe that the Commission has observed a presumption against interim increases by its strong efforts in the last three years to decide rate cases within a six months' period to reduce regulatory lag and eliminate the need for interim rate relief.

This case presents a need for immediate relief, however, which would be thwarted if the decision is not unanimous. A dissent would make this decision a Recommended Order and cause delays in implementation which would not be justified under the emergency conditions demonstrated. The gas heating season will be over for the duration of this interim increase, and at least this reason for denying interim rate relief is not present.

For these reasons I therefore concur in the result of this Order, although as to the amount of the increase allowed, the concurrence is for reasons other than those stated in the principal opinion.

DOCKET NO. G-3, SUB 95

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Pennsylvania & Southern Gas) ORDER
Company (North Carolina Gas Service Division)) GRANTING
for an Adjustment of Its Rates and Charges) RATE
Due to a General Rate Increase) INCREASE

HEARD IN: The Wrenn Room, Rockingham Public Library, Reidsville Branch, Reidsville, North Carolina, Tuesday, July 8, 1980, at 11:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

T. Carlton Younger, Jr., Brooks, Pierce, McLendon, Humphrey and Leonard, Attorneys and Counsellors at Law, P.O. Drawer U, Greensboro, North Carolina 27402

For the Public Staff:

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

BY THE COMMISSION: On February 25, 1980, Pennsylvania & Southern Gas Company, North Carolina Gas Service Division (Pennsylvania & Southern, Applicant, or Company), filed an application with the Commission for authority to increase its rates and charges in North Carolina by $750,000 in gross revenues applied to the 12 months ended December 31, 1979. At the same time of the general rate increase filing, Pennsylvania & Southern filed an application for an interim rate increase to be effective March 26, 1980.

On March 24, 1980, the Commission declared the application to be a general rate case pursuant to G.S. 62-137, suspended the proposed increase for up to 270 days, established the test year to be the 12 months ended December 31, 1979, set the request for interim rate relief for investigation and hearing on March 31, 1980, and set the general rate case for hearing on July 8 and 9, 1980.

The hearing on the interim rate request came on as scheduled. In support of its application for interim rate relief, the Company presented the testimony of E.L. Lohmann, Executive Vice President, and Marshall Campbell, Assistant

Secretary. Following the interim hearing, the Commission issued an Order on April 4, 1980, stating that the deterioration of the Company's financial condition would not be corrected until late July or August 1980 unless interim relief were granted. The Commission thus allowed the Company to adjust its rates to all customers on an interim basis by a uniform, across-the-board increase of 26.93 cents per Mcf, subject to refund at interest of 6% per annum on any rates collected in excess of those finally approved after the hearings scheduled in this docket on July 8 and 9, 1980. Pursuant to this Order, Pennsylvania & Southern filed revised rate schedules on April 8, 1980.

On May 22, 1980, the Company filed supplemental data and information, including revised rate schedules and revised exhibits. Pennsylvania & Southern indicated that changed conditions faced by the Company required the Applicant to request an increase in revenues of $1,110,000, on a uniform across-the-board increase in rates of 43.50 cents per Mcf.

By Order dated May 28, 1980, the Commission acknowledged receipt of the supplemental information and required the Company to publish a revised Notice of its request. On May 30, 1980, the Commission issued an Amended Order requiring supplemental Notice in this docket modifying the average, annual charges which customers in Rate Schedule 101 could expect to receive before and after the proposed increase.

Notices of the request for interim relief, of the general rate request for permanent relief, and of the supplemental rate request were published in the Greensboro Daily News, Eden News and/or Madison Messenger.

The matter came on for hearing in the Wrenn Room, Rockingham Public Library, Reidsville branch, in the City of Reidsville on July 8, 1980, at 11:00 a.m. The Company offered the testimony and exhibits of the following persons: James A Ciavardini, Rates Analyst of Pennsylvania & Southern Gas Company, testified concerning the Company's accounting exhibits, its operating revenues and expenses, rates of return during the test year, and the value of its property in North Carolina; E.L. Lohmann, Executive Vice President of Pennsylvania & Southern, testified concerning the Company's historical natural gas operations, its present level of operations, the financial requirements of the Company, the cost of capital, the fair rate of return required by the Company, and the need of the Company to eliminate the Curtailment Tracking Adjustment (CTA).

The Public Staff offered the testimony of Eugene H. Curtis, Jr., Utilities Engineer, Gas Section of the North Carolina Utilities Commission - Public Staff. Mr. Curtis presented testimony with regard to revenue calculations, gas supply and sales, the standard to be used for billing, and the CTA.

No public witnesses testified at the hearings.

Based upon the verified application and the exhibits attached hereto, the prefiled testimony and exhibits, the testimony given during the course of the hearings, and the entire Commission record herein, the Commission now makes the following

FINDINGS OF FACT

1. That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, is a Delaware corporation domesticated in the State of North Carolina and is a duly franchised public utility providing natural gas service to its customers in its North Carolina service area. Applicant is properly before this Commission for a determination, pursuant to G.S. 62-133, of whether its proposed increased rates are just and reasonable.

2. That Pennsylvania & Southern Gas Company, North Carolina Gas Service Division, is providing reasonable and adequate natural gas service to its existing customers in North Carolina.

3. That the test period set by the Commission in this proceeding is the 12 months ended December 31, 1979.

4. That the reasonable original cost of Pennsylvania & Southern Gas Company's investment in property used and useful in providing gas service to its customers in North Carolina is $4,115,450, which sum includes gas plant in service of $6,166,687 less accumulated depreciation of $2,395,663 and accumulated deferred income taxes of $386,644 plus a working capital allowance of $731,070.

5. That the appropriate level of test year operating revenues of Pennsylvania & Southern after accounting, pro forma, and end-of-period adjustments is $9,225,851 under present rates and after consideration of the Company's proposed revenue increase would have been $10,335,851.

6. That the approximate operating revenue deductions after accounting and pro forma adjustments for the test period are $9,310,097, including depreciation expense of $169,277.

7. That the fair and reasonable rate of return which Pennsylvania & Southern should have the opportunity to achieve on the net original cost of its North Carolina investment is 9.77% which consists of a return of 12.55% on the stockholder's equity component of the Company's investment.

8. That in order to earn the rate of return found fair by the Commission, Pennsylvania & Southern should be allowed to increase its rates and charges so as to produce an

increase in operating revenues of $1,041,787, annually, based on operations during the test year.

9. That the Curtailment Tracking Adjustment (CTA) should be eliminated from the present rate structure of the Company.

10. That the rate structure and use of therm billing as proposed by the Public Staff for the Company, and as approved herein, are just and reasonable and do not discriminate among the various classes of customers of Pennsylvania & Southern and does not discriminate between customers within the various classes of customers.

11. That the rate structure and rates proposed by the Public Staff are found to be just and reasonable and appropriate for use herein. To the extent that the rates proposed by the Company in its application exceed the rates approved herein, such request cannot be held to be reasonable since such proposed tariffs would produce revenues in excess of those determined to be just and reasonable herein. The rate schedules proposed by the Company are therefore disapproved and disallowed.

12. That the amount of any demand charge credits should be added to Account 253, and that such funds so credited to that account be returned to customers at least annually by a reduction in rates to the then existing customers of the Company.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

The evidence for these findings is contained in the verified application, the Commission Order Setting Hearing, and the testimony given at the hearing. These findings are essentially informational, procedural, and jurisdictional in nature and were, for the most part, uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The verified Petition of the Company, Exhibits 3, 4, 5, 6, Revised Exhibit 7 (page 2 of 6), and Exhibit 11 (attached to the supplemental testimony of Mr. Ciavardini) set forth the method and amounts used by Pennsylvania & Southern to determine its original cost rate base including an allowance for working capital. Company witness Ciavardini presented the derivation of these amounts. Since no conflicting testimony or evidence was offered by any party or witness, the Commission concludes that the proper amount of rate base to be used in this proceeding is $4,210,674, prior to the proposed increase and $4,115,450 after the increase.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Company witness Ciavardini presented testimony concerning end-of-period gross operating revenues under present rates and under the Company's proposed rates. Mr. Ciavardini

testified that the end-of-period level of operating revenues under present rates was $8,566,001 and that under the rates proposed by the Company operating revenues were $9,676,001 based on the level of volumes and the rate design proposed by the Company.

Public Staff witness Curtis presented testimony indicating that the reasonable level of end-of-period sales volumes exceeded the amount proposed by the Company. Based on the volumes proposed by the Public Staff, witness Curtis calculated the end-of-period level of revenues to be $9,225,851 under present rates. After consideration of various rate schedule proposals of the Public Staff, witness Curtis calculated operating revenues under proposed rates to be $10,267,638.

The Commission concludes that the level of volumes proposed by the Public Staff are reasonable and, consequently, that operating revenues under present rates of $9,225,851 are appropriate for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Ciavardini presented to the Commission the Applicant's end-of-period operating revenue deductions as set forth in Revised Exhibit 7 of the Petition and offered calculations in Exhibit 11 of revenue deductions based upon the volumes proposed by the Public Staff. No conflicting evidence was presented by any party or witness. Therefore, since the Commission has accepted the volumes proposed by the Public Staff, the Commission adopts, for purposes of calculating the fair and reasonable rates of return, operating revenue deductions of $9,310,097, including a deduction for depreciation expense of $169,277.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding was presented in the testimony of Company witnesses Lohmann and Ciavardini.

Company witness Ciavardini testified that under present rates after consideration of accounting, pro forma, and end-of-period adjustments, the Company was earning a negative return of 2.70% on rate base and a negative return of 11.22% on the common equity portion of its investment based on Company proposed volumes. Mr. Ciavardini further testified that based on the Public Staff's proposed volumes the Company was earning a negative 2.0% return on rate base under the rates presently in effect.

Revised Exhibit 7 of the Petition, identified by Company witness Ciavardini, showed that the rate of return requested by the Company, including all adjustments made by the Company was 9.83% on rate base. Using the income figures set forth in Revised Exhibit 7, Company witness Ciavardini showed that the rate of return on common equity for the Company would be 12.66% as set forth in Revised Exhibit 10.

Exhibit 11, also identified by Company witness Ciavardini, showed that rates of return of 9.77% on rate base and 12.55% on common equity were produced using the volumes and rate structure proposed by the Public Staff.

Company witness Lohmann testified that the Company's current rate of return was insufficient to satisfy the tests of G.S. 62-133(b)(4). Mr. Lohmann further stated that based upon the needs of similar gas utilities, he believes that a rate of return of 15% on common equity is appropriate. Nevertheless, he stated that the revenue request of $1,110,000 should provide the immediate rate of return assistance required by the Company. Company witness Ciavardini stated that the increases of $1,110,000 requested by the Company and the $1,041,787 proposed by the Public Staff were comparable and would produce essentially the same result.

The Commission concludes that Pennsylvania & Southern should have the opportunity to earn a return of approximately 9.77% on its North Carolina property used and useful in rendering gas utility service as determined hereinabove. Such a rate of return will produce a return on common equity of approximately 12.55%. The Commission concludes that these rates of return will be sufficient to produce a fair profit for the Company's stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on reasonable terms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Based upon the Commission's previous findings and conclusions, the Commission concludes that Pennsylvania & Southern should be allowed to increase its rates and charges by $1,041,787 in order to achieve the rates of return previously determined to be just and reasonable. Such increase in rates 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 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
PENNSYLVANIA & SOUTHERN GAS COMPANY
NORTH CAROLINA DIVISION
STATEMENT OF RETURN
Twelve months ended December 31, 1979

	Present Rates	Increase Approved	After Increase Approved
Operating Revenues	$9,225,851	$1,041,787	$10,267,638
Operating Revenue Deductions			
Cost of natural gas	7,725,855	-	7,725,855
Operations and maintenance	1,001,470	20,820	1,022,290
Depreciation	169,277	-	169,277
General taxes	640,255	62,507	702,762
Total operating revenue deductions before income taxes	9,536,857	83,327	9,620,184
Income taxes:			
State income taxes	(31,159)	57,508	26,349
Federal income taxes	(252,516)	414,438	161,922
Deferred accelerated depreciation	36,201	-	36,201
Deferred investment credit	30,209	-	30,209
Amortized investment credit	(9,495)	-	(9,495)
Total operating revenue deductions	9,310,097	555,273	9,865,370
Net operating income	$ (84,246)	$ 486,514	$ 402,268

SCHEDULE II
PENNSYLVANIA & SOUTHERN GAS COMPANY
NORTH CAROLINA DIVISION
STATEMENT OF RETURN
Twelve months ended December 31, 1979

	Present Rates	Increase Approved	After Increase Approved
Investment in gas plant	$6,166,687	$ -	$6,166,687
Less: Accumulated depreciation	2,395,663	-	2,395,663
Accumulated deferred income taxes	386,644	-	386,644
Net plant in service	3,384,380	-	3,384,380
Allowance for working capital			
Materials and supplies	766,733	-	766,733
Cash 1/8 of O&M expense plus minimum bank balances	181,055	2,603	183,658
Less: Tax accruals and customer deposits	121,494	97,827	219,321
Total allowance for working capital	826,294	(95,224)	731,070
Rate base	$4,210,674	$(95,224)	$4,115,450
Rate of return	(2.0%)	-	9.77%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Lohmann testified that the Curtailment Tracking Adjustment (CTA) was adopted for the Company in Docket No. G-3, Sub 58, and has been modified on various occasions since its adoption. Mr. Lohmann stated that 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 was subject to variation due to changes in the gas supplies available to Pennsylvania & Southern because of curtailment. As a result of recent actions by the Federal Energy Regulatory Commission and an improvement in the gas supply situation of Transcontinental Gas Pipe Line Corporation (Transco) it appears that fluctuations in future gas supplies will not be as severe.

Company witness Lohmann further testified that while the CTA had been beneficial to the Company and its customers during the dramatic supply fluctuations previously experienced by the Company, the perceived stabilization of gas supplies from Transco allowed the removal of the mechanism at this time. Public Staff witness Curtis stated that it was the opinion of the Public Staff that volumes had sufficiently stabilized so as to allow the removal of the CTA.

While the Company and the Public Staff did not differ with regard to the elimination of the CTA, the parties differed substantially as to the effect of the proposed elimination. Public Staff witness Curtis stated that if the Company had undercollected funds pursuant to the CTA that the Company could not secure such funds in a true-up of the account. The Company strongly objected to this conclusion.

The Commission concludes that it cannot render a decision with regard to whether there should be a true-up of the CTA, and, if so, the method and form of it until figures showing an undercollection or overcollection are filed. The Commission further concludes that the CTA should be eliminated and that the Company should file a proposed true-up within 45 days of the issuance of this Order. However, in issuing this Order, the Commission expressly reserves the right to later determine whether a true-up will be ordered and, if so, the amount and method of any such true-up.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 11

Public Staff witness Curtis presented calculations of rates and revenues based upon volumes for the 12 months ended December 31, 1979, as modified by information supplied by the Company and customers of the Company as to future sales of natural gas. Company witnesses Lohmann and Ciavardini questioned the ability of the Company to make all future sales set forth by the Public Staff and stated that they preferred the present rate structure of the Company.

Public Staff witness Curtis proposed changes in the rate structure of the Company which can be summarized as follows:

a. Consolidation of Rate Schedules 102 (Commercial and School Service Rate) and 201 (Industrial Service Rate). This change would simplify the rate structure of the Company to provide one general rate for all commercial and industrial accounts. Although this change combines two separate priority classifications, the present supply situation indicates that the probability of curtailment between the categories is not substantial enough to justify separate rate treatment of these customers.

b. Addition of a Facilities Charge to Rate Schedules 101, 102, 103, 205, and 206. The existing rate structure of the Company provides for the payment of minimum bills in conjunction with natural gas usage. The proposal offered by Public Staff witness Curtis provided that a monthly facilities charge be placed on customers of Pennsylvania & Southern in the following rate classes with the amounts noted: Schedule 101 - $4.00; Schedule 102 - $7.50; Schedule 103 - $8.00; Schedule 205 - $50.00; and Schedule 206 - $50.00.

c. Change of Designation of Volume Standard. This change would convert the measurement of volumes sold by the Company from a standard of one hundred cubit feet to having sales and billings based on a therm as a heating unit. Public Staff witness Curtis has used a conversion factor in his calculations of 1.03 therms equal to one hundred cubit feet of natural gas.

The Commission concludes that the revised rate structure presented in public Staff witness Curtis' testimony is just and reasonable and that the rates approved in this proceeding should be based on this revised rate structure. The Commission further concludes that the rates set forth in Curtis Exhibit EHC-1 (Rev.) reflect the revenue increase approved herein. The Commission concludes that the rates proposed in Curtis Exhibit EHC-1 (Rev.) incorporate the required adjustments approved by this Commission in this proceeding subject to being subsequently increased or decreased by the exploration surcharge of the Company, relevant purchase gas adjustments subsequent to March 31, 1980, and existing PGA rate reductions. The Commission thus concludes that the rates proposed by Public Staff witness Curtis are just and reasonable and should be adopted as the base rates of Pennsylvania & Southern.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Public Staff witness Curtis presented testimony as to the method used by the Company to determine its revised cost of gas based upon modified procedures instituted by Transco. The improved supply situation of Transco was commented upon by Company witness Lohmann. Company witness Ciavardini

testified that the use of the PGA mechanism was not the exclusive method for distributing the demand charge credits and that Account No. 253 could be used for such a purpose. The Commission concludes that the PGA mechanism should not be immediately complicated by amounts paid or disbursed as demand charge credits and that the Company should place those amounts in Account No. 253 for at least annual distribution to the existing customers of Pennsylvania & Southern. Nevertheless, the Commission reserves the right and authority to direct that funds held in Account No. 253 received as demand charge credits be distributed at a later time through rate reduction which could include some rate reduction of a PGA filing.

IT IS, THEREFORE, ORDERED as follows:

1. That the base rates set forth in column (2) of Exhibit A attached hereto are designed to produce additional annual gross revenues of $1,041,787 for Pennsylvania & Southern Gas Company and are hereby approved. These rates have been modified to account for a past PGA reduction as shown in column (4) of Exhibit A. The appropriate rates for the Company following the issuance of this Order will therefore be the net rates set forth and shown in column (5) of Exhibit A.

2. That Pennsylvania & Southern Gas Company file schedules of rates and charges, in accordance with paragraph 1 of this Order and Exhibit A attached hereto, which reflect the increases in rates and the adjustments approved herein. That upon one day's notice such rates shall become effective on service rendered.

3. That effective as of the date of this Order the Curtailment Tracking Adjustment (CTA) no longer be applied to the rates of Pennsylvania & Southern Gas Company; however, not later than 45 days after the effective date of this Order, the Company shall file a proposed true-up of the CTA implemented in Docket No. G-5, Sub 76. To the extent that an over- or undercollection is shown by such proposed true-up, the Commission specifically reserves the power and authority to determine whether there shall be a true-up and, if so, the amount and method of any true-up of the CTA.

4. That until the next general rate case order is issued by this Commission for Pennsylvania & Southern Gas Company, said Company shall transfer all demand charge credits received from Transco to Account No. 253 and shall return all such credits to its customers by filing at least annually a motion in this docket requesting a reduction in its rates and charges so as to return any credits to its then existing customers. The Commission specifically reserves the power and authority to modify the method of returning any demand charge credits to customers of the Company.

5. That Pennsylvania & Southern Gas Company notify its customers concerning the effect of the rate increase granted herein by appropriate bill insert along with the next bill sent to each customer after the date of this Order.

6. That the undertaking by Pennsylvania & Southern Gas Company filed on April 9, 1980, in conection with the Order of this Commission dated April 4, 1980, granting the Company interim rate relief in this docket, is hereby discharged.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of July 1980.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

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

DOCKET NO. G-9, SUB 198

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 to Track Supplier Increases	) ORDER ESTABLISHING PROCEDURE FOR REFUND OF STORAGE APPRECIATION

HEARD IN: The Commission Hearing Room, 2nd Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 4 and August 7, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate, John W. Winters, and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

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.

For the 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: On January 31, 1980, Piedmont Natural Gas Company, Inc. (Piedmont, Company, or Applicant), filed an application with the Commission seeking to increase its rates and charges to North Carolina retail customers, pursuant to G.S. 62-133(f), in order to recover an increase in the wholesale costs of gas purchased by Piedmont from its suppliers.

By Order dated February 27, 1980, this Commission found that Piedmont's wholesale cost of gas increased by $21,703,502 (including gross receipts taxes of $1,302,210) annually effective March 1, 1980, and that Piedmont should increase its rates by 49.51 cents per dekatherm in order to recover this increase. In addition, this Commission found that Piedmont would experience an inventory appreciation estimated at $956,744, computed by multiplying the estimated amount of gas in inventory for North Carolina at March 1, 1980 (1,932,426 dekatherms), by the 49.51 cents per dekatherm increase approved effective March 1, 1980. Piedmont was ordered to reduce its rates by 2.18 cents per dekatherm until such time as it refunded the actual inventory appreciation. Piedmont's request that the refund

be reduced to offset costs associated with the appreciated inventory was deferred by this Commission.

On July 22, 1980, Piedmont filed a motion requesting that this docket be set for hearing. The motion was placed on the agenda for the Staff Conference for August 5, 1980. After hearing arguments of counsel for Piedmont and the Public Staff, the matter was set for hearing beginning at 2:00 p.m., on August 4, 1980. At the conclusion of the hearing on August 4, 1980, the hearing was continued until August 7, 1980.

At the hearings, the Company offered the testimony of its President, John H. Maxheim and its Senior Vice-President of Finance, Everett C. Hinson. The Public Staff offered the testimony of Eugene H. Curtis, Public Staff Natural Gas Engineer, and Donald E. Daniel, Assistant Director of Public Staff's Accounting Division.

At the conclusion of the hearing on August 7, 1980, the parties agreed to proceed with oral arguments and to waive the filing of briefs. The parties further agreed to file proposed orders or findings of fact and conclusions on or before August 15, 1980. On August 15, 1980, proposed orders were filed by both Piedmont and the Public Staff.

Based upon a careful consideration of 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 Piedmont Natural Gas Company, Inc., is a public utility as defined by G.S. 62-3(23)a.2. and, as such, is subject to the jurisdiction of this Commission with regard to matters affecting its rates and service practices.

2. That Piedmont is properly before the Commission, pursuant to G.S. 62-133(f), with an application for approval to track a supplier increase in the wholesale cost of gas.

3. That the increase in cost of gas applicable to stored volumes must be considered to ensure that the Company recovers no more than its increased cost of gas.

4. That Piedmont's decisions concerning the purchase and storage of natural gas for later sale should be based upon its reasonable operating conditions and anticipated future demand level by customers.

5. That no rate of return or capital carrying charges on inventory appreciation should be included in the calculation of a Purchased Gas Adjustment pursuant to G.S. 62-133(f).

6. That Piedmont's proposal to exclude 770,200 dekatherms as base storage in the calculation of the

increase in cost of gas to be recovered on stored volumes is reasonable.

7. That an accounting for the increased cost of gas recovery on stored volumes should be made in each subsequent PGA application.

8. That Piedmont should for financial and rate-making purposes modify its basis of stating inventories.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence for these findings is contained in the Company's verified Application and the exhibits attached thereto, the testimony of Company witnesses Maxheim and Hinson and G.S. 62-133(f). These findings are essentially procedural and jurisdictional in nature and were not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

If Piedmont were permitted to place a PGA surcharge on all gas volumes sold on and after the effective date of an increase in rates from its wholesale supplier Transco, in an amount equal to the Transco increase plus the related gross receipts tax, without the Commission having factored into Piedmont's rates the revenue impact of the PGA surcharge on volumes of gas then held in storage (inventory) to be sold subsequently, Piedmont would receive substantial benefits beyond those contemplated by G.S. 62-133(f). Such benefits would accrue to Piedmont by virtue of the fact that a surcharge would be collected on volumes of gas held in storage by Piedmont at the time of the Transco rate increase when such volumes are sold, notwithstanding the fact that the purchase price of such volumes was not subject to, and thus was not affected by, the Transco increase(s).

In its Order in this docket dated February 27, 1980, the Commission stated:

> The Commission concludes upon filing by Piedmont and upon recommendation of the Public Staff, that this refund is appropriate and should be utilized in offsetting the PGA increment until the dollars attributable are returned.

Additionally, the Commission found in its Orders in both Public Service Company of North Carolina, Inc., Docket No. G-5, Sub 151, and Pennsylvania & Southern Gas Company, Docket No. G-3, Sub 93, that the Purchased Gas Adjustment Rate should include a decrement to recognize the excess recovery of cost of gas on stored volumes.

Based on the above, and the record as a whole, the Commission concludes that a decrement to recognize the increased cost of gas recovered through the sale of stored volumes must be included in Piedmont's Purchased Gas Adjustment Rate to preclude any overrecovery of the increase

in cost of gas. The Commission must, however, determine the appropriate level of volumes which will be ultimately removed from storage by Piedmont for sale to its customers prospectively.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Piedmont Natural Gas Company, Inc., by virtue of its duties and obligations as a public utility, is mandated to serve its customers in its franchised service territory at the lowest possible cost. In so doing, Piedmont should, of its own accord, buy gas at the cheapest possible rate and pass this lower cost along to its customers in the Company's filed tariff rates. Since it is the intention of this Commission to allow Piedmont a reasonable rate of return on its investment in public utility property in its basic rates and charges and to allow the Company to recover increases in wholesale gas cost imposed by suppliers, to the extent of purchases occurring after the date of the supplier increase, the Commission concludes that Piedmont's decisions concerning the purchase and storage of gas for later sale should be made based upon its reasonable operating conditions and the anticipated future demand level by customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

In its Order dated February 27, 1980, in this docket the Commission concluded that a decision on the .45 cent per dekatherm increase relating to a return on inventory should be deferred pending a decision in Docket Nos. G-5, Sub 151, and G-3, Sub 93.

In both of those dockets the Commission concluded that:

> ...an application under G.S. 62-133(f) is not the proper vehicle through which to recover every element of cost of service; only wholesale cost of gas charges can be recovered under its provisions. Therefore, the Commission concludes that any increase in the allowance for working capital or any other element of cost of service (other than cost of gas) must be considered in the context of a general rate case and not in a G.S. 62-133(f) proceeding.
>
> Based on the above, the Commission concludes that no rate of return or capital carrying charges should be included in the calculation of a Purchased Gas Adjustment Rate.

The issue on rate of return on inventory in this proceeding is identical to the rate of return on inventory issue in Docket Nos. G-5, Sub 151, and G-3, Sub 93.

Based on the testimony, exhibits, and the entire record in this docket and consistent with the Commission's decisions in Public Service Company of North Carolina, Inc., Docket No. G-5, Sub 151, and Pennsylvania & Southern Gas Company, Docket No. G-3, Sub 93, the Commission concludes that no

rate of return or capital carrying charges should be included in the calculation of a Purchased Gas Adjustment Rate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The issue in dispute is the volume that should be used in calculating the inventory storage appreciation. The Public Staff contends that Piedmont should refund $956,744, computed by multiplying the estimated amount of gas in North Carolina inventory at March 1, 1980 (1,932,426 dekatherms), by the 49.51 cents per dekatherm approved to be effective March 1, 1980. Piedmont contends that the appreciation in the value of the inventory is no different from the appreciation in the value of any other utility property and that no refund should be required. During the hearing on August 7, 1980, Piedmont proposed to refund to its customers an amount determined by multiplying the amount of gas in inventory at March 1, 1980, minus an amount considered as "base storage," in other words, an amount that will remain in storage indefinitely. Piedmont contends that it must at all times maintain an inventory balance of 770,200 dekatherms for North Carolina, and thus it will receive no benefit from any inventory appreciation imputed to this minimum inventory since it will never be sold. Therefore, Piedmont contends that any refund calculated due to storage appreciation should exclude this minimum volume.

Public Staff witness Daniel testified that the Company would recover all of the cost of gas even though a base level of storage was maintained. Witness Daniel testified that, assuming 10,000,000 dekatherms in storage at November 1, 1980, the Company will have withdrawn and sold 10,000,000 dekatherms of gas no later than March 31, 1982. In other words, the Public Staff contends that the question raised by the Company is essentially one of timing; when shall Piedmont be allowed to recover its costs associated with gas injected into storage inventory? The Public Staff contends that costs should be recovered when the gas is sold. Thus, the Public Staff asserts that no base level of storage should be excluded from the calculation of the cost of gas to be recovered from stored volumes.

The Commission concludes that if Piedmont does, in fact, maintain a minimum level of storage, one cannot say which molecules of gas flow in and out. Thus, the pertinent fact is that there is always some minimum level of stored volumes on which Piedmont cannot receive any benefit from storage appreciation because said volumes are not sold. The Commission concludes that the just and reasonable treatment of such storage volume that will not be sold is to exclude such storage volume from the calculation of a refund due to storage appreciation. The Commission further concludes that the volume of this minimum inventory balance should be frozen as of the effective date of this new policy and that the same value of the volumes considered as minimum storage

should be maintained in all future proceedings, both PGA proceedings and general rate cases.

The Commission recognizes that its decision to exclude Piedmont's minimum inventory balance of 770,200 dekatherms when calculating the Company's level of inventory appreciation stands in direct contrast to the decision heretofore made by the Commission in its Order in this docket dated February 27, 1980. The Commission notes, however, that the exact issue now being addressed was not specifically in controversy at the time the Commission entered its original Order in this docket on February 27, 1980. In fact, such issue was not raised for consideration in this docket by either Piedmont or the Public Staff prior to the hearing on August 7, 1980. The Commission further recognizes that the decision to exclude Piedmont's minimum inventory balance when calculating the Company's level of inventory appreciation differs in principle from one portion of the decision heretofore made and entered by a panel of three Commissioners in Docket No. G-5, Sub 151, concerning inventory appreciation in a PGA case. The three Commissioners who heard and decided the case in Docket No. G-5, Sub 151, have fully participated in deciding the issues which have been presented for decision in the instant case. Therefore, to the extent that the Orders heretofore entered on February 27, 1980, by the Commission in Docket No. G-5, Sub 151, and in this docket are inconsistent herewith, the rule of this case supercedes the rule of said prior decisions.

The Commission now believes, after a thorough review of the entire record in this proceeding, that Piedmont should be permitted to exclude an inventory balance of 770,200 dekatherms when calculating the Company's level of inventory appreciation. It is the further opinion of the Commission that any other natural gas distributing company in this State which is able to justify and document a need to maintain a minimum inventory balance due to reasons related to safety and operational efficiency should also be permitted to exclude its minimum inventory balance when calculating the applicable level of inventory appreciation in a G.S. 62-133(f) proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

In its determination of the appropriate PGA surcharge, the Commission has found it proper to consider both the revenue impact of the PGA surcharge on volumes held in storage to be sold subsequently and to recognize a base level of storage which will not ultimately be sold to customers due to operational constraints. The PGA surcharge determination by necessity involves the use of estimation with regard to storage volumes and sales volumes. Therefore, it will be necessary to have a continuing accounting to determine that the cumulative recovery of cost of gas on stored volumes has been properly passed through to the customers.

Accordingly, the Commission concludes that an accounting for the disposition of the recovery of cost of gas on stored volumes should be made in each of Piedmont's subsequent PGA filings. It is the Commission's opinion that normally any remaining balance from a prior PGA should be "rolled over" into the next PGA. However, in this instance, the Commission finds that to the extent that the cumulative amount of the refund or PGA decrement of 2.18 cents per dekatherm ordered by the Commission in this docket on February 27, 1980, is equivalent to or greater than $575,418 (estimated March 1 storage of 1,932,426 dekatherms minus base storage of 770,200 dekatherms times the PGA increment of 49.51 cents per dekatherm) no such "roll over" will be appropriate, as the Commission is of the opinion that an adjustment to recognize a base level of storage should be made on a prospective basis only, and any refunds resulting from the 2.18 cents per dekatherm decrement ordered February 27, 1980, made in excess of $575,418 by Piedmont should not be placed in a deferred account for consideration in a subsequent rate proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Piedmont currently employs an average cost of gas technique in pricing gas out of its storage facilities (inventory) when gas is removed for sale to its customers. While such costing methodology may imply the physical comingling of gas held in storage, such methodology is not intended and does not track the actual physical flow of molecules of gas, but rather is intended to be used as a basis for calculating the cost of gas sold for use in the determination of periodic income or loss. Therefore, inconsistency in the selection or employment of an inventory pricing technique, particularly during periods of rapidly changing prices, will improperly affect the determination of periodic income or loss.

Fundamental financial accounting standards have long recognized that

> ...because of the common use and importance of periodic statements, a procedure adopted for the treatment of inventory items should be consistently applied in order that the results reported may be fairly allocated as between years. A change of such basis may have an important effect upon the interpretation of the financial statements both before and after that change, and a full disclosure of its nature and of its effect upon income should be made, if material.

The Commission has carefully considered the foregoing and concludes that, if a certain volume of gas is excluded as in Piedmont's case from the calculation of the average cost of gas removed from storage and sold, such action results in a change in the basis of stating inventories and thus would result in a change in periodic income or loss. However, the Commission also recognizes that Piedmont is constrained from

removing approximately one Bcf of gas from storage (of which 770,200 dekatherms are allocated to North Carolina) due to certain operational constraints. Therefore, it would be unfair to Piedmont to assume for purposes of this proceeding that it will eventually sell all gas held in storage when the Commission finds the greater weight of the evidence of record to be to the contrary.

The Commission concludes in Finding of Fact No. 6 that all gas held in storage by Piedmont which will not be removed because of operational constraints should not be included in the calculation of the revenue impact of the PGA surcharge on volumes of gas held in storage. Consequently, the Commission concludes that Piedmont should be required for financial reporting and rate-making purposes to modify its basis of stating inventories and all related cost, e.g., its cost of gas sold, in a manner so as to reflect the impact of the Commission's decision with respect thereto.

IT IS, THEREFORE, ORDERED as follows:

1. That effective September 1, 1980, the PGA decrement of 2.18 cents per dekatherm ordered by the Commission on February 27, 1980, shall be terminated and to the extent that the cumulative amount of such PGA decrement previously refunded to Piedmont's customers is equivalent to or exceeds $575,418 no remaining balance shall be considered in calculation of the next PGA adjustment or placed in a deferred account to be considered in subsequent rate proceedings.

2. That Piedmont's motion to recover an additional interest rate, carrying charge, or rate of return on inventory appreciation be, and the same is hereby, denied.

3. That in future PGA filings Piedmont shall make an accounting of the disposition of the recovery of cost of gas on stored volumes. With one exception, any remaining balance from the prior PGA shall be "rolled over" into the next PGA adjustment. That one exception is the adjustment being made as of September 1, 1980, to exclude base storage.

4. That Piedmont shall for financial reporting and rate-making purposes modify its basis of stating inventories in a manner so as to reflect the impact of the Commission's decision as set forth hereinabove.

5. That a copy of this Order shall be served upon Public Service Company of North Carolina, Inc., North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, and United Cities Gas Company.

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of August 1980.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL)

Sandra J. Webster, Chief Clerk

DOCKET NO. G-5, SUB 151

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Public Service Company of North Carolina, Inc. - Application for Adjustment of Rates Due to Transco's Increased Cost of Purchased Gas	) ORDER REQUIRING) ADJUSTMENTS DUE) TO INVENTORY) STORAGE) APPRECIATION

HEARD IN: The Commission Hearing Room, 2nd Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 11, 1979

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners John W. Winters and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

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

For the 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: On August 15, 1979, Public Service Company of North Carolina, Inc. (hereinafter Public Service, the Company, or the Applicant), filed an application with the Commission seeking to increase its rates and charges to North Carolina retail customers, pursuant to G.S. 62-133(f), in order to recover an increase in wholesale gas cost imposed by its pipeline supplier, Transcontinental Gas Pipeline Corporation (Transco).

The Public Staff analyzed the filing and alleged that the proposed rates would allow Public Service to recover revenue dollars in excess of the actual wholesale gas cost increase, due to the existence of gas volumes in storage which were purchased at a cost of gas rate lower than the cost of gas rate at which such volumes were proposed to be sold. Because the dollars involved in this issue are substantial, the Public Staff proposed that the Commission allow the Company's proposed Purchased Gas Adjustment (PGA) rate, subject however to undertaking, investigation, and possible refund to customers.

Subsequent to the Public Staff's recommendation, the Commission issued its Order on September 17, 1979, allowing the proposed increased rate to become effective provided that 20% of the allowed increase would be subject to an undertaking, investigation, and refund.

An undertaking as required was filed with the Commission on September 19, 1979, and on October 23, 1979, the Commission issued its Order continuing the undertaking and setting a hearing for the purpose of investigating the allegation of the Public Staff.

On December 11, 1979, a public hearing was held in the Hearing Room of the Commission in Raleigh. The Company offered the testimony and exhibits of C. Marshall Dickey, Vice-President of Gas Supply Services, and Allen J. Shock, Vice-President - Rates of Public Service Company. The Public Staff offered the testimony of Donald E. Daniel, Assistant Director of the Public Staff Accounting Division.

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. Public Service Company of North Carolina, Inc., is a corporation duly organized under the laws of the State of North Carolina and is engaged in the business of providing natural gas service to the public as a franchised public utility under the jurisdiction of this Commission.

2. This application is properly before the Commission pursuant to G.S. 62-133(f) and Commission Rule R1-17(g).

3. In this docket, Public Service is seeking to increase its rates uniformly by $.02318 per therm to recover the increase in the cost of its purchased gas plus the related gross receipts tax effective on all bills rendered on and after September 20, 1979.

4. The total increase in the cost of purchased gas, including franchise tax as a result of the Transco increases which are the subject of this docket, is $9,188,836 based on estimated annual sales of 40,317,985 dt.

5. The proper calculation of the Purchase Gas Adjustment Rates for Public Service Company of North Carolina, Inc., in this docket should include a decrement to recognize the effect of stored volumes as of the effective date of the increase in the Transco cost of purchased gas.

6. Public Service will have an appreciation in the value of the inventory of its stored gas. The volume of gas upon which the determination of the amount of this appreciation should be made is:

GSS	1,820,462	dt
LNG	853,402	dt
WSS (net of fuel)	2,504,300	dt
LGA	(25,650)	dt
Total Quantity	5,152,514	dt

7. No rate of return, or capital carrying charges should be included in the calculation of the PGA.

8. Based upon the foregoing quantity of storage Public Service will have an inventory appreciation of $1,076,875 (5,152,514 dt x $.209). Because of timing problems, this amount should be included by the Company in its application to track the Transco increase effective March 1.

9. An accounting of the disposition of the excess cost recovery on stored volumes approved in Finding of Fact No. 8 should be made with each subsequent PGA Application and any balances should be "rolled over" into the ensuing PGA adjustment.

10. The deferred account (Other Deferred Credits - Account 253) should continue to be used in accordance with the NARUC Uniform System of Accounts, and the disposition of amounts recorded in Account 253 should be determined on a case-by-case basis.

11. The proper disposition of Transco refunds should be determined on a case-by-case basis with refunds being returned to the customers who paid the rates to which the refunds are applicable by check or credits to bills, wherever possible and practicable.

12. PGA rates will not adversely affect Commission policy on "incremental pricing" pursuant to Federal Energy Regulatory Commission rules and regulations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

G.S. 62-133(f) authorizes the Commission to consider increases in rates for North Carolina gas utilities brought about by increases in the cost of purchased gas without requiring the procedures and detailed findings of a general rate case. Information contained in the Company's application supports said findings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In the present filing, all parties agree that the cost of purchased gas to Public Service will increase by $9,188,836 based on annual sales of 40,317,985 dt as a result of an increase in the rates of Transco, the wholesale pipeline supplier.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The primary purpose of this proceeding is to determine whether recognition should be given in the calculation of the purchased gas adjustment rate to the effect of volumes in storage on the effective date of the supplier increase in purchased gas cost. Company witness Schock testified (TR. p. 25) that:

> "...Granted the Company will eventually realize the effects of the inventory appreciation but in some cases it will be long after the gas is sold."

Public Staff witness Daniel testified (TR. p. 48) that:

> "Without the recommended decrement the Company will recover $1,082,236 (5,178,164 x $.209) on stored volumes as a result of the Transco increase. This represents the recovery of a cost which the Company has not incurred; therefore, the decrement is necessary to insure that the Company recovers no more than the increased costs of gas."

He further testified (TR. p. 48) that the problem of excess recovery on stored volumes had always existed; however, the effect had been small until the level of stored volumes and amount of Transco increases in cost of gas rose dramatically in recent times.

Witness Daniel testified (TR. p. 50) that stored volumes are no different from delivered but unbilled volumes at the beginning point of a PGA increase, and it has long been recognized that there must be a proration to preclude the Company from recovering an additional cost in excess of that to which it is entitled on delivered but unbilled volumes.

The Commission takes judicial note of the fact that North Carolina Natural Gas Corporation, in Docket No. G-21, Subs 202, 203, and 205, included a decrement to reduce the recovery of the $.209 Transco increase that is the subject to this proceeding.

Based on the above and the record as a whole, the Commission concludes that the Purchased Gas Adjustment rate in this docket should include a decrement to recognize the excess recovery of cost of gas on stored volumes.

The Commission further concludes that subsequent PGA applications by Public Service Company should include an increment or decrement to recognize the effect of stored volumes on cost recovery. The Commission also concludes that Public Service Company should calculate the excess cost applicable to the Transco decrease effective January 1, 1980, and include such costs in its next PGA application.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

A comparison of the storage volumes used by the Company and the Public Staff follows:

	Company	Public Staff	Approved by Commission
GSS	1,820,462	1,820,462	1,820,462
LNG	753,402	853,402	853,402
WSS (net of fuel)	2,504,300	2,504,300	2,504,300
LGA	(25,650)	-	(25,650)
Total	5,052,514	5,178,164	5,152,514

Company witness Dickey stated (TR. p. 7) that "...the Company attempts never to withdraw the last 100,000 dt of LNG unless an extreme emergency should occur. This is to prevent having to go through the expensive process of cooling down the tank from ambient temperature." Although the Commission recognizes the potential technical problems that may occur if the last 100,000 dt is withdrawn from the LNG tank, the Commission concludes that this 100,000 dt should not be excluded in the storage volumes used in the appreciation calculation. Normally in a rate case, all storage would be priced at its then current market value; however, to exclude the 100,000 dt in the storage appreciation calculation and then to allow that it be priced currently in the next rate proceeding would appear to be "double dipping." The Commission believes that to avoid such an occurrence that if the 100,000 dt is excluded here then the value of that amount would have to be set and held constant in the next rate case. The Commission also believes that such a change in the treatment of inventory (i.e., holding a specified amount of inventory at a constant price) might be disruptive in that it would constitute a change in an accounting method which under generally accepted accounting principles would, if material, require a restatement of prior period earnings. Further, such a change in accounting methodology if sought for Federal income tax purposes would require prior approval of the Internal Revenue Service. Therefore, the Commission concludes that the proper and most reasonable way to handle the 100,000 dt is to include it in the storage appreciation volume calculation.

According to Company witness Dickey, the Company's contract for LGA requires that the Company replace the gas the summer following the time in which it is used, which is exactly the opposite of other methods of storage. Therefore, the Commission concludes that to the extent that other storage volumes appreciate that LGA volumes should be considered as having a negative appreciation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

In regard to whether the Company has a cost recoverable in this proceeding as a result of a delay in recovering the full increased cost of purchased gas until all of the

storage volumes are sold at some indefinite time in the future, all parties have recognized that the Company will have to provide the funds to maintain the inventory until it is sold and further that this cost was not considered in the Company's last general rate case. Company witness Schock testified (TR. p. 23) that:

> "Simply speaking, if the company cannot retain the inventory appreciation to help offset the effects of double digit inflation, it should at a minimum be allowed to reduce the amount it has to flow back to its customers by the costs associated with the increased inventory values."

On cross-examination witness Schock testified (TR. p. 40) that:

> "After accounting and pro forma adjustments in this docket...G-5, Sub 151, the rate of return on equity is 13.10, the rate of return on investment is 9.52, the allowed returns were 13.92 on equity and 9.47 on investment."

The Public Staff although recognizing the cost takes the position that it cannot be recovered except in another general rate case. Public Staff witness Daniel testified (TR. p. 50) that:

> "In essence, the Company is contending that its working capital requirement has increased and that an application under G.S. 62-133(f) is the proper vehicle through which to recover that increased requirement. I strongly disagree with this position. First, G.S 62-133(f) has never been considered the proper vehicle for recovering any element of cost of service other than cost of gas. The Court of Appeals ruling in Utilities Commission vs. CF Industries, Inc., 39 N.C. App. 477, 479 (1979) states:
>
> 'The purpose of G.S. 62-133(f) is to allow the retailer to automatically pass on to the consumer changes in the wholesale cost of natural gas, over which neither the retailer nor the Utilities Commission has control,... While we express no opinion as to the necessity of the added storage, it is clear that the decision to increase storage capacity represents a discretionary determination on the part of NCNG and is not a change in the wholesale cost of gas supplied beyond the retailer's control...'"

Witness Daniel also testified (TR. p. 50) that it is:

> "...inappropriate to consider a single element of cost of service (other than cost of gas) to the exclusion of all others. Even the higher inventory valuation may be partly offset by downward changes in other components of the working capital requirement. I, therefore, do not

believe that the excess cost recovery should be reduced by a return on 'inventory appreciation.'"

The Commission concludes that an application under G.S. 62-133(f) is not the proper vehicle through which to recover every element of the cost of service; only wholesale cost of gas changes can be recovered under its provisions. Therefore, the Commission concludes that any increase in the allowance for working capital or any other element of cost of service (other than cost of gas) must be considered in the context of a general rate case and not in a G.S. 62-133(f) proceeding.

Based on the above, the Commission concludes that no rate of return or capital carrying charges should be included in the calculation of a Purchased Gas Adjustment Rate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Schock reduced his calculated inventory appreciation of $805,674 by $209,601 which he contended was the fair rate of return associated with inventory appreciation. In addition, he reduced inventory appreciation by $89,040 associated with an increase in WSS storage levels.

Consistent with Finding of Fact No. 6, the Commission concludes that the storage volumes of 5,152,514 are proper for use in this proceeding.

The Commission also concludes, consistent with Finding of Fact No. 7 and the Evidence and Conclusions thereto, that the $209,601 rate of return element used by witness Schock is improper.

The Commission has already ruled in its September 18, 1979, Order that the $89,040 cost associated with increasing WSS storage levels was not a recoverable cost through a purchased gas filing but rather must be apportioned in a general rate case. Therefore, the Commission concludes that the proper amount of storage appreciation is $1,076,875.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Schock testified (TR. p. 26) that "When the amount to be refunded or collected, whichever the case may be, can be determined beforehand, I see no problem with a true-up other than extra bookkeeping."

He also testified (TR. p. 36) on cross-examination that "I visualize some problems in changing a decrement every time Transco changes its rates. I think you would have a true-up on a 12-month period for every change in Transco's rates."

Public Staff witness Daniel testified that there would be a need for a true-up (TR. p. 49) "...to the extent that

there will need to be a continuing accounting to determine that the cumulative excess recovery is being flowed to customers." On cross-examination he testified (TR. p. 74) that North Carolina Natural Gas, which has already separated the excess cost recovery and has included a decrement in its rates did "...provide for just such a rollover, and which is, I think, acceptable, maybe preferable."

The Commission concludes that the methodology currently being employed by North Carolina Natural Gas Corporation in accounting for excess cost recovery on stored volumes should be adopted in this proceeding and that an accounting for the disposition of excess cost recovery should be made in each subsequent PGA filing by Public Service Company. Any remaining balance should be "rolled over" into the next PGA adjustment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The Commission concludes that the NARUC Uniform System of Accounts is the basis for the use of the deferred account and that the deferred account should continue to be used as prescribed by the Uniform System of Accounts and by rulings of this Commission. The disposition of all amounts recorded in the deferred account should be in accordance with Orders of this Commission. The disposition of amounts recorded in Account 253 - Other Deferred Credits should be on a case-by-case basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witness Schock testified (TR. p. 27) that "I think subsequent refunds from Transco should be given to present customers based on current consumption over a period of time acceptable to the Commission."

Public Staff witness Daniel testified (TR. p. 55) that "The Commission has traditionally ruled on refunds as they come about where it is reasonable and feasible to redistribute those refunds to customers who paid them in. I think that is appropriate. There are instances where it is difficult to determine to whom refunds are entitled, so I think, really, the refunds have to be treated on a case-by-case basis."

The Commission concludes that the proper disposition of Transco refunds should be determined on a case-by-case basis with refunds being returned to customers who paid the rates to which the refunds are applicable by check or credits to bills where possible and practicable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Both Company witness Dickey (TR. p. 10) and Public Staff witness Daniel (TR. p. 55) agreed that the only effect of accounting for excess cost recovery due to stored volumes in

PGA rate increase cases on incremental pricing will be on the amount placed in the deferred account.

The Commission, therefore, concludes that PGA rates will not adversely affect Commission policy on incremental pricing.

IT IS, THEREFORE, ORDERED as follows:

1. That Public Service Company include the cost recovery reduction applicable to stored volumes of $1,076,875 approved in this order in its next PGA application.

2. That Public Service Company calculate and include costs applicable to volumes in storage based on the Transco decrease effective January 1, 1980, in its next PGA application.

3. That Public Service Company calculate the cost applicable to stored volumes to be used to decrease or increase future purchased gas adjustments using the methodology approved in this order.

4. That Public Service Company perform an accounting for prior cost applicable to stored volumes with each future purchased gas adjustment application.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February 1980.

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

DOCKET NO. G-5, SUB 157

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Public Service for an Adjustment of Its Rates and Charges	) ORDER APPROVING REDUCED RATES) FOR THE PERIOD BEGINNING) NOVEMBER 1, 1980, AND) TERMINATING THE VVAF

BY THE COMMISSION: On September 4, 1980, Public Service Company of North Carolina, Inc. (Public Service) filed a motion requesting the Commission to consider the following:

(a) Terminating the VVAF effective November 1, 1980.

(b) Continuing the present decrement of 33.43¢ per dt as a part of the rates of Public Service during the period from November 1, 1980, until the Final Order of the Commission in this docket.

(c) Providing for a true-up of the VVAF for the year ending October 31, 1980, in the manner prescribed in the Commission Order dated April 2, 1980, in Docket No. G-5, Sub 136A.

(d) Providing that there will be no true-up of the decrement of 33.43¢ per dt for the period between November 1, 1980, and the date of the Final Order in this docket.

The Public Staff has reviewed the motion and recommends the following:

1. That the CTA decrement in the rates to become effective November 1, 1980, be 34.7¢/dt instead of the 33.43¢/dt proposed by Public Service. The 34.7¢/dt is based on the estimated sales volume of 43,535,000 dt for the year ending December 31, 1980. The current decrement was based on the estimated volume for the 12 months ending October 31, 1980, of 42,000,000 dt.

2. That this 34.7¢/kt decrement remain in the rates of Public Service until the effective date of the new rates to be set pursuant to the Commission's Final Order in this docket.

3. That Public Service not be required to true-up this interim CTA for the period November 1, 1980, until the Final Order of the Commission in this docket.

4. That if the Commission approved the foregoing, the CTA be terminated as of November 1, 1980.

The Commission after considering the motion of Public Service and the recommendations of the Public Staff is of the opinion that the recommendations of the Public Staff should be approved.

IT IS, THEREFORE, ORDERED:

1. That Public Service shall file tariffs to become effective on all service rendered on and after November 1, 1980, containing a decrement of 34.7¢/dt, which decrement shall remain in the rates of Public Service until the effective date of the new rates to be set pursuant to the Commission's Final Order in this docket.

2. That no true-up of this decrement be required for the period during which the decrement remains in effect, that is, from November 1, 1980, until the Commission's Final Order on rates in this docket.

3. That the VVAF be, and is, hereby terminated effective November 1, 1980.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of October 1980.

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

DOCKET NO. G-1, SUB 75

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of United Cities Gas Company for Authority to Adjust and Increase Its Rates and Charges	) ORDER GRANTING) RATE INCREASE) AND SETTING RATES

HEARD IN: City Hall, 145 5th Avenue East, Hendersonville, North Carolina, Monday, April 14, 1980, at 7:30 p.m.

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Wednesday, April 16, 1980, at 9:30 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding, and Commissioners John W. Winters and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

T. Carlton Younger, Jr., Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys and Counsellors at Law, P.O. Drawer U, Greensboro, North Carolina 27402

For the Public Staff:

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

BY THE COMMISSION: On October 11, 1979, United Cities Gas Company (United Cities, the Company, or the Applicant), filed with the Commission an application for a general rate increase to North Carolina retail customers. Applicant requested that it be authorized by the Commission to increase its rates effective November 11, 1979, amounting to an increase of approximately $174,070 in general revenues applied to the calendar year of 12 months ended December 31, 1978.

Being of the opinion that the application affected the public interest in the areas in which service is provided by the Applicant, the Commission, by Order of November 7, 1979, (a) set the matter for investigation and hearing, (b) declared the proceeding to be a general rate case under G.S. 62-133, (c) suspended the increases requested by the Applicant for a period of 270 days from and after November 11, 1979, and (d) required that the Applicant publish and

deliver notice of such application and hearing to its customers in its service area.

On January 10, 1980, Notice of Intervention on behalf of the using and consuming public of the State of North Carolina was filed by the Public Staff of the North Carolina Utilities Commission. Intervention by the Public Staff was subsequently recognized by the Commission.

Notice of the application and hearing for permanent rate relief was published in The Times-News and copies of such notice were filed prior to the hearing.

The matter came on for hearing in the City Hall of the City of Hendersonville on April 14, 1980, at 7:30 p.m., which hearing was continued and reopened at 9:30 a.m., on April 16, 1980, in the Commission Hearing Room in Raleigh, North Carolina.

At the hearings, the Company offered the testimony and exhibits of the following persons: (a) James B. Ford, Vice President and Controller of United Cities, testified concerning the Company's accounting exhibits, its operating revenues and expenses, rates of return during the test year, and the value of its property used and useful in rendering service to its customers in North Carolina; (b) Gene C. Koonce, President and Chief Executive Officer of United Cities, testified concerning the Company's historical natural gas operations and its present level of operations; (c) Robert J. Sebastian, Senior Vice President and Treasurer of United Cities, testified concerning the financial requirements of the Company, its cost of capital, and the fair rate of return on the Company's property and common equity; and (d) Glenn B. Rogers, Group Vice President of United Cities, testified concerning the proposed rate structure of the Company and the request of the Company to eliminate the Curtailment Tracking Adjustment (CTA).

The Public Staff offered the testimony of John T. Garrison, Jr., Utilities Engineer of the North Carolina Utilities Commission - Public Staff. Mr. Garrison normalized volumes, revenues generated by these volumes, and rates to recover the increased revenue requirements supported in the application.

Two public witnesses, Mr. Miller and Mr. Cheeseborough, testified concerning the proposed distribution of the percentage increases among the various customer classes. Both witnesses requested that the increases proposed for industrial and commercial customers be reduced.

Based upon the verified application and the exhibits attached hereto, the prefiled testimony and exhibits, the testimony given from the stand during the course of the hearings, the Company's Proposed Order which the Public Staff found no objections to, and the entire Commission record herein, the Commission now makes the following

FINDINGS OF FACT

1. That United Cities Gas Company is a corporation organized under the laws of the States of Virginia and Illinois, is domesticated in the State of North Carolina, and is a duly franchised public utility providing natural gas service to its customers in its North Carolina service area. Applicant is properly before this Commission for a determination, pursuant to G.S. 62-133, of whether its proposed increased rates are just and reasonable.

2. That United Cities Gas Company is providing reasonable and adequate natural gas service to its existing customers in North Carolina.

3. That the test period set by the Commission in this proceeding is the 12 months ended December 31, 1978.

4. That the reasonable original cost net investment, exclusive of a working capital allowance, of United Cities' property used and useful in providing gas service to its customers in North Carolina is $2,137,203. The net investment of the Company is composed of gas plant in service of $3,049,037, which amount includes an allocation of the property of the Company located in its general offices in Nashville, Tennessee. In addition, the Company has construction work in progress of $3,185, giving a total of $3,052,222. From this total, accumulated depreciation of $630,978 and cost-free capital of $284,041 must be deducted, yielding original cost net investment, exclusive of a working capital allowance, of $2,137,203.

5. That the reasonable allowance for working capital for the test year ended December 31, 1978, is $232,733.

6. That the end-of-period adjusted gross revenues of United Cities for the test period are $2,217,215.

7. That total end-of-period operating revenue deductions for the test year after accounting and pro forma adjustments are $2,084,138, including depreciation expense of $108,043.

8. That the fair and reasonable rate of return which United Cities should have the opportunity to achieve on the net original cost of its North Carolina investment is 9.12%.

9. That under present rates, the Company's pro forma return on its rate base at the end of the test year is approximately 5.62% which is substantially below that which the Commission has determined to be just and reasonable. Therefore, in order to earn the level of returns which the Commission finds to be just and reasonable, the Applicant should be allowed to increase its rates and charges so as to produce an additional $174,070. The Commission finds that given efficient management, this amount of additional gross revenue dollars will afford the Company a fair opportunity to earn the level of return on rate base which the

Commission has found to be fair, both to the Company and to its customers.

10. That the CTA was adopted for the Company during 1975 in Docket No. G-1, Sub 47, and has been modified on various 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 was subject to variation due to changes in the gas supplies available to United Cities because of curtailment. It appears as a result of recent actions by the Federal Energy Regulatory Commission and an improvement in the gas supply situation of Transcontinental Gas Pipe Line Corporation that fluctuations in future gas supplies will not be as severe. The CTA should therefore be eliminated effective at the end of the past winter heating season (March 31, 1980).

11. That because of an increase in the sales of natural gas by the Company during 1979 occasioned by an increase in gas supplies and a market for such increased supplies that the rates proposed by the Company in its application for a general rate increase would produce revenues in excess of those determined herein to be just and reasonable. Such rate schedules must, therefore, be disapproved and disallowed and the rate structure, proposed by the Public Staff is accepted, approved, and allowed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 3

The evidence for these findings is contained in the verified application, the Commission's Order Setting Hearing, and the testimony given at the hearing. These findings are essentially informational, procedural, and jurisdictional in nature and were, for the most part, uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The verified Petition of the Company and Exhibits 3, 4, 5, and 6 set forth the method and amounts used by United Cities to determine its original cost net investment, exclusive of working capital, of property in North Carolina. Company witness Ford presented the derivation of these amounts. Since no conflicting testimony or evidence was offered by any party or witness, the Commission concludes that the proper amount of original cost net investment, exclusive of working capital, to be used in this proceeding is $2,137,203.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Company witness Ford included an allowance for working capital in developing the original cost net investment of United Cities.

From a regulatory point of view, working capital represents investor supplied funds to support an investment

in materials and supplies plus the cash required to pay operating expenses prior to the time revenues for services rendered are received. Since no conflicting testimony or evidence was offered, the Commission concludes that the $232,733 of working capital presented by the Company is fair and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Ford presented testimony concerning end-of-period gross operating revenues of $2,217,215 for the test period ended December 31, 1978. Here again, the record reflects no contradiction, thus the Commission finds the Applicant's fair and reasonable level of end-of-period gross operating revenues to be $2,217,215.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witness Ford reviewed for the Commission the Applicant's end-of-period operating revenue deductions as set forth in Exhibit 7 of the Petition. No conflicting evidence was presented by any party or witness. Therefore, the Commission adopts, for purposes of calculating the fair and reasonable rates of return, operating revenue deductions of $2,084,138, including a deduction for depreciation expense of $108,043.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this Finding of Fact was presented in the testimony of Company witnesses Sebastian and Ford.

Mr. Ford's Exhibit No. 7 (Petition Exhibit 7) shows that the full amount of the rate increase requested by the Company, including all adjustments made or accepted by the Company, would produce a rate of return of 9.12% on the original cost net investment and 15.0% on common equity.

Mr. Sebastian testified that the Company's current rate of return was insufficient to satisfy the tests of G.S. 62-133(b)(4). Mr. Sebastian presented to the Commission a comparison of statistical information on rates of return taken from Value Line Investment Survey. Using the figures obtained from that service for 29 natural gas distribution companies in conjunction with the Discounted Cash Flow approach for evaluating investor expectations, Company witness Sebastian determined that a rate of 16.24% was produced. As a comparison, Company witness Sebastian stated that this same service showed an expected return on equity for these same companies of 14.38%.

The Commission concludes that United Cities should have the opportunity to earn a return of approximately 9.12% on the original cost net investment of its North Carolina property used and useful in rendering gas utility service as determined hereinabove. Such a rate of return will produce a return on common equity of approximately 15%. The

Commission concludes that these rates of return will be sufficient to produce a fair profit for the Company's stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on reasonable terms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The culmination of Commission Findings of Fact Nos. 4, 5, 6, and 7 reveals that under present rates the Applicant's pro forma return on its end-of-period rate base is approximately 5.62%. In order to satisfy the tests laid down by G.S. 62-133(b)(4) and to consequently achieve a 9.12% return on the Company's portion of North Carolina original cost net investment found to be fair and reasonable under Finding of Fact No. 8, the Commission concludes that a $174,070 increase in revenues is necessary.

For this proceeding only, the following schedule summarizes the rates of return which the Company should have a reasonable opportunity to achieve, based upon the increase approved above. This schedule incorporates the findings and conclusions heretofore, and herein made by the Commission.

UNITED CITIES GAS COMPANY
SCHEDULE OF RETURN ON ORIGINAL COST NET INVESTMENT
TWELVE MONTHS ENDED DECEMBER 31, 1978

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues	$2,217,215	$174,070	$2,391,285
Operating Revenue Deductions	2,084,138	91,013	2,175,151
Net Operating Income for Return	$ 133,077	$ 83,057	$ 216,134
Original Cost Net Investment	$2,369,936	$ -	$2,369,936
Rate of Return on Original Cost Net Investment	5.62%		9.12%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Rogers testified that while the CTA had been beneficial to the Company and its customers during the dramatic supply fluctuations previously experienced by the Company, the perceived stabilization of gas supplies from Transco allowed the removal of the mechanism at this time. Public Staff witness Garrison stated that it was the opinion

of the Public Staff that volumes had sufficiently stabilized so as to allow the removal of the CTA.

Under examination from the Commission, Company witness Rogers testified that new problems were presently facing the gas distribution companies. Instead of supply problems, many companies (including the Tennessee operations of United Cities) now were experiencing difficulties in selling volumes of natural gas because of incremental pricing. Company witness Rogers indicated that the degree of difficulties would be magnified if Phase II were placed in effect since the North Carolina operation of United Cities has no customers who are subject to Phase I under existing rules and interpretations.

The Commission therefore concludes that the CTA should be removed, with a final true-up of the CTA rates for the winter period to be determined using the volumes for the 12-month period ended March 31, 1980.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Public Staff witness Garrison presented calculations of rates and revenues based upon volumes available to United Cities for the 12 months ended December 31, 1979, of 8,835,039 therms. Company witness Rogers had no substantial disagreement with this level of volumes, except to state that it might be reduced in the future when Phase II of incremental pricing is implemented by the Federal Energy Regulatory Commission.

Public Staff witness Garrison proposed changes in the rate structure of the Company which can be summarized as follows:

(a) Consolidate existing schedules 705 (Residential, nonheating) and 710 (General). This change would simplify the rate structure of the Company, providing one general residential schedule under Schedule 710. Company witness Rogers proposed an identical change. However, in presenting his proposal, Mr. Garrison provided a facilities charge of $5.00 with an increase in rates for monthly consumption above the first 20 therms. The Company's proposal provided for no facilities charge and a decreasing cost per therm as consumption increased.

(b) Retain Rate Schedule 780. While the Company proposed an elimination of Schedule 780, Mr. Garrison proposed that the rate be continued since (i) a volume of gas was involved and (ii) the removal would increase service formerly provided under this schedule by 375%.

(c) Consolidate Existing Schedules 730 (Industrial, Firm) and 750 (Interruptible) into one Industrial Category. This change would also simplify the rate structure of the Company providing a general industrial and commercial rate for all service except public housing authority sales. The minimum

bill of $10.00, as proposed by the Company, was also proposed by Mr. Garrison.

(d) Change of Designation of Volume Standard. This change would convert the measurement of volumes sold by the Company from a standard of one hundred cubic feet as equal to a therm to having sales and billings based on a therm as a heating unit. Public Staff witness Garrison has used a conversion factor in his calculations of 1.03 therms equal to one hundred cubic feet of natural gas.

The Commission concludes that the revised rate structure presented in Public Staff witness Garrison's testimony is just and reasonable and that the rates approved in this proceeding should be based on this revised rate structure. The Commission further concludes that the rates set forth in Garrison Exhibit No. JTG-3 reflect the revenue increase approved herein and the normalized level of gas volumes experienced by the Applicant during 1979. The Commission concludes that the rates proposed in Garrison Exhibit No. JTG-3 incorporate the required adjustments approved by this Commission in this proceeding subject to being subsequently increased or decreased by the exploration surcharge of the Company, relevant purchase gas adjustments subsequent to December 31, 1979, and any true-up of CTA collections. The Commission thus concludes that the rates proposed by Public Staff witness Garrison are just and reasonable and should be adopted as the base rates of United Cities.

IT IS, THEREFORE, ORDERED as follows:

1. That the base rates set forth in column (2) of Exhibit A attached hereto are designed to produce additional annual gross revenues of $174,070 on demand volumes of 8,835,089 therms available for sale by United Cities Gas Company, and are hereby approved.

The base rates set forth in column (2) of Exhibit A attached hereto shall be further adjusted as reflected in columns (3) through (6) inclusive of Exhibit A so as to result in the rates which are reflected in column (7) of Exhibit A. The adjustments in columns (3) through (6) inclusive are necessary and appropriate by virtue of previous Commission action taken in the dockets which are identified in each of the headings for those columns (3) through (6) inclusive.

2. That United Cities Gas Company file schedules of rates and charges in accordance with paragraph 1 of this Order and Exhibit A attached hereto, which reflects the increases in rates and the adjustments approved herein. That upon one day's notice such rates shall become effective on service rendered.

3. That effective as of the date of this Order the Curtailment Tracking Adjustment (CTA) no longer be applied to the rates of United Cities; however, the Company shall

file a true-up pursuant to the provisions of paragraph 4 of this Order.

4. That not later than 45 days after the effective date of this Order, the Company file a true-up of the CTA implemented in Docket No. G-1, Sub 47, for the winter period (November 1, 1979, through March 31, 1980) based on volumes used during the period of the 12 months ended March 31, 1980. This adjustment shall be applied to volumes used by customers during the winter period by credit to their bills.

5. That United Cities notify its customers concerning the effect of the rate increase granted herein by appropriate bill insert along with the next bill sent to each customer after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 6th day of May 1980.

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

DOCKET NO. G-21, SUB 212
DOCKET NO. G-21, SUB 213

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina) ORDER ESTABLISHING PGA
Natural Gas Corporation for an) INCREMENT EFFECTIVE
Adjustment of Its Rates and Charges) NOVEMBER 1, 1980

HEARD IN: The Commission Hearing Room, 430 North Salisbury Street, Raleigh, North Carolina, on October 6, 1980

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

APPEARANCES:

For the Applicant:

Donald W. McCoy, McCoy, Weaver, Wiggins, Cleveland and Raper, Attorneys at Law, 222 Maiden Lane. P.O. Box 2129, Fayetteville, North Carolina 28302

For the Using and Consuming Public:

Robert F. Page. Staff Attorney Public Staff - North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27602

BY THE COMMISSION: Upon consideration or a Petition for Reconsideration and Hearing filed in this docket by North Carolina Natural Gas Corporation (NCNG), wherein it moved that the Commission reconsider that portion of the Commission Order of August 29, 1980, concerning "inventory appreciation" associated with the increased cost of gas from Transco, the Commission scheduled a further hearing on this matter by Order of September 17, 1980. The hearing was held at the specified time and place of the September 17, 1980, Order. Company witness Calvin B. Wells testified to the Applicant's methodology for calculating the inventory appreciation resulting from the increased cost of gas from Transco. Public Staff witness Don Daniels, Staff Accountant, testified to the Public Staff's position on the so-called inventory appreciation matter.

In this further hearing, the issue was the treatment to be afforded the inventory volumes at the time of an increase in the cost of gas from Transco, when calculating the proper PGA increment. The Commission Order of August 29, 1980, adopted, without prejudice to the Applicant, the treatment pronounced by the Public Staff, which considered all volumes

in storage when calculating the proper PGA increment. At this further hearing, the Applicant proposed that (November 1, 1980 - March 31, 1981) should be considered in the PGA calculation, with the resulting PGA increment effective only for that six-month (November 1, 1980 - March 31, 1981) period of time. If this methodology results in underrefunding to the customer, the Applicant proposes to return such monies, with interest, to the customers of the next winter period.

At this further hearing for reconsideration of the August 29, 1980, Order, Public Staff witness Daniels offered support of the Public Staff's position reflected in the Commission Order of August 29, 1980. Witness Daniels further advocated that the NCNG method, if adopted, should be modified to incorporate a "first in - first out" methodology in determining the refunds due to the customers from the so-called inventory appreciation. Witness Daniels also proposed that a generic hearing should be held on this matter, at which time this question would be considered for all natural gas distribution companies in the State of North Carolina.

Based upon the entire record of this proceeding, the Commission concludes that NCNG's method of determining inventory appreciation associated with an increase in the cost of gas from Transco is fair and reasonable. This methodology requires that the Applicant remove from its rates the inventory appreciation decrement of $.0731* per decatherm previously approved and to include in its rates an inventory appreciation decrement of $.0701 per decatherm. As to the calculation of interest on any underrefunds resulting from the use of this methodology. the Commission concludes that such interest should be calculated on such monies pursuant to the guidelines set forth in Commission Rule R1-17(g)(10), which Rule was revised by an Order issued on August 19, 1980, in Docket No. G-100, Sub 40. Further, the Commission concludes that the inventory appreciation decrement should be in effect for the winter season only (November 1, 1980 - March 31, 1981), as advocated by the Applicant, with any underrefunds returned with interest to customers in the next winter season. Finally, the Commission concludes that a generic hearing should be held on the question of "inventory appreciation" and will proceed accordingly. In this context, the actual use of the NCNG methodology as well as the use of the methodology approved for Piedmont and Public Service can serve as a basis for further comparison with the methodology proposed by the Public Staff.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG be, and hereby is, allowed to remove from its rates the present inventory appreciation decrement of

* corrected by Order Dated 10-24-80

$.0731* per decatherm allowed in the Commission Order of August 29, 1980.

2. That NCNG be, and hereby is, ordered to reduce its rates by $.0701 per decatherm, effective for service rendered in the period November 1, 1980, through March 31, 1981.

3. That NCNG calculate interest on all monies held from underrefunds to customers pursuant to the methodology set forth in Commission Rule R1-17(g)(10), which Rule was revised by an Order issued on August 19, 1980, in Docket No. G-100, Sub 40.

4. That NCNG send appropriate notice to all customers, other than those on Rate Schedule No. 7, advising of this change in rates. A copy of this notice shall be filed with the Commission.

5. That NCNG notify C.F. Industries, Inc., the only customer on Rate Schedule No. 7, of the change in rates.

6. The Commission hereby gives notice that it will hold a generic hearing on the inventory appreciation matter at a future date.

7. That NCNG be, and hereby is, required to file tariffs reflecting these changes in its rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of October 1980.

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

* corrected by Order Dated 10-24-80

DOCKET NO. G-5, SUB 160

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company	)	ORDER
of North Carolina, Inc., for an	)	ADJUSTING
Adjustment of Its Rates and Charges	)	PGA

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 2, 1980

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

APPEARANCES:

For the Applicant:

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

For the Public Service:

Robert F. Page 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: On August 1, 1980, Public Service Company of North Carolina, Inc. (Public Service, Applicant), filed an application to increase its rates and charges effective on September 1, 1980, pursuant to the provisions of G.S. 62-133(f) and NCUC Rule R1-17(g). This application was filed in order to recover increases in the cost of gas from the Applicant's supplier, Transcontinental Gas Pipe Line Corporation (Transco) as of September 1, 1980.

By Order issued August 29, 1980, this Commission found that Public Service should increase its rates by $.05781 per therm in order to reflect the increase in the cost of gas. In calculating this PGA increment, this Commission found that Public Service would experience an inventory appreciation estimated at $3,189,794. The inventory appreciation is composed of two components. First, $900,432 represents the inventory appreciation and related gross receipts taxes balance at August 31, 1980. Second, $2,289,362 represents the increased cost of gas of .538 per dekatherm times the estimated gas in storage at September 1, 1980, of 4,000,000 dekatherms, plus related gross receipts taxes.

On August 29, 1980, Public Service requested that the Commission reconsider the calculation of the proper level of inventory appreciation and to allow the Company an opportunity to present further evidence on this matter. This request was granted and a hearing was scheduled for September 2, 1980.

The hearing on the proper method of calculating inventory appreciation related to the allowed increased cost of gas under G.S. 62-133(f) was held at the time and place specified in the Order of August 29, 1980. The Company presented the testimony of C. Marshall Dickey, Vice President - Gas Supply Services, and Allen J. Schock, Vice President - Rates. The Public Staff did not present further testimony at this hearing.

The issue in dispute at the hearing was the proper volume that should be used in calculating inventory storage appreciation. The Public Staff's position on this matter, and reflected in the Commission's Order in this docket of August 29, 1980, is that the entire gas in storage at September 1, 1980, estimated to be 4,000,000 dekatherms, should be used to calculate the inventory appreciation. In contrast, Public Service contends that base storage of 800,000 dekatherms should be excluded from this calculation. In the Order of August 29, 1980, the Commission denied, without prejudice, Public Service's application that their base level inventory storage needs are 800,000 dekatherms. In Docket No. G-9, Sub 198, involving Piedmont Natural Gas Company the Commission indicated such an exclusion would be reasonable if proper justification was presented, as spelled out below:

"It is the further opinion of the Commission that any other natural gas distribution company which is able to justify and document a need to maintain a minimum inventory balance due to reasons related to safety and operational efficiency should also be permitted to exclude its minimum inventory balance when calculating the applicable level of inventory appreciation in the G.S. 62-133(f) proceeding."

At the instant hearing in this docket, Public Service presented sworn testimony to support the base inventory amount of 800,000 dekatherms. Most significant of this evidence is Company witness Dickey's assertion that technical problems would ensue from the withdrawal from storage of LNG gas below the 100,000 dekatherm level. This base level of 100,000 dekatherms is 9.62% of the Applicant's storage capacity for LNG gas. This fact, coupled with the projected problems associated the withdrawal of WSS stored gas due to the capacity limitations on the Transco system, leads this Commission to conclude that a fair and reasonable level of base storage for Public Service is 9.62% of total storage capacity. This conclusion is consistent with the parameters of base storage determination for inventory appreciation calculation purposes, as dictated by this

Commission Order in Docket No. G-9, Sub 198. Therefore, the necessary and reasonable base storage for Public Service is 552,958 (5,748,000 x .0962) dekatherms which results in a decrease in the inventory appreciation presented in the Commission Order of August 29, 1980, of $316,480 ((552,958 x .538) ÷ .94). This results in an adjustment to the inventory appreciation decrement of .00330 per therm rather than the .00408 per therm adjustment found proper in the Commission Order of August 29, 1980. Hence, Public Service's rate should be increased by .05859 per therm, rather than the .05781 per therm presented in the Commission Order of August 29, 1980.

In its determination of the appropriate PGA surcharge, the Commission has found it proper to consider both the revenue impact of the PGA surcharge on volumes held in storage to be sold subsequently and to recognize a base level of storage which will not ultimately be sold to customers due to operational constraints. The PGA surcharge determination by necessity involves the use of estimation with regard to storage volumes and sales volumes. Therefore, it will be necessary to have a continuing acounting to determine that the cumulative recovery of cost of gas on stored volumes has been properly passed through to the customers.

Accordingly, the Commission concludes that an accounting for the disposition of the recovery of cost of gas on stored volumes should be made in each of Public Service's subsequent PGA filings. It is the Commission's opinion that any remaining balance from a prior PGA should be "rolled over" into the next PGA.

Public Service currently employs an average cost of gas technique in pricing gas out of its storage facilities (inventory) when gas is removed for sale to its customers. While such costing methodology may imply the physical commingling of gas held in storage, such methodology is not intended and does not track in storage, such methodology is not intended and does not track the actual physical flow of molecules of gas, but rather is intended to be used as a basis for calculating the cost of gas sold for use in the determination of periodic income or loss. Therefore, inconsistency in the selection or employment of an inventory pricing technique, particularly during periods of rapidly changing prices, will improperly affect the determination of periodic income or loss.

Fundamental financial accounting standards have long recognized that

> "...because of the common use and importance of periodic statements, a procedure adopted for the treatment of inventory items should be consistently applied in order that the results reported may be fairly allocated as between years. A change of such basis may have an important effect upon the interpretation of the financial

statements both before and after that change and hence, in the event of a change, a full disclosure of its nature and of its effect, if material, upon income should be made."

The Commission has carefully considered the foregoing and concludes that, if a certain volume of gas is excluded as in Public Service's case from the calculation of the average cost of gas removed from storage and sold, such action results in a change in the basis of stating inventories and thus would result in a change in periodic income or loss. However, the Commission also recognizes that Public Service is constrained from removing approximately 552,958 dekatherms of gas from storage due to certain operational constraints. Therefore, it would be unfair to assume for purposes of this proceeding that it will eventually sell all gas held in storage when the Commission finds the greater weight of the evidence of record to be to the contrary.

Previously, the Commission concluded that all gas held in storage by Public Service which will not be removed because of operational constraints should not be included in the calculation of the revenue impact of the PGA surcharge on volumes of gas held in storage. Consequently, the Commission concludes that Public Service should be required for financial reporting and rate-making purposes to modify its basis of stating inventories and all related cost, e.g., its cost of gas sold, in a manner so as to reflect the impact of the Commission's decision with respect thereto.

IT IS, THEREFORE, ORDERED as follows:

1. That effective September 4, 1980, the PGA surcharge of .05781 per therm granted Public Service by Commission Order of August 29, 1980, be, and hereby is, terminated.

2. That effective September 4, 1980, Public Service be, and hereby is, granted a PGA surcharge of .5859 per therm effective on service rendered on or after September 4, 1980.

3. That Public Service be, and hereby is, required to file tariffs reflecting these changes in its rates.

4. That the Notice attached as Appendix A be sent to all customers in its next billing advising them of the change in rates.

5. That in the event the Federal Energy Regulatory Commission should by final order deny any portion of the Transco rates on which this request is based, Public Service shall comply fully with the requirements set forth in Revised Rule R1-17(g)(10) by placing refunds that result from the FERC action in the deferred account for refunding to customers, and by notifying the Commission of the amount of the refund.

6. That Public Service shall calculate interest on all monies held from customer overcollections at the rate of eight percent (8%) for the period of time such monies will have been held for refund prior to September 1, 1980. Beginning on September 1, 1980, interest shall be calculated on such monies, if such monies are then continuing to be held for refund, pursuant to the methodology set forth in Commission Rule R1-17(g)(10), which Rule was revised by an Order issued on August 19, 1980, in Docket No. G-100, Sub 40.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of September 1980.

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

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

HAMMOND, COMMISSIONER, Dissenting.

I am opposed to the decision of the majority to allow any volume of gas storage to be set aside and exempted from so-called "inventory appreciation".

Provisions are made in all general rate cases for a working capital allowance to cover the costs of maintaining a minimum level of inventory of materials and equipment including gas storage. Such an allowance was included in Public Service's rate base in its last general rate case.

In essence, the sum and substance of the majority's decision is to implement a procedure which could be characterized as a working capital adjustment clause. Such adjustment clause permits the company to earn a rate of return on increases in its allowance for working capital that are occasioned by increases in the cost of gas from Transco. This objective is accomplished by changing the method by which the company accounts for or prices gas out of its inventory. In the past the company has consistently employed a moving average technique in pricing gas out of inventory which implicitly assumes that all gas held in inventory will turn over.

The majority in its decision in this case, at the request of Public Service, has abandoned this concept and has taken the view that the price of gas removed from inventory should be calculated excluding a certain level of volumes and the price thereof. The net effect of this new approach is to permit the company to retain approximately $300,000 that would have otherwise, under the existing accounting procedure, been returned to the customers.

Future wholesale price increases will result in a similar transfer of benefits from the customers to the company. I disagree and dissent from the majority.

Leigh H. Hammond, Commissioner

DOCKET NO. T-214, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Coastal Transport, Inc., 703 South George Street, Goldsboro, North Carolina 27530 - Application for Authority to Amend Certificate No. C-132	) RECOMMENDED) ORDER DENYING) APPLICATION)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 9, 1980, at 9:30 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina
For: Coastal Transport, Inc.

For the Protestants:

Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: Kenan Transport Company and Fleet Transport Company, Inc.

BENNINK, HEARING EXAMINER: On October 26, 1979, Coastal Transport, Inc. (Applicant or Coastal), filed an application in this docket seeking to amend the territorial scope of the common carrier authority which said carrier presently holds under Exhibit B(1) of Certificate No. C-132 to read as follows:

> Transportation of petroleum and petroleum products, in bulk, in tank trucks, over irregular routes from existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville, and Salisbury to points and places in North Carolina and of gasoline, kerosene, fuel oils and napthas, in bulk, in tank trucks, over irregular routes, between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals.

Notice of the application, together with a description of the extension of operating authority being sought in conjunction therewith, was published in the Commission's Calendar of Hearings issued on December 13, 1979. The matter was thereby scheduled to be heard on Wednesday, January 9, 1980, at 9:30 a.m.

On December 28, 1979, counsel for and on behalf of Fleet Transport Company, Inc. (Fleet or Protestant), and Kenan Transport Company (Kenan or Protestant) filed a "Protest and Motion for Intervention" in this docket. By Commission Order issued on January 8, 1980, Fleet and Kenan were permitted to intervene in this proceeding as Protestant Parties.

Upon call of the matter for hearing at the appointed time and place, all parties were represented by counsel. The Applicant offered the testimony of Sterling Dillon Wooten, Jr., its President and majority shareholder, and Philip Poole, Vice President and Manager of Poole & Company, Inc., d/b/a Econo Oil Company. Mr. Wooten also offered testimony in support of the application in his capacity as shareholder, President, and Manager of the following companies: Wooten Oil Company; Petroleum Distributors of Eastern Carolina, Inc.; and Thornell Oil Company, Inc. Kenan offered the testimony of David Fesperman, its Traffic Manager, in opposition to the application.

Based upon a careful consideration of the application, the testimony and evidence presented at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant Coastal Transport, Inc., is a corporation duly organized and existing under the laws of the State of North Carolina and is located at Goldsboro, Wayne County, North Carolina.

2. That the Applicant presently holds Common Carrier Certificate No. C-132 and is actively conducting intrastate transportation operations thereunder.

3. That the Applicant, by its application herein, seeks to extend the territorial scope of its Certificate No. C-132, Exhibit B(1) thereof, to include all points and places in North Carolina.

4. That Coastal serves as the primary carrier for Wooten Oil Company, Petroleum Distributors of Eastern Carolina, Inc., and Thornell Oil Company, Inc., hauling 90% - 95% of the petroleum products shipped by said companies.

5. That the primary marketing area for petroleum products distributed by Wooten Oil Company extends within a 50-mile radius of Goldsboro, North Carolina. Wooten Oil Company made no shipments of petroleum products into the area of western North Carolina covered by this application in 1979. However, it does have "potential" customers in that area of the State.

6. That the primary marketing area for petroleum products distributed by Petroleum Distributors of Eastern

Carolina, Inc., and Thornell Oil Company, Inc., extends within a 50 to 100 mile radius of Goldsboro, North Carolina. Petroleum Distributors of Eastern Carolina, Inc., has a present need to transport petroleum products into West Jefferson, Ashe County, North Carolina, which traffic is now being hauled by privately owned customer equipment rather than by certificated common carriers. Thornell Oil Company, Inc., does not have any customers at the present time in the area of western North Carolina covered by this application, but does have "potential" customers located therein.

7. That during 1979, it was not necessary for either Wooten Oil Company, Petroleum Distributors of Eastern Carolina, Inc., or Thornell Oil Company, Inc., to request service from certificated common carriers to handle intrastate shipments of petroleum products into the area of western North Carolina covered by this application. Rather, those shipments which were actually made into that area of the State by Petroleum Distributors were themselves handled by customer-owned equipment.

8. That the primary marketing territory for petroleum products distributed by Econo Oil Company extends within a 75-mile radius of Asheboro, North Carolina. Econo Oil Company presently owns one truck, which is not sufficient to handle all of its transportation needs. Coastal is the only certificated intrastate common carrier used by Econo Oil Company to haul its products in North Carolina. Econo Oil Company has customers and "potential" customers for the sale of various grades of fuel oil and petroleum products in the area of western North Carolina covered by this application, with Haywood County being one specific destination point. Coastal has provided "very good" common carrier transportation service to Econo Oil Company during the period of approximately the last four years.

9. That there are approximately 80 common carriers who now hold intrastate operating authority issued by this Commission to transport petroleum and petroleum products in North Carolina. Certain of these carriers, including the Protestants Fleet and Kenan, are authorized to engage in the transportation of petroleum and petroleum products throughout the State of North Carolina. During 1979, Protestant Kenan transported 114 loads of petroleum products into the area of western North Carolina covered by the application at issue herein. Gross revenues derived by Kenan from such intrastate traffic totaled approximately $15,000. Kenan now operates five terminals in North Carolina at which are maintained approximately 116 tractors and 64 tank trailers suitable for the transportation of petroleum products. Kenan is actively engaged in the transportation of petroleum and petroleum products throughout the portion of western North Carolina covered by the application at issue herein.

10. That the Applicant is fit, willing, and able to properly perform and operate as a common carrier in North Carolina intrastate commerce and said carrier is solvent and financially responsible in its current operations under Certificate No. C-132.

11. That the public convenience and necessity do not require the proposed service in addition to existing authorized transportation service.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Under the provisions of G.S. 62-262(e), Coastal has the burden of proof with respect to its application for an extension of the territorial scope of its common carrier authority to show to the satisfaction of this Commission:

1. That public convenience and necessity require the proposed service in addition to existing authorized transportation service,

2. That Coastal is fit, willing, and able to properly perform the proposed service, and

3. That Coastal is solvent and financially able to furnish adequate service on a continuing basis.

The type of proof required to show public convenience and necessity within the meaning of G.S. 62-262 is further explained by Rule R2-15 of this Commission which provides that the Applicant must establish proof that a "public demand and need exists" for the proposed service in addition to existing authorized service. The Supreme Court of North Carolina and the Court of Appeals have in several decisions stated the elements which constitute "public convenience and necessity," pointing out that they include such questions as "whether there is a substantial public need for the service;" "whether the existing carriers can reasonably meet this need;" and "whether it would endanger or impair the operations of existing carriers contrary to the public interest." Utilities Commission v. Carolina Coach Company, 260 N.C. 43, 132 S.E.2d 249 (1963); Utilities Commission v. Trucking Company, 223 N.C. 687, 28 S.E.2d 201 (1943); Utilities Commission v. Southern Coach Company, 19 N.C.App. 597, 199 S.E.2d 731 (1973); Utilities Commission v. Queen City Coach Company, 4 N.C.App. 116, 166 S.E.2d 441 (1969).

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 therefore concludes, that the Applicant has failed to carry the burden of proof in this proceeding to show that public convenience and necessity require its proposed service in addition to existing authorized transportation service. In this regard, the Hearing Examiner believes that Coastal has failed to

offer sufficient evidence in this case which would indicate that there presently exists a substantial public need for the proposed common carrier service in the area of western North Carolina covered by the application at issue herein.

Rather, the Applicant has, at most, offered evidence indicating a present need for the transportation of petroleum products into only two of the counties in western North Carolina covered by its application; namely, Ashe County and Haywood County. Furthermore, the Hearing Examiner feels compelled to note that the movements of the aforementioned petroleum products do not now require the services of certificated common carriers. To the contrary, the shipments of petroleum products into Ashe County are now transported by privately owned customer equipment, while shipments into Haywood County are apparently handled by Econo Oil Company using its own truck. It is also the opinion and further conclusion of this Hearing Examiner that general testimony indicating that supporting shippers have "potential" customers who may henceforth require the use of common carriers is itself insufficient to support a finding that public convenience and necessity require the proposed service in addition to existing authorized transportation service.

A careful consideration of the entire record in this case also leads the Hearing Examiner to conclude that there has been no substantial showing that the existing common carriers are unable to reasonably meet the transportation needs of shippers who presently desire to transport petroleum products into the area of western North Carolina covered by the application at issue herein. Therefore, the Hearing Examiner concludes that the existing carriers, including the Protestants Kenan and Fleet, could reasonably be expected to handle all of the specific transportation needs shown in this proceeding by Coastal in support of its application.

Accordingly, for all of the reasons set forth above, the Hearing Examiner concludes that Coastal has failed to carry the burden of proof in this proceeding to show that the public convenience and necessity require the Applicant's proposed common carrier service in addition to existing authorized transportation service.

In concluding this Order, the Hearing Examiner wishes to emphasize that denial of the application at issue herein is based solely upon Coastal's failure to establish the existence of a public demand and need in support of its proposed service and operating authority rather than upon any other factors. In this regard, the Hearing Examiner notes that the evidence presented at the hearing by Coastal clearly indicates that said carrier is fit, willing, and able to properly perform and operate as a common carrier in North Carolina intrastate commerce and that Coastal is in fact currently operating as a solvent and financially responsible intrastate common carrier.

IT IS, THEREFORE, ORDERED that the application filed in this docket on October 26, 1979, by Coastal Transport, Inc., be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of April 1980.

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

DOCKET NO. T-1998

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Sales of Aberdeen, Inc., d/b/a Southern Transport Service, U.S. 1 South, Aberdeen, North Carolina 28315 - Application, as Amended, for Common Carrier Authority to Transport Group 21, Gasoline, Kerosene, No. 2 Fuel Oil and Diesel Oil, in Bulk, in Tank Vehicles, Over Irregular Routes From all Existing Originating Terminals at or Near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville, and Salisbury to all Points and Places Within the Counties of Moore, Montgomery, Hoke, and Richmond	)	RECOMMENDED ORDER DENYING APPLICATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 6, 1979, at 9:30 a.m.

BEFORE: Carolyn D. Johnson, Hearing Examiner

APPEARANCES:

FOR THE APPLICANT:

Vaughn S. Winborne, Attorney at Law, 1108 Capitol Club Building, Raleigh, North Carolina 27601
For: Southern Sales of Aberdeen, Inc., d/b/a Southern Transport Service

For the Protestants:

Thomas W. Steed, Jr., Allen, Steed and Allen, P.A., P. O. Box 2058, Raleigh, North Carolina 27602
For: Kenan Transport Co. and Eastern Oil Transport, Inc.

JOHNSON, HEARING EXAMINER: This matter arose upon the filing with the North Carolina Utilities Commission (Commission) on August 22, 1979, by Southern Sales of Aberdeen, Inc., d/b/a Southern Transport Service (Southern) of an application for common carrier authority to transport Group 3, Petroleum and Petroleum Products, in bulk, in tank vehicles, over irregular routes from all existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville, and Salisbury to all points and places within the following counties: Moore, Montgomery, Hoke, and Richmond.

Notice of the application, together with a description of the authority sought, and the time and place of hearing, was published in the Commission's Calendar of Hearings issued Septemer 26, 1979.

Protest and Motions for Intervention filed by Fleet Transport Company, Inc., Nashville, Tennessee; Kenan Transport Company, Chapel Hill, North Carolina; and Eastern Oil Transportation, Inc., Wilmington, North Carolina, were duly filed with the Commission and all interventions allowed by subsequent orders of the Commission.

On November 1, 1979, the Applicant filed a motion to amend the commodity description in its application to cover transportation of "Group 21. Other Specified Commodities: Gasoline, Kerosene, No. 2 Fuel Oil and Diesel Fuel, in bulk, in tank vehicles." By letter dated November 2, 1979, to the Commission, Protestant Fleet Transport Company withdrew its protest upon amendment of the application.

At the hearing all parties were present or represented by counsel. A summary of the testimony offered at the hearing is as follows:

FRANK MCNEILL testified that he is the principal stockholder of the Applicant, Southern, which now operates two retail establishments, a truck stop and a mini-convenience store and station. Mr. McNeill is also a principal stockholder in Sandhill Oil Company and McNeill Oil Company, both of which sell gasoline, kerosene, fuel oil, and diesel fuel. Together, these companies handle about 5 1/2 million gallons of these products a year. At the present time transportation of the product is handled by a truck and trailer owned by McNeill Oil Company. This equipment would be leased to Southern if the application is granted.

Mr. McNeill testified that one of the reasons for filing the application was to get the hauling operations of McNeill Oil Company and Sandhill Oil Company into a separate corporation in order to put it on a more profitable basis. During the past few years his companies have received only 85% of the posted rate where common carriers receive 100% of the posted rate. Another reason for wanting to become a common carrier is that his companies have experienced some difficulty in getting product hauled in emergency situations. He has also surveyed other oil companies in the area, including Page and Shamburger in Aberdeen, Lee-Moore Oil Company, Scotland Oil Company, and Thomas Oil Company and decided there was a need for a common carrier. The application is being supported by McNeill Oil Company and Sandhill Oil Company.

Mr. McNeill stated that he had been active in the oil business since graduating from the University of North Carolina in 1952 and had been manager and president of McNeill Oil Company for a number of years. That company

began hauling its own products in 1964. He is familiar with the safety rules and regulations pertaining to the hauling of petroleum products. Identified as Applicant's Exhibit No. 1 was a list of equipment showing one 1975 Mack Truck, one 1980 Mack Truck, and one 1967 Heil trailer with 8,500-gallon capacity. Mr. McNeill testified that the 1975 tractor and the trailer were owned by McNeill Oil Company and the additional tractor was under lease to be delivered February 1980. Net worth of Southern as shown on the application was $6,900 consisting of cash and merchandise in the mini-convenience store. He would put other assets into Southern as required and identified as Applicant's Exhibit No. 2 his personal financial statement showing a net worth of $441,000.

At present the one tractor and tank is sufficient to handle the hauling of his companies, but occasionally common carriers including East Coast and Kenan are called on. Mr. McNeill stated that from his survey he feels there is a need for a common carrier to be located in the four-county area, known as the Sandhills of North Carolina. If the application were granted the two companies controlled by him, Sandhill Oil Company and McNeill Oil Company, would use the service for their transportation needs. Both of these companies handle Union 76 products.

On cross-examination, Mr. McNeill explained that both McNeill Oil Company and Sandhill Oil Company are Union 76 oil jobbers who purchase gasoline and other fuels from Union 76 and, in turn, retail these products. He is the majority stockholder in both of the oil jobbers as well as the majority stockholder in Southern. Southern is a Union 76 Retailer which purchases its products from the oil jobbers controlled by Mr. McNeill and retails them through the truck stop and the mini-convenience store.

The original primary purpose in seeking a common carrier certificate for Southern is to convert the private transportation operations now conducted through McNeill Oil Company to a separate corporate entity. This would remove liability as well as be of economic advantage to his companies since Southern would receive the full common carrier rate, including the 7% fuel surcharge, for transporting the product from the Union 76 terminals to his oil jobber companies which rate is 26% greater than the freight allowance which McNeill Oil Company now receives. He explained that his gasoline is purchased from Union 76 f.o.b. his oil jobber sites and that Union 76, instead of actually shipping the product, given McNeill Oil Company an allowance off the price of the product equal to the dedicated rate which is 85% of the posted rate. The basic reason for seeking common carrier status rather than continuing the private carriage would be the very obvious economic advantage to his companies that would be obtained.

Mr. McNeill testified that at the present time about 98% of the transportation requirements of McNeill Oil Company

and Sandhill Oil Company are able to be handled by the tractor and trailer owned by McNeill Oil Company. It is only in the remote or emergency cases that he is required to call on common carriers. Such an emergency situation occurs when he is given notice of a price increase in the product and desires to buy as much product as he can prior to the increase.

As a common carrier it would be the intent of Southern to hold itself out to serve anybody that sought its service in the four-county area. For the present time the two oil jobbers controlled by Mr. McNeill handle all of the Union 76 products in the area. His company would be willing to haul products from other oil companies, such as Exxon and Phillips, although he realizes that basically it is the oil company that is the shipper if the product is sold f.o.b. destination.

On redirect examination, Mr. McNeill testified that on the prior Thursday Kenan had been unable to handle a load for his companies which he was trying to get because of a price increase. He has not called on Eastern Oil. To his knowledge neither Kenan nor Eastern Oil have solicited business from his oil jobber companies. The previous day he had called East Coast which was able to help him with one load.

On recross-examination, Mr. McNeill testified that the reason he called common carriers in the previous few days was in order to take advantage of a price break. He also stated that he was on the Executive Committee and immediate Past President of the North Carolina Oil Jobbers Association which was contesting the dedicated rate on petroleum through litigation in the North Carolina Court of Appeals. If Southern were granted common carrier authority it would not be interested in handling service under the dedicated rate, but would hope to avail itself of the full rate.

ROBERT H. MEDLIN testified that he is the Traffic and Distribution Manager of Scotland Oil Company, located in Scotland County, which handles petroleum products throughout the entire State of North Carolina as well as South Carolina and Virginia. In the four-county area involved, his company handles about five million gallons a year most of which is transported with privately owned equipment. The major supplier of Scotland Oil Company is Texaco and they have purchase contracts with Gulf, City Service, and some large independents.

In the opinion of Mr. Medlin there is a need for an additional carrier in addition to the existing authorized common carriers because in cases of price increases his company needs to haul as much of its product as possible to beat the price increase and because in the winter time he cannot always get his transportation done on time. Kenan Transport Company has given very good service, hauling an average of 10 to 15 loads a day, but is not able at all

times to give service. The same is true of Eastern Oil Company. Both of these carriers, according to the witness, serve their primary customers first. He feels that there is a need for additional service in this area and if the application were granted his company would use such service.

On cross-examination, Mr. Medlin testified that, of the five million gallons of products which his company handles each year in the four-county area involved, about 75% is transported on company-owned trucks. The remainder is handled by common carriage. He gets good service from Kenan and other common carriers except in certain peak times. He has not been told that Scotland Oil would be a primary customer of Southern. He realizes that Southern Transport has only one operating truck and trailer at the present time.

On redirect examination, Mr. Medlin testified that during the independent truckers' strike his company was unable to move all of its product and from 5% to 10% of his customer accounts had to wait.

On recross-examination, Mr. Medlin stated that the independent truckers' strike took some transportation equipment out of operation in the State thus causing an abnormal type shortage. He would not expect the other common carriers to maintain enough equipment at all times to cover this type of abnormal situation.

ED DICKERSON testified that he is connected with Thomas Oil Company which handles approximately three million gallons per year of Phillips 66 products in Moore County. At the present time transportation of that product is handled primarily by two company-owned trucks. At times his company utilizes common carriers in Moore County and has gotten from poor to no service. Kenan, which is his company's primary supplier for propane gasoline, has been called on for transportation of gasoline, kerosene, and fuel oil. In June it had taken two weeks to get five loads of product from Gulf Oil. His company has not used Eastern Oil Company. Neither Eastern Oil nor Kenan has solicited his business. In the opinion of the witness there is a need for an additional common carrier in Moore County and his company would use the services of the Applicant if additional authority is granted.

On cross-examination, Mr. Dickerson testified that out of the three million gallons of product handled by his company each year in Moore County about 95% is handled by private carriage. Factors that require his company to call on common carriers include price increase situations, end of the month allocation situations, and other set-aside assigned volumes which are not part of the company's regular supply. Thomas Oil has not indicated to Kenan or any common carrier a desire to use common carrier service in lieu of private transportation. Because of the convenience of being able to control the flow and get the product to the right

place at the right time, depending upon a common carrier as the sole carrier would not be feasible for his company. His company seeks common carriers only in remote type situations. He had one problem with Kenan in June of this year where it took two weeks to give five loads out of Gulf's terminal. He does not know whether or not Southern could have provided this service.

DAVID FESPERMAN testified that he is Traffic Manager of Kenan Transport Company which holds authority from this Commission and is actively engaged in North Carolina as a common carrier of bulk commodities both liquid and dry including petroleum products and the specific commodities that are involved in the application in this case. Kenan operates five terminal facilities in North Carolina at Apex, Charlotte, Greensboro, Selma, and Wilmington at which are located 116 tractors and 64 tank trailers which are suitable for the transportation of petroleum products. The Company also operates terminals in Virginia, South Carolina, and Georgia and is able to transfer additional petroleum equipment where it is needed. Kenan is at the present time transporting petroleum products in the four-county area involved in application. A month-by-month traffic analysis of shipments into these counties for the months of January through September 1979 is shown on Kenan Exhibit No. 1.

Mr. Fesperman explained the dedicated rate provisions of the North Carolina Intrastate Common Carrier Petroleum Tariff under which the regular rate is discounted 15% in situations where the carrier can dedicate a tractor and trailer to the exclusive use of a customer for a minimum 20-week period and such equipment is utilized for 100 hours per week. He also explained that there is now in existence a 7% surcharge allowed on the North Carolina Intrastate Common Carrier Petroleum Tariff to offset increased fuel costs.

Mr. Fesperman testified that there are approximately 80 common carriers, including Kenan Transport, transporting petroleum products in North Carolina and that his knowledge of these carriers indicates that they are not experiencing full utilization of their transportation equipment at all times. He is familiar with the seasonal needs for additional common carrier service in the transportation of petroleum brought about in the winter months because of an increased demand for heating fuels and in the summer months because of an increased demand for gasoline due to vacation season. Kenan Transport Company holds itself out as a common carrier in the four counties involved in the application and has equipment available to serve oil jobbers such as the ones represented in the hearing. There are instances, because of emergency or sporadic needs, where Kenan Transport cannot send a truck to a shipper at the very minute it is asked for. There will be occasions, throughout the petroleum transportation industry, when any common carrier at a specific point and time will not have a piece of equipment that can be dispatched right away. It would

not be economically feasible for Kenan Transport or other common carriers of petroleum products to keep enough equipment on hand to be able to serve anybody at any given time on any given day throughout the entire year in North Carolina. Kenan Transport and other common carriers try to maintain fleet levels at a level that will satisfy the normal average demand. In the opinion of Mr. Fesperman there is a sufficient number of common carriers of petroleum products authorized in North Carolina to serve the four-county area involved in that application and that there is no need for additional common carrier service in the area.

On cross-examination Mr. Fesperman testified that a company would seldom experience 100% utilization of its equipment 100% of the time. He stated that the dedicated rate was of statewide application and could be of benefit to a shipper that used common carriage for only a part of its transportation needs. Kenan Transport has dedicated a tractor-trailer to an oil company that was using its own private fleet to deliver the product, but was able to tender efficient business to a common carrier to qualify for the dedicated rate. Also, oil companies can combine the volume of several of their customers and be able to tender to a carrier enough business to allow for the dedicated rate. Kenan Oil Company and Burlington Industries, for example, have used the dedicated rate.

Mr. Fesperman testified that he did not know the circumstances involved in the five loads handled by Kenan Transport for Thomas Oil Company in June of this year, but stated that the delay could very well have been caused by the blockading of the pipeline terminals by the independent truckers. As to the monthly allocations which had been testified to by various witnesses he does not know whether or not there is a mechanism within the allocation process to recover the allocation for loads that could not be hauled.

Tractors and trailers owned by Kenan Transport for its interstate and intrastate operations are used for gasoline and fuel oil as well as other chemical products. Kenan operates in a four-state base area of Virginia, North Carolina, South Carolina, and Georgia and will occasionally haul loads from one of those four states to states outside of the area. It has authority to haul to approximately 35 states.

Whether or not any of the oil jobbers testifying at the hearing could qualify for a dedicated rate would depend on whether the supplier involved had made dedicated arrangements with the common carrier that is doing the hauling.

Total intrastate petroleum revenues for Kenan Transport for the first nine months of this year were approximately $1,500,000 out of which approximately $33,000 was attributable to the four-county area involved. The Company, however, considers every load it hauls an integral part of

its total operation and over a period of time every load and every dollar of revenue could be subject to diversion through applications of this type. The transportation operations shown in Kenan Exhibit No. 1 include some shipments for major oil companies and some for small oil companies. The biggest major oil company customer of Kenan on a statewide basis is Exxon, with Texaco being second and Mobile and Phillips following. Traffic represented by the Exhibit includes that hauled for Gulf, Exxon, and Texaco as well as Hudson Pulp and Paper, Kenan Oil, Major Oil Company, Richmond Oil Company, Eastern Aviation, and Fortune Oil Company. Traffic to these four counties is a mixture of traffic from major oil companies and companies that are not major oil companies. Kenan Transport did not haul any traffic in this nine-month period for Union 76 nor for Phillips. Mr. Fesperman could not tell whether any product had been hauled for any of the oil jobber witnesses testifying in the hearing. He could not tell whether any of the transportation represented on Exhibit No. 1 would be diverted from Kenan Transport by granting of the application. No study has been bmade of what common carriers are based in the four-county area. The common carriers are located throughout the State, with the larger of the carriers operating terminals at locations near the pipeline terminals. Of the approximately 80 common carriers in North Carolina probably 25 or more have more than 10 tankers. According to his last knowledge some eight or nine carriers had at one time or another participated in the dedicated rate provision. He considers equipment dedicated under this provision to be 100% utilized.

Mr. Fesperman testified that Kenan has made and continues to make solicitations on Scotland Oil for its petroleum transportation business, but he does not know whether or not Mr. Medlin's or Mr. McNeill's business has been solicited. He has made no specific study of the needs in the four-county area for gasoline, kerosene, fuel oil, or diesel oil and does not know whether or not any characteristics of need in that area differ from other parts of the state. He did not hear any testimony in the hearing to indicate that any oil jobbers have lost allocations due to inability to get service.

On redirect examination Mr. Fesperman stated that he had not heard any testimony in the hearing that would indicate any particulay charactoristic of need for transportation of petroleum different from the rest of the State or that the problem with the monthly allocation is any different in the four-county area than in the rest of the state.

Based upon the foregoing, and the entire record in this proceeding as a whole, the Hearing Examiner makes the following

FINDINGS OF FACT

1. By the application, as amended, Southern seeks common carrier authority to transport Group 21, Other Specified Commodities: Gasoline, Kerosene, No. 2 Fuel Oil, and Diesel Fuel, in bulk, in tank vehicles, over irregular routes from all existing originating terminals at or near Wilmington, Morehead City, Beaufort, River Terminal, Thrift, Friendship, Selma, Apex, Fayetteville, and Salisbury to all points and places within the following counties: Moore, Montgomery, Hoke, and Richmond.

2. Southern now operates two retail establishments, a truck stop and a mini-convenience store, both of which operations sell Union 76 gasoline and petroleum products. These petroleum products are purchased at wholesale from McNeill Oil Company and Sandhill Oil Company both of which are Union 76 oil jobbers and under common control with Southern by reason of the ownership of the controlling stock in each company being held by Frank McNeill.

3. McNeill Oil Company and Sandhill Oil Company handle a volume of approximately 5 1/2 million gallons of petroleum products per year in the four-county area of Moore, Hoke, Montgomery, and Richmond Counties. At the present time approximately 98% of these petroleum products are transported in private carriage by one tractor-trailer unit owned by McNeill Oil Company. In emergency or unusual situations such as price increases or end-of-the-month allocations these companies have called upon the services of common carriers.

4. The primary purpose of Southern in seeking common carrier petroleum authority is to enable the private carriage transportation operations of McNeill Oil Company for itself and for Sandhill Oil Company to be handled by a separate corporation in order to insulate the oil jobbing operations from the liability of transportation operations and to bring about more profitable transportation operations for the commonly controlled companies. This latter purpose is hoped to be accomplished primarily through the fact that Southern, as a common carrier, would receive the regular common carrier rate for transportation of the petroleum products, including the 7% fuel cost surcharge, which would be 26% greater than the transportation allowance now given by Union 76 to McNeill Oil Company based on the reduced dedicated rate provisions of the common carrier petroleum tariff.

5. Southern has an approximate net worth of $6,900 consisting of cash and merchandise on hand in the mini-convenience store. If granted the operating authority, it would lease the tractor-trailer unit now owned by McNeill Oil Company. Frank McNeill, the controlling stockholder of Southern has a personal net worth of $441,000.

6. If granted the common carrier authority sought in the application, Southern, in addition to handling the transportation needs of McNeill Oil Company and Sandhill Oil Company, would hold itself out to provide transportation services in the four-county area involved to other shippers including Scotland Oil Company and Thomas Oil Company who supported the application.

7. Scotland Oil Company is an oil jobber handling approximately five million gallons of gasoline and petroleum products in the four counties of Moore, Montgomery, Hoke, and Richmond. Approximately 75% of this product is transportated in company-owned trucks with common carriers handling the remainder of the transportation requirements. Scotland Oil Company has received good service from Kenan Transport Company and other common carriers but, in emergency type situations such as the desire to purchase increased volumes prior to pending price increases, or equipment shortages due to the independent truckers' strike, have experienced certain occasions where common carriers could not furnish equipment at the specific time requested.

8. Thomas Oil Company is a Phillips 66 oil jobber handling about three million gallons of gasoline and petroleum products a year in Moore County. About 95% of this product is transported in company-owned trucks. This company utilizes private carriage because of the convenience of being able to control the flow of the product and does not desire to depend solely upon common carriage. It utilizes common carriage only in remote situations such as price increases, end-of-the-month allocations and assigned volumes which are not from its regular suppliers. The only specific incident of use of a common carrier cited by Thomas Oil Company was in June of this year where Kenan Transport was requested to haul five loads out of the Gulf terminal.

9. There are approximately 80 common carriers who have intrastate authority issued by this Commission to transport gasoline and other petroleum products. A number of these carriers, including the Protestants Kenan Transport Company and Eastern Oil Transport, Inc., are authorized to engage in and are engaged in the transportation of petroleum products in the four-county area involved in this application. Neither Kenan Transport Company nor the other common carriers are experiencing 100% utilization of their petroleum transportation equipment at all times. The Protestant Kenan Transport operates five terminals in North Carolina at which are maintained 116 tractors and 64 tank trailers suitable for the transprotation of petroleum porducts with additional equipment readily available if needed. Kenan is actively engaged in transportation operations in the four-county area involved in this application and holds itself out as a common carrier of petroleum products available to serve oil jobbers and other shippers within the area.

10. Transportation requirements of gasoline and petroleum products of the type involved in this application are characterized by seasonal needs or peaks brought about by an increased demand for heating fuel in the winter months and an increased demand for gasoline due to vacation during the summer months. In adddition other emergency or sporadic needs are occasioned by price increases, fuel allocations, and recently, the independent truckers' strike which caused an overall shortage of petroleum transportation equipment. Because of these characteristics, particularly the emergency or sporadic needs, there may be occasions where the demand for equipment made upon a common carrier might exceed the equipment it has available for immediate use at a given time. It would be economically unfeasible for a common carrier to maintain sufficient equipment to be able to serve any shipper at any given time on any given day.

11. Southern has not shown that it would be able to provide common carrier transportation service for gasoline and petroleum products in the four county area involved in this application to meet all emergency or sporadic requirements of the shipper winesses or other shippers in any manner better than or different from the transportation service now available from the Protestants and other existing common carriers.

12. Public convenience and necessity does not require the proposed service of Southern in addition to existing authorized transportation service.

13. Southern has not shown that it is fit and able to properly perform the proposed service.

14. Southern has not shown that it is financially able to furnish adequate service on a continuing basis.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following

CONCLUSIONS

In this application for a common carrier certificate Southern, under the provisions of G.S. 62-262(e), first has the burden of proof to show to the satisfaction of this Commission:

> "(1) That public convenience and necessity require the proposed service in addition to existing authorized transportation service...."

The type of proof required to show public convenience and necessity within the meaning of G.S. 62-262 is further explained by Rule R2-15 of this Commission which provides that the Applicant must establish proof that a "public demand and need exists" for the proposed service in addition to existing authorized service. The Supreme Court of North Carolina and the Court of Appeals have in several decisions

stated the elements which constitute "public convenience and necessity," pointing out that they include such questions as "whether there is a substantial public need for the service" and "whether the existing carriers can reasonably meet this need." Utilities Commission v. Carolina Coach Company, 260 N.C. 43, 132 S.E.2d 249 (1963); Utilities Commission v. Trucking Company, 223 N.C. 687, 28 S.E.2d 201 (1943); Utilities Commission v. Southern Coach Company, 19 N.C.App. 597, 199 S.E.2d 731 (1973); Utilities Commission v. Queen City Coach Company, 4 N.C.App. 116, 166 S.E.2d 441 (1969). It is fundamental that the type of need required to establish public convenience and necessity is a public need for transportation service. The fact that an individual shipper may find it more convenient, more desirable or more profitable to convert its private carriage operations into a separate common carriage operation does not in any way support a finding of public convenience and necessity for the common carriage operation. See Utilities Commission v. Petroleum Transportation, Inc., 2 N.C.App. 566, 163 S.E.2d 526 (1968). Thus, the primary reasons for McNeill Oil Company and Sandhill Oil Company in supporting the granting by this Commission to Southern of a common carrier certificate do not establish any public need for the proposed service within the meaning of G.S. 62-262. Since these two oil jobbers who are under common control and ownership with Southern would continue to utilize the same equipment even if Southern were granted common carrier status there is no real transportation need on the part of these companies for the grant of authority to Southern.

Nor has there been sufficient showing of a substantial need on the part of Scotland Oil Company or Thomas Oil Company for common carrier service from Southern in addition to existing common carriers. Both of these carriers utilize their own equipment for the greater part of their transportation needs and call upon common carriers only when their own equipment is not sufficient. Neither of these companies testified as to any difficulty in obtaining common carrier transportation when needed except in the emergency or sporadic type situations occasioned by pending price increases, monthly allocations, and the abnormal shortage of equipment caused by the independent truckers' strike. Even in those situations there were very few specific incidents testified to where equipment was not available from existing common carriers. Obviously, it would be totally unfeasible from a practical and economical standpoint for a common carrier to maintain sufficient equipment to be able to serve any shipper at any given time on any given day. To find that existing common carriers were not reasonably meeting the public need for transportation of petroleum products because they did not maintain such level of equipment would be completely unreasonable. This is particularly true with respect to shippers, such as Scotland Oil Company and Thomas Oil Company, who elect to depend primarily on private carriage and look to the common carrier for service only in emergency type situations. For these reasons, the Commission concludes that Southern has failed to meet the

burden of proof to show that public convenience and necessity require the proposed service of Southern in addition to existing authorized service.

The provisions of G.S. 62-262 also place upon Southern the burden of proof of showing to the satisfaction of this Commission that it is "able to properly perform the proposed service" and "financially able to furnish adequate service upon a continuing basis." Since, if the authority is granted, it is the intent of McNeill Oil Company to lease its tractor-trailer unit to Southern and for McNeill Oil Company and Sandhill Oil Company to utilize Southern, as a common carrier, in lieu of the present private carriage operations, it is apparent that Southern will of necessity have to devote its equipmant and facilities primarily to fill the transportation needs of these two commonly owned companies. In fact, the evidence indicates that the equipment is now needed to handle the transportation requirements of the two companies and that, on occasions, it is necessary to seek the services of common carriers. There has been no showing that Southern would be willing or have the financial ability to maintain sufficient levels of equipment to serve the other shippers in the area including Scotland Oil Company and Thomas Oil Company in addition to serving the needs of its own commonly controlled companies. Nothing in the evidence indicates that Southern would be able to handle the emergency and sporadic needs of these two supporting shippers and other shippers in the area in any way differently from the Protestants or other existing common carriers. Except for serving its own commonly owned oil jobbers in lieu of private transportation, Southern has made no showing as to how it could operate as a common carrier of petroleum products. The Commission concludes that Southern has not met the burden of proof of showing that it is able to perform the proposed service within the meaning of G.S. 62-262.

IT IS, THEREFORE, ORDERED that the application of Southern in this docket be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of March 1980.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Sharon C. Credle, Deputy Clerk

DOCKET NO. T-902, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Henry Faircloth Transfer, Inc., 521 North John Street, Goldsboro, North Carolina, North Carolina Application for Permanent Common Carrier Authority to Transport Group 21, Soya Bean Meal, etc., Statewide	) RECOMMENDED) ORDER GRANTING) COMMON CARRIER) AUTHORITY

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on January 23, 1980

BEFORE: Wilson B. Partin, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

Lindsay C. Warren, Jr., Taylor, Warren, Kerr & Walker, P.O. Box 1616, Goldsboro, North Carolina 27530

Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., P.O. Box 2058, Raleigh, North Carolina 27602

For the Protestant:

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, P.O. Box 2246, Raleigh, North Carolina 27602

PARTIN, HEARING EXAMINER: This docket involves an application filed with this Commission on September 12, 1979, by Henry Faircloth, Inc. (Applicant), to transport Group 21, soya bean meal, fish meal, poultry meal, bone meal, feather meal, and meat meal, in bulk, to and from all points and places within the State of North Carolina.

On September 11, 1979, the Applicant filed with the Commission by telegram an application requesting temporary authority as a common carrier to transport such commodities from Southport, Beaufort, Fayetteville, Raleigh, and Goldsboro, North Carolina, to the Goldsboro Milling Company, Goldsboro, North Carolina. On September 24, 1979, Riverside Transportation Company, Inc., filed with the Commission a protest and motion for intervention and a protest to the motion for temporary authority.

Notice of the application for the permanent common carrier authority together with a description of the authority sought and the date and place of hearing was published in the Calendar of Hearings of the Commission dated September 26, 1979.

On October 1, 1979, the Commission entered an Order in this docket granting the request for temporary authority pending final disposition by the Commission of the application for permanent authority.

On October 5, 1979, Riverside Transportation Company, Inc., filed exceptions to the Order of the Commission granting temporary authority and requested a hearing thereon. Also, on October 5, 1979, I.W. Bowling, Inc., filed with the Commission a protest and motion for intervention in the application.

On October 12, 1979, the Applicant filed a response to the exceptions of Riverside Transportation Company, Inc., and by Order issued that same day the Commission set the exceptions to the order of temporary authority for hearing at the same time and place as the hearing for permanent authority.

By Order of October 18, 1979, the Commission allowed the intervention of both Protestants and permitted them to become parties to the proceeding. A subsequent motion filed by Riverside Transportation Company, Inc., to strike certain paragraphs of the response of the Applicant which had been filed on October 12, 1979, was likewise set for disposition at the time and place for hearing on the permanent authority.

After being continued on several occasions, the docket came on for hearing on January 23, 1980, with all parties being present or represented by counsel at the hearing. In support of the application the Applicant presented testimony of its President, Henry Faircloth, and its General Manager, William Nimick. The Applicant also presented testimony of William Derby, Jr., of Goldsboro Milling Company, in Goldsboro, North Carolina; John Doyle of Cargil, Inc., in Fayetteville, North Carolina; and Clayton Jenkins with Ralston Purina Company in Raleigh, North Carolina. The Protestants presented the testimony of I.H. Hinton of the Commission Staff, and Dennis A. Peacock, the President of Riverside Transportation Company. A subsequent stipulation between the parties was filed with respect to the Protestant I.W. Bowling, Inc.

Upon careful consideration of all the competent evidence offered at the hearing, including exhibits and stipulations, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant is a North Carolina corporation and is the successor to Henry Faircloth Transfer, a sole proprietorship, formerly owned and operated by Henry Faircloth, who is an officer and shareholder of Applicant. Applicant owns and holds Certificate C-15 issued by this Commission, which authorizes it to transport various commodities as an irregular route common carrier and as

otherwise provided in said certificate, a copy of which is on file with the Commission.

2. Applicant is now seeking permanent authority as an irregular route common carrier to transport certain Group 21 commodities consisting of soya bean meal, fish meal, poultry meal, bone meal, feather meal, and meat meal to and from all points and places within the State of North Carolina.

3. Riverside Transportation Company, Inc., and I.W. Bowling, Inc. (Protestants), are also North Carolina corporations. Riverside Transportation Company, Inc., is an irregular route common carrier operating under Certificate C-1084 which authorizes it to transport animal feed and feed ingredients between all points and places in North Carolina. I.W. Bowling, Inc., is also an irregular route common carrier operating under Certificate C-1077 which authorizes it to transport, among other things, feed ingredients to and from all points and places in North Carolina.

4. Applicant and its sole proprietor predecessor have been engaged in the transportation business for approximately 35 years. Applicant and its predecessor have owned and operated under various intrastate operating authority during this period, the last change in its certificate having been made in May 1978, when the Commission in Docket No. T-902, Sub 11, entered an Order approving the sale and transfer to Applicant of certain operating rights which authorized Applicant to transport, among other things, Group 6 agricultural commodities including feed over irregular routes between points and places within a radius of 150 miles of Goldsboro, North Carolina.

5. Applicant owns, operates, and maintains a terminal for its transportation business in Goldsboro, North Carolina, located at 521 North John Street.

6. Applicant owns and operates seven tractor units and five trailers suitable for the transportation of feed or feed ingredients. In addition, Applicant has leased two dump body trailer vehicles having a mechanism to unload feed or feed ingredients without a lift. Applicant's equipment has been filed and listed with the Commission and is specifically described in an exhibit attached to its application for permanent authority.

7. Applicant has also filed with the Commission certificates of insurance for its listed equipment and has published and filed with the Commission tariffs establishing rates for the transportation of the commodities that it is authorized to transport.

8. Applicant's current financial condition is reflected in Exhibit D attached to its application which shows a net worth of over $110,000.

9. The Commission has received no complaints concerning the operations of Applicant.

10. Goldsboro Milling Company, located in Wayne County, is an integrated poultry farm engaged in the business of growing and feeding turkeys exclusively. It operates a feed mill and its demand for feed ranges between 2500 tons to 1500 tons a week. The Company raises approximately 4,000,000 turkeys and has about 200,000 laying hens and some form of egg production at all times.

11. Goldsboro Milling Company manufactures its own feed and uses approximately 20 ingredients in its feed which are mixed and manufactured under 13 different formulas. Among ingredients used in its feed are soya bean meal, fish meal, poultry meal, feather meal, bone meal, and meat meal. Most of its soya bean meal is purchased from Ralston Purina, and Cargill, Inc., in Fayetteville. Meat meal is purchased from Carolina By-Products Company, Inc., in Greensboro. Poultry meal is purchased from Cape Fear Feeds in Fayetteville and fish meal from Standard Products in Beaufort and Southport.

12. None of the processors named in Paragraph 11 provide transportation for shipment of their products to customers. Their products are shipped and delivered to Goldsboro Milling Company by rail and motor freight common carriers.

13. Because of the nature of its business (manufacturing feed for growing turkeys) it is necessary for Goldsboro Milling Company to have available at all times dependable and reliable transportation service. Motor freight service is more flexible and readily available than rail service, particularly when emergencies arise.

14. The peak transportation need of Goldsboro Milling Company for all ingredients used in its feed including corn requires about 160 loads per week of 25 tons each. Of this volume approximately 38% or 60 loads per week represent the ingredients described in Applicant's application.

15. Goldsboro Milling Company's transportation needs are not being met by authorized carriers. Protestant I.W. Bowling, Inc., has not solicited the business since 1978. Protestant Riverside Transportation Company, Inc., has not solicited the business since May 1979, and according to its President's testimony the company does not wish to serve Goldsboro Milling Company. The prior service of Riverside Transportation Company, Inc., to Goldsboro Milling Company was not reliable.

16. Cargill, Inc., at Fayetteville and Ralston Purina at Raleigh are processors of soya bean meal and oil. Neither company provides transportation for its customers although they will assist customers in finding suitable transportation by rail or truck. Approximately 30% of their product is shipped by truck. Cargill, Inc.'s products are shipped all over the State of North Carolina. Most of the

Ralston Purina shipments are within a 150-mile radius of Raleigh.

17. In the opinion of the Traffic Manager for Ralston Purina there is a present need for more common carrier authority to transport soya bean meal by truck. This need has increased since the summer of 1979 when the Commission provided Ralston Purina with a list of carriers with authority to transport feed ingredients including soya bean meal. The list contained only 17 carriers. A previous list furnished by the Commission contained 49 carriers including some carriers who were only authorized to transport Group 6 agricultural commodities. Also, a change in short-haul rail rates has had the effect of increasing the demand for truck transportation within a range of 100 miles from the processor's plant.

18. Prior to the filing of its application for temporary and permanent authority to transport the feed ingredients described therein, Applicant had for several months transported feed ingredients to Goldsboro Milling Company. Applicant's President Henry Faircloth testified that he was told by representatives of the Commission that feed ingredients such as soya bean meal, bone meal, etc., could be transported by Applicant under its authority to transport feed as a Group 6 commodity although I.H. Hinton, Director of Transportation for the Commission, testified he had never given such an interpretation. It is clear from the testimony of several witnesses that confusion existed among carriers and shippers as to what authority was required from the Commission to transport feed ingredients. In fact, Dennis Peacock, President of Riverside Transportation Company, Inc., testified that for about a year before he received common carrier authority to transport feed ingredients his company frequently transported feed ingredients for shippers although he was operating at that time under a Certificate of Exemption.

CONCLUSIONS OF LAW

Under the provisions of G.S. 62-262(e) the Applicant has the burden of proof in this application for common carrier authority 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, (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. With respect to the showing of need, the Hearing Examiner concludes that although the shipper testimony falls short of showing a presently existing need for statewide authority, it does clearly show such need to and from all points and places within a radius of 150 miles of Wayne County, North Carolina. With respect to any issue of fitness which may have been raised by the testimony concerning past transportation operations of the Applicant involving feed

ingredients, the Hearing Examiner concludes that there was no evidence of any intentional or willful illegal transportation activities on the part of the Applicant which would render it unfit to engage in the business of a common carrier, but that, on the contrary, Applicant was at all times acting in good faith and that any transportation beyond the scope of its authority was caused by the apparent confusion which existed both among carriers and shippers as to the type of authority required from this Commission to transport feed ingredients. Accordingly, the Hearing Examiner concludes as follows:

1. That the public convenience and necessity require that Applicant be authorized to transport as an irregular route common carrier Group 21 commodities consisting of soya bean meal, fish meal, poultry meal, feather meal, bone meal, and meat meal to and from all points and places within a radius of 150 miles of Wayne County, North Carolina;

2. That Applicant is fit, willing, and able to properly perform this service; and

3. That Applicant is solvent and financially able to furnish adequate service on a continuing basis.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Henry Faircloth Transfer, Inc., is hereby granted permanent authority as an irregular route common carrier to transport Group 21 commodities, soya bean meal, fish meal, poultry meal, feather meal, bone meal, and meat meal to and from all points and places within a radius of 150 miles of Wayne County, North Carolina.

2. That the Applicant, to the extent that it has already not done so, file with this Commission evidence of the required insurance, list of equipment, and otherwise comply with the rules and regulations of this Commission and institute operations under the authority herein granted within 30 days from the date this Order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of June 1980.

(SEAL)	NORTH CAROLINA UTILITIES COMMISSION Sandra J. Webster, Chief Clerk
DOCKET NO. T-902, SUB 13	Henry Faircloth Transfer, Inc. 521 N. John Street Goldsboro, North Carolina 27530
	IRREGULAR ROUTE COMMON CARRIER AUTHORITY
EXHIBIT B	Transportation of Group 21, soya bean meal, fish meal, poultry meal, bone meal, feather meal, and meat meal in

bulk, to and from all points and places within a radius of 150 miles of Wayne County, North Carolina.

DOCKET NO. T-902, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Henry Faircloth Transfer, Inc.,	) FINAL ORDER
521 North John Street, Goldsboro,	) OVERRULING
North Carolina, Application for	) EXCEPTIONS AND
Permanent Common Carrier Authority	) AFFIRMING
to Transport Group 21, Soya Bean Meal,	) RECOMMENDED
Etc., Statewide	) ORDER

HEARD IN: The Commission Hearing Room, 430 North Salisbury Street, Dobbs Building, Raleigh, North Carolina, on August 27, 1980

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners John W. Winters, Edward B. Hipp, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Applicant:

Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602

For the Protestants:

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, P.O. Box 2246, Raleigh, North Carolina 27602

BY THE COMMISSION: On June 25, 1980, Hearing Examiner Wilson B. Partin, Jr., entered a "Recommended Order Granting Common Carrier Authority" in this docket. On July 10, 1980, counsel for and on behalf of the Protestants filed certain Exceptions to the Recommended Order and requested oral argument thereon before the full Commission. Oral argument on the Exceptions was subsequently heard by the Commission on August 27, 1980. Counsel for both the Applicant and the Protestants were present and presented oral argument on the Exceptions.

Based upon a careful consideration of the entire record in this proceeding, including the Exceptions and oral argument heard thereon, 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 dated June 25, 1980, should be affirmed and that each of the Exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the Exceptions to the Recommended Order filed herein on July 10, 1980, by the Protestants be, and each is hereby, overruled and denied.

2. That the Recommended Order in this docket dated June 25, 1980, be, and the same is hereby, affirmed.

3. That the temporary operating authority heretofore granted to the Applicant by the Commission pursuant to its Order dated October 1, 1979, be, and the same is hereby, cancelled.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of September 1980.

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

DOCKET NO. T-125, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Goldston Transfer, Inc., P.O. Box 338, Eden, North Carolina - Application for Common Carrier Authority to Transport Group 21, Malt Beverages and Related Advertising Materials; Materials, Supplies, and Equipment Used in the Manufacture, Sale, and Distribution of Malt Beverages; and Used Empty Beverage Containers, Statewide	) RECOMMENDED) ORDER) GRANTING) APPLICATION) IN PART

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 12, 1980, at 9:30 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602
For: Goldston Transfer, Inc.

For the Protestants:

Kenneth Wooten, Jr., Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: M.L. Hatcher Pickup & Delivery Services, Inc.

Vaughan S. Winborne, Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27601
For: Everette Truck Lines, Inc.

BENNINK, HEARING EXAMINER: By application filed with the Commission on October 11, 1979, Goldston Transfer, Inc. (Goldston or Applicant), seeks common carrier authority to transport Group 21, commodities as follows:

> Malt beverages and related advertising materials; materials, supplies, and equipment used in the manufacture, sale and distribution of malt beverages and empty beverage containers between points in North Carolina.

The matter was originally set for hearing on December 11, 1979, and was duly noticed in the Commission's Calendar of Hearings issued on October 29, 1979. The case was

subsequently rescheduled for hearing at the time and place designated above by Order dated December 28, 1979.

Protests and motions for intervention were filed in this docket by Everette Truck Lines, Inc. (Everette), and M.L. Hatcher Pickup & Delivery Services, Inc. (Hatcher). Intervention of these parties was allowed by appropriate Commission Orders.

At the hearing, the Applicant presented the testimony and exhibits of Archie W. Andrews, Executive Vice President of Goldston Transfer, Inc., and Edward P. Guerts, Assistant Corporate Traffic Manager - Operations, Miller Brewing Company (Miller) in suport of its application.

Mr. Andrews testified that he had been associated with trucking for 24 years; that Goldston is a North Carolina corporation which is wholly owned by Goldston, Inc.; that Goldston, Inc., has other subsidiaries engaged as a contract carrier and in leasing and sale of trucks; that the Applicant holds Common Carrier Certificate No. C-189 from this Commission; that Applicant holds emergency temporary authority from the I.C.C. in Docket MC-146659 authorizing the interstate transportation in North Carolina of the same commodities within the same territory sought in the present application; that Applicant has 16 full-time and five part-time employees; that its drivers are experienced; that Applicant has an excellent safety record; that Applicant is presently hauling about 25 truckloads of the commodities sought herein per day for Miller within the scope of its present authority; that Applicant has ample equipment to be used in the transportation for which authority is now being sought, including seven van can haulers designed for transporting empty beer cans and five tractors designed specially for this traffic; that Applicant has available to it additional equipment as needed from its affiliated leasing company in Eden; that Applicant is now operating as a profitable entity; that, in addition, Applicant has available to it the financial resources of its parent, Goldston, Inc., and the Fluor Corporation, parent of Goldston, Inc.; that Applicant seeks authority to serve points which it has been asked to serve, but cannot for want of present authority; that Applicant has been asked to provide service by Miller throughout the State; that Applicant has the required liability and cargo insurance on file with the Commission; that Applicant has also designated a process agent with the Commission and has filed tariffs with the Commission covering its present operations.

Edward P. Guerts testified that he is responsible for all transportation operations for the Miller Brewing Company, including the Company's facilities in North Carolina; that Miller presently requires 800 truckloads a week of inbound materials at its existing production level at Eden, North Carolina, and 15 - 17 rail cars a day; that in 1979, the Miller brewery at Eden shipped 18,045 rail cars and 31,763 truckloads of outbound products from that plant, of which

570 rail cars and 4,682 truckloads were shipped within North Carolina; that Miller's inbound supplies include glass, kegs, cans, cardboard separators, pallets, cartons, lids, crowns, and other items for the brewing process; that these products come from a variety of locations throughout the State; that the outbound products go to distributors who are located in every major city in the State; that Miller presently uses a number of intrastate carriers for its inbound and outbound movements, but that it does not have available sufficient capable intrastate common carriers to meet its needs; that Miller supported nine carriers in applications for certificates from the Commission two years ago, but only one of those carriers is hauling beer for Miller to any extent today; that Miller has experienced equipment difficulties with M.L. Hatcher; that Miller's Eden plant is increasing production by 25% and the volume of inbound and outbound movements from the plant is expected to increase approximately 25% as a result of this expansion at a time when Miller does not have sufficient common carriers to meet its present needs; that the witness is familiar with Applicant's equipment and service at the Miller plant and that such service is excellent; and that Miller's company policy is to use the same carriers for inbound and outbound movements from the Eden plant to minimize congestion and to minimize dead-head miles for truckers.

M.L. Hatcher Pickup & Delivery Services, Inc., offered the testimony of Ervin Harry Hatcher. Mr. Hatcher testified that he is Assistant Vice President and is therefore familiar with Hatcher's operations; that Hatcher holds Common Carrier Certificate No. C-1015 from this Commission and was supported by Miller in obtaining authority to haul malt beverages and supplies; that Hatcher established a terminal at Eden and that the witness had worked at the Eden Terminal; that Hatcher had hauled for Miller until November 1979; that Hatcher Exhibit No. 1 shows the movements from Miller at Eden produced revenues of $631,508.92 in 1979; that since November 1979, all of this traffic had been lost; that Hatcher has equipment available to meet the needs of Miller; that Hatcher had purchased 75 trailers and eight can haulers, but since November 1979, it has sold 60 of the trailers and all eight can haulers; that Hatcher could move everything for Miller except cans; that the witness is familiar with the Miller complaints; that these complaints involved rough side walls and holes in the floor; that the witness had previously received complaints about the doors on Hatcher's trailers; that some complaints involved landing apparatus; that one trailer lost its landing legs and had to have a tractor before it could be unloaded; that there were a few instances of other trouble with landing gear which the witness believed would be normal; that Hatcher's personnel and the traffic personnel of Miller had a personality conflict; that there were also a few problems with drivers; and that Hatcher has had some loss and damage claims from the brewery and from vendors, of which a couple are still outstanding.

Woodrow Everette testified for the Protestant Everette Truck Lines, Inc., that he is President of Everette; that Everette holds a Common Carrier Certificate from the Commission; that the Company owns 42 vans and has 26 leased tractors and 13 leased trailers which are mostly flat trailers; that Everette had set up a trailer pool in Eden until the traffic from Miller dropped off, at which time Everette's equipment was pulled back to Washington, North Carolina; that Everette has never hauled cans for Miller; that if Everette was offered a chance, it would reopen its trailer pool at Eden; that the witness does not see a need for additional authorized carriers; that the business Everette lost was with distributors and said carrier was moving eight truckloads a week; that this traffic dropped to three truckloads a month; that as Russell Transfer moved in, Everette moved out; that the traffic Everette was hauling is now being hauled by Mr. Russell; that if someone wanted Everette to haul, they would call Washington; that Everette solicited the movement of glass from Wilson but that other carriers are hauling that traffic; that Everette dealt directly with distributors and Miller was not involved; that Goldston Exhibit No. 5 represents Everette's present authority; and that Everette's equipment does not have rollers in the beds of the trailers.

Based upon a careful consideration of the application, the testimony and evidence presented at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant is a North Carolina corporation which presently holds Common Carrier Certificate No. C-189 issued by this Commission. The Applicant also holds emergency temporary authority from the I.C.C. granted in Docket IC-146659.

2. That the Applicant maintains a fleet of equipment which is specifically suitable for the transportation of the commodities involved in this application. Furthermore, the Applicant has the facilities and personnel necessary to service and operate this equipment.

3. That the Applicant has a good safety record.

4. That Applicant's financial statements indicate that it is solvent and it is presently operating at a profit. In addition, the Applicant has available to it the financial resources of its parent, Goldston, Inc., and, if necessary, the resources of the Fluor Corporation, parent of Goldston, Inc.

5. That the Applicant has been providing service within the scope of its present authority to Miller Brewing Company from its terminal at Eden, North Carolina, and that such service has been excellent.

6. That the Applicant has insurance, process agent designation, and tariffs on file with the Commission as required by the Commission's rules.

7. That the Miller Brewing Company has an extremely large volume of both inbound and outbound traffic to and from its plant at Eden, North Carolina; that the inbound freight comes from vendors and warehouses located throughout the State; that the outbound freight moves to distributors located in every major city in the State; and that Miller's vendors and warehouses change, causing changes in the flow to its plant.

8. That Miller is in the process of expanding its present operations and will ultimately require approximately 25% more trucking than it currently uses. Miller has a present need for additional common carrier service in North Carolina intrastate commerce.

9. That use of the same carriers on inbound and outbound movements results in a more efficient operation for both Miller and the carriers by eliminating dead-head miles and saving fuel.

10. That the Protestant, M.L. Hatcher Pickup & Delivery Services, Inc., although holding authority to transport the commodities involved in the instant application, has been terminated from transporting these commodities by Miller and Miller's vendors as a result of a business decision made jointly by said shippers.

11. That the Protestant, Everette Truck Lines, Inc., although holding authority to transport commodities in at least a portion of the territory involved in the instant application, does not have sufficient and proper equipment available to it to meet all the needs of Miller and its distributors for intrastate transportation services.

12. That the public convenience and necessity require a grant of common carrier operating authority to the Applicant in conformity with Exhibit B attached hereto in addition to existing authorized transportation service.

13. That the Applicant is fit, willing, and able to properly perform the common carrier transportation service set forth in Exhibit B attached hereto and made a part hereof.

14. That no matters exist which would disqualify the Applicant from being granted an additional authority to operate as a common carrier in this State under the operating authority set forth in Exhibit B attached hereto.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Under the provisions of G.S. 62-262(e) and Commission Rule R2-15, the Applicant has the burden of proof in this proceeding to establish to the satisfaction of this Commission:

1. That the public convenience and necessity require the proposed common carrier service in addition to existing authorized transportation service,

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.

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 therefore concludes, (1) that the Applicant in this proceeding has met and carried the burden of proof necessary to support and justify a grant of at least a portion of the common carrier operating authority applied for in this docket by Goldston; (2) that the operating authority set forth in Exhibit B attached hereto is in the public interest and will not unlawfuly affect the service which is presently being rendered to the public by other certificated common carriers; (3) that the Applicant is fit, willing, and able to properly perform as a common carrier under the operating authority described in Exhibit B; (4) that the Applicant is solvent and qualified, financially and otherwise, to operate on an adequate and continuing basis under the authority granted herein; and (5) that the application herein under consideration, being partially justified by the public convenience and necessity, should be granted in part and denied in part.

A careful review of the entire record in this case leads the Hearing Examiner to conclude that the Applicant has failed to carry the burden of proof in this proceeding to show a public demand and need for its proposed common carrier service on a statewide basis. In this regard, the Hearing Examiner notes that the testimony offered at the hearing by the Applicant's witnesses was primarily concerned with only the transportation needs of the Miller Brewing Company relative to shipments from and to its plantsite and facilities located at or near Eden, North Carolina. The Hearing Examiner further notes that, except for the Miller Brewing Company witness, no other shipper witnesses appeared at the hearing in this matter in support of Goldston's application for statewide operating authority. Accordingly, the Hearing Examiner concludes that Goldston has only sustained its burden of proof in this proceeding to the extent of the operating authority set forth and described in Exhibit B attached hereto. Such grant of common carrier operating authority is identical to the authority previously

granted by the Commission to the Protestant Hatcher and eight (8) other carriers in Docket Nos. T-1613, Sub 2, et al. It is clear that Goldston has failed to substantiate a need for its proposed common carrier service throughout the entire geographical area covered by its application.

IT IS, THEREFORE, ORDERED as follows:

1. That Goldston Transfer, Inc., be, and the same is hereby, granted an extension of irregular route common carrier operating authority under Certificate No. C-189 in accordance with Exhibit B attached hereto and made a part hereof. Upon this Recommended Order becoming final, Certificate No. C-189 shall be revised so as to incorporate and include the Group 21 operating authority set forth in Exhibit B attached hereto in addition to the existing authority presently held by the Applicant under said Certificate.

2. That the Applicant shall file with this Commission, to the extent it has not already done so, 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 the Applicant complies with the requirements set forth in Decretal Paragraph 2 above and begins operating under the additional authority herein authorized within a period of 30 days after this Recommended Order becomes final, unless such time is extended in writing by the Commission upon written request for such an extension, the additional operating authority granted herein will cease and determine.

4. That the Applicant shall continue to maintain its 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 readily identified from said books and records and 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 under request made to the Accounting Division, Public Staff, North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of June 1980.

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

DOCKET NO. T-125, Sub 9

Goldston Transfer, Inc.
P.O. Box 338
Eden, North Carolina 27288

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of Group 21 commodities as follows:

(1) Malt beverages and related advertising materials from the plantsite and facilities of Miller Brewing Company located at or near Eden, North Carolina, to all points and places within the State of North Carolina.

(2) Materials, supplies, and equipment used in the manufacture, sale, and distribution of malt beverages and returned empty malt beverage containers from all points and places within the State of North Carolina, to the plantsite and facilities of Miller Brewing Company located at or near Eden, North Carolina.

RESTRICTION: The authority granted herein is restricted against the transportation of commodities in bulk, in tank vehicles.

DOCKET NO. P-1938, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Pony Express Courier Corporation, P.O. Box 4313, Atlanta, Georgia 30302 - Application for Common Carrier Authority for: Transportation of Group 1, General Commodities Restricted Against the Transportation of Shipments Weighing in Excess of 200 Pounds and Group 21, Cash Letters, Commercial Papers, Documents and Records, Bank Stationery, Sales, Payroll and Other Media, and Business, Institutional, and Governmental Records, Statewide	) RECOMMENDED ORDER GRANTING COMMON CARRIER AUTHORITY

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 16, 17, and 18, 1979, and on December 6, 1979

BEFORE: Robert Gruber, Hearing Examiner

APPEARANCES:

For the Applicant:

James M. Kimzey, Attorney at Law, Kimzey, Smith & McMillan, 506 Wachovia Bank Building, P.O. Box 150, Raleigh, North Carolina 27602

Francis J. Mulcahy, Attorney at Law, P.O. Box 4313, Atlanta, Georgia 30202

For the Protestant:

Thomas W. Steed, Jr., Attorney at Law, Allen, Steed & Allen, P.O. Box 2058, Raleigh, North Carolina 27602

Peter A. Greene, Attorney at Law, Thompson, Hine, Caldwell & Greene, 900 Seventeenth Street, N.W., Washington, D.C. 20006

John M. Delany, Attorney at Law, Purolator Courier Corporation, 3333 New Hyde Park Road, New Hyde Park, New York 11530

GRUBER, HEARING EXAMINER: By application filed with this Commission on September 18, 1979, Pony Express Courier Corporation (Pony Express or Applicant) seeks common carrier authority as follows:

> Transportation of Group 1, General Commodities restricted against transportation of shipments weighing in excess of 200 pounds and Group 21, Cash letters, commercial papers, documents and records, bank stationery,

sales, payroll and other media, and business, institutional and governmental records, statewide.

Notice of the application for this common carrier authority together with a description of the authority sought and the date and place of hearing was published in the Calendar of Hearings of the Commission dated August 8, 1979.

On August 31, 1979, Purolator Courier Corporation filed Protest and Motion for Intervention which was allowed by Commission Order of September 6, 1979. Hearings were held on October 16, 17, and 18 and then were adjourned until the date of December 6, 1979, when the hearings were reconvened. All parties were present and represented by counsel at the hearing. The summary of the evidence presented at the hearing is as follows:

SUMMARY OF EVIDENCE

BRACK R. BAILEY, Assistant Vice President and District Manager of Pony Express Courier Corporation, testified on behalf of the Applicant. The Applicant is a Delaware corporation qualified to do business in the State of North Carolina and 18 other states. The Applicant is a wholly owned subsidiary of Baker Industries, Parsippany, New Jersey, which, in turn, is controlled by the Borg-Warner Corporation (Borg-Warner) of Chicago, Illinois. A copy of Borg-Warner's annual report for 1978 is found in Exhibit 1. According to Exhibit 1, Borg-Warner has assets in excess of $1.6 billion and in 1978 had net earnings of over $173 million. Borg-Warner is involved in a variety of manufacturing and service industries. Baker Industries provides a variety of services and products to protect people and property against fire, theft, intrusion, and other hazards. According to Exhibit 1 at page 30, Baker Industries had assets in excess of $194 million at the end of 1978 and during 1978 had net earnings of $1.9 million.

Pony Express presently operates as a motor contract carrier in the statewide transportation of Group 21 commodities, Cash letters, commercial papers, documents and records, bank stationery, sales, payroll, and other media, and business, institutional and governmental records pursuant to Permit No. P-215. Pony Express is the successor of Financial Courier Corporation, itself the successor of Wachovia Courier, a subsidiary of the Wachovia Corporation. Pony Express' existing service is essentially the same as that which was previously provided by Financial Courier and Wachovia Courier. In addition to its North Carolina operations, Pony Express also provides service in 13 other states, on both an intrastate and interstate basis. Pony Express has an application pending before the Interstate Commerce Commission for authority to transport general commodities between all points and places in North Carolina, South Carolina, and Virginia. Pony Express also holds authority from the Civil Aeronautics Board to provide

airfreight forwarding service for all types of freight throughout the United States.

Pony Express is a sister corporation to Wells Fargo Armored Service Corporation which provides intrastate armored car service in North Carolina.

Pony Express presently provides expedited transportation service for documents related to the banking and data processing industries and to other industries throughout the State of North Carolina. This type of service requires swift and efficient transportation with flexibility and careful accountability of all shipments. The Applicant also has extra vehicles and courier guards available for special runs. Pony Express' service includes the following features: (a) full territorial coverage throughout North Carolina, (b) door-to-door pickup and delivery, (c) same-day or overnight service as required by the shipping public, (d) automatic pickup and delivery service as requested by customers, (e) transfer boxes for those customers who require after-hours pickup and delivery, (f) special or dedicated service to meet special customer needs, (g) automatic return of refused shipments, and (h) automatic correction of missent shipments. Present operations and the existing terminals could be used for the expanded authority.

Pony Express presently uses automobiles, station wagons, vans, and pickup trucks with camper backs. Exhibit 7 shows that Pony Express presently has 150 vehicles used in North Carolina intrastate commerce. Vehicles are now leased from Borg-Warner Leasing, a subsidiary of the Borg-Warner Corporation. Pony Express would continue to use the same type of vehicles for its expanded authority and it has access to a virtually unlimited number of vehicles.

Operationally, Pony Express' operations are described as a hub and spoke operation. Vehicles move to and from hub locations just as spokes emanate from the hub of a wheel. Pony Express' major hubs are located in Winston-Salem, Raleigh, and Charlotte with additional operations centers in Asheville, Greenville, Jacksonville, and Whiteville, plus other satellite locations. Pony Express also provides "line-haul" service between operations centers. Exhibit 5 is a map showing the broad expanse of Pony Express' operation in North Carolina.

Pony Express' facilities vary with location; however, all have office space, vehicle parking areas, and storage space. Bulk gasoline storage tanks exist at Winston-Salem and Raleigh and are planned for Charlotte. Pony Express has 45,000 square feet of storage space in Winston-Salem.

By the present application, Pony Express proposes to take the service features of its existing operations and offer them to a larger segment of the shipping public. The proposed service would be established on the same hub and

spoke theory as the Pony Express' existing facilities which are satisfactory for the beginning of expanded operations.

Pony Express presently employs 260 employees in North Carolina including 242 courier guards, a full-time mechanic, a sales representative and 16 administrative and supervisory personnel. An additional sales representative is scheduled to begin work on January 1, 1980. Sales representatives are responsible for aggressively seeking new business within the scope of operating authority and for insuring that service to existing customers is satisfactory. Supervisory personnel are available at all operations centers in North Carolina and, if necessary, additional supervisors will be added as operations expand.

Grant of the present application would improve Pony Express' overall efficiency, particularly in the area of fuel usage. On all but line-haul movements, vehicles operate at approximately 50% capacity yet the scope of existing authority makes it difficult to add additional traffic. The grant of the present application would permit the reduction of excess capacity and the improvement of fuel efficiency. The grant would be particularly beneficial in enabling Pony Express to provide expanded service in geographic areas that it already serves. The proposed service is compatible with existing operations since service to banks and data processing centers causes approximately 35% of the fleet to be idle between 10:00 a.m. and 3:00 p.m. each day. Pony Express could improve its overall efficiency by operating these vehicles for the benefit of other customers during this slack period. Pony Express has an existing series of bills of lading, run sheets, and freight manifests which can be efficiently used in the expanded operation.

Because of the strict time schedules followed by courier guards, the dispatcher can easily contact a courier guard en route by telephone.

Pony Express has a comprehensive safety program. Courier guards are carefully screened prior to employment and they are trained throughout their employment. Vehicles are inspected each day and problems are corrected to avoid unsafe operation. Courier guards are instructed in accident reporting requirements, and accidents are reviewed to determine the cause and to prevent recurrence.

Pony Express has a vehicle maintenance program designed to obtain peak vehicle performance. Maintenance records are maintained and reviewed periodically to identify recurring problems. Pony Express has a mechanic in Winston-Salem and it has agreements for vehicle service with maintenance facilities throughout the State.

Pony Express has certificates of insurance on file with the Commission in full compliance with the Commission's regulations.

As of December 31, 1978, Pony Express had total assets of $3.9 million and as of June 30, 1979, it had total assets of $4.1 million. (Exhibits 11-12). Pony Express had revenue of $7.6 million in 1978 and $4.5 million for the first six months of 1979. (Exhibits 13-14). The North Carolina district itself had revenues in excess of $2 million for the first six months of 1979 and realized an excess of operating revenue over direct operating expenses of $330,465. Pony Express' revenue is increasing on an annualized basis and funds are available for the expansion of operations. Expansion can be covered by current revenue and, if any capital expenditures are needed, funds will be made available from the resources of the parent companies.

On cross-examination Mr. Bailey was queried as to the relationship between existing operations and the proposed operations. Pony Express does not intend to surrender its contract carrier permit but will provide expanded service on its existing vehicles. Pony Express presently has between 200 to 300 contracts on file with the Commission and Pony Express continues to provide the service described in those contracts. Pony Express does not have a schedule of times and routes by which it will provide an expanded service; however, this represents no great problem because of the number of vehicles already operating between the hub and the outlying areas. The new customers under the expanded authority will be offered the same service features as described in Mr. Bailey's direct examination.

Pony Express' proposed service would be restricted against the transportation of shipments weighing in excess of 200 pounds; however, Pony Express proposed no restriction on the length, height, or dimension of shipments. If necessary, Pony Express will acquire larger equipment to provide service for packages of large dimensions; however, there are no specific projections for the addition of larger equipment.

As an example of Pony Express' ability to provide statewide, overnight service, Mr. Bailey stated that a shipment from Elizabeth City to Asheville would be transported, by a vehicle already domiciled in Elizabeth City, from Elizabeth City to the Greenville terminal, to the Raleigh terminal, to the Winston-Salem terminal, and then to Asheville. This could be provided on existing routes between those cities and, in fact, could go further west of Asheville to Murphy. The present schedule would involve a 5:00 p.m. pickup at Elizabeth City for delivery to Greenville prior to 7:30 p.m. and further delivery to Raleigh by 10:30 p.m. The shipment would be delivered to Winston-Salem by 3:00 a.m. and depart Winston-Salem at 6:00 a.m. for delivery in Asheville at 9:00 a.m.

Pony Express will provide special service and dedicated service. Special service is an on-call special service requested by some customers, and dedicated service indicates that service is dedicated to the specific time frames. The

service is available to any shipper in the State of North Carolina to provide general commodity transportation between any two points. Charges for this service would be according to the published tariff but similar to those charges presently provided for similar service under contract carrier authority.

Mr. Bailey clarified the Applicant's equipment list (Exhibit 7) by noting that the reference to Gelco Corporation (Gelco) that the vehicle in question was leased from Gelco. As indicated earlier, Pony Express now leases vehicles from a Borg-Warner subsidiary; however, vehicles leased from Gelco will be used for the duration of the present leases.

On questioning with regard to Pony Express' financial status as reflected in Exhibits 11-14, Mr. Bailey noted that the North Carolina district provides approximately 50% of the Company's revenue and approximately the same percentage of expenses. Management has given assurances that funds will be available for expansion of operations.

Although 35% of the fleet is idle between 10:00 a.m. and 3:00 p.m. each day, Pony Express intends to provide service during all hours. If additional vehicles or personnel are needed, they will be obtained.

On redirect examination Mr. Bailey made it clear that, while the Company does have existing routes, it will modify its routes to provide service to all locations throughout the State. Mr. Bailey also indicated that it is Pony Express' intention to offer the complete service described in his testimony and that it would be available to all shippers even though every shipper may not need each and every service feature available.

PUBLIC WITNESSES

JERRY WALKER, Manager of Electrical Equipment Company, located in Raleigh, North Carolina, testified in support of the application. Electrical Equipment Company is in the large electrical equipment repair business and supplies and sells repair parts for electrical equipment machinery. The company ships to heavy and light industrial companies in North Carolina from Greensboro to the coast.

The company does a large business in renewal parts for machinery which breaks down and can only be repaired with specialized parts. The company has two trucks which it uses for regular route deliveries to its customers once a week; however, it also requires service for emergency shipments which its own fleet cannot provide. These emergency shipments are needed because a customer's machine is broken and the customer is loosing production time while waiting for the repair part. In this type of situation, bus shipments, UPS shipments, air shipments, or private vehicles may be used. The existing services are not satisfactory.

The use of Electrical Equipment Company's employees or the employees of a customer is a costly inconvenience. Particularly in small towns in eastern North Carolina, the bus is not dependable. The Electrical Equipment Company would find the service proposed by Pony Express to be useful to it. While the company would probably have 10 shipments a week from Raleigh and approximately five shipments a week from its Laurinburg, North Carolina, location, the service proposed would be valuable to the shipper.

The shipper is not familiar with the service of Purolator and it has not been approached by any Purolator representative.

On cross-examination the witness stated that the company would continue to use its own two trucks for the large shipments but that it needed common carrier service for small but important shipments which must be transported quickly.

ROBERT BECK, Vice President of Traffic for Threads, U.S.A. (Threads), testified in support of the application. The company ships threads to all sections of the State from Gastonia. The company ships to "cut and sew houses," shoe manufacturers, canvas, awning and tarpaulin, drapery shops, and manufacturers of sheets, pillowcases, and garments. The company ships approximately 60 intrastate shipments per day with a weight of less than 200 pounds.

The company requires fast door-to-door service because its product goes largely to the high fashion industry where time is of the essence, particularly late in a fashion season. In this business, a delay of a few days makes a significant difference. In addition, Threads has a number of competitors in the North Carolina area and Threads requires speedy service in order to beat competition.

Threads presently uses UPS, motor carriers, and bus lines in North Carolina.

The service of UPS is generally satisfactory; however, UPS does not adequately provide service in the eastern part of the State about 40 or 50 miles from their satellites. UPS's service is also insufficient in that it has a restriction on shipments of up to 50 pounds per package and 100 pounds per day per consignee. Because of this restriction, many of the witness's shipments must be unpacked and repacked to meet the weight restrictions. In some cases shipments must be split and sent over a two-day period. This unpacking is costly to the witness and causes additional paper work and confusion.

The witness is not satisfied with the service of general freight motor carriers because they do not provide good service to areas which are away from their main traffic lanes. In some cases, third and fourth morning delivery is not unusual. There is no problem with general freight motor

carriers' weight restrictions; however, their minimum charges increase the cost of the witness' transportation.

The witness used Purolator's service several years ago during the UPS strike and his company has used Purolator in its Tupelo, Mississippi, office. No one, however, has solicited the witness' traffic with regard to packages of thread.

The witness expressed a desire to use the service features proposed by Pony Express.

On cross-examination the witness stated that he found Purolator's service during the UPS strike to be adequate under the conditions at the time. After the strike, however, the witness did not continue using Purolator because it lacked the service to certain areas of the State. The witness was unaware of any changes in Purolator's operating authority since that time.

The witness clarified his direct testimony to show that his company has to break down approximately six to eight packages a day to meet the UPS (and current Purolator) weight restrictions. The witness considers it a significant problem each month.

HENRY BOOK, Senior Vice President of Book and Company in Winston-Salem, North Carolina, testified in support of the application. Book and Company is an actuarial consulting firm which might otherwise be defined as an employees' benefit consulting firm.

Mr. Book is responsible for the profit sharing allocations area of the company's business. In his position, Mr. Book has many bank customers but his business is rapidly branching into direct corporate work as well.

The witness' division ships allocation work which is the end result of its consulting work to points throughout the State. The shipments vary in size from a large envelop to two or three or four boxes weighing up to 30 pounds. At present, the company uses Pony Express for shipments to banks. The company has found that Pony Express is "the most reliable source for getting information from one place to the other and the service has been very good overnight."

Book and Company supports Pony Express' application because it needs a better means of getting data from Winston-Salem to its client locations throughout the State. At present, the company has approximately 50 nonbank customers in North Carolina and it has a potential market of about 700 companies in North Carolina, South Carolina, and Virginia with the majority in North Carolina. The company also needs transportation service for projectors, slide screens, slides themselves, and different productive shows that have been produced. All these transportation services

must be as expeditious as possible in order for Book and Company to meet its customers' needs.

Book and Company presently transports its items by U.S. Mail and by UPS on occasions. The witness is not confident that UPS can provide the needed next-day service. Mail service, particularly express mail, is generally good; however, given the choice between mail and Pony Express, the company prefers Pony Express because of its experience with Pony Express in North Carolina.

The witness has little experience with Purolator other than to know of its existence.

The witness' customers are spread throughout the State of North Carolina and are not concentrated near Winston-Salem.

On cross-examination the witness stated that his company does not have a contract with Pony Express but that the contracts are between Pony Express and the bank customers. The witness understands that Pony Express cannot transport nonbank items under its present authority.

The audiovisual media and material to which the witness referred in his direct testimohy is presently hand carried or sent by plane; however, the company has not found a satisfactory solution. The company has attempted to find other means of transportation. In attempting to find other means of transportation, Purolator's service was not recognized as having authority to transport these items.

GEORGE WOOD, Sales Representative for Cardiac Pacemakers, Inc., Charlotte, North Carolina, supported the application. Mr. Wood represents his company in all portions of North Carolina except the Asheville area. His major areas include Winston-Salem, Durham, Chapel Hill, Raleigh, Charlotte, Wilmington, Wilson, and Rocky Mount.

The witness requires transportation service for cardiac pacemakers. The pacemakers, including their packaging, weigh approximately one pound. The pacemakers are not only sent to thoracic surgeons, cardiologists, and other heart specialists at hospitals throughout the State, but shipments may be destined for any location in the State where there is a hospital. The witness is primarily interested in transportation service for his "car stock" which is stock he carries in his car for emergency situations. Emergency situations arise when a heart implant operation is pending or when a hospital has used its inventory of pacemakers and does not want to risk not having pacemakers available for emergencies. Because pacemakers wholesale at $2,100 to $2,600, few hospitals can afford to have an inventory of more than one or two pacemakers at any one time.

The witness has been representing the company for a short period of time; however, he is changing the method of operation used by his predecessor. His predecessor would

provide delivery service through his own vehicle; however, the witness cannot operate that way and needs a delivery service. The witness has contacted Purolator; however, Purolator was unable to provide the precise service required, particularly with regard to the storage of pacemakers.

The witness has discussed the type of service he needs with Pony Express and he could use that service.

Roy Langley, Regional Director of Professional Relations with Biomedical Reference Laboratories, Burlington, North Carolina, supported the application. Biomedical Reference Laboratories processes blood, serum, tissue, and urine at its laboratory in Burlington. The items originate at doctors' offices, hospitals, clinics, veterinarians' offices, and other laboratories throughout the State.

The witness has a need for six transportation movements a day. The company has 40 cars operating on routes throughout the State of North Carolina. The various routes are based in Asheville, Charlotte, Edenton, Rocky Mount, Kinston, and Wilmington. After the company-owned cars have made pickups they return to these base points and the company needs transportation service from these base points to Burlington.

Speed is an important factor in the transportation of these items for several reasons. Some samples are frozen and must be maintained at specific temperatures to keep organisms alive. The laboratory also requires speed in situations involving toxicology where a patient may be toxic and speed of evaluation is important. The witness does not need return shipments to his customers throughout the State because telecommunications are used.

The company presently uses whatever transportation it can find, including buses, its own vehicles, and charter aircraft. The witness tried to use Purolator's service from Asheville and Wilmington but the service was of no value to the company's operation.

The witness would try Pony Express' service if it obtained authority.

The witness found a disadvantage in the bus service because buses do not provide door-to-door service and they frequently fail to leave shipments at the proper bus station. When shipments are not left at the bus station, it is difficult to retrieve them even though patients may be involved in critical situations.

The size of the witness' shipments varies between 40 and 70 pounds.

On cross-examination the witness clarified that it requires six shipments per day between six locations in North Carolina and Burlington.

With regard to the witness' attempt to use Purolator's service between Wilmington and Burlington, the witness stated that the company presently uses a charter aircraft; however, it could use Pony Express because its departure time from Wilmington would be satisfactory. The witness' company had contacted Purolator but was told that Purolator did not serve that area.

With regard to the Asheville situation, the witness uses Piedmont Airlines; however, flights are being changed and cancelled. The company has contacted Purolator but was apparently unable to get service.

GERALD F. SHELTON, Executive Vice President and General Manager of Wilmington Hospital Supply, Wilmington, North Carolina, supported the application. Wilmington Hospital Supply is a wholesaler of medical supplies for hospitals, doctors, clinics, and nursing homes throughout the State of North Carolina. The company supplies disposable hospital supplies such as underpads, surgical gloves, and caps and gowns, reagents, and a small amount of equipment. Service is provided to 200 institutions, 500 physicians, and 50 to 60 nursing homes, 95% of which are within the State of North Carolina.

The witness ships between 50 to 60 small packages per day. These small packages result from back orders and weigh between 10 and 40 pounds. Back orders must be transported quickly because hospitals do not maintain large inventories and the company must supply the items. There are approximately eight surgical supply houses in North Carolina and Wilmington Hospital Supply must provide quick service to compete with those houses.

Wilmington Hospital Supply presently uses UPS but is dissatisfied with the service. The witness is dissatisfied with UPS's service because UPS has a size limitation which often requires the shipper to break down packages and repack them. Not only is this time consuming and expensive, it creates a risk that the wholesaler will not pack breakable items as well as the manufacturer had them packed. UPS also requires that shipments be able to withstand a dropping of 30 inches; however, Wilmington Hospital Supply ships many delicate instruments which cannot be dropped 30 inches. UPS also has packages which are damaged frequently. Since some of the packages include instruments costing between $200 and $300, the company suffers a serious loss if a package is lost or damaged. Finally, UPS's service has been deteriorating in that Wilmington Warehouse Supply is experiencing four-, five-, or six-day deliveries where previously two-day deliveries had been made. The long delivery periods are unsatisfactory to the company.

The witness is aware of Purolator but does not know its service.

On cross-examination the witness stated that he has not had experience with Pony Express but that he needs an alternative to United Parcel.

TED SANSBURY, of Christian Brothers Wholesale Flowers, Winston-Salem, North Carolina (Christian Brothers), supported the application. Christian Brothers is a wholesale florist which purchases large quantities of flowers from growers throughout the United States, South America, and Europe, brings them to a warehouse in North Carolina, and redistributes the flowers to retail florists. From its warehouse in Winston-Salem, the company services retail florists as far west as Hickory, as far south as Charlotte, as far north as the Virginia state line, and as far east as Randleman and Denton, North Carolina. The company services approximately 125 accounts in that area.

Speed of delivery is important to a wholesale florist because flowers, by their nature, are perishable. In addition, unlike weddings which are planned in advance, there is no warning when flowers may be needed in large quantities for a funeral. Accordingly, a swift delivery service such as that of Pony Express would be extremely valuable.

At present, Christian Brothers uses local delivery services in the Forsyth County area. In outlying areas shipments are made by bus or Purolator in some areas.

The bus service is unsatisfactory because customers must pick up the shipments at a bus station and in small towns the bus agency is not open at all hours.

Purolator's service is not entirely satisfactory in that it cannot make same-day deliveries when shipments are ready early in the morning. Furthermore, Purolator does not provide service to certain areas of the State. For example, Purolator would not provide service to Harmony, Sparta, and Hickory, North Carolina.

Christian Brothers also requires service for incoming shipments of flowers from Etowah, Horseshoe, Pittsboro, and Asheboro, the locations of four major flower growers in North Carolina.

The shipments involved weigh between 25 and 45 pounds and are shipped in boxes which measure up to 52 by 24 by 14 inches.

On cross-examination the witness noted that buses provide poor service because of limited staffing in small towns.

With regard to Purolator's service the witness indicated that he has tried to communicate with Purolator on many occasions regarding his need for service. The witness has made his service needs known to Purolator; however, if

Purolator's service has expanded, Purolator has not made that known to the witness.

The witness has spoken to Pony Express' personnel regarding proposed service and, based on the route sheet shown (Exhibit 5) and the nature of existing service, the witness would find Pony Express' service beneficial.

The witness indicated that he has an immediate interest in expanding service to Greensboro, Mount Airy, High Point, Thomasville, and Burlington if service were available. The witness could expand to these areas if transportation service were available.

On redirect examination the witness reiterated that he has contacted Purolator regarding his service needs but has not been fully satisfied. The witness also stated that the service described in Exhibit 5 would provide better coverage than Purolator's present service.

JOHN SULTON, President of Christian Brothers Flowers, Inc., in Grimesland, North Carolina, supported the application. The witness is employed by the same company as the previous witness; however, this witness is responsible for the area of North Carolina east of the greater Winston-Salem area. His area covers everything east of I-95, north to Elizabeth City, south to Wilmington, and west to Wilson and Rocky Mount. The witness has approximately 125 active accounts and needs the same-time critical service as Mr. Sansbury.

Mr. Sulton presently uses his own vehicles; however, he wants to discontinue private carriage because these trucks have been increasing in expense and because they require substantial deadhead travel.

The witness has used Purolator in areas near Wilmington, Jacksonville, and Morehead; however, Purolator has been unable to provide service more than once a week in Southport and only limited service in Swan Quarter and Engelhard. The witness is unable to obtain same-day delivery in eastern North Carolina from Purolator. Same-day service is necessary because of the perishability of the flowers and because of the summer heat. Christian Brothers has lost at least one account because of transportation service.

The witness has used bus service in last resort situations; however, many bus stations in eastern North Carolina are not open at all hours. UPS is an unacceptable alternative because of the size of the packages and because of their perishability.

If Pony Express were granted authority, the witness would immediately tender seven to 15 deliveries per day to Pony Express. The grant of Pony Express' authority would also assist in the expansion of the witness' business.

On cross-examination the witness emphasized the importance of same-day service for his business and indicated he would use courier service which best met his needs. The witness indicated that the bus provides same-day service; however, the bus station is a distance from his operation and bus scheduling is not conducive to florist operations. If Purolator offered the service, the witness would discuss the possibility of Purolator providing service between its operation and the bus station.

DAN BEAVER, Warehouse Manager of Fisher Scientific Company in Raleigh, North Carolina, supported the application. Fisher Scientific distributes a variety of medical laboratory supplies, educational materials, and hospital supplies throughout the State of North Carolina. The items include reagents, med lab tests of all types, glassware, instruments, and other items. Fisher Scientific ships items from Raleigh to hospitals, high schools, private schools, research facilities, and similar institutions in just about every town in North Carolina. Packages range between five pounds and 50 pounds and measure from three inches to 84 inches. The Company is primarily concerned with shipments to hospitals because hospitals lack the room to inventory vast amounts of supplies and they rely on companies such as Fisher Scientific to do that for them.

The witness' shipments are classified as either rush or emergency. Rush shipments must be delivered within one or two days. Emergency shipments must be delivered even faster and often, warehouse employees will be used for these deliveries. The use of warehouse employees is unsatisfactory since there is no one to replace that employee when he is absent. The witness has about 30 rush shipments a week and three or four emergency shipments a week.

The witness uses a local carrier in the Raleigh - Durham area but tenders most of its traffic to UPS. While UPS's service is basically satisfactory, UPS will not accept certain items either because they are chemicals or because UPS tends to damage them. UPS also does not provide overnight service to Pinehurst, North Carolina.

The witness has contacted Purolator on several occasions during the past one and one-half years, and a Purolator representative has promised to call; however, no sales representative has ever called and offered service.

On cross-examination the witness explained that he has not yet used Pony Express' service but has discussed various service features and would use that service if it were made available.

On redirect examination the witness clarified the weight of the packages tendered and indicated that, while shipments average between 5 pounds and 50 pounds, there are many

shipments weighing up to 200 pounds and he would be willing to tender these shipments to Pony Express.

DR. JOHN FREEMAN, Public Health Veterinarian for the North Carolina Division of Health Services, testified in support of the application. Dr. Freeman, as pertinent to this application, is responsible for the rabies control program in North Carolina. He determines what animal heads must be sent from locations throughout the State to laboratories in Raleigh for testing. Transportation service must be performed on a rapid basis because animal heads may deteriorate and, thus, prevent proper evaluation. In addition, medical science has no specific criteria for when rabies treatment must begin; therefore, doctors try to initiate treatment as quickly as possible. Properly packed, these animal heads weigh up to 20 pounds. The witness also requires incoming shipments of blood or serum for testing. These shipments also must be transported rapidly to prevent breakdown of the samples.

The witness also requires outgoing shipments from one of four warehouses for rabies vaccine. UPS is available to provide service for these items; however, UPS is not available at the times needed by the witness. Shipments must, therefore, be sent by a bus company or by the State Police. While the witness has gotten cooperation from the police, he does not know whether the police find this a satisfactory arrangement.

The witness is not aware of Purolator's service. He has seen vehicles but has never been advised of the service provided.

On cross-examination the witness reiterated his primary concern in having service available for these emergency shipments. He further stated that he would be willing to use any available service; however, as far as he had been made aware, Purolator was in the oil filter business.

On redirect examination the witness reiterated that service is needed throughout the entire State of North Carolina, from any location where a person may be bitten by an animal.

CECIL STEPHENS, Warehouse Manager for C.C. Dickson Company, supported the application. The company is a wholesaler of various parts and supplies for the air conditioning and heating industry. The witness ships these parts from its warehouse in Raleigh to customers primarily east of Raleigh but as far west as Durham and Greensboro. His area includes Lumberton, Fayetteville, Rocky Mount, Greenville, and Elizabeth City.

The witness requires one- or two-day deliveries because many refrigerators cannot be left in a nonworking state without the deterioration of items in the refrigerator. The witness has used the bus service but finds the need to

deliver shipments to the bus station and have a customer pick it up to be unsatisfactory.

The witness needs service for packages between 50 pounds and 200 pounds. Particularly during the summer, three or four shipments of these items may be needed.

Wade Allen, the witness' supervisor, previously testified in support of Purolator's application for general commodity authority in September 1977; however, even though Purolator has the operating authority, no Purolator representative has so advised the shipper. Accordingly, the Company has not used Purolator's service.

On both cross-examination and redirect examination, the witness stated that he would be willing to use any authorized carrier capable of providing the service; however, any carrier with a weight limitation of 50 pounds could obviously not provide service for shipments up to 100 pounds or 150 pounds.

DR. T. B. RYAN, a licensed veterinarian with Rollins Animal Disease Diagnostic Laboratory in Raleigh, supported the application. The laboratory offers diagnostic service for food animals. The laboratory has incoming shipments of specimens from all over the State of North Carolina to laboratories in Asheville, Shelby, North Wilkesboro, Robbins, Rose Hill, Edenton, and Monroe. Since some of these laboratories cannot perform all necessary functions, shipments must come from these laboratories to the main laboratory in Raleigh. Packages weigh between 20 pounds and 25 pounds.

The witness requires rapid transportation service in order to prevent the deterioration of the specimens. The witness has a particular need for Saturday and weekend service to prevent deterioration.

The witness has found bus and mail service to be unsatisfactory particularly since it is not available on weekends and because bus service cannot provide door-to-door service. If Pony Express were granted the authority it seeks, the witness would recommend the use of that service to persons needing the service and to the laboratories under his jurisdiction.

On cross-examination the witness indicated that he was aware of Purolator's existence but had not been informed of the nature of the service provided. Nevertheless, the witness would be willing to use any service capable of meeting his needs.

JIMMY BAKER, Warehouse and Traffic Manager for American Zinser Corporation in Charlotte, North Carolina, testified in support of the application. American Zinser distributes machine parts for textile machinery from its Charlotte facility. The packages range from one pound to 50 pounds

with some weighing between 50 pounds and 200 pounds. The witness has shipments throughout the State of North Carolina including Salisbury, Kannapolis, Concord, Burlington, Saxapahaw, Henderson, Greensboro, Roanoke Rapids, Hickory, Maiden, Shelby, and Statesville. These shipments must be transported rapidly because if a machine is shut down, the company owning the machine will lose money. Overnight door-to-door service is required.

The Company uses bus service; however, bus service lacks door-to-door service. Furthermore, bus schedules may not be compatible with the shipper's needs. The witness also uses trucking companies but these companies cannot provide the next-day service that is required.

Mr. Baker previously testified in support of Purolator's general commodity application in September 1977; however, Purolator has never offered any actual service to the witness.

On cross-examination the witness stated that he would consider using Purolator's service if its existence was made known to him.

On refirect examination and cross-examination the witness indicated that he had 15 to 20 incoming shipments a week and 70 to 80 outgoing shipments, of which 15 to 20 a week require expedited overnight service.

EARL LYNCH, Warehouse Supervisor for Electric Supply Company supported the application. The Company supplies electrical components for industrial, commercial, and residential use. The witness ships these items from its Fayetteville location to customers throughout the State. Packages weigh up to 500 pounds; however, 95% to 98% of the shipments are less than 200 pounds.

Many of the shipments must be transported on an expedited basis because repair parts are needed for such items as cold storage units which, if not repaired, can result in the loss of thousands of pounds of meat.

Bus service is not satisfactory in that in smaller cities service is not available at certain hours. In addition, buses lack door-to-door service.

UPS can generally provide only two- to three-day service to many areas. Furthermore, packages which exceed 50 pounds are not acceptable.

For eight months the witness attempted to contact Purolator; however, he was unable to locate them in the Fayetteville area. He did contact the Purolator Filter Plant in Fayetteville; however, the receptionist had no knowledge of Purolator Courier.

The witness indicated that his company has stores in Raleigh, Durham, and Greenville, and that these stores would require the same type of service as his own.

By cross-examination Mr. Lynch testified that 90% of his shipments are intrastate North Carolina. He emphasized his testimony in support of courier service in east North Carolina and again stated that he was not aware of Purolator's service.

TERRY RUSSELL, Vice President and General Manager of Case Blueprint and Supply Company supported the application. The Company supplies engineers, architects, and surveyors with instruments and tools throughout the State. The witness must ship these instruments and tools everywhere in North Carolina, including Kinston, Greenville, Morehead, Jacksonville, Clinton, Fayetteville, and Sanford. The witness ships 15 to 20 packages a day.

The witness' shipments often exceed 50 pounds. In particular, the witness ships diazo paper which weighs 52 pounds and cannot be transported by UPS. Motor freight carriers transport these shipments but often cannot meet the shipper's time requirements.

The shipper's shipments are time-critical in that architects and engineers need supplies at the last minute and if the witness is unable to provide them in a timely fashion, competitive suppliers will provide them.

The witness finds bus shipments unsatisfactory for precision items which must be adjusted before leaving the office. The witness also prefers not to send valuable equipment by bus; however, the shipper has no alternative.

The shipper uses UPS but finds that UPS will not accept original drawings.

On cross-examination the witness explained that the diazo paper must be kept cool and that overnight shipments would ensure that the paper did not deteriorate. In addition, the witness stated that he would use whatever service is capable of meeting his needs.

DONALD N. BARBOUR testified on behalf of C.A.V., Inc., a supplier of audio equipment to radio stations, television stations, and recording studios. All shipments move from Winston-Salem throughout the State of North Carolina from Manteo to Murphy. The witness ships three to five shipments a week and these shipments must arrive on a timely basis since customers need them and will use competitors' equipment if the witness cannot provide its own.

The witness uses UPS, bus service, and freight carriers. Since 30% to 40% of the witness' items exceed 50 pounds, UPS cannot carry them. On the other hand frequently large motor carriers do not serve points needed or discourage small

packages. Bus service is unsatisfactory in that door-to-door service is not provided and because bus stations are not open in all areas of the State at all times. The witness received a brochure from Purolator; however, he was aware only of its air freight service.

On cross-examination and redirect examination the witness restated his need for expedited door-to-door service and his relative satisfaction with packages of less than 50 pounds.

JO ANN DAVIS testified on behalf of Dr. W.C. Oglesby, a veterinarian in Clinton, North Carolina. The Doctor treats both large and small animals and needs transportation service between Clinton and Rollins Diagnostic Laboratory in Raleigh. He needs to ship tissue samples and animals weighing from one to 50 pounds. The Doctor sends approximately three to four shipments a month and the shipments must move on an expedited basis because items for testing may deteriorate and render testing impossible. Speed of delivery is also important because a doctor's patents are vitally interested in medical information about their pets.

At present, the witness uses bus transportation service; however, bus stations are frequently closed when shipments must be made. The witness also uses UPS; however, she has experienced lost packages.

The witness was unfamiliar with the service of Purolator. The witness and her employer would be willing to use Pony Express if authority is granted.

On cross-examination the witness indicated that the doctor's patients would pay for the service, however, they would work through the witness' employer.

On redirect examination the witness clarified that her employer would choose the carrier.

DR. JOHN DAVENPORT, a veterinarian from Shelby, North Carolina, supported the application. He engages in a food animal practice for large animals, such as cattle and swine. The witness needs transportation service between Shelby and Rollins Laboratory in Raleigh for diagnostic procedures. The shipments of samples or aborted animal fetuses may weigh up to 100 pounds. The witness also ships blood samples which are needed for pathological study and for tests which are required by federal law. Timely service is needed to meet the laboratory's deadline and to comply with client request for completed blood tests prior to the shipment of animals. In addition, the doctor also requires incoming shipments of various vaccines which are needed to immunize animals and to prevent the spread of diseases. While he can maintain a supply of some vaccines, he is physically unable to maintain supplies of all needed medicines. These vaccines may come from such locations as Charlotte and

Fayetteville. Particularly in emergency cases, the doctor may specify the type of transportation to be used.

The witness has used bus service but finds it unsatisfactory because the bus cannot specify when shipments will be delivered and the witness cannot afford to leave employees at the bus station waiting for shipments. The doctor cited an example of an outbreak of Lettosporosis, a disease of swines, for which a vaccine was ordered but could not be used because delay in shipment caused deterioration of the medication. The witness saw little value in a courier waiting for a bus shipment to transport from the bus terminal to the office because the cost of a courier waiting for several hours would be prohibitive and unreasonable.

The witness is familiar only with Purolator as a manufacturer of oil filters; however, he would be willing to use Pony Express' motor carrier service.

On cross-examination the witness stated that he would use the courier service that could provide the service promised.

JOSEPH L. GRIMES, Executive Secretary to the North Carolina Veterinary Medical Association, testified in support of the application. The Association headquarters is located in Smithfield, North Carolina, and it includes 500 of the approximately 650 veterinarians in the State of North Carolina. The Association members are located throughout the entire state.

The Association would use the services of a small package motor carrier for the transportation of public information documents and booklets which the Association sponsors. The shipments weigh approximately 100 pounds. The Association also ships film for presentation in high schools around the State. This film must be shipped in such a way as to arrive at the desired location in time for presentation to the class. The Association would like transportation service for meeting notes which must be sent out prior to Association meetings; however, mail has proved so unreliable that the Association has given up sending the notes out prior to meetings. Finally, the Association needs transportation service for the equipment of exhibitors at its annual meetings. These exhibitors must ship their exhibits to the next location at the end of each exhibit; however, the Association has had difficulty locating a carrier willing to provide the service.

The Association has used the bus for transportation service; however, this has not been satisfactory. For example, the shipment of film to Shelby for a recent high school class presentation required the witness to drive 27 miles from Smithfield to Raleigh to obtain a copy of the film, carry it to the bus station himself, make arrangements for the transfer of the film, and finally contact the veterinarian in Shelby to ensure that he would be waiting.

The witness has also attempted to use UPS; however, UPS's procedures are so complicated that he normally uses the bus.

Like Dr. Davenport, the witness recognized Purolator only as a manufacturer of oil filters and could not recall seeing any information that would lead him to believe that Purolator offered courier service.

As a representative of the Association and as one who is familiar with the needs of veterinarians throughout the State, the witness confirmed that the testimony of Dr. Davenport and Ms. Davis represent the needs of veterinarians.

HORACE LEWIS testified in support of the application on behalf of Colorcraft Corporation. Colorcraft processes photographic film for department stores, drug stores, camera stores, and other places where the public may leave film for developing. The Company has distribution centers in Raleigh, Wilmington, and Kernersville. While the Company uses its own vehicles for many runs at the present, it desires the service of a common carrier to provide additional service in outlying areas. At present, the Company is using Purolator for service between Raleigh and Charlotte and between Raleigh and Fayetteville. The transportation needs of this company are time-critical in that the photo processing business is extremely competitive and, in some cases, the processor must provide a free roll of film if processing is not accomplished in time.

From time to time the witness has been dissatisfied with Purolator's service because of a shipment being improperly delivered and because of late shipments; however, he offered no specific examples. The witness also is dissatisfied with Purolator's service because, while he requires delivery by 7:00 a.m., Purolator's office is not open before 8:00 a.m. and, if shipments are late, the witness cannot contact Purolator about it.

On cross-examination the witness confirmed that he would not discontinue using his own vehicles but would use a carrier such as Pony Express as a supplement to his own operations.

ROBERT L. BRYANT testified that he is traffic manager of Carolina Biological Supply Company and is responsible for all shipments from that Company. His company ships nationwide as well as within North Carolina. It ships all types of biological materials, laboratory apparatus, glassware, microscopes, and other materials needed for biological classes for biological studies in educational institutions. In North Carolina shipments are made all over North Carolina. If a community has a school, it is a customer or a potential customer and, insofar as existing customers are concerned, it is fair to say that the company covers pretty well all of the towns in North Carolina today. They ship to both public schools and institutions of higher

learning. His company ships from 700 to 900 UPS shipments a day and from 100 to 125 motor freight shipments a day during their busiest time of the year. Of that total from 10% to 25% would be North Carolina shipments.

His company is currently using UPS and motor freight within North Carolina as well as parcel post. He has a need for same-day or expedited service and is aware of the type of service that Pony Express is offering. In addition he has a need for expedited service in the categories exceeding 50 pounds to 200 pounds, particularly where UPS has a limit of 50 pounds. When an emergency situation has arisen in the past he has seen his customers come to pick up material and has used the bus a few times. The bus has the disadvantage of having someone to stop their work to go downtown, put the material on the bus, and then someone at the school has to meet the bus to pick it up.

Mr. Bryant knows of the Purolator Courier Corporation but has not had any dealings with them personally nor has his company been shipping by Purolator. He has not been solicited by Purolator to use their service. Some of his shipments are perishable and for this reason need expedited service. Approximately 75% of his shipments will fall within the range of two pounds to 200 pounds.

On cross-examination Mr. Bryant testified that someone from Pony Express visited his office back in the summer several months before the first hearing scheduled in October. He reiterated that 99% of his customers were schools and academic institutions and that the items that were shipped were used in classroom study. Generally a school would place an order which his company calls an "initial order" before school opens or right at the beginning of school and then they put their fill-in orders in all along as they see their needs. Present shipments are generally satisfactory for the ones they are not trying to expedite. They need expedited service very frequently, he means often, and he is doing this type of expedited shipping constantly but he does not pay any attention to how many times or how many dates when they were shipped. He testified that he had no documentation of the number of expedited shipments since he had not taken the time to research for the information. The company may have existing transportation requirements to every point in North Carolina at the present time, but he has nothing to show the exact locations where the company has shipped within the last six months or the last year. His emergency or fill-in orders can be for relatively small amounts, such as 200 amoeba in one small bottle, or the volume could be heavy. He further testified that he had not talked to Pony Express people about rates; and that Purolator was not serving his company at the present time. He stated that he had not contacted Purolator, that he had a real interest in expedited reliable transportation, and though he had no particular preference for Pony Express versus Purolator or anybody else, he thought the more competition the better service they are

going to get. He has never known much about Purolator and if someone would have sat down and given him their services it is possible they could have been of use to him, but that has not happened. He would possibly use their services if Purolator was able to offer it.

JAMES B. DULA, JR., testified that he is Sales Manager and Director of Industrial Relations for Granite Diagnostics. He is involved in the shipping needs of Granite Diagnostics and in general management. His company is a manufacturer of prepared microbiological media which is culture plates used for growth and identification of bacteria in hospital labs and doctors' offices. They have shipments nationwide, but the largest percentage of the number of shipments is in North Carolina. His company serves the State and is the contractor for the State laboratories. He understands that this hearing is solely concerned with his North Carolina shipments and presented a list of the points and places in North Carolina to which he shipped his product. This list containes over 100 shipment points in North Carolina and was entered in evidence as witness Dula Exhibit No. 1 showing these points in North Carolina scattered geographically throughout the State from Murphy, Brevard, Marion, and Boone in the western part of the State to Morehead City and Wilmington in the eastern part of the State, and Winston-Salem, Charlotte, Raleigh, and points in between throughout North Carolina. The points are representative of his shipping needs in North Carolina. He stated that his shipments were generally packaged in heavy weight cardboard boxes, no more than 17 inches wide by eight inches deep and 14 inches wide and generally weigh under 25 pounds. His company needed expedited service and this was particularly important as the product is perishable, is contaminated easily, must be delivered as quickly as possible and not subjected to temperature extremes. In addition to the perishable nature of the product, he has need for expedited shipments since a medical facility can run out of the product and need it immediately. His company ships from 475 to 500 shipments per month and approximately 50% of that would be in North Carolina. He has somewhere in the area of 200 shipments a month in North Carolina. His company has a State health contract that involves approximately 80 separate shipments to the individual county health laboratories across the State. Granite Diagnostics is currently using U.S. Mail, UPS, and air freight, is aware of the type of service that Pony Express intends to offer, and has a need for that service.

Granite Diagnostics needs every possible option in delivering the product and it is urgent that it be delivered quickly and, in addition, they have had problems with Saturday deliveries. The recipients of this product are generally open 24 hours a day and they can take overnight or same-day delivery. UPS does not always provide overnight or same-day delivery and his company needs additional services and feels it can give better coverage to all the varying points throughout the State with the Pony Express system.

Mr. Dula is familiar with Purolator Courier Corporation and has used it to some extent. He has had no problem with Purolator related to their service, but has had problems related to the apparent misunderstandings or misinterpretations of the various tariffs for different commodities. For instance, he shipped animal bloods, which are used for diagnostic purposes, and had an agreement with Purolator that these would be shipped at a diagnostic rate, but they were actually billed at a much higher rate. For that reason they have discontinued use of Purolator for that type of shipment because they can hand deliver it cheaper. Purolator is not presently meeting their needs.

On cross-examination Mr. Dula stated that he was seen in May of this year by Mr. Richard Irving of Pony Express and that his company was a wholly owned subsidiary of Carolina Biological Supply Company, but located in a separate facility. He stated that Purolator Courier had charged him over three times the rate that they had quoted him for some shipments in the past. He stated that he had used the services of Purolator Courier Corporation within the State of North Carolina some in the past but was not using them at the present time. He testified that Paul Sparks was in his company and was responsible for transportation and that he supervised Mr. Sparks. He had talked specifically with Mr. Sparks in anticipation of his appearance today and extensively with his shipping people and with Glenn Walker who is specifically in charge of shipping. He was aware of the fact that Mr. Sparks testified before this Commission in connection with Purolator's application for similar authority. A list of service points was prepared by the director of his customer relations department who handles all paper work on shipments to all points. He did not have with him a breakdown as to the number of shipments to any other specific points on the list; most of the customers were regular shipments, some weekly, some twice-monthly, and others monthly, but there was no indication as to which were which. The list contained towns in which there may be more than one customer. If he does not provide satisfactory service to the customers in those towns he is likely to lose them to competitors. Pony Express has indicated to him that they would as a likelihood offer Saturday service and that is an important factor but not the only factor for support of the Pony Express application. UPS does not provide him with overnight service to all points and he wants to have as many alternative services as possible. He has had some problems with breakage and at some additional expense has switched to a more expensive, heavier weight plastic petri dish in order to avoid the breakage. He was aware that a courier could take his product to a bus station to make connections for bus service.

LOUIS A. MICKEY testified that he is the warehouse manager for Young Phillips Sales Company (Young Phillips) in Winston-Salem, North Carolina, and in charge of shipping. Young Phillips sells everything connected with the graphic arts trade, printing supplies, film, chemicals, printing

plates, papers, and other material. They stock 10,000 items and have 5,000 customers, approximately 65% to 70% of them in North Carolina. They ship from 375 to 425 customer orders daily and approximately 65% of them are in North Carolina. They ship from Sylva, Cherokee, Murphy, Waynesville, Brevard, Hendersonville, and Asheville, in the west to Elizabeth City, Morehead, Wilmington, up and down the coast and to most of the towns in between. Approximately 50% of their shipments would be from zero to 200 pounds. They have constantly been called on for short notice or expedited shipments. Young Phillips is currently shipping by commercial trucking firms, UPS, bus, company trucks, and company cars. The services of Pony Express would be advantageous over the trucking companies and the bus company. The main facility of Young Phillips is in Winston-Salem and they have other locations in Charlotte, North Carolina. He has problems with UPS in both the weight limit and the size limit, particularly with one container for five gallon cubes that weighs 54.5 lbs and UPS is limited to 50 pounds. This container cannot be repackaged since it is in a plastic jug. He has a lot of damage claims with UPS. He would not replace his company vehicles with Pony Express.

Company personnel from Young Phillips appeared in support of Purolator Courier's application for common carrier status, but since that time he is not using Purolator to meet any of the shipping needs of the company. He needs pickup around the end of the day after 4:00 and the major firms and UPS pick up prior to that time.

On cross-examination Mr. Mickey testified that he had met with Mr. Kimbrow of Purolator Courier, but that someone from his company dropped the ball and that he was not now using Purolator. He did think he could use more than one additional carrier. He testified that the printing industry has always required expedited delivery, no if, ands, or buts about it, they want same-day or next-day delivery service and that is pretty chaotic.

Mr. Mickey testified on redirect that if a way could be found to solve some of the chaos in the future, it would be serving the public needs of North Carolina as far as his business was concerned.

SUE BYNE testified that she is office manager and secretary for Roffler Products (Roffler) in Charlotte, North Carolina. Roffler Products is the distributor of hair care, shampoo, hair spray, conditioners, permanents, hair dryers, and all products in the beauty care line. These products would be shipped all over North Carolina with all packages being 200 pounds or less. They ship to about 250 shops throughout the State located in Asheville, Boone, Winston-Salem, Morehead City, and just about all over the State. Shipments are made to all 250 locations approximately once every two weeks for an average of 10 to 20 shipments per day. Roffler is currently using UPS, but for shipments over

50 or 100 pounds, they have experienced problems with UPS and have not received "one day service." In addition, they have had damages, shortages, and communication problems in using UPS.

Purolator Courier Corporation has never called on this shipper and they would be willing to use the services of Pony Express if it were made available. On cross-examination Ms. Rhyne testified that she had been contacted in the spring by Pony Express representatives. The average shipment from Roffler is around 60 to 70 pounds but Ms. Rhyne has not discussed rates with Pony Express. She has had problems with United Parcel and could use the service of Pony Express although she would be willing to use Purolator if it could provide the service.

DELTA WILLETT testified that she is the Assistant Inventory Controller for City Optical Company in Wilmington, North Carolina, in charge of ordering stock and keeping tabs on it. City Optical Company makes glasses, frames, lenses, and other optical needs and ships them to their customers. They have three branches in Wilmington, Fayetteville, and Raleigh and ship all over North Carolina. The packages weigh from five to 10 pounds and need to be shipped overnight. City Optical Company currently uses UPS, mail, and Purolator, and although they have proved adequate, they need something else to lean on or to go to in case something should happen to the present situation.

JOEL P. WHITE testified on behalf of the protestant Purolator Courier Corporation that he is the regional manager for Purolator Courier Corporation in charge of all sales and operations for the State of North Carolina as well as interstate operations encompassing North Carolina, South Carolina, Georgia, Virginia, and West Virginia. Purolator Courier Corporation is a specialist in courier transportation of small items which require expedited handling. It operates as a contract carrier and a common carrier in the State of North Carolina. Since 1958 it has provided contract carrier service for bank-related documents within North Carolina and interstate service to and from North Carolina. All of its operations, common, contract, interstate, and intrastate are commingled in the same vehicles. The contract carrier authority is generally restricted to traffic used in conjunction with the operations of banks and banking institutions and that business is picked up at approximately 5:00 p.m. and delivered to a computer center to be returned by 7:00 a.m. Purolator started strictly as a bank service in North Carolina, and has gradually added additional commodities and additional services, including its common carrier authority to transport all commodities other than bank documents of 50 pounds or less.

Purolator Courier operates 50 vehicles in the State of North Carolina with a majority of them being E150 to 250 parcel delivery vans and three of four larger closed-in vans

and two FM600s which are 16-foot body vans. The larger vehicles run between the major terminals. The majority of the vehicles are econoline vans that are white with red and white lettering. Of these, there are 12 in Charlotte, 10 in Cary, 6 in Asheville, 5 in Greensboro, and 17 are based in other stragetic locations around the State. They have spare vehicles and an additional pool of vehicles in Atlanta, Georgia, that are available. Purolator has two major terminals in Charlotte and Cary, North Carolina. Traffic is fed into these two major terminals with the smaller vehicles and then the two 600s run between Charlotte and Raleigh for expediting it. Charlotte is the largest terminal but demands are increasing in Cary and Purolator is increasing its carrier operation to a full-service shop. It has also added a terminal facility in Asheville and Greensboro. The common carrier authority was issued in March 1979 and Purolator has opened two terminals since that time. These terminals have required a major investment although they are not storage and freight-handling terminals, but rather drive-into terminals for hand handling. Due to the nature of the service and small packages, no tow motors are used.

Purolator has a changing route structure in the State of North Carolina but does not provide service to every point in North Carolina every day. That would be impossible. Service is provided according to the customer's needs. Purolator holds itself out to provide service all over the State even though it does not go all over the State every day. It can make arrangements to take a package. Under normal conditions, route runs from point to point in so many hours, but they have off-route traffic. Purolator operates on a 24-hour day schedule, five and one-half days a week. During the weekends or at lunch they have supervisors, a WATS line, and an answering service. Purolator does not expect much demand for transportation during the weekends. Purolator provides lock boxes in some instances where the customers' location might be closed, and in some instances the customers give a key to Purolator's drivers. Purolator has two market representatives and national advertising through magazines and mail outs and yellow pages to promote their services. The market representatives make sales calls and some times take care of problems. They have operational training. If they had more market representatives, there would be no need to go to the customers because the rates would be so high they could not afford service. Purolator has not been able to contact all of the prospective users of their common carrier authority within North Carolina, but would like to do so. Purolator has been serving florists for about 10 years in the interstate transportation. Purolator also serves a few pathology labs, but most of them go to their own vehicles. Purolator also serves some optical equipment suppliers, but most of them run their own cars. Mr. White testified that he would be willing to provide service for the witnesses who testified and has recently expanded his service to pick up Harmony, Sparta, and Southport, North Carolina.

Since the hearing was continued, Purolator has attempted to call on all of the witnesses who testified but has not called on the veterinarian in Shelby nor the person with the pacemaker. Purolator could not serve the witness who has a need for pacemaker transportation although they have shipped pacemakers interstate. Mr. White testified that he is responsible for making recommendations of expansion in North Carolina and the granting of this application would "have an impact on his determination as to whether and to what extent he should continue to expand." His operation is just getting in full swing, he feels that getting it started has been good, and from now on it ought to be a going operation.

On cross-examination Mr. White testified as to the increase in his facilities, the increase in his personnel, and the increase in his vehicles. The vehicles have not been increasing as rapidly as the facilities and personnel because when they received common carrier authority they could add the commodities to the existing vehicle to make it more economical in terms of the company to run the routes and an additional savings of gas and oil in the national interest. The expansion has been due to the granting of general commodities authority. Mr. White was familiar with the big push Purolator is putting on with freight forwarding and Purolator's national advertising program. All of this evidence shows an increase in the need for this type service in North Carolina and there is an existing increasing need in North Carolina. In addition, he testified that it would be impossible for a service representative to contact all of the potential shippers in North Carolina and, in fact, prior to these hearings Purolator had not even contacted all of the witnesses who appeared in support of their application. There is a large body of potential shippers that have not been contacted in North Carolina and those shippers have a need for these services. It was not his testimony that he could not possibly contact all of the potential customers, but that it was impossible for two market representatives to contact every person in North Carolina that could be a shipper, because there could be 5,000 or 10,000 of them.

In spite of Mr. White's testimony on direct examination that he could serve the needs of any witness he heard in support of Pony Express' application, he testified that he did not have the present authority to serve those customers which exceed Purolator's 50-pound limit and had no application in the works now nor any plans to ask for any additional authority. For instance, Purolator could not carry the 55 gallon cubes for Young Phillips. Mr. White testified that he could serve these witnesses' needs but he did not say that he would serve them. That is, he would have the ability but would not have the Commission's authority to handle it. The witness testified that he could not serve the needs of the witnesses with single shipments between 50 and 200 pounds or for aggregate shipments between 100 and 200 pounds.

The florists that testified have a need for the transportation they testified to. His testimony was that he could handle the florists now even though Christian Brothers Florists testified that Purolator had declined service to Harmony and Sparta. He did not testify that there was not a need for the biomedical and optical equipment labs. Purolator handles a portion of that business itself and his testimony was not meant to diminish the testimony of the biomedical or optical equipment witnesses that they had a need, but he is still willing to serve them if they have a need. Mr. White testified that he was an expert and that he thought his testimony would be a better indication to this Commission of what the needs of the shippers are than the witnesses' own testimony. Mr. White is aware that although he has about 50 vehicles, that Pony Express has approximately 150 vehicles and testified that Purolator Courier was covering pretty much the whole State that Pony Express is covering, but he had no documentation to show his routes or the areas in the State that are covered. Mr. White recalled that the certificate for common carrier authority in North Carolina was issued on March 2 even though the Order authorizing the service was issued on September 7, 1978. He stated the reason for the delay was some problems getting the certificate number; that he could not explain any other delay except possibly a tariff survey. Purolator Courier made no shipments under common carrier authority until March 1979 and at the time of the hearing on November 15, 1979, the common carrier revenue represented 80% of the intrastate revenues and the contract carrier only 20%.

Mr. White testified that in a little less than 10 months in the common carrier business the common carrier revenues represent 80% of his business for intrastate business. He agreed that this demonstrated a tremendous public necessity for this type of common carrier and that there was a need there. That is why Purolator went after it. He testified that Purolator had no present plans to serve those shippers who had requirements of over 50 pounds, but that Purolator Courier might file an application sometime in the future.

Based on the testimony and evidence presented at the hearing including the documents and matters on file with the Commission of which the Hearing Examiner has taken judicial notice, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Pony Express Courier Corporation, the Applicant in this docket, is authorized to and is actively engaged in operations as a contract carrier in North Carolina under Contract Carrier Permit No. P-215 throughout the State of North Carolina on irregular routes of Group 21 commodities, cash letters, commercial papers, documents and records, bank stationery, sales, payroll and other media, and business, institutional, and governmental records.

2. By this application, filed July 2, 1979, Pony Express further seeks common carrier authority to transport throughout North Carolina on irregular routes Group 1 general commodities, restricted against transportation of shipments weighing in excess of 200 pounds and Group 21, Cash letters, commercial papers, documents and records, bank stationery, sales, payroll and other media, and business, institutional and governmental records, statewide.

3. Under its present contract carrier operations, Pony Express provides an expedited service for the transportation of documents related to the banking and data processing industries and other industries throughout the State of North Carolina. It provides to these industries, full territorial coverage, door-to-door service, same-day or overnight service, automatic pickup and delivery service, transfer box service, special service and dedicated service, automatic return on refused shipments, and immediate correction of misdelivery.

4. By this present application Pony Express proposes to take the service features provided in its existing operation and offer those features to the shipping public generally in the expedited transportation of a broader range of commodities for packages less than 200 pounds. It will offer a broad segment of the shipping public full territorial service, door-to-door service, same-day or overnight service, transfer box service, special or dedicated service, automatic return of refused shipments, and immediate correction of misdeliveries.

5. Applicant is a wholly owned subsidiary of Baker Industries which is in turn controlled by Borg-Warner Corporation.

6. Borg-Warner has assets in excess of $1.6 billion and in 1978 had net earnings of over $173 million. Baker Industries has assets in excess of $194 million and during 1978 had net earnings of $1.9 million. As of June 30, 1979, Pony Express had assets of $4.1 million and revenue of $7.6 million in 1978 increasing to $4.5 million for the first six months of 1979.

7. Pony Express' revenue is increasing on an annualized basis and funds are available for the expansion of operations both from Pony Express' revenue and from the resources of the parent companies.

8. Pony Express presently has 150 vehicles used in intrastate commerce in North Carolina and would continue to use the same type of vehicles for its expanded authority. Pony Express provides service completely covering North Carolina with a hub and spoke operation in major locations in Winston-Salem, Raleigh, and Charlotte, and additional operational centers in Asheville, Greenville, Jacksonville, and Whiteville, plus other satellite locations throughout the State.

9. Pony Express presently employs 260 employees in North Carolina.

10. The Applicant has sufficient vehicles, personnel, and facilities already available in North Carolina to provide the proposed service and it has an existing route structure to provide service.

11. Pony Express is experienced in providing transportation service for small packages on an expedited basis. Pony Express, through its predecessors Financial Courier Corporation and Wachovia Courier, has provided contract carrier service in North Carolina for many years. Pony Express, furthermore, presently provides motor carrier service in 13 states.

12. Pony Express has an existing vehicle safety and maintenance program and it is covered by insurance in full compliance with the Commission's requirements.

13. Grant of the present application for common carrier service would improve Pony Express' overall efficiency, particularly in the area of fuel usage since vehicles are presently operating at approximately 50% of capacity and Pony Express has 35% of the freight of its fleet of vehicles idle between 10:00 a.m. and 3:00 p.m. each day.

14. On all but its line haul movements, Pony Express vehicles operate at approximately 50% capacity and, because of the nature of traffic under present authority, 35% of the fleet is idle for five hours every day. Pony Express, therefore, has the vehicle capacity to transport additional commodities and it has the route structure needed to provide the Statewide service needed by the public.

15. Pony Express has a sophisticated, capable transportation service operating currently in North Carolina and has full ability both from a financial and operational standpoint to operate the additional requested authority.

16. In support of its application for common carrier authority, Pony Express Courier Corporation offered testimony of witnesses as to the need for expedited service for general commodities from Electrical Equipment Company of Raleigh, North Carolina; Threads, USA of Gastonia, North Carolina; Book and Company of Winston-Salem, North Carolina; Cardiac Pacemakers, Inc., of Charlotte, North Carolina; Biomedical Reference Laboratories of Burlington, North Carolina; Wilmington Hospital Supply Company of Wilmington, North Carolina; Christian Brothers Wholesale Flowers of Winston-Salem, North Carolina, and of Grimesland, North Carolina; Fisher Scientific Company of Raleigh, North Carolina; The Veterinarians Section of the North Carolina Division of Health Services; the C.C. Dixon Company of Raleigh, North Carolina; Rollins Animal Disease Diagnostic Laboratory in Raleigh, North Carolina; American Zinser Corporation of Charlotte, North Carolina; Electric Supply

Company of Fayetteville, North Carolina; Case Blueprint and Supply Company of Raleigh, North Carolina; CAV, Inc., of Winston-Salem, North Carolina; Dr. John Davenport, a veterinarian from Shelby, North Carolina; the North Carolina Veterinary Medical Association located in Smithfield, North Carolina; Colorcraft Corporation of Raleigh, Wilmington, and Kernersville, North Carolina; Carolina Biological Supply Company of Burlington, North Carolina; Granite Diagnostics Company of Burlington, North Carolina; Young-Phillips Sales Company of Winston-Salem, North Carolina; Roffler Products of Charlotte, North Carolina; and City Optical Company of Wilmington, North Carolina.

17. The need for Pony Express' service is not confined to selected commodities but covers a wide range. Representatives of the public testified to a need for the transportation of electrical parts; threads; documents and printouts; projectors, slide screens and slides; cardiac pacemakers; blood, serum, tissue, and urine; medical supplies; flowers; medical laboratory supplies such as reagents, medical lab tests, glassware, instruments and similar items; dead animal heads for testing; air conditioning and heating parts; animal specimens for testing; textile machine parts; supplies for engineers, architects and surveyors; professional audio equipment; information documents and booklets; photographic film; biological materials, laboratory apparatus, glassware, microscopes and other materials needed for biology classes; prepared microbiological media; printing supplies, film, chemicals, printing plates, papers and similar materials used in the graphic arts; hair care products; glasses, frames, lens and other optical supplies.

18. The public witnesses also showed that Pony Express' service is needed throughout the State. Witnesses ship or receive various commodities from Raleigh to the area between Greensboro and the coast; from Gastonia to points throughout North Carolina; from Winston-Salem to a present market of 50 locations and a potential market of over 350 locations throughout the State; from Charlotte to points throughout the State, in particular Winston-Salem, Durham, Chapel Hill, Raleigh, Charlotte, Wilmington, Wilson, and Rocky Mount; from doctors' offices, hospitals, clinics, veterinarians' offices and other laboratories throughout the State; from Winston-Salem to an area as far west as Hickory, as far south as Charlotte, as far north as the Virginia line, and as far east as Randleman and Denton; from Grimesland to the part of North Carolina east of Winston-Salem; from Raleigh to virtually every town in North Carolina; from potentially any location in North Carolina to Raleigh; from Raleigh to customers east of Raleigh but as far west as Durham and Greensboro; from Asheville, Shelby, North Wilkesboro, Robbins, Rose Hill, Edenton, and Monroe to Raleigh; from Charlotte to points throughout North Carolina; from Fayetteville to customers throughout the State; from Winston-Salem to points throughout the State; from Clinton to Raleigh; from Shelby to Raleigh; from Smithfield to

veterinarians throughout the State, between Raleigh, Charlotte and Fayetteville; from Burlington to points throughout the State; from Winston-Salem to such locations as Sylva, Cherokee, Murphy, Waynesville, Brevard, Hendersonville, Elizabeth City, Morehead, and Wilmington; and from Charlotte to points throughout the State.

19. Door-to-door service is needed by the shipping public as represented by the public witnesses.

20. Expedited, overnight, or same-day service is needed by many witnesses, particularly in emergency situations.

21. Every witness spoke of a need for the transportation of packages of less than 200 pounds but many particularly noted the need for the transportation of packages weighing between 50 and 200 pounds.

22. In response to these needs Pony Express will provide door-to-door service, same-day or overnight deliveries as required, and service for shipments up to two hundred pounds without any restriction on package size.

23. There are presently no carriers in North Carolina who provide service for general commodities weighing 50 pounds to 200 pounds other than general freight carriers on less than carload lots, and this type of service has proved unsatisfactory to a large segment of the shipping public in North Carolina.

24. The service of bus lines is not entirely satisfactory for the transportation of packages. Bus companies do not provide door-to-door service, thus, both shippers and receivers must go to the bus terminal to pick up or deliver shipments and this is a burden for many members of the public. Furthermore, bus terminals are not available for service during many parts of the day or night.

25. Purolator Courier Corporation's authority in North Carolina is limited to 50 pounds or less per package or 100 pounds or less in the aggregate.

26. Purolator Courier operates 50 vehicles in the State of North Carolina and has statewide coverage, but does not provide service to every place in North Carolina every day.

27. United Parcel Service did not protest this application. Like Purolator, UPS cannot transport shipments of more than 100 pounds nor packages of more than 50 pounds per day.

CONCLUSIONS

1. Public convenience and necessity require the service proposed by Pony Express in addition to existing transportation service.

2. The grant of Pony Express' application will not endanger of ımpair the operations of existing carriers contrary to the public interest.

3. Pony Express is fit, willing, and able to provide the proposed service.

4. Pony Express is solvent and financially able to furnish adequate service on a continuing basis.

5. The grant of the application will tend to promote the interests of the public, the inherent advantage of highway ₵ransportation, and foster a coordinated statewide motor carrier service consistent with the policies enumerated in G.S. 62-259.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application of Pony Express Courier Corporation for common carrier authority for transportation of Group 1 general commodities restricted against the transportation of shipments weighing in excess of 200 pounds and Group 21, Cash letters, commercial papers, documents and records, bank stationery, sales, payroll and other media, and business, institution and governmental records, statewide, be and it here is granted.

2. That Pony Express Courier Corporation is hereby granted a common carrier certificate as set forth in Exhibit B attached hereto.

3. That Pony Express Courier Corporation file with the Commission evidence of the required insurance, list of equipment, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within sixty days from the date this Order becomes final.

4. That unless Pony Express Courier Corporation complys with the requirements set forth in the above paragraph and begins operations as authorized within a period of sixty days after this Order becomes final, unless such time is extended by the Commission upon written request, the operating authority granted herein will cease and determine.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of March 1980.

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

DOCKET NO.T-1938 SUB 1

Pony Express Corporation
P.O. Box 4313
Atlanta, Georgia 30302

EXHIBIT B
Authority

Irregular Route Common Carrier

Transportation of Group 1, General Commodities restricted against the transportation of shipments weighing in excess of 200 pounds and Group 21, Cash letters, commercial papers, documents and records, bank stationery, sales, payroll and other media, and business, institutional and governmental records, statewide.

DOCKET NO. T-477, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Terminal Trucking Company, Inc.,) RECOMMENDED ORDER
Application for Permanent Authority) GRANTING APPLICATION

HEARD IN: Room 617, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on November 27 and 28, 1979

BEFORE: Hearing Examiner Carolyn D. Johnson

APPEARANCES:

For the Applicant:

Edwin H. Ferguson, Jr., Attorney at Law, 115 Union Street, South, P.O. Box 1113, Concord, North Carolina 28025

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

Thomas W. Steed, Jr., and Joseph Eason, Allen, Steed and Allen, P.A., Attorneys at Law, P.O. Box 2051, Raleigh, North Carolina 27602

JOHNSON, HEARING EXAMINER: By application filed on September 21, 1979, Terminal Trucking Company, Inc. (Terminal Trucking), seeks to amend its Common Carrier Certificate No. C-368 as follows:

> The limitation "truckloads only" be removed on Common Carrier Certificate No. C-368 which provides authority for all points and places on and east of U.S. Highway 15. Applicant also requests to amend Certificate No. C-368 to reflect additional authority being sought as follows: To operate from all points and places in present authority to all points and places in Alamance, Orange, Person, Rockingham, Buncombe, and Henderson Counties and from Alamance, Orange, Person, Rockingham, Buncombe, and Henderson Counties to all points and places in the present authorization.

Applicant also requested temporary or emergency authority to remove the limitation "truckloads only."

On September 5, 1979, notice of the request for temporary authority was sent to all carriers and several telegrams and letters in support of the application were received by the Commission. The application was published

in the Commission's September 26, 1979, Calendar of Hearings and scheduled for hearing at the time and place above noted.

On October 4, 1979, joint protests to the application for temporary authority were filed by Estes Express Lines, Richmond, Virginia; Overnight Transportation Company, Richmond, Virginia; Shipper's Freight Lines, Inc., Salisbury, North Carolina; Morven Freight Lines, Incorporated, Morven, North Carolina; M.M. Smith Storage Warehouse, Inc., Fayetteville, North Carolina; and EDMAC Trucking Company, Inc., Fayetteville, North Carolina.

On October 11, 1979, the Commission issued an Order assigning the matter of temporary authority for hearing at the time of the application for permanent authority.

On November 5, 1979, the aforementioned companies filed Joint Protests and Motion for Intervention to the application for permanent authority which were allowed by the Commission's Order dated November 9, 1979. On November 16, 1979, Protest and Motion for Intervention to the permanent authority was filed by Blue Ridge Trucking Company, Asheville, North Carolina, and allowed by Order of November 21, 1979.

The public hearing at which all parties were present and represented by counsel was conducted as scheduled. In its brief, the Applicant, Terminal Trucking Company, Inc., has stipulated that it is withdrawing that portion of the application seeking to operate to and from the Counties of Alamance, Orange, Person, Rockingham, Buncombe, and Henderson and narrows its request to the removal of the "truckload limitation" from that portion of its certificate which authorizes the transportation of general commodities between points and places on and east of U.S. Highway 15.

The testimony at the hearing consisted of some 18 witnesses for the Applicant and three witnesses for the protestants.

APPLICANT'S EVIDENCE

C.E. ISENHOUR, JR., Vice President of Terminal Trucking Company, Inc., testified that his Company purchased in 1971 that portion of the certificate which authorizes the transportation of general commodities between points and places on and east of U.S. Highway 15 from Vernon Aycock and, to the time of the purchase, his Company was led to believe that there had been no interpretation by the Commission with respect to "truckloads only" as was incorporated in that certificate which would limit them from transportation of less than truckload (LTL) shipments so long as they were accumulated in a truckload and without any restriction with respect to number of consignments on a truckload. He further testified that his Company had operated continuously since 1971 with that understanding and

had been frequently inspected by the Commission's inspectors and no one had ever mentioned any concern over this interpretation until the events that led to the filing of this application.

DWIGHT W. QUINN testified that he is the Representative in the North Carolina General Assembly for Cabarrus and Union Counties and has been for 29 years. He is familiar with the operators of Terminal Trucking and he knows them to be of good character, good reputation, and good business men whose operations are important to the economy around Concord.

PAUL PERRY testified that he is Vice President of Perry Brothers Tire Service which has its principal office in Sanford and other offices in Dunn, Smithfield, Oxford, Aberdeen, and Rockingham. The company is primarily in the retail tire business distributing all lines of Goodyear tires with an annual volume in excess of $5 million. The company needs to transport the tires out of the Goodyear distribution center in Charlotte to the various stores of the company with at least one shipment coming into one of the stores every day during the week. Terminal Trucking has handled this transportation for the past six or eight months and has provided prompt overnight service. He believes that his company needs the continued operations of Terminal Trucking over and above the transportation service presently available to it from other carriers including the ability of Terminal Trucking to haul LTL traffic. He has experienced delay from other carriers, including some of the Protestants, in deliveries to Oxford, Henderson, and Smithfield.

On cross-examination Mr. Perry testified that of the approximately seven or eight shipments per week handled for his company by Terminal Trucking during the months of October and November 1979, the majority of them would be LTL shipments.

MORRIS DIXON testified that he is Supervisor of Shipping and Receiving and Warehouse Manager of Uniroyal Chemical and Gas Company with its principal North Carolina office in Gaston, North Carolina. The company manufactures various chemicals and plastic materials including herbicides for use on tobacco and soy beans. He has used the services of Terminal Trucking over the past six years for transportation into the 75-mile radius of Concord and the territory on and east of U.S. Highway 15 for both truckload and LTL shipments. Normally, next-day or same-day delivery is needed and Terminal Trucking has provided prompt and adequate service. He has experienced some problems with late deliveries in the past from other carriers. It would be beneficial to the company if the restriction of the truckload limitation into the eastern territory were eliminated.

On cross-examination Mr. Dixon testified that he is at the present time using Terminal Trucking for both truckload and LTL shipments to points east of U.S. Highway 15. His company has not used any carrier other than Terminal Trucking for intrastate shipments in North Carolina for six years. He knows of approximately 12 common carriers that have the authority to handle the type of transportation that is now being handled for his company by Terminal Trucking.

LESTER LEE CRUSE testified that he is a Purchasing Agent for Texfi Industries located in Kinston, North Carolina. He is responsible for purchasing and arranging transportation of raw goods such as dyes and chemicals coming into his company's plants in Kinston and Fayetteville. Terminal Trucking has handled the transportation of these goods out of the Charlotte and Concord areas into Kinston for three or four years. Next-day delivery is necessary, and he has been unable to obtain such service from other common carriers since Standard Trucking Company eliminated its Kinston terminal. His company has experienced shipment delays when using Overnite and Estes but has recently used Shipper's Freight Lines and found their service satisfactory.

On cross-examination Mr. Cruse testified that on occasions he had used Terminal Trucking for LTL shipments out of Charlotte into Kinston. Although Shipper's Freight Lines is able to give his company overnight service, he prefers to continue to use Terminal Trucking.

ROBERT JERMAN testified that he is responsible for the truck tire sales business of the Charlotte-based Guarrard Tire Company, Incorporated, wholesale and retail dealer of truck and passenger tires. He has experienced some difficulty in securing second- or third-day delivery of LTL tire shipments into the eastern part of the State around Wilmington and Holly Ridge. He has not used Terminal Trucking but supports the removal of the truckload limitation on its authority for the area east of U.S. Highway 15.

On cross-examination Mr. Jerman stated that he was testifying with respect only to the sales which he made and in which he arranges the transporation. Common carriers are utilized only when the weight is not sufficient to justify use of the company's own trucks. He knows that there are eight or 10 common carriers that serve the Wilmington and Holly Ridge area, but he has used only Estes for that service. His company dealt with Terminal Trucking for years in the sale of tires for its equipment.

NORMAN PLOTT testified that he is employed by the Concord Warehousing Division of Land-Scott-Arland Fabrics located in Concord which is about 1 1/2 miles from the terminal facilities of Terminal Trucking. His company has used Terminal Trucking as well as Overnite Transportation Company for intrastate shipments in North Carolina. He had

good experience with Terminal Trucking but has experienced some delays in pickup and delivery by Overnite.

On cross-examination Mr. Plott testified that his company had used Terminal Trucking for six or seven years for both truckload and LTL shipments to points throughout the State. In November 1979 Terminal Trucking handled approximately 12 to 15 shipments east of U.S. Highway 15 most of which were LTL shipments. Terminal Trucking handled about 20 or 25 LTL shipments to that area in October 1979. All intrastate outbound shipments from Concord of drapery materials are handled by common carrier with Terminal Trucking handling most of the transportration to the points on and east of U.S. Highway 15 and points within the 75-mile radius of Concord.

CHARLES COLE testified that he is Terminal Manager of Dry-Cole Chemicals, Incorporated, a manufacturer of liquid latex for carpet and upholstery material, located in Concord. He desires to use the services of Terminal Trucking for early morning delivery of drums of chemicals into Roxboro and also for small LTL shipments into eastern North Carolina. His primary problem is that in the wintertime he needs a carrier who will provide protection from freezing and Terminal Trucking has been able to do this in the past.

On cross-examination Mr. Cole stated that equipment necessary to keep his product from freezing was a heater that could be installed in a regular type van. Terminal Trucking presently transports truckload shipments into Kings Mountain and Tarboro. Other than shipments into Tarboro there has been very little need for shipments east of U. S. Highway 15. Approximately three or four weeks prior to the hearing Terminal Trucking had made a shipment into Roxboro when one of the company's tractors broke down.

FRANK CALLAHAN testified that he is in charge of shipping and receiving for Lumberton Dyeing and Finishing Corporation which is located in Lumberton. His company receives all types of knit goods which it dyes and finishes and ships back to its customers. Terminal Trucking is now handling intrastate shipments out of Lumberton in the 75-mile radius of Concord and to points on and east of U.S. Highway 15. The only specific need for transportation testified to by the witness was for shipments out of Lumberton into Charlotte. These are now being handled by Terminal Trucking and are shipments that run from 7,500 pounds to 10,000 pounds. The company has utilized no other carrier for this service. He desires to have Terminal Trucking continue handling LTL shipments.

On cross-examination Mr. Callahan testified that the Lumberton-Charlotte shipments consisted of two shipments a week to Lida Manufacturing Company which his company acquired as a new customer in September 1979. Most of the shipments are large shipments of 7,500 pounds to 10,000

pounds. There would seldom be a need to ship a small load. The selection of Terminal Trucking as the shipper is made by Lida Manufacturing Company.

JACK HARDEE testified that he is President of Hardee's Tire Center, Incorporated, a retail and wholesale distributor of tires, located in Lumberton. His company receives its tires from Charlotte and needs overnight service on such shipments which range anywhere from one tire to 500 tires. Until about a month prior to the hearing, Terminal Trucking handled this transportation. But he was advised by Terminal Trucking at that time that they could no longer handle the shipments. He has used Dixie, which has given him good service since that time but not as good service as Terminal Trucking.

On cross-examination Mr. Hardee stated that he had used Terminal Trucking for approximately 2 1/2 years.

JAMES SCOTT testified that he drives a tractor-trailer for Temporary Fabrics in Lumberton, North Carolina, and was asked to come to the hearing in place of the shipping clerk and two or three others who could not come. He stated he was not familiar with the transportation problems of the company.

K.M. SLOOP testified that he is Traffic Manager of Mineral Research and Development Corporation, a manufacturer of industrial and agricultural chemicals, located in Harrisburg, North Carolina. The majority of the company's freight is liquid bulk commodities, but they do have some bag material and drums. The company handles its truckload traffic by private carrier and uses common carriers for the LTL shipments. It used Terminal Trucking to handle about 25% of this transportation, primarily to Salisbury, Charlotte, Gastonia, and Monroe. At the present time, his company does not have any need for service into the western part of the State beyond the 75-mile radius of Concord.

On cross-examination Mr. Sloop testified that with respect to shipments within the 75-mile radius of Concord there was no need for any type of transportation that it could not now receive from Terminal Trucking.

LARRY FREEMAN testified that he is President of Elite Knit, Incorporated, a commissioned knitter of double knits, located in Lumberton. His company transports both truckload and LTL shipments of knitted goods to finishers located throughout the State. It has used the services of Terminal Trucking and found them to be excellent. It has also used Overnite, Thurston, and Spartan and found that their services meet its needs, but not as well as Terminal Trucking. He supports the removal of the truckload restriction from the authority of Terminal Trucking east of U.S. Highway 15.

On cross-examination Mr. Freeman testified that at the present time all of his transportation is handled by customer-owned trucks. In prior years Terminal Trucking handled about 50% of the common carriage transportation out of his plant with approximately 25% of the shipments being LTL. Most of these shipments were to Charlotte, Concord, and Randleman. He was not aware of shipments to other points during the three years in which the company had been in business.

MONROE WILLIAMS testified that he is General Manager of Fine Knits, Incorporated, a commissioned knitter, located in Lumberton. His company uses Terminal Trucking, Shipper's, Estes, EDMAC, Overnite, and Thurston. It has used Terminal Trucking for about 18 months and finds that none of the other companies can compare with it. His company receives inbound shipments from Asheville, Shelby, Greensboro, and Charlotte and some from the eastern part of the State. It has experienced some difficulty with inbound shipments from the western part of the State including difficulties in having carriers load during the company's normal eight-hour loading period from 8:00 a.m. to 4:00 p.m. On outbound shipments Terminal Trucking has been able to meet his company's requirements while other common carriers have not. He supports the removal of the truckload restriction on Terminal Trucking's authority.

On cross-examination Mr. Williams testified that Terminal Trucking handled inbound shipments form points around the Charlotte area. Approximately 35% of the outbound shipments is handled by the customer's private carriage, and of the remaining transportation which is handled by common carrier about 10% of the time the customer designated the carrier. Terminal Trucking handled from 25% to 50% of the outbound common carriage. The company is making some LTL shipments by Shipper's and Dixie but not by Terminal Trucking.

QUINTON ALLEN testified that he is with Comanche Pottery, Incorporated, a manufacturer of clay pottery, located in Lumberton. His company does not presently use common carriage for intrastate transportation but ships its product by rail, company-owned truck, and customer private carriage. He would like to get out of the trucking business and utilize common carriage for shipments from Lumberton to points in North Carolina. He is familiar with Terminal Trucking and feels that it could meet his transportation needs if the truckload limitation were removed and the additional geographical authority were granted.

On cross-examination Mr. Allen testified that he had talked with various trucking firms about their rates, pickup times, and routes, but that he is presently using no common carriers in North Carolina.

IKE FAUST testified that he is the Owner and Manager of Denmar Public Warehouse, a bonded public warehouse for

various types of goods, located in Concord. He has used Terminal Trucking almost exclusively in picking up commmodities to bring into the warehouse and taking commodities out of the warehouse. This transportation consists of both truckload and LTL shipments. He is quite satisfied with Terminal Trucking's services.

On cross-examination Mr. Faust stated that he had not investigated other common carriers that might handle his shipments out of Concord, that the service of Terminal Trucking has been exceptional, and that he sees no reason to use any other service.

LEONARD M. THOMPSON, JR., testified that he is President and Managing Director of Laura Len, Inc., a manufacturer of men's, ladies' and children's shirts, with three plants in Concord. On inbound shipments approximately 50% is handled by common carriage and on outbound shipments approximately 40% is handled by common carriage. At the present time, his company primarily uses Terminal Trucking and Fredrickson for its outbound common carrier shipments and is satisfied with their service. In other cases the customer designates the carrier. He has found the service of Terminal Trucking within the radius of 75 miles of Concord to be very satisfactory and desires to utilize this service into points east of U. S. Highway 15. Except for Terminal Trucking and Fredrickson, his company has experienced difficulty in securing dependable pickup and delivery of its products. The company does not presently need to go into the Counties of Orange, Alamance, Person, Rockingham, Buncombe, and Henderson. Most of the shipments into the eastern part of North Carolina are LTL.

On cross-examination Mr. Thompson stated that he had shipments to the eastern part of the State once every two or three weeks. His standard packaged unit consists of approximately 3,000 pounds and average close to 500 cubic feet.

C.E. ISENHOUR, JR., upon resuming the stand, identified an aeronautical chart of North Carolina upon which was drawn a 75-mile radius from Concord, North Carolina, and the line of U. S. Highway 15. He pointed out that the two lines meet just above Sanford, leaving a triangular area constituting a portion of Alamance and Rockingham Counties. He explained the problems involved in not being able to operate through this triangular area and being able to operate in only portions of Alamance and Rockingham Counties. He also pointed out that under his radial authority he would be able to handle Sanford and its commercial zone. To the west, the only two counties in which he is seeking authority beyond his company's radial authority, are Henderson and Buncombe.

Mr. Isenhour further testified it was his understanding since acquisition of the authority on and east of U. S. Highway 15 that his company could accumulate truckloads of traffic in this authority and tack it to his radial

authority. His company operated this way from the date of acquisition until talking recently with I. H. Hinton of the Utilities Commission. He has never received any cease and desist Order from the Commission concerning any operation of LTL shipments within this territory. The authority was initially granted to Vernon Aycock in November 1949. Mr. Isenhour testified that when Terminal Trucking acquired authority from Mr. Aycock, he had no understanding as to restrictions on the number of shipments which could be included in a truckload. No one from the Commission ever warned him that there was an excessive number of shipments on any truckload and the fact that there was a definition of "truckload" adopted in 1951 had not been called to his attention. Nor had he been informed that the limitation of 10,000 pounds or 500 cubic feet on one bill of laden from no more than one consignor to no more than four consignees applied to his authority. If this definition of "truckload" were applied to the Terminal Trucking authority, it would decrease business 50% or more, require that personnel be laid off, and idle 40% to 50% of the equipment.

Mr. Isenhour further testified that the small radial circle around Concord on the aeronautical map from which the 75-mile radius was measured had a two-mile radius. This was the shortest distance from the center of town to the city limit. The list of equipment filed with the application in this docket reflected the Company's 1978 report and there probably is more equipment now. The financial statement attached to the application is a copy of the financial statement on file with the Commission for the year ended December 1978, and the financial condition of the company has improved since that time. Terminal Trucking files with the Commission its financial statements, equipment list, and tariffs which are filed through the Motor Carriers Tariff Association of Greensboro. It presently has in force and effect the insurance required by the Commission. Terminal Trucking has never received any citation for any deficiency from the North Carolina Utilities Commission.

In filing the application for temporary authority it was the understanding of Terminal Trucking that as long as there was in fact a truckload the number of consignments on the truck bill of lading was not restricted. That has been the Company's understanding through the years and the purpose of the temporary authority was to maintain the status quo until the permanent authority application could be considered.

On cross-examination Mr. Isenhour stated that at the time of the acquisition of the authority on and east of U.S. Highway 15, in 1971 his father was active in operations of the Company and that he was still active in the Company for an hour a day. He stated that the interpretation of "truckload" followed by Terminal Trucking was a truck full from the front to the back or within two or three feet. This interpretation is not based on any weight or volume considerations, but simply that the truck was full.

The witness stated that he had become involved in the management of the Company about eight or nine years ago. He had not made any study or review of the rules and regulations of the Commission with respect to the definition of a truckload. The first time he recalls reading such a rule was around September 20, 1979, after Mr. Hinton told him he could not continue operating the way that he was operating. He is aware that in October 1973 an application was filed with the Commission concerning the truckload limitation but that he was not personally involved in that application and does not know its purpose.

His company does business with Best Way Express (Best Way), an exempt carrier hauling intracity traffic in Lumberton. Terminal Trucking has a lease arrangement with Best Way entered into about two or three years ago, which is on file with the Commission. Best Way's equipment is leased to Terminal Trucking when it operates outside of Lumberton in the 75-mile radius from Concord or the territory on and east of U.S. Highway 15.

Mr. Isenhour further explained the establishment of the 75-mile radial authority from Concord as shown on his map exhibit, pointing out that the 75 miles was measured from the two-mile circle and from the center point of the 2-mile circle it would be 77 miles to the outside of the larger circe. The map was drawn approximately two months ago and prior to that time his Company had used an Esso road map for determining the scope of its radial authority.

Mr. Isenhour stated that his Company leased five tractor-trailer units from Best Way for use in its general operations and that the leased equipment would be used in the proposed service, if granted. Best Way is paid 90% of the freight charge for leasing the equipment. Prior to the morning of November 28, 1979, he had not read all the rules of the Commission with respect to leasing equipment. Terminal Trucking has filed an annual report showing the leased equipment, but has not made the monthly reports required by Commission Rule R2-7. Until about three months ago the freight bills on the leased operations were designated in the name of Best Way Express as agent for Terminal Trucking. Three months ago he was advised by Mr. Hinton that these freight bills could only show Terminal Trucking and not Best Way and since that time they only designate Terminal Trucking. Prior to talking with Mr. Hinton, he had not read all the rules and regulations of the Commission concerning leased equipment except those requiring the copies of lease to be in the tractor, the Terminal Trucking decal to be placed on the leased equipment, and the drivers' physicals.

The witness testified that despite inspections by the Utilities Commission he had never received any orders to cease and desist from any type of operations in Terminal Trucking's Concord office. His Company has conducted operations to points outside the 75-mile radial authority or

outside the U.S. Highway 15 east authority over the last three years. This type of operation occurs when his company has a drop off at Hickory or Morganton and head load going to Asheville, the Company would deliver the head load to Asheville rather than return it to the customer. During the past three years his Company has made approximately 20 shipments outside the geographical scope of its operating authority. Approximately three months ago he received a letter from the Commission as a result of an investigation by the Commission with respect to these shipments. The letter was from Mr. Hinton and dated August 23, 1979. After receiving the letter, his Company occasionally operated outside of its geographical territory, but he cannot recall the number of shipments or the destination points. For the convenience of customers, the Company has occasionally hauled shipments outside its territorial authority after filing this application. Mr. Isenhour testified that he had also received a copy of a letter from the Commission addressed to MacArthur Jones, President of Best Way Express, which listed shipments conducted by Terminal Trucking under its lease operations with Best Way outside of its operating authority. He did not know whether occasional shipments outside of the authority are made under the lease agreement. Mr. Isenhour further testified that since being advised in September by Mr. Hinton that his definition of "truckload" was not in conformity with the rules and regulations of the Commission he continued to handle LTL shipments up until the protest was filed on October 1. After talking with Mr. Hinton, he had an idea that he was in trouble and began cutting back on these shipments. His Company has occasionally handled LTL shipments since October 1 for the customers' convenience. He does not know how many such shipments have been hauled. He did communicate with his shippers and tell them he could no longer handle LTL in that area, but some of them continued to make LTL shipments.

On redirect examination Mr. Isenhour stated that he filed his application for temporary authority to remove the truckload limitation the day after talking with Mr. Hinton. His Company had been investigated by an inspector from time to time but his erroneous interpretation of truckloads had never been called to his attention. His Company had operated consistently with the understanding which resulted from discussion with Mr. Hughes at the time the authority was bought. He did not have any legal advice at the time the lease arrangement was established with Best Way, but has since sought legal counsel to determine the way to conform that operation to the requirements of the Commission. He stated that it would have been impossible to have completely ceased LTL shipments east of U.S. Highway 15 since the application and that he was seeking temporary authority to continue that operation until a final determination of his application to remove the "Truckload Only" restriction.

PROTESTANT'S EVIDENCE

DANIEL BABB testified that he is Assistant Traffic Manager of Estes Express Lines (Estes), one of the Protestants to the application. He identified as Estes Exhibit No. 1 a copy of Comon Carrier Certificate No. C-59 reflecting the scope of the operating authority of Estes in North Carolina which encompasses the whole territory involved in this docket. He identified as Estes Exhibit No. 2 a list of terminals, equipment, and personnel of his company as of April 21, 1979, and pointed out that Estes has 14 terminals in the State. The revenues for common carrier operations of Estes for the year ended December 31, 1978, derived from intrastate traffic was $7,806,506 as shown on Exhibit No. 3 identified by Mr. Babb. He identified as Estes Exhibit No. 4 a printed brochure showing points served by Estes within North Carolina which included Concord, Lumberton, and Charlotte. The company has a terminal at Charlotte. Estes is actively engaged in common carrier operations of general commodities in North Carolina for both truckload and LTL shipments to all points within its operating authority. Mr. Babb had heard the testimony of the shipper witnesses supporting the application with the exception of a brief period after lunch on the first day of the hearing and stated that Estes could conduct all the transportation activities, both truckload and LTL, described by the witnesses. He is familiar with the definition of the term "truckload" under the rules and regulations of the Commission. In his North Carolina experience there has been no problem in dealing with shippers or other carriers knowing the definition of the term "truckload." Estes has equipment available which could handle additional North Carolina intrastate common carrier transportation. The company is in a position to move equipment into other areas where it might be needed by the shipping public and is ready, willing, and able to provide additional service. It provides regular service into and out of Lumberton, Concord, and Charlotte. Except for the two Counties of Buncombe and Henderson west of U. S. Highway 21, Mr. Babb heard no testimony of any transportation need that would not be within the scope of the authority of his company and that his company could not handle.

On cross-examination Mr. Babb testified that Estes has both regular route and irregular route authority with the irregular authority being generally east of U. S. Highway 21. His company covers all of North Carolina east of that line and has shown a substantial growth each year. He was not familiar with the incident of a delayed shipment of tires testified to by witness Hardee. Estes does not claim to handle next-morning delivery to all of its points, but attempts to provide the best service possible. He cannot say whether the increase in growth of Estes reflects a substantial increase in public demand for transportation. It could reflect increased rates, but he does not have specific figures to show the comparison between increased revenues and rates. Nor did he have specific figures as to

increase in tonnage handled by his company in North Carolina intrastate transportation for the prior year. He has never testified before the Commission that there was a shortcoming in the service of his company or that his company could not meet all of the public demand for services.

JOHN J. HENNESSEY testified that he is employed in traffic analysis by Overnite Transportation Company, one of the Protestants. Overnite has both regular and irregular general commodity authority in North Carolina which covers all of the authority now held by Terminal Trucking and the expanded authority which it is seeking in the hearing. He identified as Overnite Exhibit No. 1 an exhibit showing the terminals, equipment, and points served by Overnite within the State. Included in the points served are Charlotte, Concord, Lumberton, and Asheville. His company is actively operating in the transportation of general commodities between those points and other points in the State. Overnite has terminals in Rocky Mount, Kinston, Wilmington, Charlotte, Raleigh-Durham, Greensboro, Hickory, and Asheville. Operations are geared to provide service from one terminal to the other within eight hours. Overnite has 187 city and peddle tractors, 948 over-the-road trailers, and 183 road tractors in North Carolina, and can move this equipment, if needed, from one point to another. The company is authorized to engage and is actively engaged in transportation of both truckload and LTL shipments in North Carolina including service to Lumberton, Concord, Charlotte, and Asheville. Mr. Hennessey did not hear any testimony stating needs that are outside the scope of the operating authority of his company or which his company could not provide, except that it would not provide heated service on LTL shipments. Overnite does have equipment that could provide refrigerated or heated service on truckload shipments. Overnite has a "trailer control" in order to keep its equipment in North Carolina fully utilized. If there were an additional demand for service at a particular area the Company would provide equipment for that need. His company is ready, willing, and able to provide common carrier service in general commodities to the shippers testifying in the hearing and other shippers.

On cross-examination Mr. Hennessey testified that he did not know how many of the 7,507 total pieces of equipment in the total system operation of Overnite was licensed to handle intrastate freight in North Carolina. He testified that his company could provide truckload service between its terminals in Asheville and Wilmington within eight hours. This does not include time for pickup and delivery of LTL freight. Overnite does experience delays from time to time due to breakdowns and weather. His company could not provide heated equipment for two drums of chemicals, but could do so for a truckload.

ROBERT L. BARE testified that he is Vice President and General Manager of the Protestant Shipper's Freight Lines. Shipper's Freight Lines has authority under Common Carrier

Certificate No. C-62 between points and places in 28 specific counties in North Carolina and from those counties, to all points in North Carolina and return from all points in North Carolina to the 28 specific counties. The geographical area of his company's authority covers the scope of the geographical area of Terminal Trucking's present authority and the additional authority which it is seeking. His company is actively engaged in the transportation of general commodities for both truckload and LTL shipments in North Carolina. It has terminals in Charlotte and Fayetteville and has purchased property for a terminal in Concord. The company operates 53 trailers, 26 tractors, and two straight trucks which are based at the two terminal locations. Mr. Bare testified that he did not hear any testimony requiring transportation service which his company would not be able to provide. Shipper's Freight Lines began operations two years and nine months ago and has actively solicited business during that time, including that of most of the supporting witnesses in the case. His company served Perry Brothers Tire Company and was able to give next-day service to the stores in Henderson, Oxford, Smithfield, and Aberdeen. It is not now handling any shipments for the company. It has also solicited Texfi Industries in Kinston and has made service available to the other shipper witnesses in the Concord and Lumberton areas who testified in the proceeding, except two or three from Concord. Shipper's Freight Lines has the financial ability to provide additional common carrier service for shippers in those areas and is ready, willing, and able to provide such service as needed.

On cross-examination Mr. Bare testified that under his authority he can pick up from any point in the State, and transport back to the specific 28 counties, and can deliver out of the specific 28 counties back into other counties. His company can pick up and deliver in any county outside of the 28-county area as long as the shipment is gatewayed into the 28-county area. His company does not solicit or handle traffic between all points and places in the State outside of the 28-county area. Of the 53 trailers available for use by the company, it owns approximately 20 and the others are under permanent lease with agreement to buy. The first year Shipper's Freight Lines was in business its revenues amounted to $468,000 and the second year, $858,000. This growth has resulted from hard work and solicitation of customers, and he cannot say that it reflects a tremendous demand for service in North Carolina. He is anticipating a substantial increase in revenues in 1979, hopefully exceeding $1 million, but that does not in his opinion show a growing demand or need for transportation services during that period. The business of Shipper's Freight Lines, Inc., has been built up through hard work and good service. He knows that North Carolina is growing but has no figures as to the economic growth in the State. The fact that his company has a terrific business in the area from Greensboro to Asheville in competition with Fredrickson does not necessarily depend upon an increase and growing

demand from the public in that area. All of the business that his company has today is not new business but he has taken some away from other carriers including Fredrickson, Standard, Dixie, Terminal Trucking, and Estes. There has been an increase in tonnage and in rates in North Carolina. The increased rates did not account for all of the growth. Since starting the business, his company has doubled the number of trailers.

CHARLIE F. FINLEY, whose written statement was allowed into evidence as if orally given, testified that he is the Traffic Manager for Fredrickson Motor Express Corporation which holds Common Carrier Certificate No. C-1 issued by this Commission authorizing it to operate as a motor common carrier of general commmodities, both LTL and truckload, throughout the geographical area covered by the application of Terminal Trucking Company, Inc. Fredrickson operates a fleet of 199 tractors, 478 trailers, and 115 straight trucks and is in a position to obtain additional equipment if needed. The company maintains nine terminals in North Carolina which are strategically located over Piedmont and Western North Carolina at Asheville, Bryson City, Charlotte, Greensboro, Hickory, Kings Mountain, Marion, Statesville, and Winston-Salem. Fredrickson is not presently utilizing its equipment and facilities to full capacity and needs additional traffic.

Based on the testimony of the witnesses, the exhibits introduced into evidence, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant, Terminal Trucking Company, Inc., now holds Common Carrier Certificate No. 368 issued by this Commission as follows:

> Transportation of general commodities, except those requiring special equipment, over irregular routes between points and places within a radius of seventy-five (75) miles of Concord.
>
> Transportation of general commodities, except those requiring special equipment and except explosives and other dangerous articles and tobacco in baskets and sheets moving from warehouse to warehouse for resale whether within a single city or to another city, between points and places on and east of U. S. Highway 15.
>
> LIMITATION: Truck Loads Only.

2. By this application Terminal Trucking Company, Inc., is seeking to amend its existing authority to remove the "truckloads only" limitation and to increase the geographical scope of the authority as follows:

> To operate from all points and places in Present Authority to all points and places in Alamance, Orange, Person, Rockingham, Buncombe, and Henderson Counties; and from Alamance, Orange, Person, Rockingham, Buncombe, and Henderson Counties to all points and places in Present Authorization.

3. The Applicant, in the Brief of its attorneys, requests the elimination from the application that portion seeking authority into additional named counties. The only part of the application remaining is the request that the "truckload only" limitation be removed on Common Carrier Certificate No. C-368 which provides authority between all points and places on and east of U.S. Highway 15.

4. That portion of the present operating authority of Terminal Trucking Company, Inc., authorizing it to operate between points and places on and east of U.S. Highway 15 and to which the "truckloads only" limitation applies was acquired in 1971 by purchase from Vernon S. Aycock approved by this Commission by Order issued in Docket No. T-477, Sub 2. The operating authority of Vernon S. Aycock had been acquired in 1949 under the "grandfather" provisions of the North Carolina Truck Act of 1947 by Order issued by this Commission in Docket No. T-20. The original authority also contained a limitation as to truckloads only.

5. The term "truckload" is defined in Rule R2-31 of this Commission as follows:

> Rule R2-31. Truckload defined. - A truckload shall be construed to mean and be limited to a consignment moving, on one bill of lading, from one consignor, at one origin, to not more than four (4) consignees, provided that the aggregate weight of such consignment shall be no less than 10,000 pounds or occupy a minimum of 500 cubic feet content.

This definition was added to the Rules and Regulations for the Administration and Enforcement of the North Carolina Truck Act by Supplement No. 1 to General Order No. 4066-A, issued by this Commission effective July 1, 1951.

6. The Commission inspectors from time to time visited and inspected the operation of the Applicant, and at no time until August or September 1979 was any concern expressed as to the LTL transportation being performed in the area on and east of U.S. Highway 15.

7. The public has had available to it service from the Applicant for LTL as well as truckload traffic between points and places on and east of U.S. Highway 15 since 1971 and from points and places within that territory into the area within the radius of 75 miles of Concord, North

Carolina. Since 1971 these shippers have utilized this service and found the same to be satisfactory.

8. The witnesses for the Protestants failed to show that the operation of the Applicant caused them to lose business, nor did they show that they will be injured by the granting of the relief sought by the Applicant.

9. Questions have arisen with respect to the compliance with the rules and regulations concerning the lease of equipment, the form of the lease, and the operation thereunder.

10. The Applicant has occasionally violated the territory of its authority, but the evidence does not support a finding of violations sufficient to warrant the denial of this application.

11. That a granting of this application is in furtherance of the public convenience and necessity, will serve real and substantial needs of shippers, and will, while serving such needs, not be unduly harmful to existing carriers.

CONCLUSIONS OF LAW

1. The Applicant has carried the burden of proof that public convenience and necessity requires the removal of the "truckload only" limitation from that portion of its certificate which authorizes transportation of general commodities between points and places on and east of U.S. Highway 15 in addition to existing authorized transportation service, that the Applicant is fit, willing, and able to properly perform the proposed service, and that the Applicant is solvent and financially able to furnish adequate service on a continuing basis.

2. Since the Applicant has carried the burden of proof with respect to convenience and necessity, there is no need to determine whether the operations prior to this application were in violation of Rule R2-31 or legal as contended by the Applicant, but it is concluded that such prior movement was not an intentional violation of the rules and regulations of the Commission sufficient to warrant the denial of this application.

3. That the Protestants have failed to show how their operations will be adversely affected and, in fact, each has shown substantial increase in business in spite of the fact that the Applicant has operated continuously in this area during the period since 1971.

4. The Applicant shall in the future not transport any goods or commmodities from or to points outside the territory embraced in its certificate.

5. That the emergency temporary authority should be issued immediately in order that the operations of the Applicant can be continued pending the permanent Order of the Commission.

IT IS, THEREFORE, ORDERED:

1. That the limitation "truckloads only" be stricken from that portion of Certificate No. C-368 which authorizes the transportation of general commodities between points and places on and east of U.S. Highway 15.

2. That temporary authority be granted to authorize the transportation without the above limitation, pending final determination of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of March 1980.

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

DOCKET NO. T-477, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Terminal Trucking Company, Inc., Application for Permanent Authority) FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 27, 1980, at 10:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners John W. Winters, Edward B. Hipp, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Applicant:*

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, P.O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:*

Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602

BY THE COMMISSION: On March 6, 1980, Hearing Examiner Carolyn D. Johnson issued a "Recommended Order Granting Application" in this docket. On March 21, 1980, counsel for Protestants filed Exceptions to the Recommended Order and requested oral argument. Oral argument was scheduled before the full Commission to be heard on April 25, 1980, but was subsequently rescheduled for August 27, 1980, upon motion of counsel.

Oral argument on the Exceptions was subsequently heard by the Commission on August 27, 1980. Counsel for both the Applicant and the Protestants were present and presented oral argument on the Exceptions.

Based upon a careful consideration of the entire record in this proceeding, including the Exceptions and oral argument heard thereon, 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

* corrected by Order issued October 9, 1980.

Order dated March 6, 1980, should be affirmed and that each of the Exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the exceptions to the Recommended Order filed herein on March 21, 1980, by the Protestants be, and each is hereby, overruled and denied.

2. That the Recommended Order in this docket dated March 6, 1980, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of October 1980.

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

DOCKET NO. T-2019

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Zackly Rite Trucking, Inc., Route 2, Box 345, Elm City, North Carolina - Application for Authority to Transport Group 21, Animal and Poultry Feed and Feed Ingredients, Statewide	) RECOMMENDED ORDER GRANTING IRREGULAR ROUTE COMMON CARRIER OPERATING AUTHORITY

HEARD IN: Commission Hearing Room 214, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 24, 1980, at 9:30 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

E. Gregory Stott, Attorney at Law, P.O. Box 131, Raleigh, North Carolina 27602

Walter L. Hinson, Parker, Miles, Hinson & Williams, Attorneys at Law, P.O. Box 701, Wilson, North Carolina 27893

For the Protestants:

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Riverside Transportation Company, Inc., I.W. Bowling, Inc., B & W Grain & Feed Service, Inc., Fleet Transport Company, Inc., and Central Transport, Inc.

BENNINK, HEARING EXAMINER: On November 27, 1979, Zackly Rite Trucking, Inc. (Applicant or Zackly Rite), filed an application in this docket seeking irregular route common carrier authority to transport Group 21, animal and poultry feed and feed ingredients in bulk, other than liquid, statewide. The Applicant also filed a "Motion for Emergency Authority" in conjunction with its application for permanent operating authority. By letter dated December 4, 1979, the Transportation Division of the North Carolina Utilities Commission gave notice of the Applicant's request for emergency operating authority to all certificated carriers of feed and feed ingredients in North Carolina.

On December 10, 1979, Riverside Transportation Company, Inc. (Riverside or Protestant), filed a "Protest to Motion for Emergency Authority and Protest to Application for Permanent Authority," which intervention was subsequently granted by Commission Order dated December 19, 1979.

On December 11, 1979, the Applicant filed a "Motion to Amend" in this docket, thereby seeking to amend Exhibit A of its application to read as follows:

Transportation of Group 21, animal and poultry feed and feed ingredients, statewide.

Notice of the application as amended, together with a description of the permanent operating authority being sought in conjunction therewith, was published in the Commission's Calendar of Hearings issued on December 13, 1979. The matter was thereby scheduled to be heard on Thursday, January 24, 1980, at 9:30 a.m.

On December 17, 1979, I.W. Bowling, Inc. (Bowling or Protestant), filed a "Protest to Motion for Emergency Authority and Protest to Application for Permanent Authority," which petition to intervene was subsequently granted by Commission Order dated December 27, 1979.

By Commission Order dated December 19, 1979, the Applicant's "Motion for Emergency Authority" was consolidated with its application for permanent common carrier operating authority for purposes of hearing.

Additional protests and motions to intervene were thereafter filed in this docket by Fleet Transport Company, Inc. (Fleet), B & W Grain & Feed Service, Inc. (B & W), and Central Transport, Inc. (Central). By Commission Order dated January 10, 1980, Fleet, B & W, and Central were permitted to intervene in this docket as Protestant Parties.

Upon call of the matter for hearing at the appointed time and place, all parties were represented by counsel. Prior to the taking of any testimony, the Applicant made a motion to amend the scope of its application to read as follows:

Transportation of Group 21, animal and poultry feed and feed ingredients, except liquid in bulk and except dry in bulk in pneumatic tank vehicles, statewide.

Upon the granting of this motion by the Hearing Examiner, Protestants Fleet and Central withdrew their protests, but were permitted to remain parties of record herein for the purpose of receiving copies of any Orders subsequently issued in this docket.

The Applicant then offered testimony by the following individuals in support of its application: Zack Royce Bissette, Applicant's President and sole shareholder; John R. Keimeier, Branch Traffic Manager for the Ralston Purina Company, Charlotte, North Carolina; Robert Edward Cummings, Plant Manager and Sales Representative for Spartan Grain & Mill Co.; John W. Wagnon, Jr., Manager of Purchasing and Sales for the Ralston Purina Company, Raleigh, North Carolina; Jay Gallimore, Customer Service Supervisor for Central Soya of Wilson, Inc.; and W.A. House, Plant Manager

for Planter's Oil Mill, Inc. The Protestants offered testimony by the following individuals: Curtis Whitley, President of B & W Grain & Feed Service, Inc.; Dennis A. Peacock, President of Riverside Transportation Company, Inc.; and Zack Royce Bissette, Jr.

Based upon a careful consideration of the amended application, the testimony and evidence presented at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That the Applicant Zackly Rite Trucking, Inc., is a corporation duly organized and existing under the laws of the State of North Carolina and is located at Elm City, Wilson County, North Carolina.

2. That the Applicant, by its amended application, seeks irregular route Group 21 common carrier operating authority as fully described in Exhibit B attached to this Recommended Order and made a part hereof.

3. That Zack Royce Bissette, d/b/a Zackly-Rite Farms, presently holds Exemption Certificate No. E-16436, said certificate having been issued by this Commission on July 1, 1977, covering the transportation of farm, dairy, or orchard products from farm to market.

4. That Zack Royce Bissette, Applicant's President and sole shareholder, and his wife jointly own the following rolling equipment which will be made available to the Applicant corporation by means of either a lease agreement, outright transfer of title thereto, or some other acceptable arrangement:

Make	Body Type	Carrying Capacity
72	International Tractor	
79	International Tractor	
79	International Tractor	
68	Fruehauf Alum Dump Trailer	25 T
77	Hill Alum Dump Trailer	25 T
79	Fruehauf Alum Dump Trailer	25 T
72	Transcraft Flat Bulk-Bag Trailer	25 T
77	Ford Straight Truck w/9 ton top Augur	9 T
73	GMC Straight Truck Dump Bulk-Bag	9 T

5. That the rolling equipment set forth in Finding of Fact No. 4 above is presently used by Zack Royce Bissette, d/b/a Zackly-Rite Farms, to haul exempt commodities and to transport animal and poultry feed and feed ingredients for private purposes. Furthermore, this rolling equipment is also under lease to the Protestant Riverside Transportation Company, Inc., to be used by said common carrier in meeting the transportation needs of the public under its certificate of public convenience and necessity. Between January 1,

1979, and January 24, 1980 (the date of hearing in this matter), Riverside handled 187 intrastate shipments or movements of regulated commodities in North Carolina under its operating authority and pursuant to its lease agreement with Zack Royce Bissette utilizing Bissette's equipment. Seventy-one of said intrastate movements required the use of the auger type equipment owned by Zack Royce Bissette.

6. That Zack Royce Bissette proposes to terminate his lease agreement with Riverside upon the granting of the common carrier operating authority at issue herein.

7. That testimony was presented by five shipper witnesses in support of the amended application at issue in this docket.

8. That there is a public need and demand for auger type equipment to haul animal and poultry feed and feed ingredients in North Carolina intrastate commerce. Zack Royce Bissette presently owns one auger type vehicle which has been more particularly described in Finding of Fact No. 4 above. Applicant plans to purchase additional auger type equipment if granted common carrier operating authority. Neither Riverside nor B & W presently owns any auger equipment, although both Protestants do have access to such equipment through lease agreements.

9. That the public convenience and necessity require the common carrier service herein proposed by the Applicant in addition to existing authorized transportation service. There is a need for the proposed transportation service throughout the State of North Carolina. The proposed operating authority is also responsive to the demand for service expressed on the record by the supporting shippers in this docket.

10. That the Applicant is fit, willing, and able to properly perform the transportation service proposed herein.

11. That the Applicant is solvent and financially able to furnish adequate service on a continuing basis under the irregular route common carrier operating authority set forth in Exhibit B attached hereto and made a part hereof.

12. That the Protestants have not, on this record, demonstrated that their ability to continue providing common carrier transportation service in North Carolina intrastate commerce will be unduly impaired by the granting of the operating authority set forth in Exhibit B attached hereto.

13. That granting the amended application is consistent with the public convenience and necessity and the public interest and will not be unduly harmful to existing common carriers.

14. That no matters exist which would disqualify the Applicant from being granted a certificate to operate as a

common carrier in this State under the operating authority set forth in Exhibit B attached hereto and made a part hereof.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Under the provisions of G.S. 62-262(e), Zackly Rite has the burden of proof with respect to its application for common carrier operating authority to show to the satisfaction of this Commission:

1. That public convenience and necessity require the proposed service in addition to existing authorized transportation service,

2. That Zackly Rite is fit, willing, and able to properly perform the proposed service, and

3. That Zackly Rite is solvent and financially able to furnish adequate service on a continuing basis.

The type of proof required to show public convenience and necessity within the meaning of G.S. 62-262 is further explained by Rule R2-15 of this Commission which provides that the Applicant must establish proof that a "public demand and need exists" for the proposed service in addition to existing authorized service. The Supreme Court of North Carolina and the Court of Appeals have in several decisions stated the elements which constitute "public convenience and necessity," pointing out that they include such questions as "whether there is a substantial public need for the service;" and "whether it would endanger or impair the operations of existing carriers contrary to the public interest." Utilities Commission v. Carolina Coach Company, 260 N.C. 43, 132 S.E.2d 249 (1963); Utilities Commission v. Trucking Company, 223 N.C. 687, 28 S.E.2d 201 (1943); Utilities Commission v. Southern Coach Company, 19 N.C.App. 597, 199 S.E.2d 731 (1973); and Utilities Commission v. Queen City Coach Company, 4 N.C.App. 116, 166 S.E.2d 441 (1969).

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 therefore concludes, (1) that the Applicant in this proceeding has met and carried the burden of proof necessary to warrant issuance by this Commission of a certificate granting said Applicant authority to operate as a common carrier of property by motor vehicle in intrastate commerce; (2) that the service herein proposed by the Applicant is in the public interest and will not unlawfully affect the service which is presently being rendered to the public by other certificated common carriers; (3) that the Applicant is fit, willing, and able to properly perform the service as herein proposed; (4) that the Applicant is solvent and qualified, financially and

otherwise, to operate on an adequate and continuing basis under the authority presently being sought from this Commission; and (5) that the amended application herein under consideration, being justified by the public convenience and necessity, should be granted.

While the Hearing Examiner certainly recognizes that the above-discussed grant of common carrier operating authority to Zackly Rite Trucking, Inc., will undoubtedly result in some degree of competition to existing au thorized carriers in North Carolina, it is, nevertheless, not the function of this Commission to insulate and protect existing common carriers from all effects and consequences of competition. Rather, affected carriers must show that they will suffer some degree of real and consequential harm as a result of the granting of new operating authority before such grant of authority will be denied by the Commission. In this regard, the North Carolina Supreme Court made the following statement in Utilities Commission v. Coach Company, 261 N.C. 384, 134 S.E.2d 689 (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."

Accordingly, the Hearing Examiner concludes that a grant of common carrier operating authority in accordance with the authority set forth in Exhibit B attached hereto, being justified by the public convenience and necessity, is appropriate in this case. The existence of a public demand and need for the proposed service in addition to existing authorized transportation service is clearly found in the testimony offered at the hearing by Applicant's five supporting shipper witnesses. Furthermore, there has been no showing in this case that such grant of common carrier operating authority will result in a degree of competition to existing common carriers of an unduly harmful, ruinous, or destructive nature. In addition, the Hearing Examiner is of the further opinion that the Applicant is certainly fit, willing, and able to perform the common carrier transportation services described in Exhibit B and that the Applicant is also solvent and financially able to furnish adequate service on a continuing basis under the operating authority set forth in said Exhibit B.

IT IS, THEREFORE, ORDERED as follows:

1. That Zackly Rite Trucking, Inc., be, and the same is hereby, granted irregular route common carrier operating authority in accordance with Exhibit B attached hereto and made a part hereof.

2. That Zackly Rite Trucking, Inc., file with this Commission, to the extent it has not already done so, 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 Zackly Rite Trucking, 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 in writing by the Commission upon written request for such an extension, the operating authority granted herein will cease.

4. That Zackly Rite Trucking, Inc., maintain its 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 readily identified from said books and records and 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.

6. That upon the commencement of operations by the Applicant under the permanent common carrier authority herein granted, the temporary operating authority previously granted to the Applicant by the Commission pursuant to its Order dated May 6, 1980, shall cease and determine.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of May 1980.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. T-2019

Zackly Rite Trucking, Inc.
Route 2, Box 345
Elm City, North Carolina 27822

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of Group 21, animal and poultry feed and feed ingredients, except liquid in bulk and except dry in bulk in pneumatic tank vehicles, statewide.

DOCKET NO. T-1709, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Eastern Courier Corporation, Raleigh, North Carolina, to Amend Existing Contract Carrier Permit and for Group 1, General Commodity Common Carrier Authority Between Points in and East of Person, Orange, Chatham, Moore, and Scotland Counties Restricted Against Transportation of Single Articles or Packages When in Excess of 50 Pounds and Aggregate Shipments of More Than 200 Pounds From One Consignor at One Location to One Consignee at One Location in a Single Day	) RECOMMENDED) ORDER) GRANTING) ADDITIONAL) CONTRACT) CARRIER) AUTHORITY AND) PARTIAL COMMON) CARRIER) AUTHORITY))

HEARD IN: The Hearing Room of the Commission, Dobbs Building, Raleigh, North Carolina, on November 15, 1979

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald and Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602

For the Protestants:

Thomas W. Steed, Jr., Allen, Steed and Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: Purolator Courier Corporation

James M. Kimzey, Kimzey, Smith and McMillan, Attorneys at Law, 506 Wachovia Bank Building, P.O. Box 150, Raleigh, North Carolina 27602
For: Pony Express Courier Corporation

BENNINK, HEARING EXAMINER: By application filed with this Commission on September 18, 1979, Eastern Courier Corporation (Eastern or Applicant) seeks authority to amend its existing Contract Carrier Permit No. P-264 by adding the firm of D.P. Services, Inc., as a contracting shipper under (1) of such permit and by adding the Counties of Rockingham and New Hanover to the geographical scope set out in subparagraph (b) of such (1), and to further add as a new (5) to its Contract Carrier Permit No. P-264 the following:

(5) Group 21, transportation of electronic word processing equipment and related commodities between points in and East of Person, Orange, Chatham, Scotland

and Moore Counties under a continuing contract with Lanier Business Products, Inc., Raleigh, North Carolina.

In said application Eastern further seeks common carrier authority as follows:

Group 1, general commodities between points in and East of Person, Orange, Chatham, Scotland and Moore Counties.

Restricted against transportation of single articles or packages weighing in excess of 50 pounds and against multiple articles and packages weighing in aggregate more than 200 pounds when moving from one consignor at one location to one consignee at one location in a single day.

On September 18, 1979, Eastern also filed a petition seeking temporary authority to serve Lanier Business Products, Inc., as a contract carrier, which authority was granted by Order of this Commission issued on October 20, 1979.

Notice of the application for permanent authority together with a description of the authority sought and the date and place of hearing was published in the Calendar of Hearings of the Commission dated September 26, 1979.

Protests and Motions for Intervention were timely filed by Purolator Courier Corporation (Purolator) and by Pony Express Courier Corporation (Pony Express), with both interventions being subsequently allowed by Orders of the Commission.

All parties were present and represented by counsel at the hearing. Motions made by counsel for Eastern at the commencement of the hearing to dismiss the protests of Purolator and Pony Express and to consolidate the proceedings in this docket with the pending application of Pony Express in Docket No. T-1938, Sub 1, were denied. The summary of the evidence presented at the hearing is as follows:

KEITH BRUTON testified that he is District Administrator for Lanier Business Products and that included in his district are several counties in eastern North Carolina. The primary transportation need for Lanier is for the transportation of electronic typing systems consisting of processors, printers, and screeners. The processors weigh from 60 to 75 pounds and the printers weigh around 35 pounds. Frequency of shipment depends on customer demand with a maximum of three to five per week. The equipment is usually shipped uncrated and requires vans with proper padding inside and a flexible delivery schedule. Lanier Business Products has entered into a contract with Eastern for contract carrier service for the transportation of these products and is presently using the services of Eastern under temporary authority granted by the Commission.

BRENDA MEASAMER testified that she represented D.P. Services of Raleigh which is a data processing service which processes such matters as accounts payable, accounts receivable, payrolls, general ledgers, and general accounting for various types of businesses. A typical example of the company's services is that which it handles for a grocery store chain in Washington, North Carolina, where the payroll and accounts payable are picked up in Washington on Monday night, delivered to D.P. Services on Tuesday morning, processed, and picked up from D.P. Services on Tuesday afternoon for delivery to customer on Wednesday morning. If the data is not received back by the customer on Wednesday morning, as has happened in three instances, the employees cannot get paid until the next day. Such transportation failures have an adverse affect upon the relationship of D.P. Services with its clients. Pony Express is now providing that particular transportation service, but the witness does not know whether or not there is a contract between D.P. Services and Pony Express. The type of transportation service provided by common carriers such as Overnite Transportation Company, Thurston Motor Lines, or Estes does not meet the requirements of D.P. Services because of the necessity for a rapid turnaround, sometimes within 24 hours. Purolator has been handling, for five years, transportation in connection with processing of utility billing for the Town of Hillsborough, but the witness did not know whether or not there was a contract for this service. She can only recall two or three cases where there has been a mix-up in the delivery service by Purolator. On two occasions the payroll for a customer, which is considered to be highly confidential, was delivered to the wrong company by Pony Express.

Ms. Measamer identified as Applicant Exhibit No. 1, a contract between D.P. Services and Eastern for the furnishing of transportation by Eastern to her company. She testified that it was debatable whether D.P. Services would continue to use Pony Express or Purolator and she would prefer to deal with one person.

On cross-examination Ms. Measamer stated that at the present time contracts with Purolator or Pony Express and other carriers are with D.P. Services in some instances and with the customers in other instances. It would be her preference to supersede all of these contracts by the contract with Eastern and she would advise her customers that such service was available.

CHARLIE WILLIAMS testified that he is the Mailing and Messenger Supervisor for the Wachovia Bank Operations Center on Wake Forest Road in Raleigh, which processes checks and deposits for the region including Chapel Hill, Durham, Rocky Mount, Wilson, Wilmington, Fayetteville, Laurinburg, Maxton, Elizabethtown, and Lumberton. Checks and deposits are picked up from Wachovia branches in this region and delivered to the Operations Center and information, data processing, and other items are delivered from the

Operations Center back to the branches. This is done on at least a daily basis and in some areas two or three times a day. This transportation outside the City of Raleigh is performed by Pony Express and inside the City by a company messenger service supervised by Mr. Williams. Eastern handles some airport transportation. In emergency situations it is sometimes necessary that company messengers handle the out-of-town transportation.

Pony Express serves the Operations Center on a scheduled basis and there are some instances where items would have to be picked up or delivered outside of the scheduled time. Wachovia messengers would be used for this, if available, and, if not, Pony Express would be requested to make the shipment. Mr. Williams has not called on Purolator for such service. He testified it would be of benefit to Wachovia if Eastern had common carrier authority which could be used as a compliment or addition to the service provided by Pony Express. It would not be the intent of Wachovia to terminate its contract with Pony Express if Eastern acquired common carrier authority.

On cross-examination Mr. Williams stated that he had called on Purolator five to seven years ago, but had not done so recently and was not familiar with its operations at this time. His company uses Pony Express as its primary contracting courier and is served on a scheduled basis. In the event that shipments do not fall within the schedule, he calls upon his company bank messengers and, if they are not available, he calls upon Pony Express to provide the emergency service. If neither company messengers nor Pony Express was available, he would like to have Eastern available. Pony Express is making numerous pickups and deliveries for the Operations Center in the general area of about 42 per day. The need for emergency service depends upon weather, computer breakdowns, and other factors, but averages two or three times a month. In the past Pony Express has been able to provide service on an emergency basis when they were contacted. The last major problem was when a hurricane hit Wilmington and Pony Express could not be reached by telephone. Eastern sent a man and brought the work back. Eastern did not have authority to handle the shipment but thought it could be done on an emergency basis. It is fair to say that only once or twice in the past year have there been situations where neither Pony Express nor the company messengers could handle a transportation need. Mr. Williams testified that Pony Express was doing a good job and that he was not testifying that their service was negative in any way.

On redirect examination Mr. Williams stated that it would be nice to have somebody else to call on for service and he was not aware until the hearing that in order to use Purolator he would have to agree to contract.

BRYAN PATRICK PRICE testified that he is the Assistant Vice President and Supports Service Manager of First

Citizens Bank in Raleigh and is in charge of the bank's courier system which ranges from Bryson City to Elizabeth City, North Carolina. The bank operates its own courier service for the transportation of checks, data processing media, and other items between the various branches of the bank, between the branches and the Operations Center in Jacksonville, and between the Operations Center and Data Processing Department in Raleigh. These items are moved on fixed schedules on a daily basis and in some cases twice a day. The courier service is necessary to the efficient operations of the company's banking business. Mr. Price testified that he supported the application of Eastern for common carrier authority because he had two possibilities for needing such service - during vacations of employees and emergency service when an employee is out sick. His company attempted to use Purolator a few years ago on an emergency type basis but could not work out an arrangement. His company has used the services of Pony Express out of Elizabeth City, from Raleigh to Charlotte, and certain other areas. In some cases this was on a contract basis and a set schedule, but in most cases it was on an emergency situation. There is no scheduled contract now in effect with Pony Express but he would use them in an emergency situation. His company presently has a contract in effect with Eastern for certain operations in Wake, Durham, and Orange Counties and in the City of Raleigh. Eastern has been able to meet the schedules when needed. It would not make any difference to him as Supervisor of Transportation whether Eastern served as a common carrier or contract carrier as long as it was available. It would be of benefit to his company to have Eastern available as a common carrier, if by common carrier it means on demand.

On cross-examination Mr. Price testified that it was the intent to continue to use First Citizens' privately owned and operated courier service except in the case of vacation replacements and emergency service. He is not familiar with the operations of Purolator except that it is a courier service covering the entire State. There would be no reason why he could not use that service if it meets the schedules at an acceptable price. The last time he made a study of the existing available carriers was a year ago and that did not include Purolator.

Mr. Price testified that it was his understanding that the common carrier had to serve on demand, which meant that if he called Eastern and asked them to handle a shipment they had to say yes. The common carrier would be on call on an emergency or standby basis. First Citizens has had agreements with Pony Express in the past, including last year, to take care of its vacation schedule and by agreement Pony Express could also be on standby for an emergency. He understands that he can contract with Pony Express for emergency service and, in fact, has done so. Except for a few instances Pony Express has met all of his transportation needs satisfactorily, both vacation and emergency needs. He could decide to take a look at it again because of the price

factor or revamping of the courier service. Eastern has also given service and he would like to have more than one courier service, which he personally considered reliable, to call upon. He would definetly like to have more than one available.

WILLIAM HENRY WADE, JR., testified that he is President of Surtronics, Inc., of Raleigh which is in the business of electroplating and chemical metal finishing. His company presently has a contract with Eastern covering operations between points within a 50-mile radius of Raleigh and between the area defined by that radius on the one hand and certain counties in eastern North Carolina on the other. His company ships commodities ranging in size from small packaged items up to 150-pound blocks of steel and parts. He was not aware that the common carrier authority sought by Eastern would be restricted against articles exceeding 50 pounds in weight and does not believe that he would have any need for the proposed common carrier service of Eastern to make such shipments to the eastern part of the State. He does have customers in Wilmington and New Hanover County and in Reidsville and Rockingham County which are the counties Eastern is seeking to add to its present contract carrier authority under which it serves his company. Most shipments into these counties would be uncrated or unpackaged material and it is his understanding that the packaging requirements of Pony Express and Purolator are such that it would cause a great deal of extra cost on his company's part and his customers' part to make that kind of shipment. Eastern has been serving his company for about six or seven years and the quality of service has been good.

JOHN L. HERGENROEDER testified that he is with Trial, Incorporated, Sanford, North Carolina, a manufacturer of electronic air filters which are used in residential, commercial, industrial, and submarine uses. He is currently using the services of Eastern to Surtronics and has been doing so for seven years. The company would like to enhance this by being able to send parts for plating or machining to other machine shops and organizations in North Carolina. He did not know of the existence of Pony Express until the day of the hearing and had been solicited by Purolator in the past for transportation of papers between branches. Purolator had never specifically solicited his business on electronic equipment. The commodities which he desires to ship are parts for plating or machining which would not normally exceed a 25-pound box and individual pieces which would not exceed more than 30 or 40 pounds. It would be of benefit to his business to have the services of Eastern available in eastern North Carolina since it would open up some fields it does not have at this time because there is no convenient carrier.

On cross-examination Mr. Hergenroeder testified that he desired to send parts for electroplating and other types of finishings to various places other then Surtronics including Wilmington and Dunn. For this purpose he has a need for a

carrier that can pick up at its place of business, deliver parts to the plating or machine shop, and bring them back to his place of business on an expedited basis. He is not aware of the fact that Purolator is a common carrier with authority to transport packages 50 pounds or less and can provide the exact service that he is requesting. He would consider using Purolator.

ARTHUR GORDON KUEBLER testified that he is Manufacturing Manager at the Cutler-Hammer Plant in Selma, North Carolina, which manufactures electrical switches. His company deals with many manufacturing plants such as IBM and General Motors and has need to transport small packages between its plant in Selma and the Raleigh-Durham Airport. It also has a need for transportation of parts to Surtronics in Raleigh for plating and Piedmont Assembly Products in Wendell, once in a while, for a painting process. On large shipments he finds common carrier truck lines to be satisfactory but needs a service for expedited shipments such as those coming into the airport in Raleigh. He is not aware of any carrier available to him in Selma to provide package delivery and was not aware of either Purolator or Pony Express.

On cross-examination Mr. Kuebler testified that the majority of shipments to Surtronics were done on company-owned equipment and that the shipments to Wendell were usually made by Overnite or one of the larger carriers. In special applications or small orders, as well as shipments coming from the airport, he would like to have an expedited common carrier courier service for authority to transport packages of 50 pounds or less. He has made no investigation into existing carriers. If he learns that this type of service is available from Purolator he would have no objection to using it. Mr. Kuebler further testified on cross-examination that the primary area in which he required expedited service was between his plant and the airport. He was not aware of any deregulation concerning shipments to and from airport carriers nor has he made any investigation into that situation. If the service were available from the airport without any grant of authority from the Commission, he would like to have the option to use that service it if is the type of service he knows he could get from Eastern.

DONALD EUGENE DOLLAR testified that he is Superintendent of Shipping with the Siemens-Allis Corporation in Sanford, North Carolina, which manufactures circuit breakers. His company has the need to transport parts or commodities back and forth from Surtronics in Raleigh, Wendell, its new plant in Garner near Raleigh, Henderson, and Fuquay. At the present time Eastern is handling transportation between the plant and Surtronics as a contract carrier. The other transportation is being handled by company-owned trucks or employee-owned vehicles which is not satisfactory since it takes employees off their regular jobs. He is not aware of any for-hire carriers around that can provide this service

and has not been solicited by either Pony Express or Purolator for the service. Purolator does deliver the company's checks on Wednesday. He did call Purolator some while back about a special pickup but the price was too high. It would be of benefit to his company to have services of Eastern available in the eastern part of the State, so that the company would be able to discontinue use of employee deliveries.

On cross-examination Mr. Dollar stated that Eastern is now used for transporting parts which are shipped to and from Surtronics and that there was no need for any additional transportation for that particular line of shipments. The shipments to Wendell are to Piedmont Assembly to have parts varnished and are now transported by company truck every other day. The shipments involving Henderson and Fuquay are to pick up parts from vendors in those cities on an occasional emergency-type basis. He needs a common carrier courier expedited service between Sanford and Wendell and a carrier that can pick up small parts or articles in Henderson and Fuquay and bring them to Sanford. He has not made any real exploration of the type of service purolator can offer, but if Purolator could furnish the type of service that he needed, and the tariffs and rates were comparable, there would be no reason why his company could not use that carrier. On redirect and recross-examination, Mr. Dollar stated that it would be of benefit to his company to have more than one carrier available to serve it since if Purolator could not send a driver in the next 30 minutes he could call Eastern. He has only used Eastern on a contract basis for transportation to Surtronics and he could not say that every time he called they were able to pick up in 30 minutes.

HARRY WILLIAM MATTHEWS testified that he is the Materials Coordinator of Siemens-Allis Corporation. His company is building a new plant in the Wendell area, which is scheduled to be completed in September 1980. At present the company is leasing a building in Garner. The present transportation needs of the new facility are limited and all transportation so far between Garner and the Seimens-Allis plant in Sanford have been done by employee vehicles. As the new plant goes into operation the transportation need in the area of eastern North Carolina will change. There will be some inbound and outbound traffic of packages to and from points in eastern North Carolina weighing less than 50 pounds. In some cases the company will be able to rely on carriers such as Overnite Transportation and Thurston; in other cases there will be a need for expedited shipments of parts in case of emergency breakdowns. There will be inbound and outbound traffic every day of all different kinds including airport traffic, common carrier traffic, special heavy haul traffic, UPS traffic, and courier traffic. Adequate truck service to and from the Wendell plant will be necessary for the proper and orderly growth of that plant.

On cross-examination Mr. Matthews testified that he had not yet made an investigation into the existing carriers in North Carolina and that he will need to meet the various transportation needs of the Wendell plant when it gets on full steam including the need for courier service. He could not testify as a fact that there was need for service in addition to existing service.

A. BERT SAUVAGEOT testified that he was affiliated with East Carolina Heat Treat Service and Machine Tool and Heat Treat Service both of which are located in Raleigh. Machine Tool and Heat Treat Service is primarily engaged in the production and machining of small parts and the fabrication of small sheet metal parts of the electronics computer-type, subchassis industry. East Carolina Heat Treat Service is engaged in the heat treatment of metal parts similar to the plating business of Surtronics. The two companies presently use Eastern Courier on a local basis within Wake County and have an additional need outside of Wake County for delivery and pickup of parts sent out for processing, such as plating and painting and which are not readily packaged, and for the pickup and delivery of parts for heat treatment from customers. These specific places are Wilson, Wendell, Rocky Mount, and the Research Triangle Park. At the present time, this transportation is done in several ways, by the company's own pickup truck, customer delivery and pickup, sometimes bus service, and sometimes UPS. Much of the transportation needs to be done expeditiously and is emergency service for maintenance parts or equipment lines broken down. He does not know of any carrier now who can provide the type of service that he anticipates Eastern would provide and has never heard of Pony Express and Purolator. It would be of benefit to his companies to have several carriers available who offer the service.

On cross-examination Mr. Sauvageot testified that his need was for a trucking company that could handle a package of 50 pounds or less with courier expedited service. From his actual knowledge of the transportation industry at the present time he cannot testify that there is a need for additional service in that area other than what is available today. There would be no reason why he could not use Purolator if it could give the service and did not have restrictive packaging requirements.

JOSEPH EARL TAYLOR testified that he is the Senior Rate Analyst for Texasgulf who was appearing at the hearing in the absence of Skip Jones of the Purchasing Department of Texasgulf at the Lee Creek Facility in Aurora. He was not specifically familiar with the transportation requirements of Texasgulf, except that he knew there were small parts flown into Raleigh that now had to be picked up by company personnel driving from Aurora to Raleigh. He understands that his company also uses the airports in Kinston and New Bern depending on the size of the commodity. He does not know whether or not there are any available carriers who can provide the service that Eastern is seeking.

On cross-examination Mr. Taylor testified that he did not know as a fact that there was not adequate existing authority for courier transportation in the eastern part of North Carolina nor did he know to what extent Mr. Jones had inquired as to the availability of Purolator or other courier service. He did not know of any reason why Purolator could not furnish his company's transportation needs if it had this type of authority. On further cross-examination, Mr. Taylor stated that the primary thrust of his testimony was the need for shipments from the airports in Raleigh-Durham, Kinston, and New Bern to pick up parts that would be coming from all over the United States.

LAWRENCE WAYNE STEWART, the President and sole stockholder of Eastern, testified that his company is presently an authorized contract carrier which has been operating since 1975 under Contract Carrier Permit P-264 issued by this Commission. Eastern has on file with the Commission evidence of liability and cargo insurance, a schedule of minimum rates and charges, a designated process agent, and its current equipment list, and it has filed annual reports with the Commission during each year in which it has operated. Motor vehicle equipment owned by Eastern consists of two three-quarter-ton window vans, two pickup trucks, one two-ton truck, and five automobiles. There has been no substantial change in the balance sheet of the company attached to the application and he will be willing and able to commit additional money to the corporation should it become necessary. Physical offices of the company are in a converted house on a 100 x 200 foot lot on West Garner Road in Raleigh. In addition to Mr. Stewart the company employs a secretary, five full-time drivers, and four part-time drivers who are called when needed. Under his present contract carrier authority, he has seven contracts being operated under temporary authority, including the one with Lanier Business Service. He proposes to drop his present contract with Tipper Tie Division because they have not used the services for about one and one-half years. In connection with his present transportation operations for First Citizens Bank, he is required to carry additional insurance on the items and documents which he is transporting for that company in the amount of $25,000. He has an additional cargo policy in the amount of $25,000 that would cover common carrier operations. The company drivers are bonded and in some instances are furnished keys to the premises of its customers. The company has had very few accidents and none with personal injuries attributable to it. In the event Eastern is granted the authority being sought in this application, it would be operated as a messenger-type delivery service with pickup at one point and delivery to another point. Eastern does not propose to consolidate or warehouse freight. In the event that Eastern obtains the common carrier authority, it would be willing to have the Commission cancel those parts of its contract carrier authority to the extent it would be authorized to perform the same transportation as a common carrier. This would be complicated to figure out because of weight

limitations. He would charge the same rates for the same services whether it was a contract carrier operation or a common carrier operation.

Mr. Stewart stated that Eastern had handled the pickup from Wilmington for Wachovia Bank during the hurricane because it was an emergency situation and no other carrier was available. It is not the common practice of Eastern to haul outside the scope of its authority.

Eastern has been called on by shippers within the past year for service which it could not handle. In the event that Eastern is granted common carrier authority, it would be willing to serve the public on demand. Without such additional authority there is practically no way for the company to grow since it is now locked into a maximum of seven contract customers.

On cross-examination Mr. Stewart testified that under his existing contract with Rockwell International he transports valves, bonnet retainers, and pipes weighing anywhere from 5 to 2,000 pounds with 45% to 50% being over 50 pounds. Shipments for Rockwell are made on a daily basis but not under a set schedule. About one-half of the shipments are made by truck with the other half carried by car. Approximately 75% of the shipments for Surtronics must be made by truck, with the remainder by car. Approximately one-half of the Surtronic shipments are over 50 pounds. Eastern has one scheduled run for Surtronics and the other transportation is on a call basis. The Computer Management Corporation transportation consists of one scheduled weekly payroll delivery to Oxford and it is handle by an automobile.

Eastern would not terminate its contract carriers in the event it acquired common carrier authority unless the service to the particular customer could be handled by the common carriage. It would need to continue to serve the Rockwell, Surtronics, Burroughs Wellcome, and possibly Dunn & Bradstreet contracts. It would be able to handle Computer Management Corporation service as a common carrier as well as First Citizens Bank. The Burroughs Wellcome operation is handled by a three-quarter-ton van on a regularly scheduled run five nights a week. The Dunn & Bradstreet transportation runs for about a week every two months and consists of customers' books weighing from six to 10 pounds.

On continued cross-examination Mr. Stewart testified that the 1979 Ford window van was used primarily for the Burroughs Wellcome transportation, the Ford LTD was used every day on different runs and as a backup vehicle, the 1979 Ford Van was used a portion of every night for the First Citizens, transportation and as a backup vehicle, the 1975 Ford Maverick was used for a regular schedule run for First Citizens, the 1965 International two-ton truck was used mainly for Rockwell and occasionally for Surtronics, the 1978 Ford F150 pickup truck was used every day for

various deliveries and as another backup vehicle, the Ford F100 pickup was used daily for Surtronics, the 1979 Toyota Sudan was used every day, and the 1974 Ford was used every day. In the event that any of this equipment is not available, Eastern would lease vehicles from a leasing company. By using the two night vehicles for daytime delivery together with the two backup vehicles Eastern would be able to handle the two additional contracts and the two additional counties, if authorized by the Commission, without adding more vehicles. If Eastern were granted the common carrier authority and got a call to make a haul from Elizabeth City to Morehead and Jacksonville, it would probably use its vehicle No. 1 which is used for Burroughs Wellcome Company during the night. This equipment would be available for the common carriage as well as the two additional contracts. As a start, the witness thinks his company could cover all of eastern North Carolina with the present vehicles up until a point that it required additional vehicles. Additional vehicles would either be leased or purchased through bank financing. The corporation does not have current capital to acquire additional vehicles at a cost of four or five thousand dollars each.

Eastern now has four full-time drivers and one secretary as full-time employees other than Mr. Stewart. The others are part-time drivers who work at other jobs. Two of these are housewives who are available to drive at any time; the others would not be available when they are at work. The company has one full-time driver who is now driving every day on local call business. The company would plan to hire additional employees if required but have made no arrangements or specific plans for that.

Of the two new vehicles purchased by Eastern, one was paid for and the other financed. This does not increase liabilities of the company since some notes were paid off. Except for the Aurora witness most of the public witnesses submitted by his company were fairly close around Raleigh, Sanford, Wendell, and that area. It would be the intent of the company, if it were granted common carrier authority, to concentrate around the Raleigh area. Eastern is not soliciting business to go to Morehead, Wilmington, Elizabeth City, and Nags Head, but would like to have the authority to do so. It would have the ability to do so only if it would be feasible to the company and the customers, which is unlikely.

On redirect examination Mr. Stewart testified that he would be unable to surrender the contract carrier authority to serve Rockwell, Surtronics, Burroughs Wellcome, and Dunn & Bradstreet because those customers have shipped commodities that weigh more than 50 pounds. He would be willing for the Commission to amend his contract carrier permit to restrict against articles weighing less than 50 pounds. The common carrier authority is the most essential item he needs in order for his business to grow. He would prefer to have common authority if First Citizens and the

others with whom he has contracts would fall under the common carrier authority.

The witness testified that he considered a backup vehicle one that he could get his hands on in an unusual situation and that he had such vehicles available at all times. It is not the normal business practice of his company to acquire equipment or to hire drivers before it has a need for them. Profits of the company were $13,000 in 1978 and the profit position has increased so far in 1979. Profits of the company are usually spent for better equipment.

JOEL P. WHITE testified that he is Regional Manager for Purolator Courier Corporation, with his office in Charlotte, North Carolina. Purolator holds statewide general commodity authority with a limitation of 50 pounds per package and an aggregate of 100 pounds to any one customer in any given day. This authority was acquired by Purolator around January 1979 and the tariff filed and operations begun in the latter part of March 1979. Purolator also has contract carrier authority. It is actively engaged in operations under both its contract and common carrier authorities in North Carolina.

Mr. White testified that he was in direct charge of the operations of Purolator in North Carolina. His company has a major terminal facility in Charlotte, a terminal with garage support in Asheville, a terminal in Greensboro, a terminal in Cary where a garage support facility is being added, and a new terminal being located in the extreme eastern part of the State. In its operation Purolator uses basically E-150 to E-250 delivery vans, some five-ton parcel delivery vans, and two F600 Linehauls which are 16-foot vans. In the eastern part of the State it has about 25 vehicles with 15 of them being based in Cary and the others based in Sanford, Elizabeth City, Jacksonville, Wilmington, Lumberton, and strategic locations. His company has the flexibility to move additional equipment into the area, if necessary.

Since March 1979, Purolator has been in active operation as a general commodity carrier of packages and articles weighing 50 pounds or less. It is ready, willing, and able to meet the transportation needs of any of the shipper witnesses appearing in the proceeding. It provides courier service characterized by a short or overnight delivery and a pickup from the place of business and delivery completely through to the destination. Purolator is now actively engaged in marketing activities, has recently hired a new market representative for the eastern part of North Carolina, and is conducting a national advertising and mail-out program. It would have been impossible for Purolator to have contacted all shippers in North Carolina within the few months that it has been operating its general commodity authority.

Mr. White is familiar with the carriers operating in North Carolina in the courier or small package delivery service and in his opinion there is no need for any additional service of that kind.

On cross-examination Mr. White identified the Commission's Order issued in Docket No. T-1077, Sub 14, on September 7, 1978, as an Order granting Purolator its common carrier authority, but explained that it was several months later before his company filed its tariff and began actual operations under the authority. He testified that the 25 vehicles that were available in the eastern part of the State are also used in contract carriage and in some interstate transportation. The present intrastate operations of Purolator consist of approximately 80% common carriage and 20% contract.

Mr. White testified that Purolator would provide its courier service to individual residences if the traffic had been prearranged. The charge would depend upon the applicable tariff rate. If the shipment had some special requirements beyond the normal service, it could come under the exclusive rate; for example, if someone would ask for a package to be picked up in Charlotte in 15 minutes and delivered to Sanford in three hours. His company does provide the call and demand service that Eastern proposes to offer. It probably has 75 to 80 call and demand shipments each day. Although his company generally operated on a system of established runs in its contract operations, this no longer holds true as a general commodity carrier. It is on call to pick up for any customer. The courier service is a common carrier general commodity service. The company does not restrict its service to customers who give repetitive business that can be handled on an established run.

It is not the position of Purolator that a shipper such as First Citizens Bank could be required to contract with Purolator nor would Purolator have to contract with First Citizens. The testimony of First Citizens in the hearing did not show a need for another carrier. It only needed someone to fill in for vacation schedules, and Purolator had handled all this transportation for them in the past. Purolator did join in a motion with Pony Express to dismiss portions of the application because there was no testimony regarding need other than in the Raleigh, Selma, and Sanford area. Mr. Williams of Wachovia Bank only testified that there was a need for service in eastern North Carolina twice in one year. Mr. Price of First Citizens did testify as to his branches throughout the eastern part of the State for vacations and sickness, but his testimony did not warrant the countywide service.

Purolator can handle the transportation needs of Mr. Sauvageot for transportation to and from Wendell, Wilson, Rocky Mount, Sanford, and the Research Triangle Park area. It is not the entire position of Purolator that the shipping

public has a duty to go out and find it, but shippers do have a responsibility to try to locate a carrier to satisfy their needs. It is not inconsistent for Purolator to object to carriers giving authority to serve a shipper that Purolator has not solicited.

The term "door-to-door" means pick up at the location the customer requests and deliver to the location that he has requested it to be delivered. In courier service, commodities are not warehoused, they are not dropped for pickup at any consolidated location, but they are picked up at the location the customer desires and delivered to the location that it desires. Expedited means exactly what it says, a speedy service. What constitutes expedited service depends upon the shipment, which could be three days or one hour. On a shipment to London three days is expedited; on a shipment from Raleigh to Selma three days would not be considered expedited.

Purolator is delivering a payroll to the Siemens-Allis plant in Sanford every Wednesday. The last time the market representative solicited this account for other paper work, Purolator did not have authority to haul general commodities.

Mr. White testified that he could not quote Purolator's revenue from North Carolina operations in 1978, but that it could run $1 million a year. Any package that is taken away from Purolator would have an impact on its operations. Even if Purolator does not serve the shipper witnesses today, it could have them next week.

(At the conclusion of Mr. White's testimony, the latest equipment list and financial statements of Purolator filed with the Commission and the Order of the Commission in Docket No. T-1077, Sub 14, were offered into evidence by reference and judicial notice was taken of such documents by the Hearing Examiner.)

BRACK R. BAILEY testified that he is the District Manager and the Chief Operating Officer in North Carolina for Pony Express. His company now has contract carrier authority to handle Group 21 commodities including data processing, bank stationery, cash letters, and papers and documents, all of which are generally known as bank documents and data processing media. Pony Express transports numerous commodities within its authority between points and places in eastern North Carolina and just about covers all the cities and towns in that area. It has approximately 80 to 85 vehicles located in the general area east of Raleigh. In transporting the bank documents and data processing media it has contracts which call for both scheduled delivery as well as on-call service throughout the State.

Mr. Bailey testified that he had heard the testimony of Mr. Stewart for Eastern as to its financial status and equipment list and is of the opinion that these would not be

sufficient to enable a carrier to successfully operate an on-call business throughout eastern North Carolina for the commodities which Pony Express is now hauling.

Mr. Bailey also testified that he had heard the testimony of the witness from First Citizens Bank concerning the need for backup coverage for vacations and emergency situations. Pony Express has provided that very type of service for First Citizens and did so last summer. It is capable of continuing to provide the service.

Mr. Bailey also heard the Wachovia witness testify concerning an attempt to contact his company. Pony Express has around-the-clock service in Raleigh, Charlotte, and Winston-Salem and, in addition, has a toll-free WATS number in Winston-Salem. As a part of the Wachovia contract strict guidelines should have been given out by Wachovia that Winston-Salem could be called 24 hours a day in case of a problem. He did not recall that the witness testified that he had called Winston-Salem. Should emergency situations now arise in Raleigh, there is a man on telephone call 24 hours a day, and Pony Express can provide the emergency service testified to this morning.

On cross-examination Mr. Bailey stated that Pony Express is giving good service to Wachovia and that he does not know why the Wachovia witness would support the application of Eastern. He does not believe Wachovia's concerns to be insignificant, but certainly they were not shocking. Under the circumstances he thinks it unreasonable for Wachovia to want an alternative carrier available to it. The only specific example of need was the time when Wachovia's normal air carrier could not go into Wilmington because of a hurricane. Pony Express could have provided the emergency service had it been contacted. He is not doubting the testimony of Mr. Williams that Wachovia attempted to contact his company. Pony Express has more than 100 contracts on file with the Commission at this time. These contracts are consolidated and then filed with the Commission. In some instances operations would start before the contract was actually filed. He recalls the witness in the hearing indicating that he was not aware of a contract with Pony Express. He does not know whether or not his company has a contract with D.P. Services. It is his responsibility to keep up with the contracts and he does a good job, but he cannot name all of the contracts.

In operating its authority Pony Express has a considerable number of established runs but also has the capability to provide on-call service. Approximately 10% to 15% of the operations would be on call. Pony Express also has interstate authority, but the 80 to 85 vehicles stationed in eastern North Carolina are all involved solely in intrastate transportation. The Pony Express authority was originally granted by this Commission while it was a subsidiary of the Wachovia Corporation. The Pony Express contract with Wachovia has a term of about six and one-half years from the

date of the sale. He was not involved in the transfer of the authority from Wachovia and does not know whether or not the length of the Wachovia contract was one of the inducements for that purchase.

Operating revenues for Pony Express to date this year would exceed $1 million, but not $5 million. Potentially, Eastern Courier operations could hurt his company very much.

It is the position of Pony Express that, if First Citizens here in Raleigh wants a backup carrier, it should be required to contract with either Pony Express or Purolator. It would be their prerogative whether they wanted to contract or not.

Pony Express is presently participating in an application before this Commission in Docket No. T-1938, Sub 1, where it is seeking statewide authority to transport general commodities in shipments not exceeding 200 pounds. It is the company's position that public convenience and necessity require that proposed service. Pony Express would be very much interested in providing the service and is in a position to provide adequate service. If Eastern acquires the authority it is seeking and serves the shippers that were represented at the hearing, Pony Express could lose service to First Citizens, to Wachovia, and to D.P. Services, all of which could certainly be considerable. Pony Express does not object to the granting of common carrier authority to Eastern other than for the transportation of audit and accounting media and bank documents. Pony Express has never turned down a request for services as a contract carrier, but probably its service has been turned down by some shippers because of rates or whatever. On redirect examination, Mr. Bailey stated that it was not the position of Pony Express in its general commodity application that there was any public convenience and necessity required for the commodities that it transports in contract carriage.

Based on the testimony and evidence presented at the hearing, including the documents and matters on file with the Commission of which the Hearing Examiner has taken judicial notice, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Eastern, the Applicant in this docket, is authorized to operate and is actively engaged in operations as a contract carrier in North Carolina under Contract Carrier Permit No. P-264 issued by this Commission with authorized commodity and territory description as follows:

> (1) Transportation of Group 21, Other Specific Commodities, viz: Data Processing reports, payrolls, cards, commercial papers, documents, written instruments (none of the above commodities shall be carried between banks or banking institutions or branches thereof, and

shall not include coin, currency, and negotiable securities), machine parts, customer supplies, metal parts or raw materials, advertising material; and small packages and U.S. Mail to and from bus stations, Raleigh-Durham Airport, and Post Offices; the foregoing does not include drugs, medicines and auto parts and accessories, under individual bilateral contract with Flow Control Division-Rockwell International, Raleigh, North Carolina; Surtronics, Inc., Raleigh, North Carolina; Computer Management Corporation, Raleigh, North Carolina, and Tipper Tie Division, Rheem Manufacturing Company, Apex, North Carolina, as follows:

(a) Between points and places within a 50-mile radius of Raleigh, North Carolina, and

(b) Between (a) above and points and places within the Counties of Granville, Durham, Orange, Alamance, Guilford, Forsyth, Davie, Iredell, Mecklenburg, Stanly, Montgomery, Moore, Hoke, Cumberland, that part of Sampson County lying on and north of U.S. Highway 13, Wayne, Lenoir, Pitt, Edgecombe, Nash, Franklin, Vance, Wilson, Johnston, Harnett, Wake, Lee, Chatham, Randolph, Davidson, Rowan, and Cabarrus.

NOTE: The authority shown in (a) and (b) above is considered as one authority and may not be separated for any purpose.

(2) Transportation of Group 1, General Commodities, between Research Triangle Park, North Carolina, and Greenville, North Carolina, under individual bilateral written contract with Burroughs Wellcome Co., 330 Cornwallis Road, Research Triangle Park, North Carolina.

(3) Transportation of commercial papers, cash letters, documents, interoffice communications, auditing and accounting media and other business records, documents and supplies used in processing such media, and written instruments (except currency, coin, and bullion) between the operations center of First Citizens Bank & Trust Company, 20 East Martin Street, Raleigh, North Carolina, on the one hand, and on the other hand, the branch offices of First Citizens Bank & Trust Company located in Wendell, North Carolina; on Highway 54, Research Triangle Park, Durham County; on Franklin Street, Chapel Hill, Orange County; and in Northgate Shopping Center, Durham, Durham County.

(4) Group 21, Transportation of reference books, directories, and related materials under contract with Dunn & Bradstreet, Inc., between points in and east of the Counties of Cumberland, Durham, Harnett, Hoke, Orange, Person, Scotland, and Wake, North Carolina.

2. By this application, which was filed on September 18, 1979, Eastern seeks authority to amend its existing Contract

Carrier Permit No. P-264 by adding the firm of D.P. Services, Inc., as a contracting shipper under (1) of its permit, by adding the Counties of Rockingham and New Hanover to the geographical scope set out in (1)(b), and by further adding a new (5) to its Contract Carrier Permit No. P-264, as follows:

(5) Group 21, transportation of electronic word processing equipment and related commodities between points in and east of Person, Orange, Chatham, Scotland, and Moore Counties under a continuing contract with Lanier Business Products, Inc., Raleigh, North Carolina.

3. By its application Eastern further seeks common carrier authority as follows:

Group 1, general commodities between points in and east of Person, Orange, Chatham, Scotland, and Moore Counties.

Restricted against transportation of single articles or packages weighing in excess of 50 pounds and against multiple articles and packages weighing in aggregate more than 200 pounds when moving from one consignor at one location to one consignee at one location in a single day.

4. In carrying out its present contract carrier operations, Eastern employs a secretary, four full-time drivers, and four part-time drivers, in addition to its President Lawrence Wayne Stewart. Motor vehicle equipment owned by the Company consists of two 3/4-ton window vans, two pickup trucks, one two-ton truck, and five automobiles. All of the vehicles are used every day in the present operations.

5. D.P. Services, Inc., is a data processing service which processes accounts payable, accounts receivable, payrolls, general ledgers, and general accounting media for various businesses. Timely shipment of the audit and accounting media on a regularly scheduled basis between the offices of D.P. Services and its clients is a critical part of the services performed by this company. D.P. Services desires to have Eastern available to provide transportation service and has entered into a contract with Eastern subject to the approval of this Commission.

6. Lanier Business Products, Inc., has a need for the transportation of electronic typing systems consisting of processors, printers, and screeners into the eastern part of North Carolina. The equipment, which weighs from 60 to 75 pounds, is usually shipped uncrated and requires vans with proper padding. Frequency of shipment depends upon customer demand, and a flexible delivery schedule is required. Lanier Business Products, Inc., is presently using the services of Eastern under temporary authority granted by this Commission and has entered into a contract with Eastern

for transportation service subject to the approval of this Commission.

7. Eastern is presently authorized to provide contract carrier service to Surtronics, Inc., Raleigh, North Carolina, within the territory specified in Permit No. P-264, Exhibit A (1), and a written contract covering such transportation is on file with the Commission.

8. Surtronics, Inc., supports the application to amend the territorial scope of Permit No. P-264, Exhibit A (1), by adding Rockingham and New Hanover Counties thereto.

9. Surtronics, Inc., has need for transportation of packaged and unpackaged parts between its facilities in Raleigh and customers located in Wilmington and Reidsville.

10. More than a year has passed since Eastern was last called upon to provide service under its transportation contract with Tipper Tie.

11. With respect to the application for additional contract carrier authority, the Hearing Examiner finds that:

a. The proposed operations conform to the definition of a contract carrier set forth in Chapter 62 of the North Carolina General Statutes;

b. The proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers;

c. The proposed service will not unreasonably impair the use of the highways by the general public;

d. The Applicant is fit, willing, and able to properly perform the proposed service as a contract carrier; and

e. The proposed operations will be consistent with the public interest and the policy declared in Chapter 62 of the North Carolina General Statutes.

12. In support of its application for common carrier authority, Eastern offered the testimony of witnesses representing Wachovia Bank and Trust Company, First Citizens Bank and Trust Company, Surtronics, Inc., Trial, Incorporated, Cutler-Hammer, Siemens-Allis Corporation, East Carolina Heat Treat Service, Machine Tool and Heat Treat Service, and Texasgulf.

13. The Wachovia Bank Operations Center in Raleigh, North Carolina, processes checks and deposits for the region consisting of Chapel Hill, Durham, Rocky Mount, Wilson,

Wilmington, Fayetteville, Laurinburg, Maxton, Elizabethtown, and Lumberton. Checks and deposits are picked up from Wachovia branches in this region and delivered to the Operations Center, and information, data processing, and other items are delivered from the Operations Center back to the branches. This transportation is now being provided by Pony Express on a daily scheduled basis, with Pony Express also being under contract for on-call service, if necessary. Except for one specific incident, which occurred during a hurricane, Pony Express has been able to provide service on an emergency basis when contacted. Pony Express is providing good service and the only transportation need identified by the Wachovia witness is its desire to have another carrier to call in emergency situations as a complement or addition to the service now being provided by Pony Express and Wachovia's own messenger service. The Wachovia witness was not familiar with the current authority of Purolator.

14. First Citizens Bank uses its own private courier service for the transportation of checks, data processing media, and other items between the various branches of the bank, between the branches and its Operations Center in Jacksonville, and between its Operations Center and Data Processing Department in Raleigh. For vacation replacements and emergency service, First Citizens has utilized Pony Express which, except in a few instances, has met all of its transportation needs satisfactorily. The only transportation need specified by the witness for First Citizens was a desire to have more than one courier service available for possible vacation replacements and emergency situations. He was not familiar with the operations of Purolator, but stated that there is no reason why his company could not use that service if it could meet the schedules at an acceptable price.

15. William Henry Wade, Jr., the President of Surtronics, Inc., of Raleigh, testified that he was not aware that the common carrier authority sought by Eastern would be restricted against articles exceeding 50 pounds in weight and, that being true, his company would have no need for the proposed common carrier service.

16. Trial, Incorporated, Sanford, North Carolina, is a manufacturer of electronic air filters. It is currently using the services of Eastern for shipments of parts for plating to Surtronics in Raleigh. The company would like to expand this by being able to send parts for plating or machining to other machine shops located in the eastern part of the State, including Dunn and Wilmington. The company witness expressed a need for a courier service that could pick up shipments from its place of business, deliver them to the plating or machine shop, and bring the parts back to its place of business on an expedited basis.

17. The Cutler-Hammer plant in Selma, North Carolina, manufactures electrical switches and requires transportation

of small packages between its plant in Selma and the Raleigh-Durham Airport and for transportation of parts from its plant to Surtronics in Raleigh for plating and to Piedmont Assembly Products in Wendell for processing. The majority of shipments to Surtronics are now handled on company-owned equipment and the shipments to Piedmont Assembly Products in Wendell are made by Overnite or other common carriers. The company desires expedited common carrier courier service for small orders as well as shipments coming from the airport.

18. Siemens-Allis Corporation in Sanford, North Carolina, manufactures circuit breakers and expressed a need for transportation of parts from the plant in Sanford to Surtronics in Raleigh, to Wendell, Henderson, and Fuquay and the temporary Siemens-Allis Corporation plant in Garner. At the present time, Eastern is handling the shipments to Surtronics under contract. The other transportation is handled by company-owned trucks or employee-owned vehicles and the company desires common carrier courier expedited service that can handle this transportation.

The company witness representing the Siemens-Allis Corporation's new plant facility located in Wendell has not yet investigated existing carriers in the State who may be able to meet the prospective transportation needs of that plant and could not testify as a fact that there was a need for service in addition to existing service.

19. East Carolina Heat Treat Service and Machine Tool and Heat Treat Service in Raleigh expressed a need for delivery and pickup of parts both inbound and outbound from their plants in Raleigh to Wilson, Wendell, Rocky Mount, and the Research Triangle Park. This transportation at the present time is handled by company-owned equipment, customer delivery and pickup, bus service, and UPS. East Carolina and Machine Tool need and desire the services of a carrier which does not require shipments to be packaged and whose services are available on an expedited basis.

20. The company witness for Texasgulf was not specifically familiar with the transportation requirements of his company except that it involves small parts being flown into the airports in Raleigh, Kinston, and New Bern that had to be picked up for delivery to the plant site in Aurora. He testified that he did not know as a fact that there was not adequate existing authority for courier transportation in the eastern part of North Carolina and he did not know of any reason why Purolator could not meet his company's transportation needs.

21. The Protestant Purolator holds Certificate/Permit No. CP-44 issued by this Commission authorizing it to operate as a common carrier between all points and places in the State in the transportation of articles, packages, and all commodities (with certain specific exceptions) moving in courier service as defined in said Certificate, said service

being restricted to the transportation of packages and articles weighing no more than 50 pounds and weighing in the aggregate no more than 100 pounds from one consignor at one location to one consignee at one location at any one day. Purolator is also authorized to operate as a contract carrier over irregular routes between all points and places in the State in the transportation of various commodities, not covered by its common carrier certificate, including inter alia commercial papers and documents between banks and banking institutions, checks, business papers, records and audit and accounting media, whole human blood and blood derivatives, and exposed and processed films and prints and related supplies.

22. Pony Express holds contract carrier authority issued by this Commission in Contract Carrier Permit No. P-215 to transport Group 21, cash letters, commercial papers, documents and records, bank stationery, sales, payroll, and other media, and business, institutional, and governmental records (except currency, coin, and bullion) between all points in the State. The company is actively operating under such authority under numerous contracts with individual shippers with shipments being made both on a regular scheduled basis and an on-call basis. Pony Express has the authority and the ability to handle the specific transportation requirements testified to by Wachovia Bank and First Citizens and, in fact, has provided and is now providing contract carrier service for Wachovia and has in the past provided contract carrier services to First Citizens. In addition to its existing contract carrier permit, Pony Express has made application to this Commission in Docket No. T-1938, Sub 1, for statewide common carrier authority to transport general commodities restricted against shipments in excess of 200 pounds and also restricted against the transportation of cash letters, commercial papers, documents and records, bank stationery, sales, payroll and other media, and business, institutional, and governmental records. This matter has been heard by a Commission Hearing Examiner.

23. In the event that it is granted common carrier authority, it is the intent of Eastern to continue its contract carriage operations unless service to a particular customer could be handled by common carriage. It would be the intent of Eastern to concentrate its common carriage operations around the Raleigh area and it would not solicite business to Morehead, Wilmington, Elizabeth City, or Nags Head since it is unlikely that such service would be feasible to Eastern or its customers.

24. None of the supporting shippers in this proceeding presently use Purolator's services as a common carrier.

25. Eastern has furnished financial data establishing that its assets exceed its liabilities and that it is realizing a profit from its operations.

26. Eastern would be willing to acquire additional operating equipment and to hire additional personnel as needed.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS
(CONTRACT CARRIER AUTHORITY)

Under the provisions of G.S. 62-262(i), the burden of proof is upon Eastern with respect to its application for additional contract carrier authority to show to the satisfaction of the Commission:

1. That the proposed operations conform with the definition of a contract carrier,

2. That the proposed operations will not unreasonably impair the efficient public service of carriers operating under certificates, or rail carriers,

3. That the proposed service will not unreasonably impair the use of the highways by the general public,

4. That Eastern is fit, willing, and able to properly perform the service proposed as a contract carrier, and

5. That the proposed operations will be consistent with the public interest and the policy declared in Chapter 62 of the North Carolina General Statutes.

Eastern is at the present time satisfactorily conducting contract carrier operations under its existing contract carrier authority and desires to add two additional contracting shippers, D.P. Services, Inc., for the transportation of audit and accounting media and Lanier Business Products, Inc., for the transportation of electronic word processing equipment and related commodities, and to also amend the territorial scope of its contract authority to include the Counties of Rockingham and New Hanover. In the case of Lanier, Eastern is at the present time performing contract services under temporary authority granted by this Commission. In view of the evidence presented in the record, the Hearing Examiner concludes that Eastern has met the statutory burden of proof justifying the requested amendments to its contract carrier permit.

FURTHER CONCLUSIONS
(COMMON CARRIER AUTHORITY)

Under the provisions of G.S. 62-262(e), Eastern has the burden of proof in its application for common carrier authority to show to the satisfaction of this Commission:

1. That public convenience and necessity require the proposed service in addition to existing authorized transportation service,

2. That Eastern is fit, willing, and able to properly perform the proposed service, and

3. That Eastern is solvent and financially able to furnish adequate service on a continuing basis.

The type of proof required to show public convenience and necessity within the meaning of G.S. 62-262 is further explained by Rule R2-15 of this Commission which provides that the Applicant must establish proof that a "public demand and need exists" for the proposed service in addition to existing authorized service. The Supreme Court of North Carolina and the Court of Appeals have in several decisions stated the elements which constitute "public convenience and necessity," pointing out that they include such questions as "whether there is a substantial public need for the service;" "whether the existing carriers can reasonably meet this need;" and "whether it would endanger or impair the operations of existing carriers contrary to the public interest." Utilities Commission v. Carolina Coach Company, 260 N.C. 43, 132 S.E.2d 249 (1963); Utilities Commission v. Trucking Company, 223 N.C. 687, 28 S.E.2d 201 (1943); Utilities Commission v. Southern Coach Company, 19 N.C.App. 597, 199 S.E.2d 731 (1973); Utilities Commission v. Queen City Coach Company, 4 N.C.App. 116, 166 S.E.2d 441 (1969).

In support of its common carrier application, Eastern has offered testimony of supporting shippers in basically two areas of transportation. First, the transportation of bank documents and audit, accounting, and data processing documents for Wachovia Bank and First Citizens Bank and, second, the transportation of small articles and parts for several business concerns located in and around the Raleigh area. With respect to the transportation of bank-related documents, the Hearing Examiner is of the opinion that the evidence fails to establish a substantial public need for the common carrier authority herein sought by Eastern. The testimony offered on behalf of Wachovia Bank indicates, at most, the possible need for emergency service if no other service (including that of Pony Express, Purolator, and the bank's own messenger service) was available. Only one specific incident of an inability to secure service from Pony Express was cited by the witness from Wachovia and that occurred during a hurricane. Likewise, the testimony on behalf of First Citizens showed, at most, a desire to have another carrier available to meet "possible" needs that could not now be met by Eastern under its present authority or by Pony Express. In the opinion of the Hearing Examiner, the testimony of the bank witnesses falls far short of establishing a substantial public need for a new common carrier authority to transport bank-related documents in addition to service which is now available from existing authorized carriers, including Pony Express and Purolator.

However, it is the further opinion of the Hearing Examiner that the totality of the testimony offered in this proceeding does support a grant of at least a portion of the common carrier operating authority applied for in this docket by Eastern. In this regard, the Hearing Examiner believes that the Applicant has carried the burden of proof of showing that the public convenience and necessity require a grant of limited operating authority to Eastern to provide common carrier pickup and delivery service of general commodities in and between the counties of Wake, Lee, Harnett, and Johnston in North Carolina. Nevertheless, this authority should be restricted against the transportation of commercial papers and documents between banking institutions and other points incidental to such bank transportation and against the transportation of single articles or packages weighing in excess of 50 pounds and against multiple articles and packages weighing in the aggregate more than 200 pounds. A careful review of the entire record in this case has led the Hearing Examiner to conclude that Eastern has failed to show a need for its proposed common carrier service throughout the entire geographical area covered by its application. In fact, Eastern's owner and president, Lawrence Wayne Stewart, testified that it was the intent of his Company to concentrate its common carrier activities in and around the Raleigh area and that his Company would not solicite nor would it be feasible for it to handle business in the easternmost part of the State, such as the Morehead, Wilmington, Elizabeth City, and Nags Head areas.

While it is recognized that most, if not all, of the transportation needs described at the hearing by the various shipper witnesses could be handled by Purolator under its existing common carrier authority, the Hearing Examiner believes that the limited operating authority set forth in Exhibit B attached hereto is, nevertheless, required in addition to existing authorized transportation service. In this regard, the Hearing Examiner feels compelled to note that none of the supporting shippers presently receive common carrier transportation services from Purolator and, in fact, it appears that the business of said shippers has not even been solicited by Purolator. This being the case, there is no evidence in this record that any of the revenues presently being derived by Purolator from its common carrier authority will be diverted to Eastern, thereby serving to seriously impair or endanger the common carrier operations of Purolator (or other existing common carriers) contrary to the public interest.

Accordingly, the Hearing Examiner concludes that a grant of limited common carrier operating authority in accordance with the authority set forth in Exhibit B attached hereto is appropriate in this case. Furthermore, the Hearing Examiner is of the opinion that the Applicant is certainly fit, willing, and able to perform the common carrier transportation services described in Exhibit B and is also solvent and financially able to furnish adequate service on

a continuing basis under the operating authority set forth in said Exhibit B.

Notwithstanding all of the above, one issue still remains for consideration. The Applicant holds contract carrier authority which will, to some extent, be duplicated by the grant of common carrier operating authority approved herein. Applicant's president has stated that it would accept a restriction on its contract carrier authority so that it could not transport the same commodities within the same territory as both a contract carrier and as a common carrier. Therefore, the Hearing Examiner concludes that the following restriction should be placed upon Applicant's existing contract carrier permit upon the granting of the common carrier authority set forth in Exhibit B attached hereto:

NOTE: Contract carrier operations are not authorized under Exhibit A of this Certificate/Permit which would be duplicated by common carrier operations authorized under Exhibit B of this Certificate/Permit.

IT IS, THEREFORE, ORDERED:

1. That the application of Eastern Courier Corporation for authority to amend Contract Carrier Permit No. P-264 be, and hereby is, granted in accordance with Exhibit A attached hereto and made a part hereof.

2. That Eastern Courier Corporation be, and hereby is, granted a common carrier certificate in accordance with Exhibit B attached hereto and made a part hereof.

3. That Eastern Courier Corporation shall file with the Commission evidence of the required insurance, and a list of equipment, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within 30 days from the date that this Order becomes final.

4. That unless Eastern Courier Corporation complies with the requirements set forth in Decretal Paragraph 3 above and begins operations as authorized within a period of 30 days after this Order becomes final, unless such time is extended by the Commission upon written request, the operating authority granted herein will cease and determine.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of March 1980.

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

EXHIBIT A

SCOPE OF OPERATIONS

DOCKET NO. T-1709, Sub 5

Eastern Courier Corporation
Raleigh, North Carolina

Contract Carrier Authority

EXHIBIT A

(1) Transportation of Group 21, Other Specific Commodities, viz: Data Processing reports, payrolls, cards, commercial papers, documents, written instruments (None of the above commodities shall be carried between banks or banking institutions or branches thereof, and shall not include coin, currency, and negotiable securities), machine parts, customer supplies, metal parts or raw materials, advertising material, and small packages and U.S. Mail to and from bus stations, Raleigh-Durham Airport and Post Offices; the foregoing does not include drugs, medicines, and auto parts and accessories under individual bilateral contract with Flow Control Division-Rockwell International, Raleigh, North Carolina; Surtronics, Inc., Raleigh, North Carolina; Computer Management Corporation, Raleigh, North Carolina; and D.P. Services, Inc., Raleigh, North Carolina, as follows:

(a) Between points and places within a 50-mile radius of Raleigh, North Carolina, and

(b) Between (a) above and points and places within the Counties of Granville, Durham, Orange, Alamance, Guilford, Forsyth, Davie, Iredell, Mecklenburg, Stanly, Montgomery, Moore, Hoke, Cumberland, that part of Sampson County lying on and north of U.S. Highway 13, Wayne, Lenoir, Pitt, Edgecombe, Nash, Franklin,

Vance, Wilson, Johnston, Harnett, Wake, Lee, Chatham, Randolph, Davidson, Rowan, Cabarrus, Rockingham, and New Hanover.

NOTE: The authority shown in (a) and (b) above is considered as one authority and may not be separated for any purpose.

(5) Group 21, Transportation of electronic word processing equipment and related commodities between points in and east of Person, Orange, Chatham, Scotland, and Moore Counties under a continuing contract with Lanier Business Products, Inc., Raleigh, North Carolina.

NOTE: Contract carrier operations are not authorized under Exhibit A of this Certificate/Permit which would be duplicated by common carrier operations authorized under Exhibit B of this Certificate/Permit.

EXHIBIT B

SCOPE OF OPERATIONS

DOCKET NO. T-1709, Sub 5

Eastern Courier Corporation
Raleigh, North Carolina

Common Carrier Authority

EXHIBIT B

(1) Group 1, General commodities between the counties of Wake, Lee, Harnett, and Johnston in North Carolina.

RESTRICTED against the transportation of single articles or packages weighing in excess of 50 pounds and against multiple articles and packages weighing in the aggregate more than 200 pounds when moving from one consignor at one location to one consignee at one location in

a single day; and further restricted against the transportation of commercial papers and documents between banking institutions and other points incidental to such bank transportation.

DOCKET NO. T-825, SUB 237

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Common Carriers - Suspension and Investigation of Proposed Increase in Rates and Charges Applicable to Ship- ments of General Commodities, Including Minimum Charges	)	ORDER ON RECONSIDERATION

HEARD IN: The Hearing Room of the Commission, Dobbs Building, Raleigh, North Carolina, on September 14, 1979, at 11:00 a.m.

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

APPEARANCES:

For the Applicant:

Thomas W. Steed, Jr., Allen, Steed & Pullen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602

John W. Joyce, 1307 Peachtree Street, N.E., Atlanta, Georgia 30309

For the Intervenors:

James M. Jones, Textile Traffic Association, 400 Wendell Court, Suite 400, Atlanta, Georgia 30336
For: North Carolina Textile Manufacturers Association, Inc., and The Textile Traffic Association, Inc.

Daniel J. Sweeney, Belnap, McCarthy, Spencer, Sweeney & Hardaway, 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

Tom Alexander, Maupin, Taylor and Ellis, P.O. Box 829, Raleigh, North Carolina 27602
For: North Carolina Traffic League, Inc., Drug and Toilet Preparation Traffic Conference, National Small Shipments Traffic Conference, Inc., North Carolina Textile Manufacturers Association, and The Textile Traffic Association, Inc.

Stephen G. Kozey, Public Staff Attorney, Public Staff - North Carolina Utilities Commission, 430 N. Salisbury Street - Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On July 19, 1979, the North Carolina Traffic League, Inc., The Drug and Toilet Preparation Traffic Conference, Inc., and other shippers filed a Petition for Reconsideration or Rehearing and Petition to Extend Date in Filing Notice of Appeal. (A corrected copy of the Petition was filed on July 20, 1979.) In its Petition the shippers requested the Commission to reconsider and/or rehear its Order of June 22, 1979, authorizing the motor carriers of general commodities to increase their intrastate rates and charges applicable to the transportation of general commodities.

On August 8, 1979, the carriers filed a reply to the Petition for Reconsideration or Rehearing. On September 4, 1979, the shippers filed a motion to Strike Portion of Reply to Petition for Reconsideration or Rehearing.

On August 30, 1979, the Commission issued an Order setting the Petition in oral argument on September 14, 1979. Other Orders of the Commission have extended the time for filing Notice of Appeal in this docket. The most recent Order dated November 15, 1979, further extended the time for an additional 60 days from the date of the Order.

The matter came on for oral argument as scheduled. The parties were present and represented by Counsel.

With respect to Exception No. 1: The shippers contend that the Commission in its Order of June 22, 1979, authorized more than double the amount of increase in rates allowable under the President's Voluntary wage and price guidelines. The shippers request that the Commission upon reconsideration find that any increase in rates in excess of 7%, if allowed, would violate said guidelines.

This Commission is, of course, deeply concerned with regard to the adverse impact that inflation is having on our economy and, accordingly, uses its full discretionary power to insure that all utilities under its jurisdiction comply with the President's wage and price guidelines to the extent possible. However, the guidelines do contain undue hardship and gross inequity provisions which do permit price increases in excess of the maximum price declaration standards under certain exceptional circumstances. Moreover, as observed by the Applicant, the General Statutes of North Carolina require that this Commission set rates that are just and reasonable and this Commission will continue to make every effort to comply with this statutory mandate.

With respect to the shippers' contention that this Commission has unconditionally elected to adopt the voluntary guidelines, the Commission would be remiss if it did not remind said Intervenors that both in its rule and in its Order adopting such rule the Commission recognized the need and provided for the few isolated instances, such as the instant proceeding, wherein the Commission in the interest of fairness and equity and in the fulfillment of its statutory duties and responsibilities would be compelled to allow increases in excess of the maximum permitted under the voluntary guidelines. Clearly, such circumstances were envisioned by the President's Council on Wage and Price Stability by virtue of the Council's inclusion of subsection 705A-6(b) in its December 31, 1978, pronouncement. Moreover, subsequent pronouncements of the Council have contained specific statements which further reflect the Council's intention that certain regulatory bodies be permitted the necessary discretionary flexibility essential to responsible regulation of public utility prices and profits. A further example of such intention is as follows:

> "The Council recognizes that the prices of most public utilities are already subject to regulation by the Federal Energy Regulatory Commission or by Public Utility Commissions (Commissions), and in issuing this price standard, the Council does not intend to supplant their statutory functions and responsibilities. The Council's standards are intended to provide guidance to Commissions on anti-inflationary price changes, in order that anti-inflationary objectives can be given appropriate weight in regulatory proceedings. The standard should be viewed by Commissions as a minimum objective to be achieved whenever possible, consistent with their statutory responsibilities, and to be exceeded only under exceptional circumstances."

Finally, the Commission wishes to reemphasize the fact as stated in its June 22, 1979, Order that any increase in rates in strict compliance with the price standards, 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.

Based upon the foregoing and the entire evidence of record in this docket the Commission concludes that the shippers Exception No. 1 to the Commission Order of June 22, 1979, is without merit and, therefore, should be and the same is hereby overruled.

In their Exception No. 2 to the Order of June 22, 1979, the shippers contend that it is not just and reasonable to increase rates on shipments weighing less than 5,000 pounds by 20% while increasing shipments over 5,000 pounds by 10%.

The shippers ask the Commission to conclude that the carriers have not justified an increase in excess of 10% on shipments weighing less than 5,000 pounds. The Commission has carefully considered the arguments of counsel with regret to this Exception No. 2 and is of the opinion that this Exception should be denied.

IT IS THEREFORE ORDERED as follows:

1. That Exceptions 1 and 2 filed herein by the shippers on July 19, 1979, in their Petition be, and the same are hereby, overruled and denied.

2. That the Order of June 22, 1979, is reaffirmed by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of January, 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Emergency Fuel Surcharge for Transportation by Motor Carriers in North Carolina Intrastate Commerce	) NOTICE OF DECISION) APPROVING INCREASED) MOTOR CARRIER FUEL) SURCHARGE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 1 and 12, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters, A. Hartwell Campbell and Douglas P. Leary

BY THE COMMISSION: Notice is hereby given that the Commission has found after public hearing that an emergency still exists in regard to the effect of further increased motor fuel costs on intrastate motor carrier traffic, and the Commission has approved surcharge adjustments for the various carrier groups as follows:

1. General Commodities: 10.5% on TL and 5.6% on LTL
2. Household Goods: 10.0% on TL
3. Bulk Commodities: 7.6% on TL
4. Unmanufactured Tobacco: 13.5% on TL
5. Mobile Home Movers and Independent Filers: 10.5% on TL and 5.6% on LTL
6. All Other LTL: 5.6%

An Order containing findings and conclusions in support of these adjustments will issue in the near future. In that Order, the Commission will also prescribe a revised procedure which will allow for monthly surcharge adjustments based upon the filing of verified applications and fuel cost reports by the various carrier rate groups.

IT IS, THEREFORE, ORDERED:

1. That the currently approved surcharge of 7.0% on TL shipments and 3.5% on LTL shipments of freight authorized by Order of July 31, 1979, are cancelled effective with the filing of the surcharges herein approved. The 3.5% surcharge on bus passenger fares approved on July 31, 1979, remains in effect without prejudice to further adjustment.

2. That the intrastate motor carriers, or their authorized publishing agents that have tariffs or schedules on file with this Commission, are hereby authorized to file with the Commission on one day's notice the following surcharges:

a. General Commodities Shippers: 10.5% on TL and 5.6% on LTL shipments;

b. Household Goods shippers: 10.0% on TL shipments;

c. Bulk Commodity Shippers: 7.6% on TL shipments;

d. Unmanufactured Tobacco Shippers: 13.5% on TL shipments;

e. Mobile Home Movers and Independent Filers: 10.5% on TL and 5.6% on LTL shipments;

f. 5.6% on all other LTL shipments.

3. The surcharge filed herein may take the form of a master tariff increase, or supplement to the affected tariffs or schedules.

4. That except as herein modified, the Order in this Docket dated May 30, 1979, shall remain in full force and effect. Notice of this emergency fuel surcharge shall be given to the general public by the issuance of a general release of this Order to the public and by forwarding a copy thereof to all media covering release from this Commission and a copy to all motor carriers and to authorized tariff publishing agents on file with the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of February 1980.

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

ATTACHMENT C*
NCUC RULE R2-16.1.
COST STUDY CARRIERS FOR FUEL SURCHARGE

A. Household Goods Carriers
   1. Horne Storage Company, Inc.
   2. Murray Transfer & Storage Company, Inc.
   3. Patterson Storage Warehouse Company, Inc.
   4. Yarbrough Transfer Company
   5. Security Storage Company, Inc.

B. Asphalt, Petroleum, and Bulk Commodities Carriers
   1. Central Transport, Inc.
   2. Eagle Transport Corporation
   3. Eastern Oil Transport, Inc.
   4. Kenan Transport Company, Inc.
   5. O'Boyle Tank Lines, Inc.
   6. Southern Oil Transportation Company, Inc.
   7. Widenhouse, A.C., Inc.

C. General Commodities Carriers
   1. Estes Express Lines
   2. Fredrickson Motor Express Corporation
   3. Old Dominion Freight Line, Inc.
   4. Overnite Transporation Company
   5. Standard Trucking Company
   6. Thurston Motor Lines, Inc.

D. Tobacco Carriers
   1. Burton Lines, Inc.
   2. Epes Transport System, Inc.
   3. Forbes Transfer Company, Inc.
   4. North State Motor Lines, Inc.
   5. Vance Trucking Company, Inc.

E. Motor Passenger Carriers
   1. Carolina Coach Company
   2. Continental Southeastern Lines, Inc.
   3. Greyhound Lines, Inc.
   4. Seashore Transportation Company

* Added by Errata Order dated February 27, 1980.

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Emergency Fuel Surcharge for Transportation by Motor Carriers in North Carolina Intrastate Commerce	) FURTHER ORDER APPROVING) SURCHARGES AND PROVIDING) SURCHARGE PROCEDURE FOR) MOTOR CARRIERS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 1 and 12, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Applicants:

Thomas W. Steed and Joseph W. Eason, Allen, Steed & Allen, P.A., P.O. Box 2058, Raleigh, North Carolina 27602
For: Motor Carriers Traffic Association, North Carolina Motor Carriers Association, Inc., Agent, Southern Motor Carriers Rate Conference, and Respondent Motor Carriers

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, P.O. Box 527, Raleigh, North Carolina 27602
For: Tobacco Transporters

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: North Carolina Intrastate Household Goods Carriers

John W. Joyce, Southern Motor Carriers Rate Conference, 1307 Peachtree Street, N.E., Atlanta, Georgia 30309
For: Southern Motor Carriers Rate Conference and Respondent Motor Common Carriers

For the Public Staff:

Theodore C. Brown, Jr., and Vickie L. Moir, 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 May 20, 1979, the Commission issued its "Order Allowing Emergency Fuel Surcharges for

Motor Carriers" wherein it approved a 2% emergency fuel surcharge for all motor carriers of passengers and freight operating in North Carolina intrastate traffic. That Order was based upon findings that rapidly increasing fuel costs had created the jeopardy of interruptions and curtailments of service for failure to meet operating costs. In that Order the Commission established a procedure for adjusting the emergency fuel surcharge in the future so as to provide a dollar-for-dollar cost pass-through. This procedure provided for the filing of monthly reports with the Commission to establish the appropriate surcharge adjustment.

By its Order on June 26, 1979, the Commission found and concluded that a 25% increase in fuel costs had occurred between January 1 and May 31, 1979; that the emergency continued to exist; and that surcharges of 3.5% on TL shipments, 2% on LTL shipments, and 2% on Passenger fares should be approved. On July 17, 1979, by further Order in this docket, the Commission approved a 7% surcharge for intrastate truckload shipments of unmanufactured tobacco.

On July 31, 1979, in an Order which supplemented and amended the foregoing emergency Orders, the Commission found fuel costs had increased by 37.11% for motor freight carriers and by 31% for motor passenger carriers. In order to allow a pass-through of costs, the Commission approved surcharges of 7% for the TL shipments, 3.5% for LTL shipments, and 3.5% for passenger fares.

On January 25, 1980, the North Carolina Motor Carriers Association, Inc., Agent, filed "Motion to Adjust Emergency Motor Carrier Fuel Surcharges" seeking an Order increasing the emergency fuel surcharge applicable to TL shipments from 7% to at least 9.95%. On January 28, 1980, the tobacco transporters participating in NCMCA Tariff No. 8-S, moved the Commission to grant tobacco transporters a 13.5% surcharge on truckload traffic. On January 30, 1980, these motions were scheduled for oral argument on February 1, 1980.

The foregoing motions came on for hearing on February 1, 1980. Moving parties present at the hearing and represented by counsel were the North Carolina Motor Carriers Association, Inc., Agent, the North Carolina Household Goods Carriers, and the Tobacco Transporters participating in North Carolina Motor Carriers Association Tariff No. 8-S. The Public Staff of the Commission was also present and represented by counsel. The Commission heard oral argument and also received evidence from the movants in support of their respective motions for surcharge adjustments. The evidence consisted of fuel cost reports prepared in accordance with the Commission procedures prescribed by the May 20, 1979, Order. The Public Staff moved that it be permitted to file a "response" to the evidence presented by the movants. This motion was allowed, and the Public Staff

was given until Wednesday, February 6, 1980, to file its response. The Chairman notified the moving carriers that they would be allowed to appear before the Commission on February 7, 1980, in order to state any comments or objections they might have to the Public Staff's Response. On February 7, 1980, the Commission gave notice that the February 7 hearing had been rescheduled for February 12, 1980. On February 7, 1980, the Public Staff filed a pleading styled "Response and Motion Concerning Recovery of Fuel Costs" wherein it recommended that the Commission amend its prior Orders and approve the following surcharges for the various carrier groups:

A.	Tobacco Carriers	13.5%	TL shipments
B.	Bulk Commodity Carriers	7.6%	TL shipments
C.	Household Goods Carriers	9.5%	TL shipments
D.	General Commodities Carriers	10.5%	TL shipments
		5.6%	LTL shipments
E.	All other LTL	3.5%	shipments

The Public Staff also recommended that the monthly report forms prescribed by the Commission's May 30, 1979, Order be modified on the ground that the reports required by that Order did not provide for the intended dollar-for-dollar pass-through of fuel costs.

The hearings resumed as scheduled on February 12, 1980. Parties present and represented by counsel were the tobacco carriers, the bulk commodities carriers, the household goods carriers, the general commodities carriers, and the Public Staff. The Commission heard sworn testimony and argument from the parties.

On February 18, 1980, the Commission issued a "Notice of Decision" wherein it approved increased surcharges for the Applicants to be effective on the filing of tariffs on one day's notice and pending a formal order containing plenary findings and conclusions.

FINDINGS OF FACT

1. Fuel costs have continued to escalate rapidly during the six months ending December 31, 1979. During the month of December 1979, the following price increases were announced by five representative suppliers of diesel fuel in North Carolina:

Date of Announcement	Company	Increase Per Gallon
12/15/79	Shell	$0.14
12/15/79	Tenneco	$0.05
12/15/79	Marathon	$0.04
12/16/79	Hess	$0.06
12/18/80	Exxon	$0.09

2. The surcharges approved on July 31, 1979, of 7% on TL shipments and 3.5% on LTL shipments are inadequate to

accomplish a pass-through on a dollar-for-dollar basis of the increases in fuel costs occurring since August 1, 1980.

3. The emergency situation found to exist by the Commission on May 30, June 26, July 17, and July 31, 1979, due to escalating fuel costs continues, and unless an appropriate emergency fuel surcharge adjustment is allowed, intrastate traffic will not meet its operating costs and the public will suffer curtailed or interrupted service.

4. The following levels of surcharge by carrier group will accomplish a pass-through of fuel costs on a dollar-for-dollar basis:

1.	Tobacco Carriers	13.5% on TL
2.	Bulk Commodities	7.6% on TL
3.	Household Goods	10.0% on TL
4.	General Commodities	10.5% on TL
		5.6% on LTL
5.	Mobile Home Movers	10.5% on TL
		5.6% on LTL
6.	*Independent Filers	10.5% on TL
		5.6% on LTL

*(Independent filers are all motor common carriers of passengers and freight that have tariffs or schedules on file with this Commission who do not publish a joint tariff.)

CONCLUSIONS

1. The Commission concludes that an emergency continues to exist in intrastate transportation for motor carriers due to increases in the cost of motor fuel during the second half of 1979 and the month of January 1980. The Commission reaffirms its prior conclusion that motor transportation is a vital necessity to the economy of North Carolina and that emergency surcharges continue to be necessary to ensure reliable motor transportation service.

2. The Commission concludes that the methodology prescribed by the Commission Order of May 30, 1979, does not accomplish the intended dollar-for-dollar pass-through of costs and that the revised methodology proposed herein by the Public Staff does provide for a dollar-for-dollar pass-through of costs. Accordingly, the Commission adopts this revised methodology as appropriate for use in calculating the surcharges set forth in Finding of Fact No. 4 and for use in future surcharge adjustment proceedings as discussed below.

3. The surcharges for the respective cost groups set forth in Finding of Fact No. 4 provide a dollar-for-dollar pass-through of motor fuel costs. The Commission concludes that these surcharges are just and reasonable and should be approved.

4. The Commission concludes that it should adopt a procedure which will allow the Commission to make future adjustments to fuel surcharges in a fair and expeditious manner; therefore, it adopts herein a new Commission Rule R2-16.1 which is attached hereto as Exhibit 1 to this Order. This Rule provides for the monthly filing of verified fuel reports and allows for the filing of a verified application seeking an increase or decrease in the existing surcharge by way of tariff revisions or tariff supplements as the need arises. The Rule requires that the reports and application be filed with the Chief Clerk of the Commission and served upon the Public Staff and the Attorney General and other interested parties and affected shippers who are included on the service list in this docket. The procedure provides that applications and reports be filed no later than the 15th day of each month, based upon the preceding month's cost data. Hearings will be held on the 25th day of each month if the Public Staff, the Attorney General, or an affected shipper files a written protest with the Chief Clerk on the 20th day of each month advising the Commission that a hearing is requested. If no written protests are filed, the matter will be decided on the pleadings on the 25th day of each month.

The Commission may set public hearings on its own motion on the fuel surcharge reports of all motor carriers for each June and each December, respectively, and for the preceding six-month periods, respectively, to review the evidence and data on fuel price increases for said periods, and the accuracy of this plan to flow said price increases through on a dollar-for-dollar basis.

In the event that any motor carrier (or group of carriers) which has a fuel surcharge in effect in its (their) rates should file for a general rate increase, the carrier(s) shall include in its (their) evidence for said general rate increase an updating of the fuel expense in its (their) rates to roll in or zero said fuel surcharge into its (their) general rates up to and including the close of the public hearing on said general rate case, and after a final decision rolling said fuel surcharge into said general rates, the carrier(s) shall thereafter update its (their) monthly fuel surcharge reports to include a new base fuel price as of the price rolled into its (their) general rates on the date of the closing of the public hearing.

Beginning with the February 1980 fuel report filed under this rule on March 15, 1980, the fuel price included as the closing price in said report shall be the actual price paid by the motor carrier or the motor carrier group at the end of the month in said report, and any increase or decrease requested shall be based on the price of fuel at the end of February as compared to the price of fuel on December 31, 1978, and to the extent necessary, to the price which is included as the base price in the adjustment to the fuel surcharge established in the Order of the Commission entered herein on February 18, 1980, and thereafter each monthly

report will be on the basis of actual prices paid by each motor carrier or motor carrier group at the close of the month reported.

The Commission anticipates that newly adopted Rule R2-16.1 may need revision and will accept written comments from the Public Staff, carriers, or shippers regarding possible revisions.

IT IS, THEREFORE, ORDERED:

1. That the surcharge levels previously approved in the "Notice of Decision" issued February 18, 1980, and decretal paragraphs 1, 2, 3, and 4 of that Decision are hereby affirmed and adopted.

2. That the North Carolina Utilities Commission Rule R2-16.1 which adopts a new procedure for adjusting previously approved motor fuel surcharges and which is attached hereto as Exhibit I is hereby approved.

3. That a copy of this Order be mailed to all motor carriers and to authorized tariff publishing agents on file with this Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of February 1980.

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

EXHIBIT I

RULE R2-16.1. APPLICATIONS FOR MOTOR FUEL SURCHARGE.-(a) The cost study carriers set forth in Attachment C to this Rule shall file on or before the 15th day of each month a Fuel Surcharge Report in the form set forth in Attachments A and B to this Rule, and which contains cost data for the previous month.

b. Any cost study carrier or independent filer seeking an adjustment to its approved motor fuel surcharge shall file a verified request in writing to increase or decrease its existing fuel surcharge on or before the 15th day of each month, which shall contain a narrative justification in support of the proposed adjustment and which shows the calculation of the fuel surcharge under the methodology set forth in Attachments A and B.

c. Public hearings shall be scheduled on a no protest basis each month on or about the 25th day of the month. Notice of said hearing shall be given on the Bulletin Board in the office of the Chief Clerk of the Commission and on the Commission's Truck Calendar. These hearings will be generally held in the Hearing Room of the Commission, 430 North Salisbury Street, Raleigh, North Carolina.

d. Copies of said application shall be served upon the Public Staff and the Attorney General, or other parties shown on the service list in Docket No. T-825, Sub 248.

e. If the Public Staff, the Attorney General, or any affected shippers desire a hearing on an application for a surcharge adjustment, they must file a written protest and request for hearing with the Chief Clerk in Docket No. T-825, Sub 248, on or before the 21st day of each month. In the event no protests are filed, the matter will be decided on the basis of the pleadings.

f. Applications shall be verified and shall set forth in numbered paragraphs the data set forth in Attachments A and B to this Rule and shall also contain a clear and concise narrative justification in support of the application.

g. Persons desiring to be placed on the service list in this docket (T-825, Sub 248) should notify the Chief Clerk of the Commission in writing.

h. The Commission may set public hearings on its own motion on the fuel surcharge reports of all motor carriers for each June and each December, respectively, and for the preceding six-month periods, respectively, to review the evidence and data on fuel price increases for said periods, and the accuracy of this plan to flow said price increases through on a dollar-for-dollar basis.

i. In the event that any motor carrier (or group of carriers) which has a fuel surcharge in effect in its rates should file for a general rate increase, the carrier shall include in its evidence for said general rate increase an updating of the fuel expense in its rates to roll in or zero said fuel surcharge into its general rates up to and including the close of the public hearing on said general rate case, and after a final decision rolling said fuel surcharge into said general rates, the carrier shall thereafter update its monthly fuel surcharge reports to include a new base fuel price as of the price rolled into its general rates on the date of the closing of the public hearing.

j. Beginning with the February 1980 fuel report filed under this rule, the fuel price included as the closing price in said report shall be the actual price paid by the motor carrier or the motor carrier group at the end of the month in said report, and any increase or decrease requested shall be based on the price of fuel at the end of February as compared to the price of fuel on December 31, 1978, and to the extent necessary, to the price which is included as the base price in the adjustment to the fuel surcharge established in the Order of the Commission entered herein on February 18, 1980, and thereafter each monthly report will be on the basis of actual prices paid by each motor carrier or motor carrier group at the close of the month reported.

EXHIBIT I
ATTACHMENT A
NCUC RULE R2-16.1
FUEL SURCHARGE REPORT
COST-STUDY CARRIERS OTHER THAN GENERAL COMMODITIES

I.	1.	Base Period Cost Per Gallon at December 31, 1978	_____
II.	2.	Current Month Data:	
	3.	System Miles	_____
	4.	Intrastate Miles	_____
	5.	Mileage Factor (L4 ÷ L3)	_____
	6.	Number of Gallons Purchased - System	_____
	7.	Number of Gallons Purchased - N.C. Intrastate (L6 x L5)	_____
	8.	N.C. Average Actual End of Month Cost Per Gallon	_____
III.		Computation of Percentage of Actual Current Month's Revenue to Current Month's Increase (Decrease) in Fuel Expense	
	9.	Current N.C. Intrastate Gallons Purchased at Average Actual End of Month Cost Per Gallon (L7 x L8)	_____
	10.	Current N.C. Intrastate Gallons Purchased at Base Period Cost Per Gallon at December 31, 1978 (L7 x L1)	_____
	11.	Actual Increase (Decrease) in Fuel Expense Due to Increase (Decrease) in Cost Per Gallon (L9 - L10)	_____
	12.	Current Month's N.C. Intrastate Line-Haul Revenue (Excluding Fuel Surcharge)	_____
	13.	Fuel Surcharge: Percentage of Actual Current Month's Revenue (Exclusive of Fuel Surcharge) to Current Month's Increase (Decrease) in Fuel Expense (4 Decimal Places)	_____

EXHIBIT I
ATTACHMENT B
NCUC RULE R2-16.1
FUEL SURCHARGE REPORT
GENERAL COMMODITIES COST-STUDY CARRIERS

I. 1. Base Period Cost Per Gallon at December 31, 1978 _____

II. Current Month Data:

2. Fuel Expense, Including Taxes - System _____
3. Number of Gallons Purchased - System _____
4. % N.C. Fuel Expense to Total Fuel Expense - 1978 CTS _____
5. N.C. Intrastate Gallons Purchased (L3 x L4) _____
6. N.C. Average Actual End of Month Cost Per Gallon _____

III. Computation of Percentage of Actual Current Month's Revenue to Current Month's Increase (Decrease) in Fuel Expense

7. Current N.C. Intrastate Gallons Purchased at Average Actual End of Month Cost Per Gallon (L5 x L6) _____
8. Current N.C. Intrastate Gallons Purchased at Base Period Cost Per Gallon at December 31, 1978 (L5 x L1) _____
9. Actual Increase (Decrease) in Fuel Expense Due to Increase (Decrease) in Cost Per Gallon (L7 - L8) _____
10. Current Month's N.C. Intrastate Line-Haul Revenue (Excluding Fuel Surcharge) _____
11. Fuel Surcharge: Percentage of Actual Current Month's Revenue (Exclusive of Fuel Surcharge) to Current Month's Increase (Decrease) in Fuel Expense (4 Decimal Places) _____

ATTACHMENT C*
NCUC RULE R2-16.1
COST STUDY CARRIERS FOR FUEL SURCHARGE

A. Household Goods Carriers
1. Horne Storage Company, Inc.
2. Murray Transfer & Storage Company, Inc.
3. Patterson Storage Warehouse Company, Inc.
4. Yarbrough Transfer Company
5. Security Storage Company, Inc.

B. Asphalt, Petroleum, and Bulk Commodities Carriers
1. Central Transport, Inc.
2. Eagle Transport Corporation
3. Eastern Oil Transport, Inc.
4. Kenan Transport Company, Inc.
5. O'Boyle Tank Lines, Inc.
6. Southern Oil Transportation Company, Inc.
7. Widenhouse, A.C., Inc.

C. General Commodities Carriers
1. Estes Express Lines
2. Fredrickson Motor Express Corporation
3. Old Dominion Freight Line, Inc.
4. Overnite Transportation Company
5. Standard Trucking Company
6. Thurston Motor Lines, Inc.

D. Tobacco Carriers
1. Burton Lines, Inc.
2. Epes Transport System, Inc.
3. Forbes Transfer Company, Inc.
4. North State Motor Lines, Inc.
5. Vance Trucking Company, Inc.

E. Motor Passenger Carriers
1. Carolina Coach Company
2. Continental Southeastern Lines, Inc.
3. Greyhound Lines, Inc.
4. Seashore Transportation Company

* Added by Order issued February 27, 1980

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Emergency Fuel Surcharge for Transportation by Motor Carriers in North Carolina Intrastate Commerce	))))	FURTHER ORDER ALLOWING EMERGENCY FUEL SURCHARGE FOR UNITED PARCEL SERVICE, INC.

BY THE COMMISSION: This proceeding is before the Commission upon the consideration of an emergency arising from the rapid increase in fuel costs of motor carriers. Upon consideration of applications filed by North Carolina Motor Carriers Association, Inc., North Carolina Movers Association and Southern Motor Carriers Rate Conference for and on behalf of member carriers and, also, upon consideration of an investigation and report by the Public Staff, the Commission issued its Order in this docket on May 30, 1979, permitting a 2% emergency fuel surcharge upon intrastate motor carrier transportation charges.

By further Order of the Commission dated February 26, 1980, all motor common carriers of passengers and freight that had individual tariff schedules on file were authorized a 5.6% interim fuel surcharge applicable upon line haul charges of LTL shipments. On February 29, 1980, United Parcel Service, Inc., filed a petition seeking to publish a 1.3% fuel surcharge applicable upon line haul charges of LTL shipments in lieu of the 5.6% fuel surcharge authorized by the Commission.

Upon consideration of the petition and the record in this matter as a whole, the Commission finds and concludes that the proposed 1.3% interim fuel surcharge proposed by United Parcel Service, Inc., is just and reasonable.

IT IS, THEREFORE, ORDERED:

1. That the petition filed by United Parcel Service, Inc., requesting permission to publish a 1.3% interim fuel surcharge is granted effective March 17, 1980.

2. That in all other respects, the Order in this docket dated February 26, 1980, shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of March 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Emergency Fuel Surcharge for Transportation by Motor Carriers in North Carolina Intrastate Commerce	) APPROVAL OF REQUEST BY THE HOUSEHOLD GOODS CARRIERS AND THE BULK COMMODITY, PETROLEUM, ASPHALT, AND CEMENT CARRIERS FOR ADJUSTMENT TO FUEL SURCHARGE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 25, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate and Douglas P. Leary

APPEARANCES:

For the Applicants:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: North Carolina Intrastate Household Goods Carriers

Bulk Commodity, Petroleum, Asphalt, and Cement Carriers were not represented by an Attorney.

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 February 26, 1980, this Commission issued a Further Order Approving Surcharges and Providing Surcharge Procedures for Motor Carriers and new Commission Rule R2-16.1. Pursuant to this Order and Rule R2-16.1, the Household Goods Carriers and the Bulk Commodity, Petroleum, Asphalt, and Cement Carriers filed verified requests for adjustment to the fuel adjustment clause.

On March 20, 1980, as allowed by the Order of February 26, 1980, and Rule R2-16.1, the Public Staff filed a written protest and requested a hearing on the applications for adjustment to the fuel surcharge.

Pursuant to the Order of February 26, 1980, the hearing was held on March 25, 1980. Based upon the evidence presented in the applications for the fuel surcharge adjustment, and in the Commission's files and in the records of this proceeding, the Commission concludes that the

applications for the fuel surcharge adjustment are in accordance with the Commission's Order of February 26, 1980, and Rule R2-16.1, and are just and reasonable.

IT IS, THEREFORE, ORDERED:

1. That effective April 1, 1980, the fuel surcharge for the Bulk Commodity, Petroleum, Asphalt, and Cement Carriers be increased to 9.92%.

2. That effective April 1, 1980, the fuel surcharge for the Household Goods Carriers be increased to 11.4%.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of March 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Emergency Fuel Surcharge for Transportation by Motor Carriers in North Carolina Intrastate Commerce	) ORDER ADJUSTING FUEL) SURCHARGE TO ZERO) FOR HOUSEHOLD GOODS) CARRIER

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on May 28, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert K. Koger and Commissioner John W. Winters

BY THE COMMISSION: On May 12, 1980, the Household Goods Carriers (Applicants) filed a Verified Request of Household Goods Carriers for Adjustment Pursuant to Rule R2-16-1. This request contained data supporting the Applicants' contentions that based on April 1980 data, the appropriate fuel surcharge should be 15.40%, based on $1.10 per gallon, as opposed to the current fuel surcharge of 11.40%. The Public Staff did not protest this filing. In general rate case Docket No. T-825, Sub 255, Filing of Tariffs and Fuel Cost Adjustment Provisions by North Carolina Household Goods Carriers Affecting Statewide Rates and Charges for North Carolina Intrastate Transporation Services, this Commission issued a final Order Granting Increase in Rates and Charges for Household Goods, which concluded that it was fair and reasonable to include fuel costs at the rate of $1.10 per gallon in the base fuel costs for determining appropriate rates.

IT IS, THEREFORE, ORDERED as follows:

1. That consistent with the Order Granting Increase in Rates and Charges for Household Goods in Docket No. T-825, Sub 255, the Household Goods Carriers fuel surcharge should be, and hereby is, adjusted to zero.

2. That the base cost per gallon of fuel to be used in determining the Household Goods Carrier's fuel surcharge under Commission Rule R2-16.1 should be, and hereby is, adjusted to $1.10.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of May 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Intrastate Fuel Surcharges Applicable to Transportation Rates and Charges of North Carolina Motor Carriers of Passengers and Property	)	FURTHER ORDER ADJUSTING FUEL SURCHARGES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 28, 1980, as Calendared

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert K. Koger, and Commissioner John W. Winters

BY THE COMMISSION: On February 26, 1980, the Commission in this Docket entered its "Further Order Proving Surcharges and Providing Surcharge Procedures for Motor Carriers" wherein the Commission adopted a new Rule R2-16.1 providing a procedure for motor fuel surcharge adjustments. Pursuant to said Order and this Commission's Rule R2-16.1, the North Carolina Motor Carriers Association, Inc., agent, on behalf of its member motor carriers of bulk commodities, petroleum, asphalt, or cement, (hereinafter, Applicant) filed on May 15, 1980, its verified Motion to Adjust Fuel Surcharges to increase the emergency fuel surcharge from the currently authorized 9.92% to 10.48%, based on the verified "Fuel Surcharge Reports" of the seven (7) study-group carriers for the month of March 1980, said reports for March 1980 being the most current data available to the study-group carriers as of May 15, 1980. A hearing to consider this and other verified Motions to Adjust Fuel Surcharges was calendared for Wednesday, May 28, 1980, and notice of same was provided in accordance with law and the rules of the Commission. Upon convening the hearing before the Commission's Panel at the time and place noted above, appearances were entered by Allen, Steed and Allen, P.A., on behalf of Applicant, and by the Public Staff, on behalf of the using and consuming public. No other party or person entered an appearance before the Commission. Thereafter, the Commission took notice that no protest to the pending Motions to Adjust Fuel Surcharges had been filed of record and then publicly invited oral protests at the hearing, but no person made any such protest. At that time the Applicant moved that the Commission take notice of and consider the verified "Fuel Surcharge Reports" of each of the relevant seven (7) study-group carriers for the month of April 1980 filed on May 23, 1980, and that the Commission allow an amendment to Applicant's Motion to Adjust Fuel Surcharges to request an increase of fuel surcharge from the currently authorized 9.92% to 10.53%, based on the verified "Fuel Surcharge Reports" filed on May 23, 1980. Both motions were allowed by the Commission. Due to the absence of any protests of record or at the hearing, Applicant moved

pursuant to this Commission's Rule R2-16.1(e) that its Motion to Adjust Fuel Surcharges be decided on the basis of the pleadings, as amended, which motion was allowed. Thereupon the hearing was concluded and the record closed.

The Commission, in consideration of its Rule R2-16.1, its prior Orders and other matters of record in this Docket, and the proceedings of May 28, 1980, makes the following

FINDINGS OF FACT

1. The verified "Fuel Surcharge Reports" of the relevant seven (7) study-group carriers for the months of March and April 1980 justify an increase of the currently authorized fuel surcharge of 9.92% to 10.53%;

2. The verified "Fuel Surcharge Reports" referred to above and the verified Motion to Adjust Fuel Surcharges of the North Carolina Motor Carriers Association, Inc., agent, on behalf of its member motor carriers of bulk commodities, petroleum, asphalt, or cement satisfied the requirements of this Commission's earlier Orders in this Docket and its Rule R2-16.1; and,

3. No protests appear in the official file of the Commission in this Docket, nor was any protest made at the hearing of May 28, 1980.

Upon consideration of the foregoing Findings of Fact, the Commission made the following

CONCLUSIONS OF LAW

1. The currently authorized emergency fuel surcharge of 9.92% applicable to intrastate transportation by motor carriers of bulk commodities, petroleum, asphalt, or cement is no longer adequate and a fuel surcharge in the amount of 10.53% is just and reasonable.

IT IS, THEREFORE, ORDERED:

1. That the currently approved emergency fuel surcharge of 9.92% applicable to the intrastate transportation by motor carriers of bulk commodities, petroleum, asphalt, or cement should be and hereby are cancelled effective upon the filing of the tariff items reflecting the surcharge herein approved;

2. That the intrastate motor carriers of bulk commodities, petroleum, asphalt, or cement, or their authorized publishing agents that have tariffs or schedules on file with this Commission, should be and are hereby authorized to file with the Commission on one day's notice a surcharge of 10.53% on truckload shipments.

3. That the surcharge filed herein shall take the form of a master tariff increase, or supplement to the tariffs or schedules.

4. That except as herein modified, the prior Orders of the Commission in this Docket shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of May 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Emergency Fuel Surcharges for) ORDER
Transportation by Motor Carriers in) REVISING
North Carolina Intrastate Commerce) RULE R2-16.1

BY THE COMMISSION: On February 26, 1980, the Commission in this Docket issued "Further Order Approving Surcharges and Providing Surcharge Procedures for Motor Carriers" wherein it adopted inter alia, a new Rule R2-16.1 which provides a procedure for monthly motor fuel surcharge adjustments. In that Order the Commission invited comments and proposed revisions to the Rule from the parties in this docket.

On April 10, 1980, the Public Staff filed comments and a proposed revision of Rule R2-16.1. On April 16, 1980, the Commission ordered any parties to this docket so desiring to file comments regarding the Public Staff's proposed revisions on or before May 15, 1980. In response to this Order, the following parties filed comments to the Public Staff's proposed revisions:

The Household Goods Carriers
The Tobacco Carriers
North Carolina Motor Carriers Association

The Commission is now in the process of studying the proposed revisions and comments and anticipates that it will issue an Order in the near future incorporating many of these revisions. Pending this decision, however, and on its own motion, the Commission finds it necessary to give expedited consideration to a revision of Section (i) of Rule R2-16.1 which reads as follows:

"(i) In the event that any motor carrier (or group of carriers) which has a fuel surcharge in effect in its rates should file for a general rate increase, the carrier shall include in its evidence for said general rate increase an updating of the fuel expense in its rates up to and including the close of the public hearing on said general rate case, and after a final decision rolling said fuel surcharge into said general rates, the carrier shall thereafter update its monthly fuel surcharge reports to include a new base fuel price as of the price rolled into its general rates on the date of the closing of the public hearing."

Comments in regard to this section of Rule R2-16.1 have been almost unanimously adverse. This provision particularly creates problems for lease operators and owner operators who would be unable to recover out-of-pocket fuel expenses under a "roll-in" procedure. This procedure also creates burdensome accounting problems. Of the carriers who

filed comments, only the Household Goods Movers, who do not use owner operators, expressed support for a roll-in procedure. Accordingly, the Commission concludes that it should revise Rule R2-16.1(i) to indicate that a roll-in of the fuel surcharge is permitted only for Household Goods Movers and Motor Carriers of passengers (buses) who do not use lease operators or owner operators.

The Commission further concludes that it should modify the Rule to clarify that the person or company who pays for the fuel used will receive all revenues derived from the fuel surcharge. This is consistent with the original fuel surcharge Order issued in this docket on May 20, 1979, which provided for full recovery of expenditures by lease operators. Indeed, it was the lease operators who prompted the initial fuel surcharge in May 1979. In accord with recommendations of the North Carolina Motor Carriers Association a new Section "(k)" should be added to Rule R2-16.1. This new section should read as follows:

> "(k) The person, whether natural or corporate, actually responsible, by contract or otherwise, for the payment of fuel charges will receive the full increase in freight revenue to be derived from fuel surcharges authorized by this rule."

A further Order containing additional revisions and modifications to this Rule R2-16.1 will issue in the near future.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R2-16.1(i) is amended, effective today, to read as follows:

> "(i) In the event that any Household Goods Mover or Motor Carrier of pasengers which has a fuel surcharge in effect in its rates should file for a general rate increase, the carrier may include in its evidence for said general rate increase an updating of the fuel expense in its rates up to and including the close of the public hearing on said general rate case, and after a final decision rolling said fuel surcharge into said general rates, the carrier may thereafter update its monthly fuel surcharge reports to include a new base fuel price as of the price rolled into its general rates on the date of the closing of the public hearing."

2. That Rule R2-16.1 is further amended by adding thereto a new section "(k)" as follows:

> "(k) The person, whether natural or corporate, actually responsible, by contract or otherwise, for the payment of fuel charges will receive the full increase in freight

revenue to be derived from fuel surcharges authorized by this rule."

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of June 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Emergency Fuel Surcharge for Transportation by Motor Carriers in North Carolina Intrastate Commerce	) APPROVAL OF REQUEST BY THE) CAROLINA COACH COMPANY, GREYHOUND) LINES, INC., SEASHORE) TRANSPORTATION COMPANY, AND) TRAILWAYS, INC.

BY THE COMMISSION: On February 26, 1980, this Commission issued a Further Order Approving Surcharges and Providing Surcharge Procedures for Motor Carriers and new Commission Rule R2-16.1. Pursuant to this Order and Rule R2-16.1, the Carolina Coach Company, Greyhound Lines, Inc., Seashore Transportation Company, and Trailways, Inc., filed a Motion to Adjust the Surcharge, on July 15, 1980. This motion was amended on July 25, 1980. The Applicants' request an increase in the fuel surcharge from 3.5% to 5.0%. Based upon the verified filing, and since the Commission has received no protests to the filing, pursuant to Rule R2-16.1. section (e), the Commission concludes that the fair and reasonable fuel surcharge for the Applicants is 5.0%.

IT IS, THEREFORE, ORDERED:

1. That effective August 1, 1980, the fuel surcharge for Carolina Coach Company, Greyhound Lines, Inc., Seashore Transportation Company, and Trailways, Inc., be increased to 5.0%.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of July 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Emergency Fuel Surcharge for Transportation by Motor) ERRATA
Carriers in North Carolina Intrastate Commerce) ORDER

BY THE COMMISSION: It was the intention of the Commission in its Order of July 28, 1980, in this docket to include the entire body of the Intrastate Motor Carriers of Passengers rather than just the members mentioned. The Commission also finds it to be more appropriate to allow this fuel surcharge to become effective upon one day's notice by publication of appropriate tariffs or supplements thereto.

IT IS, THEREFORE, ORDERED as follows:

1. That the fuel surcharge for Intrastate Motor Carriers of Passengers be, and hereby is, increased to 5% effective upon one day's notice by publication of appropriate tariffs or supplements thereto.

ISSUED BY ORDER OF THE COMMISSION.

This the 29th day of July 1980.

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

DOCKET NO. T-825, SUB 248

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Intrastate Fuel Surcharge Applicable to Transportation Rates and Charges of North Carolina Motor Carriers of Passengers and Property	)) ORDER ADOPTING) REVISED MOTOR FUEL) SURCHARGE RULE

BY THE COMMISSION: On February 26, 1980, the Commission issued its "Order Approving Surcharges and Providing Surcharge Procedure for Motor Carriers" wherein it approved Commission Rule R2-16.1 which adopted a new procedure for adjusting motor fuel surcharges. In its order the Commission stated, "The Commission anticipates that newly adopted Rule R2-16.1 may need revision and will accept written comments from the Public Staff, carriers, or shippers regarding possible revisions."

On April 10, 1980, the Public Staff filed "Comments, Recommended Rule, Forms and Motion" which include revisions to the newly adopted Rule R2-16.1. The Public Staff stated that their proposed revisions are intended to accomplish the following:

1. Require motor fuel reports to be filed by the 25th of each month, rather than the 15th in order to allow additional time for carriers to accumulate data and prepare their reports.

2. Allow sufficient notice and time to protest.

3. Remedy the problem of the setting of a hearing in response to a protested application.

4. Remedy the problem of the computation of the proper costs to be used both for the reference month and the month in question by requiring the average cost of fuel for the month, rather than the actual price paid by the carriers at the end of the month being used in fuel reports and applications. The Public Staff stated that the use of actual price is arbitrary and provides an irresistible temptation to manipulation.

5. Provide a mechanism for updating an application.

6. Provide procedures for filings by independent filers.

7. Provide explicitly that fuel surcharge revenues shall be passed on to lease operators.

8. Provide that fuel surcharges not be rolled-in in general rate proceedings.

On April 16, 1980, the Commission issued an Order allowing any party to this docket to file comments regarding the

Public Staff's proposed revisions to Rule R2-16.1. In response to this Order, comments were filed by the following parties with the time alloted:

Tobacco Carriers
Household Goods Carriers
North Carolina Motor Carriers

On June 16, 1980, the Commission issued its "Order Revising Rule R2-16.1" wherein it modified Rule R2-16.1 to provide that only Household Goods Movers or Motor Carriers of Passengers may apply for a roll-in of their current fuel surcharge with their basic rates, and to provide expressly that the person actually responsible for payments of fuel surcharges receive the freight revenue to be derived from fuel surcharges. These revisions were ordered to alleviate problems of lease operators who would be unable to fully recover out-of-pocket fuel expenses under a "roll-in" procedure. The Commission gave notice in this Order that it was studying further revisions to Rule R2-16.1 and that it would issue an Order in the near future incorporating many of these revisions.

On August 22, 1980, the Public Staff filed a Motion requesting the Commission to issue a Final Order Revising Rule R2-16.1. Having considered the foregoing comments and proposed revisions, the Commission concludes that a revised Rule R2-16.1 set forth in Exhibit A attached hereto should be adopted. This revision incorporates the following features:

1. The revised rule provides that motor fuel surveillance reports be filed on the 25th of the month rather than the 15th of the month in order to allow adequate time to compile data from the previous month and prepare the reports and application.

2. The revised rule provides that an application may be filed at any time, that protests and requests for hearing must be filed 10 days after the application is filed and if a protest is filed, hearings will be scheduled approximately 21 days after the application is filed. The revised rule, like the former rule, allows the Commission to decide the matter on the basis of the verified application if no protests are filed. The prior rule required both the surveillance reports and the application to be filed on the 15th of the month; protests to be filed by the 21st day of the month; and hearings to be scheduled on approximately the 25th day of the month. The allowance of only six days for filing protests, and 10 days between application and hearing was criticized by the intervenors for not providing adequate notice.

3. The revised rule provides that the fuel report(s) and application(s) filed in this docket use the average cost per gallon paid by the applicant during the month proceeding the filing of the application. The revised rule also accepts

the Public Staff's recommendation providing for a mechanism for updating the application through use of the ICC's fuel price survey which is published in the Federal Register.

4. The revised rule continues to prohibit a roll-in of the fuel surcharge into basic rates (except for Household Goods Movers and Motor Carriers of Passengers), and to provide that lease operators or owner operators who pay fuel surcharges shall receive the full increase in freight revenues authorized by this rule.

5. The revised rule provides that independent filers not publishing tariffs of one of the included carrier groups may charge the surcharge approved for the carrier group carrying the same commodity the independent filers carry, and also provides he may apply for a different motor fuel surcharge than that approved for the carrier group of the same commodity handled by the independent filer.

The Commission is advertent to the fact that unless appropriate adjustments are made in general rate cases, the fuel surcharge may result in an overcollection of fuel expenses. This problem stems from the fact that fuel surcharge revenues are mathematically linked to base revenues, and an unintended increase in fuel surcharge will result each time base rates are increased. Since Rule R2-16.1 prohibits a roll-in of the fuel surcharge into basic rates (except for the household goods carriers), this problem cannot be appropriately dealt with in a general rate case. The Commission concludes that the appropriate method for preventing an overcollection of fuel revenues is to adjust the fuel adjustment factor. Accordingly, the Commission requests that the Public Staff maintain close surveillance of the monthly fuel surcharge reports filed by the carriers, particularly after general rate relief is granted, and make appropriate recommendations for adjustments to the fuel surcharge as needed.

IT IS, THEREFORE, ORDERED that a Revised Rule R2-16.1 as set forth in Exhibit A attached to this Order be, and hereby is, adopted.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of November 1980.

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

Note: For Attachments A, B, and C, see the official Order in the Office of the Chief Clerk.

EXHIBIT A

RULE REVISION

RULE R2-16.1 - MOTOR FUEL SURCHARGE

(a) The cost study carriers set forth in Attachment C to this rule, during any period a fuel surcharge is in effect for such group, shall file on or before the 25th day of each month a fuel surcharge report in the form set forth in Attachments A and B to this rule. Failure to file a fuel surcharge report will be grounds for denying subsequent applications for a fuel surcharge adjustment.

(b) Any cost study carrier or independent filer seeking an adjustment to its approved motor fuel surcharge may file with the Commission's Chief Clerk a verified application for adjustment at any time. This application must supplement the individual carrier reports (Attachments A and B) with a clear and concise narrative justification in support of the application. Such application must be verified before a notary public or other person authorized to take oaths.

(c) Fuel surcharges approved through application of this rule for motor carrier groups are also approved for individual carriers of the same commodity, provided independent filers desiring a fuel surcharge different from that granted to the carrier group for the same commodity may file a verified application with this Commission in accord with Rule R2-16.1(b) above.

(d) Copies of application(s) shall be served upon the Public Staff, the Attorney General, and any party designated on the Chief Clerk's service list in Docket No. T-825, Sub 248. Persons desiring to be placed on this service list shall notify the Chief Clerk of the Commission in writing.

(e) Any party to this docket, including the Public Staff, the Attorney General, and affected shippers, or other intervenors, may file a protest to the application and request for hearing in Docket T-825, Sub 248, no later than 10 days following the filing of the application. Upon receipt of a protest and request for hearing, the Commission will set the matter for hearing, to the extent practicable, approximately 21 days from the filing of an application. Notice of said hearing shall be given by the Chief Clerk to the Public Staff, the Attorney General, and the parties of record in Docket T-825, Sub 248.

(f) In the event no protests request for hearing are filed, the matter may be decided by the Commission on the basis of verified representations contained in the application.

(g) The Public Staff, the Attorney General, or any affected shipper may at any time petition the Commission for a hearing for the purpose of adjusting the fuel surcharge.

(h) Fuel reports filed under this rule shall use the North Carolina cost per gallon which is the average price paid by the motor carrier or motor carrier group during the month.

(i) For the purpose of updating an adjustment to the fuel surcharge the North Carolina average cost per gallon may be adjusted by amendment to the application any time prior to hearing or decision to reflect the change in price per gallon indicated by the fuel price survey conducted by the Interstate Commerce Commission in Ex parte No. 311 (Expedited Procedures for Recovery of Fuel Costs) as published in the Federal Register. The amount of the price adjustment to be added to or subtracted from the average price per gallon shall be the change in price per gallon reflected by the Fuel Price Survey from the 15th day of the month for which the North Carolina average cost per gallon has been computed up to the date the amendment is filed.

(j) The person, whether natural or corporate, actually responsible, by contract or otherwise, for the payment of fuel charges will receive the full increase in freight revenue to be derived from fuel surcharges authorized by this rule.

(k) Fuel surcharges implemented under this rule shall not be made a part of permanent tariff rates and charges except in the event that any household goods mover or motor carrier of passengers, which has a fuel surcharge in effect in its rates, should file for a general rate increase, the carrier may include in its evidence for said general rate increase an updating of the fuel expense in its rates up to and including the close of the public hearing on said general rate case. After a final decision rolling a fuel surcharge into general rates, the carrier may thereafter update its monthly fuel surcharge reports to include a new base fuel price as of the price rolled into its general rates on the date of the closing of the public hearing.

DOCKET NO. P-825, SUB 251

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Common Carriers - Suspension and) ORDER
Investigation of Proposed Increases in Rates) GRANTING
and Charges and Adjustments in Certain Rules) INCREASES
Applicable to Shipments of Various Commodities)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 14, 1980, at 10:00 a.m., and February 18, 1980, at 11:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and Douglas P. Leary

APPEARANCES:

For the Respondent:

Thomas W. Steed, Jr., Allen, Steed & Allen, P.A., P.O. Box 2058, Raleigh, North Carolina
For: Southern Motor Carriers Rate Conference, North Carolina Motor Carrier Association, Inc., and Member General Commodity Carriers

John W. Joyce, Southern Motor Carriers Rate Conference, 1307 Peachtree Street, N.E., Atlanta, Georgia 30309
For: Southern Motor Carriers Rate Conference and Its Member Motor Common Carriers

For the Intervenors:

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

BY THE COMMISSION: On July 20, 1979, the Southern Motor Carriers Rate Conference (SMCRC) filed with the Commission on behalf of its motor common carrier participants in Tariff NCUC SMC 304-B, its Supplement No. 24 which contained a proposal to amend Items 217550 through 217670, applicable on roofing materials from Morehead City to various points in North Carolina, by increasing the present 40,000 pounds rates by approximately 25%. In an Order issued August 21, 1979, the matter was suspended and an investigation instituted into its lawfulness.

On August 3, 1979, SMCRC filed with the Commission Supplement No. 27 to Tariff NCUC SMC 304-B which contained the following proposed changes:

1. Amended Item 202120 by increasing the charge for stopoff-in-transit for partial unloading to be $57.50 per stop when on volume or truckload shipments of foodstuffs;

2. Amended Item 204500 by providing that specific commodity rates published in Section 3 of the tariff would apply regardless of rates published in other sections of the tariff; and

3. Amended Items 202450 through 219400 by cancelling all present volume or truckload rates applicable on foodstuff Group and allowing class rates to apply.

This publication bore a scheduled effective date of September 6, 1979.

The matter was protested by Hunt-Wesson Foods, Inc., and in an Order issued September 4, 1979, the Commission suspended the operation of the proposed schedule and assigned the matter to be heard on a common record with the adjustment on roofing materials.

On August 24, 1979, the North Carolina Motor Carriers Association, Inc. (NCMCA), filed with the Commission on behalf of its motor common carrier participants Supplement No. 29 to Class and Commodity Tariff 10-H, NCUC No. 117 which contained the same adjustments as those set forth in Supplement No. 27 to Tariff NCUC SMC 304-B. This supplement bore a scheduled effective date of September 24, 1979. In an Order issued September 18, 1979, the Commission suspended the proposed adjustment and assigned the matter to be heard on November 28, 1979, on a common record with the adjustments proposed by SMCRC.

On September 11, 1979, SMCRC filed a petition to vacate the suspension and terminate the investigation in connection with the roofing materials adjustment.

On October 5, 1979, Hunt-Wesson Foods, Inc., filed a motion to dismiss the pending proceeding in connection with the foodstuffs adjustment on the ground that the adjustment resulted from collective carrier activity which was prohibited by an order of the United States District Court in United States vs. SMCRC, et al. (Civil Action No. 76-1009-A) (Decided September 13, 1979).

On October 18, 1979, the Public Staff of the North Carolina Utilities Commission filed its notice of intervention in this investigation.

On October 24, 1979, SMCRC filed its reply to the motion of Hunt-Wesson for dismissal of the application.

On October 26, 1979, respondents filed a motion for enlargement of time for prefiling testimony and for postponement of the public hearing for at least 21 days.

On November 30, 1979, the Public Staff petitioned the Commission to assign Hunt-Wesson's motion to dismiss for oral argument and requested that the hearing be postponed until February 14, 1980.

On December 3, 1979, the Commission issued its Order granting the Public Staff's request for oral argument on the motion to dismiss and postponed the hearing until February 14, 1980.

On January 8, 1980, NCMCA filed a letter request for leave to adopt the prefiled testimony of SMCRC as its own. On January 16, 1980, the Public Staff filed a motion to defer ruling on the motion of NCMCA that it be permitted to adopt the testimony filed by SMCRC. On January 22, 1980, the Commission issued its Order denying the motion of NCMCA without prejudice to resubmission of the motion by a qualified member of the bar, and the letter of NCMCA was accepted as a statement of its position.

The matter came on for hearing on February 14, 1980, at 9:30 a.m., in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. All parties were present and represented by counsel except Hunt-Wesson Foods, Inc., whose representative testified but did not enter an appearance.

Before any testimony was presented, the Commission took up the motion to dismiss the application on the ground that the instant proposal was the product of collective rate-making activities which had been declared by a United States District Court decision to be in violation of the Federal Antitrust Laws. The motion was not renewed by any party present at the hearing, and accordingly, the issue is considered to be abandoned. However, respondent placed in the record a copy of an order issued by the United States District Court for the Northern District of Georgia, on the 10th day of October 1979, which stays the effectiveness of the decision cited by Hunt-Wesson as ground for dismissal of the application. The order indicates that the stay is in effect pending the disposition of appeal, which respondents' counsel indicated was being actively pursued at the time of the hearing. Based on the foregoing the Commission's denial of the motion to dismiss the application is hereby affirmed.

In addition, respondents moved to voluntarily dismiss that portion of the proposal dealing with the alternation of commodity rates with other rates in the tariffs. Without objection this motion was granted and the issue abandoned.

At the hearing in this matter, respondent motor carriers presented the testimony and exhibits of the following witnesses in support of their burden of proving that the

proposed adjustments are just and reasonable as required by North Carolina General Statutes, Section 62-146:

Robert A. Hopkins, Secretary of the North Carolina Intrastate Rate Committee;

Charlie Finley, Traffic Manager of Fredrickson Motor Express Corporation;

Robert E. Fitzgerald, Vice President of Traffic, Estes Express Lines;

Bruce Hooks, Traffic Manager of Bruce Johnson Trucking Company;

Bill Baker, Traffic Analyst, Overnite Transportation Company;

W.D. Snavely, Vice President and Traffic Manager, Standard Trucking Company;

John V. Luckadoo, Director of Traffic, Thurston Motor Lines, Inc.; and

Daniel M. Acker, Manager of the Cost and Statistical Department of Southern Motor Carriers Rate Conference.

The Public Staff presented the testimony and exhibits of Ms. Donna Harris, Distribution Specialist with Hunt-Wesson Foods, Inc., in opposition to the proposed adjustment on foodstuffs. In addition, the Public Staff presented the testimony and exhibits of James L. Rose, Rate Specialist - Transportation Rates Division, Public Staff, and James C. Turner, Supervisor - Transportation Rates Section, Public Staff, Accounting Division, on behalf of the using and consuming public.

Based upon the record in this proceeding and the testimony and exhibits introduced at the hearing, the Commission makes the following:

FINDINGS OF FACT

1. The motor carriers of general commodities participating in the tariff publications under suspension in this proceeding hold certificates from the Commission for operating authority and are properly before this Commission seeking to adjust the rates on foodstuffs and roofing materials and the charge for stopping-in-transit on foodstuffs.

2. Shipments of foodstuffs entail extra handling by the carriers in performing the delivery and unloading service. This is sufficient justification for adjusting the rates to more nearly reflect the additional costs to the carriers.

3. The proposed class rate levels have been shown to be just and reasonable for application to shipments of foodstuffs.

4. The Public Staff advocated the each-to-each costing method in this proceeding. The respondent carriers advocated the individual shipment method. Both costing methods indicated that the respondents' present rates on foodstuffs are not compensatory. The each-to-each costing method indicated that the proposed rates would be slightly compensatory, while the individual shipment method indicated that the proposed rates as applied to the applicable minimum weights would not be compensatory.

5. The proposed increase in the charge for stopoffs of volume or truckload shipments for partial unloading service on shipments of foodstuffs, from $32.10 to $57.50, has been shown to be just and reasonable.

6. The proposed increase in the point-to-point commodity rates on shipments of roofing materials from Morehead City to 46 specifically named destination points, as published in Items 217650 thru 217670 of Tariff NCUC SMC 304-B, has been shown to be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding is essentially informational, procedural, and jurisdictional in nature and is affirmed by the Commission's denial of the motion to dismiss the proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Respondents basically are proposing to cancel the truckload commodity rates on foodstuffs in the involved tariffs and permit class rates to apply. Class rates are rates which are applicable from and to all points in the State on all commodities moved in motor carrier service. Under the tariff, all products are divided into 23 separate "classes" which are based upon the individual characteristics of each commodity. All classes are provided with rates which vary in accordance with the weight of the shipment and the distance traveled. Generally speaking, the class rates are the highest level of rates applicable on any commodity.

On the other hand, commodity rates are established because of some inherent transportation characteristic of the particular commodity or of the particular movement which results in an identifiable cost savings to the carrier. Theoretically, these cost savings are passed on to the shipping public in the form of lower rates for the particular commodity or the particular movement. Commodity rates are usually lower than class rates.

Under the instant proposal, respondents have proposed to cancel the truckload commodity rates on foodstuffs, which

would permit higher class rates to apply. The record indicates that most commodities would move under the class 35 rates at a truckload minimum weight of 24,000 pounds. Presently, the commodity rates on foodstuffs range from six cents higher than the class 35 rates at a minimum weight of 20,000 pounds to 36 cents lower than the class 35 rates at a minimum weight of 36,000 pounds.

In an effort to demonstrate that the class rates represent a more reasonable basis for application to shipments of foodstuffs, the carrier witnesses testified that the manner in which the carriers are required to deliver and unload shipments of foodstuffs has rendered the commodity rates to be noncompensatory. They characterize the bulk of foodstuff transportation in North Carolina as being from the distributor to a warehouse and that delivery and unloading problems occur on about 80% of the foodstuffs delivered to warehouses.

At the outset, the carrier witnesses stressed that very few problems have occurred in connection with the loading service or the line-haul service. For the most part, the problems which the carriers claim render the rates noncompensatory occur at the point of delivery. For example, respondents' carrier witnesses contended that most warehouses require the carrier to prearrange an appointment for delivery of the shipment. Several witnesses produced signed delivery receipts which indicated that some shipments required as much as seven days to complete the entire transportation service. The carriers testified that the transportation service in connection with most truckload shipments of other commodities handled in North Carolina could be completed in less than two days' time. The carrier witnesses indicated that the necessity for appointment deliveries required the carrier, in many instances, to hold the shipment at the destination terminal for several days before the consignee would accept the freight.

In addition, the record shows that the carriers characterize the unloading docks at these food warehouses as generally congested with other vehicles, which in many instances resulted in additional delays after arrival at the consignee's warehouse location. One witness testified that his drivers waited in line for as much as one-half day just to reach the consignee's unloading dock. In addition, the same witness testified that the trailers could not be dropped at the consignee's location because the consignee required that the tractor remain attached to the trailer in order to ensure that the trailer could be unloaded safely with a forklift without danger of tipping the trailer over on its side.

The carrier witnesses also testified that foodstuff shipments are usually tendered to the carrier on pallets due to the large number of small packages normally associated with the truckload shipment of this commodity. Palletization is used in order to quickly load the carrier's

trailer and to prevent unreasonable delays at the shipper's dock. The carrier witnesses testified that this procedure results in additional problems for the carrier at the delivery point since many of the consignees required the carrier to strip the shipper's pallets and place the individual cartons on the consignee's pallets. The carrier witnesses contend that the unloading process from pallet-to-pallet often requires in excess of a full day at the consignee's dock due to the large number of pieces, as many as 3,500 per shipment, which must be transferred in the unloading operation.

The carriers do not deny that this unloading procedure is nothing more than a free sorting and segregating service which they are currently prohibited from performing under the provisions of their tariff. However, they contend that unloading in this manner is necessary in order to protect themselves from loss and damage claims. Due to the manner in which the freight is tendered to the carrier, they contend that the unloading process offers the only opportunity for counting the number of pieces in the shipment and noting any concealed damage.

In this latter respect, the carriers also contend that loss and damage claims are a severe problem in connection with foodstuff shipments despite the precautions taken in unloading the freight. For example, the witness from Estes Express Lines testified that for the first four months of 1979 the claim ratio on foodstuff shipments for his company was 15.99% and for the same period of time, the system average claim ratio for all commodities was between 8/10 and 9/10 of one percent. (A claim ratio is the percentage relationship of dollars paid in claims to the total number of dollars received for the full transportation service.) The witness from Bruce Johnson Trucking Company testified that, for the first nine months of 1979, one foodstuff shipper accounted for 9% of the total dollar value in claims paid out by his company systemwide. The witness from Overnite Transportation Company provided examples of the claims ratio by shipper, with one foodstuff shipper having a claims ratio of 6.35%, another a ratio of 5.32%, and another with a claims ratio of 4.56%. This witness testified that these figures compared with their system claims ratio of 1.1%.

The carriers' witnesses generally contend that the additional problems associated with delivery and unloading of foodstuff shipments result in much higher operating costs which are not recoverable under the present point-to-point commodity rate structure. The record indicates that the carriers' representatives are of the opinion that class 35 would still not be compensatory for the services which they are required to perform, but that the class 35 basis would help cut their losses on this traffic.

Neither the witness for Hunt-Wesson nor the witnesses for the Public Staff dispute the existence of extraordinary

delivery and unloading problems described by the carriers. However, they contend that the solution to the problem is to assess an additional charge on the consignee to compensate the carrier for the additional expenses of providing the service. It is their position that it is unfair to place the burden on the shipper who has no control over the actions of the consignee. (The record indicates the shipments of foodstuffs usually move prepaid.) In addition, witnesses for the Public Staff pointed out that the carriers maintain a detention rule which provides for the assessment of additional charges for delays in loading and unloading through the fault of the consignor or consignee. The rule provides free time for loading or unloading service ranging from two to six hours per shipment, depending upon weight, with a charge of $4.60 for each quarter hour in excess of free time. The detention rule is designed to encourage consignors and consignees to expeditiously load and unload the carriers' equipment, but there is nothing in the record to indicate if the charge is actually in excess of the carriers' cost.

In response, the carriers contend that the contract of carriage is for a full pickup service at origin and a full delivery service at destination, and accordingly, they feel it is appropriate to recover these additional costs through the general rate structure on foodstuffs since the problems can be associated with the handling of this particular commodity. Apparently, it is their belief that the shipper can pass the additional transportation charges on to the consignee through the price of the product.

The carriers also contend that the detention rule is a largely ineffective solution where, as in the instant situation, the additional charges must be assessed on the vast majority of shipments. The carrier witnesses testified that more money was spent in attempting to enforce the detention rule than was actually collected from consignors and consignees as a result of detention. In addition, the carrier witnesses testified that the detention rule does not apply until the carrier arrives at the place of loading and unloading, and accordingly, the rule would do nothing to alleviate the condition whereby the carriers must maintain possession of the shipments in order to provide appointment deliveries which coincide with the consignee's unloading schedule.

The record in this proceeding reflects general disagreement among the parties as to the proper method for the carriers to recover their additional costs of handling foodstuffs. The question before this Commission, however, is whether the carriers' proposal to increase the rate levels on foodstuffs would be just and reasonable.

Based on the record in this proceeding, the Commission is of the opinion, and so concludes, that shipments of foodstuffs generally entail extra handling by the carriers in performing the delivery and unloading function. The

record is incomplete as to when and for what purpose the present commodity rate levels were established. However, the carrier witnesses indicate that they would not establish the same commodity rate levels today, given the extraordinary handling problems associated with delivery and unloading of shipments of foodstuffs. Consequently, it is reasonable to assume that the delivery and unloading problems have become associated with the handling of shipments of foodstuffs after the point-to-point commodity rate levels were established. Accordingly, the Commission finds and concludes that respondents have demonstrated sufficient justification for adjusting the basic transportation rates to more nearly reflect the additional costs associated with the entire transportation service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

In an effort to demonstrate that the proposed class rates on shipments of foodstuffs were not in excess of a just and reasonable level, respondents introduced the testimony and exhibits of Daniel M. Acker, a cost expert employed by Southern Motor Carriers Rate Conference. Mr. Acker presented a separate rate-cost comparison for each group of point-to-point commodity rates on various foodstuffs. Each comparison contains the proposed rate level, the 1978 fully allocated cost level, the restated fully allocated cost level, and the operating ratio which is based upon dividing the restated fully allocated cost level by the present and proposed charges.

Mr. Acker testified that the 1978 fully allocated cost level was based upon the 1978 annual reports of the six North Carolina cost-study carriers which participated in the SMCRC Continuous Study of Traffic in 1978. (The six North Carolina cost-study carriers are Estes Express Lines, Fredrickson Motor Express Corp., Old Dominion Freight Line, Overnite Transportation Company, Standard Trucking Company, and Thurston Motor Lines, Inc.) Mr. Acker testified that he used a cost separation formula which distributes the carriers' total expenses for the entire year into four separate service categories: Line-Haul Expenses, Pickup and Delivery Expenses, Platform Handling Expenses, and Billing and Collecting Expenses. The total expenses in each service category were divided by the total number of service units performed by the carrier to produce the average service unit costs for the entire year.

The 1978 fully allocated cost level was updated to the present (restated) level by reflecting the impact of increased labor expenses effective through October 1, 1979. The nonlabor expenses (other than fuel) in the base year were updated to the midpoint of October 1979 in accordance with the rate of change reflected by the Producer's Price Index for Industrial Commodities. The fuel expenses were restated to the September 1979 level by use of the fuel reports supplied to this Commission by the six study carriers. The effect of the updating process is reflected

in the restated fully allocated cost level provided in Mr. Acker's comparisons. By dividing the charges produced by both the present and proposed rates at the respective minimum weights into the restated fully allocated cost level, an operating ratio is produced for each hypothetical shipment, which respondents alleged to be representative of the range of distances.

The essence of Mr. Acker's testimony is that the present commodity rate levels produce charges which are not compensatory when measured against the average cost of handling truckload shipments in North Carolina intrastate service. In addition, Mr. Acker testified that the proposed class rate levels at 24,000 pounds will generally afford only a small improvement in the operating ratio. Only in connection with heavier-weighted shipments would the proposed class rate levels become compensatory.

Witnesses for the Public Staff testified that it was their belief that Mr. Acker's cost presentation was misleading. They contend that the inclusion of the operating statistics of Overnite Transportation Company and Thurston Motor Lines, Inc., both large carriers with relatively small participation in North Carolina intrastate traffic, has the effect of distorting the cost of the remaining four carriers. However, upon cross-examination, it was developed that the exclusion of the average unit cost for these two carriers would result in little change in the average unit cost for all six carriers combined.

In addition, the Public Staff contends that it is misleading to apply the average cost for the six study carriers to hypothetical shipments based upon the present and proposed minimum weights. It is their contention that the each-to-each costing method utilized in general increase proceedings is more appropriate to indicate the present operating ratio on foodstuffs. This method applies the carriers' average unit costs to actual shipments of foodstuffs which fell into the Continuous Traffic Study in the year 1978. However, respondents introduced an exhibit which demonstrated the operating ratio based upon the application of the each-to-each costing method advocated by the Public Staff to each truckload shipment of foodstuffs which appeared in the Continuous Traffic Study in the year 1978. This exhibit shows that the six cost-study carriers experienced a total operating ratio of 119.72% on their foodstuff traffic for that period of time. This operating ratio was computed without regard to any update of revenues and expenses.

The record in this proceeding has been complicated by the fact that both respondents and the Public Staff advocate different methods of costing. The Public Staff contends that the each-to-each method must be utilized in order to compute an overall operating ratio for all foodstuff traffic. On the other hand, respondents apparently believe that the operating ratio on foodstuff traffic as a whole is

immaterial and that the appropriate tool to be utilized by the Commission in order to measure the relative compensativeness of a very small portion of the carriers' traffic is the operating ratio based upon representative hypothetical shipments. In this proceeding, the issue is resolved somewhat by virtue of the fact that both costing methods indicate that the present rate structure on foodstuffs is not compensatory. In addition, the each-to-each costing method indicates that the proposed basis would result in rates which would be slightly compensatory while the individual-shipment costing method indicates that the proposed rates applied to the applicable minimum weight would continue to produce charges which are not compensatory. Accordingly, the Commission finds and concludes that the proposed class rate level on foodstuffs is not in excess of a just and reasonable level.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Public Staff in its Proposed Order asked the Commission to find that "the each-to-each costing method is the most appropriate means of costing the individual shipments of foodstuffs under consideration in this proceeding in order to measure actual compensativeness of this traffic as well as traffic involved in general increase adjustments."

The respondent carriers asked the Commission to find that the individual-shipment costing method is the most appropriate for this proceeding.

This issue is resolved somewhat by the fact that both costing methods indicate that the present rate structure on foodstuffs is not compensatory. In addition, the each-to-each costing method seems to indicate that the proposed rates would be slightly compensatory, while the individual-shipment costing method indicates that the proposed rates applied to the applicable minimum weight would continue to produce charges which are not compensatory.

As the parties pointed out at the hearing and in their proposed orders, each method has its benefits and its deficiencies. Suffice it to say that, for purposes of this proceeding, the Commission does not find it necessary to determine which method is the most appropriate for similar-type proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Respondents have also proposed an increase in the charge for stopping-in-transit for partial unloading service on volume or truckload shipments of foodstuffs. The stopoff rule essentially permits the shipper to consolidate smaller shipments into a singly large shipment for the purpose of obtaining lower rates based upon the carriers' ability to transport the consolidated load. Basically, the rule permits up to four part-lots to be consolidated at origin

for delivery in part-lots at up to four destination points. For each stop to deliver a portion of the shipment, excluding the stop for final delivery, the carriers presently assess a charge of $32.10. Under the proposed adjustment, this charge would be increased to be $57.50 per stop on volume or truckload shipments of foodstuffs. No additional increase is proposed for stopoffs in connection with other commodities nor in connection with stopoffs for partial loading service.

The record shows that respondents have initiated this proposal to increase the stopoff charge in this instance due to the manner in which volume or truckload shipments of foodstuffs must be delivered and unloaded. Respondents' witnesses testified that the delivery and unloading difficulties previously described in connection with volume or truckload shipments of foodstuffs were also applicable in connection with these shipments which required stopoff-in-transit for unloading service. (See Evidence and Conclusions for Finding of Fact No. 2, above.)

The record shows that respondents offer stopoff-in-transit service in order to encourage the shipper to consolidate small loads where possible. By consolidating small lots into a truckload shipment which can be handled on one vehicle, the carrier's costs are reduced, and the resultant savings are passed on to the shipper in the form of lower volume or truckload rates for the entire shipment. However, respondents contend that the necessity for maintaining appointment deliveries in order to match the consignees' unloading schedules eliminates any cost savings which may have been realized from handling a consolidated load.

The carriers contend that, in order to be economical, delivery service on stopoff shipments should be nothing more than an extension of the line-haul service. That is, each individual part-lot to be delivered should be capable of being handled by the vehicle which performs the line-haul service. The stopoff rule provides that stopoff points must be directly intermediate between the point of origin and the final destination in order to encourage this operational practicality. However, the carriers testified that it was uneconomical to operate in this manner on shipments which required delivery appointments, since the carriers' equipment may be tied up for several days in order to accommodate each individual appointment schedule. The record shows that the carriers overcome this problem in connection with truckload shipments of foodstuffs by operationally handling each part-lot where practical as a less-than-truckload shipment. For example, one or more part-lots may be platformed at the carrier's origin terminal, loaded in a vehicle with other less-than-truckload shipments, and moved to the carrier's destination terminal where delivery could be accomplished in accordance with the consignee's appointment schedule. The carriers contend that handling of shipments in this manner is much more costly than the stopoff service usually rendered in connection with

other commodities and that the increase in the stopoff charge is a compromise in order to permit the continued offering of stopoff service in connection with volume or truckload shipments of foodstuffs.

As was pointed out by the Public Staff, respondents have introduced no cost evidence to justify the increase in the stopoff charge. However, under the circumstances, the Commission is not convinced of the necessity to translate increased operational difficulties into increased cost in terms of dollars and cents.

In the first instance, it should be borne in mind that the stopoff privilege is nothing more than an optional feature which may be utilized by the shipper at any time he feels that lower charges may result from consolidating less-than-truckload quantities into truckload shipments. Thus, if the increase in the stopoff charge renders it uneconomical to utilize the stopoff privilege, the shipper continues to have the option of tendering each part-lot as a less-than-truckload shipment. Consequently, the shipper can do no worse than to pay the transportation charges which apparently equates to the manner in which the shipments must be handled by the carriers under the present operating conditions.

In addition, it should also be pointed out that the stopoff rule is also optional on behalf of the carrier. The first line of the rule reads:

> A single shipment, subject to vol or TL rates <u>may</u> be stopped for partial unloading subject to the following provisions:

One of the conditions for exercising the stopoff privilege is that the arrangements for any stopoff service must be made with the originating carrier before any portion of the shipment is tendered for transportation. The absence of commandatory language in the rule and the requirement for prearrangement for the service would appear to render the rule optional on behalf of both the carrier and the shipper.

Under the circumstances, the Commission is of the opinion that the proper method of measuring the justness and reasonableness of the proposed adjustment would be to determine whether the continuation of the present charge would discourage the continued offering of the service and whether the proposed charge would constitute an embargo. In connection with the former, it is obvious that the carriers would not continue to render more expensive less-than-truckload service at truckload rates for very long. The record indicates that the carriers are losing money on their truckload traffic as a whole, and consequently, the Commission is of the opinion that the maintenance of the present stopoff charge would only aggravate the situation.

There is nothing in the record to indicate whether the proposed stopoff charge would result in an embargo of the service. However, respondents' truckload rates in North Carolina intrastate service are approximately 25% lower than the lowest less-than-truckload rates for the same class. This reduction in rates, combined with the reduction in class as the result of tendering volume or truckload shipments, leaves little doubt that the consolidation of less-than-truckload shipments in order to obtain the truckload rates would continue to produce substantially reduced charges, despite the $25.40 increase in the stopoff charge. While the proposed increase in the stopoff charge will undoubtedly discourage the utilization of the stopoff service in some instances, the shipper will be no worse off than if the carrier simply refused to offer the stopoff service.

Under the circumstances, the Commission finds and concludes that the proposed increase in the charge for stopoffs of volume or truckload shipments for partial unloading service on shipments of foodstuffs from $32.10 to $57.50 has been shown to be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Respondents have proposed a 25% increase in the present point-to-point commodity rates on various roofing materials, applicable from Morehead City to various named destinations and points basing thereon, as published in Items 217650 thru 217670 of Tariff NCUC SMC 304-B. John Luckadoo, Director of Traffic of Thurston Motor Lines, Inc., testified in support of the proposed adjustment.

The record indicates that the present point-to-point commodity rate basis was established about 20 years ago by Thurston Motor Lines primarily for the account of a plant which has changed hands several times but which is now owned by Owens Corning Fibreglass. At that time, the rates reflected 20% of the Class 100 rates and approximately 56.2% of the then-applicable class 35 rates. While technically speaking the rates are applicable on all routes, virtually the entire movement has been handled via Thurston Motor Lines, Inc.

Mr. Luckadoo testified that at the time the present rates were established, his company maintained a terminal facility at Morehead City from which equipment could be provided to the involved shipper with very little empty mileage. However, in 1977, Thurston no longer found it economical to maintain a terminal facility at Morehead City, and consequently, the terminal facility was shut down. Mr. Luckadoo testified that very little other traffic moves out of Morehead City and that this particular region was a backhaul area for his company. He also testified that equipment necessary to handle traffic out of Morehead City is currently dispatched from either a terminal at Wilson, which is 110 miles from Morehead City, or from the Cherry

Point/Camp Lejuene area which ranges from 40 to 110 miles from Morehead City.

Thurston indicates that the proposed increase was negotiated with the involved shipper in order to ensure the availability of van-type equipment which must be deadheaded from the carrier's Wilson terminal. Thurston avers that the closing of its Morehead City terminal facility has eliminated the cost advantage which prompted the publication of the present rates and that the substantial number of empty miles has rendered the rates noncompensatory. Although the fact is disputed by the Public Staff, Thurston indicates that they were advised by the shipper to adjust the rates if necessary to maintain current service levels on van-type equipment.

In an effort to demonstrate that the proposed rates were not in excess of a just and reasonable level, respondents' witness Acker presented a rate-cost comparison for several allegedly representative movements of roofing materials. This exhibit compares the present and proposed rate levels with the restated fully allocated cost level which was computed for the six North Carolina study carriers in the same manner as the cost level presented in support of the foodstuffs adjustment.

Mr. Acker testified that the present rates subject to a minimum weight of 40,000 pounds produced an operating ratio which ranged from a low of 150.4% to a high of 208.5% for the representative shipments. In addition, the proposed rates produce an operating ratio which ranges from a low of 119.8% to a high of 165.3% for the same representative shipments. It is also worthy of note that none of the proposed rates produce charges which are in excess of the unadjusted 1978 fully allocated cost level. Once again, respondents stress that the demonstrated cost level is not necessarily the actual cost level for roofing materials but reflects the average unit cost for all truckload shipments handled by these carriers in the study year.

Based on the record in this proceeding, the Commission concludes that the additional revenue generated by this proposal is no more than necessary to allow the respondents to continue to provide the service requested by the shipper. Consequently, the Commission finds that respondents have satisfied their statutory burden of demonstrating that the proposed increase in the point-to-point commodity rates on shipments of roofing materials from Morehead City to 46 specifically named destination points, as published in Items 217650 thru 217670 of Tariff NCUC SHC 304-B, has been shown to be just and reasonable.

IT IS, THEREFORE, ORDERED:

1. That the respondents be, and the same hereby are, authorized to cancel all volume or truckload commodity rates on foodstuffs group published in the following items of

Tariff NCUC SMC 304-B: 211510 thru 211590, 211770 thru 211790, 211800, 211810 thru 211850, 212080, 212100 thru 212120, 212175, 212650 thru 213155, 213180 thru 213200, 213410 thru 213425, 213620, 219350, 219375, 219385, 219390, 219400, and the corresponding items published in North Carolina Motor Carriers Association, Inc., Class and Commodity Tariff 10-H, NCUC No. 117.

2. That the respondents be, and the same hereby are, authorized to increase the charge in Paragraph 3 of Item 202120 of Tariff NCUC SMC 304-B and Paragraph 3 of Item 205460 of NCMCA Tariff 10-H, NCUC No. 117, for stopping of truckload or volume shipments of foodstuffs for partial unloading, to be $57.50 per stop, excluding the stops for initial pickup and delivery.

3. That the respondents be, and the same hereby are, authorized to increase the rates on roofing materials group, from Morehead City to various points in North Carolina, as published in Items 217650 thru 217670 of Tariff NCUC SMC 304-B, by 25%.

4. That the respondents be, and the same hereby are, ordered to reinstate the alternation provisions published in Item 204500, Section 3 of NCUC SMC 304-B and similar publication in Item 500000-C, NCMCA Tariff 10-H, NCUC No. 117, which will permit the alternation of the point-to-point commodity rates in Section 3 with rates published in other sections of the tariff.

5. That the publications hereby approved may become effective after appropriate tariff publications in accordance with the Commission's rules and regulations governing the construction, filing, and posting of transportation tariff schedules, upon not less than 10 days' notice to the Commission and to the public.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of June 1980.

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

DOCKET NO. T-825, SUB 254

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) PARTIAL RATE) INCREASE))

HEARD IN: The Hearing Room of the Commission, Dobbs Building, Raleigh, North Carolina, on April 29, 1980, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicants:

John W. Joyce, 1307 Peachtree Street, N.E., Atlanta, Georgia 30309

Thomas W. Steed, Jr., Allen, Steed & Allen, 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

Vickie L. Moir and Theodore C. Brown, Jr., Public Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On December 7, 1979, 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. 33 to Tariff Nos. 10-H, NCUC No. 117, issued by North Carolina Motor Carriers Association, Inc., Agent, on behalf of its participating carriers; and

Supplement No. 36 to Tariff No. 3-J, NCUC No. 45, issued by Motor Carriers Traffic Association, Inc., Agent, on behalf of its participating carriers;

Supplement No. 34 to Tariff No. 304-B, NCUC No. 304-B issued by Southern Motor Carriers Rate Conference, Inc., Agent, on behalf of its participating carriers;

Each supplemental tariff publication provides for a 20% increase in all present truckload (TL), less-than-truckload (LTL), and any quantity (AQ) rates and charges, accessorial rates and charges, and minimum charges. These tariffs were scheduled to become effective on January 22, 1980. The matter was designated as Docket No. T-825, Sub 254.

On December 31, 1979, Applicants filed a justification statement in support of the proposed 20% increase. In addition, Applicants filed a petition seeking an emergency interim increase in rates and charges of not less than 10%.

On January 18, 1980, this Commission issued its Order setting the evidential hearing on the request for emergency interim rate relief for February 1, 1980. In an Order dated February 11, 1980, the Commission denied in its entirety the petition for interim increase and rescheduled the hearing on the permanent 20% rate increase request for April 29, 1980.

On February 12, 1980, the Public Staff filed its Notice of Intervention in this matter on behalf of the Using and Consuming Public.

The matter was subsequently called for hearing on April 29, 1980, 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. 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 SMCRC North Carolina Intrastate Rate Committee;
Charles R. McGowan, Cost Analyst, Southern Motor Carriers Rate Conference;
Daniel M. Acker, Manager of the Cost and Statistical Department, Southern Motor Carriers Rate Conference;
John V. Luckadoo, Director of Traffic, Thurston Motor Lines, Inc.;
K.D. Shaver, Sr., President and General Manager, Dixie Trucking Co., Inc.;
W.D. Snavely, Vice President and Traffic Manager, Standard Trucking Company;
C. Gerald Pusey, Vice President of Traffic, Old Dominion Freight Lines, Inc.;
Charlie F. Finley, Traffic Manager, Fredrickson Motor Express Corporation;
R.E. Fitzgerald, Vice President - Traffic, Estes Express Lines; and
Bruce Hooks, Traffic Manager, Bruce Johnson Trucking Company

The intervenors presented the testimony and exhibits of the following witnesses in oppoosition to the application:

J.R. Huffman, Traffic Manager, Superior Cable Corporation;
Gerald W. Fauth, Jr., President, G.W. Fauth & Associates, Inc.;
Harold A. Elmore, Traffic Analyst, R.J. Reynolds Tobacco Company;
James Bradley, Traffic Manager, Chatham Manufacturing Company;
H.L. Woody, Executive Vice President, North Carolina Traffic League;
W.J. Shields, Traffic Section, Exxon Company, USA; and
Bill Underwood, Chairman of the Legislative Committee, North Carolina Traffic League

The Public Staff presented the testimony of James C. Turner, Transportation Supervisor - Accounting Division, on behalf of the Using and Consuming Public. In addition, the Public Staff presented the testimony of Bob Lendon, Traffic Manger, Jiffy Manufacturing Company, in opposition to the application.

FINDINGS OF FACT

1. That the motor carriers of general commodities which are parties to the tariff publications listed above 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 requirement of Commission Rule R2-16.1, which requires the rolling in of fuel surcharge adjustments into the base rates in general rate case proceedings should be waived for this proceeding.

3. That the total present expenses, exclusive of fuel expense increases over the base period, on North Carolina intrastate Traffic are $52,281,344 for the six study carriers and approximately $79,575,866 for all participating carriers as of April 1980.

4. That the total present revenues, exclusive of fuel surcharge revenues, from North Carolina intrastate traffic is $45,252,573 for the six study carriers and approximately $68,879,107 for all participating carriers as of April 1980.

5. That the present intrastate operating ratio for all carriers participating in Applicant's tariffs is 115.53%.

6. That the proposed increase in rates generates $9,050,714 in additional revenues for the six study carriers on an annual basis and approximately $13,775,820 in additional revenues for all participating carriers.

7. That the intrastate operating ratio for the participating carriers under Applicant's proposed rates is 96.27%.

8. That the participating carriers should be allowed to recover the increase in expenses over the level found to be fair and reasonable in Docket No. T-825, Sub 237.

9. That since the foodstuffs traffic upon which this Commission granted a 26.6% increase in rates in the Order Granting Increase in Docket No. T-825, Sub 251, are also covered by the tariffs involved in this Docket, this traffic should not be given an increase in rates in this docket.

10. That the fair and reasonable increase in revenues for the participating carriers in this general rate proceeding is $11,562,121 which is an increase of 16.96% on all traffic except foodstuffs.

11. That the $11,562,121 increase results in a fair and reasonable operating ratio of 98.78%.

12. That the $11,562,121 increase in rates for the participating carriers does not violate the President's Voluntary Wage and Price Guidelines.

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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The Commission's Further Order Approving Surcharges and Providing Surcharge Procedure for Motor Carriers on February 26, 1980, established Commission Rule R2-16.1 which requires the rolling in of applicable fuel surcharges into

base rates in general rate case proceedings. This Order also noted that the rule may need refinement, and therefore called for comments from all interested parties. The Public Staff in this proceeding, through the testimony of Public Staff witness Turner, has taken the position that Rule R2-16.1 should be waived, and thereby precluding the fuel surcharge revenues and applicable expenses from consideration of fair and reasonable base rates. The Commission concludes that for purposes of decision making in this proceeding, Rule R2-16.1 shall be waived and therefore the fuel surcharge revenues and applicable expenses shall not be rolled into the base rates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACTS NOS. 3, 4, AND 5

The evidence for this finding is found primarily in the testimony and exhibits of Applicants witnesses Daniel M. Acker and Charles R. McGowan, both employees in the Cost and Statistical Department of Southern Motor Carriers Rate Conference. Applicants witness Acker testified that the cost-revenue comparisons were based upon the data derived from samples of North Carolina intrastate traffic movements of general commodities handled by the following six cost study carriers:

1. Estes Express Lines
2. Fredrickson Motor Express Corporation
3. Old Dominion Freight Line, Inc.
4. Overnite Transportation Company
5. Standard Trucking Company
6. Thurston Motor Lines, Inc.

Applicants witness Acker testified that the procedures used in the 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. Mr. Acker testified that the six cost study carriers accounted for approximately 65.7% of the total actual revenue earned by the applicant general commodity motor carriers from North Carolina intrastate traffic in the sample year 1978.

Applicants witness Acker testified that the study year 1978 expenses were arrived at by the each-to-each costing method which applies each carrier's cost to that carrier's own traffic. This witness testified that the study year 1978 was the latest complete year of traffic data available at the time the application was filed. Applicants' Exhibit 4, supported by witness Acker, shows that after accounting adjustments to annualize expense to current levels, that the present level of expenses for the six cost study carriers is $52,281,344.

Public Staff witness Turner presented testimony concerning the Continuing Traffic Study and the data generated from that study. Public Staff witness Turner testified that the Public Staff maintains an automated

continuing cost/traffic study system which is similar to the system utilized by the Applicants. Public Staff witness Turner testified that the six cost study carriers' traffic study data had been processed through the Public Staff's own computer programs and that no material differences in the actual base year data had been discovered. In addition, witness Turner testified that the Public Staff's independent verification audits of two of the cost study carriers revealed that the actual revenues were fairly stated by the Continuing Traffic Study.

At the outset, intervenors took issue with the use of the Continuing Traffic Study as a tool for accurately determining North Carolina intrastate revenues and expenses. Intervenors witness Fauth depicted five of the six cost study carriers as large interstate carriers with extensive operations outside North Carolina which allegedly distort the costing process. Intervenors further contend that Fredrickson Motor Express, with 58.43% dependancy upon North Carolina intrastate traffic and only minor operations outside the State, is the only carrier which may truly be characterized as a North Carolina intrastate carrier. The Intervenors point to carriers with a high dependancy upon North Carolina intrastate traffic, such as Dixie Trucking Company, Inc., Super Motor Lines, Inc., P.T. Huffman Transfer, Inc., and Shippers Freight Lines, as being more indicative of the total North Carolina intrastate experience.

Applicants contend that it would be wrong to conclude that the costs of five of the six study carriers are not representative of the cost of handling North Carolina intrastate traffic simply because they also operate outside the State. In the first instance, they noted that the system-average costs of the carriers have been adjusted by performance factors developed at the request of this Commission in order to more accurately reflect the North Carolina intrastate experience. They also point out that the composite service unit costs of the six study carriers are substantially lower than the service unit costs for a 70-carrier group which operates to, from, and within the South generally. In addition, they point out that, despite the fact that less than 10% of their system revenues are derived from North Carolina intrastate traffic, the six carriers collectively operate 57 terminals within the State which represents about 25% of their total operations. Four of the six carriers are headquartered in North Carolina, and the remaining two are headquartered in the neighboring State of Virginia which means that a large percentage of the carriers' work force is domiciled within the State. Additionally, the six study carriers handled 65.7% of all North Carolina intrastate traffic while the remaining 34.3% was divided among 91 carriers with varying degrees of dependence upon North Carolina intrastate traffic. Finally, a comparison of the six carriers' individual service unit costs indicates that Fredrickson's service unit costs, which intervenors contend is representative of the cost of

handling North Carolina intrastate traffic, are both higher and lower than the average for the six carriers combined. Based on these conclusions, Applicants aver that the costs of the six study carriers are representative of the cost of handling North Carolina intrastate traffic.

In evaluating the merits of the evidence presented by the Applicants through use of the analysis of the six cost study carriers, the Commission has proceeded with much inquisitiveness. The Commission recognizes the fact that the programs used to formulate the evidence construed from the six cost carriers have their origin within the mandates of this Commission. The integrity and meaningfulness of these programs are attested to in this proceeding by both the Applicants and the Public Staff. In face of the foregoing, the Intervenors have presented testimony that speaks more to alleged weaknesses of the cost study system rather than the construction of a workable alternative. Some of the individual evidence presented by the intervenors appears to have merit when considered alone. However, when the entire carrier group affected by this proceeding are considered, this merit is found to be somewhat akin to shooting in the fog at an enemy you think is out there, but you have no evidence that he is. Consequently, this Commission concludes that the preponderance of evidence in this proceeding supports the position of both the Applicants and the Public Staff in regard to the reliability of the cost study system used in formulating the carriers' operational evidence in this proceeding.

Based on the record in this proceeding, the Commission finds and concludes that the six cost study carriers' data, representing 65.7% of total North Carolina intrastate traffic, is representative of the total North Carolina intrastate general commodity traffic experience for the study year 1978. Further, the Commission concludes that the present operating ratio derived from present revenue and expense levels for North carolina intrastate general commodity traffic for the study year was 115.53%, exclusive of consideration of fuel surcharge revenues and applicable expenses.

In determining the present expense level of $52,281,344 the Applicants used the Producers' Price Index - Industrial Commodities (PPI-IC) to update nonlabor expenses to the midpoint of January 1980. The Intervenors objected to this methodology, supporting instead the Motor Carrier Index (MCI), which was not available for use until January 1980. The Intervenors stated that the Motor Carrier Index was the preferred tool to measure price increases for motor carriers because the market basket considered in this index is specifically designed to reflect motor carrier purchasing activity, while the PPI-IC market basket engulfs the purchasing activity of a wider and more diversified sector of industry. Since the Intervenors freely admit that the nonlabor expense level presented by the Applicants in this proceeding does not exceed the April 1980 level dictated by

use of the MCI, the Commision concludes that the level of nonlabor expenses presented by the Applicants in this proceeding is fair and reasonable. However, in future proceedings before this Commission, Applicants are admonished to utilize the Motor Carrier Index in order to bring to current levels nonlabor expenses.

Applicants witness Acker also testified that the test year revenues of the cost study carriers were updated by rerating the North Carolina intrastate shipments to include all general increases in rates and charges which became effective subsequent to the date upon which the shipments were originally billed. Applicants' Exhibit 4 indicates that after updating the test year 1978 revenue levels to reflect the intrastate rates in effect as of June 27, 1979, but disregarding fuel surcharge revenues, the six cost study carriers' North Carolina intrastate general commodity traffic generated total revenues of $45,253,573 on a pro forma basis.

Based uopn the record in this proceeding, the Commission finds and concludes that the update procedures employed by the Applicants is an accurate means of restating the test year 1978 revenues and expenses to the present pro forma level. Further, the Commission concludes that, exclusive of consideration of the fuel surcharges and related expenses, the cost study carriers' updated North Carolina intrastate general commodity revenues at the present level are $45,253,573, and that the updated operating expenses of these same carriers on the same traffic are $52,281,344. Based upon the cost study carriers' updated revenues and expenses, the Commission finds that the present operating ratio for North Carolina intrastate general commodity traffic is 115.53%.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6 AND 7

Applicant witness Acker testified that the level of revenues to be generated by the increase proposal was determined by applying the percentage increase requested in each weight group to each shipment included in that individual weight group. The testimony of this witness indicates that the proposed 20% increase in rates will increase the six study carriers' North Carolina intrastate revenues to $54,304,287, which, when measured against the present expense level, produces a proposed operating ratio of 96.27%.

The intervenors generally agree that some revenue relief is necessary in order to prevent a decline in service. But, generally, intervenors contend that the carriers are entitled to no more than a 10% increase. Intervenors have offered no testimony as to the basis for the 10% increase except that Intervenor witness Fauth testified that the 10% increase was based on his impression of the increases granted to other carriers throughout the United States over the same period. Applicants counter by pointing out that

the interstate rates of this same group of carriers have been increased by 18.52% on a compounded basis between the filing of the application in Docket No. T-825, Sub 237, and the hearing in this proceeding.

Based on the record in this proceeding, the Commission concludes that the additional revenues generated by the proposed 20% increase on North Carolina intrastate traffic would be approximately $9,050,714 for the six cost study carriers. In addition, the Commission finds that the proposed 20% increase will generate approximately $13,775,820 for all carriers participating in the Applicants' tariffs.

The granting of a 10% increase as urged by the intervenors would produce an additional $4,525,357 for the six cost study carriers which would result in an operating ratio of 105.03%. This additional revenue will not enable the Applicants to recover the increase in expenses from the time of the Commission's Order in Docket No. T-825, Sub 237, to the April 1980 level found to be fair and reasonable in this proceeding by the Commission. Conversely, the Applicants' proposed increase of 20% exceeds the recovery of these increased expenses. This excess recovery is $1,336,154 for the six cost carriers and $2,033,720 for all carriers participating in the Applicants' tariffs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACTS NOS. 8, 9, 10, AND 11

Application of the Applicants' proposed 20% rate increase to present revenues results in a 20% increase on foodstuffs traffic covered by the tariffs in this proceeding and that were granted a 26.63% increase in the recent Commission Order in Docket No. T-825, Sub 251. Consequently, this foodstuffs traffic would receive a 51.96% increase in an almost simultaneous time frame.

The Commission is acutely aware of the rapid inflation which threatens the integrity of the economic system in this State. Consequently, the Commission concludes that the motor carriers affected by the tariffs in this proceeding should certainly be allowed to recover their increase in expenses from the level found to be fair and reasonable in the Commission's Order in Docket No. T-825, Sub 237, to that found to be fair and reasonable in this proceeding. But equally as certain a revenue increase greater than the amont of increased expenses should not be allowed. As noted in Evidence and Conclusions for Findings of Facts Nos. 6 and 7 this increase in expenses is exceeded by revenues under Applicant's Proposed Rates by $1,336,154 for the six cost study carriers and $2,033,720 for all carriers participating in the Applicants' Tariffs. Therefore, the revenue increase needed by all the carriers participating in the Applicant's tariffs in order to equal the increase in expenses from the time of the last general rate case is $11,722,100 ($13,755,820 - $2,033,720).

In recognition of the increase granted on the foodstuffs traffic in Docket No. T-825, Sub 251, the Commission concludes that an additional rate increase on this traffic is not justified at this time. The ratio between the present foodstuffs traffic revenue and present total revenues multiplied by the increase in expenses ($10,406,580) from the last general rate equals $105,106, the amount of the increased expenses allocated to the foodstuffs traffic. This expense amount of $105,106 is added to the $1,336,154 excess recovery of expenses for the six cost study carriers as determined above, in order to exclude these expenses from consideration of a fair and reasonable rate increase. The $1,441,260 sum of this addition is divided by .657 to achieve the reduction on the Applicant's proposed increase in order to achieve a recovery of increased expenses from the time of the last general case, exclusive of foodstuff traffic.

Hence, the Commission concludes that the fair and reasonable rate increase for all carriers participating in the Applicant's tariffs is $11,562,121 which equates to a 16.96% on all traffic except foodstuffs. The $11,562,121 increase results in an operating ratio of 98.78% for all participating carriers in this proceeding, for all traffic except foodstuffs. The foodstuffs traffic rates under the tariffs affected by this proceeding are not increased over the level found to be reasonable in Docket No. T-825, Sub 251.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Applicants witness Acker and Intervenors witness Fauth presented testimony with regards to the acceptabilty of the Applicants' requested rate increase under the President's Voluntary Wage and Price Guidelines. Witness Acker contended that since North Carolina intrastate traffic for the affected carriers is being conducted at a loss, then the voluntary wage and price guidelines do not apply to the revenue increase requested in this proceeding. Intervenors witness Fauth testified that compliance with the wage and price standards necessitates the consideration of the carriers' performance on a system, rather than just on an intrastate basis.

Based upon the carriers present operating results presented by Applicants witness Acker, and found to be fair and reasonable under Evidence and Conclusions for Findings of Fact Nos. 3, 4 and 5, the Commission concludes that any increase in rates in strict compliance with the price standards, 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.

Further, this Commission is, of course, deeply concerned with regard to the adverse impact that inflation is having on our economy and accordingly, uses its full discretionary power to ensure that all utilities under its jurisdiction comply with the parameters promulgated by the President's Council on Wage and Price Stability, to the extent possible. However, the guidelines do contain undue hardship and gross inequity provisions which permit price increases in excess of the maximum price declaration standards under certain exceptional circumstances. Moreover, as observed by the Applicants, the General Statutes of North Carolina require that this Commission set rates that are just and reasonable and this Commission will continue to make every effort to comply with this statutory mandate.

Therefore, the Commission concludes that the President's Council on Wage and Price Stability guidelines permit regulatory bodies the necessary discretionary flexibility essential to responsible regulation of public utility prices and profits. Hence, the Commission finds the rate increase allowed the Applicants in this proceeding to be within the criteria of the President's voluntary wage and price guidelines.

IT IS, THEREFORE, ORDERED:

1. That the Aplicants be, and the same are hereby, authorized to increase, with the exception of foodstuffs traffic, their North Carolina intrastate class, commodity, distance or mileage commodity, and exception rates, minimum charges, accessorial charges, and accessorial rates applying on the transportation of general commodities, involved in this proceeding, by 16.96%.

2. That rates on all foodstuffs traffic covered by the tariffs in this proceeding should not be increased.

3. That the increases are hereby approved and may become effective after appropriate tariff publications in accordance with the Commission's rules and regulations governing the construction, filing, and posting of transportation tariff schedules, upon not less than five (5) days' notice to the Commission and to the public.

4. That the tariff publications hereby authorized shall be constructed in such a manner so that all changes, with the exception of fuel surcharge adjustments authorized by this Commission in Docket No. T-825, Sub 248, shall be included in a single table of class rates which shall not be subject to further increases, except as noted.

5. That the proposed increases herein authorized for application in connection with all commodity rates as

published may be increased by the publication of an appropriate conversion table of increased rates having application only on commodity rates, accessorial charges, and accessorial rates.

6. That the Applicant 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, with the exception of fuel surcharge adjustments authorized by this Commission under Docket No. T-825, Sub 248, will be the rates authorized by this Order.

7. That in future proceedings before this Commission, the Motor Carrier Index should be used to bring nonlabor expenses, excluding fuel, to present levels.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of July 1980.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. T-825, SUB 254

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	)	ERRATA ORDER

BY THE COMMISSION: The Commission's Order Granting Partial Rate Increase issued in this docket contains an error concerning the foodstuffs traffic under the tariffs considered in this docket. In that Order, it was the intention of the Commission to disallow any rate increase on the foodstuffs traffic that had received a rate increase in Docket No. T-825, Sub 251. There appearing that there is additional foodstuffs traffic under the tariffs in this docket, that were not included in the T-825, Sub 251 filing, the Commission wishes to clarify that this additional traffic is granted the 16.96% increase, found to be fair and reasonable in the Commission's Order Granting Partial Rate Increase. Therefore, the Commission concludes that this clarification should be reflected throughout the Order Granting Partial Rate Increase.

IT IS, THEREFORE, ORDERED:

1. That the Order Granting Partial Rate Increase should be corrected as dictated in the following ordering paragraphs.

2. That the first sentence under Evidence and Conclusions for Findings of Fact Nos. 8, 9, 10, and 11 should read as follows:

> Application of the Applicants' proposed 20% rate increase to present revenues results in a 20% increase on that portion of the foodstuffs traffic...

3. That the second sentence of the third paragraph under Evidence and Conclusions for Findings of Fact Nos. 8, 9, 10, and 11 should read as follows:

> The ratio between the present foodstuffs traffic revenue considered in Docket No. T-825, Sub 251, and present total revenues, generated from all traffic considered under the tariffs in this proceeding, multiplied by the increase in expenses ($10,406,580) from the last general rate case equals $105,106, the amount of the increased expenses allocated to the foodstuffs traffic, considered in Docket No. T-825, Sub 251.

4. That the fourth sentence of the third paragraph under Evidence and Conclusions for Findings of Fact Nos. 8, 9, 10, and 11 should read as follows:

The $1,441,260 sum of this addition is divided by .657 to achieve the reduction on the Applicants' proposed increase in order to achieve a recovery of increased expenses from the time of the last general rate case, exclusive of foodstuffs traffic considered in Docket No. T-825, Sub 251.

5. That the last paragraph under Evidence and Conclusions for Findings of Fact Nos. 8, #9, 10, and 11 should read as follows:

Hence, the Commission concludes that the fair and reasonable rate increase for all carriers participating in the Applicant's tariffs is $11,562,121 which equates to a 16.96% on all traffic except for the foodstuffs traffic which was granted a 26.6% increase in Docket No. T-825, Sub 251. This $11,562,121 increase results in an operating ratio of 98.78% for all participating carriers in this proceeding, for all traffic except the foodstuffs traffic denoted above. The foodstuffs traffic rates under the tariffs considered in this proceeding and the tariffs found to be reasonable in Docket No. T-825, Sub 251, are not increased over the level found to be reasonable in Docket No. T-825, Sub 251. Conversely, foodstuffs traffic under the Applicants' tariffs in this proceeding, but not included in the increase in Docket No. T-825, Sub 251, is granted a 16.96% increase in rates.

6. That the first Ordering Paragraph should read as follows:

1. That the Applicants be, and the same are hereby, authorized to increase, with the exception of the foodstuffs traffic considered in the Commission's Order in Docket No. T-825, Sub 251, their North Carolina intrastate class, commodity, distance or mileage commodity, and exception rates, minimum charges, accessorial charges, and accessorial rates applying on the transportation of general commodities, involved in this proceeding, by 16.96%.

7. That the second Ordering paragraph should read as follows:

2. That the rates on foodstuffs traffic covered under both the tariffs in this proceeding and the tariffs considered under Docket No. T-825, Sub 251, should not be increased.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of July 1980.

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

DOCKET NO. T-825, SUB 254

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 ON RECONSIDERATION

HEARD IN: The Hearing Room of the Commission, Dobbs Building, Raleigh, North Carolina, on October 17, 1980

BEFORE: Commissioner Robert K. Koger and Commissioners Sarah Lindsay Tate, A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicants:

John W. Joyce, 1307 Peachtree Street, N.E., Atlanta, Georgia 30309

Thomas E. Steed, Jr., Allen, Steed & Allen, 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 Caroilna Traffic League, Inc., National Small Shipments Traffic Conference, and Drug and Toilet Preparation Traffic Conference

Vickie L. Moir and Theodore C. Brown, Jr., Public 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 August 14, 1980, the North Carolina Traffic League, Inc., Drug and Toilet Preparation Traffic Conference, Inc., National Small Shipments Traffic Conference, Inc., and The Textile Traffic Asociation, Inc. (Protestants) filed Notice of Appeal From and Exceptions to the Order served July 17, 1980. This matter was scheduled for oral argument on October 17, 1980, by Commission Order of September 8, 1980.

Also, on September 8, 1980, the Southern Motor Carriers Rate Conference, N.C. Motor Carriers Association, and Motor Carriers Traffic Asociation (Replicants) filed Reply to Exceptions. The Commission Order of September 29, 1980, extended the time for serving the record on appeal in this proceeding to and including December 1, 1980.

With respect to Exception No. 1: the shippers contend that the 16.96 percent increase granted by the Commission on all traffic except Foodstuffs was based on inappropriate comparison of the changes in revenues and expenses of the six study carriers which have occurred since the Commission Order in Docket No. T-825, Sub 237. The shippers contend that a revenue increase of 14.67 percent should be ordered in lieu of the 16.96 percent.

The 16.96 percent increase yields an operating ratio of 98.78%, which the Commission found to be fair and reasonable in the Order of July 17, 1980. The Commission in that Order properly discharged its duties under Section 62-146 of the General Statutes of the State of North Carolina in establishing fair and reasonable rates based on a fair and reasonable operating ratio. This operating ratio is somewhat higher than that requested (96.27%) by the Replicants. The Commission concludes that it determined a fair and reasonable operating ratio of 98.78% in the Order of July 17, 1980.

As to the question of possible over-recovery of fuel surcharge revenues, resulting from the general rate increase allowed in this docket, this matter will be treated, if necessary, in fuel surcharge proceedings as prescribed in the Commission Order of November 7, 1980.

With respect to Exception Nos. 2 and 3, the shippers contend that the Commission erred in its Order of July 17, 1980, because findings were based upon the operating results of six study carriers which allegedly are not representative of the North Carolina intrastate operating experience. Shippers further contend that the findings did not consider affiliated transactions. After review of the entire record,

the Commission concludes that these questions were properly considered by the Panel in its Order of July 17, 1980.

IT IS, THEREFORE, ORDERED as follows:

1. That the Exception Nos. 1, 2, and 3 filed herein by the shippers on August 14, 1980, in their Petition be, and the same are hereby overruled and denied.

2. That the Panel Order of July 17, 1980, is affirmed by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of December 1980.

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

DOCKET NO. T-825, SUB 255

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Filing of Tariffs and Fuel Cost Adjustment Provisions by North Carolina Household Goods Carriers Affecting Statewide Rates and Charges for North Caroling Intra-state Transportation Services	ORDER GRANTING INCREASE IN RATES AND CHARGES FOR HOUSEHOLD GOODS

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on May 13, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and A. Hartwell Campbell

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: This matter arises upon the filing of a verified application and motion for and on behalf of North Carolina intrastate motor common carriers of household goods seeking an approximate 13% increase in annual revenues, approval of a continuing fuel cost recovery procedure, and a "zeroing" of the present fuel surcharge at levels existing at the time of hearings.

Extensive testimony, exhibits, and cost data in the form prescribed by this Commission's Order and Rule of August 9, 1979, was also filed with the application. Simultaneously with the filing of the application the household goods carriers caused to be filed and published on statutory notice tariff supplements described to increase their transportation (Section II) rates by an average 23%, and provide for a continuing fuel surcharge rider with a "zero" effect at the time the rates were scheduled to become effective. These tariff supplements are as follows:

Supplement No. 5 to Tariff No. 3, North Carolina Utilities Commission No. 9, issued by North Carolina Movers Association, Inc., on behalf of its participating carriers;

Supplement No. 4 to Tariff No. 18-C, North Carolina Utilities Commission No. 12, issued by North Carolina Motor Carriers Association, Inc., on behalf of its participating carriers; and

Supplement No. 2 to Tariff No. 5-D, North Carolina Utilities Commission No. 46, issued by Motor Carriers Traffic Association, Inc., on behalf of its participating carriers.

Each tariff publication was duly filed and published on December 28, 1979; each publication bears an effective date of February 1, 1980; each publication effectuates the relief prayed for in the Application and Motion; and each affects Section II (transportation, or "line haul") rates only, except that each provides for increases in transportation rates associated with pickup and delivery ("cartage") of intrastate storage-in-transit ("S.I.T.") traffic, and each provides a rate under "Additional Services and Charges" for handling of pool tables with slate tops. On hearing, the published language relating to handling of slate top pool tables in each published supplement was amended to read "Handling for Pool Tables with Slate tops which are at least 42 inches in width, 84 inches in length, and weigh more than 400 pounds." The emphasized language was added to the description by the amendment; the rate ($50.00) as published was not changed.

Upon consideration of the aforesaid application, Motion and Tariff filings, and being of the opinion that the matter constituted a general rate case and was affected with the public interest, the Commission on January 30, 1980, issued an Order suspending the effectiveness of the aforesaid tariff supplements for a period of 270 days, setting a general investigation into the justness and reasonableness of the proposals contained in the Application and Motion and said tariff filings, providing for intervention and participation by interested persons, and setting public hearings thereon.

On February 13, 1980, the Executive Director, Public Staff - North Carolina Utilities Commission, gave notice of intervention on behalf of the using and consuming public. No other Interventions or Protests were filed.

After appropriate continuances, the matter came on for hearing, and was heard, on May 13, 1980. There were no protestants or appearances from the public in opposition to the carrier proposals at the hearings. However, the Applicants presented, in addition to its five witnesses and exhibits on various technical aspects, the testimony of some 25 representatives of North Carolina intrastate common carriers of household goods and personal effects on the issue of the need for rate relief and an assured and continuing procedure for recovery of increases in the cost of the major operating expense, fuel. These witnesses,

their localities, and the carriers they represented are as follows:

Name	Location	Carriers
Don A. Ray	Greensboro	Ray Moving & Storage, Inc.
David Johnson	Charlotte	Queen City Moving & Storage
John R. Brashwell, Jr.	Charlotte	Charlotte Van & Storage
George H. Martin	Charlotte	Martin Transfer & Storage
Fred Burks	Charlotte	Burks Moving & Storage Co.
Samuel Gilbert	Eden	Gilbert Transfer Co.
Mack Poole	Raleigh	Jiffy Moving and Storage
Thomas Whitley	Raleigh	Abe Whitley Moving & Storage
Bruce C. Long	Durham	Dehaven's Transfer & Storage
Rufus Moore	Durham	I.H. Hill Transfer & Storage
Claire Webster	Burlington	Piedmont Movers, Inc.
Doris Lassiter	High Point	City Transfer & Storage
Craten Lassiter	High Point	City Transfer & Storage
Harold Parrish	Durham	Burham Van Lines, Inc.
Michael Simpson	Greensboro	Fleming-Shaw Moving & Storage
F.R. Davis	Greensboro	Tri-City Moving
Martin Green, Jr.	Raleigh	Raleigh Furniture & Storage Co.
James Phillips	Fayetteville	Fayetteville Moving & Storage
Leon Baker	Fayetteville	Modern Moving & Storage
Milford C. Cox, Jr.	Greensboro	Tatum-Dalton Transfer Co.
Carl B. Coley	Burlington	Coley Moving & Storage, Inc.
Earlena B. Hinson	Goldsboro	Bowens Moving & Storage, Inc.
Van Finch	Raleigh	All American Moving & Storage, Inc.
John Yarbrough	Winston-Salem	Yarbrough Transfer Company

The Applicants' witnesses on technical aspects and their general subject matter were:

Robert F. Drennan, Jr. Vice President Currin and Associates, Inc.	Cost Studies, Data and Allocations; Operating Ratios, and Revenue Requirements
C. Darrell Horne Chairman - Rates & Tariffs North Carolina Movers Association, Inc.	Rates, Tariffs and Cost Justification
Wendell Thornton President Security Storage Company, Inc.	Carrier Operating & Financial Conditions, Inflation and Fuel Costs
Wayne Riddle Tariff Officer North Carolina Motor Carriers Association, Inc.	Rates and Tariffs

The Public Staff presented two witnesses:

Dennis E. Sovell Acting Director Transportation Rates Division	Revenue and Traffic Statistics of Rates and Application
David A. Poole Staff Accountant	Analysis of Cost/Traffic Study Procedures, Fuel Cost Recovery Rider

Based upon the testimony and exhibits received in evidence and the matters of which the Commission in the hearings announced it would take judicial notice or receive by reference, considered in light of the entire record as a whole, the Commission makes the following

FINDINGS OF FACT

1. The Applicants are duly certificated, active common carriers of household goods and personal effects in intrastate commerce in North Carolina, are properly before the Commission, and the Commission has jurisdiction over their rates and service and has jurisdiction over the subject matter of these proceedings.

2. It is in the public interest, and is required by the public convenience and necessity, that rates, tariffs, and practices of the intrastate common carriers of household goods and personal effects in North Carolina be set at reasonably uniform levels, subject to the continued right of any authorized carrier to file and justify with competent proof rates and tariffs above or below said generally uniform level as determined by the Commission. The public convenience and necessity does not justify or require uniform rates, tariffs, or practices between or among motor carrier groups with substantially different commodity or territorial scopes of authority or substantially different operating cost, or administrative characteristics made to appear.

3. Applicants have in all respects material to the subject matter of this proceeding complied with the cost/traffic study, data assimilation, and jurisdictional allocations requirements as promulgated by this Commission for household goods carriers by Order and Rule issued August 9, 1979.

4. Applicants likewise have complied in all material respects with Rule R2-16.1, particularly Sections I and J, and G.S. 62-134 as the same relate to the inclusion in base rates of fuel costs on a reasonably current basis in this general rate proceeding.

5. Applicants' operating and capital costs have increased at a much greater rate, individually and collectively, than have rate revenues. The actual

unadjusted operating ratio for Applicants for the test year ended December 31, 1978, was 123.4%.

6. After all adjustments for rate-making purposes, Applicants experienced an operating ratio of 108.9%, during the test year under presently authorized rates.

7. Had Applicants' proposed 23% average increase in transportation (Section II) rates been in effect throughout the test year, they would have experienced an adjusted operating ratio of 104.2% for the 1978 test year.

8. Had the proposed transportation rate increase been in effect in the test year, Applicants would have experienced an annual revenue increase of approximately $544,000. Such increase, if actually achieved, would not have resulted in an operating ratio less than 100%.

9. The cost of fuel is a major determinant for Applicants' transportation rates. The present transportation rates of Applicants are predicated upon a base cost per gallon of $.53. The base cost of fuel for Applicants at April 1980, the most current period for which historic data was available at the time of hearings, was $1.10 per gallon. It is necessary that the transportation rates of Applicants be adjusted to include said increase in the cost of fuel. Based on conditions existing at the time of hearings as well as trends in fuel prices extended to the immediate future, it is not likely that the present base cost of fuel will decline substantially. The likelihood is that said base cost will continue to increase at a declining rate.

10. As a result of the increase from $.53 per gallon to $1.10 per gallon in the base cost of fuel for household goods carriers since their last general rate increase effective May 1, 1979, it has been necessary that the Commission grant extraordinary relief in the form of an emergency fuel cost recovery surcharge. By the time of hearings, the emergency surcharge necessary to permit household goods carriers to recover the difference between the $.53 per gallon and the $1.10 per gallon base costs had reached 15.4%.

11. Applicants in this proceeding have updated base fuel costs through and including April, have proposed that those costs ($1.10 per gallon) be included in their base rates and that a continuing, assured fuel cost recovery provision be substituted for the present emergency surcharge with a zero effect at June 1, 1980. The effect of Applicants' proposal is that the transportation rates reflected in revised (updated) Attachment F in evidence are proposed to be made effective on June 1, 1980, at which time the Applicants propose that the fuel surcharge, whether continuing or emergency, be of zero effect.

12. The Commission has taken judicial notice of Rule R2-16.1, specifically Section I reading as follows:

> In the event that any motor carrier (or group of carriers) which has a fuel surcharge in effect in its rates should file for a general rate increase, the carrier shall include in its evidence for said general rate increase an updating of the fuel expense in its rates to roll in or zero said fuel surcharge into its general rates up to and including the close of the public hearing on said general rate case, and after a final decision rolling said fuel surcharge into said general rates, the carrier shall thereafter update its monthly fuel surcharge reports to include a new base fuel price as of the price rolled into its general rates on the date of the closing of the public hearing.

13. The transportation rates set forth in Applicants' Attachment F are in accordance with cost data and cost allocations prescribed by the Commission, continue the uniformity previously and presently prescribed by this Commission, and conform and comply with Rule R2-16.1 and the general law and practice in this State relating to the adjustment of base rates to conform to the incurred level of expenses up to and including the time of hearing and the same have been justified.

CONCLUSIONS

The testimony and exhibits of the entire record present no material disagreement.

It appears there may be a misapprehension of the term roll-in" as used in Rule R2-16.1 and the regulatory practice of this State. The procedure is not a "roll-in of the fuel surcharge" as stated by the Public Staff, but an inclusion in the base rates of the currently experienced, reasonable base cost of fuel. In this case, it is the changing of the base cost of fuel ($.53 per gallon) as it existed at the time of the last general rate case to the present established level ($1.10). The surcharge is not proposed to be rolled-in, but "zeroed" as of the time of the hearing.

The Commission concludes that the Applicants have borne the burden of proof and have established their entitlement to a 23% increase in Section II (line haul) revenue, and that they are entitled to make the increases in line haul rates, pickup and delivery rates for storage-in-transit, and slate top pool tables as set forth in revised and updated Applicants' Attachment F effective on June 1, 1980, together with the fuel cost recovery rider herein approved of zero revenue effect as of that same date to be applicable on traffic for the month of June 1980 and thereafter, unless a verified request and supporting documents for monthly fuel surcharge increases are filed and approved in accordance with Rule R2-16.1.

The Commission notes that, upon this approval, the approved total charges for intrastate shipments in North Carolina will still be approximately 3% less than total charges for the identical shipment moving the same distance in interstate commerce in North Carolina and that the parties are agreed 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 1980 moving season.

IT IS, THEREFORE, ORDERED:

1. That Applicants' rate increase request be and hereby is approved.

2. That the Applicants are authorized to file, publish, and make effective on June 1, 1980, the transportation (Section II) rates reflected in Appendix A, attached to and made a part hereof. Said tariffs shall contain a statement and notice that such transportation (Section II) rates are subject to a surcharge for the dollar-for-dollar recovery of the amount, if any, by which the base cost of fuel for any month subsequent to April 1980 exceeds $1.10 per gallon as audited and approved monthly by the North Carolina Utilities Commission.

3. That the authorized intrastate common carriers of household goods and personal effects in North Carolina are hereby authorized to institute a fuel cost recovery rider, or surcharge, to recover on a monthly basis the amount by which the current cost of fuel exceeds $1.10 per gallon which is herein set as the base cost of fuel both for base rate and fuel surcharge purposes. This fuel cost adjustment procedure is subject to Commission Rule R2-16.1.

4. That appropriate tariff supplements to effectuate this Order may be published on one day's notice; further notice is waived.

ISSUED BY ORDER OF THE COMMISSION.

This the 30th day of May 1980.

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

DOCKET NO. T-825, SUB 257

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Motor Common Carriers - Suspension and Investigation of Proposed Ten Percent Increase in Rates and Charges Applicable on Asphalt, in Bulk, in Tank Trucks, Scheduled Effective on March 18, 1980	) NOTICE OF DECISION) APPROVING PROPOSED) TEN PERCENT) INCREASE AND) VACATING ORDER OF) SUSPENSION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 21, 1980, as Calendared

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Edward B. Hipp and A. Hartwell Campbell

BY THE COMMISSION: Notice is hereby given that a plenary public hearing in this docket was conducted on the date indicated at which appearances were entered by Allen, Steed and Allen, P.A., on behalf of the Applicant, and by the Public Staff, on behalf of the using and consuming public. Based upon testimony rendered and exhibits introduced at the hearing and other material in the official file of this docket, the Commission has found that the proposed ten percent (10%) increase in rates and charges applicable on asphalt, in bulk, in tank trucks, is substantiated and the proposed charges are just and reasonable, and that the carriers of asphalt participating in the relevant tariff have an immediate and pressing need to collect such increased rates and charges during the upcoming summer months, which months are the peak traffic periods of this very seasonable traffic, in order to preserve the Carriers' financial stability and the adequacy of service available to the consuming public. Upon the unopposed motion of the Applicant made at the conclusion of all evidence at the public hearing, the Commission, in view of its findings and conclusions, has approved the proposed ten percent (10%) increase in the rates and charges applying to North Carolina intrastate shipments of asphalt, in bulk, in tank trucks, which were scheduled to become effective March 18, 1980, and has allowed the collection of such increased charges upon the giving of one day's notice to the Commission and the public and upon compliance with the Commission's other Rules and Regulations governing the construction and filing of tariffs.

A Final Order containing findings and conclusions in support of the Commission's approval of the proposed rate increase and the entry of this Order will be issued as soon as practicable.

IT IS, THEREFORE, ORDERED:

1. That the Commission Order of Suspension dated March 17, 1980, entered in this Docket be, and the same hereby is, vacated and set aside for the purpose of allowing the involved tariff to become effective on one day's notice to the Commission and the public and upon compliance with the Commission's other Rules and Regulations governing the construction and filing of tariffs.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of May 1980.

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

DOCKET NO. T-825, SUB 257

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Motor Common Carriers - Proposed Increase in Rates and Charges Applicable on Shipments of Asphalt, in Bulk, in Tank Trucks	) ORDER) APPROVING) RATE INCREASE

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 21, 1980, as Calendared

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Edward B. Hipp and A. Hartwell Campbell

FOR THE APPLICANT AND RESPONDENTS:

Joseph W. Eason, Allen, Steed and Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602

FOR THE PUBLIC STAFF:

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

BY THE COMMISSION: This cause arises from the Order of this Commission dated March 17, 1980, wherein this Commission suspended and ordered an investigation of a tariff filed February 15, 1980, by the North Carolina Motor Carriers Association, Inc., Agent (NCMCA), on behalf of its member motor carriers participating in its local motor freight tariff No. 16-F, NCUC 111, Supplement No. 13 (hereinafter Respondents). The tariff, scheduled to become effective March 18, 1980, proposed an across-the-board ten percent (10%) increase in the rates and charges applying on line-haul North Carolina intrastate shipments of asphalt, in bulk, in tank trucks. Upon consideration of the tariff filing, this Commission was of the opinion that the filing was a matter affecting the public interest and that the filing constituted an application for a general increase in rates, and that such tariff should be suspended pending an investigation instituted by the Public Staff and conclusion of a public hearing for determining whether the tariff as published was just and reasonable and not the means of creating an unlawful discrimination, preference, or prejudice.

Pursuant to the Order of the Commission dated March 20, 1980, this cause came to be heard by this Commission at the

time and place indicated above after calendaring and public notice in compliance with the rules of this Commission. A Notice of Intervention had been filed with this Commission on March 26, 1980, by the Public Staff, and the Public Staff, through counsel, entered an appearance at the hearing.

At the hearing Respondents introduced evidence by and through James R. Edwards, Traffic Manager for A.C. Widenhouse, Inc. (Widenhouse), a carrier participating in the involved tariff, on behalf of Respondents. The Public Staff introduced evidence by and through William H. Harris III, a Staff Accountant with the Public Staff of the North Carolina Utilities Commission. Witness Edwards and witness Harris explained the respective methodology each had used to determine whether the proposed tariff increases were substantiated by the financial data supplied by the cost-study carriers.

Mr. Harris testified that he made certain material adjustments in the financial data supplied by the cost-study carriers. There were certain specific adjustments made in the data relating to Eastern Oil Transport Company (Eastern) concerning allocation of certain payments to former owners who are now employees of Eastern, and adjustments relating to the allocation of general administrative expenses between Eatern and a wholly owned subsidiary, Hobgood Transport Company. Mr. Harris also adjusted the purchase transportation expense items of both Widenhouse and Eastern, because in their financial data those carriers had used an allocation factor, but data was available permitting an actual determination of such expense items attributable to the issue traffic. Finally, Mr. Harris commented that the data submitted by the cost-study carriers did not restate the data to show an end-of-period operating ratio. Mr. Harris believed it imperative that carriers utilize a trend analysis or rerating system to permit restatement of revenues and operating expenses to an end-of-period format. Using Mr. Harris' methodology, the involved tariff, if approved, would result in an operating ratio of not less than 91%.

Mr. Edwards had no comment regarding the adjustments made in the expenses of Eastern by the Public Staff. With regard to use of end-of-period data, Mr. Edwards testified that most of the carriers participating in this tariff were small and would need instructions or explanations from the Public Staff as to the accounting methods proposed to be used to provide such data. Mr. Edwards believed that restated data could be used in future rate filings if the cost study carriers understood how to compile such data.

Mr. Edwards protested the adjustment made in the purchase transportation expense items for data submitted on behalf of Widenhouse. Mr. Edwards stated that on the data submitted by the cost-study carriers this expense item was determined

by use of an allocation factor, such factor being the ratio of issue traffic revenue to companywide revenue. Under the revenue allocation method there may be overstatement or understatement of the purchase transportation expense items. Mr. Edwards admitted dispatch records were available permitting actual allocation of purchase transportation expenses to one commodity or another, but emphasized that asphalt carriage involved numerous unique expense items which could not be actually attributed to asphalt carriage without a cost accountant. Such extra expenses included steam cleaning of certain types of trailers, 24-hour dispatch service, the seasonal nature of the operation (resulting in six months of nonutilization, or partial utilization, of equipment), and the demands of shippers for delivery of the product immediately upon order. Mr. Edwards stated that use of actual data as to only some expense items disregarded these other expenses which were clearly attributable solely to asphalt, and believed the revenue allocation method balanced out such expenses. Mr. Edwards stated that obtaining actual data as to such other expenses solely attributable to asphalt would require the services of a cost accountant on the payroll of each carrier, and that because most carriers participating in the involved tariff are relatively small, cost accountants currently are not employed by such carriers. Furthermore, the consuming public ultimately would bear the cost of obtaining the services of a cost accountant.

At the hearing Respondents moved that the Commission vacate its Order of Suspension dated March 17, 1980, orally at such public hearing. Because no dispute existed as to the justification for the proposed increases, and because the peak traffic period for the seasonal commodities moving under the involved tariff would commence before a final Order could be issued, this Commission at the public hearing granted such motion and formally gave notice of same by its "Notice of Decision Approving Proposed Ten Percent Increase and Vacating Order of Suspension" entered in this docket on May 28, 1980.

Based on the record of this docket, including the application and the testimony adduced at hearing, and all other matters of which judicial notice may be taken, the Commission makes the following

FINDINGS OF FACT

1. That the common carriers participating in the tariff schedules involved in this proceeding are subject to regulation by the Commission, and are properly before this Commission with regard to these matters over which this Commission has jurisdiction.

2. That the tariff filed in this docket of this Commission on February 15, 1980, by the North Carolina Motors Carriers Association, Inc., Agent, for and on behalf

of its respective member motor carriers participating in said tariff, proposes an across-the-board ten percent (10%) increase on rates and charges applying on line-haul North Carolina intrastate shipments of asphalt, in bulk, in tank trucks, which increase was scheduled to become effective March 18, 1980.

3. That the cost-study carriers which supplied data, A.C. Widenhouse, Inc., and Eastern Oil Transport, Inc., moved seventy-five percent (75%) of the issue traffic for the study period, and the system of operations for these carriers is representative of the operations by all other carriers participating in the involved tariff.

4. That using Respondents' methodology, the financial data supplied by the representative cost-study carriers indicates that the proposed ten percent (10%) increase in rates will result in a projected operating ratio of ninety-one percent (91%); the methodology employed by the Public Staff also projects a composite operating ratio of ninety-one percent (91%), or higher, if the involved tariff is approved.

5. That the application for the across-the-board ten percent (10%) increase in line-haul charges on intrastate shipments of asphalt in bulk, in tank trucks, is substantiated under either methodology presented to this Commission, and thus for purposes of the involved tariff, as opposed to future tariff filings, the question of methodology is moot.

6. That the involved tariff is just and reasonable, and is not a means of establishing an unlawful discrimination preference, or prejudice, and is otherwise lawful.

7. That this Commission at the hearing on May 21, 1980, vacated its Order of Suspension, approved the proposed tariff, and allowed such tariff to become effective on one day's notice by virtue of its Notice of Decision Approving Proposed Ten Percent (10%) Increase and Vacating Order of Suspension entered in this docket on May 28, 1980.

8. That the rates increased by the involved tariff have not been increased since the entry of an Order in Docket No. T-825, Sub 228, in August 1978, except for the fuel surcharges applicable to such rates and such surcharges are not general rate increases. The issue traffic is very seasonal, being limited both by the physical properties of the commodities and the demands of shippers and consignees to warmer weather, and demand for service particularly heavy during summer months.

9. That Respondents, including the cost-study carriers, are small in size relative to other motor carriers and generally do not employ cost accountants, and thus are unfamiliar with the methods required to provide financial

data restated in an end-of-period format; are unable to compute a base period rate of price increases; and are unable to segregate certain actual expenses solely attributable to intrastate carriage of the issue traffic, such as cleaning expenses, nonutilization costs and 24-hour dispatching.

10. There are records available to the cost-study carriers herein which permit determination of actual purchased transportation expenses for such carriers.

11. That for purposes of future tariff filings supplanting or supplementing the involved tariff, a uniform methodology for compiling financial data by cost-study carriers would be in the public interest, and such a methodology should be proposed in a report of the Public Staff filed in this docket after a conference with the Respondents, and in a Response to such report filed in this docket by Respondents.

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

CONCLUSIONS OF LAW

1. The proposed tariff involved in this proceeding is just and reasonable, is not a means of establishing an unlawful discrimination, preference or prejudice, and is otherwise lawful.

2. The involved tariff, if approved, will not conflict with the anti-inflation guidelines promulgated by the Council of Wage and Price Stability for the period of October 1979 through October 1980, or with the Order of this Commission dated January 23, 1979, in Docket No. M-100, Sub 82. The involved tariff, which proposes a ten percent (10%) increase, is the only rate increase applicable to the issue traffic which has become effective during the current two-year program period (October 2, 1978, through October 2, 1980). Intermediate price limitations may be exceeded if justified on grounds of seasonal variations or unusual business conditions and if such excesses will not prevent compliance with the two-year limitation. 6 C.F.R. § 705.1. Due to the seasonal nature of the issue traffic and the unusual business conditions arising from the regulation of intrastate motor carriers, Respondents should be exempted from intermediate price limitations if proposed rate increases do not exceed the two-year price limitation. The two-year limitation is the lesser of the rate of base period price changes or nineteen percent (19%), and when a base period change cannot be computed it is deemed to be ten percent (10%). 6 C.F.R § 705.2 Therefore, the ten percent (10%) increase proposed by the involved tariff is within the two-year limitation.

WHEREFORE, it is Adjudged, Decreed, and Ordered:

1. That the Commission s Notice of Decision filed in this docket on May 29, 1980, be, and the same hereby is, incorporated herein as if set out in its entirety and is ratified and reaffirmed by this Commission.

2. That Respondents should have been and were, authorized to place in effect the proposed increases published in the involved tariff effective upon one day's notice, as set out in the Notice of Decision filed on May 29, 1980.

3. That upon publication having been made in compliance with the provisions of this and earlier Orders in this docket, this proceeding will be discontinued except as set out in Paragraph 4 herein, and the same is hereby discontinued except as set out below.

4. That repesentatives of the Public Staff and the Respondents shall have a conference within three months of entry of this Order to discuss a uniform methodology for compiling financial data to be used in proceedings involving future tariff filings supplanting or supplementing the involved tariff. Within thirty (30) days after the conclusion of such conference(s) the Public Staff shall file a report proposing its recommended methodology, and twenty (20) days thereafter Respondents shall file a response to such report of the Public Staff.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of July 1980.

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

DOCKET NO. T-825, SUB 258

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Motor Common Carriers - Suspension)
and Investigation of Proposed 7%) ORDER
to 14% General Increase in Rates) ALLOWING
and Charges Applicable on Certain) PARTIAL
Petroleum and Petroleum Products) RATE INCREASE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Sarah Lindsay Tate, Presiding, and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant/Respondents:

Thomas W. Steed, Jr., Allen, Steed and Allen, P.A., Suite 701 - Branch Bank Building, P.O. Box 2058, Raleigh, North Carolina 27802

Robert E. Born, Born, Kohlman & Duvall, P.C., Suite 508, 1447 Peachtree Street, N.E., Atlanta, Georgia 30309

For the Intervenor:

Robert T. Dearborn, Moore and Van Allen, 3000 NCNB Plaza, Charlotte, North Carolina 28280
For: Phillips Petroleum Company

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff, North Carolina Utilities Commission, Raleigh, North Carolina 27602

BY THE COMMISSION: The North Carolina Motor Carriers Association, Inc., Agent, Raleigh, North Carolina, filed with this Commission for and on behalf of its respective member carriers, parties thereto, local motor freight Tariff No. 5-Q, NCUC No. 125, Supplement No. 2 (also Supplement No. 4), publishing a general increase of from 7% to 14% on certain petroleum and petroleum products, scheduled to become effective on June 17, 1980.

By Order of the Commission dated June 4, 1980, the operation of the tariff matter published in Supplement No. 2 as well as Supplement No. 4 as above referenced was suspended and the use of the application thereof deferred for a period of 270 days. The matter was declared to constitute a general rate case under G.S. 62-137 and an

investigation was instituted into and concerning the lawfulness of the tariff matter suspended. The motor common carrier respondents were ordered to comply with certain governing statutes and the Commission's governing rules concerning burden of proof and submission of required data on or before July 1, 1980 (by subsequent Commission Order extended to August 11, 1980); the Public Staff was ordered to file its testimony on or before July 20, 1980 (by subsequent Commission Order extended to September 1, 1980); and the matter was assigned for hearing on July 31, 1980, but by subsequent Order of the Commission assigned for hearing on September 4, 1980, at 9:30 a.m.

The matter came on for hearing as scheduled. The respondent carriers presented the testimony and exhibits of witness W. David Fesperman, who in addition to being Traffic Manager of one of the respondent carriers, Kenan Transport Company, serves as Chairman of the Petroleum General Rate Committee of the North Carolina Motor Carriers Association. Witness Fesperman presented data which he had prepared based upon operating statistics and revenue and expense experience for a group of study carriers accounting for more than 80% of the total issue traffic moving within the State of North Carolina. Witness Fesperman was personally familiar with the statistics, revenue and expense data of Kenan Transport. Representatives from other study carriers including Silar Snow of Eagle Transport Corporation; Marrow Smith of East Coast Transport; James McAdams of Eastern Oil Transport; David Searcy of Infinger Transportation Company; Paul Grimm of O'Boyle Tank Lines; C.W. Poston of Southern Oil Transport; George Harper of Tidewater Transit Company; Proc Dean of Wendell Transport; and James Edwards of A.C. Widenhouse Company were present in the hearing room. Counsel for Respondents stated that these persons were available for cross-examination on the statistics, revenue and expense figures of their respective companies. Counsel for Phillips Petroleum Company cross-examined witness Fesperman and called Marrow Smith and James Edwards for cross-examination. Counsel for Phillips also called James McAdams for cross-examination who at the time had left the hearing room and was unavailable. The Commission allowed counsel for Phillips to propound interrogatories to witness McAdams who in turn responded with answers to interrogatories. A late-filed exhibit of witness Fesperman showing percentage of revenue represented by each study carrier was authorized and filed.

The Public Staff presented the testimony and exhibit of witness William H. Harris, Staff Accountant.

Phillips Petroleum Company presented the testimony of witness Charles L. Lohrke.

Counsel for Phillips Petroleum Company objected to respondents' presentation of the evidence to the extent that witness Fesperman presented data furnished to him by other carriers. The Commission overruled this objection. The

approach followed by the respondents in this proceeding whereby the study carriers submitted their data to witness Fesperman for consolidation, analysis and adjustment is an acceptable means by which the respondents may comply with the burden of proof under governing statutes and under the Commission's Rule R1-17 (which they were ordered to do in the Commission's Order in this proceeding dated June 4, 1980). A qualified witness was available for cross-examination from each of the study carriers with the exception of Eastern Oil Transport and Public Transport. Counsel for Phillips was permitted to propound interrogatories to both Eastern Oil Transport and Public Transport which he elected to do only as to Eastern Oil Transport. Adequate opportunity for cross-examination of qualified and competent witnesses was afforded to counsel for Phillips.

The parties waived the filing of briefs. The parties were afforded the opportunity to file with the Commission draft orders. Draft orders were received from counsel for the respondents and counsel for Phillips.

The Public Staff deviated from general practice before this Commission and did not file a proposed Order, even though they participated in the entire proceeding and were requested to file a proposed order. Though the Public Staff presented its case in this proceeding as it has done in countless proceedings before this Commission, the Commission is in a quandary as to why a proposed Order was not submitted. Inasmuch as it is unquestionable that proposed orders are viable documents of record that contribute greatly to the Commission's decision process and inasmuch as the formation of the Public Staff in July 1977 resulted in the entire Rates Transportation Department of the Commission Staff being transferred to the Public Staff, the absence of the filing of a proposed order leaves the Commission at a disadvantage in attempting to analyze the needs of the using and consuming public. The Commission hopes that this practice will not occur again.

FINDINGS OF FACT

1. In Docket No. T-825, Sub 258, the motor common carriers transporting certain petroleum and petroleum products are applying for general increases in North Carolina Motor Carriers Association, Inc., Agent, Tariff 5-Q, NCUC No. 125, originally scheduled effective June 17, 1980, as follows:

Item	Percent Increase Proposed
30 (Heavy Fuel Oil, i.e., Bunker C)	12%
40 (Light Fuel Oil, i.e., Gasolene, Kerosene, Diesel, etc.):	
0-110 miles	7%
over 110 miles	14%

2. Included among carriers who transport issue traffic are Eagle Transport Corporation, East Coast Transport, Eastern Oil Transport, Infinger Transportation Company, Kenan Transport Company, Laney Tank Lines, O'Boyle Tank Lines, Public Transport, Southern Oil Transportation, Tarheel Transport Company, Tidewater Transit Company, Wendell Transport, and A.C. Widenhouse. The named carriers, as study carriers, submitted operating statistics, revenue and expense comparisons reflecting actual operating ratio for the year 1979, present operating ratio and proposed operating ratio on the issue traffic. The study carriers account for more than 80% of the total revenue generated under the involved tariff (excluding the revenue of associated petroleum carriers due to their incompatibility with the operations of other carriers). Proposed additional revenues are as follows:

	Study Carriers	All Carriers Participating in Tariff 5Q
Item 30	$355,508	$546,935
Item 40 (0-110 miles)	$325,408	$500,628
Item 40 (Over 110 miles)	$102,678	$157,966

3. The following table reflects the revenues, expenses and operating ratio of the study carriers found to be fair and reasonable by the Commmssion on the issue traffic for the year ended December 31, 1979 (actual); adjusted and updated for both increases in revenues and expenses through February 1980 (present). The last column of the chart below reflects the level of revenues and expenses under Applicant's proposed rates.

	Actual	Present	Proposed
Item 30			
Revenues	$2,786,765	$2,989,214	$3,344,722
Expenses	$3,006,245	$3,234,077	$3,364,239
Operating ratio	107.88%	108.19%	100.58%
Item 40 (0 - 110 Miles)			
Revenues	$4,595,919	$4,725,833	$5,051,241
Expenses	$4,251,625	$4,513,694	$4,626,342
Operating ratio	92.51%	95.51%	91.59%
Item 40 (over 110 Miles)			
Revenues	$ 693,238	$ 744,015	$ 846,993
Expenses	$ 725,378	$ 781,977	$ 812,479
Operating ratio	104.64%	105.10%	95.93%
Composite			
Revenues	$8,075,922	$8,459,062	$9,242,956
Expenses	$7,983,248	$8,529,748	$8,803,060
Operating ratio	98.85%	100.84%	95.24%

The above data does not include revenue derived from the fuel surcharge nor do they include the expenses associated with the increase in fuel expense from December 31, 1978, adjustments having been made to back out from the data such fuel related surcharge revenues and fuel related expense increases since the Commission has a separate proceeding in which it considers on an ongoing basis the need for fuel related revenues. The above data does not reflect increases in operating expenses experienced by the carriers since February 1980.

Respondents developed for the study carriers the following projected (proposed) operating ratio data:

	Projected Revenue	Projected Expenses	Projected Operating Ratio
Item 30	$3,335,096	$3,167,984	95.0%
Item 40 (0-110 miles)	5,050,610	$4,500,022	89.1%
Item 40 (over 110 miles)	843,219	778,485	92.3%
Total Issue Traffic	$9,228,925	$8,446,491	91.5%

The operating ratio data developed by the respondent carriers understates the proposed operating ratios because

the revenues for all carriers were increased to the proposed level, but expenses were updated for less than half of the study carriers. The Public Staff developed cost increased factors and applied them to aggregate actual operating expenses to develop the present and proposed operating costs as set forth in the above findings of fact.

Phillips Petroleum Company ships only Item 40 traffic intrastate within the State of North Carolina, the overwhelming preponderance which moves a distance of less than 110 miles; Kenan Transport is its primary North Carolina intrastate carrier. It also uses the services of Eagle Transport; East Coast Transport; Eastern Oil Transport (not on Phillips' billing); Tidewater Transit; and Wendell Transport; all on occasion. Phillips entered this proceeding for the reasons that it contends Item 40 commodities are subsidizing other commodities; it objects to the mileage break at 110 miles on Item 40 commodities; it contends there is a subsidy by the short-haul traffic of the long-haul traffic; it objects to a flat percentage surcharge; it contends that the data base has carriers that apparently refuse to raise their revenue which is not representative of good, overall carrier management; and it objects to the carriers seeking a different ratio than that offered to the public. Phillips objects to an operating ratio less than 93. It feels the carriers could do a better job of allocating their expenses. It acknowledges some increase is required but it disagrees with the manner of structuring as proposed by the carriers.

DISCUSSION OF EVIDENCE AND CONCLUSIONS OF LAW

Based upon its investigation, the Public Staff's position in this proceeding is (1) that the carriers have supported their need for the rate relief and (2) the proposed relief does not appear to be unreasonable.

Phillips Petroleum Company opposes the proposed increases contending that they represent more than have been justified. Various other major oil companies, as well as smaller shippers and receivers, ship the issue traffic within the State of North Carolina under the involved tariff. Notice of the proposed increase was given to all subscribers of the involved tariff, involving in excess of 200 shippers and receivers of the issue traffic. Through generalized testimony of the witness from Phillips and through questioning by its counsel on cross-examination, Phillips takes issue with the proposed increases and the evidence submitted by the respondents in support thereof in several respects. By reference to a national publication showing operating ratio data for carriers of petroleum and petroleum products throughout the United States, Phillips seeks to show that the proposed operating ratios involved in this proceeding are lower than the national average. The respondents contend the national average is not relevant and does not represent any norm or goal for the North Carolina intrastate carriage of petroleum and petroleum products,

being too high to generate sufficient returns. Phillips alleges also that an operating ratio of 93 has, from time to time, been accepted as a reasonable operating ratio by various commissions. Respondents contend that in more recent years a good operating ratio has tended to be closer to 90 or even in the very high 80s. They contend that an operating ratio of 93 would be grossly inefficient and would not allow them to replace equipment or add equipment as additional needs arise.

Phillips questions the inclusion in the study group of carriers who are operating at a loss and experiencing high operating ratios well in excess of 100. Specifically, it challenges inclusion of Eastern Oil Transport and Southern Oil Transportation. Phillips questions whether such carriers should be "supported" by this Commission, alleging that this Commission should "support" only those carriers operating in a reasonably efficient manner. Respondents contend that the study carriers are all representative of the day-to-day operations experienced in the transportation of petroleum and petroleum products within North Carolina, that some carriers in the study have relatively low operating ratios while others have relatively high operating ratios; that a carrier such as Eastern Oil Transport is uniquely representative of North Carolina intrastate operations since its entire operations are confined to the State and confined to intrastate traffic, certainly qualifying it as a proper study carrier and that the high operating ratio which it is experiencing points up the real need for revenue relief; that the operating ratio of a carrier standing alone does not constitute a determination whether the carrier is providing service under economical and efficient management; that if carriers with high operating ratios are to be excluded, then carriers with the lower operating ratios should be excluded and there is no way of determining how to make any such exclusions; that revenue needs for the industry must be determined on the basis of the operations of such a representative group of carriers who are serving the public and not upon the individual company operating ratios; and that the carriers to be included in the study group have been worked out in consultation with the Public Staff and used now for several years as agreed upon with the Public Staff to be duly representative.

Phillips challenges the allocation formula used by the respondents for separating expenses related to the respective segments of the issue traffic. The allocation formula has been worked out in consultation with the Public Staff. It utilizes actual carrier operating revenue, miles, and number of shipments, on the respective segments of the issue traffic and allocates expenses according to their relationship to these known actual factors. Counsel for Phillips postulated certain hypothetical assumptions and sought to illustrate overstatement of the expenses allocated to the issue traffic. Respondents contend that the overall allocation formula and factors utilized represent the best

and only available means for separating expenses and allocating to issue traffic. Respondents contend that while the allocation method may arguably overstate some categories of expenses, at the same time there are other categories of expenses which are understated and that overall the approach fairly apportions expenses among categories of traffic. Respondents point to the fact that their facilities in the State of North Carolina are utilized for all segments of traffic moving from, to and within the State; that management and operating personnel are used interchangeably; and that their operations are so commingled on various segments of traffic, both intrastate and interstate, that there is no way of making an actual separation and that the allocation formulas worked out with the Public Staff constitute the only practical approach. Respondents further rely upon the fact that the Commission has accepted this allocation method in numerous proceedings as a reasonable and fair method of allocation of expenses.

Phillips contends that Item 40 traffic moving less than 110 miles is subsidizing Item 30 traffic and is subsidizing Item 40 traffic moving more than 110 miles because of the fact that the operating ratio on the Item 40 traffic for less than 110 miles is significantly lower. It contends that the carriers should structure their proposed increases so as to accomplish a uniform operating ratio on all segments of traffic. Respondents point out that they are forced to deal with the realities of day-to-day operations on various segments of traffic. The operating ratio on Item 40 traffic moving for distances over 110 miles has through the years become exceptionally high because of the tendency of that rate scale to peak out and decline in terms of earnings per mile at approximately 110 miles. The carriers have now for the last few years been applying higher percentages of increase to the scale over 110 miles in order to bring the operating ratio more into line with that on the shorter haul traffic. In this respect, they are trying to accomplish the purpose urged by Phillips. As to the Item 30 traffic, respondents are unable to apply a sufficiently high increase to bring that traffic to the desirable operating ratio level because of competition from out-of-state shipping origins and from other carriers who serve those out-of-state origins such as Norfolk, Charleston, and Savannah. Respondents represent that they went as far as they felt they could go in applying a higher percentage increase on Item 30 traffic, i.e., 12%. To this extent they are also attempting to bring the operating ratio on that traffic down to a more desirable level. Respondents point to their fear that any higher increase will divert the traffic from their systems to interstate origins and that thus as a result they would need even more revenue on Item 40 traffic moving less than 110 miles. Respondents believe that the structure of the proposed increase which applies a substantially lesser percentage on Item 40 traffic moving less than 110 miles and a much higher increase on the other categories is in keeping with the very argument urged by Phillips. In other words, respondents are attempting to

place higher increases on the less profitable traffic. Had the respondents structured their proposed increase here at a set percentage across the board, they would have filed a significantly higher increase on the Item 40 traffic moving less than 110 miles than they did.

Phillips expresses concern that the respondents handed out to persons appearing before the General Rate Committee at the public hearing on the proposed increases prior to filing with the Commission information which indicated that the carriers had experienced an operating ratio of 95.8 on Item 40 traffic less than 110 miles for their actual operations in 1979. It expresses concern that at the hearing before this Commission respondents reflect that the operating ratio which they experienced in 1979 on Item 40 traffic less than 110 miles is 92.7. Respondents explain that subsequent to the filing of the proposed imcrease with the Commission and the filing of the original data in support thereof, it was determined in consultation with the Public Staff that it would be best to eliminate fuel surcharge revenues and adjust fuel related expenses so as to remove any consideration concerning increased fuel expenses and surcharge revenues from this proceeding. The result of that adjustment made subsequent to the filing as reflected in the data filed with the Commission on August 11, 1980, resulted in the change of the operating ratio from 95.8 to 92.7. Respondents explain that they did not anticipate the need to back out the surcharge revenue and adjust expenses related to fuel and that the handout given to the public at the public hearing before the General Rate Committee was identically the same as the data filed with this Commission by the respondents on May 14, 1980, along with the filing of the tariff publication reflecting the proposed increases.

That the operating ratio of a particular carrier taken in the abstract does not indicate whether the carrier is being operated economically and with efficient management to provide its service is illustrated by the differences in the traffic makeup and the respective operating conditions of individual carriers. For example, Eastern Oil Transport's systemwide operating ratio for 1979 after adjustment for fuel expenses and surcharge was 110.7. By contrast, the operating ratio of Kenan Transport which Phillips acknowledges to be efficiently managed and economically operated was 84.2 after adjustment for fuel expenses and surcharge. Eastern Oil's entire operations are confined to the State of North Carolina and to intrastate traffic. Sixty (60%) percent of its total traffic is represented by the issue traffic here involved. By contrast, Kenan operates in various other intrastate jurisdictions and has extensive interstate operations. Only 9% of its total traffic is represented by the issue traffic here involved. While Kenan transports a larger volume of issue traffic within North Carolina than does Eastern Oil, for example, the issue traffic is obviously a very small percentage of Kenan's total; whereas, with Eastern Oil the issue traffic constitutes the majority. The same is true with respect to

all the other carriers with the exception of O'Boyle. That is, they all have a much higher percentage of their total traffic represented by issue traffic. Especially is that true with the carriers who have the relatively high operating ratios.

Based upon all evidence of record, the Commission concludes that the actual and present levels of expenses and revenues presented on the chart on page 4 of this Order are fair and reasonable. Further, the Commission concludes that the proposed increase for Item 30 traffic resulting in an 100.58% operating ratio is reasonable and was generally uncontested by parties of record. After closely reviewing the evidence of Intervenor Phillips, the Commission concludes that a 93% operating ratio on Item 40 traffic (0-110 miles) is fair and reasonable, which will result in less of an increase than that proposed by the Applicants. Similarly, the Commission concludes that an operating ratio of 93 on Item 40 traffic (over 110 miles) is fair and reasonable, which will result in more of an increase than that proposed by the Applicant. Consequently, the Commission concludes that the affected motor common carriers should file new tariffs, designed to achieve the operating ratios found to be fair and reasonable above.

As to the treatment of the fuel surcharge revenue increase resulting from the increase in the base rates, the Commission concludes that the Fuel Surcharge Docket No. T-825, Sub 248, is the appropriate proceeding to consider this matter. To this end, it should be pointed out that the Commission closely monitors the fuel surcharge reports filed by the motor carriers each month.

IT IS, THEREFORE, ORDERED as follows:

1. That the tariffs suspended in this docket by Commission Order of June 4, 1980, be, and hereby are, permanently cancelled.

2. That the motor common carriers of petroleum and petroleum products parties to the tariffs in this proceeding be, and hereby are, authorized to file new tariffs that satisfy the operating ratios found to be fair and reasonable in this Order.

3. That parties of record have five working days to comment on the tariffs filed in accordance with paragraph 2 above.

4. That the tariffs filed in accordance with paragraph 2 shall become effective upon the issuance of a further order in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of November 1980.

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

DOCKET NO. T-1069, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Morgan Drive Away, Inc. - Suspension) RECOMMENDED ORDER
and Investigation of Proposed Increase) VACATING
in Rates and Charges Applicable on the) SUSPENSION AND
Transportation of Mobile Homes, Sched-) ALLOWING INCREASE
uled to Become Effective May 15, 1980) IN RATES

HEARD IN: Commission Hearing Room 214, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 12, 1980, at 9:30 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

Thomas S. Harrington, Harrington, Stultz & Maddrey, Attorneys at Law, P.O. Box 909, Eden, North Carolina 27288

For the Public Staff:

Vickie L. Moir, Staff Attorney, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BENNINK, HEARING EXAMINER: On April 14, 1980, the Commission received a tariff filing by Morgan Drive Away, Inc. (Morgan or Applicant), proposing an increase of approximately 14% in the rates and charges applicable to intrastate shipments of mobile homes in North Carolina. Submitted with the tariff filing were statements and certain information and data as justification in support thereof. Said tariff filing, which was scheduled to become effective on May 15, 1980, was designated as follows:

Morgan Drive Away, Inc.
Local Freight Tariff No. 10, NCUC No. 10
Second Revised Pages 20, 21, 23, 25, 26, 28, 29, 31, 32, 35, 36, 38, 39, and 40
First Revised Pages 33 and 34
Original Page 39A and Fifth Revised Page No. 2

By Commission Order dated May 6, 1980, the tariff schedule at issue in this docket was suspended for a period of 270 days, the matter was declared to constitute a general rate case under G.S. 62-137, an investigation was instituted into the lawfulness of the proposed tariff filing, and the case was set for hearing on Thursday, June 12, 1980, at 9:30 a.m.

On May 28, 1980, the Public Staff filed a "Notice of Intervention" in this proceeding on behalf of the using and consuming public.

Upon call of the matter for hearing at the appointed time and place, both the Applicant and the Public Staff were present and represented by counsel. Testimony in support of the proposed tariff filing was offered by William G. Starnal, Applicant's Vice President for Traffic. The Public Staff offered the testimony of William H. Harris III, Staff Accountant.

Based upon a careful consideration of the foregoing, the testimony and evidence presented at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Morgan Drive Away, Inc., is an Indiana corporation which is engaged in the transportation of mobile homes in North Carolina intrastate commerce pursuant to Common Carrier Certificate No. C-762 and is subject to the jurisdiction of this Commission.

2. The increased rates proposed herein would produce approximately $22,978 in additional intrastate revenues on an annual basis, exclusive of fuel surcharge revenues.

3. According to Public Staff accounting testimony, the Applicant achieved an actual intrastate operating ratio of 107.22% with respect to the issue traffic during the 1979 test period ending December 31, 1979. Such an operating ratio is unreasonably high and indicates a need by the Applicant for additional revenues.

4. According to Public Staff accounting testimony, the rates proposed herein by Morgan would result in an overall operating ratio of 95.29% for Applicant's North Carolina operations.

5. The proposed rates exclude any permanent roll-in of the fuel surcharge.

6. The Applicant's proposed rate increase is consistent with the President's voluntary wage and price guidelines.

7. The rates proposed by the Applicant in Local Freight Tariff No. 10, NCUC No. 10, are just and reasonable and should be permitted to become effective on one day's notice.

whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Under Chapter 62 of the North Carolina General Statutes, the ultimate burden of proof in a proceeding before this

Commission involving a proposed common carrier general tariff increase must be borne by the Applicant therefor. 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 therefore concludes, that the Applicant in this proceeding has met and carried the burden of proof necessary to justify favorable action with respect to the granting of the rate increase at issue herein. In this regard, the Hearing Examiner notes that both the Applicant and the Public Staff have presented evidence in this proceeding indicating that the Applicant is in need of rate relief. Accordingly, the Hearing examiner concludes that the rates proposed herein by the Applicant, being just and reasonable, should be approved as filed.

On January 23, 1979, this Commission amended its Rule R1-17 so as to require all utilities applying for rate increases to certify that the increases requested comply with the anti-inflation guidelines established by the President's Council on Wage and Price Stability (COWPS or Council) or to demonstrate why said guidelines should not be applied. The increase in rates and charges sought herein by Morgan does not appear to meet either the COWPS' two-year price limitation standard or the profit margin standard. However, COWPS has recognized the need for exceptions to the above-referenced standards in cases of extreme hardship or gross inequity and has, therefore, outlined certain conditions under which the undue hardship exception should be applied.

Under its intrastate rates and charges which are presently in effect, Morgan is operating at a loss in North Carolina. This Commission is of the opinion, and has so stated in several Orders, that it is not reasonable to expect a company which is providing adequate and efficient service in this State to continue to operate at a loss. Therefore, the Hearing Examiner believes that the COWPS' undue hardship exception is clearly applicable in this proceeding and that the increased rates and charges proposed herein are in compliance with Section 705A-6 of the President's voluntary wage and price guidelines. The Hearing Examiner further notes that the General Statutes of North Carolina also require this Commission to set rates which are both just and reasonable. This Commission has always made every effort to comply with said statutory mandate and will continue to do so in the interest of responsible regulation, fairness, and equity, particularly in those cases, such as the instant proceeding, where rate increases in excess of the maximum permitted under the voluntary guidelines are clearly justified.

Accordingly, for all of the reasons stated above, the Hearing Examiner concludes that the increased rates and charges proposed herein by the Applicant should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order in this docket dated May 6, 1980, wherein Local Freight Tariff No. 10, NCUC No. 10, was suspended by the Commission be, and the same is hereby, vacated.

2. That upon this Recommended Order becoming final, Local Freight Tariff No. 10, NCUC No. 10, shall be permitted to become effective on one day's notice upon publication of an appropriate tariff by the Applicant.

ISSUED BY ORDER OF THE COMMISSION

This the 3rd day of July 1980.

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

DOCKET NO. T-1367, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Schwerman Trucking Company - Suspension and Investigation of Proposed 12% Increase in Rates and Charges Applicable on the Transportation of Cement, Scheduled to Become Effective April 14, 1980	)	RECOMMENDED ORDER GRANTING RATE INCREASE

HEARD IN: Commission Hearing Room 214, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Hearing Examiner Jim Panton

APPEARANCES:

For the Applicant:

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald, and Fountain, P.O. Box 2246, Raleigh, North Carolina 27602

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

PANTON, HEARING EXAMINER: On March 17, 1980, Schwerman Trucking Company (Applicant) filed an application with this Commission for authority to increase its rates and charges on the transportation of cement, to be effective April 14, 1980. On April 11, 1980, the Commission suspended the proposed increase and charges for a period of 270 days from April 14, 1980, and scheduled the application for public hearing. The Order of April 11, 1980, also required, among other things, the Applicant to file an appropriate suspension supplement to the tariff schedule effected by the proposed increase.

The Company filed the appropriate suspension supplement on April 23, 1980, and filed the testimony of Thomas A. Robinson, Cost Analyst of Schwerman Trucking Company, in support of the application.

The Public Staff moved to intervene in the proceeding on May 9, 1980, and filed the testimony of William Harris on May 27, 1980.

The hearing was held at the time and place specified in the Commission's Order of April 11, 1980. Thomas A. Robinson testified in support of the application for Schwerman Trucking Company and Public Staff Accountant William Harris testified on his investigation of the

Applicant's supporting data filed in this proceeding. No one appeared at the hearing to protest the rate increase.

Based on the information contained in the application and the Commission's files and in the record of this proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. That the Applicant is Schwerman Trucking Company, a Milwaukee, Wisconsin, based company who has one terminal in North Carolina, that being in Wilmington.

2. That the Applicant has a Certificate of Public Convenience and Necessity to furnish transportation of cement, in bulk and bags, from and to all points in North Carolina.

3. That the Applicant's quality of service is good.

4. That under present rates the Applicant's operating ratio is 108.64%, with the exclusion of fuel surcharge revenues and increased costs of fuel over the base rate.

5. That under proposed rates the Applicant's operating ratio is 96.92%, with the exclusion of fuel surcharge revenues and increased costs of fuel over the base rate.

6. That the proposed increase will result in $115,059 of additional revenues, with $113,607 related to line-haul revenues and the remaining $1,452 related to accessorial revenues.

7. That the Applicant's proposed rate increase is within the parameter of the President's voluntary wage and price guidelines.

CONCLUSIONS

From a review of the application, the evidence presented at the hearing, supporting material, and other information in the Commission's files, the Hearing Examiner reaches the following conclusions:

1. That the evidence supporting Findings of Fact Nos. 1 - 3 is contained in the verified application and the testimony and exhibits presented by both the Company and the Public Staff. These findings are essentially informational, procedural, and jurisdictional in nature and were uncontested.

2. That the evidence suppporting Findings of Fact Nos. 4 - 5 are found in the application, the testimony of Company witness Robinson, and primarily in the testimony of Public Staff witness Harris. Public Staff witness Harris determined that, after accounting adjustments, the Company's operating ratio is 108.64%, under present rates and 96.92%

under proposed rates, with, in both calculations, the exclusion of fuel surcharge revenues and increased costs of fuel over the base rate. The Company did not contest the calculations of Public Staff witness Harris.

The Hearing Examiner concludes that, based on the uncontested testimony of Public Staff witness Harris, the Company's present rates result in an unfair and unreasonable operating ratio of 108.64%. In considering the test laid down by G.S. 62-133(b)(4), the Hearing Examiner concludes that the Company's proposed rates must be allowed, in order to give the Company an opportunity through efficient management to recover its cost of service. These proposed rates will result in $115,059 of additional revenues, as presented by Public Staff witness Harris. These additional revenues of $115,059 result from a $113,607 increase in line-haul revenues and $1,452 increase in accessorial revenues.

3. That the evidence for this finding is found primarily in the application and the exhibits of Company witness Robinson.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order in this docket dated April 11, 1980, wherein Tariff NCUC No. 1, revised pages 1, 7, 8, 9, 10, 11, 36, and 38, was suspended by the Commission, be, and the same is hereby, vacated.

2. That upon this Recommended Order becoming final, Tariff NCUC No. 1, revised pages 1, 7, 8, 9, 10, 11, 36, and 38, be 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 11th day of June 1980.

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

DOCKET NO. T-1977

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Sale and Transfer of Common Carrier Certificate No. R-5 from REA Express, Inc., Bankrupt, 141 East 44th Street, New York, New York 10017, to Central Transport, Inc., d/b/a CT Transport, 34200 Mound Road, Sterling Heights, Michigan 48077	) PROPOSED) RECOMMENDED ORDER) ALLOWING SALE) AND TRANSFER OF) CERTIFICATE)))

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, October 2, 1979, at 9:30 a.m.

BEFORE: Carolyn D. Johnson, Hearing Examiner

APPEARANCES:

For the Applicants:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, P.O. Box 527, Raleigh, North Carolina 27602
For: C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc., and Central Transport, Inc.

For the Protestants:

Thomas W. Steed, Jr., Allen, Steed and Allen, P.A., P.O. Box 2058, Raleigh, North Carolina 27602
For: Estes Express Lines, Inc., Fredrickson Motor Express Corporation, Overnite Transportation Company, Standard Trucking Company, Thurston Motor Lines, Inc., Old Dominion Freight Lines, and Bruce Johnson Trucking Company

Jones Byrd, Patla, Strouse, Robinson and Moore, P.A. P.O. Box 7625, Asheville North Carolina, 28807
For: Blue Ridge Trucking Company, Inc.

JOHNSON, HEARING EXAMINER: On May, 15, 1979, a joint application was filed with the North Carolina Utilities Commission by C. Orvis Sowerwine, Trustee in Bankruptcy for REA Express, Inc. (REA), Bankrupt, and Central Transport Company, Inc. (Central Transport), d/b/a/ CT Transport. The application requested the Commission to approve the transfer of motor carrier operating authority contained in

Certificate No. R-5 from C. Orvis Sowerwine, Trustee in Bankruptcy for REA Express, Inc., to Central Transport, Inc.

Attached to the joint application were copies of the following two documents: (1) an order of John J. Galgay, Bankruptcy Judge for the Southern District of New York, dated February 23, 1979, approving the sale, inter alia, of REA Express, Inc.'s North Carolina operating authority to Central Transport, Inc., subject to the approval of this Commission, and further ordering C. Orvis Sowerwine, Trustee, Central Transport, Inc., and this Commission to take all necessary actions to prosecute this application; and (2) Articles of Incorporation and amendments thereto of Central Transport, Inc.

The matter was noticed in the Commission's June 26, 1979, Calendar of Hearings, scheduling a hearing for August 14, 1979.

On July 27, 1979, the attorney for Central Transport filed a motion requesting a continuance. The hearing was thereafter continued by Commission Order to October 2, 1979.

On August 2, 1979, a formal protest and Motion for Intervention was filed of behalf of Blue Ridge Trucking Company, Inc. (Blue Ridge). On August 3, 1979, a joint protest and Motion for Intervention was filed on behalf of Estes Express Lines (Estes), Fredrickson Motor Express Corporation (Fredrickson), Overnite Transportation Company (Overnite), Standard Trucking Company, Thurston Motor Lines, Old Dominion Freight Lines, Inc., and Bruce Johnson Trucking Company, Inc. (Bruce Johnson). The Commission allowed the Motions for Intervention by Order dated August 6, 1979.

The matter came on for hearing on October 2, 1979. There were no preliminary motions or stipulations. The joint Applicants offered the testimony of two witnesses and sponsored 16 exhibits in addition to those exhibits contained in the application. The Intervenors offered the testimony of six witnesses and sponsored a total of 17 exhibits.

A summary of the testimony and exhibits offered by the joint Applicants is as follows:

(1) A. Ernest Larsen, 141 East 44th Street, New York, New York 10017, testified that he was the comptroller of REA Express, Inc., Bankrupt, and had been with the company for over 25 years. He presently serves as an administrative assistant to the Trustee in the supervision of those activities which do not require the Trustee's immediate personal attention. Larsen Exhibit 1 is an order of the Bankruptcy Judge, John J. Galgay, dated June 4, 1979, authorizing Mr. Larsen to act in the place of C. Orvis Sowerwine, Trustee, in connection with the processing of applications for the Bankrupt's intrastate authority.

Mr. Larsen identified Larsen Exhibit 2 as a copy of the order of the Bankruptcy Judge for the Southern District of New York which declared REA Express, Inc., bankrupt and appointed C. Orvis Sowerwine as Trustee, effective on November 6, 1975. Mr. Larsen testified that Larsen Exhibit 3 is a letter from a co-counsel to the Trustee sent to all state utilities commissions in August of 1977, summarizing the activities relating to the bankruptcy and, in particular, the efforts of the Trustee to preserve and maximize the assets of the Bankrupt's estate. With the approval of the Bankruptcy Court, the Trustee continued to operate the Rexco Division of REA subsequent to November 6, 1975. The Rexco Division of REA used REA's operating authorities for its operations. In addition, following extensive hearings, the Bankruptcy Court ordered the sale of all of REA's operating authorities to Alltrans Express USA, Inc. (Alltrans Express), on July 16, 1976. An application to approve the transfer was filed with the Interstate Commerce Commission (ICC) on September 27, 1976, but was denied on January 27, 1977. Following denial of a petition for reconsideration with the ICC, the Trustee filed an appeal with the Second Circuit Court of Appeals on August 4, 1977.

Mr. Larsen further testified that during the same time period, on the complaints of members of the motor carrier industry, extensive hearings were held before the ICC seeking to shut down and terminate the Rexco operations being conducted by the Trustee. On November 17, 1976, the ICC ordered the operations of the Rexco Division terminated. Following denial of a petition for reconsideration, the Trustee filed an appeal with the Second Circuit Court of Appeals, which was denied on September 19, 1977. Following the adverse decision from the Circuit Court of Appeals on the Rexco Division, the proposed purchaser of REA's operating authorities, Alltrans Express, exercised its option to cancel the purchase.

Mr. Larsen also testified that by order of the Bankruptcy Court dated September 27, 1977, Donald L. Wallace, co-counsel for the Trustee, was granted authority to execute the necessary documentation required to preserve the assets of the estate on behalf of the Trustee. Thereafter, REA filed an application for suspension of its certificate with this Commission, which was granted by Order dated December 6, 1977. This suspension was subsequently continued by an additional Order of this Commission through December 31, 1979. Mr. Larsen testified that Larsen Exhibits 4, 5, and 6 are correspondence and Orders of this Commission relating to said suspension.

Mr. Larsen also testified that pursuant to an Order of the Bankruptcy Court, the intrastate operating rights of REA Express, Inc., Bankrupt, were sold at public auction during January and February 1979. Larsen Exhibit 7 is the order of the Bankruptcy Court approving the sale of the operating authorities, including the sale of REA's North Carolina

intrastate rights to Central Transport, Inc., of Sterling Heights, Michigan. The purchase price was $500 and the Trustee has received a 10% deposit on the sale.

Mr. Larsen further testified that the liquidation of the bankrupt estate is continuing, that the operating equipment has been sold at auction, and that most of the real property has also been sold. However, there are several matters which remain pending in the Courts.

Mr. Larsen further testified that the claims of creditors are being validated with REA records and processed with the Bankruptcy Court.

Mr. Larsen testified that REA Express, Inc., or its predecessors began operations as a common carrier engaged in the interstate and intrastate transportation of general commodities in North Carolina sometime in the 1920s. Although REA handled many commodities which were not handled by other carriers, the largest percentage of REA's business consisted of the usual commodities handled by other carriers. REA concentrated on the small shipment field, although there were no restrictions as to the size and weight of the traffic which REA could handle.

Mr. Larsen testified that prior to the bandruptcy, REA operated seven terminals in or near North Carolina providing pickup and delivery services in North Carolina. These terminals were located at Charlotte, Greensboro, Kinston, Raleigh, and Wilmington, North Carolina, at Greenville, South Carolina, and Norfolk, Virginia. Larsen Exhibit 8 is a copy of a portion of REA's pickup and delivery guide which lists several hundred towns in North Carolina where pickup and delivery services were provided. This delivery guide was distributed by the marketing and sales department of REA to potential customers throughout the country.

Mr. Larsen further testified that Larsen Exhibit 9 is a traffic exhibit for the month of October 1975, the last full month of REA's operations prior to bankruptcy, based upon a 20% sample of traffic. The exhibit indicates that REA's service centers serving North Carolina handled a total of 6,340 shipments, weighing 2,434,055 pounds, of which 345 shipments, weighing 40,935 pounds, were North Carolina intrastate traffic.

Mr. Larsen further testified that subsequent to the adjudication of bankruptcy, REA continued to deliver traffic already received to ultimate consignees. This activity continued into the early spring of 1976.

In addition, the Trustee, with the approval of the Bankruptcy Court, continued the operations of the Rexco Division. The Rexco Division used REA's operating rights for the services it performed. The Rexco Division continued operations through November 1976, when the ICC issued its order requiring the Rexco Division to shut down. The

Trustee appealed this decision for an additional one and one-half years, during which time the Trustee fully intended to resume operations of the Rexco Division if a favorable court ruling were obtained. Finally, during the fall of 1977, following the adverse ruling of the US Court of Appeals for the Second Circuit, the Trustee sought and obtained an authorized suspension of all of its intrastate certificates.

Mr. Larsen further testified that REA first obtained its interstate and intrastate motor carrier certificates to supplement and then, subsequently, to substitute for its railway operations. When railroads were forced to discontinue or curtail passenger service, it was necessary for REA to provide its own line haul operations by motor vehicles. By 1968 or 1969, all of REA's agreements with the railroads for the interlining of freight in express cars or passenger cars had been terminated. Subsequent to 1969, all of REA's traffic moved by motor carrier.

Mr. Larsen further testified that Larsen Exhibit 10 is a further summarization of the traffic study conducted for the month of October 1975, which lists all of the origination and destination points for the traffic.

On cross-examination, Mr. Larsen testified that the Trustee ordered no pick up of express traffic after November 6, 1975. Other than the subsequent clearing of the pipelines, there have been no intrastate operations in North Carolina since November 6, 1975.

Mr. Larsen further testified that the restrictions contained in Certificate No. R-5 which have language such as "service shall be limited to that which is auxillary to or supplemental of express service of the Railway Express Agency" to mean that whichever way REA moved the traffic on an intercity basis prior to the discontinuance of the train service was the authority that was being granted to REA to operate over-the-road service to get between the two points. It was an attempt to provide the same service to the shippers and consignees in North Carolina that had been favored with the service during the period of the train service.

(2) Elmer J. Maue, Suite 1200, 755 West Big Beaver Road, Troy, Michigan 48084, testified that he is the Assistant Vice President for Traffic of Central Transport, Inc., the proposed transferee in this proceeding. Mr. Maue testified that he has worked in traffic and transportation since 1947 and that he is familiar with the operations of Central Transport, Inc., and its affiliates.

Mr. Maue further testified that Central Transport, Inc., attended the auction of the sale of REA's intrastate authority and was a successful bidder in 14 states, including North Carolina. Since there is already another Central Transport, Inc., operating as a motor carrier in the

State of North Carolina, his company has decided to use the name Central Transport, Inc., d/b/a CT Transport.

Mr. Maue testified that the transferee is a motor common carrier of general commodities holding interstate commerce authority in the 48 contiguous states and presently holds intrastate authority in the states of Illinois, Indiana, Michigan, and Ohio.

Mr. Maue further testified that Central Transport has three affiliate carriers, CT Transport, Inc., McKinley Transport Ltd., and Central Cartage Company. CT Transport, Inc., operates primarily in New York and Ontario. McKinley Transport operates primarily in Ontario and between the international boundary line and certain points of Michigan and New York. Central Cartage Company is an intrastate carrier in Michigan.

The capital stock of the transferee, Central Transport, Inc., is owned by Centra, Inc., which is wholly owned by members of the Moroun family. All of these carriers share common accounting and traffic functions along with integrated rating and billing systems. Mr. Maue identified Maue Exhibit 1 as abstracts of the operating authorities of Central Transport, Inc., and its affiliates. Mr. Maue also identified Maue Exhibit 2 as a brochure used by Central Transport and its affiliates to describe its areas of operation and terminals.

Mr. Maue also testified as to the present operational methods of Central Transport which enable it to keep constant and instantaneous track of shipments and avoid the necessity of passing freight through its terminals.

Mr. Maue also identified Maue Exhibit 3 as its Balance Sheet and Income Statement for the six months ending July 30, 1979. Maue Exhibit 3 indicates Central Transport, Inc., has total assets of approximately $27 million, stockholders equity of approximately $18.5 million, and gross freight revenues for the first six months of 1979 of approximately $55 million.

Mr. Maue also identified Maue Exhibit 4 as a current equipment list of Central Transport, Inc. Mr. Maue further indicated that if the transfer were approved, the transferee would acquire additional equipment to be used to operate this authority and that Central Transport initially planned to establish terminals in Charlotte and Greensboro. As additional personnel are trained, Central Transport plans to establish additional terminals throughout the State.

Mr. Maue further testified that Central Transport, in addition to normal pickup and delivery service, plans on offering an expedited service similar to the service which it now provides in its present areas of operations. Maue Exhibit 5 is a brochure showing Central Transport's freight

emergency service. Maue Exhibit 6 is a Michigan intrastate tariff supplement which defines expedited service.

Mr. Maue further testified that in his work experience for various shippers, he used railway express to handle his shipments. Cost and service determined whether a shipment moved by railway express, motor carrier, freight forwarder, or rail. Later, while working for another motor carrier, railway express was a competitor on shipments weighing in excess of 2,000 pounds each.

Mr. Maue also testified as to the efforts made by Central Transport, Inc., to insure compliance with Federal and State safety requirements.

The Protestants offered the following testimony in opposition to the proposed transfer:

(1) Charles F. Finley, 3400 North Graham Street, Charlotte, North Carolina 28206, testified that he was the Traffic Manager of Fredrickson Motor Express Corporation and therefore was familiar with Fredrickson's operations.

Mr. Finley testified that Fredrickson is a motor common carrier of general commodities, which operates a fleet of 199 tractors, 478 trailers, and 115 straight trucks. Fredrickson has nine terminals located in the Piedmont and Western North Carolina, including Charlotte and Greensboro.

Mr. Finley also identified Appendix A as a map of Fredrickson's operations, Appendix B as a copy of Fredrickson's operating rights, and Appendix C as a points list which Fredrickson serves on a daily basis.

Mr. Finley also testified that Fredrickson handled 600,000 shipments producing approximately $9 million revenue in North Carolina intrastate commerce in 1978.

Mr. Finley further testified that the introduction of new competition could adversely affect Fredrickson's ability to continue to provide adequate service to the public. Mr. Finley also testified that granting the proposed transfer would result in greater consumption of fuel and Fredrickson can see no necessity for the transfer.

Mr. Finley also testified that Greensboro and Charlotte, where CT Transport proposes to establish terminals, are the two best revenue cities in the State of North Carolina for motor carriers.

On cross-examination, Mr. Finley testified that Fredrickson's gross operating revenues in 1978 were $16.7 million and that Fredrickson had an operating ratio after taxes of 91%. Mr. Finley also testified that Fredrickson's revenues have been up every year for the last four years.

Mr. Finley also testified that he recalled when Burris Express went into bankruptcy and its authority was subsequently acquired by Consolidated Freightways approximately four years ago. Mr. Finley testified that the introduction of Consolidated Freightways in North Carolina has not had an adverse impact on Fredrickson.

(2) Ronald P. Goldstein, Asheville, North Carolina, testified that he is President of Blue Ridge Trucking Company. Mr. Goldstein testified that Blue Ridge is an interline carrier serving small communities in Western North Carolina within a 120-mile radius of Asheville.

Mr. Goldstein identified Blue Ridge Exhibit 1 as a copy of Blue Ridge's North Carolina intrastate authority and Blue Ridge Exhibit 2 as a map of Blue Ridge's operations and points list. Mr. Goldstein also testified that Routes 9, 12, and 35 of the REA authority amounts to 95% duplication of Blue Ridge's authority.

Mr. Goldstein also identified Blue Ridge Exhibit 3 as a description of Blue Ridge's terminal facilities and Blue Ridge Exhibit 4 as Blue Ridge's equipment list. Mr. Goldstein further testified Blue Ridge has approximately 50 tractors and 90 trailers and further described Blue Ridge's operational facilities.

Mr. Goldstein identified Blue Ridge Exhibit 5 as Blue Ridge's most recent balance sheet and financial statement and Blue Ridge Exhibit 6 as a traffic exhibit covering approximately 25% of Blue Ridge's bills in 1979. Blue Ridge Exhibit 6 shows a total number of shipments of 5,501 producing approximately $151,000 in revenue.

Mr. Goldstein further testified that Blue Ridge is a small LTL carrier specializing in small shipments and thus the granting of this application would result in an almost exact duplication. Mr. Goldstein further testified that prior to 1975 Blue Ridge had an agreement with REA whereby Blue Ridge delivered freight for REA. Mr. Goldstein further testified that, in his opinion, the transfer of this authority would adversely affect Blue Ridge's business.

On Cross-examination, Mr. Goldstein testified that of the 15 points listed on Blue Ridge Exhibit 2, five of the 15 points are not duplicated by the REA authority.

Mr. Goldstein further testified that Blue Ridge's gross revenue in 1978 was $2.7 million and its operating ratio was 97% and that in 1977 Blue Ridge's gross revenue was $2.2 million and its operating ratio was about 95%.

(3) Douglas A. Pearson, 15 Beaver Valley Road, Asheville, North Carolina 28804, testified that he was President and owner of Citizens Express, Inc (Citizens Express). Citizens Express is a special service carrier holding Certificate No. C-1043 providing small package services. Citizens Express

serves 21 counties in Western North Carolina. Mr. Pearson testified that he bought the business in December 1975, partly on the basis that REA had gone out of business.

Mr. Pearson further testified that Citizens Express' number of shipments increased from 1976 to 1977, but then declined in 1978. Mr. Pearson also testified that he was not operating at full capacity, that he has recently sold two trucks, and that, in his opinion, there was no need for additional service on small package express service in Western North Carolina.

On cross-examination, Mr. Pearson testified that his revenue increased in 1977 and 1978 and that his operating ratio in 1976 was 92.8%, in 1977 was 91%, and in 1978 was 92.6%. On cross-examination, Mr. Pearson further testified that the population of Buncombe County has been increasing and that there have been new businesses established in Buncombe County in the last four or five years, including Reliance Electric Company and Walker Manufacturing Company.

On redirect, Mr. Pearson testified that the reason his revenue increased in 1978 even though his number of shipments declined was that he had a rate increase in 1978. Mr. Pearson further testified that the REA authority completely covers his authority.

(4) John Burton, 1000 Sims Avenue, Richmond, Virginia, testified that he is Assistant Director, Traffic and Commerce, of Overnite Transportation Company. Mr. Burton testified that Overnite is a general commodity carrier, operating nine terminals in North Carolina covering approximately 85% of the points in North Carolina.

Mr. Burton identified Overnite Exhibit 1 as Overnite's points list which provides both intrastate and interstate service on LTL and truckload traffic and Overnite Exhibit 2 as Overnite's equipment and facilities list.

Mr. Burton also testified that the proposed operations of CT Transport would have a detrimental effect on Overnite's operations in North Carolina, particularly in light of CT Transport's intention to establish terminals at Greensboro and Charlotte, which generate approximately 40% of Overnite's North Carolina intrastate revenues.

Mr. Burton also testified that REA's authority essentially completely duplicates Overnite's authority.

On cross-examination, Mr. Burton testified that Overnite's $9 million North Carolina intrastate revenue was approximately 5% of Overnite's total gross revenue in 1978 of $195 million. Mr. Burton also testified that Overnite's operating ratio in 1978 was 85.9% and that in 1977 it was 84.6%.

Mr. Burton also testified that Overnite began its operations generally in the North Carolina and Virginia area and in the last seven or eight years Overnite has expanded its operations into almost every state east of the Mississippi, including areas in the Midwest where CT Transport primarily operates.

Mr. Burton further testified that he felt Overnite could compete successfully against CT Transport and did not object to this transfer on the basis of competition, rather Overnite objected to the application on the grounds of dormancy.

On redirect examination, Mr. Burton testified that Overnite's 1978 intrastate operating ratio was in excess of 100%.

(5) Daniel M. Babb, 1405 Gordon Avenue, Richmond, Virginia, testified that he is Assistant Traffic Manager of Estes Express Lines. Estes Express Lines holds Certificate No. C-59. Mr. Babb identified Estes Exhibit 1 as a copy of Estes' North Carolina authority. Mr. Babb further testified that Estes serves all points in North Carolina east of Mt. Airy and Hickory, providing a general commodity, regular route service.

Mr. Babb further identified Estes Exhibit 2 as a map of Estes' total company operations, and Estes Exhibit 3 as an equipment, terminal, and personnel list of Estes for the State of North Carolina. Mr. Babb further testified that Estes operates terminals in North Carolina at Bisco, Charlotte, Fayetteville, Henderson, Hickory, Elizabeth City, Jacksonville, Mount Airy, High Point, Sanford, and Washington.

Mr. Babb further testified that the REA authority almost completely duplicates Estes' North Carolina authority.

Mr. Babb identified Estes Exhibit 4 and 5 as traffic exhibits for the months of January and August 1979. Mr. Babb identified Estes Exhibit 6 as a document showing revenue breakdown for Estes. Estes Exhibit 6 shows that out of the total revenue of $30 million, $7.8 million was produced by North Carolina intrastate revenue.

Mr. Babb further testified that the transfer of the REA authority and operation by CT Transport would have an adverse effect upon Estes Express Lines.

On cross-examination, Mr. Babb testified that the amount of duplication between the REA and Estes authority could be only 90% and that Estes has very little authority west of Hickory. Mr. Babb further testified that Estes' gross revenue in 1978 was approximately $30 million and its operating ratio was around 90%. Mr. Babb further testified that Estes is not afraid of competition in North Carolina

and agreed that Estes has the reputation for outstanding freight delivery service.

On redirect examination, Mr. Babb testified that its North Carolina intrastate operating ratio was higher than its total operating ratio.

(6) Bruce Hooks, P.O. Box 5647, Charlotte, North Carolina 28225, testified that he is Traffic Manager of Bruce Johnson Trucking Company. Bruce Johnson is an irregular route carrier having authority between points in 52 counties in North Carolina and from Mecklenburg County to all points in North Carolina.

Mr. Hooks further testified that Bruce Johnson had terminals in Asheville, Hickory, Charlotte, Greensboro, and Raleigh, providing general commodity service.

Mr. Hooks testified that the REA authority duplicates about 95% of Bruce Johnson's authority.

Mr. Hooks further testified that the operation of the REA authority by CT Transport would have an adverse effect on Bruce Johnson, particularly considering that CT Transport was considering establishing terminals in Greensboro and Charlotte which produce over one-half of Bruce Johnson's intrastate business.

Mr. Hooks further testified that Bruce Johnson is operating at 70% capacity.

On cross-examination, Mr. Hooks testified that Bruce Johnson's revenue in 1978 was $9 million and its operating ratio was 93%. Mr. Hooks further testified that approximately 20% of its revenue is produced from North Carolina intrastate traffic and that its revenue has increased each year for the past three years. Mr. Hooks further testified that there are approximately 40 general commodity intrastate carriers operating in the City of Charlotte, of which Predrickson is the largest, having approximately 15% of the business.

All exhibits of the Applicants and the Protestants were identified and admitted into evidence.

At the close of the Applicants' case and again at the close of all of the evidence, the Protestants made a motion to dismiss, which was denied.

The Protestants moved to include by reference as exhibits the 1978 financial statements and equipment lists on file with the Commission, which motion was allowed without objection. The Applicants moved to include the annual financial statements for the Protestants for the years 1975, 1976, and 1977, which also was allowed. Finally, the Applicants moved to continue the suspension of Certificate

No. R-5, the REA authority, until a final adjudication in this proceeding, which motion was allowed.

Based on the foregoing, the verified application and the exhibits attached thereto, the evidence presented by the witnesses at the hearing, and the able arguments of counsel, the Hearing Examiner now reaches the following:

FINDINGS OF FACT

1. That this matter is lawfully before the North Carolina Utilities Commission pursuant to jurisdiction conferred by North Carolina G.S. 62-111, based upon the joint application of C. Orvis Sowerwine, Trustee of REA Express, Inc., Bankrupt, and Central Transport, Inc., d/b/a CT Transport, for authority to transfer North Carolina Motor Common Carrier Certificate No. R-5 from REA Express, Inc., to Central Transport, Inc., d/b/a CT Transport.

2. That North Carolina Common Carrier Certificate No. R-5, presently owned by REA Express, Inc., Bankrupt, contains authority for the transportation of general commodities moving in express service over 48 regular routes as set forth in said certificate.

3. That REA Express, Inc., was declared bankrupt by Judge John J. Galgay, Bankruptcy Judge for the Southern District of New York, on November 6, 1975. In the Matter of REA Express, Inc., F/K/A Railway Express Agency, Inc., No. 75-B-253 (S.D.N.Y. February 18, 1975). C. Orvis Sowerwine was appointed Trustee at the same time by the Bankruptcy Judge.

4. That since November 6, 1975, under the supervision of the Bankruptcy Court, Mr. Sowerwine has been engaged in the process of liquidating the assets of the bankrupt, including Certificate No. R-5 issued by this Commission.

5. That with the approval of the Bankruptcy Court, Mr. Sowerwine as Trustee for REA Express, Inc., on or about November 7, 1975, issued an embargo on the pick up of express shipments by REA, but continued the operations of the Rexco Division.

6. That on July 16, 1976, the Bankruptcy Court approved the sale of all of REA's operating authorities, including Certificate No. R-5 of this Commission, to Alltrans Express USA, Inc. (Alltrans Express). An application to approve the proposed transfer with the Interstate Commerce Commission was thereafter filed. In addition, related proceedings were instituted with the Interstate Commerce Commission relating to temporary authority previously granted to REA Express and the operations of the Rexco Division. All of these applications and proceedings were decided adversely to REA Express, Inc., Bankrupt, and Alltrans Express. An appeal affirming the decision of the Interstate Commerce Commission was rendered by the US Court of Appeals for the Second

Circuit on September 16, 1977. REA Express, Inc., Bankrupt, C. Orvis Sowerwine, Trustee in Bankruptcy, vs. U.S. of A. and Interstate Commerce Commission, 1978 Federal Carrier Cases Paragraph 82,733. On December 6, 1977, the North Carolina Utilities Commission issued an Order suspending operations under Certificate No. R-5, which authorized suspension of operations has remained in effect through the present.

7. That REA Express, Inc., Bankrupt, has continuously maintained on file with this Commission tariffs, evidence of cargo and liability insurance, and a designation of process agent.

8. That on or about February 23, 1979, the Bankruptcy Judge approved a sale of Certificate No. R-5 by C. Orvis Sowerwine, Trustee in Bankruptcy of REA Express, Inc., to Central Transport, Inc., for the sum of $500.

9. That the transferee, Central Transport, Inc., is a corporation formed under the laws of the State of Michigan.

10. That immediately prior to November 6, 1975, REA Express, Inc., was providing service to several hundred North Carolina towns and in October 1975 transported a total of 6,340 shipments weighing 2,434,055 pounds of which 345 shipments weighing 40,935 pounds were North Carolina intrastate traffic.

11. That all debts and claims against REA Express, Inc., Bankrupt, are being processed by the Trustee pursuant to the Federal bankruptcy laws.

12. That as of June 30, 1979, the transferee, Central Transport, Inc., had total assets of $27,151,000 and total liabilities of $8,491,363.

13. That for the six months ending June 30, 1979, the transferee, Central Transport, Inc., had freight revenues of approximately $55 million and a net income of $2,723,000.

14. That Central Transport, Inc., is a substantial motor carrier of general commodities presently operating in the Midwest concentrating on short-haul, expedited service, on small shipments.

15. That up to November 6, 1975, REA Express or its predecessors provided continuous service to the shipping public of North Carolina pursuant to Certificate No. R-5 for a period of more than 40 years.

16. That subsequent to November 6, 1975, C. Orvis Sowerwine, Trustee in Bankruptcy for REA Express, Inc., discontinued some operations and continued other operations of REA Express pursuant to his authority under the Federal bankruptcy laws and as authorized by the Bankruptcy Court.

17. That since November 6, 1975, C. Orvis Sowerwine, Trustee in Bankruptcy for REA Express, Inc., has taken no actions which would constitute an abandonment of Certificate No. R-5 and, to the contrary, as he is required pursuant to the Federal bankruptcy laws, C. Orvis Sowerwine, Trustee, has moved expeditiously to preserve, liquidate, and transfer all assets of the bankrupt including Certificate No. R-5.

18. That the proposed sale and transfer of authority is in the public interest.

19. That the proposed sale and transfer will not adversely affect service to the public under the authority of Certificate No. R-5.

20. That the proposed transfer will not unlawfully affect the service to the public by other public utilities.

21. That the proposed transferee, Central Transport, Inc., d/b/a CT Transport, is fit, willing, and able to perform service to the public under the terms of Certificate No. R-5, which is at least equal to, and may exceed, the level of service previously offered by REA Express, Inc.

Based upon the foregoing Findings of Fact, the Hearing Examiner now reaches the following

CONCLUSIONS

Based upon the foregoing Findings of Fact, the outcome of this case hinges upon G.S. 62-111 and G.S. 62-112, cases construing such statutory sections decided by the Appellate Division of the North Carolina courts, and prior decisions of this Commission. The policy of the State of North Carolina, as declared in the Public Utility Acts of 1963, clearly favors the transfer of actively operated motor freight certificates without unreasonable restraint. State ex rel. Utilities Commission vs. Associated Petroleum Carriers, 7 NC App 408, 173 SE 2d 25 (1970).

Protestants contend that Certificate No. R-5 is dormant pursuant to the provisions of G.S. 62-112(c) and, therefore, the application for transfer must be denied and the certificate cancelled because approval would in effect constitute the granting of a new franchise without satisfying the new authority test and other requirements of G.S. 62-262(e). State ex rel. Utilities vs. Estes Express Lines, 33 NC App 174, 234 SE 2d 624 (1977).

However, G.S. 62-112(c) specifically provides: "Any motor carrier who has obtained authority to suspend operations under the provisions of G.S. 62-112(b)(5) and the rules of the Utilities Commission issued thereunder shall not be subject to cancellation of its franchise under this section during the time such suspension of operations is authorized." Pursuant to the provisions of G.S. 62-112(b)(5), the Trustee of REA Express, Inc., Bankrupt,

obtained an order of suspension and, therefore, the carrier is not subject to the provisions of G.S. 62-112(c) relating to cancellation of certificates on the grounds of dormancy.

The Protestants further take the position that REA's Trustee in Bankruptcy did not seek a suspension of its certificate until sometime in the fall of 1977 and, in fact, REA Express, Inc., had not conducted any operations pursuant to its North Carolina intrastate certificate subsequent to November 6, 1975, and further, that the Trustee's actions in declaring an embargo on the pick up of express traffic subsequent to November 7, 1975, was unlawful. However, the uncontradicted evidence before this Commission indicates that all actions taken by the Trustee in Bankruptcy were pursuant to his fiduciary responsibilities under the Federal Bankruptcy Act and under the direction and approval of the Bankruptcy Court. As such, his actions take precedence over any conflicting rule of this Commission or state statute. New York Casualty Company vs. City of La Grange, D.C.Ky. 1940, 33 Fed Supp 993; Securities, Inc. vs. Louisville N.R. Company, 1953, 115 NE 2d 9. In addition, the Trustee for some period of time after November 6, 1975, continued the operations of the Bankrupt's Rexco Division. This Commission has previously approved transfers of general commodity authority where the transferor was only transporting a limited number of commodities (Builders Transport, Inc., - Hennis Freight Lines, Inc., Docket No. T-1638, Sub 1) and where the transferor had only been hauling exempt commodities. (Harper Trucking Company, Inc., Transfer from Haywood-Atkins Trucking Company, Inc., Docket No. T-521, Sub 18)

Finally, cancellation of a certificate on the grounds of dormancy pursuant to G.S. 62-162(c) is discretionary with the Commission and the Commission in its discretion may give consideration to other factors, including the disabilities of the carrier. Utilities Commission vs. Estes Express Lines, supra, and Dependable Feed Service, Inc., Transfer from Nathaniel Jackson Hudson (Docket No. T-1951). The bankruptcy and the ensuing proceedings before the ICC and other courts relating to REA Express, Inc., Bankrupt, are such factors which have affected the performance of the certificate holder since November 6, 1975. Finally, the uncontradicted evidence relating to the activities of the Trustee in maintaining its certificates of insurance in otherwise meeting the requirements of this Commission and in actively pursuing a purchaser for the authority effectively rebuts any allegation that the Trustee has abandoned the certificate.

Uncontradicted evidence of financial strength and stability and experience in operations clearly demonstrates that CT Transport is fit, willing, and able to perform the services required by the franchise which it is seeking to acquire and that it will, in fact, offer a level of service which meets or exceeds the level of service previously offered by REA Express. The Hearing Examiner thus concludes

that the proposed transferee is fit, willing, and able to perform the services required by the terms of Certificate No. R-5. For this reason, the Hearing Examiner also concludes that the proposed transfer will not adversely affect the service to the public under Certificate No. R-5.

As previously noted, service under Certificate No. R-5 has been suspended by Order of the Commission. Therefore, the Hearing Examiner concludes that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5) as required by G.S. 62-111(e).

Based on the foregoing, the Hearing Examiner concludes that the joint Applicants have met the test imposed by G.S. 62-111(a) that no certificate existing or issued under the provisions of Chapter 62 may be sold except by application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. It has been held that the test of "public convenience and necessity" referred to in G.S. 62-111(a) does not require a new showing of public need. See State ex rel. Utilities Commission vs. Associated Petroleum Carriers, supra. Rather, the operations under the franchise prior to the bankruptcy meet this requirement.

Protestants in this case urge this Commission to deny the transfer because they fear that the transfer may have an adverse effect upon their operations. However, the Petroleum Carriers case, supra, stands for the proposition that the transfer of a franchise to a more competitive carrier, with possible adverse affects to existing common carriers, does not make such transfer contrary to the public interest as a matter of law. Nor does G.S. 62-111(e) protect existing certificate holders from lawful competition. It is apparent from the record that the level of service which will be offered by CT Transport will meet or exceed the level previously offered by REA Express. For these reasons, the Hearing Examiner concludes that the proposed transfer will be in the public interest and that such transfer will not unlawfully affect the service to and public by other existing certificated common carriers. Finally, the Hearing Examiner concludes that the proposed transfer is justified by public convenience and necessity as required by G.S. 62-111(a) and that the proposed transfer should be allowed.

IT IS, THEREFORE, ORDERED as follows:

1. That the joint application for transfer of Common Carrier Certificate No. R-5 from REA Express, Inc., Bankrupt, to Central Transport, Inc., d/b/a CT Transport, be, and the same is hereby, approved.

2. That Certificate No. R-5 be, and the same is hereby, amended, by striking all references contained therein to "Railway Express Agency, Incorporated" and substituting therefor Central Transport, Inc., d/b/a CT Transport.

3. That Certificate No. R-5 be, and the same is hereby, transferred from REA Express, Inc., Bankrupt, to Central Transport, Inc., d/b/a CT Transport, in accordance with Exhibit B attached hereto.

4. That the authorization contained herein shall constitute a certificate until a formal certificate showing the amended ownership shall have been transmitted to Central Transport, Inc., authorizing the transportation set forth in Exhibit B.

5. That Central Transport, Inc., shall file with the Commission a certificate of authority from the Office of the Secretary of State to do business in the State of North Carolina, a list of equipment to be registered with the State of North Carolina, evidence of insurance, and tariffs, and shall otherwise comply with the applicable rules and regulations of this Commission and begin operations under the authority granted herein within 30 days of the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of January 1980.

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 28621	)))))	RECOMMENDED ORDER APPROVING APPLICATION

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 4, 1979, at 9:30 a.m.

BEFORE: Sarah Lindsay Tate, Hearing Commissioner

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.

TATE, HEARING COMMISSIONER: This matter arose upon the filing with the Commission of a joint application on January 25, 1979, seeking approval of the sale and transfer of that portion of authority set forth in Certificate No. C-789 authorizing the transportation of animal feeds and poultry feeds, feed materials, and seeds not requiring the use of special equipment between all points and places throughout the State of North Carolina, from Nathaniel Jackson Hudson (Hudson) to Dependable Feed Service, Inc. (Dependable).

The application was duly noticed in the Commission's Calendar of Hearings and Riverside Transportation Co., Inc., was permitted to intervene as a Protestant Party by Order dated March 29, 1979.

By Order dated April 19, 1979, the Commission denied the request by the Applicant for Dependable to operate under the involved portion of authority on a temporary basis.

The application herein came on for hearing on May 18, 1979, before Hearing Examiner Robert H. Bennink, Jr., and all parties were either present or represented by counsel.

Upon consideration of the evidence presented at the aforesaid hearing, the Hearing Examiner concluded that, among other things, the Applicants failed to carry the burden of proof necessary to warrant approval of the application; that the authority sought to be transferred became dormant prior to the commencement of the proceeding; and that the application, not being justified by public convenience and necessity, should be denied. Accordingly, a Recommended Order was entered in this docket on July 18, 1979, denying the application, revoking the involved portion of Certificate No. C-789 sought to be transferred, and closing the docket.

By Order dated August 14, 1979, the Commission assigned Applicants' Exception to the Recommended Order for oral argument on September 5, 1979.

Upon call of the matter for hearing on September 5, 1979, counsel on behalf of Applicants and Protestant were present and offered oral arguments. Upon consideration of the entire record in this proceeding, the Commission entered an Order on September 19, 1979, allowing Applicants' Exceptions as filed on August 2, 1979; deciding that the authority sought to be transferred in this proceeding was not dormant; reversing that portion of the Recommended Order pertaining to the issue of dormancy; and vacating the remainder thereof. Further, the Commission set the matter, to the extent not reversed and decided in its September 19, 1979, Order, for rehearing on October 4, 1979, at which time consideration would be specifically given to the fitness of Dependable Feed Service, Inc., to perform service under the authority sought to be transferred, pursuant to G.S. 62-111(e).

Hearing was commenced at the time and place noted above and all parties were present or represented by counsel. Applicant offered the testimony of John Ross Goldston, Jr., President of Dependable Feed Service, Inc.; Edward Ladner, public accountant; John W. Goldston, employee of Dependable Feed Service, Inc.; and Nathaniel Jackson Hudson. Protestant Riverside Transportation Co., Inc., offered the testimony of its President Dennis Adams Peacock.

Upon careful review of the testimony and evidence presented at the public hearings in this matter and of the entire record, including the Commission Order entered on September 19, 1979, the Hearing Commissioner makes the following

FINDINGS OF FACT

1. That Nanthaniel Jackson Hudson, an individual doing business under that name, is the holder of North Carolina Common Carrier Certificate No. C-789.

2. That Dependable Feed Service, Inc., a corporation organized and existing under the laws of the State of North Carolina, holds neither a common carrier certificate nor a contract carrier permit from this Commission. Dependable does, however, hold emergency operating authority from the Interstate Commerce Commission.

3. That the Applicants, by their joint application in this docket, seek authority to transfer a portion of the operating authority contained in Certificate No. C-789 from Hudson to Dependable for a total consideration of Five Thousand Dollars ($5,000.00).

4. That the portion of operating authority referred to in Finding No. 3 above authorizes the transportation of animal feeds and poultry feeds, feed materials, and seeds not requiring the use of special equipment between all points and places throughout the State of North Carolina.

5. That the Commission entered an Order in this docket dated September 19, 1979, concluding that the operating authority sought to be transferred in this proceeding was not dormant as of the date of filing of the application herein, since service thereunder had been continuously offered to the public until said filing, and so ordered that the involved authority is not dormant.

6. That Dependable is engaged in the lease of vehicles to Hudson under formal lease agreements, copies of which are maintained in each leased vehicle and maintains placards on such vehicles indicating same are leased to Nathaniel Jackson Hudson.

7. That Hudson maintains evidence of insurance and tariffs of rates and charges on file with the Commission.

8. That Hudson receives compensation in the amount of $300.00 per month from Dependable. One-half of said monthly payment is applied toward the $5,000.00 purchase price of the authority sought to be transferred, and the remaining $150.00 represents compensation of the lease of vehicles.

9. That there are no debts or claims against Hudson of the nature set forth and described in G.S. 62-111(c).

10. That Dependable has provided financial statements which reflect that it is solvent and operating at a profit.

11. That Dependable maintains adequate personnel and vehicles suitable for the transportation of the commodities sought to be acquired herein and is experienced in the transportation of feed and feed ingredients.

12. That Riverside Transportation Co., Inc., holds Certificate No. C-1084 authorizing the transportation of

Group 21, feed and feed ingredients and is performing service thereunder.

Based upon the above findings of fact and the record in this matter as a whole, the Hearing Commissioner reaches the following

CONCLUSIONS

Pursuant to Section 62-111 of the North Carolina General Statutes, the Commission may approve the sale and transfer of operating authority upon finding (1) that the transfer is justified by the public convenience and necessity; (2) that there are no debts or claims against the seller of the nature described in part (c) thereof; (3) that the transfer is in the public interest; (4) that the transfer will not adversely affect the service to the public under said franchise; (5) that the transfer will not unlawfully affect the service to the public by other public utilities; (6) that the person acquiring said franchise is fit, willing, and able to perform such service to the public under said franchise; and (7) that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding thirty days has been approved by the Commission as provided in G.S. 62-112(b)(5).

In response to the criterion set forth above, the Hearing Commissioner so concludes that the burden imposed upon the Applicants pursuant to G.S. 62-111 has been met and offers in support thereof the following:

1. The criteria "if justified by the public convenience and necessity," has been interpreted as a statutory basis for the test of dormancy and is satisfied by a showing that the authority has been and is being actively applied in satisfaction of the public need which was shown to exist when the authority was acquired originally. The Commission, in its Order in this proceeding dated September 19, 1979, resolved this matter in the affirmative when it concluded and so ordered that the authority herein sought to be transferred was not dormant.

2. Regarding the debts or claims against transferor as specified in G.S. 62-111(c), Part IV, of the verified application filed on January 25, 1979, in the matter reflects that no such debts or claims exist. Also, no evidence has been presented in this docket to conclude otherwise.

3. The policy set forth in the Public Utilities Act clearly favors transfer of operating authority which is not dormant upon the rationale that public convenience and necessity, once being shown to exist, continues. The possibility that a transfer of authority to a more

competitive carrier will adversely affect existing carriers does not make such a transfer contrary to the public interest.

It is apparent from the record that the service proposed to be offered to the public if the application is approved will meet or exceed the level provided by Hudson and, for these reasons, the Hearing Commissioner concludes that the proposed transfer is in the public interest.

4. Likewise, the conclusion that the proposed transfer will not adversely affect the service to the public under said franchise is supported by the uncontradicted evidence which establishes that Dependable is capable of rendering service at least equal to that previously performed by Hudson.

5. No substantial evidence has been presented in this docket to find that the service to the public by Riverside Transportation Co., Inc., or other public utilities, will be unlawfully affected in the event the application herein is approved and, therefore, the Hearing Commissioner concludes that this criteria has been satisfied.

6. As to the fitness, willingness, and ability of Dependable engaging in the transportation of animal feeds and poultry feeds, feed materials and, seeds, the evidence presented reflects that Dependable maintains suitable vehicles and drivers necessary to provide such service; that Dependable is financially solvent and has operated at a profit; and that Dependable has considerable experience in performing transportation services. Therefore, the Hearing Commissioner so concludes that Dependable has sustained the burden of proof in this regard.

7. Inasmuch as the Commission, by Order dated September 19, 1979, found that the portion of authority at issue in this docket was not dormant, the Hearing Commissioner concludes that the service under said franchise has been offered to the public up to the time of the filing of the application herein.

As evidenced above, the Hearing Commissioner therefore concludes that the Applicants in this docket have met the statutory burden imposed under the Public Utilities Act for approval of the sale and transfer of the involved portion of operating authority set forth in Common Carrier Certificate No. C-789 and that the application should be granted.

IT IS, THEREFORE, ORDERED:

1. That the application for the sale and transfer of a portion of the operating authority set forth in Common Carrier Certificate No. C-789, as more specifically described in Exhibit B attached hereto and made a part hereof, from Nanthaniel Jackson Hudson to Dependable Feed Service, Inc., be, and the same is hereby, approved.

2. 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.

3. That Dependable Feed Service, Inc., 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.

4. That unless Dependable Feed Service, Inc., complies with the requirments set forth in decretal paragraph (3) above and begins operating, as herein authorized, within a period of thirty (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.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of April 1980.

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

DOCKET NO. T-1951

Dependable Feed Service, Inc.
Bear Creek, North Carolina

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

Transportation of animal feeds and poultry feeds, feed materials, and seeds not requiring the use of special equipment between all points and places throughout the State of North Carolina.

DOCKET NO. R-71, SUB 90

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Seaboard Coast Line Railroad Company, Louisville and Nashville Railroad Company and Participating Carriers - Suspension and Investigation of Proposed Increases in Intraterminal and Interterminal Switching Charges at Points in North Carolina, Scheduled to Become Effective July 28, 1979	)	ORDER DENYING APPLICATION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 5, 6, and 7, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate and Douglas P. Leary

APPEARANCES:

For the Applicant:

Neill W. McArthur, Jr., Assistant General Attorney, Seaboard Coast Line Railroad Company, 500 Water Street, Jacksonville, Florida 32202

Jane Fox Brown, Maupin, Taylor & Ellis, P.A., P.O. Box 829, Raleigh, North Carolina 27602
For: Seaboard Coast Line Railroad Company, Louisville and Nashville Railroad Company, Durham and Southern Railway, Carolina Clinchfield and Ohio Railway, Aberdeen and Rockfish Railroad, and The Yancey Railroad

For the Intervenors:

John F. Wilson, United States Steel Corporation, 600 Grant Street, Pittsburgh, Pennsylvania 15230
For: USS Agri-Chemicals, A Division of United States Steel Corporation

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Estech General Chemicals Corporation, Northeast Chemicals Company, Pearsall & Company, Royster Company, W.R. Grace & Company, and Local Counsel for USS Agri-Chemicals

Theodore C. Brown, Jr., and G. Clark Crampton, 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 22, 1979, Seaboard Coast Line Railroad Company filed Supplement No. 13 to Freight Tariff SCL 8031-A, which was a proposed increase in intraterminal and interterminal switching charges to become effective on July 25, 1979.

On July 2, 1979, protests were filed by Northeast Chemical Company, Pearsall and Company, Royster and Company, Swift Agricultural Chemicals Corporation, W.R. Grace and Company, Wilmington Fertilizer Company, and on a later date, United States Steel Corporation, Agri-Chemicals Division. On July 9, 1979, the Commission issued an Order allowing the Petitioners to Intervene and made all the intervenors parties of record.

The Commission issued an Order on July 25, 1979, suspending the application, ordered an investigation, and set the matter for hearing on October 18, 1979.

The Public Staff gave Notice of Intervention on August 13, 1979, and also filed a motion for additional data on August 16, 1979.

After various and numerous motions by the Public Staff, the Intervenors, and the Applicants, the case was continued and was finally set for hearing on March 5, 1980, in the Commission's Hearing Room, Dobbs Building, Raleigh, North Carolina.

The Rail Common Carriers offered the testimony of R.W. Parsons, Jr., Family Lines System, Assistant Manager, who gave testimony concerning interstate and intrastate line haul charges and switching charges; R.F. Murphy, Assistant General Manager of Seaboard Coast Line, who gave testimony and presented an exhibit concerning the distribution, cost, and utilization of freight equipment; Charles H. Eacho, Assistant Superintendent - Transportation Planning, Seaboard Coast Line Industries, who testified and presented an exhibit concerning a switching study at Wilmington Yard; Herman Stancill, Jr., Seaboard Coast Line Railroad Company, Freight Agent/Terminal Trainmaster, who offered testimony concerning engines and crews involved in Crosstown switching studies; David H. Ranseur Manager - Coast Development, Seaboard Coast Line Industries, who presented testimony and exhibits about cost of intrastate intraterminal switching at Wilmington, North Carolina; Frances M. Spuhler, Southern Freight Association, Senior Cost Analyst, who gave testimony and exhibits regarding costs for intraterminal and interterminal switching and a comparison to the proposed charges.

The Public Staff offered the testimony of James C. Turner, Supervisor of Accounting, Transportation Rates Section, who

testified as to his investigation of the application concerning North Carolina interterminal and intraterminal switching, car shortages, and benefits of the proposed increase; and Dennis E. Sovel, Acting Director of the Transportation Rates Division, who offered testimony and exhibits reflecting switching charges in effect, and proposed and pro forma revenues.

The Intervenors presented the testimony of William T. Smith, President of Pearsall and Company, who expressed the opinion that the Applicants' increase was excessive; George Sloan, Jr., Executive Vice President of Wilmington Fertilizer Company, who presented testimony and exhibits reflecting that fertilizer costs in North Carolina would increase if the application is granted; W. Harry Sikes, Regional Traffic Manager, W.R. Grace & Company, who gave testimony and presented exhibits reflecting Grace's cost for switching during 1978 and part of 1979, and further showing a pro forma increase on the same levels of traffic of 107% for 1978 and 80% for 1979; Ted D. Evans, Manager of Transportation, United States Steel, Agri-Chemicals Division, Atlanta, Georgia, offered testimony and exhibits reflecting the effect of the proposed increase in switching charges for his Company of 132% for the period of January 1978 through August 1979.

The Railroads further offered the testimony of R.W. Parsons, Jr., in rebuttal.

Based on the testimony given, the evidence and exhibits presented, and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. That the rail 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 such rates and charges.

2. That the application under suspension in this docket, as published in SCL Tariff 8031-A, seeks to increase the charges for intraterminal and interterminal switch movements statewide for account of the Aberdeen & Rockfish Railroad Company, Carolina Clinchfield and Ohio Railway, Durham and Southern Railway Company, Louisville and Nashville Railroad Company, Seaboard Coast Line Railroad Company (SCL), and the Yancey Railroad Company.

3. That the rail common carriers have only furnished evidence as to the cost of intraterminal switching service at the Wilmington terminal of SCL which is insufficient to support the statewide increases proposed in both intraterminal and interterminal switching charges by the six rail carriers.

4. That this Commission has not been sufficiently furnished data upon which it can rely in reaching an informed decision that the proposed rates are just, reasonable, and not discriminatory.

5. That the rail common carriers in this proceeding have failed to carry the statutory burden of proof to show justification and reasonableness of the proposed increases in SCL Tariff 8031-A, Supplement No. 13, Items 4340-B and 6715-C, thereto.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence for these findings comes from the verified application and the pertinent North Carolina General Statutes. These findings are essentially informational, procedural, and jurisdictional in nature and are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence reflects that the railroads have furnished cost/revenue data which only shows the cost of the intraterminal switching service of SCL at its Wilmington terminal. The proposal under investigation in this docket involves both intraterminal and interterminal switch movements statewide for account of six rail carriers. R.W. Parsons, Jr., Assistant Manager of Commerce for Seaboard Coast Line, stated that SCL had 10 North Carolina stations which received (reported) terminal switching charges during the six-month study period ending June 1979. The stations were Charlotte, Enfield, Goldsboro, Henderson, Moncure, Plymouth, Roanoke Rapids, Tarboro, Wilmington, and Wilson. At these 10 stations during the six-month study, there were a total of 1677 switch movements, 1539, or 92% of which, occurred at the Wilmington terminal.

The rail carriers have presented no probative evidence as to the reasonableness of the proposed interterminal and intraterminal switching charges set forth in Item 4340-B. The rail carriers have not presented expert testimony as to the reasonableness and reliability of the six-month sample. The rail carriers have not presented a representative sample of the stations participating in the statewide intraterminal switching service. The sample of a single station is not representative nor are the results of such sampling probative. And finally, only SCL has attested and presented evidence as to the magnitude of the terminal switching service. The remaining five rail carriers, parties to this proceeding, have remained mute, and the rail carrier's evidence presented has evolved from the assumption that SCL is the single rail carrier representative of all six carriers. However, nothing in the record supports this presumption.

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

The Respondents developed a cost of service study for the intraterminal switching movements performed at the Wilmington terminal. Herman Stancill, Jr., Terminal Trainmaster at the Wilmington terminal of SCL, testified as to the switching operations at Davis Yard (Wilmington terminal). Mr. Stancill further testified that the average intraterminal switch movement performed at Davis Yard during the five-day study in May 1979 took 7.6 days. In the four illustrations Mr. Stancill presented in his testimony, the evidence discloses that the shipper and consignees held the rail cars a total of 20 days versus 14 days for the SCL (including weekends). The evidence is inconclusive as to whether the shipper or the carrier is responsible for the delays in releasing the cars mentioned by Mr. Stancill.

David Ramseur, Manager of Cost Development for SCL, resented testimony and offered evidence portraying a special intraterminal switch study performed at the Wilmington terminal during the month of May 1979. The testimony of Mr. Ramseur provides the development of car ownership costs used in intraterminal switching. The basis of car costs are: (1) development of time in service of an average carload in intraterminal switching at Wilmington, which is 7.6 days, (2) presumption that car in switching service was 16 years old and has an historical cost of $11,983, and (3) recognition that only one locomotive is used in intraterminal switching service at Wilmington. Mr. Ramseur further testified that the constant costs in determining the intraterminal switching cost at Wilmington were determined by the application of unit costs developed in the Rail Form A procedure.

The Commission is cognizant that the burden of proof in a complaint case is upon the Respondents. The Commission must examine the evidence presented and determine its probativeness to the issues of the proceeding. The application in this proceeding is for an increase in the intraterminal and interterminal switching charges for six railroads statewide. Respondents offered a study made at a single terminal of only one railroad. The terminal utilized participates only in intraterminal switching services. None of the cost witnesses for SCL are offered in this proceeding or are recognized as sampling experts. The 7.6 average carload days developed by the switching study is at best representative for SCL only at its Wilmington terminal. The evidence of Respondents is void of any support of the presumptions made concerning car age and historical cost of the equipment used in switching service. The recognition that only one locomotive is used in intraterminal switching is again proven applicable only at the Wilmington terminal.

The Commission takes official notice of its Order in Docket No. R-66, Sub 50, dated December 16, 1968, and offers the following summary of its adjudication in that proceeding. In cases involving proposed increases in

intraterminal and interterminal switching charges prior to the R-66, Sub 50, proceeding, the Commission had admonished the railroads for failure to perform and offer into evidence reliable cost studies to justify the proposed increases. In Docket No. R-66, Sub 50, the rail carriers performed switch engine time studies at seven rail terminals, with such time standards developed from the study to be applied to a sample of randomly selected switch bills for an entire one-year period. A scientific sampling technique was employed which was designed to produce a confidence level of 99%. The switching study further included a determination of operating expenses incurred for North Carolina for each of the railroads participating in the study, such North Carolina expenses being developed by an allocation of expenses on a direct basis otherwise. The allocation procedure was attested to and found to be competent by the Commission.

The Respondents in this proceeding have not presented acceptable accreditation to any of the sampling techniques, time studies, and cost allocation procedures utilized in developing the cost of service for the intraterminal and interterminal switching services performed throughout the State. Wilmington is definitely the largest terminal in terms of number of switch movements for SCL. This does not ensure a conclusion that Wilmington is representative for SCL's statewide switch service nor for the other five Respondent Carriers. The revenue basis that Respondents used in this proceeding to determine the ratios of revenues to variable cost and revenues to fully allocated costs were based strictly on revenues earned in intraterminal switch movements at Wilmington.

The Respondents, in developing constant costs, have relied solely on the unit costs developed from the application of the Rail Form A procedure. The Commission takes official notice that in rate matters pertaining to the general commodity motor carriers, a similar unit cost procedure has been found acceptable. The Commission's decision to allow the use of motor carrier unit costs was adjudicated upon the basis of substantial evidence presented by witnesses found to be expert in the area of sampling and cost allocation (Docket No. T-825, Sub 168). The Rail Form A procedure has been simply applied by the railroads. There has not been offered into evidence expert testimony as to the reliability of the sampling and costing procedures as it pertains to development of intrastate service costs. Without an attestation of the reliability of the procedure, the Commission is without evidence to find the procedure acceptable and reliable for North Carolina intrastate application. In addition, the Respondents did not present evidence by which to gauge the factors developed by the Rail Form A procedure. At what point would the ratio of revenues to variable cost demonstrate reasonable rate levels has not been prescribed nor substantiated by evidence.

The Commission concludes and finds that the Commission's Order of Suspension in this proceeding, dated July 25, 1979, should be vacated and set aside and that the proposed increase in rates and charges as hereinbefore described are not just and reasonable and should not be allowed to become effective.

IT IS, THEREFORE, ORDERED:

1. That the Commission's Order of Suspension in this proceeding, dated July 25, 1979, be, and upon the effectiveness of this Order, the same is vacated and set aside.

2. That the tariff schedule designated as follows:

Freight Tariff SCL 8031-A, Supplement 13, Items 4340-B and 6715-C, Thereto.

be, and the same is hereby, denied.

3. That Respondent Rail Common Carriers be, and the same are hereby, required to issue the appropriate new tariff schedule cancelling tariff filing No. SCL 8031-A, Supplement 13, Items 4340-B and 6715-C, which are under suspension in this proceeding.

4. That the Respondent Railroads are hereby required to continue in effect the switching rates presently in force on North Carolina intrastate switching.

5. That upon publication of the tariff authorized in Ordering Paragraph No. 3, which should be effective on one (1) day's notice to the Commission, this matter shall be discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 24 th day of July 1980.

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

Commissioner Hipp dissents.

HIPP, COMMISSIONER, DISSENTING: In my view, the rail respondents have shown by the greater weight of the evidence that present switching charges in North Carolina are noncompensatory. They have shown that some increase is justified. I would vote to increase the charges for switching rail-owned cars to $107.00, based upon Seaboard Exhibit 6, allowing one-half of the freight car cost shown, and shipper-owned cars to $73.26, to meet the total fully allocated cost per car on Seaboard Exhibit 6. I would further limit this at this time to switching by the Seaboard Coast Line at Wilmington, which is 91% of the traffic

involved, without prejudice to further proceedings to determine the just and reasonable charge at other switching yards in North Carolina, and for the other respondent railroads.

The majority Order dismisses the application on the principal grounds that the rail carriers have failed to carry the burden of proof in omitting some of the supporting detail for the evidence presented on allocations of the cost of service to North Carolina, and for failure to present evidence on switching yards other than Wilmington and for failure to establish the authority of Seaboard to present evidence for the other five respondent railroads. It is the prerogative of the majority to weigh the evidence presented, but in my view the respondents have presented sufficient evidence to show that a portion of the increase applied for is just and reasonable, and there was no evidence presented to the contrary. The case for the intervenors consisted principally of testimony and exhibits showing the amount of the increase on their individual freight bills, and argument that the rails had not furnished sufficient data upon which to determine if the rates were just and reasonable.

The rates at issue represent a small portion of the total revenue of the respondent rail carriers. If the switching charges are not compensatory, they are subsidized to that extent by other shippers. The general need to establish rates based upon the cost of the particular service involved is one of two purposes of the present application. The other purpose is to secure better utilization of rail cars. The evidence shows that the time required for the average switching movement within the Wilmington yard is 7.6 days. This is extremely poor utilitization of railroad equipment, and the present rate of $56.71 per switching movement utilizing 7.6 days shows a sadly disporportionate revenue per car day for switching charges, as compared to line-haul utilization of the cars.

In Utilities Commission v. State, 343 N.C. 685 (1956), at 686, the Supreme Court said of rail rate cases:

> This Court fully realizes that the value of the properties owned by the several petitioners used and useful for their intrastate traffic cannot be determined with mathematical exactitude. But they can no doubt approximate the rateable proportion of their property devoted to intrastate traffic and offer evidence of other facts and circumstances in respect thereto sufficient in probative force to enable The Commission to make findings of fact under our statute, and issue such order as it determines the facts found may warrant...

In my view, the majority Order takes an unduly restrictive view of the method and burden of proof which can reasonably be required, nothing else appearing to the contrary. If the majority and the intervenors have doubts regarding the underlying data for rail cost Form A or for the relationship

between Wilmington and other switching yards in North Carolina or for the relationship between the Seaboard and other five rail respondents, these matters can easily be established from the Commission records or from further proceedings in this docket. The cost of conducting this rate case is of no small moment on the part of all of the parties involved, as well as the Commission's own costs. To dismiss the application and presumably cause this expense to be duplicated in order for such evidence to be considered seems to place an unduly heavy burden of regulation and regulatory lag and expense upon a small segment of rail traffic. This seems particularly true where the Commission has some responsibility to fix just and reasonable rates for utility service, to ensure that all shippers carry their fair share of the cost of service, without requiring subsidies from other shippers to meet the revenue requirements of the service involved.

Edward B. Hipp, Commissioner

DOCKET NO. R-66, SUB 112

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Railway Company - Suspension and Investigation of Proposed Cancel- lation of Point-to-Point Rates on Furniture in North Carolina, Scheduled to Become Effective January 19, 1980	) RECOMMENDED) ORDER) DENYING) APPLICATION) IN PART

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 17, 1980

BEFORE: Wilson B. Partin, Jr., Hearing Examiner

APPEARANCES:

Odes L. Stroupe, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Southern Railway Company

Thomas K. Austin, 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: On December 10, 1979, Southern Freight Tariff Bureau filed with the Commission for and on behalf of Southern Railway System Supplement No. 71 to Freight Tariff SFA 4972, scheduled to become effective on January 19, 1980. The tariff supplement proposed to cancel various point-to-point rates on furniture in North Carolina and to apply, in lieu thereof, the higher class or combination rates.

Protests to the proposed cancellation of the point-to-point furniture rates were received by the Commission from the following North Carolina companies: Southern Furniture Manufacturers Association, High Point; Drexel Heritage Furnishings, Inc., Drexel; Broyhill Furniture Industries, Inc., Lenior; Fairfield Chair Company, Lenoir; and Singer Furniture, Lenior.

The Commission issued an Order on January 18, 1980, suspending the application, ordered an investigation, and set the matter for hearing on June 17, 1980.

The Public Staff gave Notice of Intervention on May 9, 1980.

The matter came on for hearing at the time and place scheduled. All parties of record were represented by counsel.

The Southern Railway Company offered the testimony of Patrick J. Glennon, Commerce Officer, who gave testimony describing the point-to-point commodity rates proposed to be cancelled, the number of such rates published, and the amount of traffic being moved under the rates proposed to be cancelled.

The Public Staff offered the testimony of Dennis E. Sovel, Acting Director of the Transportation Rates Division, who testified as to his investigation of the proposed rate cancellation and the volume of traffic moved under the rates in question.

Harry M. Shoe, Director of Transportation Service for the Southern Furniture Manufacturers Association, gave testimony on behalf of the Protestants concerning the need to maintain the point-to-point commodity rates proposed to be cancelled.

Based upon the testimony and exhibits presented at the hearing and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. The Southern Railway Company, participating in the tariff schedule under suspension in this proceeding, is subject to regulation by this Commission and is properly before the Commission with respect to such rates and charges.

2. The application under suspension in this docket, as published in Supplement 71 to Tariff SFA 4972, seeks to cancel 93 point-to-point "gathering" rates applicable on North Carolina intrastate rail shipments of furniture, when such shipments are for consolidation and reshipment to points beyond the consolidation point in road haul movement over the Southern as the initial line.

3. The application seeks to place into effect higher class or combination rates in lieu of the point-to-point rates proposed to be cancelled.

4. The justification submitted by Applicant for the proposed cancellation of the point-to-point rates is obsolescence of the rates because the shippers do not use them.

5. The Applicant has offered to retain the point-to-point commodity rate from Conover to Lenoir as published in item 1200-F of Tariff SFA 4972.

6. The Protestants have requested retention of 23 of the 93 specific point-to-point rates proposed to be cancelled.

7. The failure to retain the 23 specific rates requested by the Protestants is likely to adversely affect the shipping public.

8. The retention of the 23 specific rates requested by Protestants will not adversely affect the Applicant. Indeed, the retention of the rates may result in new traffic to the carrier and prevent diversion of traffic to motor transportation.

9. The evidence presented by Applicant and Protestants shows that some carload movements of furniture have been handled during the past three years under the point-to-point rates proposed to be cancelled.

10. The cancellation of the 23 specific rates which Protestants have requested be retained is not justified in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence for these findings comes from the verified application and the pertinent North Carolina General Statutes. These findings are essentially informational, procedural, and jurisdictional in nature and are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Mr. Glennon, Commerce Officer for Southern Railway Company, stated that Southern had no intention of cancelling any rate that was extensively used and that for this reason Southern would voluntarily reinstate the Conover to Lenoir rate. Mr. Glennon's exhibits show that the movements from Conover to Lenoir represented 98% (1021 carloads) of the total issue traffic moved during the past three years. The Hearing Examiner concludes that the Conover to Lenoir rate is extensively used, the rate was inadvertently proposed to be cancelled, and Southern should be permitted to retain the Conover to Lenoir rate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6, 7, AND 8

Mr. Sovel and Mr. Shoe presented exhibits identifying the 23 point-to-point rates which the Protestants seek to have retained.

The controversy in this proceeding centers upon these 23 rates proposed to be cancelled. (Actually 22 rates: See Finding of Fact No. 5.) The utility laws of this State give to the carrier the right to initiate a new rate. A rate once established, however, should not be cancelled or changed unless the proposed change is reasonable and in the public interest. It would appear from the evidence that retention of the rates would be in the public interest insofar as the public would benefit from a more efficient and less costly handling of furniture commodities. Mr. Shoe stated that most furniture companies have designed their warehouses to load rail cars and that they prefer to load

rail cars. Mr. Shoe further stated that increasing costs of fuel and shipper uncertainties over transportation deregulation may revive the use of many of the rates proposed to be cancelled.

On the other hand, the carrier contends that wasteful replication of obsolete rates ultimately costs the public in terms of excessive tariff publishing costs. Mr. Sovel's testimony demonstrated that the costs associated with publishing the 23 rates in question are miniscule. In addition, Mr. Shoe pointed out the excessive duplications currently existing in the carrier's tariffs. Based upon the evidence, the Hearing Examiner concludes that the public interest is best served by retention of the rates.

The Hearing Examiner further concludes that there are advantages accruing to the Applicant by the retention of the rates. If the rates are kept in the tariff and are used, there is the possibility of new traffic to the carrier. On the other hand, if the rates are kept in the tariff and are not used, the carrier has not been substantially penalized by the tariff publication. Consequently, the carrier could benefit from retaining the rates should the rates prove to attract any amount of traffic, whereas cancellation of the rates would mean the possibility of further traffic diversions.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 AND 10

Mr. Sovel stated that information furnished by Mr. Glennon showed that Southern Railway handled 1039 cars of traffic during the last three years under the rates proposed to be cancelled. Mr. Glennon offered into evidence exhibits identified as Nos. 1 and 2 which reflected the issue traffic movements when the Conover to Lenoir rate (see Finding of Fact No. 5) was deleted. Apart from the Conover to Lenoir rate, the exhibits show that only five other rates have been used by the shippers in the past three years and that they resulted in a total of 14 carloads. The evidence at this point could support a finding that the rates in issue are obsolete and should be cancelled. (Indeed, the proposed Order of the Public Staff recognizes this possibility.)

Based upon the evidence in this proceeding, including the rigorous opposition of the Protestants, the Hearing Examiner concludes that the cancellation of the 23 point-to-point furniture rates in controversy is not reasonable at this time. The protestant shippers have relied upon the existence of these rates in developing their distribution facilities and have demonstrated the possibility of future needs to warrant the retention of the 23 rates in question.

The findings and conclusions herein are without prejudice to the carrier's right to apply later to the Commission for cancellation of the 23 rates, if it should appear that an increase in the use of the rates did not materialize. For the moment, however, the Examiner is persuaded by the Public

St{aff and the Protestants that the advantages which will accrue to the public and to the shippers by the retention of the 23 rates outweigh any possible detriment to the carrier.

The Hearing Examiner finds and concludes that the Commission's Order of Suspension in this proceeding, dated January 18, 1980, should be vacated and set aside, and the proposed cancellation of the point-to-point rates as published in Supplement 71 to Tariff SFA 4972, be granted in part insofar as the carrier shall cancel all but the 23 rates attached as Appendix A.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Order of Suspension in this proceeding, dated January 18, 1980, be, and upon the effectiveness of this Order, the same is vacated and set aside.

2. That the tariff rate changes proposed in Supplement 71 to Tariff SFA 4972 be allowed to become effective, in part, upon five days' notice, except that the rates attached as Appendix A hereto shall be retained and remain in effect.

3. That the Respondent be, and the same hereby is, required to issue an appropriate new tariff schedule cancelling Supplement 71 to Tariff SFA 4972 and publishing on at least five days' notice the cancellation of only the rate items as permitted herein.

4. That upon publication of the tariff authorized in Ordering Paragraph No. 3, this matter shall be discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August 1980.

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

APPENDIX A

Item	From
1075-G (To Hickory)	
" "	Conover
" "	Drexel
" "	Lenoir
" "	Lincolnton
" "	Marion
" "	Morganton
" "	Newton
" "	Rutherfordton
" "	Salisbury
" "	Statesville
" "	Waynesville
1100-F (To: High Point)	
" "	Asheboro
1150-F (To: Hudson)	
" "	Asheboro
1200-F (To: Lenoir)	
" "	Bryson
** "	Conover
" "	Marion
" "	Morganton
1275-F (To: North Hickory)	
" "	Bryson
" "	Conover
" "	Lincolnton
1300-F (To: North Hickory)	
" "	Rutherfordton
" "	Salisbury
" "	Waynesville

**This particular rate has been voluntarily retained by the Southern Railway Company.

DOCKET NO. R-66, SUB 97

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rail Common Carriers - Suspension and Investigation of Proposed Increases in Demurrage Charges Scheduled to Become Effective February 1, 1979	) FINAL ORDER ON) EXCEPTIONS ALLOWING) FULL INCREASE IN) DEMURRAGE CHARGES

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 4, 1980, at 10:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; Commissioners Leigh H. Hammond, Sarah Lindsay Tate, John W. Winters, A. Hartwell Campbell, and Douglas P. Leary

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

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 January 5, 1979, H.J. Positano, Alternate Agent, Traffic Executive Association - Eastern Railroads, 2 Pennsylvania Plaza, New York, New York 10001, _or and on behalf of rail carriers operating in North Carolina, filed tariff schedules with the Commission proposing to increase intrastate 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. This tariff filing, designated as Freight Tariff 4-K, Supplement 32, was _cheduled to become effective on February 1, 1979.

On January 24, 1979, the Commission issued an Order of Suspension and Investigation and set the matter for hearing on April 25, 1979. Said hearing was subsequently rescheduled for August 7, 1979, at 9:30 a.m. and held on that date. Both the Respondent Railroads and the Public Staff were present and represented by counsel at said proceeding. On October 12, 1979, Hearing Examiner Robert P. Gruber entered a "Recommended Order Allowing Rate Increase" in this docket. As therein pertinent, the Respondents were permitted to increase intrastate demurrage charges to the following levels: $15 for each of the first two chargeable days; $20 for each of the next two chargeable days; $30 for each of the next two days; and $60 for each subsequent day.

On October 29, 1979, the Respondent Railroads filed certain Exceptions to the Recommended Order, setting forth two Exceptions and the reasons and arguments in support thereof. On October 30, 1979, the Public Staff filed four Exceptions to the Recommended Order and requested oral argument thereon before the full Commission. Oral argument on the parties' Exceptions was subsequently heard by the Commission on January 4, 1980, with both the Respondents and the Public Staff having been represented by counsel.

Based upon a careful consideration of the entire record in this proceeding, including the testimony and exhibits presented at the hearing and the Exceptions to the Recommended Order filed herein by the parties and the oral argument heard thereon, the Commission is of the opinion, finds, and concludes that the Exceptions filed herein by the Respondents should be allowed; and that the Respondent Railroads have carried the burden of proof in this proceeding to show that the proposed increases in general demurrage charges on intrastate rail shipments are just and reasonable.

In deciding this case in favor of the Respondent Railroads, the Commission has been strongly influenced by evidence in the record which indicates that, pursuant to rules of the Interstate Commerce Commission, whenever there is a difference between intrastate and interstate demurrage charges, interstate demurrage debits and credits cannot be commingled with intrastate debits and credits under the Railroads' average agreement demurrage plan, but must be computed separately. In the opinion of the Commission, the ability for all shippers, both large and small, to be able to commingle interstate and intrastate demurrage debits and credits outweighs the possible disadvantages which may occur as a result of allowing the Respondents to place into effect the full increase in demurrage charges herein under consideration. The Commission further notes that it is also of the opinion that requiring separation of interstate and intrastate demurrage transactions would undoubtedly result in additional clerical costs being borne by both the railroads and shippers who incur demurrage charges.

Furthermore, the Commission agrees with the contention made herein by the Respondent Railroads to the effect that the record in this case fails to support the conclusion reached by the Hearing Examiner that "certain small shippers may have difficulty filling cars within the alloted free time, and therefore, a 100 percent increase in the present charge of $10 for the first four days is unreasonable." In addition, the Commission notes that intrastate demurrage charges in North Carolina have not been increased since 1971.

For all of the reasons stated above, the Commission concludes that the Exceptions filed herein by the Respondent Railroads should be allowed, thereby serving to approve the full increase in intrastate demurrage charges as proposed in the tariff matter now under suspension in this proceeding. The Exceptions filed by the Public Staff are hereby denied. The Recommended Order dated October 12, 1979, to the extent not modified and reversed hereby, is otherwise affirmed.

IT IS, THEREFORE, ORDERED as follows:

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 schedules designated Freight Tariff 4-K, Supplement 32 to become effective.

2. That the 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 the construction, filing, and posting of tariff schedules.

3. That upon the publications hereby authorized having been made, the investigation in this matter shall be discontinued and this proceeding shall be, and the same is hereby, discontinued.

4. That the Exceptions to the Recommended Order filed herein by the Respondent Railroads are hereby allowed.

5. That the Exceptions to the Recommended Order filed herein by the Public Staff are hereby overruled and denied.

6. That the Recommended Order entered in this docket on October 12, 1979, is, to the extent not modified and reversed by this Order, hereby affirmed.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of January 1980.

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

Chairman Koger did not participate.

DOCKET NO. R-66, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rail Common Carriers - Suspension and Investigation of Proposed Increases in Rates or Charges in Wood Chips and Proposed Increases in Special Detention Charges in Connection with Rates on Pulpwood, Sawdust, Wood Chips and Wood Shavings, Between Points in North Carolina, Scheduled to Become Effective May 7, 1979, August 1, August 8, and August 10, 1979	RECOMMENDED ORDER ALLOWING INCREASES IN CHARGES

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, December 4, 1979, at 10:00 a.m.

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Respondents:

W.T. Joyner, Jr., Joyner & Howison, P.O. Box 109, Raleigh, North Carolina 27602
For: North Carolina Railroads, Southern Railway System

James L. Howe, III, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013
For: North Carolina Railroads, Southern Railway System

Phyllis A. Joyner, Seaboard Coast Line Railroad Company, P.O. Box 27581, Richmond, Virginia 23261
For: Family Lines Systems

For the Intervenors:

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

PARTIN, HEARING EXAMINER: This docket was instituted by various filings of the Southern Freight Tariff Bureau in Atlanta, Georgia, seeking proposed increases in detention charges relating to wood products. The proposed increased charges suspended and under investigation in this docket are 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.

A protest was received dated March 26, 1979, from Federal Paper Board Company, Inc., requesting that the proposed increases be suspended and the matter set for investigation and hearing. By Order dated April 11, 1979, the Commission suspended the proposed rates for 270 days from their effective date, instituted an investigation, ordered that a data request be complied with, scheduled filing dates for testimony, and set a hearing date.

Through a subsequent Order dated April 25, 1979, the Commission consolidated in this docket the question of the reasonableness of a related set of proposed tariff schedules, which had also been protested. These schedules were filed on April 3, 1979, with an effective date of May 7, 1979, and were designated as "Wood Tariff SFA 4496, Supplement 119-A, Items 5335-F and 5570-E, thereto, in full." The increases covered wood chips in shipper furnished cars, and special detention charges on pulpwood, sawdust, wood chips, and wood shavings in North Carolina intrastate traffic. Protests were received from Federal Paper Board Company, Southeastern Lumber Manufacturers Association, and the Georgia Pacific Corporation. These schedules were likewise suspended and the respondents were ordered to comply with a Public Staff data request.

On May 11, 1979, the rail carriers moved to cancel the proceedings by withdrawing the publication of all the tariff schedules with the exception of those relating to special detention charges on pulp wood, sawdust, wood chips, and wood shavings, and requesting consolidation of the remaining topic with another related docket, Docket No. R-66, Sub 97.

The Public Staff - North Carolina Utilities Commission gave Notice of Intervention and concurred in the above motion on May 16, 1979.

The Commission received another set of related proposals, the tariff schedules designated as "Items 169.60-F, 170-E and 171 of Supplement 130 to Wood Tariff SFA 4496," and "Items 530-D and 535-D of Supplement 35 to SFA Tariff 3629-G." By an Order dated August 1, 1979, the Commission consolidated them for hearing in this docket and ordered compliance with another Public Staff data request. On August 16, 1979, the carriers filed a response to the Public Staff's data request objecting to the material requested and moving to extend the time for filing testimony and to extend the hearing date. On the 30th of August, the Public Staff filed a reply to the carriers' latest filing concurring in the delays requested and setting forth the disputed discovery issues for the Commission to determine. The Commission on September 14, 1979, issued an Order continuing the hearing and establishing a schedule for complying with discovery and filing testimony.

The matter came for hearing at the time and place finally scheduled. All parties were represented by counsel.

Mr. Jones of the Southeastern Demurrage and Storage Bureau listed the tariff publications involved, insofar as the increase in special detention charges, as follows:

Items 530-D and 535-D in Supplement 35 to Freight Tariff SFA 3629-G, North Carolina Intrastate Mileage Commodity Tariff issued July 27, 1979

Item 5570-E in supplement 119-A to SFA Freight Tariff 4496, Wood Tariff issued April 3, 1979

Items 169.60-F, 170-E and 171 in Supplement 130 to SFA 4496, Wood Tariff issued June 26, 1979

Items 57881-G in Supplement 113 to SFA Freight Tariff 2011-P, Classifications Exceptions and General Commodity Tariff, issued July 6, 1979.

The only commodities involved in the foregoing tariff publications are pulpwood, sawdust, wood chips, wood shavings, lumber, and related articles.

Mr. Jones also testified that the purpose of the proposed increase in detention 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 and that if the increases are allowed, the charges will then be the same as those that now apply and have applied since February 1, 1979, on interstate special detention charges and regular demurrage and as proposed on regular North Carolina intrastate demurrage charges in Docket No. R-66, Sub 97.

Mr. Jones further testified that the proposed level of special detention charges has been in effect on interstate detention since February 1, 1979. Previous to February 1, 1979, ICC Service Order 1315 was applicable to both interstate and intrastate special detention including North Carolina. As pointed out by Mr. Jones, the Service Order 1315 charges, while not identical to those proposed here, are comparable thereto. 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 special detention 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.

Mr. Jones expressed the opinion that the proposed increased charges would be successful in providing an incentive to shippers and receivers to release cars quicker. This opinion was based on the comparison of the North Carolina interstate and intrastate dentention experience on the two principal North Carolina railroads for the months of August 1978 and August 1979. The study showed that shipper performance on North Carolina intrastate shipments was worse in August 1979 compared to August 1978. The higher Service Order 1315 charges were in effect in 1978 and the lower current charges were in effect in August 1979. The study showed that shipper performance in August 1979 was better on North Carolina interstate traffic than on North Carolina intrastate when the interstate charges were at the higher level sought here.

Mr. Jones expressed the opinion that the month of August 1979 is comparable to detention experienced on the involved commodities for other preceding months in 1979, except January when the Service Order 1315 charges were in effect. This is because, barring abnormal circumstances, such as unusually severe weather, the traffic moves pretty much the same from month to month.

Finally, Mr. Jones explained in some detail the various ways in which a shipper or receiver can minimize the accrual of detention charges. Chief among these ways is by carefully monitoring the ordering of empty cars for loading. Mr. Jones pointed out that, for example, a shipper can cancel car orders prior to the date ordered for loading if loading schedules fall behind or if the railroad places more cars than ordered for daily placing.

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 cars ordered 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 percent with carrying capacity increasing over 27 percent. Covered hopper car ownership

has increased almost 18 percent with an increase in carrying capacity of over 19 percent during the same period.

Mr. Martin noted that Southern has an order for 1980 of 800 pulpwood cars and 300 wood chip cars. He pointed out that in 1973 pulpwood cars cost $13,500 and wood chip cars cost $23,883. In 1980 these same cars will cost $34,000 and $56,000 respectively - increases of 152 percent and 134 percent.

Mr. Martin introduced exhibits showing Southern Railway's traffic by commodity group intrastate and interstate North Carolina, pointing out that 42 percent of Southern's pulpwood and wood chip traffic moved under incentive rates in 1978 and were subject to special detention charges. 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 intrastae 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 North Carolina intrastate detention to equal the August 1978 detention level. This calculation showed that a considerable number of car days would be saved if the shipper improved their detention practices.

R.W. Parsons, Assistant Manager-Commerce of the Family Lines System (which includes the Seaboard Coast Line Railroad Company), testified that his company, like Southern, is engaged in buying many new pulpwood and wood chip cars at greatly increased costs. His opinion is that measures such as the increase in demurrage in Docket No. R-66, Sub 97, and increased detention charges proposed here will help improve car utilization by providing an incentive to the shipping public on promptly released cars. Mr. Parsons also introduced an exhibit showing separately the North Carolina interstate and intrastate traffic of his railroad by commodity groups.

C.W. Hart, Superintendent-Agencies of Southern Railway, testified that, based on his experience and his personal observations, he could see no reason why a carload of any commodity could not be physically loaded or unloaded within 24 hours and, based on that same knowledge, he could see no reason why an intrastate car cannot be loaded in exactly the same time as an interstate car of the same commodity. Mr. Hart further testified that he recently observed the loading of wood chips from storage on concrete pads in North Caolina as well as in other states.

Francis Spuhler, Senior Cost Analyst 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, increasingly higher 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. Spuhler 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. Spuhler 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. Spuhler 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. Spuhler 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. Spuhler 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. Spuhler 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.

Finally, Mr. Spuhler spelled out the per diem rates applicable to the cars in Mr. Jones' detention study which can be equated to car ownership costs.

J.A. Brough, a public witness representing Georgia Pacific Corporation, testified in opposition to the proposal. He stated that his primary interest is in recovering better car supply from the railroads. He further testified as to the instances of poor railroad service received by his company's facilities in North Carolina and to the necessity of his company's purchase of railroad cars to help alleviate the car supply situation.

Based on the testimony and the exhibits presented at the hearing, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. The rail common carriers participating in the tariff schedules 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 publications.

2. It is the duty of this Commission to make rules and fix, establish, or allow rates governing detention, demurrage, and storage charges by common carriers.

3. One of the principal purposes of demurrage and detention charges is to provide incentive to shippers and receivers for quicker release of freight cars.

4. There continues to be a chronic shortage of freight cars, including pulpwood and wood chip cars, despite the railroads' efforts to reduce the shortage through acquisition of new equipment.

5. The cost of freight cars to the railroads has increased considerably since 1971 and North Carolina intrastate special detention charges are presently at the 1971 level.

6. The present levels of special detention charges are not adequate to provide the necessary incentive to rail shippers and receivers of pulpwood, wood chips, and wood products 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. The proposed charges are likely to provide an incentive to shippers and receivers of pulpwood, wood chips, and wood products to load and unload freight cars quicker and they are likely to respond to that incentive by a quicker release.

8. The quicker release of freight cars by shippers and receivers of pulpwood, wood chips, and wood products will produce additional productive car days for the benefit of all shippers and receivers of these commodities, North Carolina intrastate and interstate alike.

CONCLUSIONS

1. 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. The Commission concludes that this includes the fixing of special detention charges. In carrying out this statutory duty the Commission is under the obligation to determine whether charges such as proposed here are reasonably consistent with the purpose of detention or demurrage charges 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.

2. The Examiner concludes that respondents have shown that there is a reasonable probability that the proposed charges 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 respondents on this issue.

3. The Examiner concludes that the level of the proposed charges are reasonable when it is considered that the present charges are at the 1971 level and therefore reflect none of the inflation experienced by the railroads since 1971, during which period of time prices the railroads pay for new freight car equipment has more than doubled.

4. The Examiner concludes that the benefits resulting to the shipping public as a whole from the proposed increase in detention charges outweigh the possible hardships to individual shippers who may incur increased detention charges.

5. The Examiner takes official notice of the Commission's January 24, 1980, decision in Docket No. R-66, Sub 97, in which increases in regular demurrage charges identical to those proposed here were approved by the Commission. The Examiner is of the opinion, and so concludes, that the same or similar considerations apply to the shipment of pulpwood, wood chips, and wood products on which special detention charges apply as to shipments of other commodities on which general demurrage applies.

6. The Hearing Examiner further concludes that the rail common carriers, respondents herein, have carried their burden of proof showing that the proposed increases in special detention charges are just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That the orders of suspension in this docket be and the same are hereby vacated and set aside for the purposes of allowing the tariff schedules to become effective.

2. That publications authorized hereby may be made on ten (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 16th day of April 1980.

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 - Subsequent Changes in Rates and Charges	) ORDER ON RECONSIDERATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 19, 1979, at 10:00 a.m.

BEFORE: Commiscioner Edward B. Hipp, Presiding; and Commissioners Leigh H. Hammond, John W. Winters, and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

James L. Howe III, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013
For: Southern Railway System Lines in North Carolina and North Carolina railroads in general.

Albert B. Russ, Jr., Seaboard Coast Line Railroad Company, 3600 West Broad Street, Richmond, Virginia 23261

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 September 17, 1979, the Public Staff - North Carolina Utilities Commission, pursuant to G.S. 62-90, filed Exceptions to the Commission Order in this docket entitled "Order Allowing Rate Increase" and issued on August 17, 1979. The Public Staff also gave Notice of Appeal to the Court of Appeals and moved for reconsideration and further hearing under G.S. 62-80 and G.S. 62-90(c) before the full Commission.

On September 25, 1979, the Commission issued its Order setting the matter for further hearing and reconsideration before the full Commission.

The matter came on for oral argument as schedueld on October 19, 1979. The parties were presented and represented by counsel.

The Commission has carefully considered the exceptions, the argument of the parties thereon, and the entire record in this proceeding. The Commission is of the opinion that the Exceptions of the Public Staff should be overruled and denied and that the Order of August 17, 1979, should be reaffirmed.

It appears from the Exceptions and the oral argument that the thrust of the Public Staff's contentions was the variations in the increases on the various commodities and the failure of the railroads to offer evidence in support of these varying increases among the commodities. The Commission Order of August 17, 1979, found and concluded that the railroads carried the statutory burden of proof to show that their present rates and charges on intrastate operations were not sufficient to permit them to continue to offer adequate and efficient transportation service under these rates. The Order also concluded that the railroads showed the need for the additional revenues that the approved increases would produce and that the increases were not excessive. Upon consideration of the entire record in this docket, the Commission reaffirms these findings and conclusions and is of the opinion that the evidence supports these findings.

With respect to the varying increases on the different commodities: the Commission reaffirms its findings in the August 17, 1979, Order that the increases approved therein are just and reasonable. An examination of the record reveals that the railroad witnesses on cross-examination gave reasons for the variations in the increases among the commodities involved in this proceeding. The Commission is of the opinion, and so concludes, that the evidence is sufficient in this proceeding to support a finding that the varying increases approved were just and reasonable and were not discriminatory under G.S. 62-140.

IT IS, THEREFORE, ORDERED as follows:

1. That all of the Exceptions of the Public Staff filed September 17, 1979, be, and the same are hereby, overruled and denied.

2. That the Order of August 17, 1979, in this docket, be, and the same is hereby, reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of January 1980.

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

DOCKET NO. R-66, SUB 108

BEFORE THE NORTH CARCLINA UTILITIES COMMISSION

In the Matter of
Rail Common Carriers - Filing)
Proposing Increased Rates) ORDER GRANTING
Scheduled to Become Effective) RATE INCREASE
November 3, 1979)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602 on May 20, 1980, at 10:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and Douglas P. Leary

APPEARANCES:

For the Respondents:

Odes L. Stroupe, Jr., Hunton & Williams, P.O. Box 109, Raleigh, North Carolina 27602
For: The North Carolina Railroads in general, and Southern Railway Company and Norfolk Southern Railway Company in particular

James L. Howe, III, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013
For: The North Carolina Railroads in general, and Southern Railway Company and Norfolk Southern Railway Company in particular

Albert B. Russ, Jr., Seaboard Coast Line Railroad Company, 3600 West Broad Street, Richmond, Virginia 23261
For: The North Carolina Railroads in general, and Seaboard Coast Line Railway Company in particular

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: This docket was instituted by the filing by Southern Freight Tariff Bureau, 151 Ellis Street, NE, Atlanta, Georgia, of tariff schedules with this Commission on September 18, 1979, proposing to increase transportation rates on unmanufactured tobacco between points in North Carolina designated as follows:

Southern Freight Tariff Bureau, Unmanufactured Tobacco Tariff, ICC SFA 4968, Supplement 146 thereto, in full tc

the extent the North Carolina intrastate traffic is involved.

Said filing proposed an increase in the current rates on unmanufactured tobacco in North Carolina intrastate traffic by approximately 10%.

By Order dated December 21, 1979, the Commission suspended the proposed rates for a period of 270 days from their effective date, instituted an investigation, scheduled filing dates for testimony and set the hearing for May 1, 1980, at 10:00 a.m. Thereafter, the Public Staff intervened in this proceeding on behalf of the Using and Consuming Public.

On March 17, 1980, the Rail Common Carriers operating in North Carolina, by and through their counsel of record, filed a Motion in this Docket and Docket No. R-66, Sub 110 (involving rates on grain), asking among other things, that said two cases be heard the same day and evidence be filed the same day. This Commission, by Order dated March 20, 1980, set the time to file testimony in both proceedings on April 18, 1980, and scheduled the hearings in R-66, Subs 108 and 110, for the same day. On April 18, 1980, the North Carolina Rail Common Carriers filed the prepared testimony of Patrick J. Glennon, Francis M. Spuhler, and Floyd E. McClamrock. On May 9, 1980, the Public Staff of the North Carolina Utilities Commission filed the prepared testimony of James C. Turner.

At the outset of the hearing, the North Carolina Rail Common Carriers moved that Docket No. R-66, Subs 108 and 110, be combined for hearing purposes, and with no objection from the Public Staff, it was so ordered.

Patrick J. Glennon, Commerce Officer, Southern Railway System, Washington, D.C., testified that this filing arose as a result of Emergency Proceeding 224, dated December 16, 1977, proposing an increase from, to and within Southern Railway territory. The publication was made in Tariff ICC SPA 270-K, Sup. 122, effective March 24, 1978. Mr. Glennon further indicated that the North Carolina Utilities Commission subsequently rejected the increase for North Carolina intrastate traffic, and that thereafter publication was once again made in Tariff Supplement 146, dated September 28, 1979, seeking this increase effective November 3, 1979. Mr. Glennon further indicated that this tariff simply seeks to recover a portion of the previous exceptions made on leaf tobacco under Ex Parte 305-A and Ex Parte 330, but that subsequent increased operating costs, car acquisition costs, labor costs, etc., necessitated this effort to bring the North Carolina rates on tobacco up to a level which would approximate what they would have been had no exceptions or hold-downs been made in Ex Parte 305-A and 330.

Mr. Glennon went on to indicate that in 1979 Southern Railway handled 186 tobacco movements producing $80,711 in system revenue and that pursuant to his request, he had furnished movements to Mr. Spuhler representing 81% of Southern Railway's North Carolina traffic in this commodity with a request that Mr. Spuhler cost said movements. He further stated that it should be noted that Southern Railway's largest movement is from Fairmont to Brook Cove which movement represents approximately 37% of Southern's total tobacco traffic in North Carolina and the ratio of that particular movement's revenue to variable costs based on the present revenue levels is 90%, and only 75% when fully allocated. He further stated that with the proposed increase included, the ratios increase to 107% and 82%, respectively, for that movement. Mr. Glennon indicated that if the proposed increased rates become effective, approximately $10,504 of additional revenue to Southern Railway System will be produced.

Finally, Mr. Glennon indicated that the intrastate rail tobacco shipping market had been declining over the years and that now it accounts for only 8% of Southern's total tobacco traffic, and that in his opinion, the reason for this decline of freight was the fact that most of the hauls were short and the motor carriers were better able to handle these short hauls.

Floyd E. McClamrock, Assistant Manager-Commerce, The Family Lines System, corroborated Mr. Glennon's testimony and indicated that in this proceeding, the railroads were trying to improve their revenues and match the increases that were applicable to interstate traffic effective March 24, 1978. Finally, Mr. McClamrock indicated that the proposed rates would result in additional revenues of approximately $1,500 annually to The Family Lines System.

Francis M. Spuhler, Senior Cost Analyst, Research Department, Southern Freight Association, testified on behalf of the North Carolina Rail Common Carriers that he had developed variable and fully allocated costs for movements on unmanufactured tobacco within North Carolina, and that based on the representative movements the ratios of revenue to variable costs at present revenue levels ranged from 62% to 137%, resulting in a weighted average of 112%. He further indicated that the ratio must be above 100% before any contribution is made to fixed rail costs, and therefore, this range is very low. He stated that if the proposed increases are approved, the range of ratios of revenue to variable costs would be from 70% to 149% with a weighted average of 123%. Mr. Spuhler says that the ratios of present revenue to fully allocated costs range from 48% to 105%, and that if the proposed rate increases are approved, this range would be only 53% to 114%. He indicated that in his opinion, the proposed increase results in a revenue-cost ratio which is well within reason. Mr. Spuhler stated that in doing his revenue to cost study, he used representative movements, reflecting actual route

mileage, lading weights and type of equipment being used in the service, and that by using Rail Form A Cost Formula, specific service factors, by route, were applied to the unit costs of each railraod participating in the movement.

Finally, Mr. Spuhler stated that in his opinion, the present revenues of this commodity were not sufficiently above the variable costs of service for a given operation to contribute its fair share of nonvariable or constant costs, and thus causes the burden of these constant costs to fall upon other traffic.

James C. Turner, Transportation Supervisor, Accounting Division, Public Staff, North Carolina Utilities Commission, testified that at the time of the filing of the proposed tariff, the Public Staff objected to this increase proposal by virtue of the fact they had no data showing the amount of traffic and revenues, and that they were not aware of the compensativeness of the present unmanufactured tobacco rates being applied to the traffic involved. He further indicated that after the carriers filed testimony and exhibits in this proceeding on April 18, 1980, the Public Staff then became aware that the total additional revenues to be realized from this change would total about $12,000 for Southern Railway System and The Family Lines System, and the proposed rate change would result in ratios of revenues to fully allocated costs ranging from 53% to 114% which the Public Staff was not willing to say was unreasonable.

Finally, Mr. Turner indicated that it was the Public Staff's position that the evidence submitted by the railroads substantiated the increase sought in this proceeding.

Based on the testimony and exhibits presented at the hearing, and the entire record in this Docket, the Commission makes the following

FINDINGS OF FACT

1. The Rail Common Carriers participating in the tariff schedule under suspension in this proceeding are subject to regulation by this Commission with respect to the charges contained in said publications.

2. This proceeding involves a proposed 10% increase in the rates on unmanufactured tobacco shipments in North Carolina.

3. The revenues from unmanufactured tobacco moving in intrastate commerce in North Carolina represent a very, very small portion of North Carolina Rail Common Carriers' revenue and total traffic.

4. The Respondents' evidence, based on the representative movements of this traffic, intrastate in North Carolina, indicates that the ratio of present revenues

to present variable costs range from 62% to 137%, while the ratio of present revenue to fully allocated costs ranges from 48% to 105%. Respondents' evidence further indicates that under the proposed rates, revenue to variable cost ratios would range from 70% to 149%, while under the same proposed rates, the revenue to fully allocated costs ratio would range from 53% to 114%.

5. Respondent railroads have satisfied the statutory burden of proof in this proceeding to show that the proposed tariff schedule is just and reasonable, and that there is a need by the Respondents for the increase proposed in the tariff schedule.

CONCLUSIONS

The Commission finds and concludes that the tariff schedule increase proposed herein by the Respondents on unmanufactured tobacco is just and reasonable and that there is a need by the Respondents for the increase proposed in such tariff schedule. In so deciding the Commission notes, among other things, the following: The North Carolina shipments of unmanufactured tobacco by the Respondents represent a very, very small portion of the North Carolina intrastate total revenues and total traffic. It is further noted that the present revenue to cost ratios for the representative shipments involved in this tariff indicate that a reasonable contribution to fully allocated costs is not being made. Also, with regard to the revenue to costs ratios under the proposed tariff, this Commission concludes that the range of such is not unreasonable and neither is the contribution said rate makes to fully allocated costs.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order of Suspension in this Docket dated December 21, 1979, be, and the same is hereby, vacated and set aside for the purposes of allowing the tariff schedule to become effective.

2. That the publication authorized hereby may be made on five (5) days' notice to the Commission and to the public, but in all other respects, shall comply with the Rules and Regulations of the Commission governing construction, filing, and posting of tariff schedules.

3. That upon publication hereby authorized and having been made, the investigation in this matter be discontinued and this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of July 1980.

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

DOCKET NO. R-66, SUB 108

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rail Common Carriers - Filing)
Proposing Increased Rates Scheduled) AMENDED ORDER
to Become Effective November 3, 1979)

BY THE COMMISSION: On July 25, 1980, the Commission issued an "Order Granting Rate Increase" which approved a proposed tariff increase for shipments of unmanufactured tobacco, and authorized publication of the approved tariff on five (5) days' notice. Upon being advised that the 270-day suspension period allowed by G.S. 62-134 expires on July 30, 1980, and that due to a delay in receipt of the Commission Order, the Southern Freight Tariff Bureau will not publish the tariff until July 30, 1980, the Commission concludes that the Order should be amended to allow publication on one day's notice so that the effective period of suspension will not exceed 270 days.

IT IS, THEREFORE, ORDERED that the "Order Granting Rate Increase" be, and hereby is, amended to allow publication on one (1) day's notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of July 1980.

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

DOCKET NO. R-66, SUB 109

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rail Common Carriers - Suspension and Investigation of Proposed Increase in Rates and Charges (S-368-A), Scheduled to Become Effective December 18, 1979	) ORDER ALLOWING) RATE INCREASE)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, April 1, 1980, at 10:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and Douglas P. Leary

APPEARANCES:

For the Respondents:

Odes L. Stroupe, Jr., Hunton & Williams, 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., Seaboard Coast Lines Railroad Company, P.O. Box 27581, Richmond, Virginia 23261

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, 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 November 26, 1979, for and on behalf of Rail Carriers in North Carolina, Application S-457 seeking permission to publish Supplement S-9 to Tariff of Increased Rates and filing a Tariff Schedule proposing a general increase varying by commodities but predominating with an increase of 6.4% in rates and charges applicable on North Carolina intrastate rail shipments scheduled to become effective on North Carolina intrastate traffic on December 18, 1979, and

further incorporating into said Tariff Schedule North Carolina intrastate fuel surcharges of 1.2%, 1.4%, and 2.1%. Said Tariff was designated as follows:

Southern Freight Tariff Bureau Tariff of Increased Rates and Charges I-368-A, Supplement No. S-9, thereto in full.

The Commission, being of the opinion that this was a matter affecting the public interest, concluded that the Application to grant publication of the Supplement should be allowed and by Order dated December 17, 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 May 15, 1980, at 10:00 a.m.

On November 26, 1979, the rail carriers prefiled the testimony of five witnesses. Notice of Intervention was filed in this Docket by the Public Staff on February 13, 1980. On March 21, 1980, the Public Staff prefiled the testimony of one witness and filed Motions to Compel Production of Data, for Extension of Time to File Testimony and a Continuance of the Hearing, or as an alternative to dismiss the application. On March 27, 1980, Southern Railway and Norfolk Southern Railway filed a reply to that motion.

On March 31, 1980, the Commission issued an Order denying the Motion to Continue and setting the remaining Motions for Oral Argument at the hearing at the time and place scheduled.

At the hearing, the Respondents offered the testimony of the following witnesses: H.P. Stewart, Assistant Director, Commerce Marketing Services Department, Southern Railway System; Brooks H. Gordon, Manager-Commerce, Seaboard Coast Line Railroad Company; R.A. Robb, Commerce Statistician, Southern Railway System; Ronald G. Butler, Senior Economic Analyst, Seaboard Coast Line Railroad Company; and Hartley W. Bird, Manager-Research Department, Southern Freight Association.

The Public Staff presented the testimony of the following witness: D.A. Poole, Staff Accountant, Public Staff Accounting Division.

Mr. Stewart, in his testimony, recounted the various phases through which the increased tariff went prior to its filing with this Commission. He pointed out that on July 26, 1979, a Petition and verified statements were filed with the Interstate Commerce Commission, by the nation's rail carriers requesting permission to file a tariff increasing freight rates and charges by, among other things, 6.4% within Southern territory. He further indicated that rate

adjustments above and below the 6.4% were proposed on some commodities with an effective date requested as of October 1, 1979. Mr. Stewart further indicated that the railroads filed the aforesaid Petition with the Interstate Commerce Commission and the present Application with the North Carolina Utilities Commission seeking additional revenue to cover increased operating costs and to prevent any further decline in the railroads' overall financial condition. Mr. Stewart also indicated that on September 19 the Interstate Commerce Commission authorized the carriers to incorporate into their Master Increase Tariff in this particular Petition the full amount of the fuel cost pass through authorized in Ex Parte 311. On October 5, 1980, the Commission served its Order authorizing the increase to be effective October 15, 1979, on interstate freight. Mr. Stewart further indicated that the Interstate Commerce Commission found that the proposed 6.4% increase in rates and charges was consistent with the anti-inflation guidelines of the Council on Wage and Price Stability. Mr. Stewart further went on to indicate that the underlying causes for the railroads' need for additional revenue stemmed from the fact that labor and material costs have increased at a much higher rate than earnings and that capital outlays must be kept continuous and at a high level to keep the rail carriers' plants and equipment in good running order. Mr. Stewart went on to indicate the extent of Southern Railway's economic activity and investment in North Carolina, along with the miles of track operated within this State. Mr. Stewart indicated that based on the record of past increases in North Carolina intrastate rates, he did not believe that the increase, if authorized, would divert traffic to other modes and that in fact, he believed the traffic would continue to grow along with the railroads' ability to provide good service. Mr. Stewart further indicated by referring to his late-filed Exhibit C, that 71.04% of the commodities in North Carolina intrastate commerce subject to the rate increases under this tariff are at the 6.4% increase level, while 28.96% are either above or below said 6.4% with a high of 9.4% increase and a low of 1.4% increase. Further, based on Mr. Stewart's late-filed Exhibit D, Mr. Stewart showed a comparison of interstate traffic for North Carolina and intrastate traffic for North Carolina for the calendar year 1979, which updated his previous Appendix B to his testimony. Finally, Mr. Stewart estimated the effect of the increase on the revenues of Southern Railway for North Carolina intrastate traffic to be additional revenues of approximately $926,000. Mr. Stewart explained that the fuel surcharge application in this proceeding is a result of the fact that the 368-A tariff proposes to include, as a part of the tariff rather than as surcharges, those fuel charges which the North Carolina Utilities Commission had authorized at the time of the filing of the Application, and that the Rail Common Carriers were not asking for any additional increases because of these fuel increases, but in fact, this was just a tariff simplification which had already been granted in the Master Tariff filed with the Interstate Commerce Commission and

would make the North Carolina tariff consistent with the Interstate Master Tariff.

Brooks H. Gordon of Seaboard Coast Line Railroad Company also recounted the history of this increase as it evolved through the Interstate Commerce Commission, corroborating Mr. Stewart's 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 North Carolina railroads are seeking the increased revenues on North Carolina intrastate traffic to avoid any deterioration of the financial position of the railroads inasmuch as that had a direct relationship to the ability of the railroads to serve the public. As with Mr. Stewart, Mr. Gordon detailed the extent of investment by Seaboard Coast Line Railroad Company in North Carolina and the number of miles of track operated and he indicated that in his opinion this increase, if allowed, would not cause a diversion of traffic to other modes of transportation. Finally, Mr. Gordon indicated that Seaboard Coast Line Railroad Company and Clinchfield Railroad Company would increase their revenue from North Carolina intrastate traffic by approximately $1.1 million if said increased rates and charges are allowed.

The Respondents presented testimony through R. A. Robb of Southern Railway Company and Ronald G. Butler of Seaboard Coast Line Railroad Company. These witnesses presented the intrastate North Carolina revenues, expenses, rents, taxes, investment, and rates of return for Southern Railway Company, Norfolk Southern Railway Company, Seaboard Coast Line Railroad Company, and Clinchfield 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. Certain modifications had been made according to Mr. Robb which were incorporated into the formula used in the last general rate increase request, Docket No. R-66, Sub 102, in 1979, and Mr. Robb stated that the modifications included an improvement whereby the use of an effective tax rate to separate federal income taxes, were incorporated in order to provide a more fair allocation of this expense. Based on the separation formula, Mr. Robb determined that the combined North Carolina intrastate operations of Southern Railway Company and its wholly owned affiliate, Norfolk Southern Railway Company, for the year ending June 30, 1979, produced a $428,00 deficit in net railway operating income. Mr. Robb further updated his North Carolina approximate intrastate operating results in his late-filed Exhibit C for the calendar year 1979 and showed an increased $537,000 deficit in net railway operating income for Southern Railway Company and Norfolk Southern Railway Company. Mr. Butler testified that the Seaboard

Coast Line's 1978 North Carolina intrastate operations produced a 3.15% rate of return.

Mr. Butler and Mr. Bobb indicated, respectively, that the North Carolina approximate net railway investment for their respective railroads was $21,914,000 and $16,054,000; or a total of $37,968,000.

Mr. Hird presented evidence relating to the recent increases in cost of doing business by the railroads operating in North Carolina, and as to these railroads, the need generally for improved earnings. Mr. Hird indicated, as did Mr. Stewart, that this request on North Carolina intrastate traffic is comparable to an increase designated by the Interstate Commerce Commission as Ex Parte 368 which was filed with that Commission on July 26, 1979, and which became effective on October 15, 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 102, Ex Parte 357) amounted to $107.8 million which was 6.0% of their overall freight revenues. Mr. Hird emphasized the fact that the increase was not based on any cost escalations incurred after July 1, 1979, except with regard to "other materials" which was indexed through the period October 1, 1979. Mr. Hird further emphasized that his costs as projected in his tables and exhibits to his written testimony were understated because they did not account for all the expected increases in costs which would take place between the date of the calculations and the effective date of this present proposal as initially filed with the Interstate Commerce Commission. Mr. Hird, in his work tables "A" through "G", detailed the components of the items representing the $107.8 million cost escalation. He offered testimony and exhibits reflecting a listing of all Class 1 and Class 2 railroads, switching and terminal companies operating within this State, the total miles of line operated by these railroads, and the proportion percentage of such mileage operated in this State. 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 Southern Railway Company and Seaboard Coast Line Railroad Company. He indicated that the data for these two Class 1 railroads is representative of the railroad 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 1978 the rate of return on net investment as realized by the principal Class 1 North Carolina railroads was a substandard 7.59% 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

353, that 10.6% for the railroads' cost of capital is a necessary rate of return on net investment. Mr. Hird also discussed other financial indicators such as: percent of revenues carried down to the net operating income; cash flow; long-term debt sources; and application of working capital and ratio of assets to liabilities.

Finally, Mr. Hird emphasized the capital intensive nature of the railroad industry and pointed to the particular need of the railroads to generate large amounts of capital annually just to replace worn out plant and equipment.

Mr. Poole testified that it was the Public Staff's position that a 1.1% additional fuel surcharge granted by this Commission on March 11, 1980, should also be rolled into the present tariff effectively zeroing the fuel surcharge. He further indicated that it was the Public Staff's recommendation that the present fuel surcharge report be modified from the Public Staff's previous recommended form and that it be filed on a monthly basis by the rail carriers rather than updating when a fuel surcharge increase is applied for and as previously proposed by the Public Staff and approved by this Commission.

At the conclusion of the hearing, the Public Staff renewed its Motion to Dismiss the rail carriers' case on the grounds that they had not complied with the Public Staff Data Request and the rail common carriers opposed said Motion and pointed out the extent and nature of the data which was, in fact, furnished.

Based on the testimony given, the exhibits presented, and the evidence adduced, the Commission makes the following

FINDINGS OF FACT

1. 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. 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. The motion of the Public Staff to dismiss the application of the rail carriers in this proceeding should be denied.

4. The approximate rateable fair value of the portion of the railroad property used and useful and devoted to intrastate traffic in North Carolina is $37,968,000.

5. The intrastate rates and charges currently in effect in North Carolina rail traffic are not sufficient to produce revenue adequate to provide the railroads a fair, reasonable, and just rate of return on the North Carolina investment devoted to intrastate use and used and useful in producing revenue. Southern and Norfolk Southern experienced a net railway operating deficit for the year 1979. Seaboard for its test year had only a 3.15% return on investment on its intrastate operations.

6. 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 the North Carolina investment.

7. 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.

8. Inflation in many phases of intrastate common carrier operations has adversely affected the operating results of the railroads.

9. Seventy-one percent (71%) of the commodities in North Carolina intrastate commerce subject to the rate increases under the proposed tariff are at the 6.4% increase level, while 28.9% are either above or below the 6.4% increase with a high of 9.4% increase and a low of 1.4% increase. Those commodities above or below the 6.4% increase, and the reasons therefor, include furniture, grain and grain products, and canned goods; these exceptions to the 6.4% increase were proposed in order to improve the utilization of the railroads' equipment (furniture, canned goods) and to meet the problem of a continuing shortage of equipment (grain and grain products).

10. The common carriers participating in the tairff 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 Interstate Commerce Commission in Ex Parte 368, as amended.

11. The proposed roll-in of the fuel surcharges in effect at the time of the filing of this Application, paralleling Ex Parte 311, is reasonable, necessary and convenient, while the roll-in of the additional 1.1% fuel surcharge increase granted subsequent to the filing of the aforesaid Application is not deemed reasonable, necessary or convenient and, in fact, would consequently make said tariff schedule differ from the Ex Parte 368 Tariff filed with the Interstate Commerce Commission, and consequently, could well

be confusing to shippers while resulting in no real benefit to them in cost savings.

12. The present procedure with respect to the reporting of fuel costs by the railroads, which requires the submission of fuel reports with an application for a fuel surcharge increase rather than submission on a monthly basis, is sufficient; and the Orders of the Commission, dated December 17, 1979, eliminating the monthly fuel reporting requirement is reaffirmed. (Docket No. R-66, Subs 104, 105, 106, and 107)

CONCLUSIONS

1. The Motion of the Public Staff to dismiss this Application is hereby denied.

2. 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 and operating expenses, and thereafter, requiring this Commission to fix a rate of return on the fair value of the property as will enable the public utility, by sound management, to produce a fair profit for its stockholders, considering changing economic conditions and other factors as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers and the territory covered by its franchises and to compete in the market for capital funds which are reasonable and which are fair to its customers and which are fair to existing investors.

The railroads in this proceeding have carried the statutory burden of proof to show by material and substantial evidence that the 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.

3. 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.

4. The Commission concludes that the rolling in to the Tariff of the fuel surcharges authorized by this Commission prior to the filing of the present Application is reasonable, convenient and necessary while the rolling in of the 1.1% fuel surcharge authorized by this Commission on the 11th day of March 1980 is not reasonable under the circumstances, would differ from the interstate tariff, and might result in confusion among shippers.

5. While the Commission does not conclude that the form and method used in making the separation in this case reflects 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 of 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.

6. 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 earnings sufficient to give reasonable service.

7. 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.

8. The Commission also concludes that the present method of reporting fuel cost increases by the railroads is sufficient and that there has been no substantial changes in the operations of the railroads which would require reporting on a monthly basis.

IT IS, THEREFORE, ORDERED:

1. That the Order of Suspension in this Docket dated the 15th day of December 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 368.

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 authorized hereby having been made, this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of June 1980.

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

DOCKET NO. R-66, SUB 110

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rail Common Carriers - Proposed Increases in Rates on Grain Between Points in North Carolina Scheduled to Become Effective January 5, 1980	) ORDER GRANTING) RATE INCREASE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602 on May 20, 1980, at 10:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and Douglas P. Leary

APPEARANCES:

For the Respondents:

Odes L. Stroupe, Jr., Hunton & Williams, P.O. Box 109, Raleigh, North Carolina 27602
For: The North Carolina Railroads in general, and Southern Railway Company and Norfolk Southern Railway Company in particular

James L. Howe, III, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013
For: The North Carolina Railroads in general, and Southern Railway Company and Norfolk Southern Railway Company in particular

Albert B. Russ, Jr., Seaboard Coast Line Railroad Company, 3600 West Broad Street, Richmond, Virginia 23261
For: The North Carolina Railroads in general, and Seaboard Coast Line Railway Company in particular

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: This Docket was instituted by the filing by Southern Freight Tariff Bureau, 151 Ellis Street, NE, Atlanta, Georgia, of tariff schedules with this Commission proposing to increase transportation rates on grain between points in North Carolina and designated as follows:

Southern Freight Tariff Bureau (Southern Freight Tariff Association, Agent), Freight Tariff SFA 4017, Supplement No. 224-A, on behalf of rail carriers operating in North Carolina.

Said filing proposed an increase in the current rates on grain in North Carolina intrastate traffic by 5% on untransited movements and 10% on transited movements as reflected in Item 1.52B of Supplement 198 thereto.

On December 13, 1979, a letter of protest was received from Holly Farms Poultry Industries, Inc.; however, said letter of protest was withdrawn by letter on May 6, 1980. A letter of protest was also received on December 18, 1979, from Ralston Purina Company. However, again a letter of withdrawal was received by this Commission on March 31, 1980. By Order dated January 3, 1980, the Commission suspended the proposed rates for a period of 270 days from their effective date, instituted an investigation, ordered that the Public Staff Data Request be complied with, scheduled filing dates for testimony, and set the hearing date for May 20, 1980, at 10:00 a.m. Thereafter, the Public Staff intervened in this proceeding on behalf of the Using and Consuming Public.

On March 17, 1980, the Rail Common Carriers operating in North Carolina, by and through their counsel of record, filed a Motion in this Docket and Docket No. R-66, Sub 108 (involving rates on unmanufactured tobacco), asking, among other things, that said two cases be heard the same day and evidence be filed the same day. This Commission, by Order dated March 20, 1980, set the time to file testimony in both proceedings on April 18, 1980, and scheduled the hearings in R-66, Subs 108 and 110, for the same day.

On April 18, 1980, the North Carolina Rail Common Carriers filed the prepared testimony of Patrick J. Glennon, Francis M. Spuhler, and Floyd E. McClamrock. On May 9, 1980, the Public Staff of the North Carolina Utilities Commission filed the prepared testimony of James C. Turner.

At the outset of this hearing, the North Carolina Rail Common Carriers moved that Docket R-66, Subs 108 and 110, be combined for hearing purposes, and with no objection from the Public Staff it was so ordered.

Patrick J. Glennon, Commerce Officer, Southern Railway System, Washington, D.C., testified that this filing arose as a result of SFA Emergency Proposal 213 dated December 16, 1977, whereby publication was made in Tariff ACC SFA 4017, Supplement 171, effective July 28, 1978. He further indicated that the North Carolina Utilities Commission subsequently rejected the increase for the North Carolina Intrastate Traffic under Docket No. R-66, Sub 91, on September 8, 1978. Thereafter, publication was once again made in Tariff ICC SFA 4017, Supplement 224-A dated January 5, 1980, seeking this increase effective January 5, 1980.

Mr. Glennon further indicated that only selected rates in the tariff for ICC SFA 4017 are to be increased, and that as a matter of fact, over 99% of North Carolina's grain traffic moves under rates not involved in this proceeding. In summary, Mr. Glennon indicated that point-to-point rates on grain and grain products would be affected but that most of these rates were now obsolete; that Items 65695.02 through 65697.38 - Scale on Feeding Tankage - was involved, but that there were no movements under this Item; that Items 119460 through 119638, which were rarely used, was applicable only when no other rates could be found in Sections 1 through 5. He further indicated that grain, soybean meal and feed were all moving under publications not subject to this increase. Mr. Glennon stated that on almost all of the proposed increases, the shipper could take advantage of the lower charges by using Item 65713 which encourages heavier loading on a reduced rate, and that for the representative movements in North Carolina of this traffic which represented over 90% of the 1979 North Carolina traffic subject to the increase, only the Wilson to Raleigh movement detailed therein would not produce lower charges by using Item 65713.

Mr. Glennon further indicated that in looking at the variable cost-to-revenue ratios of these representative movements, one sees very quickly that the rates presently applicable are not compensatory. Finally, Mr. Glennon indicated that if the proposed increase became effective, Southern Railway Company would gain $1,768 additional revenue at the current X-311-A level.

Floyd E. McClamrock, Assistant Manager-Commerce, The Family Lines System, corroborated Mr. Glennon's testimony, and indicated in this proceeding that the railroads were trying to improve their revenues and match the increases that were applicable to interstate traffic effective July 28, 1978. Finally, Mr. McClamrock indicated that the proposed rates would result in additional revenue of $3,100 to The Family Lines System.

Francis M. Spuhler, Senior Cost Analyst, Research Department, Southern Freight Association, testified on behalf of the North Carolina rail carriers that he had developed variable and fully allocated costs for movements of grain and grain products in closed equipment moving within North Carolina, and that based on the representative movements furnished to him by Southern Railway System and The Family Lines System, the ratios of revenue to variable costs based on present revenue levels ranged from 125% to 157%. He further indicated that it should be noted that the ICC has found, on numerous occasions, that rates well above 180% of variable costs were not unreasonable. Mr. Spuhler further stated that based on the representative movements furnished to him, the revenue to fully allocated costs ratio ranged from 96% to 121% under the present rates, and if the proposed rates are approved, the range would be from 106% to 124%. Again, he indicated that in his opinion, these figures are not unreasonable from a revenue-cost standpoint.

Mr. Spuhler stated that in doing his revenue-to-cost study, he used representative movements, reflecting actual route mileage, lading weights, and type of equipment being used in the service and that by using 1977 Rail Form A Cost Formula, specific service factors, by route, were applied to the unit costs of each railroad participating in the movement. Finally, Mr. Spuhler stated that in his opinion, the present revenues for this commodity were not sufficiently above the variable costs of service for a given operation to contribute its fair share of nonvariable or constant costs, and thus, causes the burden of these constant costs to fall upon other traffic.

James C. Turner, Transportation Supervisor, Accounting Division, Public Staff, North Carolina Utilities Commission, testified that at the time of the filing of the proposed tariff, the Public Staff objected to this increase proposal by virtue of the fact they had no data showing the amount of traffic and revenues and that they were not aware of the compensativeness of the present grain rates being applied to the traffic involved. He further indicated that after the carriers filed testimony and exhibits in this proceeding on April 18, 1980, the Public Staff then became aware that the total additional revenues to be realized from this change would total about $4,800 for Southern Railway System and The Family Lines System, and that the proposed rate change would result in ratios of revenues to fully allocated costs ranging from 106% to 134% which the Public Staff was not willing to say was unreasonable. Finally, Mr. Turner indicated that it was the Public Staff's position that the evidence submitted by the railroads substantiated the increase sought in this proceeding.

Based on the testimony and the exhibits presented at the hearing, and the entire record in this Docket, the Commission makes the following

FINDINGS OF FACT

1. The Rail Common Carriers participating in the tariff schedules 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 publications.

2. This proceeding involves a proposed 5% to 10% increase in the rates on certain shipments of grain in North Carolina.

3. Well over 90% of grain moving by rail in North Carolina intrastate traffic is not subject to this increase.

4. The Respondent's evidence, based on the representative movements of this traffic intrastate in North Carolina, indicates that the ratio of present revenues to variable costs range from 125% to 157%, while this same present ratio of present revenue to fully allocated costs

ranges from 96% to 121%. Respondent's evidence further indicates that under the proposed rates, revenue-to-variable-cost ratios would range from 139% to 175% while under the same proposed rates the revenue-to-fully-allocated-costs ratio would range from 106% to 134%.

5. Respondent Railroads have satisfied the statutory burden of proof in this proceeding to show that the proposed tariff schedule is just and reasonable and that there is a need by the Respondents for the increase proposed in the tariff schedule.

CONCLUSIONS

The Commission finds and concludes that the tariff schedule increase proposed herein by the Respondents on grain is just and reasonable and that there is a need by the Respondents for the increase proposed in such tariff schedule. In so deciding, the Commission notes, among other things, the following: well over 90% of all grain shipped intrastate in North Carolina is not subject to the increase proposed above. It is further noted that the present revenue-to-cost ratios for the representative shipments involving this tariff indicate that a reasonable contribution to fully allocated costs is not being made. Also, with regard to the revenue-to-cost ratios under the proposed tariff, this Commission concludes that the range of such is not unreasonable and neither is the contribution said rate makes to fully allocated costs.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order of Suspension in this Docket dated January 3, 1980, be, and the same is hereby, vacated and set aside for the purposes of allowing the tariff schedule to become effective.

2. That the publication authorized hereby may be made on five (5) day's notice to the Commission and to the public, but in all other respects shall comply with the rules and regulations of the Commission governing construction, _iling, and posting of tariff schedules.

3. That upon publication hereby authorized and having been made, the investigation in this matter be discontinued and this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of July 1980.

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

DOCKET NO. R-66, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Emergency Fuel Surcharge for) ORDER APPROVING
Transportation by Rail Carriers in) ADDITIONAL
North Carolina Intrastate Commerce) SURCHARGE

BY THE COMMISSION: On February 8, 1980, the Commission received a petition filed by James L. Howe III, General Attorney, Southern Railway System, P.O. Box 1808, Washington, D.C. 20013, for and on behalf of the intrastate rail carriers seeking an additional increase of 1.1% in the current fuel surcharge. Statement in support of this increase was filed by J.K. Hoza, Research Analyst, employed by Southern Freight Association.

FINDINGS OF FACT

1. Fuel surcharges previously granted by this Commission to the rail common carriers currently total 3.5%.

2. Fuel costs are continuing to escalate beyond the control of the transportation industry, this Commission, and the using and consuming public.

3. From September 16, 1979, to January 7, 1980, costs per gallon of fuel have risen 9.3 cents for the intrastate rail carriers.

4. Based upon '378 fuel consumption levels, a fuel price increase of 9.39 cents per gallon would require a 1.4% increase in revenues to offset the increased fuel costs incurred from September 16, 1979, to January 7, 1980.

5. Based upon supporting data filed with the petition, it appears reasonable that an additional 1.1% fuel surcharge on transportation revenue will accomplish a pass through of fuel costs on a dollar-for-dollar basis for the intrastate rail carriers.

CONCLUSIONS

1. The Commission concludes that the rail carriers transporting North Carolina intrastate traffic have continued to experience increases in the cost of fuel since September 16, 1979.

2. A surcharge of 1.1% will provide a dollar-for-dollar pass through of the increased fuel costs being incurred. The Commission concludes that this surcharge is just and reasonable and should be approved.

3. The granting of the instant fuel surcharge increase is viewed by this Commission as permitting interim relief because this Commission has assigned for hearing on April 1,

1980, a general rate increase application by the North Carolina rail carriers referred to as X-368 and docketed by this Commission as R-66, Sub 109. This general application proposes to incorporate the fuel surcharge into the conversion table rate base. In Docket No. R-66, Sub 104, the Commission granted a 1.2% general rate increase to the intrastate rail carriers by Order dated July 24, 1979.

4. The Commission is concerned about the adequacy of the present fuel surcharge reports being filed by the rail carriers when seeking an additional fuel surcharge. A hearing date has already been set by the Commission to view both the general increase application in Docket No. R-66, Sub 109, and the request to incorporate the current fuel surcharges into the conversion table rate base. The Commission concludes that the adequacy of the fuel report form used by the rail carriers should be a matter for consideration in Docket No. R-66, Sub 109.

IT IS, THEREFORE, ORDERED:

1. That the additional fuel surcharge of 1.1% is hereby approved as interim rate relief and allowed to become effective March 12, 1980, as scheduled.

2. That the adequacy of the present fuel surcharge report filed by the North Carolina rail carriers should be and hereby is made a part of the Docket No. R-66, Sub 109, general rate proceeding.

3. That any recommendations for revising the present fuel surcharge report shall be filed with the Commission on or before May 20, 1980, in Docket No. R-66, Sub 109.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of March 1980.

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

DOCKET NO. R-5, SUB 262
DOCKET NO. T-1977

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Temporary Suspension of Operating Authority Conferred by Certificate No. R-5 as Requested by the Trustee of REA Express, Inc., 141 East 44th Street, New York, New York 10017	)	
and	)	FINAL ORDER
Sale and Transfer of Common Carrier Certificate No. R-5 From the Trustee in Bankruptcy of REA Express, Inc., to Central Transport, Inc., d/b/a CT Transport. 34200 Mound Road, Sterling Heights, Michigan 48077	)	

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, March 19, 1980, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp, Sarah Lindsay Tate, Leigh H. Hammond, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Applicants:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, P.O. Box 527, Raleigh, North Carolina 27602
For: Central Transport, Inc., d/b/a CT Transport, Trustee of REA Express, Inc., Bankrupt

For the Protestants:

Thomas W. Steed, Jr., Joseph W. Eason, Allen, Steed and Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27602
For: Estes Express Lines, Fredrickson Motor Express Corporation, Overnite Transportation Company, Standard Trucking Company, Thurston Motor Lines, Old Dominion Freight Lines, Bruce Johnson Trucking Company, Inc., and Blue Ridge Trucking Company

BY THE COMMISSION: On January 18, 1980, a Recommended Order was entered in Docket No. T-1977 approving the transfer of Certificate No. R-5, together with the operating authority set forth therein, from REA Express, Inc., Bankrupt, to Central Transport, Inc., d/b/a CT Transport.

Prior to the issuance of the Recommended Order, on November 13, 1979, counsel for Protestants in this docket filed a Petition and Motion For Reconsideration And Rescission Of Temporary Suspension Orders and on November 27, 1979, Applicants' counsel filed a Response thereto. Decision on said Petition and Response in Docket No. R-5, Sub 262, was deferred pending the final determination of the matters in Docket No. T-1977 by Commission Order dated December 17, 1979.

By Order in these dockets dated February 15, 1980, the Commission assigned Protestants' Exceptions to the Recommended Order for oral argument before the Commission and consolidated therewith for hearing the Petition and Response filed in Docket No. R-5, Sub 262.

Upon call of the matters for hearing at the time and place noted above, counsel on behalf of both Applicants and Protestants were present and offered oral arguments.

Upon a review of the entire record in these proceedings, including the Exceptions filed herein, and after consideration of the able arguments of counsel on behalf of the involved parties, and of the Commission's official files in these dockets, the Commission makes the following

FINDINGS OF FACT

1. That REA Express, Inc., holds Certificate No. R-5 issued by this Commission and by the application filed herein, authority is sought for the sale and transfer of said Certificate to Central Transport, Inc., d/b/a CT Transport.

2. That Certificate No. R-5 authorizes the transportation of general commodities with certain restrictions which generally limit such service to that originally handled by rail.

3. That the original and traditional service handled by REA Express, Inc., and its predecessor Railway Express Agency, Incorporated, was the maintenance of express offices at railway stations and the providing for express shipments of commodities moving between such offices by passenger trains which operated on schedules and enabled REA to render an expeditious or "express" service. With the decline of railroad service in the State, REA found it necesary to apply to the Commission for authority to substitute its own over-the-road truck service in the handling of its express between certain points. This Commission has granted such authority from time to time, on the basis that such authority involved no new service or change in the manner of operation other than to substitute over-the-road truck service in lieu of rail service. Limitations and restrictions were imposed in most cases upon the grant of such substituted motor carrier service to provide that the

service would be restricted to service auxiliary to and supplemental of the express service handled by REA. By 1968, REA had discontinued all of its use of rail service and all of its intrastate traffic in North Carolina moved by truck pursuant to its Certificate No. R-5.

4. That prior to November 6, 1975, REA had actively operated under its Certificate in the transportation of general commodities, primarily in the small shipment range, and provided a pick-up and delivery service in several hundred North Carolina towns through terminals located at Charlotte, Greensboro, Kinston, Raleigh, and Wilmington, North Carolina, and at Greenville, South Carolina, and Norfolk, Virginia.

5. That in February 1975, REA filed in the United States District Court, Southern District of New York, a petition to operate as a debtor in possession and on November 6, 1975, was adjudicated bankrupt by that Court and a Trustee in Bankruptcy appointed. Within days the Trustee placed an embargo against further transportation operations by REA except for delivery of express shipments which had been tendered to REA prior to the embargo. REA has conducted no intrastate transportation operations in North Carolina since November 6, 1975, nor held itself out to perform such operations since that date.

6. Since adjudication of bankruptcy, the Trustee has liquidated the assets of REA and all motor carrier equipment and terminal facilities, including those used in its North Carolina intrastate operations, have been sold except in certain few instances where the assets are under litigation.

7. In November of 1977, REA, through counsel, requested from this Commission a suspension of operations under its Certificate No. R-5 which suspension was granted until December 31, 1978, by order of the Commission issued on December 6, 1977, in Docket No. R-5, Sub 262. In December 1978, REA, through counsel, requested a further suspension of operations under its Certificate which was granted until December 31, 1979, by Order of the Commission dated January 3, 1979, issued in the same docket. During the conduct of the hearing in this matter, the Hearing Examiner continued the suspension of operations under Certificate No. R-5 for the duration of the proceedings before the Commission.

8. That with approval of the Bankruptcy Court, the trustee for REA in the latter part of 1978 and early part of 1979 sold the operating authorities of REA at public auction. REA's North Carolina intrastate authority in its Certificate No. R-5 was sold to Central Transport, Inc., for the sum of $500.00.

9. That Central Transport, Inc., which would do business under the name of CT Transport in North Caroilna,

under its own authority and through its affiliated companies, operates as a common carrier of general commodities in interstate commerce in several states and also holds intrastate general commodity authority in the States of Illinois, Indiana, Michigan, and Ohio. Central Transport, Inc., holds no North Carolina intrastate authority. Initial operations of the company in North Carolina, if the transfer is allowed, would be performed through terminals at Charlotte and Greensboro, and the company proposes to provide a general commodity pick-up and delivery service through the State and otherwise operate as a motor carrier of freight, except it will not interline intrastate freight.

10. That as of June 30, 1979, Central Transport, Inc., had total assets of $27,151,000 and total liabilities of $8,491,363 and that for the six months ending June 30, 1979, it had freight revenues of approximately $55 million.

11. That all of the Protestants are common carriers of property by motor vehicle authorized to transport and actively engage in the transportation of general commodities in intrastate commerce between points and places in North Carolina as authorized by their respective franchise certificates issued by this Commission. The geographical scope of Certificate No. R-5 substantially duplicates the scope of the operating authority held by each of the Protestants and the transportation operations now being conducted by the Protestants include the type of transportation operations proposed to be conducted by CT Transport if the application is granted. None of the Protestants are experiencing full utilization of their equipment and facilities in North Carolina and a resumption of transportation operations under Certificate No. R-5 by CT Transport would divert intrastate traffic and revenues from these Protestants.

Based upon the aforesaid findings of fact, the Commission reaches the following

CONCLUSIONS

That this application seeking approval of the sale of operating authority is governed by the provisions of G.S. 62-111 which provides:

> "(a) No franchise now existing or hereafter issued under the provisions of this Chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the

above provisions shall not apply to regular trading in listed securities on recognized markets.

"(e) The Commission shall approve applications for transfer of motor carrier franchise made under this section upon findings that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of the filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)."

The first statutory criteria which must be determined is whether or not the sale of authority is "justified by the public convenience and necessity" within the meaning of G.S. 62-111(a). In State Ex. Rel. Utilities Commission v. Associated Petroleum Carriers, 7 N.C. App. 408, 173 S.E. 2nd 25 (1970), the North Carolina Court of Appeals reiterated the long-standing interpretation of "public convenience and necessity" in transfer cases first enunciated by this Commission in In Re Comer Transport Service, N.C.U.C. Docket No. T-821, Sub 2 (reported in 54 N.C.U.C. Reports 266 (1965)):

"The Commission in effect interpreted the criteria `if justified by the public convenience and necessity' in G.S. 62-111(a) to be a statutory basis for the test of dormancy. Where the authority has been abandoned or `dormant, the Commission has denied applications for transfer because approval would in effect be the granting of a new authority without satisfying the new authority test of public need set out in G.S. 62-262(e)(1). Where the authority has been actively operated, the applicants for sale and transfer of motor freight carrier rights `are under no burden to show through shipper witnesses that a demand and need exists.' Comer, supra. The rationale is that public convenience and necessity was shown to exist when the authority was granted or acquired under the 1947 grandfather clause, and the rebuttable presumption of law is that it continues. Thus, the Commission in Comer held that `the statutory requirement referred to (G.S. 62-111(a)) is satisfied by a showing that the authority has been and is being actively applied in satisfaction of the public need theretofore found.'" 7 N.C. App. at 413-414.

There can be no question from the evidence in this proceeding that the operating authority of REA has not been actively applied in satisfaction of a public need as to

support a finding of "public convenience and necessity" in this case. REA has conducted no transportation activities under its Certificate for a period of four years and possesses none of the equipment or facilities to perform any such operations. Certainly any public need which may have existed for the transportation services formally provided by REA must, in the absence of shipper witnesses evidencing a real need for such service, be presumed to be bound by existing carriers such as the Protestants. Whatever may be the present limitations on the Commission's authority under G.S. 62-112 to cancel REA's certificate for unlawful suspension of operations, those limitations have no bearing on the Commission's discretionary authority to consider the issue of dormancy when determining whether a transfer is "justified by the public convenience and necessity" within the meaning of G.S. 62-111(a). Accordingly, the Commission concludes that the operating authority which is sought to be transferred in this proceeding is not being, and has not been, actively operated by REA in satisfaction of public need and is dormant, and the transfer of such operating authority is not justified by the public convenience and necessity within the meaning of G.S. 62-111(a).

The provisions of G.S. 62-111(e) provide that approval of transfer of operating authority can be made only if "service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)." Although closely related, the issue of compliance with this provision is separate from the question of dormancy under G.S. 62-111(a). There is no question but what service under REA's Certificate has not been continuously offered to the public up to the filing of this application for transfer. As indicated above, REA has not conducted nor offered any transportation services under its certificate since November 1975. Consequently, the question to be determined is whether or not the suspension of service has been approved by the Commission as provided in G.S. 62-111(b)(5). The Commission concludes that the necessary approval has not been given. First, the records of this Commission established that it was not until after December 6, 1977, over two years after REA ceased its operations, that the Commission entered its first order suspending operations under Certificate No. R-5. Nothing in that first or the subsequent Orders of the Commission expressly or implicitly approved of the suspensions of operations by REA prior to December 6, 1977. The provision of G.S. 62-112(b) providing for the written consent of the Commission for suspension of authorized operations, when read in conjunction with Rule R2-47 of this Commission prohibiting a discontinuance of service under a certificate "without first obtaining written authority from the Commission," clearly contemplates that carriers desiring to suspend operations must secure written consent of the Commission prior to, or immediately after, the supension occurs. The suspension Orders of December 6, 1977, and

December 31, 1979, do not constitute approval by this Commission of cessation of operations by REA in November 1975. The contention by REA that its suspension of operations was not unlawful in that it was a "case of involuntary failure or suspension brought about by compulsion" within the meaning of G.S. 62-112(b)(5) is without merit. The Commission concludes that service under the REA certificate sought to be transferred in this proceeding has not been continuously offered to the public up to the time of filing of the application and that such suspension of service was not approved by the Commission within the meaning of G.S. 62-111(e).

The Commission concludes that the Applicants have not met the statutory provisions imposed in G.S. 62-111 and, therefore, the application in this docket should be denied; that Certificate No. R-5 heretofore issued to REA Express, Inc., should be cancelled; that the Petition and Motion For Reconsideration and Rescission of Temporary Suspension Orders filed on November 13, 1979, should be denied; and that Protestants' Exceptions to the Recommended Order herein should be allowed.

IT IS, THEREFORE, ORDERED:

1. That the Protestant's Exceptions to the Examiner's Recommended Order are allowed.

2. That the application for authority for the sale and transfer of Certificate No. R-5 from REA Express, Inc., Bankrupt, to Central Transport, Inc., d/b/a CT Transport be, and the same is hereby, denied.

3. That Certificate No. R-5, heretofore issued to REA Express, Inc., be, and the same is hereby, cancelled.

4. That the Petition and Motion for reconsideration of the authorized suspension of operations granted by the Commission to REA Express, Inc., be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of September 1980.

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

DOCKET NO. R-66, SUB 111

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rates - Railroad - Proposed Change of the Transit General Rules at Points in North Carolina	) ORDER GRANTING) RULES CHANGE)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 22, 1980

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners Sarah Lindsay Tate and John W. Winters

APPEARANCES:

For the Respondent Railroads:

R. Lyle Key, Jr., Attorney, Louisville & Nashville Railroad Company, 908 W. Broadway, Louisville, Kentucky 40201
For: Family Lines Railroad System

James R. Paschall, Assistant General Attorney, Southern Railway System, P.O. Box 1808, Washington, D.C. 20013
For: Southern Railway System

Odes L. Stroupe, Jr., Hunton & Williams, Attorneys at Law, Wachovia Bank Building, P.O. Box 109, Raleigh, North Carolina 27602
For: North Carolina Railroads in general and Southern Railway and Norfolk Southern Railway in particular

For the Public Staff:

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

BY THE COMMISSION: On December 27, 1979, Southern Freight Tariff Bureau, on behalf of the rail carriers operating in North Carolina, filed tariff schedules with the Commission proposing to amend the transit rules applicable to certain commodities. The new rules provide that the balance of the through rate in effect at the time of outward bound movement from the transit station will apply to outbound transit shipments in lieu of the balance of the through rate effective at the time of the original inbound shipment(s) to the transit station.

By Order of the Commission in this docket dated January 30, 1980, these proposed changes, scheduled to

become effective on February 2, 1980, were suspended and investigation was instituted. The tariffs designated in the suspension and investigation Order were:

Southern Freight Tariff Bureau
(Southern Freight Association, Agent)
Freight Tariff SFA 9998-B, Supplement 43
Freight Tariff SFA 9930-E, Supplement 190

The matter was assigned for hearing in Raleigh on April 22, 1980. The hearing was held as scheduled.

On February 14, 1980, and February 21, 1980, Southern Freight Tariff Bureau filed further tariff schedules proposing to amend the general transit rules in those tariffs, to become effective on March 22, 1980, and March 29, 1980, in the same manner as those changes proposed earlier, as outlined above. These tariffs were suspended and placed under investigation by Supplemental Order of the Commission in this docket, dated March 18, 1980. The tariffs designated in the March 18 Order were:

Southern Freight Tariff Bureau
(Southern Freight Association, Agent)
Freight Tariff SFA 9799-I, Supplement 46
Freight Tariff SFA 9102-A, Supplement 94
Freight Tariff SFA 9107-A, Supplement 77
Freight Tariff SFA 9170-M, Supplement 27
Freight Tariff SFA 9933-F, Supplement 77

These tariff schedules were consolidated and made a part of the investigation instituted by the Order in this docket dated January 30, 1980. They were also under consideration at the April 22, 1980, hearing.

The Commission received a protest concerning this matter on January 17, 1980, from J.R. Keimeier, Branch Traffic Manager of Ralston-Purina Company in Charlotte, North Carolina.

Intervention was filed by the Public Staff of the North Carolina Utilities Commission on February 13, 1980.

Testimony was prefiled by Floyd E. McClamrock of the Family Lines System and Diane C. Moody of Southern Railway System on March 24, 1980, and by Dennis Sovel of the Public Staff on April 14, 1980, in accordance with the Commission's Orders in this docket.

This matter came on for hearing on April 22, 1980. The Respondent railroads and the Public Staff were present and represented by counsel. Ralston-Purina was present and represented by Public Staff counsel. The railroads presented the testimony of Diane C. Moody, Senior Commerce Officer, Southern Railway System, and Floyd E. McClamrock, Assistant Manager Commerce, Family Lines System. The Public Staff presented the testimony of Dennis E. Sovel,

Acting Director, Transportation Rates Division, Public Staff, and J.R. Keimeier, Branch Traffic Manager Charlotte, Ralston-Purina. At the close of Respondent's evidence, the Public Staff moved to dismiss the application for failure to carry the burden of proof, which motion was denied. The motion was renewed and taken under consideration at the close of the hearing.

Based upon a careful consideration of the testimony, exhibits, and documentary evidence presented in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. The Respondent railroads participating in the tariff schedules under suspension in this proceeding are subject to regulation by this Commission.

2. This proceeding involves a change in transit rules for application on North Carolina intrastate traffic. Currently, on North Carolina intrastate traffic, the through rate assessed on transit shipments is the rate in effect on the date the shipment was billed from the initial origin. The new rule provides that the through rate is the rate in effect on the date the shipment is billed from the transit station.

3. The shipper, who has a transit privilege available for use in what is actually two separate movements, pays the local inbound rate at the time of the original movement and, if he elects to use the transit privilege, pays the balance of the through rate when he ships from the transit station to the final destination. The proposed change does not increase the local inbound rate as that is determined by the date the shipment is billed from the initial origin.

4. Once an inbound movement has been made to a transit station, the shipper has many options. He need not use the transit privilege but may ship his commodity from the transit station using a nontransit rail rate, if that is more economical. The shipper may also elect to ship the outbound commodity by motor carrier or dispose of the commodity locally.

5. The rule change may result in either rate increases or rate decreases, depending on whether the through rate has been increased or decreased in the period between the inbound and the outbound shipments.

6. Not all transit shipments will be subject to rate changes due to this rule change, since rate changes are not frequent enough to affect all shipments. Southern Railway's study showed the average time between date of the inbound waybill and date of the outbound waybill was 38 1/2 days. Family Lines' study showed an average time to be 48.6 days. This means that unless a rate change went into effect on North Carolina intrastate traffic within those 38 1/2 days

or 48.6 days, the rate at the time of the inbound movement to the transit station and the rate at the time of the outbound movement would be the same.

7. Grain and soybeans are the principal commodities affected by this change. Ralston-Purina is a principal intrastate shipper of these commodities.

8. The new rule will greatly simplify transit billing. Transit tonnage often originates at many different origins. Tonnage from different movements is combined at the transit station and reshipped at a later date to a final destination. Since many inbound waybills often are used for one outbound waybill, the practice of using the through rate in effect on the date of the inbound shipment means that besides determining the applicable through rates, the person doing or checking the billing must also determine the correct level of rates which should be applied. With the new rule, it is only necessary to determine the current rate level.

9. The transit rule change will promote tariff simplification by simplifying tariff applications.

10. Transit charges, which are meant to defray certain clerical and incidental costs related to transit shipments but do not defray the general, operating expenses incurred in a through movement, are not at issue in this proceeding.

11. Many transit shipments involve both interstate and intrastate traffic on the same outbound waybill.

CONCLUSIONS

Although transit is regulated by this Commission once it is published in rail carriers' tariffs, no statute requires that transit be offered to shippers at all. In this sense, it is a carrier-granted and carrier-defined privilege. Under this privilege, a shipper is able to apply a through rate for movement from initial origin to final destination to what is actually two distinct movements, from the initial origin to the transit station, and later, from the transit station to the final destination. The through rate plus a transit charge results in a more economical total charge than would the combination of two local rail rates. This is why the shipper uses the transit privilege. In return for granting the privilege, the railroads presumably retain traffic which would be lost under the higher local rates alone. Nothing requires use of the transit privilege if there is a more economical alternative, even if an inbound shipment is initially intended to be transited and moves on a transit bill of lading.

Under both the present and the proposed rules, the shipper pays the local rate from the initial origin to the transit station which is in effect on the date of the shipment. In no case would that rate be increased. Whether transit is

used or not, that rate remains the same for the first portion of the transit movement, which is in actuality, if not in theory, a local movement in itself. There is, therefore, no retroactive ratemaking in this rule change because the local rate for the first movement is never changed. What is involved in the rule change is simply the rate to be charged for the second movement.

The charge for the second movement in a transit shipment is thus all that is involved in this rule change. This charge maintains the fiction of a through movement even under the new rule because it is still based on subtracting the local rate already paid from a through rate. The only difference under the new rule is that it is the through rate in effect at the time of the second, rather than the first, movement, which is the figure from which the previously paid rate is subtracted to obtain the rate for the second movement.

This change does not result in unreasonable rates. The shipper need not pay more than the total of the local rates in effect at the times of each movement. If the carriers did not offer transit privileges, they could lawfully charge the local rate currently in effect for each segment of a transit movement. Since these rates have been authorized by the Commission, there is no question about whether they are above a reasonable level. Under this proposal the shipper need never pay more than the combination of the two local rates effective at the time of each shipment, since he can always elect to do that directly if it is more economical. The transit shipper will in fact always still pay less than this figure if it is to his advantage to use the through rate. The only difference under the proposal is that the amount of the shipper's discount over the combination of local rates is reduced in those limited instances where a rate increase goes into effect between the first and second movements. Indeed, since all inbound billing is not used for outbound transit billing, the shipper may be able to arrange his affairs so as to minimize the impact of this proposal. Also, the shipper will receive the advantage of any rate decreases which may take effect between the first and second movements.

This is not a revenue proceeding since the revenue impact is not known or foreseeable and the primary purpose of the rules change is not to raise any specific amount of revenue. The change may result in revenue increases, revenue decreases, or in many instances, no revenue change at all, depending on whether any rate changes take place between the first and second parts of a transit movement and the nature of those changes.

The Commission does not accept the suggestion of Ralston-Purina that rate increases or decreases only apply to the balance of the through rate applicable to transit movements in North Carolina. This would result in a system which is at variance with that in effect on interstate traffic and in

other states in this area. We noted earlier that many transit shipments involve both interstate and intrastate traffic on the same outbound waybill. For this and other reasons, Ralston-Purina's proposal would complicate billing and tariffs and would be contrary to the carriers' desire to simplify these matters. Moreover, this proposal is based on the erroneous assumption that the carriers are changing the local rate on the first portion of the movement. In fact, this remains unchanged, as we have seen. What the carriers are doing in effect is reducing the discount for the second part of the movement when there is a rate increase. Since they could reasonably charge the local rate for this movement, if viewed separately, and since the balance of the through rate will still be below that new local rate, the new rule does not result in charges which are too high for either movement. Since the carriers have justified a higher local rate for the same movement in any general increase proceeding which may have intervened, and this rate is presumably reasonable for the local movement standing alone, it cannot logically be said that a lesser charge for identical service is unreasonable.

The new rule will simplify tariff applications and make billing easier because only one rate, the current one, need be checked rather than all the previous rates applicable to tonnage from a variety of waybills.

The Commission finds and concludes that the respondent rail carriers have met their burden of proof and that the proposed rule change is just and reasonable and should be permitted to become effective. Under these circumstances the renewed motion of the Public Staff to dismiss the application is denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the Orders of Suspension in this docket dated January 30, 1980, and March 18, 1980, be, and the same are hereby, vacated and set aside for the purpose of allowing the tariff schedules to become effective.

2. That the publications authorized hereby may be made on one day's notice to the Commission and to the public, but in all other respects shall comply with the rules and regulations of the Commission governing construction, filing, and posting of tariff schedules.

3. That upon publications hereby authorized having been made, the investigation in this matter shall be discontinued, and this proceeding be, and the same is hereby, discontinued.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of August 1980.

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

DOCKET NO. P-89, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Provision of Telephone Service to the Entire Northpoint Commercial Plaza from the Southern Bell Telephone and Telegraph Company's Exchange of Winston-Salem Rather than from the Mid-Carolina Telephone Company's Old Town Exchange	)	RECOMMENDED ORDER

HEARD IN: Commission Hearing Room 214, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 20, 1980

BEFORE: Hearing Examiner Robert Gruber

APPEARANCES:

For Mid-Carolina Telephone Company:

F. Kent Burns, Boyce, Mitchell, Burns and Smith, Attorneys at Law, 107 Fayetteville Street, Raleigh, North Carolina 27602

For Southern Bell Telephone and Telegraph Company:

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

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, Public Staff-North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

GRUBER, HEARING EXAMINER: This matter arose as a result of a motion filed by the Public Staff on May 1, 1980, requesting that an order be issued requiring Mid-Carolina Telephone Company (hereinafter called Mid-Carolina) and Southern Bell Telephone and Telegraph Company (hereinafter called Bell) to show cause why telephone service to the entire Northpoint Commercial Plaza should not be provided from the Winston-Salem exchange of Bell rather than the Old Town Exchange of Mid-Carolina. On May 2, 1980, the Commission for good cause appearing issued a show cause order requiring Mid-Carolina and Bell to appear before the Commission to show cause why telephone service should not be provided to the entire Northpoint Commercial Plaza from the Winston-Salem exchange in accordance with the official exchange service area maps on file with the Commission. On May 7, 1980, Mid-Carolina filed a motion requesting that the order to show cause be dismissed.

The matter was called for hearing at the appointed time and place. Mid-Carolina renewed its motion to dismiss the show cause order and said motion was taken under consideration by the Hearing Examiner pending receipt of the evidence in the case. The Public Staff offered the direct testimony of Gene A. Clemmons, Director of the Communications Division, and W.B. Leverton, property owner in the Northpoint Commercial Plaza. Southern Bell offered the testimony of W. F. Dyer, Jr., District Staff Manager-Rates. Mid-Carolina offered the testimony of Archie Thomas, President of the Company.

Based upon the pleadings, all of the evidence, testimony, and exhibits presented and the official Commission files and records, the Commission makes the following

FINDINGS OF FACT

1. That Mid-Carolina and Southern Bell are public utilities subject to the jurisdiction of this Commission.

2. That all regulated telephone companies in North Carolina are required to file exchange service area maps to define the geographical area within which each company has the authority and obligation to provide service.

3. That the entire Northpoint Commercial Plaza area is now located in the franchised exchange service area (ESA) of Bell's Winston-Salem exchange and has been so located since at least 1974.

4. That Southern Bell was providing telephone service and had constructed facilities to all of the developed portion of the Northpoint Plaza prior to the extension of facilities into the Plaza by Mid-Carolina in 1979.

5. That Mid-Carolina violated the provisions of G.S. 62-110 when it extended its facilities into the Northpoint Commercial Plaza without first obtaining from the Commission a certificate that public convenience and necessity required such construction.

6. That only Southern Bell has the obligation and authority to provide telephone service to the entire Northpoint Commercial Plaza under its certificate of public convenience and necessity as reflected on its official exchange service area (ESA) maps on file with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding is jurisdictional and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Public Staff witness Clemmons testified that telephone utilities are required to file exchange service area maps

with the Commission. The witness further testified that the tariffs of both Southern Bell and Mid-Carolina state that exchange service areas for each exchange are identified on maps filed as a supplement to the tariff and that such maps were on file for the Old Town exchange of Mid-Carolina and the Winston-Salem exchange of Southern Bell.

Southern Bell witness Dyer and Mid-Carolina witness Thomas both testified that their respective companies have on file with the Commission exchange service area maps with the latest revision having an effective date of April 26, 1978, for Winston-Salem and October 15, 1978, for Old Town.

N.C. General Statute 62-31 gives the Commission full power and authority to make and enforce reasonable rules and regulations for public utilities. The Commission has established such rules in connection with exchange service area maps. Commission Rule R9-4(b)(2) requires that each regulated telephone utility in North Carolina have on file with the Commission for each exchange it serves a map showing the exchange service area. In addition, Rule R9-4(b)(5) requires that when a telephone utility desires to make changes in maps, an official filing shall be made to the Commission. The requirement that telephone utilities file exchange service area maps is clearly set forth in Commission Rules and in the telephone company tariffs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Public Staff witness Clemmons testified that his study of the Winston-Salem and Old Town exchange service area maps on file with the Commission clearly show that the entire Northpoint Commercial Plaza is within the Winston-Salem exchange service area. The witness further testified that the current Winston-Salem exchange service area map has an effective date of April 26, 1978, and the current Old Town exchange map has an effective date of October 15, 1978. Witness Clemmons testified that the current Old Town exchange map shows that boundary line to be in the same location as the Winston-Salem map and that a check of the exchange maps back to 1974 disclosed that the boundary line as shown on those maps agrees with the current maps.

Mid-Carolina witness Thomas and Southern Bell witness Dyer both agreed on cross-examination that the current exchange service area maps of their respective companies show the Northpoint Commercial Plaza to be located in the Winston-Salem exchange service area.

Based on the testimony and exhibits of the Public Staff, Mid-Carolina and Southern Bell, the Examiner concludes that the entire Northpoint Commercial Plaza is within the franchised exchange service area of Southern Bell's Winston-Salem exchange and that the area where the Plaza is located has been within the Winston-Salem exchange service area since at least 1974.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4, 5, AND 6

Public Staff witness Clemmons testified that at the time of his field visit to the Northpoint Commercial Plaza area in April 1980, he found that Mid-Carolina had extended telephone cable from its Old Town exchange to the westernmost portion of the Northpoint Commercial Plaza and was serving one subscriber. Mid-Carolina witness Thomas testified that Mid-Carolina initially provided service to the Plaza in mid-1979.

Witness Thomas further presented as Mid-Carolina Exhibit No. 4 a letter dated November 1, 1978, addressed to a Mid-Carolina official and signed by a Southern Bell official to which was attached a sketch (no scale) "indicating the agreed upon exchange service area boundary location between Southern Bell and Mid-Carolina Telephone Company at an arbitrary line separating the two companies..." (Emphasis added.) Witness Thomas presented Mid-Carolia Exhibit No. 7 showing that in June 1979 Mid-Carolina extended facilities a distance of 2,141 feet to the westernmost portion of the Plaza from its nearest existing facilities located on Edgebrook Drive. Southern Bell witness Dyer testified that his Company's facilities come within 800 feet of the portion of the Plaza in question. In addition, Dyer Exhibit No. 1 shows that Southern Bell has been providing service to the Plaza since at least March 27, 1974, when service was provided to K-Mart and Big Star.

The language of G.S. 62-110 is clear that a public utility cannot begin the construction of facilities into an area without first obtaining from the Commission a certificate that the public convenience and necessity requires such construction except "construction into territory contiguous to that already occupied and not receiving similar service from another public utility...." (Emphasis added.) This latter provision permits a utility to begin the construction of facilities without first having a certificate of public convenience and necessity only in the case where the extension is into a contiguous area not receiving service from another utility. When Mid-Carolina extended its facilities into Northpoint Commercial Plaza in 1979, the Plaza was not an unserved area. It was being served by Southern Bell and was assigned to the Winston-Salem exchange on the exchange service area maps of both companies. Under the provisions of G.S. 62-110, Mid-Carolina was required to obtain a certificate from the Commission before it extended its facilities into the served area. The certificate could have been effected through a revision in the exchange service area maps to place the Plaza in the Old Town exchange after a finding by the Commission that such an extension was required by the public convenience and necessity. The purpose of an exchange service area map is to define the area where a utility has a monopoly right and obligation to provide service. The

defining of a service area helps to avoid unnecessary construction or duplication of facilities. The purpose of Commission Rule R9-4 requiring that exchange service area maps and any changes in the maps be filed is intended to give the Commission an opportunity to decide if a boundary change is reasonable and in the public interest. The legislature recognized the necessity for such oversight by the Commission when it authorized the Commission under G.S. 62-31 to make and enforce reasonable rules and regulations. Such authority is essential to prevent abuses by utilities, who left to their own devices may not act in the public interest. The legislature further recognized the need for the Commission to assign and regulate utility service areas in the public interest when it passed G.S. 62-110.2 in 1965 giving the Commission authority to assign electric service areas. It seems clear from the legislature's action that it fully intended for the Commission to oversee the establishment of exchange service areas.

Another consideration in this matter is raised by the Court's 1974 decision in State ex. rel. Utilities Commission v. Southern Bell Telephone and Telegraph Company, 21 N.C. App. 182. In that case, the court concluded "that the Commission does not have the authority to compel Southern Bell to provide local exchange service to an area which is already receiving such service from another public utility."

This instant case must be viewed in light of the circumstances with which the court was concerned in its 1974 decision. In the 1974 case, Central Telephone Company had been assigned a service area on its ESA maps, had constructed facilities to serve the assigned area and was providing service to the area in question. Notwithstanding these circumstances, the Commission ordered Southern Bell to extend its facilities and provide service into the same area. The court stated that "The single issue presented by this appeal is whether the Utilities Commission was correct in ordering Southern Bell to provide telephone service to individuals who reside in an area which is presently served by Central Telephone Company."

The court concluded that "under the facts of this case to order Southern Bell to render service to an area already occupied by Central Telephone Company would foster duplication, wastefullness and unwarranted competition - all of which are repugnant to the avowed policy of the public utility law." (Emphasis added.)

It seems axiomatical to the Commission that it is also repugnant to public utility law for a telephone utility on its own motion to extend its facilities into an area already occupied by another telephone utility without a finding first being made by the Commission that the public convenience and necessity requires such extension.

The facts of the instant case are that at the time Mid-Carolina extended its facilities 2,141 feet to reach the Northpoint Commercial Plaza in 1979, the entire Plaza area was assigned to Southern Bell on the exchange maps of both companies, the exchange service area maps had reflected such assignment since at least 1974, Southern Bell had already constructed facilities within the Plaza area to service potential subscribers, Southern Bell was serving all of the developed portion of the Plaza and Southern Bell had facilities located within 800 feet of the undeveloped westernmost portion of the Plaza in question. The Plaza area to which Mid-Carolina extended its facilities was not a contiguous unserved area but a part of the same development which Southern Bell had been serving for at least five years.

The Commission concludes that Mid-Carolina's action to arbitrarily separate a small portion of the Plaza from the majority of the Plaza was not in the public interest, resulted in the unnecessary extension of facilities and violated the provisions of G.S. 62-110. The Commission further concludes that Southern Bell has the obligation and authority to serve the Northpoint Commercial Plaza and that service to the entire Plaza should be provided from the Winston-Salem exchange in accordance with the ESA maps on file with the Commission.

IT IS, THEREFORE, ORDERED:

1. That the motion made by Mid-Carolina to dismiss the show cause order and the motion of Southern Bell that it be dismissed from the proceeding are denied.

2. That Southern Bell is hereby ordered to provide telephone service to the entire Northpoint Commercial Plaza in accordance with its current Winston-Salem exchange service area map on file with the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of July 1980.

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

DOCKET NO. P-89, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
The Provision of Telephone Service to the Entire Northpoint Commercial Plaza from the Southern Bell Telephone and Telegraph Company's Exchange of Winston-Salem Rather than from the Mid-Carolina Telephone Company's Old Town Exchange	)	ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 19, 1980, at 11:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, John W. Winters, Edward B. Hipp, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For Mid-Carolina Telephone Company:

F. Kent Burns, Boyce, Mitchell, Burns and Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602

For Southern Bell Telephone and Telegraph Company:

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

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, Public Staff-North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On July 16, 1980, Hearing Examiner Robert Gruber issued a Recommended Order in this docket. The Recommended Order denied the motion made by Mid-Carolina to dismiss the show cause order and also denied the motion of Southern Bell that it be dismissed from the proceeding. In addition, Southern Bell was ordered to provide telephone service to the entire Northpoint Commercial Plaza in accordance with its current Winston-Salem exchange service area map on file with the Commission. On July 29, 1980, Exceptions of Mid-Carolina Telephone Company to Recommended Order was filed. Southern Bell filed Exceptions to Recommended Order and Authorities in Support Thereof on July 31, 1980.

Oral argument on the Exceptions was heard by the Commission on September 19, 1980. Counsel for Mid-Carolina, Southern Bell, and the Public Staff were present and presented oral argument supporting their respective positions.

Based upon a review of the entire record in this proceeding, including the Exceptions and oral argument by able counsel, 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 that the Recommended Order dated July 16, 1980, should be affirmed and that each of the Exceptions thereto should be overruled and denied.

Mid-Carolina's Edgebrook Drive subscribers are, according to Mid-Carolina and Southern Bell service area maps on file with the Commission, located in the Winston-Salem exchange of Southern Bell. In that these subscribers have received service from Mid-Carolina for several years, the Commission concludes that it would be unreasonable to require them to be served by Southern Bell notwithstanding the fact that they are within Southern Bell's exchange. Therefore, the Commission concludes that these subscribers should continue to be served by Mid-Carolina, and that boundary lines should be revised accordingly. Therefore, Southern Bell and Mid-Carolina should file with the Commission revised maps consistent with this decision showing the Edgebrook Drive subscribers in the Old Town exchange of Mid-Carolina and the entire Northpoint Commercial Plaza within the Winston-Salem exchange of Southern Bell.

IT IS, THEREFORE, ORDERED as follows:

1. That each and all of the Exceptions filed by Southern Bell and Mid-Carolina are denied.

2. That the Recommended Order issued on July 16, 1980, is affirmed.

3. That Southern Bell and Mid-Carolina shall file with the Commission revised maps conforming with this Order. Such maps shall show Edgebrook Drive subscribers in the Old Town exchange of Mid-Carolina Telephone Company and the entire Northpoint Commercial Plaza in the Winston-Salem exchange of Southern Bell.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of October 1980.

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

DOCKET NO. P-10, SUB 388

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Susie B. Creadick, Complainant	) RECOMMENDED ORDER
	) DIRECTING RESPONDENT
vs.	) TO INSTITUTE
	) RESIDENTIAL
Central Telephone Company, Respondent	) TELEPHONE SERVICE

HEARD IN: Commission Hearing Room 214, Dobbs Building, Raleigh, North Carolina, on February 15, 1980, at 10:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Respondent:

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:

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 and Susie B. Creadick

BENNINK, HEARING EXAMINER: On November 5, 1979, Susie B. Creadick (Complainant) filed a formal complaint with the Commission against Central Telephone Company (Central or Respondent), therein raising allegations of "unfair and discriminatory treatment" by Central. Pursuant to the Commission's rules of practice and procedure, the complaint was served upon Respondent by Order dated November 27, 1979. Central filed its answer to the complaint on December 17, 1979. On December 28, 1979, the Commission issued a "Notice to Complainant of Answer Filed by Respondent." On January 7, 1980, the Complainant filed a response in this docket indicating that the Respondent's answer was not satisfactory to her. The Complainant also requested that a public hearing be scheduled by the Commission. The matter was subsequently set for hearing by Commission Order dated January 28, 1980.

On February 5, 1980, the Public Staff filed a "Notice of Intervention" in this docket on behalf of the Using and Consuming Public pursuant to G.S. 62-15(d).

Upon call of the matter for hearing at the appointed time and place, both the Complainant and the Respondent were

present and represented by counsel. The Complainant testified in her own behalf. Respondent offered the testimony of Mac Armstrong, who is Assistant Customer Services Manager for Central.

Based upon a careful consideration of the complaint, the testimony offered at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. That Respondent Central Telephone Company is a public utility as defined in G.S. 62-3(23)a.6 and is subject to the jurisdiction of this Commission.

2. That this proceeding involves a complaint filed against the Respondent by Susie B. Creadick. Ms. Creadick is seeking to establish residential telephone service in her own name. The Complainant has been denied such service by Central until such time as a past-due account in the amount of $363.39 is satisfied. Said past-due account was listed in the name of Ms. Creadick's husband, R.N. Creadick, from whom she has been separated since February 11, 1979. This service was disconnected by Central on July 17, 1979, for nonpayment.

3. That R.N. Creadick, and not the Complainant, applied for telephone service from Central in April 1978. Telephone service was installed on April 7, 1978, in the name of R.N. Creadick. The Complainant had no contact whatsoever with Central at the time such residential service was initiated in April 1978. The Complainant was not informed by Central that said Company considered her legal liability to be equal to that of her husband at the time such service was instituted. All bills were rendered by Central in the name of R.N. Creadick alone. This account was listed in the telephone book in the name of R.N. Creadick. Company records do not indicate that the Complainant was in any way involved with the initial application for residential telephone service. None of the Company records or account cards with respect to the service in question have the Complainant's name on them.

4. That the Complainant resides at 330 West King Street in Hillsborough (Orange County) and works in Alamance County as an employee of the Arts Council. Ms. Creadick has two children, ages eight and 12, who are home alone in the afternoon between the hours of 3:00 p.m. and 5:00 p.m. The Complainant's mother-in-law, Margaret B. Creadick, resides in a separate apartment in the West King Street house which is kept locked. This residence is jointly owned by the Complainant, R.N. Creadick, and Margaret B. Creadick. Margaret B. Creadick has telephone service in her own name at the residence in question. Complainant does not have access to Margaret B. Creadick's telephone.

5. That the Complainant and her husband have entered into a legal separation agreement and are presently in the process of negotiating an agreement with respect to the outstanding telephone bill in question.

6. That Central was first advised that the Complainant was separated from R.N. Creadick at the time Complainant sought to initiate service in her own name in August or September 1979. At that time, the Complainant advised Central of where R.N. Creadick could be contacted so that the Respondent could attempt to collect the overdue telephone bill in question from him.

7. That even after his separation from the Complainant, R.N. Creadick never requested Central to discontinue the residential telephone service listed in his name at 330 West King Street. Nor did R.N. Creadick ever request Central to place said account in the Complainant's name and to remove his name therefrom.

8. That R.N. Creadick presently owns and operates two music stores in Chapel Hill, North Carolina; namely, Hill Music and Oxbow Music.

9. That most, if not all, of the toll calls covered by the past-due telephone bill in question were made and the charges associated therewith were incurred by the Complainant.

10. That subsequent to the disconnection of service on July 17, 1979, at the 330 West King Street residence, Central mailed two letters to R.N. Creadick at the above-referenced address in an attempt to collect the account in question. These letters were mailed by Central on September 21, 1979, and October 10, 1979, respectively. Central contacted Mr. Creadick by telephone regarding payment of the account on two occasions, their being October 11, 1979, and November 28, 1979.

11. That Central has agreed to provide the Complainant with telephone service in her own name upon payment of the overdue bill in question and said Company has also agreed to waive any deposit requirement in establishing such service upon satisfaction of such account.

12. That on December 4, 1979, Central contacted the Complainant by telephone in order to gather the additional information necessary to complete Complainant's application for service. Central is continuing to maintain this application in its files.

13. That under Chapter 12 of the Rules and Regulations of this Commission, Susie B. Creadick was not a "customer" of Central with respect to residential telephone service rendered prior to July 17, 1979, at 330 West King Street, pursuant to the account listed in the name of R.N. Creadick. Rather, Central's "customer" was R.N. Creadick alone.

14. That the Hearing Examiner is without authority to make a finding in this matter concerning the question of any legal liability for the outstanding telephone bill in question which may ultimately be placed upon or be assumed by the Complainant.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Section 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 therefore concludes, that the Complainant is entitled to the relief for which she has prayed in this proceeding. Accordingly, Central Telephone Company is hereby directed to permit Susie B. Creadick to establish credit and residential telephone service in her own name at 330 West King Street in Hillsborough, North Carolina. Said service is to be used and paid for by the Complainant pending settlement of the question of her ultimate legal liability and responsibility for paying all or any part of the past-due bill in the amount of $363.39 which is presently owing on the account previously established in the name of R.N. Creadick. In this regard, the Complainant testified at the hearing that she and her husband are now in the process of attempting to negotiate an acceptable arrangement which would result in payment of the overdue account at issue herein.

Central has taken the basic position in this proceeding that the term "customer" as used in Chapter 12 of the Commission's Rules and Regulations includes both the applicant for residential telephone service and also the spouse of such applicant on the theory that both individuals are users of the service, even though only one of such individuals may have actually taken part in arranging for the initial establishment of service. Review of the Rules of this Commission leads the Hearing Examiner to conclude that the terms "customer" and "applicant" as used in Chapter 12 of said Rules are basically synonymous, particularly when, as is the case here, there is no significant indication in the record that the utility, even by its own corporate practices and procedures, has treated both the applicant for service and the spouse of such applicant as being equally responsible from a legal point of view for the service provided to their household.

In this particular case, the Hearing Examiner finds that the following facts support a conclusion that Central regarded R.N. Creadick as its "customer," rather than Susie B. Creadick or both of said individuals:

1. R.N. Creadick was the sole applicant for service. Company records do not indicate that Susie B. Creadick was

in any way involved with making the initial application for residential telephone service at 330 West King Street in April 1978.

2. None of Respondent's corporate records or account cards with respect to the service in question have Complainant's name contained thereon.

3. This account was originally established in the name of R.N. Creadick alone and only the name of R.N. Creadick was listed in the Company telephone book.

4. All bills were rendered by Central in the name of R.N. Creadick alone.

5. Although Central was advised by the Complainant as early as August or September of 1979, that she and R.N. Creadick were then separated, the Company, nevertheless, subsequently mailed two letters addressed to R.N. Creadick to the 330 West King Street address in an attempt to collect the overdue bill. Said letters were mailed on September 21, 1979, and October 10, 1979, respectively. Complainant's name did not appear thereon.

6. Central did not attempt to collect the overdue bill directly from Susie B. Creadick prior to the time that the Complainant initially sought to establish a residential account in her own name in August or September 1979.

The Hearing Examiner further notes that R.N. Creadick could certainly have had the service in question disconnected at the time he became separated from his wife, but, for whatever reason, said individual chose not to follow that course of action.

While the Hearing Examiner is troubled by certain aspects of this case, particularly by the fact that the Complainant admits that she was in fact responsible for making most, if not all, of the long distance calls billed by Central prior to disconnection of the R. N. Creadick account on July 17, 1979, it must be recognized that a determination of ultimate legal liability as between R.N. Creadick and the Complainant for the bill in question is beyond the jurisdiction of this Commission. Any determination with respect to the ultimate legal liability for payment of such bill must, by necessity, be made by a court of competent jurisdiction or otherwise be settled by means of an agreement negotiated between Susie B. and R.N. Creadick. It is beyond the power of this Hearing Examiner to make such a determination.

Therefore, having concluded that Susie B. Creadick was not a "customer" of Central for purposes of applying Chapter 12 of the Commission's Rules and Regulations, and having further concluded that this Commission is without authority to make a determination as to whether or not Complainant bears any legal liability in this matter, it therefore follows that Central should permit the Complainant to

establish credit and residential service in her own name at her 330 West King Street residence until such time as the ultimate legal responsibility for the outstanding bill is finally determined.

Central is certainly free under the terms of this Order to now seek a legal determination of whether Ms. Creadick is legally liable for the overdue bill at issue herein. Should it be hereafter determined or agreed that Susie B. Creadick is in fact liable for all or any portion of said bill, it is the opinion of this Hearing Examiner that Central would then be justified in insisting upon payment of such sum by Ms. Creadick as a condition to providing further telephone service in her own name as ordered herein.

Nevertheless, the Hearing Examiner feels compelled to note that the primary legal responsibility of R.N. Creadick to pay the past-due bill is clear in this case, notwithstanding any potential liability which Central claims Susie B. Creadick may share in this regard with Mr. Creadick. It is also clear that Mr. Creadick, having been the applicant for initial service from Central, was a "customer" of said company for purposes of applying the Rules and Regulations of this Commission.

Although Central is free to initiate whatever actions it deems appropriate and reasonable in an attempt to collect the past-due bill at issue herein, the Hearing Examiner is hopeful that legal action by Central in this matter will not be necessary in view of the testimony offered by the Complainant to the effect that she and her husband are now in the process of attempting to settle responsibility for payment of the bill in question between themselves, so that said account may soon be paid. Complainant is strongly urged to expeditiously settle this matter with her husband, if possible, and to fully inform Central and the Public Staff of any progress made in this regard as the Complainant attempts to reach an agreement thereon with her husband.

IT IS, THEREFORE, ORDERED as follows:

1. That Central Telephone Company shall permit Susie B. Creadick to establish credit and telephone service in her own name at her residence located at 330 West King Street, Hillsborough, North Carolina, to be used and paid for by Ms. Creadick until such time as her legal responsibility for paying all or any part of the outstanding final bill in the amount of $363.39 is determined.

2. That the service referred to in ordering paragraph 1 above shall be provided by Central without benefit of deposit if the Complainant is able to establish acceptable and satisfactory credit pursuant to Commission Rule R12-2.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of March 1980.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. P-10, SUB 388

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Ms. Susie B. Creadick, Complainant	) ORDER
	) DECLARING
vs.	) DISPUTE
	) TO BE
Central Telephone Company, Respondent	) MOOT

BY THE COMMISSION: On March 28, 1980, Commission Hearing Examiner, Robert H. Bennink, Jr., issued a "Recommended Order Directing Respondent to Institute Residential Telephone Service." On April 14, 1980, Respondent Central Telephone Company filed exceptions to this Recommended Order and required oral argument on these exceptions. On April 18, 1980, the Commission scheduled oral argument on these exceptions for hearing on May 22, 1980. By subsequent Orders, the hearing was rescheduled for July 24, 1980.

The matter came on for argument before the full Commission. At the hearing, Respondent Central Telephone Company and the Public Staff on behalf of the Complainant Susie B. Creadick were present and made oral argument. Upon consideration of the record in its entirety, including Central Telephone Company's exceptions and oral argument therein;

IT IS ORDERED that the complaint of Susie B. Creadick vs. Central Telephone Company be, and hereby is, declared moot.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of July 1980.

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

COMMISSIONER TATE DISSENTS.

DOCKET NO. P-89, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Town of Pineville (Pineville Telephone Company), Complainant vs. Southern Bell Telephone and Telegraph Company and Eslon Thermoplastics, Inc., Respondents	ORDER

HEARD IN: Room 213, Commerce Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 25, 1980

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Chairman Robert K. Koger and Commissioner Sarah Lindsay Tate

APPEARANCES:

For the Complainant:

F. Kent Burns, Boyce, Mitchell, Burns and Smith, Attorneys at Law, P.O. Box 1406, Raleigh, North Carolina 27602

and

Peter A. Foley, Attorney at Law, 1009 Cameron Brown Building, Charlotte, North Carolina

For the Respondents:

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

Gene V. Coker, Attorney at Law, 1245 Hurt Building, Atlanta, Georgia 30303

For the Intervenors:

Terry G. Mahn, Werner & Mahn, Attorneys at Law, 1762 Church Street, N.W., Washington, D.C.
For: Eslon Thermoplastics, Inc.

BY THE COMMISSION: This Complaint proceeding was initiated by the Town of Pineville (Pineville) on August 19, 1980, wherein it requested that the Commission order Southern Bell Telephone and Telegraph Company (Southern

Bell) not to provide or offer to provide telephone service to Eslon Thermoplastics, Inc. (Eslon), until hearing was held and final order issued determining the issues raised in the complaint.

On August 20, 1980, the Commission issued an Order serving the complaint on both Southern Bell and Eslon. Additionally, on August 20, 1980, the Commission issued a Temporary Order directing Southern Bell not to provide or offer to provide telephone service to Eslon Thermoplastics, Inc., until hearing on the Temporary Order set for August 27, 1980, or as soon thereafter as said determination could be made. Southern Bell filed an Answer to the complaint on August 25, 1980.

The matter came on for hearing on August 26, 1980, as scheduled and all parties were present and represented by counsel. In addition to arguments by counsel, witnesses for Southern Bell and Eslon presented sworn testimony to the effect that the Temporary Order should be dissolved, Southern Bell be allowed to serve Eslon, and that the complaint be dismissed. Pineville was allowed to file a memorandum in support of continuing the Temporary Order.

Following that hearing, the Commission concluded that the Temporary Order, issued August 20, 1980, should remain in effect pending a hearing before a panel of the Commission set for September 25, 1980, and further order of the Commission.

The hearing was duly held before Chairman Koger and Commissioners Campbell and Tate on September 25, 1980, in Room 213, Dobbs Building, 430 North Salisbury Street, Raleigh, and the entire record, including testimony and exhibits proferred at the August 26, 1980, hearing was incorporated by reference at this hearing. Jack G. Crump, Acting General Manager of Pineville Telephone Company, and R.T. Payne, President and part owner of Mid-South Consulting Engineers, testified on behalf of Pineville; Janice Perry, Manager - Forecast, and Harry D. Barnes, Jr., Staff Manager Business Department, testified on behalf of Southern Bell; Rex Eagle, President of Tele-Management Resources, Inc., William Bradley, President of Eslon, Edward Zulch, employee of Plastic Piping Systems of Maryland, and John E. Hackett, Vice President of Administration, Aeronica, Inc., testified on behalf of Eslon. Thomas Moncho, General Regulatory Manager, Central Telephone Company, made a statement for the record. Following the testimony of Southern Bell's witnesses, counsel for Southern Bell renewed a motion to dismiss (supported by Eslon) for the reason that the evidence showed that Eslon's equipment to which it wanted a Southern Bell connection was located on property located in Southern Bell's area of undertaking and was in full compliance with Southern Bell's tariffs and the rules and regulations of the Commission and the FCC. The Commission denied the motion without prejudice.

Based upon the evidence of record and the public hearing held as above recited, the Commission makes the following

FINDINGS OF FACT

1. That Southern Bell is a "utility" within the meaning of G.S. 62-3(23), provides telecommunications services in various parts of North Carolina within the areas it has undertaken to serve (including Charlotte and substantial portions of Mecklenburg County), and is subject to the jurisdiction of this Commission.

2. That the town of Pineville through the Pineville Telephone Company provides telephone service to customers within the Town limits of Pineville and certain other "grandfathered" customers outside such limits, and is a "utility" for the purposes of regulation by the North Carolina Utilities Commission. (G.S. 62-3(23)(f))

3. That Eslon Thermoplastics, Inc., is a manufacturer of plastic products such as piping and conduit and markets its products across the United States.

4. That Eslon is presently a telephone customer of Pineville Telephone Company, and prior to 1979 Eslon's business operations were located entirely on a 15-acre tract within Pineville's service area.

5. That in the early spring of 1979, Eslon determined that as a result of growing financial success it needed to expand its facilities and entered negotiations for a 10-acre tract of land which abutted the 15 acres it already owned, and which was located in Southern Bell's territory. Eslon acquired this property in the fall of 1979, for a purchase price of approximately $200,000. Upon acquiring the 10-acre tract, Eslon owned two contiguous tracts of land consisting of 25 acres in the Southland Industrial Park of south Mecklenburg County.

6. That an easement for a railroad spur runs along the dividing line between Eslon's "old" property and the newly acquired 10-acre tract. The boundary line between Pineville Telephone Company's and Southern Bell Telephone and Telegraph Company's service territories runs along this railroad easement.

7. That prior to the actual acquisition of the 10-acre tract, but after negotiations for its acquisition had begun, Eslon retained a consulting firm to study its internal communications needs. In the course of the consulting study, Eslon informed the consultant of its expansion plans and where its expansion property was located. The consultant inquired of Southern Bell concerning the location of its service boundary line and determined that the expansion property lay in Southern Bell's territory.

8. That the consultant recommended that in light of Eslon's expansion plans, and in order to avoid any future service problems such as "split" telephone service between Pineville and Southern Bell, Eslon should lease or purchase its own interconnect PBX and seek service from Southern Bell.

9. That upon recommendation of the consultant, Eslon purchased an electronic PBX switch (OKI Discovery III) and had it installed by RCA in a small building or shed located on its expansion property within Southern Bell's territory. Eslon owns the entire PBX facility, including all lines and cables connecting this PBX to Eslon's offices in Pineville's territory.

10. That this privately owned PBX facility initially will serve Eslon's current operating facilities, and in addition, it is intended to serve and is capable of serving Eslon's expanded operations which will be located on the recently acquired 10-acre tract. The PBX is located in a reasonably central location in order to facilitate the future development of the entire 25 acres owned by Eslon.

11. That after installing the said PBX in Southern Bell's territory, Eslon contacted Southern Bell and requested Bell to furnish Eslon service by interconnecting to the PBX.

12. That the subject PBX is registered with the FCC and is fully protected under Part 68 of the FCC rules.

13. That after reviewing Eslon's request for interconnection and after determining that the subject switch was registered and within Bell's service territory, Southern Bell extended its facilities so as to terminate with Eslon's private PBX. All of Southern Bell's cable and pole attachments used in making the interconnection are completely within its own franchise territory.

EVIDENCE FOR FINDINGS OF FACT NOS. 1 AND 2

1. The evidence regarding Findings of Fact Nos. 1 and 2 is found in the official files and maps of the Commission, its findings in prior orders, and the evidence of record in this proceeding. Testimony in this proceeding shows that Southern Bell provides service in parts of Charlotte and Mecklenburg County and, more particularly, in and around the area of the Southland Industrial Park. The evidence and testimony of Pineville's witnesses also show that Pineville provides service within its town limits and to certain customers outside its limits. The maps and testimony in the proceeding show that part of what is commonly called the Southland Industrial Park is located both within and without the town limits of Pineville and that those customers within the limits are served by Pineville and those without are served by both Southern Bell and Pineville. However, it is clear that, in this area in question, the territory outside the town limits of Pineville is Southern Bell "territory"

and those few customers served by Pineville are so served by "grandfather" provisions of previous Commission Orders.

EVIDENCE FOR FINDINGS OF FACT NOS. 3, 4, 5, AND 6

The evidence supporting Findings of Fact Nos. 3, 4, 5, and 6 is found in the testimonies of William Bradley, President of Eslon; Rex Eagle, President of Tele-Management Resources, Inc.; Edward Zulch, a representative of a customer of Eslon; and Jack Crump, Acting Manager of the Pineville Telephone Company. Mr. Bradley testified that Eslon was in the business of manufacturing and selling plastic products, such as piping and conduit, and markets same across the United States. Mr. Bradley and Mr. Eagle testified as to the importance of good communications service to Eslon and its desire to have reliable communications now and when its expansion plans are realized. Both Mr. Bradley and Mr. Crump testified that Eslon is presently a customer of Pineville Telephone Company. Mr. Bradley testified concerning the financial and corporate history of Eslon, stating that some years ago Eslon was operating as a local, and financially troubled concern. He stated that Eslon has become financially sound and nationwide in its outlook since its parent, Sekisui Chemical Company of Japan, bought the concern in January 1978. Mr. Bradley also testified that as a result of growing financial success, Eslon determined that as a part of its future plans, it needed to expand its facilities. Thus, in early spring 1979, it began discussions and, subsequently, negotiations for a tract of land which abutted the property it already owned, to be paid for by industrial bonds. According to uncontradicted testimony of Mr. Bradley, these negotiations culminated in the acquisition of this property in the fall of 1979 for a purchase price of $200,000. The purchase of the contiguous 10-acre tract resulted in Eslon owning 25 acres in the Southland Industrial Park area of south Mecklenburg County.

EVIDENCE FOR FINDINGS OF FACT NOS. 7, 8, 9, 10, 11, AND 12

The evidence supporting Findings of Fact Nos. 7, 8, 9, 10, 11, and 12 is found in the testimony of Mr. Bradley and Mr. Eagle, and Ms. Perry, Manager-Forecast for Southern Bell. As stated above, Mr. Bradley related the expansion plans of Eslon and its negotiations for the property in question. He also stated that because of its growth and national outlook, as well as its dependence on communications for sales, it retained Tele-Management Resources, Inc., to survey its communications needs. Both Mr. Bradley and Mr. Eagle discussed certain communications service problems which Eslon was having, and also the potential future problem - after the effectuation of expansion plans - of having to take telephone service from two utilities. During the course of consultations with Eslon, an employee of Tele-Management Resources, Inc., talked with Janice Perry, of Southern Bell, whose job it is

to know where the Company's boundaries are located. She did not know that this employee was inquiring on behalf of Eslon; nevertheless, she, in the normal course of her job duties, showed such employee where the boundary was. In this particular instance, the boundary ran down the railroad spur line easement which separated the tract of land owned by Eslon and the tract of land which it ultimately acquired.

Ultimately, Eslon, based upon its various consultations, determined to build an equipment housing on the portion of its property which lay in Southern Bell territory and place therein the PBX which it obtained from RCA. This decision was indeed effectuated, and service was then sought from Southern Bell at a point of connection located within the above-referred-to equipment housing. Southern Bell received an order for service at a location within its service territory. The order included a request for certain trunks to be terminated in a registered "fully protected" customer-provided piece of equipment. Southern Bell has agreed to provide service to Eslon. In making interconnection all Southern Bell owned facilities will be located wholly within its own territory, and any facilities connecting the PBX to Eslon's stations will be customer provided.

EVIDENCE FOR FINDING OF FACT NO. 13

The evidence for Finding of Fact No. 13 is found in the testimony and exhibits of Harry Barnes, Staff Manager - Business, Southern Bell, Rex Eagle, William Bradley, and Janice Perry, the Southern Bell tariff, and Part 68 of the FCC Rules (of which this Commission took judicial notice during the course of the proceedings).

Section A15.1.2(A)(1) of Southern Bell's effective General Subscriber Services Tariff states as follows:

> "Customer-provided registered terminal equipment, registered protective circuitry, and registered communications systems may be directly connected at the Customer's premises to the telecommunications network, subject to Part 68 of the Federal Communications Commission's Rules and Regulations, A15.1 preceding and the following:"

The evidence is uncontradited that the PBX which Eslon ordered from RCA is a "fully protected" OK1 Discovery 3 and bears the registration number B1686J-67747-PF-E. It is also uncontradicted that Southern Bell will connect with the PBX through a Southern Bell provided RJ21X jack as prescribed in its tariffs. Thus, it is clear that the type of PBX and the method by which it would be connected to the telephone network would be in full compliance with Southern Bell's tariff and Part 68 of the Rules and Regulations of the FCC as referenced in such tariff.

CONCLUSIONS

The essential facts of this case are these: Eslon owns 25 acres in south Mecklenburg County, 15 acres of which are located in Pineville's exchange and 10 acres of which have been recently acquired for expansion purposes and are located in Southern Bell's exchange. Eslon receives service from Pineville, and all of Eslon's telephone stations are located in Eslon's offices on the Pineville side of the boundary. Eslon has purchased an FCC registered PBX system, which it intends to use to serve the entire 25-acre tract, and has located this PBX in Southern Bell's exchange. All lines, cables, and equipment linking the PBX to Eslon's office facilities in Pineville's exchange are owned by Eslon. Eslon has approached Southern Bell requesting service through interconnection with its PBX and Southern Bell has offered to provide such service. In order to serve Eslon, Southern Bell has not and will not extend its lines, poles, or equipment into Pineville's territory. Pineville seeks to permanently enjoin Southern Bell from serving Eslon on the grounds that such service will violate established service boundaries, will violate Southern Bell's tariffs, and will otherwise violate statutes and Commission rules.

Based on the facts of this case, the Commission reaches the following conclusions:

1. Southern Bell's interconnection with Eslon's PBX located on the 10-acre tract is only a fulfillment of the Utility's obligation to serve the customers in its assigned service area.

The clear and undisputed evidence presented in this docket shows that Southern Bell has been requested to terminate its facilities in an equipment building at a point located within territory it has undertaken to serve. At this point the Southern Bell facilities are interconnected with the privately owned communications system of Eslon and do not extend any further. In other words, Southern Bell did not extend its cable wires or telephone equipment into the Pineville service area. It is Eslon that has installed and maintained a private communications system to serve only itself which extends from the equipment building in the Southern Bell exchange to Pineville's exchange.

Complainant argues that Southern Bell is or will operate or control a telephone system in its service area and cites G.S. 62-110 as support for that proposition. This section of the North Carolina law applies only to public utility plant or communications systems and not to a privately owned system which is not serving the public, and since Eslon is a private corporation and not a public utility, this law does not apply. The communications system that Eslon has extended into the service area of Pineville is neither owned nor controlled by Southern Bell in any way whatsoever. Southern Bell has the right and obligation to serve any customer located in its service area.

The evidence does not support the contention that Southern Bell intentionally sought to deprive Pineville of any of its customers or revenues. Nor is there any credible evidence that either Eslon or Southern Bell or both intended to violate any of the statutes of this State regarding territorial undertakings to serve. It is quite clear that Eslon felt it had the need for expert advice regarding its communications problems, especially in view of an expansion program which included the acquisition of an additional 10 acres to be used in connection with its manufacturing business. Such action evinces no motivation other than its own corporate well being. Southern Bell, on the other hand, received an order for service at a location which was unquestionably within its service territory. The order included a request for certain trunks to be terminated in a registered "fully protected" customer-provided piece of equipment. Confronted with these facts, Southern Bell's agreement to provide the service was only the fulfillment of its obligation, as a public utility, to provide such service to the public in the areas it has undertaken to serve.

2. The proposed interconnection between Southern Bell and Eslon's private PBX will not violate Southern Bell's tariffs.

Southern Bell has no tariff that would prohibit a customer from using its communications system in the manner proposed by Eslon. Section A15.1.2(A)(1) of Southern Bell's effective General Subscriber Services Tariff states as follows:

> "Customer-provided registered terminal equipment, registered protective circuitry, and registered communications systems may be directly connected at the Customer's premises to the telecommunications network, subject to Part 68 of the Federal Communications Commission's Rules and Regulations, A15.1 preceding and the following:"

The evidence is uncontradicted that the PBX which Eslon ordered from RCA is a "fully protected" OK1 Discovery 3 and bears the registration number B1686J-67747-PF-E. It is also uncontradicted that Southern Bell will connect with the PBX through a Southern Bell provided RJ21X jack as prescribed in its tariffs. Thus, it is clear that the type of PBX and the method by which it would be connected to the telephone network would be in full compliance with Southern Bell's tariff and Part 68 of the Rules and Regulations of the FCC as referenced in such tariff.

Pineville argues that Southern Bell is violating the portion of the tariff which requires connection at the customer's "premises." Pineville contends that the PBX is located off Eslon's "premises" in that it is located on a separate tract of land. Pineville contends that the "premises" is the point where telephone stations are located

and conversations originate. The Commission notes that the term "premises" is not defined in the statutes, the Commission Rules, or in Southern Bell's tariffs. Lacking such legal definition, the Commission interprets "premises" to mean a tract of land which may consist of more than one parcel so long as the parcels adjoin each other. Although the land was acquired by two separate deeds and is separately identified on the Mecklenburg Tax Line Map, once the adjoining tracts were acquired by one owner, the Commission finds that the total 25 acres became the "premises" of Eslon. The Commission concludes that inasmuch as Eslon now owns both contiguous parcels consisting of 25 acres, and plans to expand its business facilities over this entire parcel, and the PBX is a single system designed and located to serve all of Eslon's facilities on both tracts, it follows that service is being provided at the customers' premises in accordance with the tariff. Southern Bell concedes that its tariff would not allow a connection in noncontiguous tracts of land.

This case presents a unique and hopefully infrequent set of circumstances where a customer owns contiguous tracts of land overlapping a service boundary with a single PBX system designed to service both tracts. This decision does not condone interconnection involving circumstances where the customer provided equipment is located across a boundary on nonadjoining property.

IT IS, THEREFORE, ORDERED as follows:

1. The Temporary Order directing Southern Bell not to provide telephone service to Eslon Thermoplastics, Inc., is dissolved.

2. Southern Bell should provide service to Eslon Thermoplastics pursuant to Eslon's request for same, in accordance with its tariffs and the pertinent statutes, rules and regulations applicable thereto.

3. The Complaint filed by the Town of Pineville (Pineville Telephone Company) on August 19, 1980, is dismissed, and this docket is closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of December 1980.

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

DOCKET NO. P-19, SUB 177

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Dr. Cheryl Mahony, Complainant)
)
vs.) RECOMMENDED ORDER
)
General Telephone Company of)
the Southeast, Respondent)

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on June 5, 1980, at 10:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Complainant:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

For the Respondent:

Richard W. Stimson, Senior Attorney, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702

BENNINK, HEARING EXAMINER: On December 21, 1979, the North Carolina Utilities Commission received a three-page letter of complaint from Dr. Cheryl Mahony (Complainant) alleging that General Telephone Company of the Southeast (GTSE, Company, or Respondent) was unwilling or unable to provide adequate telephone service to her at her residence, that an employee of the Company had entered her premises to repair her telephone instrument against her express instructions by "lying" to her landlady, and that the Company was unable or unwilling to provide her with documents that would substantiate her complaint. By Order issued January 23, 1979, the Commission served Dr. Mahony's Complaint on the Company. GTSE's Answer to the Complaint was filed with the Commission on February 13, 1980. On February 13, 1980, the Company also filed the Statement and Motion of Richard W. Stimson seeking permission to represent GTSE in this proceeding. The Company's Answer to Dr. Mahony's Complaint was served on her by Order issued March 6, 1980. The Commission also issued an Order on March 6, 1980, allowing Mr. Stimson's Motion for permission to appear and represent GTSE in this proceeding. On March 26, 1980, Dr. Mahony filed with the Commission certain questions in regard to the Company's Answer to her Complaint. On April 2, 1980, the Commission issued an Order Serving Complainant's Response on Respondent which served

these supplemental questions on the Company. On April 14, 1980, in response to those supplemental questions, GTSE filed its Answer to Supplemental Questions. The Commission, on April 22, 1980, issued an Order Serving Answer to Supplemental Questions on Complainant which served the Company's supplemental answers on Dr. Mahony. On April 28, 1980, Dr. Mahony filed her response to the April 22, 1980, Order, therein stating that the Company's response was unsatisfactory to her and requesting a public hearing. By Commission Order issued on April 30, 1980, Dr. Mahony's Complaint was set for public hearing on June 5, 1980, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. The Public Staff filed its Notice of Intervention on June 4, 1980.

The matter came on for hearing as scheduled with the Complainant and the Company both being present and represented by counsel. Dr. Mahony appeared and testified in her own behalf. The Company responded with the testimony of the following witnesses: Thomas W. Frazier, Service Supervisor - Central Office Equipment; Merel Utley, Service Supervisor - Outside Plant; Robert L. Goodbar, Jr., Service Supervisor; Thomas Sanseverino, Installer-Repairman; Charles E. Woody, Customer Services Manager - Customer Equipment; Terry M. Desmond, Division Service Manager; and Donna Emmons, Customer Services Supervisor, Service Office.

Based upon a careful consideration of the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. General Telephone Company of the Southeast is a public utility providing telecommunications services to subscribers in seven southeastern states, including North Carolina. The Company's activities within the State of North Carolina are within the jurisdiction of the North Carolina Utilities Commission.

2. The Complainant in this matter is Dr. Cheryl Mahony, a physician employed by Duke University Hospital, one of thirty (30) Fellows in the Hospital's Department of Cardiology. The Complainant has been a subscriber of service from the Respondent since January 1977.

3. Dr. Mahony resides in an apartment contained within the house of her landlady, Mrs. Williams. The apartment access is through a separate entry door located on the back porch of Mrs. Williams' home. Mrs. Williams possesses a key to Dr. Mahony's apartment which Dr. Mahony gave her for use in emergency situations.

4. The Complainant believes that satisfactory telephone service is an essential part of her employment and considers any interference or outage an emergency which requires immediate and prompt action by the Respondent.

5. Since the Complainant is occasionally on-call to the hospital, there is concern about medical-legal problems which may arise in the event she could not be contacted in an emergency.

6. A review of the Complainant's service history for the thirty-five (35) month period from January 1977 through November 1979 indicates that the Complainant experienced three (3) service complaints where the trouble was located and corrected and two (2) complaints where the telephone was working properly when tested.

7. During the month of December 1979, the Complainant registered six (6) service complaints with Respondent. In four (4) cases, Respondent was able to locate the cause of the interference and corrective actions were taken. In the remaining cases, service was found to be properly functioning.

8. At the time of the hearing, the Complainant was receiving reliable service from the Respondent.

9. In each of the above cases, the Respondent acted in a prompt manner to locate and correct the cause of the reported trouble.

10. On December 21, 1979, the Commission received a complaint from Dr. Mahony alleging (1) that the Company failed to provide her with adequate service, (2) that an employee of the Company entered her premises against her wishes by lying to her landlady, and (3) that the Company was unwilling to supply her with information which would support her complaint. The Complainant did not request specific relief. Aside from the general service matters raised by the complaint, the thrust of the complaint was directed to events which surrounded a service complaint received by the Company during the late evening hours of December 6, 1979.

11. On December 6, 1979, at approximately 11:30 p.m., the Complainant contacted Respondent reporting a trouble emergency. The operator receiving the call obtained the basic trouble information and referred the call to the duty supervisor. The Complainant informed the duty supervisor she was an "on-call" physician, that she could receive calls but could not call out on her instrument, and that she had experienced similar problems in the past which were located in the cable.

12. The duty supervisor immediately called out a switchperson who tested all central office equipment and reported that the central office equipment was in proper working condition. He then recontacted the Complainant to discuss the possibility of sending an employee to her premises to test her facilities and conduct any required on-site repairs. The Complainant replied that she did not wish to be disturbed any further that evening and requested that

the Company not send anyone out that night. The Complainant then requested that the duty supervisor recontact her at approximately 8:15 a.m. the following morning.

13. In an effort to isolate the problem that night, the duty supervisor contacted the outside plant supervisor and passed to him the responsibility of deciding what action, if any, should be taken. The outside plant supervisor was informed that the trouble involved an on-call doctor, that it was a repeat problem believed by the customer to be in the cable, and that the customer did not wish to be disturbed further that night concerning the matter.

14. The outside plant supervisor immediately requested a check of the line which was to include test calls, but instructed the craft employee performing the tests not to disturb the customer. The employee reported that the tests indicated the line was clear - no hum, static, or noise - and informed the supervisor that he had, against instructions, contacted the customer to ensure that his test results were accurate.

15. After the test of the facilities indicated that they were clear, the remaining area to be examined was the on-premises customer equipment. The outside plant supervisor then decided to make a last call to the Complainant to explain what had been done and to inform her that the problem was most likely in the telephone instrument itself and could be cured if she would allow him and another employee to visit the premises that evening. This call occurred minutes after the switchperson's contact at approximately 1:30 a.m. The Complainant stated that she had given her call out to another physician and did not wish to be further disturbed that evening. As a result of that conversation, further attempts to resolve Dr. Mahony's service problem were postponed until 8:00 a.m. the following morning. No physical corrective actions were taken that evening.

16. On the morning of December 7, 1979, the Complainant was contacted by four of Respondent's employees. She was first contacted by a repair clerk whose purpose was to ensure that service had been restored to the Complainant's satisfaction. A second call was made by a person unknown to the parties. Both of these individuals were informed that service had been restored. The third contact was by the duty supervisor whose call was in accord with the Complainant's request that he contact her that morning. During the conversation, the Complainant requested that the Company furnish her with a complete service record.

17. The last contact with the Complainant occurred when the service supervisor assigned to investigate and resolve the Complainant's recurring cable problems contacted her to discuss the particulars and characteristics of the problems encountered. The Complainant would not discuss the matter

with him and referred him to the person acting on the original report.

18. On December 7, 1979, the Respondent dispatched an installer-repairperson, Thomas Sanseverino, to the Complainant's premises to examine and test the facilities serving the Complainant to discover and, if possible, repair the cause of the Complainant's intermittent problems. When the repairperson arrived at the scene, he realized he had visited the premises in the past. He specifically remembered his conversations with Mrs. Williams, the Complainant's landlady, who had allowed him to enter the premises in her presence to install service for a prior tenant absent at the time of his visit

19. The installer did not attempt to enter the premises when he arrived. He went straight to the protector where he performed all the usual tests. All readings were within normal limits, the line was clear, and all test calls made from the protector were successful. In his opinion, based upon ten (10) years' experience, the problem, if any, would be found in the Complainant's telephone instrument.

20. While Mr. Sanseverino was aware that Dr. Mahony might not be at home, he proceeded to the front of the premises to ensure that he did not leave the location without making every effort to resolve the problem. Mr. Sanseverino's knock was answered by Mrs. Williams whom he had known from a previous installation assignment. When he inquired concerning her tenant's telephone problems and the possibility of entry to test the instrument, Mrs. Williams, in Dr. Mahony's words, replied that she was unaware of any problem, "but if he wanted to enter the premises that would be fine." Mr. Sanseverino entered Mrs. Williams' house through the front door and was escorted through the interior of the house to the back porch door to Dr. Mahony's apartment. Mrs. Williams possessed a key to the apartment provided to her by Dr. Mahony for use in emergency situations, and readily opened the apartment to him. Both Mr. Sanseverino and Mrs. Williams entered and she remained there during 95% of the repair. The telephone was in plain view and Mr. Sanseverino proceeded to make several test calls from the instrument without failure. Although the dial did not fail during the testing, removal of the instrument cover revealed burnt dial contact points and Mr. Sanseverino decided to replace the entire instrument. He then called the service supervisor and informed him that he had discovered burnt contact points in the instrument and had changed it out to avoid a recurrence of the trouble. He also filled out a Company survey card to notify the customer that he had been to the premises and placed the card in plain view next to the new instrument. Mrs. Williams locked up Dr. Mahony's apartment and escorted Mr. Sanseverino back through her residence to the front porch. The trouble was thereafter cleared and Mr. Sanseverino proceeded to his next assignment.

21. Respondent's North Carolina Division employs approximately 100 installer-repairpersons who may make up to ten (10) customer premises visits each day to install, change, upgrade, remove, or conduct repair activities at the customers' premises. Between 30% and 40% of those visits are made in the presence of landlords, neighbors, or other authorized personnel in the absence of the subscriber. Employees of the Company are not allowed to enter any customer's premises (terminal rooms excepted) except when the customer is present or when an authorized agent of the customer or other responsible person grants permission and is present during the work.

22. Premises access arrangements are made at the time a customer contacts the Company to report a trouble. An agreed access time or contact number is obtained from the customer and is recorded on documentation associated with the report. Should a customer indicate, for any reason, that he/she does not want a Company employee to visit his/her premises, the party receiving the call places a red notation across the face of all documentation. An installer is not thereafter dispatched to the customer's residence without the expressed approval of the customer. Each of the Respondent's employees who receives customer complaints has received extensive training in the proper reporting of such matters.

23. This case presents the first formal complaint against Respondent relating to the above entry policies and procedures within the knowledge of current management. No other customer of the Respondent has ever raised a question with respect to the propriety of a Company employee having entered their premises. The Respondent serves over 80,000 customers in North Carolina.

24. On Monday, December 10, 1979, the Complainant contacted Respondent and demanded to know the name of the person who "illegally" entered her apartment on December 7, 1979. The Complainant had found the survey card next to the telephone indicating that a Company employee had entered and repaired her telephone. The identity of the installer-repairperson was not then given to the Complainant. The Complainant further stated that she had given each of the four persons contacting her on the morning of December 7, 1979, specific instructions not to enter her premises that day. The Company committed to investigate the matter.

25. The Company thereafter discussed the matter with each employee involved. Those who had contact with Dr. Mahony during the night of December 6, 1979, clearly recalled her directions not to send a repairperson out that night. Each denied that Dr. Mahony had given them any instructions with respect to entry during normal working hours on December 7, 1979.

26. The exact nature of Dr. Mahony's instructions with respect to access to her premises by Company employees is

unclear. Each of the Respondent's witnesses denied receiving any no access instructions from the Complainant on the morning of December 7, 1979.

27. On December 11, 1979, Complainant again contacted Respondent to obtain the name of the installer-repairperson and to again request a copy of her service record. Respondent disclosed the name of its employee and agreed to provide the service record on December 12, 1979.

28. On December 12, 1979, the Complainant was provided with a service record which was unintelligible to her. Although two Company supervisory personnel then offered to explain all of the notations contained on said service record, the Complainant declined such offer. On January 30, 1980, the Complainant received a comprehensible service record history from the Company.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

1. The Respondent, General Telephone Company of the Southeast, is a public utility as defined in G.S. 62-3(23)a.6 and, as such, is subject to the jurisdiction of this Commission.

2. The burden of proving each essential element of the complaint at issue herein is upon the Complainant who is required to support each allegation with competent, material, and substantial evidence. G.S. 62-65; G.S. 62-75; State ex rel. Utilities Commission v. Nello L. Teer Co. 266 NC 366 146 SE2d 511 (1966).

3. The Complainant has alleged that the Company was either unable or unwilling to provide her with the customer service information which she requested prior to filing this complaint. In this regard, Dr. Mahony testified that the customer service record which the Company initially provided to her on December 12, 1979, was completely unintelligible to her and that said report was not at all helpful in making the instant complaint. Dr. Mahony further testified that while two Company employees did offer to explain the above-referenced document to her, she had gone to the Company's office expecting to be provided with a more comprehensible document which would not have required interpretation in order to be understood. On January 30, 1980, the Complainant received a second service record history from the Company which she was in fact able to understand. Company witness Woody testified that in response to a letter requesting compilation of a customer service history, he would prepare a report similar to the second report provided to Dr. Mahony. Witness Woody further testified that it would have only taken him approximately 15 minutes to translate the document originally provided to the Complainant into a document of the type which was ultimately prepared and distributed to her. Accordingly, the Hearing

Examiner concludes that the Company should henceforth endeavor to provide its customers who make either a verbal or written request for a service history with a report which is at least as comprehensible to a layman as the second report which was ultimately provided to the Complainant in this case.

4. The Complainant has alleged that the Company was unable or unwilling to provide her with reliable telephone service. While the record does reveal an unusually high incidence of reported troubles on Complainant's line, there is no question surrounding the Company's response to each of the Complainant's trouble reports. It is apparent from the record that each complaint was handled on a priority basis and that the Company responded promptly each time the Complainant reported a trouble. Each employee of Respondent acted in a sincere effort to provide the Complainant with reliable service. It is also clear that the Company has made every effort to resolve the Complainant's problems and to ensure that she will continue to receive reliable service. The allegation that the Company was unwilling to provide good service has been refuted in this case. With respect to the ability of Respondent to continue to provide good service, it is noted that even the Complainant testified that she had received good and reliable service for approximately six months prior to the hearing. The record does not indicate that service related relief was requested. Nor is any mandated by the facts. Notwithstanding the above, GTSE is hereby advised to take all steps necessary to ensure the continued provision of reliable and satisfactory service to the Complainant.

5. The Complainant has alleged that a Company employee entered her apartment against her wishes by lying to her landlady. Although the evidence indicates that the entry was against the Complainant's wishes, there is a substantial question left by the record that those desires were in fact communicated to the Respondent. The Complainant's testimony did not clearly define the substance of her conversations with Respondent's employees. There appear to be two versions of exactly what was said and, by the Complainant's own admission, her comments were subject to interpretation. The Respondent's witnesses each denied having received any instructions from the Complainant with respect to premises entry on December 7, 1979. The facts show that the person entering Complainant's apartment did so with the expressed consent and in the company of Complainant's landlady who possessed a key given to her by Complainant for use in such situations, thereby implying that she had authority to allow entry. There is no evidence that an employee of Respondent lied to gain entry to Complainant's premises.

6. The Complainant did not seek any relief, but did request that the Commission examine the Respondent's premises entry policies. As previously noted, those policies are longstanding and have not been heretofore challenged by any of the Respondent's customers. The

Hearing Examiner is confident that the Company would not have entered the Complainant's premises had the Complainant's position been made expressly known to it. Likewise, there is no question that each of Respondent's employees acted with the sole purpose of providing or restoring telephone service to the Complainant. Finding the current policy to be proper and considering the unique facts of this case, no premises entry policy restructuring relief should be granted.

7. In concluding this Order, the Hearing Examiner believes that it is extremely important to note that since the filing of the instant complaint, the Respondent has reviewed this matter with each of the employees involved and has also reviewed its premises entry procedures with all first and second line supervisors with responsibilities over premises entry activities. In addition, the Respondent has restructured duty supervisor responsibilities to include all customer contact, including follow-up activities. The intent of the responsibility realignment is to reduce the number of persons contacting a customer reporting a night trouble emergency. The Company is hereby advised to remain cognizant of its duty to see that its employees continue to provide its customers with satisfactory and efficient service.

IT IS, THEREFORE, ORDERED as follows:

1. That GTSE shall undertake all reasonable efforts to ensure the continued provision of reliable and satisfactory service to the Complainant.

2. That in response to a verbal or written request for a customer service report, GTSE shall provide the customer making such request with a document which is at least as comprehensible to a layman as the second service report which was ultimately provided to the Complainant herein.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of November 1980.

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

DOCKET NO. P-82, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Aircall, Inc., for an	) ORDER
Adjustment in Its Rates and Charges	) GRANTING
Applicable to Intrastate Radio Common	) PARTIAL INCREASE
Carrier Service in North Carolina	) IN RATES

HEARD IN: Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on March 18, 1980, and the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 20 and 21, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding, and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

Thomas R. Eller, Jr., Attorney, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: Aircall, Inc.

For the Public Staff:

Paul L. Lassiter, 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: This matter is before the Commission upon the application of Aircall, Inc. (Aircall, RCC, or Applicant), filed December 17, 1979, for authority to modernize and bring current its service regulations and revise and increase its rates and charges on radio common carrier service it provides in its certificated territory in and around Asheville, North Carolina. The Commission on January 16, 1980, suspended effectiveness of the proposed rates and charges, ordered a general investigation into the reasonableness thereof, scheduled public hearings, and required the Applicant to give notice to the public and to its consumers.

The Public Staff - North Carolina Utilities Commission gave Notice of Intervention. There were no other interventions or protests to the granting of the Application.

After appropriate rulings on production of documents and other procedural matters, the matter came on for hearings and was heard as scheduled.

One public witness, Edmund Horgan, appeared in opposition to the increase in the mobile telephone communication service rate. A subscriber to Applicant's automatic mobile telephone service through his own equipment, Mr. Horgan makes very little use of Aircall's service. Mr. Horgan is President of International Telecom, an electronic consulting firm which has a service area primarily outside of the Asheville area. In order to use the services of other RCCs outside the Asheville area, Mr. Horgan subscribes to Aircall's service and then pays a transient rate to the RCCs rendering service in other territories. Mr. Horgan was not opposed to the Applicant receiving an increase in its communication service rate, but felt that the increase proposed was too substantial.

Several customers appeared and testified in support of Aircall in the Asheville hearings. These were:

1. Dr. Reavis T. Eubanks, a general practitioner in the Asheville area, testified that he was pleased with Aircall's service, that equipment failures have been absolutely minimal, and in the one instance when his pager needed servicing, the pager was replaced immediately. Dr. Eubanks felt that the increase in rates was justified and that subscribers who frequently utilize the Applicant's service should pay a proportionately higher rate. However, he did ask the Commission to consider the number of calls that would be included in the base subscription rate.

2. Alan L. Duckett, a subscriber of the Applicant's services almost since Aircall's inception, testified that he found the service to be of inestimable value to his funeral home business, and he strongly supported the proposed increase.

3. Michael Robert Fagan, a highway contractor, testified that his company subscribes to both mobile telephone and paging service from Aircall and that both services have been of tremendous value to his business in saving time and mileage and that the service has been excellent. He also stated that Aircall's mobile telephone service is superior to any other mobile telephone service which his company has utilized in the past and that his company is supportive of the rate increase.

The principal evidence was taken in the hearings in Raleigh. The Applicant presented the following:

1. Ira A. Smith, Jr., President - Aircall, Inc.;

2. H. Randolph Currin, Jr., President, Currin and Associates, Inc., Consultant - Revenue Requirements Allocations, Rate of Return, and Rate Design; and

3. Ms. Judy Beacham, Senior Utility Analyst, Currin and Associates, Inc., Consultant - Original Cost Rate Base and End of Period Revenues and Expenses.

The Public Staff - North Carolina Utilities Commission presented the following witnesses:

1. Robert Weiss, Staff Economist - Rate of Return and Cost of Capital;

2. Thomas Collins, Staff Accountant - Accounting Adjustments;

3. Benjamin Turner, Staff Communications Engineer - Plant Condition and Service; and

4. Leslie C. Sutton, Staff Communications Engineer - Revenues.

Various motions and objections were made by the parties during the course of the hearing. Rulings thereon by the Commission appear of record.

After due consideration of the verified Application, the testimony and exhibits of the six witnesses for the Applicant, the four witnesses for the Public Staff, and the one public witness, taking judicial notice of the matters and things noted in the record of hearings, the argument and briefs of counsel, and upon a review of the entire record as a whole in accordance with applicable law, the Commission makes the following:

FINDINGS OF FACT

1. That Aircall is a North Carolina Corporation which is doing business in North Carolina as a franchised public utility providing service as a radio common carrier in the Asheville area.

2. That Aircall is lawfully before this Commission for a determination of the justness and reasonableness of its proposed rates and charges pursuant to Chapter 62 of the General Statutes of North Carolina.

3. That the test period established by the Commission is the 12 months ended December 31, 1978. The annual increase in revenues sought by Aircall under its proposed rates is approximately $66,201.

4. That Aircall is providing good service to its customers in North Carolina.

5. That the original cost of Aircall's plant in service used and useful in providing radio common carrier services in North Carolina is $289,952. From this amount should be deducted the accumulated depreciation associated with the original cost of this plant of $104,026, resulting in a reasonable original cost less depreciation or a net plant in service of $185,926.

6. That the reasonable allowance for working capital for Aircall is $7,215.

7. That the original cost of Aircall's net plant in service to customers within the State of North Carolina is $185,926, plus the reasonable allowance for working capital of $7,215, less the unamortized investment tax credit of $4,198, which yields a reasonable original cost net investment (rate base) of $188,943.

8. That the Company's test year operating revenues, net of uncollectables, after appropriate accounting adjustments, under present rates are approximately $169,626, and under the Company's proposed rates would have been approximately $234,516.

9. That the appropriate level of the Company's operating revenue deductions (or expenses) under present rates, after accounting and pro forma adjustments, including taxes, is $180,447, which includes the amount of $47,730 for actual investment currently consumed through actual reasonable depreciation.

10. That the capital structure which is proper for use in this proceeding is the following:

Item	Percent
Long-Term Debt	50.67
Common Equity	49.33
Total	100.00

11. That the Company's proper embedded cost of debt is 15.63%. The fair rate of return which should be applied to the original cost net investment of Aircall (or rate base) is 18.77%. This return on Aircall's rate base will allow the Company the opportunity to earn a return on its common equity of 22.00%, after recovery of the embedded cost of debt. Such returns on rate base and common equity are just and reasonable.

12. That the Company's pro forma return on its rate base at the end of the test year under present rates is approximately (5.60%), which is less than the Commission has determined to be just and reasonable. Therefore, in order to earn the level of returns which the Commission finds to be just and reasonable, Aircall should be allowed to increase its rates and charges so as to produce an additional $53,117, based on operations during the test year. The Commission finds that, given efficient management, this amount of additional gross revenue dollars will afford the Company a fair opportunity to earn the level of returns on rate base, and original cost equity which the Commission has found to be fair, both to the Company and to its customers.

13. That the President's voluntary wage and price guidelines must be applied with due discretion and flexibility in order that the Applicant be allowed a fair and reasonable return on original cost net investment, as required by the General Statutes of the State of North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

The evidence for these findings are contained in the verified application, the Commission's Order Setting Hearing, the testimony of the public witnesses, and the testimony and exhibits of Company witness Smith. These findings are essentially informational, procedural, and jurisdictional in nature and were, for the most part, uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding is located in the verified application and in the testimony and exhibits of Company witness Beacham and of Public Staff witnesses Collins and Turner. The amounts presented were as follows:

	Company Witness Beacham	Public Staff Witnesses
RCC plant in service	$291,687	$255,832
Accumulated depreciation	118,084	91,283
Net plant in service	$173,603	$164,549

In developing the end-of-period RCC plant in service, both Company witness Beacham and Public Staff witness Collins started with the balance per books at December 31, 1978. Company witness Beacham contended that this figure should be adjusted for two items to reflect actual known changes through December 31, 1978. The Public Staff contended that six adjustments were required to reflect a reasonable end-of-period level of plant in service after allowing for actual known changes through December 31, 1978. The following chart shows a listing of the adjustments proposed by these witnesses:

Description	Company Witness Beacham	Public Staff Witness Collins
RCC plant in service - per books (12/31/78)	$264,416	$264,416
Additions:		
Automatic mobile equipment	32,959	32,959
New vehicles	-	9,162
Less:		
Pager retirements	-	13,909
Mobiles not in service	5,688	22,527
Hickory transmitter	-	3,506
Old vehicles	-	10,763
Total	$291,687	$255,832

These items account for the differences between the amounts presented by the Company and by the Public Staff. One of these differences relates to the treatment of some 46 fully depreciated pagers. The Public Staff has removed them from the accounts while the Company has not. In order to be consistent with generally accepted accounting principles and to ensure that the proper level of depreciation expense is included in the cost of service for purposes of this proceeding, the Commission concludes that the Public Staff's treatment of this item is proper.

Another difference concerns the appropriate amount for mobiles not in service, which should be excluded from the plant in service account for rate-making purposes. In the Company's initial filing, they excluded $22,527 for these units which is the amount excluded by the Public Staff. However, Company witness Beacham testified that while reviewing the data supporting the application, the Company discovered that some of the equipment included in the $22,527 amount was leased equipment which had never been included in the plant in service account, and therefore, the appropriate exclusion should be $5,688. The Commission concludes that $5,688 is the proper amount to be deducted from plant in service for mobile telephones not in service.

The next item concerns the Hickory transmitter which had been in service as a part of Aircall's Hickory Operation prior to 1976. Since that time and until just recently, it had been leased to Two-Way Radio, another radio common carrier. Public Staff witness Turner testified that since Aircall was no longer doing business in Hickory, the investment should not be included in the rate base because it is not used and useful. Company witness Smith testified, however, that the transmitter should be included in the rate base because the Company had plans to place it in service pending regulatory approval, engineering design, and construction. He anticipated that the plant would be in service by the end of 1980.

The Commission concludes that the transmitter was not in service during the test year and, further, it was not in

service at the close of the hearing in this docket. Therefore, the Commission concludes that the plant is not used and useful and, consequently, the original cost of this item of $3,506 should be removed from plant in service.

The last item concerns automotive equipment. The Company made no adjustments to plant in service for known changes in the automotive equipment account occurring subsequent to the test year. The Company had included two vehicles in its rate base, a 1974 Jeep and a 1977 Buick. Public Staff witness Turner testified that he found during his investigation that the Company was actually using two recently purchased vehicles in its business operation; a Chevrolet pickup truck and a Subaru truck with four-wheel drive. Public Staff witness Turner included the original cost of these new vehicles in plant in service, but excluded the original cost of the 1974 Jeep and 1977 Buick, because he determined that they were not used and useful utility plant. The Company did not contest the exclusion of $4,482, the original cost of the Jeep from plant in service. However, the Company contends that the Buick is still used and useful in that it is used to demonstrate mobile telephones to prospective customers and that it was driven to Raleigh six or seven times during the course of this rate proceeding. In view of this, and the fact that the Buick was the only passenger vehicle owned by the Company at the close of the hearing, this Commission concludes that the Buick is in fact used and useful utility plant.

Based on the evidence in the record which shows that the inclusion of the vehicles purchased after the end of the test year as proposed by Public Staff witness Turner is in fact an actual change in nonrevenue producing investments occurring since the end of the test period, the Commission concludes that the $9,162 addition to vehicle investment is appropriate. This amount should be added to the December 31, 1978, vehicle balance ($10,763), less $4,482, the original cost of the Jeep, resulting in the fair and reasonable level of vehicle investment of $15,443.

After a careful review of the record, and particularily Public Staff witness Turner Exhibit 1, the Commission concludes that one additional adjustment must be made to gross plant in service. Under Evidence and Conclusions of Finding of Fact Nos. 8 and 9, the Commission has included the revenues and expenses related to the pronounced growth in customers experienced by the Applicant in the Hendersonville and Canton area, between the end of the test period and the close of the hearing. In keeping with the matching concept in income determination and the normalization concept in the fixing of rates, the Commission must match these expense and revenue adjustments with any additions to plant necessary to meet this customer growth. Thus, after much deliberation, the Commission concludes that pager investment should be increased by $11,000 in order to allow the Company a representative level of pager investment necessary to support the level of customers considered fair

and reasonable in this proceeding. This addition of $11,000 results in a total pager investment level of $159,841, which equates to $313 per pager. This level of investment per pager is somewhat higher than that ($302) associated with the 46 pagers retired above by the Commission but somewhat less than that ($323) advocated by the Public Staff and found reasonable by this Commission in Docket 83, Sub 6.

After making these adjustments to plant in service, the Commission finds that the proper gross plant in service for the test year ending December 31, 1978, is $289,952.

In developing the end-of-period level of accumulated depreciation, both Company witness Beacham and Public Staff witness Collins started with the balance per books at December 31, 1978. Ms. Beacham contended that this amount should be adjusted for two items to reflect actual known changes through December 31, 1978. The Public Staff contended that six adjustments were required to reflect a reasonable end-of-period level of accumulated depreciation after allowing for actual known changes through December 31, 1978. The following chart shows a listing of the adjustments proposed by these witnesses:

Description	Company Witness Beacham	Public Staff Witness Collins
Accumulated depreciation - per books (12/31/78)	$117,841	$117,841
Additions:		
Automatic mobile equipment	4,120	2,270
New vehicles	-	1,219
Less:		
Pager retirements	-	7,996
Mobiles not in service	3,877	14,200
Hickory transmitter	-	1,972
Old vehicles	-	5,879
Total	$118,084	$ 91,283

Five items account for the differences between the amounts presented by Company witness Beacham and Public Staff witness Collins. The first concerns the adjustments in the depreciation reserve account made by the Public Staff to correspond with the adjustments updating the automotive equipment account. Consistent with the Commission's earlier finding concerning the proper automotive equipment account balance, the Commission concludes that the fair and reasonable level of accumulated depreciation related to the automotive accounts is $6,065, after consideration of depreciation rates found to be fair and reasonable under Evidence and Conclusions for Finding of Fact No. 9.

The second item concerns the appropriate level of accumulated depreciation to include for the new automatic mobile equipment. The Company contends that the equipment should be depreciated over an eight-year period, resulting

in a reserve adjustment of $4,120. The Public Staff contends that $2,270 is the appropriate adjustment to be made, based upon depreciation rates developed by Public Staff witness Turner. Corresponding with the Commission's findings in Evidence and Conclusions for Finding of Fact No. 9 regarding the appropriate depreciation rates, the Commission concludes that $3,557 is the appropriate adjustment to the accumulated depreciation account for the new automatic mobile equipment.

The third item concerns the appropriate reduction in the accumulated depreciation reserve for the pager retirements. Public Staff witness Turner reduced the pager accumulated depreciation balance by a net amount of $7,996. This amount was derived by netting the fully depreciated pager retirements of $13,909, found appropriate in the Commission's conclusions above, with $5,913 of pager salvage. Public Staff witness Turner stated that this salvage figure was equal to an amount the Company had received as replacement payment by customers or trade-in credits for pagers retired since 1976. The Company contends that the pagers were fully depreciated at the time of this retirement, and therefore the proceeds should be reported as a gain on the income statement. Though the treatment of this item advocated by the Public Staff is used in larger telephone companies, the Commission concludes that, considering Aircall's small size and the nature of the item involved, the pager salvage in excess of net book cost should be reflected in the income statement. Therefore, the Commission concludes that $13,909 of accumulated depreciation related to the retired pagers should be deducted from the end-of-period accumulated depreciation balance.

The fourth item concerns the depreciation associated with mobiles not in service. Consistent with the earlier finding that the Company's reduction of $5,688 in the plant account for mobiles not in service was appropriate, the Commission finds that the corresponding adjustment to the reserve account should be $3,877.

The final item concerns the adjustment for depreciation of $1,972 for the Hickory transmitter. Consistent with the Commission's earlier finding that the transmitter should be excluded from rate base, the Commission finds that the $1,972 reduction is appropriate.

In correlation to the $11,000 adjustment, in coming to an appropriate representative level of pager investment, as spoken to above, the Commission concludes that accumulated depreciation should be increased by $2,200 for this item, after consideration of the depreciation rates found to be fair and reasonable under Evidence and Conclusions for Finding of Fact No. 9.

After making these adjustments to accumulated depreciation, the Commission finds that the proper

depreciation reserve level for the test year ended December 31, 1978, is $104,026.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Beacham and Public Staff witness Collins each presented a different amount for the working capital allowance as shown by the chart below:

	Company Witness Beacham	Public Staff Witness Collins
Cash allowance	$11,686	$5,107
Customer deposits	(3,845)	(3,845)
	$ 7,841	$1,262

The difference in the cash amounts shown above results from the different methods employed by the witnesses in calculating the cash requirement and from the different levels of operating and maintenance expenses determined by the witnesses. Company witness Beacham calculated the cash requirement by dividing her level of operating and maintenance expenses by 12, whereas Public Staff witness Collins divided his level of operating and maintenance expenses by 24.

In prior telephone cases in which this Commission has used the formula method for calculating the cash requirements, operating and maintenance expenses have been divided by 12 to arrive at the cash requirement for working capital. One-twelfth is generally used in proceedings in which the Company bills its services in advance, as is the case with Aircall.

The Commission concludes from the evidence in the record that the cash component of working capital should be determined by dividing end-of-period operating and maintenance expenses by 12. Using operating and maintenance expenses found proper in Evidence and Conclusions for Finding of Fact No. 9, the Commission concludes that $11,060 is the proper amount of the cash component of working capital in this proceeding.

The Company and the Public Staff agreed as to the proper level of customer deposits.

Based on the foregoing Findings and Conclusions, the Commission finds that $7,215 is the appropriate amount of working capital allowance to be used in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Commission has previously determined in Evidence and Conclusions for Findings of Fact Nos. 5 and 6 that the proper level of net plant in service at December 31, 1978, is $185,926 and that a reasonable allowance for working capital is $7,215.

The last item to be considered in the determination of the Company's rate base is the unamortized job development investment tax credit (JDITC) incurred under the Revenue Act of 1971. Both the Company and the Public Staff witnesses agree that Aircall should be treated as an Option (1) company under the IRS regulations. Both also agree that $5,037 is the proper level of JDITC for 1978. To this amount, Company witness Beacham added $3,296 for the new automatic mobile telephone equipment while Public Staff witness Collins added $3,213 for this equipment. The Commission concludes that the appropriate amount of JDITC for the new automatic mobile telephone equipment is $3,296.

Neither Company witness Beacham nor Public Staff witness Collins included JDITC for the new vehicles included in the rate base. The Commission concluded in Evidence and Conclusions for Finding of Fact No. 5 that these vehicles should be included in the rate base; therefore, JDITC should be recognized for these vehicles. Based upon the $9,162 original cost and a depreciable life of four years as found to be appropriate in Evidence and Conclusions for Finding of Fact No. 9, the Commission concludes that $305 of JDITC should be recognized for these vehicles. In addition to this adjustment, $149 should be deducted for the recapture of investment tax credits related to the Jeep sold by Aircall subsequent to the end of the test year and $734, related to the tax credit on the $11,000 additional pager investment, should be added.

Based on the foregoing Findings and Conclusions, the Commission concludes that $9,223 is the appropriate amount of JDITC to be considered in this case.

Public Staff witness Collins reduced the unamortized JDITC by the amount of the credit carried forward, due to an inadequate tax liability under his calculations. The Commission agrees with the theory supporting this adjustment. Hence, this Commission concludes that the rate base should be reduced by the proper amount of unamortized JDITC of $4,198 after the approved increase of $53,117 as determined in Evidence and Conclusions for Finding of Fact No. 12.

Therefore, the Commission concludes that Aircall's net plant in service of $185,926 plus the reasonable allowance for working capital of $7,215 less the unamortized JDITC of $4,198 yields the approximate level of original cost net investment of $188,943.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Beacham and Public Staff witnesses Sutton and Collins presented testimony concerning Aircall's representative level of end-of-test-period revenues. The following chart shows the amounts presented by the witnesses:

	Company Witness Beacham	Public Staff Witnesses
Operating Revenue:		
Mobile Telephone	$ 17,250	$ 16,404
Pager	132,036	149,718
Paging, Installation & Special Charge	2,197	1,020
Mobile Telephone Extra Calls	2,410	2,076
Mobile Telephone Installation and Special Charges	1,380	1,200
Mobile Transient Calls	943	1,008
Total	$156,216	$171,426

The Company determined the end-of-period adjustment to mobile telephone and pager revenue by calculating the end-of-period incremental billing units over the actual or the average number for the test year and multiplying these units by the billing rate. This revenue increase was added to actual operating revenues to determine end-of-period mobile telephone and pager revenues.

The Company used the actual test year nonrecurring revenues (Paging, Installation & Special Charges, Mobile Telephone Extra Calls, Mobile Telephone Installation & Special Charges and Mobile Transient Calls) of $6,930 to calculate end-of-period revenues. The Company contends that these revenues fluctuate significantly during a 12-month period; therefore, it is difficult to choose one month as a basis to annualize these revenues. The total end-of-period revenues presented by the Company was $156,216.

Public Staff witness Sutton used the same methodology the Company used to calculate the end-of-period adjustment to mobile telephone and pager revenues as he did to calculate the end-of-period level of nonrecurring revenues. In addition, the Public Staff made an adjustment to end-of-period revenues to exclude special charge revenues which are revenues from services which the Public Staff contends do not properly belong in the regulated environment since these services are available in the open market.

The Commission concludes that the special charge revenues, which were excluded by the Public Staff, should be included in the calculation of the end-of-period revenues. The Commission also concludes that the actual test year level of nonrecurring revenues should be used in calculating the total end-of-period revenues.

The Public Staff also made a pro forma adjustment of $17,970 to test year pager revenues to reflect the additional revenues related to the subscriber growth in the Canton and Hendersonville areas after the end of the test year. The Public Staff contends that this increase in subscribers is a result of the establishment of FX service between the Canton and Hendersonville exchanges and the

control terminal in Asheville, which enabled toll-free calling from these two exchanges to Asheville. The Public Staff position is that since the Company included an adjustment to telephone expenses to reflect the additional expenses incurred in providing this FX service, it is proper to include the additional revenues that occurred as a result of these expenditures. The Company contends that this FX service was added to improve service and not to acquire additional subscribers and that the additional subscribers resulted from the Applicant's marketing effort at an industrial trade fair in January 1979. The Company also contends that the Public Staff failed to include any additional investment in pagers and any increase in operating expenses required to support these new subscribers, therefore, violating the fundamental accounting concept of matching revenues, expenses, and investment.

The Commission concludes that the magnitude of the cost ($4,296 per year) associated with the FX service, compared with the small number of customers (7) at test year end, indicates managerial desire to encourage customer growth in the Hendersonville and Canton area. Therefore, the Commission concludes that, consistent with the inclusion of a representative level of pager investment to meet the growth in the Canton and Hendersonville area under Evidence and Conclusions for Finding of Fact No. 5, and the annual FX service charges of $4,296 under Evidence and Conclusions for Finding of Fact No. 9 the $17,970 additional revenues should be included in the calculation of end-of-period gross revenues.

The parties did not disagree on the appropriate uncollectible rate to be used in this proceeding. Therefore, after the adjustments found to be approproiate by this Commission, the Commission concludes that the fair and reasonable level of end-of-period net revenues under present rates is $169,626 ($173,052 - $3,426), and under the Company's proposed rates would be approximately $234,516 ($239,253 - $4,737).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Beacham and Public Staff witness Collins presented testimony and exhibits showing the level of operating revenue deductions which they believed should be used by the Commission for the purpose of fixing Aircall's rates in this proceeding. The following tabular summary shows the amounts claimed by each witness.

	Company Witness Beacham	Public Staff Witness Collins
Operating expenses	$140,237	$122,577
Depreciation	37,046	23,575
Income taxes	-	2,787
Total operating revenue Deductions	$177,283	$148,939

In developing the end-of-period level of operating expenses, both the Company and Public Staff started with the balance per books at December 31, 1978. Both witnesses made adjustments to this balance in order to bring expenses to an end-of-period level and to reflect actual known changes through December 31, 1978. Those operating expenses for which there is disagreement are detailed in the following chart.

Item	Company Witness Beacham	Public Staff Witness Collins	Difference
Leased equipment	$ 1,135	$ 966	$ 169
Other taxes	6,846	6,285	561
Advertising	4,235	3,341	894
Dues and subscriptions	2,823	2,670	153
Insurance and medical	5,598	4,535	1,063
Legal and accounting	8,145	7,012	1,133
Salaries	68,649	61,622	7,027
Office supplies and miscellaneous	12,038	5,378	6,660
Total	$109,469	$91,809	$17,660

The first item concerns the appropriate level of leased equipment expense. The Public Staff introduced into evidence copies of the leases which indicate that the annual payments over the next three years will be $966. Therefore, the Commission concludes that the appropriate level for this expense is $966.

The second item concerns the level of other taxes included by the witnesses. Since the appropriate level of this expense is affected by the levels of gross plant in service and employee salaries, Commission treatment of these items must be considered. Since under Evidence and Conclusions for Finding of Fact No. 5, the Commission concluded that the appropriate end-of-period level of plant is $289,952, the resulting end-of-period property taxes are $3,192. Under the conclusions below, the Commission determines that the appropriate level of end-of-period salaries is $68,649; therefore, end-of-period level of employee taxes is $3,883. Consequently, the Commission concludes that, after adjustments for end-of-period property and employee taxes, the appropriate level of other taxes to be considered in this proceeding is $7,090.

The next item of difference relates to the level of advertising expense included by each witness. The Company included advertising expense of $4,235, while the Public Staff included advertising expense of $3,341, resulting in a difference of $894, which is the actual test year yellow page advertising expense. The Company contends that yellow page advertising expense was included in telephone expense during the test year; therefore, this adjustment was to reclassify yellow page advertising expense from telephone expense to advertising expense. Public Staff witness Collins contends that in reviewing the advertising expense account for the test year, he determined that yellow page advertising expense was included in this account. After considering the evidence, the Commission concludes that the appropriate level of advertising expense is $3,341.

Next, the proper level of dues and subscriptions was disputed. The Public Staff included $2,670 while the Company included $2,823, resulting in a difference of $153. Two adjustments account for this difference. First, the witnesses used a different number of pagers in calculating Telocator Dues. The Company based their calculation on 481 pagers, while the Public Staff based their calculations on 500 pagers. The Commission finds that the appropriate level of end-of-period pagers in service of 500 should be used in the calculation of the proper level of dues and subscriptions. The second adjustment was made by the Company to include the additional monthly charge of $20 for Telocator Dues, which was a known change as of the end of the Test Year and an expense now incurred by the Company. The policy of this Commission has been to update expenses for known changes occurring by the close of the hearing. Based on the evidence presented, the Commission finds the proper level of dues and subscription expense to be $2880.

The witnesses differ as to the proper level of insurance and medical expense. The Company presented insurance and medical expenses of $5,598 whereas the Public Staff presented medical and insurance expenses of $4,535, resulting in a difference of $1,063. This difference relates to an adjustment made by the Company to include one additional employee and to officer medical expenses reimbursed by the Company. After careful consideration of the entire record of this proceeding, the Commission concludes that the appropriate level of insurance and medical expense to be used in determining rates in this proceeding is $5,500.

The next difference in operating expenses concerns the level of legal and accounting expenses included by the witnesses. The Public Staff included $7,012 whereas the Company included $8,145, resulting in a $1,133 difference. This difference results from the Company updating rate case expenses at the time of the hearing from $15,000 to $18,400. The Commission concludes that the proper level of legal and accounting expense to be used in this proceeding is $8,145.

The next item of difference in operating expenses relates to the level of salaries and wages included by each witness. The Company included salaries of $68,649, whereas the Public Staff included salaries of $61,622. The difference is primarily due to the Company's adjustment to include one additional office employee. From the evidence presented and with particular emphasis on the fact that Ira Smith's wife participated in full time employment at no pay in the past, the Commission concludes that the proper level of salaries and wages is $68,649.

The Company included office supplies and miscellaneous expenses of $12,038, whereas the Public Staff included office supplies and miscellaneous expenses of $5,378. The difference of $6,660 relates to an adjustment made by the Company to include insurance expense for the cost of insuring Company-owned pagers and mobile telephones. At present, customers utilizing Aircall's equipment are responsible for this equipment and have the option of insuring this equipment through an arrangement the Applicant has made with an insurance company. Approximately half of the Applicant's customers have chosen to insure their equipment. The Applicant testified that from December 1979 through March 1980 three uninsured mobile telephones were lost and approximately 12 uninsured pagers were lost. Assuming the Company did not recover any of the mobile telephones and half of the pagers, the unrecovered losses for the first quarter of 1980 would be approximately $6,000. Hence, the Company is proposing to assume the responsibility of insuring all of their equipment.

It is the Public Staff's position that the cost of insurance far exceeds the unrecovered losses over the past five years. This is based on evidence presented by Public Staff witness Turner which compared the cost of insurance over the past five years of $33,300 to the unrecovered losses of the past five years of $5,850. In calculating the cost of insurance over the past five years, witness Turner used the current annual cost of insurance and projected this cost back over the past five years. Since the cost of insurance is calculated on a per unit basis and the expense included by the Company was based on the number of pagers and mobile telephones in service at the end of the test year, witness Turner is assuming for comparison purposes that the Applicant had that same number of pagers and mobile units in service over the past five years. Inasmuch as the Company did not have the same number of pagers and mobile telephones in service over the past five years, the insurance cost presented by the Public Staff is an overstatement of what the insurance cost would have been using the actual number of pagers and mobile telephones in service at the end of each year for the period 1974 through 1978.

The Commission concludes that the Company's proposed insurance on Company-owned pagers and mobile telpehones is a reasonable operating expense. However, the Commission can

not allow this expense in determining rates in this proceeding simply because the proposed insurance was not enforced as of the close of the hearing. In view of the fact that the Commission considers this to be a reasonable and necessary operating expense for the Applicant, the Commission shall consider approval of a tariff surcharge to cover this insurance expense upon the Applicant's filing of both rates, which include the recovery of such costs, and documented proof of the costs, including a copy of the insurance policy.

Based upon the foregoing, the Commission concludes that the proper level of operating expenses to be used in this proceeding is $132,717.

The Company and Public Staff differ on the proper level of depreciation expense. Company witness Beacham applied the rates used by the Company on its books to her end-of-period plant to arrive at end-of-period depreciation expense. In contrast, Public Staff witness Turner used depreciation rates, determined after analysis of both the Company's plant history and that experienced by other companies operating in North Carolina, applied to his end-of-period plant to arrive at end-of-period depreciation expense. The Commission, after due consideration of the record, and the depreciation rates approved by this Commission for similiar companies under its jurisdiction, concludes that neither party's depreciation rates are fair and reasonable. The schedule below depicts the determination of the fair and reasonable level of depreciation expense to be used in setting rates in this proceeding.

Account	End-of-Period Amount	Annual Depreciation Rate %	End-of-Period Depreciation Expense
Furniture	$ 5,858	10	$ 586
Two-Way Common	27,727	10	2,773
Mobiles	40,424	12.5	5,053
One-Way Common	23,257	10	2,326
Pagers	159,841	20	31,968
Vehicles	15,443	25	3,861
Test Equipment	9,302	12.5	1,163
Total	$281,852		$47,730

With the adjustments made by the Commission, the end-of-period operating expenses of Aircall under present rates are found to be $132,717, exclusive of depreciation expenses of $47,730, and no income taxes can be calculated since the Company's net income after adjustments is a net loss.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Currin and Public Staff witness Collins testified concerning the proper capital structure to be used in this proceeding. In developing the Company's proposed capital structure, witness Currin excluded one mortgage loan

from the debt component because the loan was undertaken to finance non-utility property. He then compared the debt component with the Company's proposed rate base and assigned the difference to the equity component to arrive at a capital structure for the regulated utility.

Company witness Currin testified under cross-examination that this method of developing the equity component of the capital structure would result in a varying capital structure, depending upon the rate base found appropriate by the Commission.

Public Staff witness Collins developed a total Company capital structure, including all debt and equity in his calculations. He then applied this capital structure to the rate base to arrive at the various components. This method is consistent with the method of determining the capital structure that the Commission has used in the past, because of the typically sheer immense task of specifically identifying capital components with their ultimate use. However, based on Company witness Currin's testimony and the unique size of the Applicant, the Commission concludes that the proper capital structure to be used in this proceeding is composed of 50.67% Debt and 49.33% Equity, as purported by the Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witness Currin developed an embedded cost of debt of 15.63%, based upon the exclusion of the mortgage loan undertaken to finance non-utility property. Public Staff witness Collins developed an embedded cost of debt of 13.66%, based upon calculations including that loan. In line with the Commission's findings in Evidence and Conclusions for Finding of Fact No. 10, the Commission finds that the embedded cost of debt is 15.63%.

Two witnesses testified as to the cost of the equity component of capital for Aircall. Company witness Currin, in his prefiled testimony, recommended the adoption of 22.0% as the cost of equity capital. This was based on his estimate of a range of 20.0% to 25.0%. At the hearing, the 22.0% recommendation was updated to 23.5%, based upon three items, a revised estimate of the capital structure (49.0% equity versus 65.0%), the fact that Mr. Smith had been required to pledge personal assets to secure loans, and an increase in the prime rate of approximately five precentage points.

Company witness Currin based his recommendation on several factors. He stated that returns on equity awarded in small telephone company cases were generally in the 14.5% to 15.5% range and that RCC's generally and Aircall in particular, were much more risky than small telephone companies.

The reasons given by Mr. Currin were size, competition, convenience versus necessity, (potential) technological

obsolescence, and financing. He claimed that Aircall is much smaller than even the smaller telephone companies, is subject to some forms of competition as it is not a natural monopoly, its services are more convenience than necessity, its capital equipment could become obsolete very rapidly, and it does not have access to REA long-term financing at low rates with flexible repayment terms.

Public Staff witness Weiss concludes that the cost of equity capital to Aircall is in the range of 18.0% to 20.0% and recommended the adoption of 20.0%. His approach was to compare Aircall to other business generally. He found, after an empirical investigation, that returns in the range of 18.0% to 20.0% were not inconsistent with the experience of a broad cross-section of American business, including businesses similar in size to Aircall. In addition, Public Staff witness Weiss concluded that RCC's generally are less risky than other businesses because they are insulated from some types of competition. This is a result of State and Federal law which effectively preclude other RCC's from competing with an existing one (such as Aircall) which already has a Certificate.

Based upon a thorough and careful consideration of all the evidence presented, the Commission concludes that the fair rate of return on equity is 22.0%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Revenues which will be derived from Aircall's rates as approved herein should produce a rate of return on its rate base of 18.77%. The Commission cannot guarantee that the Company will, in fact, earn the rates of return herein allowed, but the Commission concludes that the Company will be able to reach that level of return through efficient management. The Commission concludes that Aircall's rates should be increased by $53,117, based on the test year ended December 31, 1978, which will allow the Company a reasonable opportunity to earn the return on its original cost rate base which the Commission has herein found fair and reasonable.

The Commission has considered the tests laid down by G.S. 62-133(b)(4). The Commission concludes that the $53,117 increase in revenues herein allowed is sufficient to enable the Company to attract sufficient debt and equity capital in order to discharge its obligations and maintain a high level of service to the public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

This Commission is, of course, deeply concerned with regard to the adverse impact that inflation is having on our economy and, accordingly, uses its full discretionary power to ensure that all utilities under its jurisdiction comply with the President's wage and price guidelines to the extent possible. However, the guidelines do contain undue hardship

and gross inequity provisions which do permit price increases in excess of the maximum price deceleration standards under certain exceptional circumstances. Moreover, as observed by the Applicant, the General Statutes of North Carolina require that this Commission set rates that are just and reasonable and this Commission will continue to make every effort to comply with this statutory mandate.

The Commission recognizes the need and provides for the few isolated instances, such as the instant proceeding, wherein the Commission in the interest of fairness and equity and in the fulfillment of its statutory duties and responsibilities is compelled to allow increases in excess of the maximum permitted under the voluntary guidelines. Clearly, such circumstances are envisioned by the President's Council on Wage and Price Stability by virtue of the Council's inclusion of subsection 705A-6(b) in its December 31, 1978, pronouncement. Moreover, subsequent pronouncements of the Council have contained specific statements which further reflect the Council's intention that certain regulatory bodies be permitted the necessary discretionary flexibility essential to responsible regulation of public utility prices and profits. A further example of such intention is as follows:

> The Council recognizes that the prices of most public utilities are already subject to regulation by the Federal Energy Regulatory Commission or by Public Utility Commissions (Commissions), and in issuing this price standard, the Council does not intend to supplant their statutory functions and responsibilities. The Council's standards are intended to provide guidance to Commissions on anti-inflationary price changes, in order that anti-inflationary objectives can be given appropriate weight in regulatory proceedings. The standard should be viewed by Commissions as a minimum objective to be achieved whenever possible, consistent with their statutory responsibilities, and to be exceeded only under exceptional circumstances.

Finally, the Commission wishes to emphasize that any increase allowed the Applicant in strict compliance with the price standard, would continue to generate an inadequate return on original cost net investment. Therefore, the Commission concludes that its responsibility, under the North Carolina Statutes requiring the fixing of just and reasonable rates, must be met, and consequently, the Applicant must be allowed an increase in rates of $53,117.

The following schedule summarizes the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve, based upon the increase approved herein. Such schedules, illustrate the Company's gross revenue requirements and incorporate the findings, adjustments, and conclusions heretofore, and herein made by this Commission.

SCHEDULE I
AIRCALL, INC.
SCHEDULE OF RETURN ON ORIGINAL COST NET INVESTMENT
TWELVE MONTHS ENDED DECEMBER 31, 1978

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues:			
Revenues	$173,052	$53,117	$226,169
Uncollectibles	(3,426)	(1,052)	(4,478)
Net revenues	$169,626	$52,206	$221,691
Operating Expenses:			
Equipment maintenance	$ 2,006	$ -	$ 2,006
Installation and special charges	3,275	-	3,275
Telephone interconnect and lease	11,394	-	11,394
Property rent	720	-	720
Utilities	596	-	596
Leased equipment	966	-	966
Depreciation	42,120	-	42,120
Other taxes	7,090	-	7,090
Interchange	460	-	460
Total operating expenses	$ 68,627	$ -	$ 68,627
General and Administrative Expenses:			
Advertising	$ 3,341	$ -	$ 3,341
Automotive	3,409	-	3,409
Depreciation	5,610	-	5,610
Dues and subscriptions	2,880	-	2,880
Insurance and medical	5,500	-	5,500
Legal and accounting	8,145	-	8,145
Rent	4,531	-	4,531
Salaries	68,649	-	68,649
Telephone	2,208	-	2,208
Tools and supplies	1,938	-	1,938
Office supplies and miscellaneous	5,378	-	5,378
Interest on customer deposits	231	-	231
Total G & A expenses	111,820	-	111,820
Total expenses	180,447	-	180,447
State income taxes	-	1,576	1,576
Federal income taxes	-	4,198	4,198
Net operating income for rates	$(10,821)	$46,291	$ 35,470

	Present Rates	Increase Approved	After Approved Increase
Plant Investment:			
Gross Plant in service	$289,952	$ -	$289,952
Less: Depreciation reserve	(104,026)	-	(104,026)
Net plant in service	185,926	-	185,926
Allowance for Working Capital:			
Cash - 1/12 of O & M expense	$ 11,060	$ -	$ 11,060
Less: Customer deposits	(3,845)	-	(3,845)
Total working capital	7,215	-	7,215
Unamorftized JDITC	-	4,198	(4,198)
Original Cost Net Investment	$193,141	$ -	$188,943
Rate of return on OCNI	(5.60%)		18.77%

SCHEDULE II
AIRCALL, INC.
SCHEDULE OF RETURN ON ORIGINAL COST COMMON EQUITY
TWELVE MONTHS ENDED DECEMBER 31, 1978

Capitalization	Original Cost Rate Base	Ratio %	Embedded Cost or Return on Common Equity	Net Operating Income for Return
		Present Rates		
Debt	$ 95,865	50.67	15.63	$ 15,296
Equity	95,276	49.33	(27.41)	$ 26,117
Total	$193,141	100.00	-	$ (10,821)
		Proposed		
Debt	$ 95,737	50.67	15.63	$ 14,964
Equity	93,206	49.33	22.00	20,506
Total	$188,943	100.00	-	$ 35,470

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Aircall, Inc., be, and hereby is, authorized to adjust its rates and charges to produce an increase in annual gross revenues of $53,117.

2. That the Company propose specific rates and charges necessary to implement the increase in operating revenues herein approved within 10 working days of the date of this Order. Five copies of the work papers supporting such

proposals should be filed with the Chief Clerk of this Commission. Exceptions, alternative rate proposals, and comments to the Company's rate schedule proposals shall be filed within five working days thereafter.

3. That the Company's recurring rates and charges and regulations necessary to increase annual gross revenues as authorized herein be effective upon issuance of a further Order approving the tariffs filed pursuant to Paragraph 2 above.

4. That the Company's proposed service regulations, excluding those related to charges and rates, be effective as of the date of this Order. These regulations are effective until such time this Commission convenes a generic hearing on service regulations for all Radio Common Carriers in the State of North Carolina.

ISSUED BY ORDER OF THE COMMISSION

This the 3rd day of June 1980.

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

DOCKET NO. P-82, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Aircall, Inc., for an	) ORDER
Adjustment in Its Rates and Charges	) APPROVING
Applcable to Intrastate Radio Common	) RATES AND
Carrier Service in North Carolina	) CHARGES

BY THE COMMISSION: On June 3, 1980, the Commission issued an Order Granting Partial Increase in Rates, wherein Aircall, Inc. (Aircall or the Company), was allowed to increase its rates and charges to produce additional revenues of approximately $53,117 annually. The Company was called upon to file within 10 working days specific rates, charges, and regulations necessary to implement the allowed rate increase. Upon the Company's filing of proposed rates, charges, and regulations, the Commission allowed all Intervenors five days for filing exceptions, comments, and alternate rate proposals.

Pursuant to the Order of June 3, 1980, Aircall filed proposed tariffs on June 18, 1980. There being no exceptions filed by the Intervenors, the Commission finds the proposed rates filed by Aircall to be fair and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates, charges, and regulations filed by Aircall, Inc., on June 18, 1980, which will produce $53,118 of additional gross revenues be, and hereby are, approved to be charged and implemented by the Company, with the typographical corrections listed below:

1. Tariff NCUC No. 1, 6th Revised - Page 13, Section D.2.(b) should read Rental <u>of</u> mobile equipment...

2. Tariff NCUC No. 1, 5th Revised - Page 14, Section D.3. - Tone and Voice Communications service includes unlimited calls (continued), section (c), (d), and (e) should include $3.00, $.50, and $1.00, respectively.

2. That the recurring rates and charges will become effective on all billings rendered on or after July 1, 1980. All service regulations remain in full force and effect until such time this Commission convenes a generic hearing on service regulations for all Radio Common Carriers in the State of North Carolina, as ordered in the Commission Order of June 3, 1980.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of June 1980.

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

DOCKET NO. P-83, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Ans-A-Phone Communications, Inc., for an Adjustment in Its Rates and Charges Applicable to Intrastate Radio Common Carrier Service in North Carolina	) ORDER GRANTING) PARTIAL RATE) INCREASE AND) REVISING SERVICE) REGULATIONS

HEARD IN: Guilford County Courthouse, No. 2 Governmental Plaza, Greensboro, North Carolina, on December 18, 1979, and the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 19, 20, and 21, 1979

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Thomas R. Eller, Jr., Attorney, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: Ans-A-Phone Communications, Inc.

For the Public Staff:

Stephen G. Kozey, 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: This matter is before the Commission upon the application of Ans-A-Phone Communications, Inc. (hereinafter Ans-A-Phone or Applicant), filed August 17, 1979, for authority to modernize and bring current its service regulations and revise and increase its rates and charges on radio common carrier service it provides in its certificated territory in and around Greensboro, North Carolina. The Commission on September 5, 1979, suspended effectiveness of the proposed rates and charges, ordered a general investigation into the reasonableness thereof, scheduled public hearings, and required the Applicant to give notice to the public and to its customers.

The Public Staff of the North Carolina Utilities Commission gave Notice of Intervention. There were no other interventions or protests to the granting of the application.

After appropriate rulings on production of documents and other procedural matters, the matter came on for hearing and was heard as scheduled.

One public witness, Donald G. Nelson, appeared in opposition to the granting of the application. A subscriber to the Applicant's manual mobile telephone service through his own equipment, Mr. Nelson makes very little use of the Ans-A-Phone service. He is a sales representative and uses his service primarily outside Ans-A-Phone's service area, for which he is billed the charges of the Radio Common Carriers (RCC) rendering service. By having his own manual equipment, he cannot feasibly take advantage of the more favorable automatic dial telephone service provided by Ans-A-Phone without investing in an automatic set or paying a substantially higher charge for rental from the Applicant.

Several customers appeared and testified in support of Ans-A-Phone in the Greensboro hearings. These were:

1. Mrs. James Harrison, who testified that she uses both mobile telephone service and paging service from Ans-A-Phone, that both are necessities in her business, that the dispatch service rendered her by the RCC is a valuable part of her service, and that she believes the increases proposed are well within the value of the services to her business.

2. Dr. Edward B. Mabry, a gynecologist and obstetrician in Greensboro, testified that the services offered by the RCC, including 24-hour operator-assisted paging, was vital to the health and welfare of his patients in emergency conditions and that Applicant's service was excellent.

3. Peter Karrier, who manages the Emergency Room at Moses Cone Hospital in handling more than 50,000 emergency room treatments involving some 300 doctors annually, testified that the operator-assisted paging was vital to the operations of the emergency room on a 24-hour basis.

4. Jake Algood, a businessman, testified to the same effect regarding quality and value of service and stated that Ans-A-Phone's proposed increases were well within reasonable, cost effective limits for him.

For convenience of the witnesses, Ans-A-Phone was permitted to call two residents of Greensboro out of order. These witnesses were:

1. Ivy K. Prescott, President of Reisenweaver Communications, Inc., a General Electric Communications equipment and service representative in the Greensboro area, testified that he had appraised the mechanical mobile (IMTS) switching

equipment which the Applicant had replaced with electronic equipment. He testified that the manual switching facility had been manufactured around 1964, that production had long since been discontinued, that parts were no longer available for it, and that it was totally obsolete. He stated that, in his opinion, the mechanical switching equipment which had been replaced was valueless.

2. Eugene T. Grissom, President of Triangle Communications, Inc., in Greensboro, a communications maintenance and repair contractor, testified to the same effect as witness Prescott concerning the present value of the mechanical switching equipment which had been replaced. Mr. Grissom testified that, although his company contracted to provide routine maintenance on other equipment operated by Ans-A-Phone, it had refused to enter a fixed contract for maintenance on this equipment. He stated it would cost more to remove the equipment than it was worth.

The principal evidence was taken in the hearings in Raleigh. The Applicant presented the following witnesses:

1. P. Hutson Moody, Jr., President - Operations and Finance;

2. Elizabeth Moody, Controller - Expenses and Controls;

3. Wayne Lowery, General Manager - Plant Condition and Rate Impacts;

4. M. Randolph Currin, Jr., President, Currin and Associates, Inc., Consultant - Revenue Requirements Allocations, Rate of Return, and Rate Design; and

5. Nancy Bright, Vice President, Currin and Associates, Inc., Consultant - Original Cost Rate Base and End of Period Revenues and Expenses.

Applicant also presented witnesses Lowery and Currin for rebuttal testimony.

The Public Staff - North Carolina Utilities Commission presented the following witnesses:

1. Edward Rosenberg, Staff Economist - Rate of Return and Cost of Capital;

2. Thomas Collins, Staff Accountant - Accounting Adjustments;

3. Benjamin Turner, Staff Communications Engineer - Plant Condition and Service;

4. William Willis, Staff Communications Engineer - Revenues; and

5. Millard N. Carpenter III, Staff Communications Engineer - Rates and Rate Design.

Various motions and objections were made by the parties during the course of the hearings. Rulings thereon by the Commission appear of record.

After due consideration of the verified application, the testimony and exhibits of 11 witness for the Applicant, five witnesses for the Public Staff, and one public witness, taking judicial notice of the matters and things noted in the record of hearings, and the argument and briefs of counsel, and upon a review of the entire record as a whole in accordance with applicable law, the Commission makes the following:

FINDINGS OF FACT

1. That Ans-A-Phone is a North Carolina Corporation which is doing business in North Carolina as a franchised public utility providing service as a radio common carrier in the Greensboro area.

2. That Ans-A-Phone is lawfully before this Commission for a determination of the justness and reasonableness of its proposed rates and charges pursuant to Chapter 62 of the General Statutes of North Carolina.

3. That the test period established by the Commission is the 12 months ended December 31, 1978. The annual increase in revenues sought by Ans-A-Phone under its proposed rates as filed in the proceeding is approximately $88,135.

4. That Ans-A-Phone is providing good service to its customers in North Carolina.

5. That the original cost of Ans-A-Phone's plant in service used and useful in providing radio common carrier services in North Carolina is $482,519. From this amount should be deducted the accumulated depreciation associated with the original cost of this plant resulting in a reasonable original cost less depreciation or a net plant in service of $239,310.

6. That the reasonable allowance for working capital for Ans-A-Phone is $18,935.

7. That the original cost of Ans-A-Phone's net plant in service to customers within the State of North Carolina of $239,310 plus the reasonable allowance for working capital of $18,935 less the investment tax credit of $7,327 yields a reasonable original cost net investment (rate base) of $250,918.

8. That the Company's test year operating revenues net of uncollectibles after appropriate accounting adjustments under present rates are approximately $253,014 and under the

Company's proposed rates would have been approximately $339,827. [($88,135 x .015) + $88,135 + $253,014]

9. That the appropriate level of the Company's operating revenue deductions (or expenses) under present rates after accounting and pro forma adjustments, including taxes is $269,350 which includes the amount of $52,060 for actual investment currently consumed through actual reasonable depreciation.

10. That the capital structure which is proper for use in this proceeding is the following:

Item	Percent
Long-Term Debt	40.11
Common Equity	59.89

11. That the Company's proper embedded cost of debt is 13.53%. The fair rate of return which should be applied to the original cost net investment of Ans-A-Phone (or rate base) is 18.60%. This return on Ans-A-Phone's rate base will allow the Company the opportunity to earn a return on its common equity of 22.00% after recovery of the embedded cost of debt. Such returns on rate base and common equity are just and reasonable.

12. That under present rates the Company's pro forma return on its rate base at the end of the test year is approximately (6.33%) which is substantially below that which the Commission has determined to be just and reasonable. Therefore, in order to earn the level of returns which the Commission finds to be just and reasonable, Ans-A-Phone should be allowed to increase its rates and charges so as to produce an additional $74,029 based on operations during the test year. The Commission finds that, given efficient management, this amount of additional gross revenue dollars will afford the Company a fair opportunity to earn the level of returns on rate base, and original cost equity which the Commission has found to be fair, both to the Company and to its customers.

13. That the Company has an unreasonable tariff provision providing certain bulk rate discounts to subscribers utilizing more than one pager.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence for these findings is contained in the verified application, the Commission's Order Setting Hearing, the testimony of the public witnesses, and the testimony and exhibits of Company witness Moody. These findings are essentially informational, procedural, and jurisdictional in nature and were, for the most part, uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding is found in the verified application, the testimony and exhibits of Company witness Bright and the testimony and exhibits of Public Staff witnesses Collins and Turner. The amounts presented were as follows:

	Company Witness Bright 12/31/78	Public Staff Witnesses 12/31/78	Public Staff Witnesses 9/30/79
RCC Plant in Service	$456,763	$385,356	$484,614
Accumulated Depreciation	248,547	241,390	264,033
Net Plant in Service	$208,216	$143,966	$220,581

There are two differences in the amounts presented for plant in service at December 31, 1978, by the Company and the Public Staff. These differences are due to two related adjustments made by the Company. Company witness Bright included an adjustment of $85,007 for the addition of a new IMTS terminal and related equipment which was decided upon in the test year, but completed by the Company after the end of the test period and before hearings. The Company made a second adjustment reducing plant in service by $13,600 for the retirement of the old IMTS terminal which was replaced.

It is the Company's position that since the new terminal was contemplated as an addition during the test year and was added to improve service and not increase capacity or the number of customers, it should be included in plant in service at December 31, 1978. The Public Staff argued that if the new IMTS terminal is included in plant in service then all other plant added through the end of September 1979 should also be included as well as additional revenues and expenses.

In conformance with this position, the Public Staff presented two sets of exhibits. The first set was based on the Company's operations for the 12 months ended December 31, 1978, with no adjustments to revenues, expenses, or plant for changes beyond the end of the test year. The second set was based on plant in service at September 30, 1979, and end-of-period revenues at September 30, 1979. Expenses were updated for all known changes through September 30, 1979. Public Staff witness Collins testified on cross-examination that he did not conduct a detailed investigation of all expenses for the year ended September 30, 1979, nor did he conduct an allocation study for this period, as he did for the test year ended December 31, 1978.

The Commission has carefully considered the evidence presented concerning the level of plant in service to be included in this proceeding and finds that it would be improper to include revenue producing plant added since the end of the test year as proposed by the Public Staff. The Commission set the test year as the 12 months ended December

31, 1978, in its Order setting the hearing. To update all plant including revenue producing plant to September 30, 1979, would, in effect, require the Commission to change the test year to the 12 months ended September 30, 1979. In coming to this decision, the Commission has given special consideration to G.S. 62-133(c) that states "the test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective...."

The Commission concludes that the new IMTS terminal and related equipment in the amount of $85,007 as presented by the Company was added to plant in service prior to the close of the hearing to improve service to the automatic mobile customers and should be included in the Commission's findings of gross plant in service for the test year ended December 31, 1978. Consistent with this decision the Commission also concludes that the old IMTS terminal should be retired from plant in service in the amount of $13,600. This new plant represents a substantial investment by the Company which will not produce additional revenue and, therefore, the Commission cannot ignore its effect on the operations of the Company for the test year.

Consistent with the Commission's decision above, plant additions included by the Public Staff in determining the gross plant in service balance at September 30, 1979, which are nonrevenue producing, should be included in determining the Company's end-of-period plant in service at December 31, 1978. These nonrevenue producing plant additions are included in the schedule below:

Furniture and Fixtures	$ 3,467
Paging - Common Equipment	18,743
Paging - Common Equipment excluded as excess	4,391
Leasehold Improvements	227
	$26,828

In determining the fair and reasonable level of paging - common equipment, Public Staff witness Turner excluded $4,391 of the original cost of the new SCAT terminal because he determined it to be excess plant. In relation to this, Mr. Turner recommended retirement of the replaced Commonwealth terminal and Motorola transmitter. As to the purchase of the SCAT terminal, Company witness Lowery testified that the $14,700 price was far below fair market value (Tr. VI, p. 9), and even below the fair market value of the plant recommended by Mr. Turner. In recognition of the Company's use of sound management prerogatives in purchasing the SCAT terminal at a price below fair market value, the Commission concludes that plant additions to the paging - common equipment of $23,134 should be included in the Company's original cost net investment in order to determine fair and reasonable rates in this proceeding.

As to the retirement of the replaced Commonwealth terminal and Motorola transmitter recommended by Mr. Turner, Mr. Turner testified that Company witness Moody stated to him (Tr. IV, p. 87), that the Commonwealth terminal would be utilized as a backup to the SCAT terminal. Hence, the Commission concludes that the original cost of the Commonwealth terminal should be included in the Company's plant in service, but that the Motorola transmitter should be retired. In addition to this retirement, the Commission concludes that the transmitters replaced in the new IMTS terminal package should be retired, as advocated by Mr. Turner. These two retirements result in a reduction to the plant in service of $3,076.

Finally, the Public Staff's automotive equipment balance at September 30, 1979, is $18,371, as opposed to $16,366 at December 31, 1978. Public Staff witness Collins testified that subsequent to December 31, 1978, all vehicles related to the $16,366 were sold. Utilizing various adjustments, Mr. Collins determined that $18,371 was a fair and reasonable level of automotive equipment. In recognition of the fact that the $18,371 balance contemplates the replacement of vehicles, with no increase in capacity, this Commission concludes that $18,371 is the appropriate level of automotive equipment.

After making these adjustments to plant in service, the Commission finds the proper gross plant in service for the test year ending December 31, 1978, is $482,519.

The difference in accumulated depreciation shown by the Public Staff and the Company at December 31, 1978, is due to differences in the amount of plant discussed previously and to differences in depreciation rates utilized by the parties. The Commission has already found the proper gross plant in service to be $482,519. In Evidence and Conclusions for Finding of Fact No. 9, the Commission discusses the depreciation rates which are found just and reasonable. Based on the evidence presented and other findings and conclusions of the Commission, the Commission concludes that the proper level of accumulated depreciation is $243,209.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Bright and Public Staff witness Collins each presented a different amount for the working capital allowance as shown by the Chart below:

	Public Staff Witness Collins 12/31/78	Company Witness Bright 9/30/79
Cash	$8,236	$19,334
Prepayments	953	953
Less: Customer deposits	(125)	(125)
Total Working Capital	$9,064	$20,162

The difference in the cash amounts shown above results from the different methods employed by the witnesses in calculating the cash requirement and from the different levels of operating and maintenance expenses determined by the witnesses. The Company calculated the cash requirement by dividing operating and maintenance expenses by 12, whereas the Public Staff divided its operating and maintenance expenses by 24.

In prior telephone cases in which this Commission has used the formula method for calculating the cash requirements, operating and maintenance expenses have been divided by 12 to arrive at the cash requirement for working capital. One-twelfth is generally used in proceedings in which the Company bills its services in advance, as is the case with Ans-A-Phone.

The Commission concludes from the evidence in the record that the cash component of working capital should be determined by dividing end-of-period operating and maintenance expenses by 12. Using operating and maintenance expenses found proper in Evidence and Conclusions for Finding of Fact No. 9, the Commission concludes that $18,107 is the proper amount of the cash component of working capital in this proceeding.

The Company and the Public Staff agreed as to the proper level of prepayments and customer deposits.

Based on the foregoing Findings and Conclusions, the Commission concludes that $18,935 is the appropriate amount of working capital allowance to be used in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Commission has previously determined in Evidence and Conclusions for Findings of Fact Nos. 5 and 6 that the proper level of net plant in service at December 31, 1978, is $239,310 and that a reasonable allowance for working capital is $18,935.

The last item to be considered in the determination of the Company's rate base is the unamortized job development investment tax credit incurred under the Revenue Act of 1971. The Company and the Public Staff agree that Ans-A-Phone should be treated as an Option (1) company under the IRS regulations. The difference in the amount of the unamortized job development investment tax credit which each party deducted from rate base is due to two items. First, the parties disagree as to the proper level of plant additions to be used in the calculation of the unamortized job development investment tax credit. Since the Commission has concluded that plant in service as presented by the Company and other nonrevenue producing additions and replacements presented by the Public Staff comprise a just and reasonable level of end-of-period plant in service, the

Commission now concludes that the amount of unamortized investment tax credit related to this plant should be considered. Hence, the unamortized investment tax credit of $13,838 related to the plant in service presented by the Company should be added to the $3,885 related to other nonrevenue producing plant additions, with a $57 reduction for tax credit recapture related to retired automotive equipment.

The Public Staff reduced the unamortized job development investment tax credit by the amount of the credit carried forward, due to the inadequate tax liability, under staff calculations. The Commission agrees with the theory supporting this adjustment; however, the Commission, under Findings of Fact Nos. 8 and 9, has found a different level of net operating income and a different level of interest expense, as alluded to under Findings of Fact Nos. 10 and 11. Hence, this Commission concludes that the rate base should be reduced by the proper amount of unamortized job development investment tax credits of $7,327.

The Commission therefore concludes that Ans-A-Phone's net plant in service of $239,310 plus the reasonable allowance for working capital of $18,935 less the unamortized investment tax credit of $7,327 yields a reasonable original cost net investment (rate base) of $250,918.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Bright and Public Staff witnesses Willis and Collins presented testimony concerning Ans-A-Phone's representative level of net end-of-period revenues. The following chart shows the amounts presented by the witnesses:

	Company Witness Bright 12/31/78	Public Staff Witnesses 12/31/78	Public Staff Witnesses 9/30/79
Operating Revenues	$246,399	$249,804	$287,875
Late Income Charges	1,030	1,030	1,290
Other Income	2,516	2,516	5,985
Gain/(Loss)	2,812	5,669	6,018
Uncollectibles	(3,842)	(3,866)	(4,518)
Total	$248,915	$255,133	$296,650

Company witness Bright determined the end-of-period operating revenue adjustment by calculating the end-of-period incremental billing units over the actual or the average number for the test year and multiplying these units by the billing rate. This revenue increase was added to actual operating revenues to determine end-of-period revenues of $246,399.

Public Staff witness Willis calculated end-of-period revenues for both the 12 months ended December 31, 1978, and September 30, 1979. His method in both cases was to take 33 months of billed revenue and obtain a mathematical equation from which he determined the value of the revenues from the months of December 1978 and September 1979, and annualized these values by multiplying them by 12. In his direct testimony Mr. Willis was asked if his method rendered a fair estimate of the end-of-period levels of revenue for the years ending December 1978 and September 1979 and his answer was affirmative.

Since this Commission has set the test period as the 12 months ended December 31, 1978, then end-of-period revenues for the 12 months ended September 30, 1979, cannot be used in this proceeding. The basic accounting concept of matching revenues, expenses, and investment would be violated if all were not brought to an end-of-period level as of the same point in time. In this case, the Public Staff has attempted to bring revenues and investment to an end-of-period level as of September 30, 1979, thus effectuating a change in the test year from the year ended December 1978 to the year ended September 1979. Thus, the Commission concludes that in keeping with its Order setting the test period as ending December 31, 1978, and in recognition of the basic matching concept of accounting, the appropriate end-of-period level of operating revenues is $249,804, as calculated by the Public Staff for the test year ended December 31, 1978.

Consistent with this finding, the Commission concludes that late income charges of $1,030 and other income of $2,516 are proper for use in this proceeding.

The last difference in revenues concerns the gain or loss on the sale of equipment. The difference in the amounts shown for the year ended December 31, 1978, is caused by two items. First, a difference of $319 in actual gain for the test year is apparent. The Commission concludes that the amount of $5,350 as presented by the Company is proper.

The second difference of $2,538 relates to an adjustment made by Company witness Bright for the amortization of the loss on the retirement of the old IMTS terminal. In Evidence and Conclusions for Finding of Fact No. 5, the retirement of the old equipment was found to be a proper pro forma adjustment to the test year. In determining the loss on the equipment, witness Bright deducted its original cost net depreciation of $8,613 from estimated salvage of $1,000. Public Staff witness Collins calculated a gain on this equipment, in determining gain/loss on equipment sales for the period ended September 30, 1979, by deducting its original cost net depreciation, reduced by the net loan balance supporting the equipment, from estimated salvage of $5,000. After review of the full record in this case, the Commission concludes that $1,000 is a fair and reasonable salvage value of the old IMTS terminal and that the net loan

balance related to this plant should be used to reduce the equipment's original cost, as expanded upon further under Evidence and Conclusions for Findings of Fact Nos. 10, 11, and 12. Hence, the resulting gain on the retirement of the old IMTS of $361 should be included in determining end-of-period revenues in this proceeding.

Since the Commission concluded that the retirement of the transmitters from the paging and mobile common equipment accounts was proper under Evidence and Conclusions for Finding of Fact No. 5, the associated loss should be included in the determination of end-of-period revenues. For the same reasons, the $111 loss associated with the automotive equipment replacement should be included.

The effective uncollectible rate utilized by the Company and the Public Staff is appreciably the same. Consequently, this Commission has utilized a .015 uncollectible rate in deriving net end-of-period revenues of $253,014.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Bright and Public Staff witness Collins presented testimony and exhibits showing the level of operating revenue deductions which they believed should be used by the Commission for the purpose of fixing Ans-A-Phone's rates in this proceeding. The following tabular summary shows the amounts claimed by each witness:

	Company Witness Bright	Public Staff Witness Collins	Public Staff Witness Collins
	12/31/78	12/31/78	9/30/79
Operating Expenses	$232,012	$180,149	$197,674
Depreciation	55,104	37,701	48,125
Income Taxes		8,690	9,194
Total Operating Revenue Deductions	$287,116	$226,540	$254,993

As discussed previously, the Public Staff presented exhibits with adjustments made to December 31, 1978, and September 30, 1979. The Commission has concluded that the test year is the 12 months ended December 31, 1978, and that end-of-period revenues and investment at December 31, 1978, are proper for use in this proceeding. Therefore, in order to match expenses with end-of-period revenues and investment, the Commission concludes that the September 30, 1979, levels of expense presented by the Public Staff are not proper and should not be used. Hence, discussion of the differences in the expense levels presented by the parties will be limited to the differences between the Company's and the Public Staff's December 31, 1978, expense levels as depicted in the table above.

The first item of difference in operating expenses relates to the level of salaries and wages included by each witness.

The Company included salaries of $81,151, whereas the Public Staff included salaries of $69,046. Two adjustments account for this difference. First, Company witness Bright increased the level of salaries and wages for salary raises decided upon in the test year, but which occurred after the end of the test period and before the hearing. The second adjustment causing the difference in salaries and wages was made by Public Staff witness Collins to exclude advertising consultant's wages. The Public Staff contended that although the services rendered by the consultant enhance the Company image, they do not result in better service to existing ratepayers or in the addition of new customers.

In prior cases it has been the policy of this Commission to update the level of salaries and wages for known changes occurring by the close of the hearing. Therefore, the Commission finds that the adjustment made by witness Bright for salary increases subsequent to the test period are just and reasonable. The Commission also finds that the advertising consultant's salary is an unfair expense to be supported by the ratepayer. Thus, the Commission concludes that the proper level of salaries and wages is $78,203.

Next, the proper level of radio repairs expense was disputed. The Public Staff included $19,715 while the Company included $20,915, resulting in a difference of $1,200. This difference arises from an adjustment made by the Company for the estimated cost of the repair contract associated with the new IMTS terminal and equipment.

This Commission finds $19,715 to be the appropriate ongoing level of radio repair expense to be used in setting rates in this proceeding.

The next item of difference relates to the level of other rent included by the parties. This difference is due to the allocation factors used to allocate the rent on an IBM word processor. In the Company's opinion the word processor should be allocated 90% to the RCC operations and 10% to the answering service. The Public Staff used the same allocation factor for this rent as for all other rent which was allocated between the two businesses. From the evidence presented as to the use of the word processor, the Commission concludes that the allocation factor used by the Public Staff is proper.

Both parties included $1,630 in other rental expense for rental on a beach cottage used by Company employees. This Commission considers this expense to be unreasonable and inappropriate for inclusion in determining rates in this proceeding. Hence, this Commission finds the proper level of other rental expense to be $6,905.

Public Staff witness Collins made an adjustment decreasing general and administrative expense by $467 which the Company contested. An amount of $450 of this adjustment decreased medical expenses paid by the Company for the officers. The

Public Staff contended that since the medical reimbursement was only for the officers it should not be allowed. The Commission concludes that a medical reimbursement plan for Company officers only is an unreasonable expense and should be excluded from operating expenses. The remaining $17 of the total adjustment relates to expenses charged to Ans-A-Phone which should have been charged to another corporation. The Commission finds the proper level of general and administrative expense to be $14,433, as stated by the Public Staff.

Company witness Bright presented an amount of $8,480 for travel and conventions expense and Public Staff witness Collins contended in his original testimony that the amount should be $4,651. A difference of $500 is explained by an adjustment made by the Public Staff to eliminate country club dues. The Company contended membership in such a club is necessary for a small businessman to gain business contacts and contacts with the banking community. This Commission does not consider country club dues to be an item of cost that is properly includable in determining a public utility's cost of service. Hence, these expenses are excluded from Ans-A-Phone's operating expenses.

The remaining difference of $3,329 in travel and conventions relates to a business trip which the Company President and Controller made to Japan. The Company contended that Mr. Moody and his wife, who are the President and Controller, respectively, participated in the trip to Nipon Electronics in Tokyo for the purpose of having a repair shop set up for Nipon pagers on the east coast of the United States. During the hearing the Public Staff agreed that the trip was a legitimate expense, but that the cost should be amortized over a three-year period. After considering the evidence, the Commission concludes that the trip to Japan was not a just and reasonable expense to be supported by Ans-A-Phone's ratepayers. Hence, this Commission finds the proper level of travel and conventions expense to be $4,651.

Both parties show the same level of taxes - North Carolina and miscellaneous actually incurred for the test period. Since this Commission, under Evidence and Conclusions for Finding of Fact No. 5, adjusted net plant service, the related property taxes must be adjusted. Hence, this Commission concludes that the appropriate level of taxes - North Carolina and miscellaneous is $5,916.

There was a difference of $1,173 in the level of employee taxes included by the witnesses. Since these taxes are related to the level of wages and salaries, the Commission concludes that $7,093 of employee taxes is proper.

The next difference in expenses concerns the amortization of rate case expenses. The Company contends that a two-year amortization period is more appropriate than the three-year period proposed by the Public Staff. The Commission is of

the opinion that, at the present time, three years is more representative of the period between rate cases and, therefore, the proper level of attorney fees and rate case expenses is $9,445, as presented by the Public Staff.

The Public Staff made an adjustment reducing dues and subscriptions by $735 for the test year. This adjustment eliminated country club expenses and membership in the National Federation of Independent Businessmen and the Greensboro Chamber of Commerce. The Commission has previously discussed its belief that country club expenses are an unreasonable expense for Ans-A-Phone. Similarly, this Commission concludes that membership in such business organizations as the National Federation of Independent Businessmen does not benefit the ratepayer and, consequently, should be eliminated from Ans-A-Phone's operating expenses. However, this Commission concludes that Ans-A-Phone's allocated portion of the dues to the Greensboro Chamber of Commerce is reasonable, and thus, this Commission concludes that the proper level of dues and subscriptions is $2,904.

The $14,359 difference in depreciation expense is caused by the different depreciation rates which the parties used and the different levels of end-of-period gross plant each included. Public Staff witness Turner recommended that the depreciation rates the Company is using for mobile plant and vehicles be changed. These changes were not supported by the Company. Considering the operating experience of the Company and its experience with plant retirements, the Commission concludes that the Company's depreciation rates should not be changed except for the rate related to the new IMTS terminal, as explained below.

The Commission, under Evidence and Conclusions for Finding of Fact No. 5, determined the fair and reasonable plant in service. Included in this end-of-period plant in service balance were nonrevenue producing plant additions placed in service subsequent to the end of the test year ended December 31, 1978. As concluded above, the Company's applicable depreciation rates should be applied to these additions with the exception of the new IMTS terminal. In its original application, the Company anticipated the purchase of a new Motorola IMTS terminal with an estimated service life of 10 years. Witness Bright's revised exhibit, filed during the hearing, reflects an estimated life of seven years for the Glenayre IMTS terminal actually placed in service and included in end-of-period plant in service by this Commission. In contrast, Public Staff witness Turner estimated the service life of the mobile - common equipment account to be 15 years. After careful consideration of all evidence of record, this Commission concludes that the Glenayre terminal should be depreciated over a 10-year service life.

Hence, this Commission concludes that the fair and reasonable level of depreciation expense is $52,060.

Public Staff witness Turner also testified as to the proper level of dispatch expense to be included in operating expenses. Witness Turner's dispatch - manual mobile expense was $6,750, while witness Bright's was $6,210. This difference of $540 is caused by witness Turner's using a different end-of-period level of manual mobile units than the level of end-of-period units at December 31, 1978, as used by witness Bright. Since this Commission has found end-of-period revenues as of December 31, 1978, to be fair and reasonable in this proceeding, then for consistency, end-of-period expenses should be determined as of December 31, 1978. Thus, the Commission concludes that the proper level of dispatch - manual mobile expense is $6,210. This is the same amount included in witness Collins' Revised Exhibit 1.

In determining dispatch-pager expense the Company assigned a monthly expense of $3 per pager for a total of $28,692 for the test year while the Public Staff included $1,200. The Company contended that the following were the three reasons for the charge:

1. The telephone operators provide a dispatch service for paging customers.

2. The radio equipment is monitored on a 24-hour, 7-day-a-week basis by the answering service employees.

3. Broken pagers or mobile phones are replaced by the operators on a 24-hour, 7-day-a-week basis.

Public witnesses testified that Ans-A-Phone's service is good. These witnesses considered the paging - dispatch service to be an integral, necessary part of the paging service provided by Ans-A-Phone. The Commission recognizes the necessity for good service and concludes that the $3 monthly expense per pager is just and reasonable and, therefore, the total charge recommended by the Company of $28,692 is allowed.

In summation, this Commission concludes that the end-of-period operating expenses of Ans-A-Phone are $269,350 which includes depreciation expense of $52,060 and that no income taxes can be calculated since the Company's net income after adjustments, under present rates, is a net loss.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10, 11, AND 12

Company witness Currin testified that the cost of capital to Ans-A-Phone is 13.64%. To arrive at this determination, he first developed the capital structure and then developed the corresponding cost rates. Mr. Currin testified that the capital structure for the December 31, 1978, test year was comprised of $125,078 of long-term debt and $171,202 of common equity. This resulted in a capital structure comprised of 42.22% debt and 57.78% equity.

Witness Currin calculated that the embedded cost of debt was 13.35%. This calculation was based on the actual amounts and cost rates of debt at the end of the test year and the inclusion of a pro forma principal of $85,000 to reflect the loan made to replace the unserviceable mobile common equipment. Mr. Currin used a cost rate of 14.87% for this loan, which is less than the actual rate of 16.0%. This loan had been consummated at the date of the hearings and was an actual part of the current capital structure. Mr. Currin testified that since the loan rate was pegged to float at prime plus 1.0%, he elected to use a conservative cost rate.

Witness Currin testified that his best estimate of the cost of equity to Ans-A-Phone was 22.5%. He based this determination on a lengthy analysis of the unique risks of Radio Common Carriers in general and Ans-A-Phone in particular.

Witness Currin testified that Ans-A-Phone was significantly riskier than the small telephone companies in North Carolina, which have typically been awarded equity returns of 14.5% to 15.5%. Mr. Currin based this risk comparison on an extensive, specific consideration of Ans-A-Phone's size, vulnerability to competition, likelihood of competition, the nonessential nature of its services to some subscribers, the extreme risks of technological obsolescence, the lack of any beneficial - REA-type financing and consulting relationship, the extremely high interest rates, and the necessity to secure some of the utility's financing with the stockholders' personal assets. Witness Currin concluded that the cost of equity to Ans-A-Phone was in the range of 22.5% to 27.5%. He stated that he was recommending a return at the low end of the range for two reasons: First, that Ans-A-Phone had adopted a prudent capital structure which tended to reduce the financial risk and, second, that the stockholders had, to date, only been required to secure $13,000 of utility debt with personal assets.

Public Staff witness Collins also testified as to the capital structure of Ans-A-Phone Communications, Inc., at December 31, 1978. The only difference in witness Collins' capital structure, comprised of 18.97% debt and 81.03% equity, and that recommended by witness Currin concerns the new debt associated with the new IMTS terminal and equipment. Mr. Collins testified that, in his opinion, the adjustment to increase investment for this new mobile terminal without adjustment to revenues for increases in paging customers understates earnings for the test period. He therefore did not include the new mobile terminal in plant in service or the debt for the new terminal in the capital structure at December 31, 1978.

Mr. Collins also presented a capital structure as of September 30, 1979, consisting of 38.08% debt and 61.92% equity. This capital structure included $67,000 of new debt

for the new IMTS terminal but excluded the debt on the old terminal. Mr. Collins stated that he had been told by Mr. Moody that payments on the old terminal had been stopped and, therefore, he had excluded the debt from the capital structure.

The Commission has concluded previously that all nonrevenue producing plant added subsequent to the test year should be included in end-of-period plant in service for the test year ended December 31, 1978. Consistent with this decision, the Commission concludes that the debt incurred for the purchase of the new IMTS terminal should be included in the capital structure at December 31, 1978. The Commission has considered the arguments of the Public Staff concerning the exclusion of the debt on the old terminal from the capital structure and concludes that this debt should be excluded since Ans-A-Phone has terminated payments on the note and the instrument holder has not called for further payment.

Public Staff witness Rosenberg testified that the Company's requested return on equity of 22.5% was "within (though at the high end of) the 'zone of reasonableness' which surrounds the cost of equity to such an enterprise." Witness Rosenberg further testified that "I have compared the situation of Ans-A-Phone to that of other public utilities and have come to the conclusion that the major similarity lies not in the method of operation, type of business, or risk; rather, it is only the fact of regulation which makes them similar to other utilities. Ans-A-Phone is much more similar to any number of small service businesses than it is to electric, natural gas, or telephone utilities. ...Overall, it is my opinion that Ans-A-Phone and other Radio Common Carriers operating in this State are likely to have relatively high costs of equity compared to other utilities."

Though witness Rosenberg stated that "it would be truly difficult to attempt to deduct what rate of return would be just sufficient to meet the test of a fair rate of return," he concluded that a price/earnings ratio of 4.5% to 5.5% was probably appropriate. He further testified that a price/earnings ratio of 4.5% to 5.5% indicated a cost of equity of 18% to 22%.

Based upon a thorough and careful consideration of all the evidence presented, the Commission concludes that the cost of book common equity, and thus the fair rate of return on equity, is 22%. The Commission further concludes that the embedded cost of debt is 13.53% and that the corresponding capital structure ratios are 59.89% for equity and 40.11% for debt. We find the resulting fair rate of return on rate base is 18.60%.

Revenues which will be derived from Ans-A-Phone's rates as approved herein should produce a rate of return on its rate base of 18.60%. The Commission cannot guarantee that the

Company will, in fact, earn the rates of return herein allowed, but the Commission concludes that the Company will be able to reach that level of return through efficient management. The Commission concludes that Ans-A-Phone's rates should be increased by $74,029, based on the test year ended December 31, 1978, which will allow the Company a reasonable opportunity to earn the return on its original cost rate base which the Commission has herein found fair and reasonable.

The Commission has considered the tests laid down by G.S. 62-133(b)(4). The Commission concludes that the $74,029 increase in revenues herein allowed is sufficient to enable the Company to attract sufficient debt and equity capital in order to discharge its obligations and maintain a high level of service to the public.

The following schedule summarizes the gross revenues and the 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, adjustments, and conclusions heretofore, and herein made by the Commission.

ANS-A-PHONE COMMUNICATIONS, INC.
SCHEDULE I
SCHEDULE OF RETURN ON ORIGINAL COST NET INVESTMENT
Twelve Months Ended December 31, 1978

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Revenues	$249,804	$74,029	$323,833
Late income charges	1,030	-	1,030
Other income	2,516	-	2,516
Gain/Loss	3,517	-	3,517
Less: Uncollectible revenue	(3,853)	(1,110)	(4,963)
Total operating revenues	$253,014	$72,919	$325,933

Operating Expenses

Salaries	$ 78,203	$ -	$ -
Retirement	4,656	-	-
Radio repairs	19,715	-	-
Telephone TAX	5,375	-	-
Telephone PCC	10,359	-	-
Antenna rent	1,800	-	-
Other rent	6,905	-	-
Insurance - miscellaneous	1,657	-	-
Advertising - general	769	-	-
Advertising - PCC	6,437	-	-
General and administrative	14,433	-	-
Travel and conventions	4,651	-	-
Taxes - N.C. and miscellaneous	5,916	-	-
Employee taxes and benefits	7,093	-	-
Attorney fees and rate case	9,445	-	-
Dues and subscriptions	2,904	-	-
Incoming freight	166	-	-
Depreciation:			
Furniture and fixtures	1,316	-	-
Paging and mobile	44,293	-	-
Leasehold	337	-	-
Transportation	6,124	-	-
Automobile	1,904	-	-
Dispatch - pagers	28,692	-	-
Dispatch - mobile	6,210	-	-
Net operating expenses before income taxes	269,350	-	269,350
State income tax	-	2,578	2,578
Federal income tax	-	7,327	7,327
Net operating income for return	$(16,336)	$63,014	$ 46,678

	Present Rates	Increase Approved	After Approved Increase
Plant Investment			
Gross plant in service	$482,519	$ -	$482,519
Less: depreciation reserve	(243,209)	-	(243,209)
Net plant in service	239,310	-	239,310
Allowance For Working Capital			
Cash - 1/12 of operation and maintenance expenses	$ 18,107	$	$ 18,107
Prepayments	953	-	953
Less: customer deposits	(125)	-	(125)
Total working capital	18,935	-	18,935
Unamortized investment tax credits	-	(7,327)	(7,327)
Original cost net investment	$258,245	$ (7,327)	$250,918
Rate of return on original cost net investment	(6.33%)	-	19.60%

ANS-A-PHONE COMMUNICATIONS, INC.
SCHEDULE II
SCHEDULE OF RETURN ON ORIGINAL COST COMMON EQUITY

Capitalization	Original Cost Rate Base	Ratio %	Embedded Cost or Return on Common Equity-%	Net Operating Income for Return
	PRESENT RATES			
	(a)	(b)	(c)	(a x c)
Debt	$103,582	40.11	13.53	$14,015
Equity	154,663	59.89	(19.62)	(30,351)
Total	$258,245	100.00	-	($16,336)
	PROPOSED RATES			
Debt	$100,543	40.11	13.53	$13,617
Equity	150,275	59.89	22.00	33,061
Total	$250,918	100.00	-	$46,678

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

As evidenced by the Company's application, Ans-A-Phone's present and proposed tariffs include certain discounts for subscribers utilizing more than one paging unit. Since this

discount is not applicable to all paging customers, this Commission concludes that this tariff provision is unfair to the general body of subscribers and should not be continued.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Ans-A-Phone Communications, Inc., be, and hereby is, authorized to adjust its rates and charges to produce, based upon units and operations as of December 31, 1978, an increase in annual gross revenues of $74,029.

2. That the Company propose specific rates and charges necessary to implement the increase in operating revenues herein approved in accordance with the guidelines established by this Commission in Evidence and Conclusions for Finding of Fact No. 13 within 10 days of the date of this Order. Five copies of the work papers supporting such proposals should be filed with the Chief Clerk of this Commission. Exceptions, alternative rate proposals, and comments to the Company's rate schedule proposals shall be filed within five days thereafter.

3. That the Company's recurring rates and charges and regulations necessary to increase annual gross revenues as authorized herein be effective upon issuance of a further Order approving the tariffs filed pursuant to Paragraph 2 above.

4. That the Company's proposed service regulations, excluding those related to charges and rates and except as spelled out below, be effective as of the date of this Order. These regulations are effective until such time this Commission convenes a generic hearing on service regulations for all Radio Common Carriers in the State of North Carolina.

In order to make the portion of Ans-A-Phone's service regulations related to Commission Rule R12 consistent with and within this rule, the two underlined changes shown below should be reflected in the Company's proposed service regulation:

1. I. Service Regulations E. Applications, Credit, Guarantees of Payment: "The utility will require a written application signed by the party to be charged, and disclosing sufficient information to permit a determination of credit worthiness of the applicant consistent with the provisions of Commission Rule R12."

2. I. Service Regulations, J. Deposits and Delinquent Charges: "The utility may, in order to safeguard its interests, require an applicant to make a deposit Consistent with Commission Rule R12." The remainder of this section is unchanged.

5. That Ans-A-Phone within 60 days of this Order develop and implement procedures resulting in the prompt and accurate division between regulated and unregulated investment, expenses, and revenues.

6. That Applicant take all reasonable steps to advise and inform its customers how they can reduce and control their charges from the Company and improve system efficiency by (a) utilizing customer-owned mobile and paging equipment, (b) changing from manual to automatic mobile service, (c) changing from tone and voice to tone only paging service, and (d) limiting the number and duration of calls made on the system.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of February 1980.

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

DOCKET NO. P-83, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Ans-A-Phone Communications, Inc., for an Adjustment in Its Rates and Charges Applicable to Intrastate Radio Common Carrier Service in North Carolina	) ORDER APPROVING) RATES AND) CHARGES

BY THE COMMISSION: On February 28, 1980, the Commission issued an Order Granting Partial Increase and Revising Service Regulations for Ans-A-Phone Communications, Inc. (Ans-A-Phone), wherein the Company was allowed to increase its rates and charges to produce additional revenues of approximately $74,029 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 Commission allowed all Intervenors five days for filing exceptions, comments, and alternate rate proposals.

Pursuant to the Order of February 28, 1980, Ans-A-Phone proposed tariffs in accordance with the rate design guidelines established by the Commission in its Order.

Following a review of the Company's proposed rates, the Public Staff filed objections to the Company's rate proposals, stating that they would result in gross revenues of $8,383 greater than that authorized by the Commission. The Public Staff also objected to certain of Ans-A-Phone's service regulations approved by the Commission in the Order of February 28, 1980.

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 Ans-A-Phone would result in excess gross revenues of $480. This excess amount is eliminated by reducing the monthly rental and maintenance charge of a utility-owned manual mobile telephone from $52.25 to $51.75 and by reducing the monthly rental and maintenance charge of a utility-owned tone and voice pager from $14.25 to $14.15. The resulting rates are reasonable and should be implemented.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates, charges, and regulations filed by Ans-A-Phone Communications, Inc., on March 7, 1980, which will produce $74,029 of additional gross annual revenues be, and hereby are, approved to be charged and implemented by the Company, except for the two changes listed below:

1. The monthly rental and maintenance charge of a utility-owned mobile telephone is $51.75.

2. The monthly rental and maintenance charge of a utility-owned tone and voice pager is $14.15.

The recurring rates and charges will become effective on all billings rendered on one day's notice after the date of this Order. All service regulations remain in full force and effect until such time this Commission convenes a generic hearing on service regulations for all Radio Common Carriers in the State of North Carolina, as ordered in the Commission's Order of February 28, 1980.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of March 1980.

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

DOCKET NO. P-120, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Short Notice Filing by Pineville Telephone Company	)	ORDER
to Establish Rates for Touch-Call Dialing and	)	AND
Custom Calling Features and to Increase its Local	)	NOTICE
Paystation Rate to Twenty Cents	)	

BY THE COMMISSION: On May 22, 1980, Pineville Telephone Company filed "Short Notice Tariff to Establish Rates for Touch-Call Dialing and Custom Calling Features and to Increase its Local Paystation Rate from Ten Cents to Twenty Cents."

The Commission is of the opinion that the above-mentioned new features will improve the quality of service to those subscribers who elect to have them. In addition, costs of the added features as reflected in the filed tariffs are reasonable and should be approved. Further, the Commission concludes that the proposed increase of paystation rates from ten cents to twenty cents per call is comparable to the twenty cents paystation charge in the adjacent territory served by Southern Bell Telephone and Telegraph Company. Under the circumstances, a no-protest procedure is deemed reasonable for a municipally owned telephone system serving approximately 14 pay telephones.

IT IS, THEREFORE, ORDERED:

1. That the tariffs filed May 22, 1980, which would establish new rates for new services including touch-calling and custom-calling are approved effective June 12, 1980.

2. That the tariffs filed May 22, 1980, proposing to increase the local paystation rate from ten cents to twenty cents shall be decided on the record following the mailing of this Order-Notice to subscribers unless significant protests to the increase are received on or before July 15, 1980.

3. That the Pineville Telephone Company shall include a copy of this Notice in bills to all subscribers mailed in June 1980, and shall file written notice with the Chief Clerk of this Commission of the exact dates of the aforementioned mailings.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of May 1980.

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

DOCKET NO. P-55, SUB 777

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Southern Bell Telephone and) ORDER
Telegraph Company for an Adjustment in Its) GRANTING
Rates and Charges Applicable to Intrastate) PARTIAL
Telephone Service in North Carolina) INCREASE

HEARD IN: Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, and in Guilford County Courthouse, Greensboro, North Carolina, on October 23, 1979; County Office Building, 720 East 4th Street, Charlotte, North Carolina, on October 24, 1979; New Hanover County Courthouse, Wilmington, North Carolina, on October 25, 1979; and in the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 30 and 31, November 1, 2, 7, 8, 9, 13, 14, 15, 16, 19, and 20, 1979

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

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Southern Bell Telephone and Telegraph 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

Robert W. Sterrett, Jr., Solicitor, Southern Bell Telephone and Telegraph Company, 1245 Hurt Building, Atlanta, Georgia 30303
For: Southern Bell Telephone and Telegraph Company

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. (NCTMA or Textile Manufacturers)

Vaughan S. Winborne, Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27609
For: Charlotte Telephone Answering Services, Inc.; Telephone Answering Service, Inc. (Charlotte); Answer-Phone, Inc. (Charlotte); Answering Services, Inc. (Statesville); Telephone Answering Service, Inc. (Burlington); Telephone Answering Service, Inc. (Greensboro); Answering Charlotte, Inc.; Ans-A-Phone Communications, Inc. (Greensboro); Answerphone, Inc. (Raleigh); Telephone Answering Service of Gastonia; Office Communications Company (Winston-Salem); and Doctors Exchange, Williams Telephone Answering (Raleigh)(herein referred to as Telephone Answering Services)

Terry J.R. Kolp, Esquire, Senior Trial Attorney, Regulatory Law Office - USALSA - RL, c/o OTJAG, Room 2C455, The Pentagon, Washington, D.C. 20310
For: The Department of Defense and the Federal Executive Agencies of the United States as consumers and customers of telephone service

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, Public Staff-North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

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

For the Attorney General's Office:

David Gordon, Associate Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Francis W. Crawley, Associate Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This matter is before the Commission upon the application of Southern Bell Telephone and Telegraph Company (Southern Bell or the Company), a wholly owned subsidiary of the American Telephone and Telegraph Company (AT&T), filed on July 3, 1979, for authority to increase its rates and charges on local exchange service. No increase was sought in the level of intrastate long-distance toll rates and charges. The application as originally filed proposed a two-step or phase increase. The total application sought $45.3 million in increased annual revenues or an increase of 10.4% as calculated by the Company. The first phase sought $26.4 million, and the second phase sought $18.9 million.

The Public Staff of the North Carolina Utilities Commission and the Attorney General gave notice of intervention.

On August 1, 1979, the Commission set Southern Bell's application for investigation and hearing in this docket, suspended the proposed rates, and required the Company to give notice of its application to the public.

The Commission scheduled public hearings as follows: October 23, 1979, in the Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, and in the Guilford County Courthouse, Greensboro, North Carolina; October 24, 1979, in the County Office Building, Charlotte, North Carolina; October 25, 1979, in the New Hanover County Courthouse, Wilmington, North Carolina; and beginning on October 30, 1979, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina.

The following additional parties asked and received permission to intervene in the case (the dates for allowing their interventions follow in parentheses): North Carolina Textile Manufacturers Association, Incorporated (October 19, 1979); The Secretary of Defense and the administrator of the General Services Administration of the United States of America (October 22, 1979); Charlotte Telephone Answering Services, Inc., Telephone Answering Service, Inc., Answer-Phone, Inc., Telephone Answering Service of Gastonia, Answering Charlotte, Inc., Ans-A-Phone Communications, Inc., Answerphone, Inc., Office Communications Company, and Doctors Exchange, Williams Telephone Answering (all on October 23, 1979).

The matter came on for hearing at the times and places listed above. All parties were present and represented by counsel.

Southern Bell offered the direct testimony of the following witnesses:

Witness	Subject
Alan E. Thomas	Operations
Robert N. Dean	Cost of capital and revenue requirements
Earl V. Forshee	Price comparison studies
Jack T. Gathright	Value of license contract
Robert L. Savage	The proposed rate schedules
Richard E. Stark	License contract services and costs
William E. Thornton	Western Electric's sales and earnings
Frederick V. King, Jr.	Operating results for Southern Bell's North Carolina intrastate services
James H. Vander Weide	The cost of common equity capital to AT&T

The Company offered three witnesses in rebuttal:

Witness	Subject
James H. Vander Weide	The capital asset pricing model
A. Max Walker	The cost of common equity capital and the fair rate of return
David Miller	Response to specific service complaints

The Public Staff offered the testimony of the following witnesses:

Witness	Subject
William F. Watson	The cost of common equity capital and fair rate of return for AT&T
Richard G. Stevie	The appropriate capital structure and cost of capital
Craig Stevens	Consumer complaints concerning Southern Bell's service
Scott C. Spettel	The overall quality of service
William W. Winters	The Company's original cost net investment, revenues, expenses, and rate of return under existing and proposed rates
Hugh L. Gerringer	Allocations between jurisdictional operations, end-of-period intrastate toll revenues, and the Company's proposed Optional Extended Area Service (OEAS) plan
Leslie C. Sutton	Service connection charges
Benjamin R. Turner	Central office and trunk engineering, operating expenses, and plant investment

Millard N. Carpenter	The reasonableness of the proposed intraexchange mileage charges, charges to the telephone answering services, and maintenance service charges
William J. Willis, Jr.	A review of the Company's proposed tariffs and end-of-period local service revenues

The Attorney General did not present any witnesses.

The North Carolina Textile Manufacturers Association, Inc., offered the testimony of H. Randolph Currin, Jr., on the cost of common equity capital and fair rate of return for Southern Bell. They also offered the testimony of several witnesses as a panel concerning the effect the proposel level of rates would have on their businesses. The witnesses on the panel and the institutions they represent are listed below:

Witness	Institution
Robert D. Carroll	Collins & Aikman
Stephen Harward	University of North Carolina - Chapel Hill
Larry McCullough	Cone Mills, Inc.
Arthur Allen	J.P. Stevens
Harry Venable	Celanese Corporation
Louis R. Jones	Burlington Industries

The telephone answering service Intervenors presented the testimony of two witnesses concerning the effect the Company's proposed level of charges would have on their operation. The witnesses and their companies are as follows:

Witness	Company
Marshall Howard	Contact, Inc.
James W. Beam	Answering Charlotte

Approximately 20 public witnesses testified in the hearings held throughout the State. Fifteen of these witnesses testified specifically concerning the quality of service they receive from Southern Bell. The substance of the testimony of these witnesses is presented in the section of this Order supporting Finding of Fact No. 5.

After due consideration of the testimony offered during the hearing with the benefit of having considered the arguments and briefs of counsel and upon a review of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Southern Bell is a duly franchised public utility lawfully incorporated and licensed to do business in North Carolina, is providing telephone services to subscribers in its North Carolina service area, and is lawfully before this Commission seeking an increase in its rates and charges for local exchange service.

2. The total increases in rates and charges under the combined phases of Southern Bell's application would have produced approximately $45.3 million in additional gross annual local service revenues.

3. That the test period used by all parties in the proceeding and established by the Commission is the 12 months ended April 30, 1979.

4. That Southern Bell's investment in telephone plant in service in North Carolina is reasonable.

5. That the quality of service provided by Southern Bell is adequate but has tended to deteriorate from the level provided in the last rate case.

6. That certain aspects of Southern Bell's advertising and sales of its "Design-Line" telephone equipment have been and continue to be confusing and potentially misleading to customers.

7. That the reasonable original cost of Southern Bell's investment in telephone plant used and useful in providing intrastate North Carolina telephone service is $845,294,000. This amount is composed of $1,153,776,000 of plant in service, plus $26,110,000 of construction work in progress, plus $4,612,000 of telephone plant acquisition adjustment, less $225,948,000 of accumulated depreciation and $113,256,000 of cost-free capital and customer deposits.

8. That the reasonable allowance for working capital is $6,717,000.

9. That the reasonable original cost rate base is $852,011,000. This amount consists of $845,294,000 of telephone plant, plus $6,717,000 as an allowance for working capital.

10. That the reasonable level of operating revenues under present rates is $445,662,000.

11. That the reasonable level of operating revenue deductions after accounting and pro forma adjustments is $370,968,000. This amount includes $66,429,000 for investment currently consumed through reasonable actual depreciation on an annual basis.

12. That the appropriate capital structure for Southern Bell in this proceeding is as follows:

Total Debt	46.15%
Preferred Equity	2.48%
Common Equity	51.37%

13. That the proper embedded cost rate for long-term debt is 7.36% and for preferred stock is 7.70%. The fair rate of return which the Company should be allowed to earn on the original cost rate base is 10.19%.

14. That, in order to earn the rate of return found fair by the Commission, Southern Bell should be allowed to increase its rates and charges so as to produce an increase in local service revenues of $25,489,000 annually, based on operations during the test year.

15. That the rates, charges, and regulations to be filed pursuant to this Order in accordance with the guidelines contained herein, which will produce an increase in annual revenues of $25,489,000, will be just and reasonable.

16. That the flat rate on which Southern Bell bills customers for local service does not take into account variations in usage patterns by different customers. Light telephone users pay the same rate as heavy telephone users who impose greater cost on usage sensitive telephone plant. That Southern Bell should design optional low usage rate tariffs in their ESS exchanges in order to give consumers additional options in the control over the cost of telephone service.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 3

The evidence supporting these findings of fact is found in the verified application, in prior Commission Orders in this docket, and in the record as a whole. The findings are essentially procedural and jurisdictional in nature and, with one exception, were uncontested and uncontroversial. The area of controversy involves the lawfulness of the two-phase increase proposed by the Company.

On July 25, 1979, the Public Staff moved to dismiss the second phase (Phase II) of the Company's application on the grounds that it was in violation of the President's Wage and Price Guidelines and had not contained a specific effective date as required by G.S. 62-134. Southern Bell filed its response to the Public Staff's motion on August 6, 1979.

On August 29, 1979, the Commission set the Public Staff's Motion to Dismiss the second phase of the applicaton for argument at the commencement of the October 30 hearing.

The North Carolina Textile Manufacturers Association, Inc., filed a similar Motion to Dismiss the second phase of Southern Bell's rate increase request on October 19, 1979.

Certain telephone answering services intervening in the proceeding also joined in the Public Staff's and Textile Manufacturers' Motions to Dismiss Phase II.

Following oral argument which was held on October 30, 1979, as scheduled, the Commission denied the Motions to Dismiss Phase II of the Company's application and ruled that the rate request be considered as a combination of both Phase I and Phase II. The Commission further took judicial notice of the October 2, 1979, order of the Council on Wage and Price Stability, issued in the Federal Register, Volume 44, No. 192, and evidence presented during oral argument which indicated that the combined rate increase of $45.3 million is in compliance with the Wage and Price Guidelines currently in effect.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the plant investment and the efficiency of plant management was presented by Company witness Thomas and Public Staff witness Turner.

Mr. Thomas testified that the high rate of inflation has been the overwhelming cause of the Company's decline in earnings in that inflation has caused the Company's costs to sharply escalate and that this high rate of inflation erodes the Company's efforts to improve productivity and reduce costs.

Mr. Turner presented the results of his investigation of the Company's operations which included a review of central office and trunk engineering and an analysis comparing the test year's operating expenses to expenses for prior years.

Concerning central office equipment engineering, Mr. Turner testified that the Company's central office switching equipment additions have been timely and planned to exhaust within a reasonable engineering interval. The Company frequently reviews its equipment needs in view of changing subscriber growth and reacts by either delaying planned additions or shortening additional intervals. Regarding trunk engineering, witness Turner testified that the Company is responsive to changes in subscriber usage and is forecasting and sizing trunk groups in response to changes in growth.

The Commission concludes, based on the testimony of witnesses Turner and Thomas, that the level of Southern Bell's telephone plant in service is reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence regarding the quality of service was offered by public witnesses Larry Laisy, Julia Greenwood, Laura Perryman, John McBride, Edmund Pickup, Mrs. Ruben Morton, Rebecca Jones, Penny Avery, Mynell Bennett, Calvin Ragan, Captain M.P. Sohnlein, Edward Haggerty, Mildred Watkins.

Lassie Smith, and John Fitts; by Company witnesses Thomas and Miller; and by Public Staff witnesses Stevens and Spettel.

A. PUBLIC WITNESSES

Public witness Laisy testified that Southern Bell did not provide new service when and as promised, that the methods used to install his service were inefficient, and that his various phone services required five repair calls during the 90-day period.

Public witness Greenwood testified that Southern Bell did not provide new service when and as promised, that service was installed only after she contacted the Public Staff, and that Southern Bell did not act on her reports of a fallen telephone line.

Public witness Perryman testified that Southern Bell did not provide new service when and as promised and that her service appeared to have been temporarily disconnected on one occasion.

Public witness McBride testified that he had experienced constant outages of his phone service, that he had also experienced periodic difficulty in receiving a dial tone, and that he frequently reached incorrect telephone numbers when dialing. He testified that his service problems were resolved after he forwarded his complaints to the Utilities Commission.

Public witness Pickup testified that he had experienced difficulties with his phone service over a five-year period, that his most recent service outage resulted in 17 days without service, that numerous repair appointments were missed, and that his phone problems were resolved only after he complained to the Utilities Commission.

Public witness Morton testified that recently her phone was out of service for 11 days and that her service problems appeared to be continuing.

Public witness Jones testified that she experienced occasional difficulty in getting a dial tone and would periodically reach tape recordings rather than the party she was calling after dialing.

Public witness Avery testified that her phone did not work when installed, that approximately 30 days passed before she received service, that she is still experiencing problems with her phone, and that Southern Bell did not promptly respond to her repair request when contacted. She testified that she eventually received service only after contacting the Utilities Commission.

Public witness Bennett testified that she had been without service for several days and has had noisy

conditions on her phone. She testified that she had contacted Southern Bell concerning a damaged wall phone, but that Southern Bell had not responded to her report.

Public witness Ragan testified that his phone had been out of service on numerous occasions during the last six years, that Southern Bell did not always respond to repair his phone when contacted, that he found it necessary to contact the Public Staff to maintain adequate service, and that the problems with his phone were continuing.

Public witness Sohnlein testified that he has experienced several service failures, that Southern Bell did not meet two repair appointments associated with his latest three-day service outage, and that the Company does not provide adequate procedures to notify customers of pending changes of their telephone numbers.

Public witness Haggerty testified that he had repeatedly reported a buzzing noise on his telephone line and that Southern Bell has not alleviated this condition.

Public witness Watkins, a small business person operating a telephone answering service, testified that Southern Bell provided temporary equipment to meet her service order while the equipment she ordered required nine months before it was placed in service. She also stated that she was opposed to the Company's handling of "secretarial services" exclusively by the Charlotte business office and that she was experiencing problems understanding Southern Bell's billing procedures.

Public witness Smith testified that she had experienced clicking noises on her telephone, that she cannot be heard on many phone connections, and that she had been inconvenienced by missed repair appointments on several occasions. She also testified that the trouble history concerning her account forwarded to the Public Staff by Southern Bell was incomplete and not true and that contrary to that report her phone was repaired only after she complained to the Utilities Commission.

Public witness Fitts testified that his service had been out several times in the past few months, that telephone service outages could cause financial loss to his business and to his customers, and that he often must dial a number several times before the call can be successfully completed. He also reported that his mother's phone service was out for six days before being repaired.

B. COMPANY WITNESSES

Company witness Thomas testified that Southern Bell continually evaluates and measures service to ensure that it is good, citing that 98.5% of Southern Bell's customers are able to get a dial tone in less than three seconds. He stated that installation and repair services are being

handled quickly and economically, citing Company records indicating 97% of installation appointments are being completed on the day promised.

Witness Thomas introduced the results of an independent firm's review of Southern Bell's service through a customer sample. He stated that results in the mid-80th percentile would be good numbers in this review and cited nine categories of service with results ranging from 83 1/2% to 99% of those sampled rating their service as being good or excellent.

Company witness Thomas testified that the Commission's previously established service objectives were extremely fine objectives to aim for, that they were difficult to achieve, and that he seriously doubted the objectives were cost effective. He considered a 7% to 10% objective for subsequent reports to be appropriate but stated that clearing all but 10% of the out-of-service trouble reports that are received before 5:00 p.m. on the day received would be ineffective from a cost standpoint. However, he stated with "total conviction" that Southern Bell's construction programs of 1979, 1980, and 1981 would bring the service indices "well within line." Furthermore, Mr. Thomas testified that Southern Bell will handle any emergency concerning an out-of-service phone that a customer describes at "any hour of the night."

Company witness Miller addressed the specific complaints cited by the public witnesses in this hearing. Mr. Miller testified that Ms. Perryman's service was scheduled to be installed on the fifth day of the month, that a five-day delay occurred in investigating Ms. Perryman's service request, and that service was then connected on the next available appointment date. Mr. Miller testified that the area of missed appointments given to customers does result in complaints and that it is an area Southern Bell "certainly could work on."

Company witness Miller testified that he could not explain the apparent discrepancies between some of the testimony offered by public witnesses and his written explanations that were offered to the Commission. Mr. Miller further testified that the reports presented to the Commission were typical of the reports submitted to upper management regarding customer complaints, as well as being typical of responses concerning complaints forwarded to the Public Staff by Southern Bell.

C. PUBLIC STAFF WITNESSES

Public Staff witness Stevens testified that the Consumer Services Division of the Public Staff had received a larger volume of complaints concerning Southern Bell's service during the first 10 months of 1979 than during any preceding 12-month calendar year and that these complaints may indicate genuine problem areas. Mr. Stevens testified that

an increasing number and percentage of complaints received concerned the quality of service and repair aspects of Southern Bell's operations in North Caorlina.

Public Staff witness Spettel testified that the quality of Southern Bell's switching services and trunk network were good, but that the quality of Southern Bell's distribution network is declining. Mr. Spettel cited an increase in the number of trouble reports per 100 stations and an increase in the percentage of repeat reports, subsequent reports, and missed repair appointments, as well as an increase in the number of out-of-service trouble reports that the Company receives before 5:00 p.m. and carries over to the next day before clearing. Mr. Spettel testified that Southern Bell was not meeting the service objectives which the Commission previously established for subsequent reports, repeat reports, and "out-of-service received before 5:00 p.m. carried over" reports and that the degreee of out-of-service reports and missed repair appointments was understated as a consequence of the form of data collection. He testified that Southern Bell's repair services needed improvement.

Witness Spettel testified that he considered the Utilities Commission's service objectives just and reasonable and that many of the telephone companies operating under the Commission's jurisdiction were meeting these service objectives. Mr. Spettel testified that he considered a 5% missed repair appointment objective reasonable and that, while the "out-of-service received before 5:00 p.m. carried over" objective was applicable to all regulated telephone utilities in North Carolina, the reporting of trouble reports cleared on a 24-hour basis would be more straightforward and serve the same purpose.

Witness Spettel testified that the overall quality of service offered by Southern Bell in North Carolina is fair and adequate.

In conclusion, this Commission finds that the overall quality of service offered by Southern Bell in North Carolina is adequate. Further, the Commission recognizes that there has been a deterioration in the quality of service provided by the Company since the last rate case. The Commission also concludes that the quality of Southern Bell's repair services must be improved and that quality of service objectives should be clearly specified in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Public Staff witness Stevens testified that the Public Staff had received complaints from consumers describing problems which had apparently resulted because of Southern Bell's sales personnel not adequately informing purchasers of Design-Line equipment of certain restrictions pertaining to that equipment. The most serious restriction involves the purchase of a Design-Line set where only the telephone

housing is actually purchased and the working parts of the set remain the property of Southern Bell. Mr. Stevens cited further problems which had developed when customers purchased Design-Line equipment as gifts for persons living in the service areas of other companies.

In a closely related area, witness Stevens described certain misleading aspects of the Company's advertising of Design-Line equipment, including the use of brochures and advertisements which either do not describe the fact that the purchaser is buying only the telephone housing or which do so in a generally inconspicuous or misleading manner. Sample brochures were displayed by Mr. Stevens. Southern Bell mentioned a particular brochure, the Bell Phone Guide, which does advise the customer that only the housing of Design-Line telephones will belong to the purchaser. Southern Bell did not state, however, that this brochure is provided to or reviewed with potential purchasers of Design-Line equipment.

The Commission concludes that some of Southern Bell's advertising of Design-Line telephone equipment is misleading to potential purchasers in that it generally fails to clearly advise potential purchasers of the various restrictions pertaining to such equipment, especially the fact that only the telephone housing can be purchased by the customer. The Commission further concludes that Southern Bell should revise both its current and proposed advertising programs for Design-Line telephones to clearly and conspicuously advise potential purchasers of the restrictions pertaining to that equipment, especially that only the telephone set housing is actually purchased and that other restrictions on use may apply outside the service area of Southern Bell or a Southern Bell affiliate company. Southern Bell should also require its personnel involved in the sales of Design-Line equipment to fully advise customers of possible restrictions or limitations of such equipment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The testimony and exhibits presented by Company witness King and Public Staff witness Winters set forth the original cost of the Company's investment in intrastate telephone plant. The following chart details the amount that each of these witnesses contends is proper for this item:

(000's Omitted)

Item	Company Witness King	Public Staff Witness Winters
Telephone plant in service	$1,153,776	$1,153,776
Telephone plant under construction	26,110	26,110
Property held for future use	424	-
Telephone plant acquisition adjustment	4,612	4,612
Accumulated depreciation	(221,962)	(225,948)
Cost-free capital	(2,220)	(113,256)
Total original cost of investment in plant	$ 960,740	$ 845,294

The testimony and exhibits presented by Company witness King and Public Staff witness Winters are in agreement with respect to the amount of telephone plant in service, telephone plant under construction, and telephone plant acquisition adjustment properly includable in the Company's investment in telephone plant. Such testimony was the only evidence presented in this regard. Therefore, the Commission concludes that the reasonable original cost of the Company's North Carolina intrastate telephone plant in service of $1,153,776,000; telephone plant under construction of $26,110,000; and intrastate telephone plant acquisition adjustment of $4,612,000 are proper for use herein.

The first difference between the two witnesses in this regard concerns plant held for future use in the amount of $424,000, which Company witness King proposed to include in the rate base. In regard to property held for future use Mr. King testified as follows:

"Property held for future telephone use comprises the original cost of land not currently in service but necessary for the provision of service. Each item of property has been acquired under a definite plan for its use in the provision of telephone service within two years.

"This investment has been dedicated to the provision of telephone service and is just as important to our North Carolina customers as the telephone plant in service which they currently use. Land for building sites must be obtained well in advance of the commencement of building construction. Time must be allowed to search for and obtain the necessary property at a reasonable price for survey and soil tests, building study plans, preparation of working drawings and specifications, and the bidding and awarding of contracts. These activities must be coordinated with the construction of the related telephone facilities so that telephone service will be available when required by our customers at the smallest overall cost.

"The funds used for such properties are provided by investors who expect to be and should be compensated for their investment."

Mr. Winters testified that in his opinion property held for future use does not meet the criterion of being used and useful in providing telephone service to the public and, therefore, should not be included in the rate base.

The Commission is bound by G.S. 62-133 in determining which utility property may be included in determining the rate base. With respect to utility plant the Commission interprets the plain language of the statute to mean that only plant which is currently used and useful in providing telephone service or construction work in progress expenditures subsequent to June 30, 1979, may be included in the rate base. The wisdom of the purchases making up property held for future use is not at issue. The same limitation applies to all utilities regulated by this Commission. Additionally, the two-year period of time given by the Company as an estimate for when this property will become useful is far beyond what can be construed as occurring "within a reasonable time after the test period."

Therefore, based upon the foregoing the Commission will not include plant held for future use in determining the rate base for use herein.

The next item on which the witnesses differ is accumulated depreciation. Both witnesses agree that accumulated depreciation should be deducted in determining the level of plant investment, but disagree as to the appropriate amount.

The witnesses agree that the actual accumulated depreciation at April 30, 1979, was $221,962,000. Public Staff witness Winters contends that this amount should be increased by $3,986,000 to reflect his pro forma adjustment to bring depreciation expense to an end-of-period level. Company witness King did not increase accumulated depreciation to reflect his annualization adjustment to depreciation expense.

Mr. Winters testified regarding his adjustment to increase accumulated depreciation as follows:

"By increasing depreciation expense to an end-of-period level, the ratepayers will have to pay in rates to cover additional depreciation expense as if the plant in service at the end of the test year had been in service for the entire test year. If, in fact, the end-of-period plant level had been in service throughout the test year, the depreciation reserve would have been $3,986,000 greater than the amount recorded at the end of the test year. If the ratepayers are required to pay in rates to cover depreciation expense which in fact had not been incurred at the end of the test period, it is only fair

and equitable that they be given the benefit of this additional depreciation in determining the end-of-period level of accumulated depreciation."

The Commission, as will be discussed subsequently, has included in the test year the Public Staff adjustment of $3,986,000 to annualize depreciation expense. Accordingly, the Commission finds it entirely consistent and proper to make the corollary adjustment of $3,986,000 to accumulated depreciation. The Commission therefore concludes that the proper level of acccumulated depreciation to be used for purposes of this proceeding is $225,948,000.

The final item on which the witnesses disagree is the amount of cost-free capital which should be deducted in determining the Company's investment in intrastate plant.

The following chart summarizes the amounts deducted by each of the witnesses:

(000's Omitted)

Item	Company Witness King	Public Staff Witness Winters
Unamortized investment tax credit pre-1971	$ -	$ 2,354
Accumulated deferred income taxes	-	108,682
End-of-period customer deposits	2,220	2,220
Total	$2,220	$113,256

The testimony and exhibits presented by the witnesses are in agreement with respect to the proper level of customer deposits; therefore, the Commission concludes that $2,220,000 of customer deposits should be included as a deduction in arriving at the proper level of utility plant in service for use herein. The Commission wishes to observe in passing that customer deposits do not in fact represent cost-free capital as reflected by the Public Staff; but rather is deducted in developing the rate base consistent with the inclusion of interest on customer deposits in the test year level of expense. This treatment ensures that the Company will recover the cost (interest) it incurs with respect to customer deposits and no more.

The above chart shows that Mr. King did not include pre-1971 investment tax credits and accumulated deferred income taxes in the amount of cost-free capital which was deducted in the plant investment calculation; whereas, Mr. Winters did include these amounts. However, pre-1971 investment tax credits and accumulated deferred income taxes were included in the capital structure at zero cost by Company witness Dean. Such treatment in effect allocates cost-free funds to all sectors of the Company's operations including those of a nonutility nature.

In explaining the significance of why cost-free capital should be deducted from the rate base Mr. Winters testified as follows:

"By deducting cost-free capital from the rate base, the customers are not required to pay a return on funds which they have contributed to the Company through the rate structure. Company witness Dean's method has the effect of allocating a portion of cost-free capital to nonrate base assets. Company witness Dean in effect allocates 11.22% of the rate base determined by Mr. King to cost-free capital. This method results in $109,508,000 being deducted as compared to the $111,036,000 I recommend."

In essence the methodology employed by the Public Staff assigns 100% of this cost-free capital to the Company's utility operations.

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 the Company's North Carolina intrastate customers to pay a return on capital which they have provided when such capital bears no cost to the Company.

The Commission therefore concludes that cost-free capital in the amount of $111,036,000 should be deducted in calculating the Company's investment in intrastate telephone plant for use herein.

Finally, the Commission concludes, based upon the foregoing, that the proper level of telephone plant in service for use herein is $845,294,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Telephone plant in service	$1,153,776
Telephone plant under construction	26,110
Telephone plant acquisition adjustment	4,612
Accumulated depreciation	(225,948)
Cost-free capital and customer deposits	(113,256)
Total original cost of plant investment	$ 845,294

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness King presented an amount of approximately $15,438,000 for working capital; whereas, Public Staff witness Winters presented an amount of $6,717,000. The

witnesses agreed on all of the components of working capital except the proper amount of the cash allowance. The $8,721,000 difference between their positions is summarized on the chart below:

(000's Omitted)

Item	Company Witness King	Public Staff Witness Winters
Company average daily cash balances	$ 1,912	$1,912
Outstanding Company drafts	5,067	-
Compensating balances supporting:		
A. Commercial paper	2,669	2,669
B. Existing bank lines of credit	544	-
Trust requirements for Federal taxes collected from employees and customers	3,110	-
N.C. working funds	159	159
Total cash allowance	$13,461	$4,740

The witnesses agree as to the proper amounts to be included in the cash allowance for average daily cash balances, compensating balances supporting commercial paper, and North Carolina working funds. The Commission therefore concludes that such amounts are reasonable.

The Commission will now analyze the testimony and exhibits of the witnesses on the remaining items.

Company witness King contends that the pool of funds maintained by AT&T is necessary to support the Company's outstanding drafts in the amount of $5,067,000.

The Public Staff contends that the banks entering into draft agreements with the Company look to the operating company to either maintain a balance sufficient to offset bank charges or to pay the charges for services rendered by the bank. Mr. Winters testified that the Company did not borrow money from the pool of funds at any time during the test year and further testified on cross-examination that the Company had paid some $600,000 in bank service charges during the test year.

After careful consideration of the entire record in this matter, the Commission finds that the evidence presented does not tend to support the contention that the AT&T pool of funds was used either to support banking arrangements related to drafts or to cover outstanding drafts during the test period.

The Commission therefore concludes that outstanding drafts should not be included in the cash allowance.

Company witness King contends that if it were not for the pool of funds, the Company would need approximately $544,000 on the intrastate level for compensating balances to support existing lines of credit. In regard to this item, Mr. Winters testified as follows:

"The Company provided information regarding confirmations of the existing $33,000,000 lines of credit which the Company has with several banks. In each case the bank confirmed that while the Comany had no legally binding line of credit, the bank was willing to make available certain amounts for borrowing. Each bank stated that there were no commitment fees or compensating balance requirements in connection with either current borrowing or amounts made available. Each bank also stated that it considered the Company's overall deposit relationship in determining credit availability."

Mr. King confirmed this testimony on cross-examination.

The Commission, having found no factual evidence to support the contention that compensating bank balances would be required were it not for the AT&T pool of funds, concludes that no allowance should be made for same in determining the proper level of the cash allowance for use herein.

The final area of disagreement of $3,110,000 relates to Mr. King's contention that legal requiements make it necessary to maintain cash funds in trust to support taxes deducted from employee wages and excise taxes collected from the customers.

In regard to this item, Mr. Winters testified as follows:

"From an accounting standpoint these funds are no different from any other funds. From such time as these funds are collected from the customers and employees until they are remitted to the government they are available for use by the Company. From a practical point of view the only way the government could be in jeopardy of losing tax revenues or Company officers having to pay taxes from their own resources would be for the Company's revenues to fall below the amount of the taxes owed. The likelihood of deficient revenues is, indeed, remote. According to Southern Bell's annual report to its stockholders in 1978, annual revenues were approximately 132 times the amount of taxes that Company witness King recommends for inclusion in working capital."

The Commission finds there is neither compelling legal nor practical reason for Southern Bell to maintain segregated trust funds for these taxes. The Commission has reviewed Section 7512 of the Internal Revenue Code concerning separate accounting for certain collected taxes and has determined that a trust fund for these taxes is not

required for a corporation unless an officer of the corporation is specifically notified by hand delivered notice that the corporation must maintain these tax collections in a trust fund. Section 7512 of the Internal Revenue Code reads as follows:

"[Section] 7512. Separate accounting for certain collected taxes, etc.
(a) General rule. Whenever any person who is required to collect, account for and pay over any tax imposed by subtitle C or by chapter 33 -
(1) at the time and in the manner prescribed by law or regulations
(A) fails to collect, truthfully account for, or pay over such tax, or
(B) fails to make deposits, payments, or returns of such tax, and

(2) is notified, by notice delivered in hand to such person, of any such failure,

then all the requirements of subsection (b) shall be complied with. In the case of a corporation, partnership, or trust, notice delivered in hand to an officer, partner, or trustee, shall, for purposes of this section, be deemed to be notice delivered in hand to such corporation, partnership, or trust and to all officers, partners, trustees, and employees thereof.

(b) Requirements. Any person who is required to collect, account for, and pay over any tax imposed by subtitle C or by chapter 33, if notice has been delivered to such person in accordance with subsection (a), shall collect the taxes imposed by subtitle C or chapter 33 which become collectible after delivery of such notice, shall (not later than the end of the second banking day after any amount of such taxes is collected) deposit such amount in a separate account in a bank (as defined in section 581), and shall keep the amount of such taxes in such account until payment over to the United States. Any such account shall be designated as a special fund in trust for the United States, payable to the United States by such person as trustee.

(c) Relief from further compliance with subsection (b). Whenever the Secretary is satisfied, with respect to any notification made under subsection (a), that all requirements of law and regulations with respect to the taxes imposed by subtitle C or chapter 33, as the case may be, will henceforth be complied with, he may cancel such notification. Such cancellation shall take effect at such time as is specified in the notice of such cancellation."

As the Commission interprets Section 7512 of the Internal Revenue Code, a taxpayer, whether an individual, corporation, partnership, or trust, is not required to

maintain these tax collections in a special trust fund unless (1) he fails to collect, truthfully account for, pay over such tax, make deposits, payments or file returns and (2) is notified, by notice delivered in hand to such person, of any such failure. Also, if a taxpayer, for the reasons previously mentioned, is required to maintain these tax collections in a special fund, he can later be relieved of this requirement if the Secretary is satisfied that these tax collections will be collected, truthfully accounted for, and paid on schedule as required by law.

There is no evidence in the record that Southern Bell has not accounted for and paid these taxes on schedule as required by law, nor is there any evidence that Southern Bell has been notified that it must maintain these tax collections in a special trust fund. Nor can the pool of funds which AT&T maintains be deemed a segregated trust when there is testimony that the monies are available to lend to operating subsidiaries.

Based on the foregoing, the Commission concludes that the $3,110,000 recommended by Mr. King for this purpose should not be included in the cash allowance.

In summary, the Commission therefore concludes that the proper level of the cash allowance for use herein is $4,740,000 which sum is calculated as follows:

(000's Omitted)

Item	Amount
Average daily cash balances	$1,912
Compensating balances supporting commercial paper	2,669
North Carolina working funds	159
Total cash allowance	$4,740

Finally, the Commission concludes that the reasonable allowance for working capital for use herein is $6,717,000, which sum is calculated as follows:

(000's Omitted)

Item	Amount
Cash allowance	$ 4,740
Materials and supplies	11,884
Customer funds advanced through operations	(200)
Accounts payable	(9,707)
Total working capital	$ 6,717

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The Commission, having previously determined the reasonable original cost of the Company's investment in intrastate telephone plant for use herein to be $845,294,000

(includes $26,110,000 for construction work in progress) and the reasonable allowance for working capital to be $6,717,000, concludes that the proper rate base for use herein is $852,011,000 ($845,294,000 + $6,717,000).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness King and Public Staff witnesses Willis, Gerringer, and Winters testified concerning the representative end-of-period level of operating revenues. Witness Willis testified specifically as to the representative level of local exchange revenues; witness Gerringer testified specifically as to the representative level of intrastate toll revenues; and witness Winters testified as to the representative level of miscellaneous and uncollectible revenues. The revenue impact of the adjustments proposed by witnesses Willis and Gerringer were appropriately reflected in the exhibits of witness Winters.

Both witnesses King and Winters testified as to the appropriate level of operating revenues after accounting and pro forma adjustments. The following tabular summary shows the amounts presented by each witness:

(000's Omitted)

Item	Company Witness King	Public Staff Witness Winters
Local service	$243,831	$253,917
Toll service	155,582	165,152
Miscellaneous	25,809	28,338
Uncollectibles	(1,665)	(1,745)
Total operating revenues	$423,557	$445,662

The difference between the two columns of $22,105,000 results from the different methods employed by the witnesses in calculating the end-of-period adjustments to revenues and expenses.

Company witness King calculated his end-of-period adjustment to net operating income by multiplying his adjusted intrastate net operating income by the ratio of the end-of-period main stations and equivalents to the test-period average main stations and equivalents. Mr. King stated that this method was the same procedure used by the Company in its last rate proceeding and that it was his belief that the approach was reasonable. Mr. King's contention was that main stations are the pivotal factor around which the Company is operated. Inherent in witness King's methodology is the assumption that net income per main station remains relatively constant over time and, consequently, end-of-period net income can be estimated by simply adjusting for average main station growth during the test period.

Public Staff witnesses Willis, Gerringer, and Winters used direct calculation methodologies to estimate the end-of-period level of approximately 99.76% of Southern Bell's operating revenues and used the main station annualization factor of 2.39% to adjust the remaining .24%.

Witness Willis calculated an end-of-period level of local services revenues to be $253,917,416 using the principle of annualizing the last month of local revenues occurring during the test period. However, Mr. Willis testified that he adjusted actual data in order to more correctly represent the yearly revenue level that could be expected in the future based on end-of-test-period main stations. In Mr. Willis' opinion, this methodology would tend neither to understate nor overstate the end-of-period level of revenues.

Witness Gerringer testified as to the representative end-of-period level of intrastate toll revenues which Mr. Winters used in his calculation of end-of-period revenues. Mr. Gerringer used a simple linear regression analysis to determine revenues of $165,151,548. The data used for the analysis was the Company's booked intrastate toll revenues summed by month from the toll revenues contained in Accounts 510 (Message Tolls), 511 (WATS) and 512 (Toll Private Line) for 17 months beginning with May 1978 and ending with September 1979. This data represented all actual monthly booked intrastate toll revenues available at the time Mr. Gerringer's testimony was prepared and included the full impact of the toll rate changes that were approved in Docket No. P-100, Sub 45, which became effective in April and May 1978.

Using the monthly data, Mr. Gerringer applied simple linear regression analysis to establish a regression line or a line of best fit through the 17 actual data points. From this regression line, a representative monthly amount of intrastate toll revenues of $13,762,629 corresponding to the last month of the test period (April 30, 1979) was determined. Multiplying that amount by 12 resulted in an annual amount of $165,151,548 which Mr. Gerringer considered to be a representative level of end-of-period intrastate toll revenues for the Company.

The Commission concludes that the approach taken by the Public Staff more reasonably represents end-of-period revenue levels than the method employed by witness King. The levels suggested by the Public Staff are the result of the examination of specific accounts for a 17-month period and are inherently more reliable than the main station growth factor used by Mr. King.

Witness Winters testified concerning the representative level of miscellaneous and uncollectible revenues. He made three adjustments to arrive at his end-of-period level of miscellaneous revenues.

Mr. Winters made his first adjustment of $2,073,000 to annualize directory revenues. He testified that he determined the end-of-period level of directory revenues in the amount of $24,108,000 by multiplying the actual April 1979 revenues by 12.

Witness Winters made his second adjustment of $456,000 to adjust rent revenues to an end-of-period level. According to Mr. Winters' testimony, certain rental charges were increased for specific contracts in October 1978. Witness Winters calculated the average monthly revenue for those months during the test period in which the rental rate increase was in effect and multiplied that amount by 12 to arrive at the end-of-period level of rent revenues of $3,156,000. Alternatively, the Company, although not advocating a direct calculation methodology, proposed annualizing (multiplying by 12) rent revenues of $248,000 for April 1979, the last month of the test period. Such a procedure would result in end-of-period rent revenues of $2,976,000 or $180,000 less than the amount proposed by the Public Staff.

The Commission concludes that the methodologies employed by the Public Staff to calculate end-of-period levels of directory revenues and rent revenues are reasonable. In regard to directory revenues and rent revenues, the Commission is of the opinion that the direct calculation methodologies such as those employed by the Public Staff result in more accurate calculations of representative end-of-period amounts than does the main station annualization factor. Further, the Commission finds that rent revenues proposed by witness Winters of $3,156,000 are reasonable. As shown in Winters Exhibit 1, Schedule 3-2, rent revenues fluctuate from month to month; consequently, the Public Staff's proposal is the most appropriate.

The final adjustment made by the Public Staff involves the remaining portion of miscellaneous revenues of $1,074,000. Witness Winters utilized the main station annualization factor of 2.39% to calculate the end-of-period amount of the remaining portion of miscellaneous revenues. Although direct calculation methodologies are considered to be the most accurate by the Commission, it is recognized that such procedures are not feasible in all situations and, consequently, the Commission finds witness Winters' adjustment to be proper.

The appropriate level of uncollectible revenues is the final operating revenue component on which the Company and Public Staff are in disagreement. Public Staff witness Winters calculated end-of-period uncollectible revenues of $1,745,000 by multiplying a calculated uncollectible rate of .39% by gross operating revenues proposed by the Public Staff of $447,407,000.

As previously discussed, the Company applied a main station annualization factor to net income to achieve the

end-of-period level of net income. The Commission finds the uncollectible adjustment proposed by the Public Staff to be both reasonable and appropriate for use herein.

In summary, the Commission concludes that the appropriate level of operating revenues under present rates is $445,662,000 which is calculated as follows:

(000's Omitted)

Item	Amount
Local service revenues	$253,917
Toll service revenues	165,152
Miscellaneous revenues	28,338
Uncollectible revenues	(1,745)
Total operating revenues	$445,662

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witness King and Public Staff witness Winters presented testimony and exhibits showing the levels of operating revenue deductions each contends should be used by the Commission in this proceeding. The following tabular summary shows the amounts presented by each witness:

(000's Omitted)

Item	Company Witness King	Public Staff Witness Winters
Operating expenses	$211,674	$219,904
Depreciation	62,739	66,429
Other operating taxes	45,120	46,562
Income taxes	33,657	33,132
Annualization adjustment	1,682	1,419
Total	$354,872	$367,446

Operating Expenses

The first difference in the revenue deductions involves operating expenses. Witness King testified that the appropriate level of operating expenses is $211,674,000; while witness Winters testified that the appropriate level of operating expenses is $219,904,000, a difference of $8,230,000.

The majority of this difference in operating expenses results from wage and benefit adjustments. Witness King made adjustments totaling $12,992,000 to recognize increases in wage and employee benefits through August 1979. Mr. King adjusted for increased wage rates, but did not adjust for the increased number of employees at the end of the test year. He also included an adjustment for wages and benefits due to the addition of one paid excused work day for nonmanagement employees after January 1, 1979.

As explained in Evidence and Conclusions for Finding of Fact No. 10, Company witness King annualized all revenues and expenses, including wages, by applying the annualization factor to his adjusted net operating income.

Witness Winters made an adjustment of $20,855,000 to annualize wages, payroll taxes, and employee benefits. Regarding this adjustment he testified as follows:

"Wages were brought to an end-of-period level by applying August 1979 wage rates to the April 30, 1979, level of employees. Medical and dental benefits were brought to an end-of-period level by multiplying the number of employees covered under each plan for the month of April 1979, times the plan's effective monthly rate at April 30, 1979, times 12. The end-of-period levels of all other benefits were calculated by multiplying their respective loading factors times the annualized level of wages. The intrastate end-of-period level of wages, salaries, pensions, and employee benefits is $160,603,000, or $20,855,000 more than the actual amount incurred during the test period."

Consistent with the Evidence and Conclusions for Finding of Fact No. 10, wherein direct calculation annualization methodologies were found to be more accurate than utilizing the main station annualization factor, the Commission finds the Public Staff's adjustment of $20,855,000 for wages, payroll taxes, and employee benefits to be proper.

The remaining difference between the amounts presented by each witness as operating expenses results from three adjustments made by witness Winters. The first adjustment at issue is a proposal by Public Staff witness Winters to increase directory expenses by $732,000. Witness Winters calculated the end-of-period level of directory expenses by multiplying the nonwage portion of directory expenses for April 1979 by 12. The wage portion of these expenses has been brought to end-of-period by the adjustment to wages previously explained. The end-of-period level of directory expense using this methodology is $8,787,000 ($9,093,000 x 96.63%).

The Commission concludes from the evidence presented that operating expenses should be increased by $732,000 to reflect the reasonable annual level of directory expense, based on a direct calculation of the April 1979 amount, exclusive of salaries and wages.

Mr. Winters proposed the next adjustment to eliminate attorney and witness fees awarded the plaintiffs in a sex discrimination case and to eliminate Company legal fees related to that case. In this regard, Mr. Winters testified as follows:

"The sex discrimination suit was brought against Southern Bell by a group of female employees. In May 1978 the Courts awarded plaintiffs $132,830 in attorney and

witness fees. In addition, Southern Bell had outside legal expenses totaling $62,773. The Public Staff concludes that these expenditures were a result of Southern Bell's violating Federal Statutes against sex discrimination practices, and therefore contends that all expenses associated with this case should be excluded from the cost of service. These costs should be borne by the stockholders and not the ratepayers."

The Commission finds that it would be unreasonable and against public policy to require the customers to pay amounts through their rates to cover these expenses. The Commission is of the opinion that these expenditures were incurred only because the Company had been found to have violated Federal Statutes and concludes that these expenses should be excluded from the cost of service in this proceeding.

Mr. Winters proposed, as his final adjustment to operating expenses, elimination of contributions and membership dues to civic organizations in the amount of $222,000. Mr. Winters testified that these contributions and dues are classified as nonoperating expenses by the Uniform System of Accounts prescribed by this Commission and that the Commission has consistently excluded these items from the cost-of-service in prior cases.

The Commission concludes that as a matter of policy contributions should not be included in the cost of service. Southern Bell'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 Southern Bell or by its parent, American Telephone and Telegraph Company.

However, the Commission is of the opinion that membership fees and dues to civic organizations are a reasonable business expenditure and should be included in the cost of service in this proceeding. The Commission therefore finds that only charitable contributions of $216,000 should be deducted from operating expenses and that membership fees and dues of $6,000 should be included as a reasonable operating expense.

In summary, the Commission finds all the adjustments to operating expense proposed by the Public Staff with the exception of elimination of membership fees and dues to civic organizations of $6,000 are reasonable. Therefore, the Commission concludes that the appropriate level of intrastate operating expenses is $219,910,000.

Depreciation

The next difference in the operating revenue deductions presented by the witnesses involves depreciation expense. Witness King testified that the appropriate level of

depreciation expense is $62,739,000; while witness Winters testified that the appropriate level is $66,429,000.

As discussed previously, witness King annualized test-period net operating income, including all revenues and expenses, using an annualization factor of 2.39%. Since he used this method, it was not necessary to annualize depreciation expense in the manner used by Mr. Winters. Mr. King, however, made an adjustment of $296,662 to normalize depreciation expense. This adjustment was made to offset a reduction in depreciation expense booked in the test period which was applicable to prior periods.

Mr. Winters testified that end-of-period depreciation expense should be calculated using end-of-period plant and end-of-period depreciation rates. The difference between the intrastate depreciation expense calculated in this manner and the actual test-period depreciation expense recorded on the books of the Company is $3,986,000.

Based on the evidence presented in this case, the Commission finds that the appropriate method for determining end-of-period depreciation expense is to apply end-of-period depreciation rates to end-of-period plant.

The Commission concludes that the appropriate level of depreciation and amortization to be included in the cost of service in this proceeding is $66,429,000.

Other Operating Taxes

The next area of disagreement between the witnesses concerns the appropriate level of other operating taxes. Mr. King testified that the appropriate level of other operating taxes should be $45,120,000; whereas, Mr. Winters testified that the appropriate amount should be $46,562,000.

Mr. King made adjustments totaling $891,000 to other operating taxes to reflect the social security taxes related to his wage adjustments and to reflect the annualization of social security taxes related to an increase in the wage base on which social security taxes are calculated.

Mr. Winters included payroll taxes in his wage adjustment as previously discussed.

The Commission concludes that no further adjustments for payroll taxes are required.

Witness Winters determined the end-of-period level of property taxes of $17,845,000 by calculating the average property tax rate for the calendar year 1978 and applying that rate to the plant in service at April 30, 1979. Mr. King made no adjustments to property tax expense other than application of the annualization factor to net income.

The Commission concludes, based on the evidence presented, that the proper level of property tax is $17,845,000 and that the adjustment of $1,110,000 made by witness Winters is proper. The Commission further concludes that the direct computation of property taxes based on actual end of year plant is more accurate than one obtained by the use of the equivalent main station growth factor.

The final difference between the two witnesses regarding other operating taxes concerns gross receipts taxes.

Mr. Winters made an adjustment of $1,224,000 to reflect the end-of-period level of gross receipts taxes based on end-of-period revenues net of uncollectibles included in the test period by the Public Staff. Mr. King made no adjustment for gross receipts taxes since he made no adjustments to the operating revenue recorded on the books during the test period.

The Commission finds that the gross receipts taxes should be calculated by multiplying the end-of-period level of gross revenues times the applicable statutory tax rate. In Evidence and Conclusions for Finding of Fact No. 10 the Commission adopted the Public Staff's adjustment to operating revenues; therefore, the Commission concludes that the adjustment proposed by Mr. Winters is proper.

The Commission concludes that the proper level of other operating taxes for this proceeding is $46,562,000.

Operating Income Taxes

The next difference in operating revenue deductions concerns operating income taxes. Mr. King contends that the appropriate level is $33,657,000; while Mr. Winters contends that the appropriate level is $33,132,000. Both witnesses made adjustments to operating income tax expense to reflect the income tax effects of the adjustments each made to operating revenues and operating revenue deductions. The Commission has previously found the level of operating revenues and operating revenue deductions which should be used in this proceeding and therefore concludes that an adjustment of $4,226,000 to reflect the income tax effects of these adjustments is proper.

The two witnesses also made adjustments to operating income taxes to reflect the income tax effects of pro forma capitalized pensions and payroll taxes. The differences relate to the level of pensions and payroll taxes calculated by the witnesses. Witness Winters testified that for income tax purposes the Company deducts all pension costs and payroll taxes including those capitalized. Therefore, the reduction in income taxes should not be limited to the effect of those items charged to expense, but should include the effect of the total increase in pension costs and payroll taxes. He proposed to decrease operating income tax expense by $713,000 to recognize the income tax effects of

the pro forma increase in pensions and payroll taxes capitalized which he calculated in conjunction with his adjustments to increase pensions and payroll taxes expensed to an end-of-period level.

The two witnesses agreed that an adjustment should be made to decrease operating income taxes for the income tax effects of pensions and payroll taxes capitalized. It is clear that there is an immediate effect which should be recognized on the level of income tax expense caused by the increase in the level of payroll taxes and pensions used as a deduction in calculating income taxes. Since the Commission has previously found the level of payroll taxes and pensions proposed by Mr. Winters to be proper, the Commission concludes that Mr. Winters' adjustment decreasing operating income taxes by $713,000 is also appropriate.

The next difference between the levels of income tax expense proposed by the witnesses concerns the interest expense each used to calculate income taxes. Mr. King used the actual expense per book plus interest on customer deposits. Mr. Winters used the interest expense which he calculated on the end-of-period debt capital supporting the intrastate original cost rate base plus interest on customer deposits.

The Commission finds neither witness King's nor witness Winters' proposal in this regard to be appropriate. Rather, the Commission concludes that the interest deduction appropriate for use in the income tax calculation in this proceeding is $27,425,000 which is calculated as follows:

Item	Amount
Interest expense shown in Evidence and Conclusions for Finding of Fact No. 14	$28,940,000
Interest on customer deposits	103,000
Interest expense associated with plant financed by the Job Development Investment Tax Credit	(1,618,000)
Interest expense deduction	$27,425,000

The first item listed above represents the interest expense associated with the capital structure, embedded cost of debt, and the original cost rate base which the Commission has found appropriate in this proceeding.

The second item relates to an adjustment made by both the Company and Public Staff witness Winters to increase the interest expense deduction by $103,000 for interest on customer deposits. The Commission has previously determined interest on customer deposits to be a reasonable cost of service and likewise finds it to be a proper income tax deduction.

Finally, the third item above involves the validity of treating the hypothetical interest expense associated with plant financed by the JDIC as a tax deduction.

Public Staff witness Winters calculated his interest deduction proposal by multiplying the Public Staff's rate base by a weighted debt cost based on a capital structure which excludes JDIC. Mr. Winters testified that his intention was to allow the Company to earn the overall rate of return on investment supported by the investment tax credits. He testified that by leaving the accumulated investment tax credits out of the capital structure any rate base components financed by investment tax credits would earn the overall rate of return.

During cross-examination of Mr. Winters regarding the amount of interst to be deducted in the income tax calculation, counsel for the Company questioned the propriety of the Public Staff's method which increases interest expense because the plant financed by investment tax credits is spread over the various components of the capital structure.

In the Commission's opinion the interest expense deduction for income tax purposes should not be increased for hypothetical interest expense relating to plant financed by JDIC. Therefore, the Commission concludes that the adjustment shown in the third item above is proper and further finds that the appropriate interest expense deduction to use in the income tax calculation in this proceeding is $27,425,000. (Using Public Staff witness Winters' tax calculation methodology, an adjustment of $1,429,000 decreasing income tax expense due to the previously discussed interest allocation adjustment is required.)

The next item in operating income tax expense to be considered in this proceeding is the Company's adjustment to reflect the change in the income tax rate which occurred during the test period. This adjustment of $1,272,000 was adopted by Mr. Winters. Since there is no disagreement concerning this adjustment, the Commission concludes that operating income tax expense should be reduced by $1,272,000 for this item.

The Commission concludes that the just and reasonable level of income tax expense to be included in the cost of service in this proceeding is $34,434,000.

Annualization Adjustment

The final difference in operating revenue deductions presented by the witnesses concerns the method of determining the annualization adjustment. Mr. King multiplied the equivalent main station annualization factor of 2.39% by his adjusted net operating income to determine his annualization adjustment of $1,682,000. Mr. Winters

computed his annualization adjustment of $1,419,000 by multiplying the equivalent main station annualization factor by the net operating revenues and operating revenue deductions which he had not already brought to end-of-period levels by direct calculation.

Under cross-examination, Mr. Winters agreed that use of the annualization factor adjusts revenues and expenses for growth, but not for changes in price levels. However, Mr. Winters testified that the annualization factor also does not give any effect to productivity or technological advances which would benefit the ratepayers and that significant expenses were incurred during the test period related to technological advances.

The Commission has determined previously that the Public Staff's method of directly calculating, whenever possible, end-of-period levels of revenues and revenue deductions is proper. However, the question remains as to what annualization factor should be applied to those operating revenues and operating revenue deductions which are not already on an end-of-period basis. In Evidence and Conclusions for Finding of Fact No. 10, the Commission found that application of the main station annualization factor of 2.39% to revenues not previously adjusted to an end-of-period level to be appropriate. This results in an annualization adjustment of $26,000. The Commission further finds that an annualization factor of 6.05%, representing the Producers Price Index for the last six months of the test period, should be applied to those operating revenue deductions not previously adjusted to an end-of-period level which results in an annualization adjustment increasing operating revenue deductions by $3,659,000 ($60,479,000 x 6.05%). It is the Commission's opinion that such a factor adjusts for price level changes only.

While it is true that such a factor does not reflect any gains in productivity, it also does not reflect volume increases or growth which may have resulted from an increase in the number of customers during the test year. In the Commission's opinion such a methoodology results in a reasonable approximation of end-of-period level of operating revenue deductions. The Commission therefore finds an annualization adjustment of $3,633,000 to be proper.

In summary, the Commission concludes that the level of intrastate operating revenue deductions, including the annualization adjustment, is $370,968,000 calculated as follows:

(000's Omitted)

Item	Amount
Operating expenses	$219,910
Depreciation	66,429
Other operating taxes	46,562
Income taxes	34,434
Annualization adjustment	3,633
Total revenue deductions	$370,968

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 AND 13

The evidence relating to these findings of fact is found in the testimony and exhibits of Company witnesses Dean, Vander Weide, and Walker; Textile Manufacturers witness Currin; and Public Staff witness Stevie.

In its filing, the Company presented the April 30, 1979, capital structure of the consolidated Bell System including cost-free capital and the Job Development Investment Tax Credit in its determination of the overall cost of capital. In its prefiled testimony, the Public Staff contended that a more reasonable approach requires the use of the Company's own capital structure excluding cost-free capital and JDIC adjusted to reflect the parent company's level of debt supporting the subsidiary operating company's equity. In the prefiled testimony of the Textile Manufacturers' witness, the Company's own capital structure, unadjusted for the debt of the parent, was recommended as the basis for determining the overall cost of capital.

The Public Staff's witness and the Textile Manufacturers witness recommended adjustments to the Company's proposed capital structure in order to account for the existence of double leverage. Double leverage occurs when a parent company uses debt financial instruments to purchase equity in a subsidiary.

At the hearing, Company witness Dean recommended that the Bell System's consolidated capital structure and associated embedded cost rates be used. His basis for this rested upon the contention that Southern Bell is as risky as the Bell System as a whole. On cross-examination, witness Dean testified that double leverage exists and that the required return on equity for Southern Bell need only be one percentage point lower than that for the Bell System due to the exisstence of double leverage.

Public Staff witness Stevie testified that the use of a consolidated capital structure overlooks the unique capital structure of the Company and its asssociated embedded cost rates. He further stated that the ratepayers are expected to support this specific relationship, not that of the consolidated system. Witness Stevie testified that, in his opinion, the appropriate capital structure and embedded cost rates to be employed are the Company's own, adjusted to

reflect the leverage of the parent in the Company's equity. This adjustment, according to witness Stevie, enables the ratepayers to receive the tax benefits of the parent company's debt. On cross-examination, witness Stevie testified that the treatment of retained earnings had little effect on the overall cost of capital. Also, he testified that no special consideration was given to the structure of AT&T's investment in Long Lines.

Textile Manufacturers witness Currin also testified that the Company's own capital structure and embedded cost rates should be employed in this proceeding instead of the consolidated Bell System's. His approach paralleled that of Public Staff witness Stevie except that an adjustment was not made to incorporate a tax benefit from the parent company's debt.

In his rebuttal testimony, Company witness Walker testified that the approaches employed by witnesses Stevie and Currin were erroneous since the Bell System is financed on an integrated basis. Witness Walker testified that the use of the Bell System's consolidated capital structure and embedded cost rates accurately accounts for all the double leverage in the System. According to witness Walker, witnesses Stevie and Currin ignored the capital structure of funds invested in Long Lines by AT&T and the retained earnings of the subsidiaries. He states that if these factors were included in their approaches, the Company's capital structure and the consolidated capital structure would produce similar results. On cross-examination, witness Walker stated that the degree of double leverage can vary from subsidiary to subsidiary. In addition, he testified that AT&T's investment in Long Lines is based on one capital structure, while a different capital structure supports the rest of AT&T's investments.

The components of the return, i.e., the "fair rate of return" which is to be allowed on the rate base, are the cost rates for the components of the capital structure weighted by their respective ratios in the capital structure. While there are differences between the witnesses with respect to the embedded cost of long-term debt, these differences arise in all material respects, if not wholly, as a direct result of the differing methodologies employed by the witnesses in giving effect to the affiliated relationship which exists between AT&T and Southern Bell. Therefore, the cost rate to be assigned long-term debt for use herein must be consistent with the methodology employed by the Commission in weighing the financial impact of this affiliation and in the distribution of the financial benefits derived therefrom between the Company and its customers. No difference(s) exists between the witnesses with respect to the cost of preferred equity capital.

Regarding the cost or the required return on common equity capital, in its application, the Company seeks a

return on its common equity which would enable it to support a return on the common equity capital of the parent company of 14.00%. In support of its application, the Company presented the testimony of Dr. James H. Vander Weide and Robert N. Dean.

Company witness Vander Weide recommended, "AT&T must earn a return on equity of between 15 1/2% and 16% in order to attract equity capital on reasonable terms in today's markets." In support of his recommendation, Dr. Vander Weide used three analytical methods as tests. These were: (1) the Discounted Cash Flow (DCF), (2) the spread or risk premium test, and (3) the comparable earnings test. Company witness Dean estimated that the cost of common equity capital of AT&T is in the range of 14% to 16%. He employed the same three test methods in support of his estimate as did witness Vander Weide.

The Public Staff presented the testimony of William F. Watson supporting a recommended return on common equity for AT&T of 12.3%. Public Staff witness Watson made use of two methods in arriving at his recommendation. These were: (1) the Capital Asset Pricing Model (CAPM) and (2) the risk premium method.

The North Carolina Textile Manufacturers Association, Inc., sponsored the testimony of H. Randolph Currin, Jr., in making a recommendation on the cost of common equity for AT&T of 13.95%. NCTMA witness Currin employed two methods in arriving at his recommendation. These were: (1) a DCF analysis of Pacific Telephone and Telegraph Company with a resulting estimate for Southern Bell Telephone and Telegraph Company based on perceived comparability which was then leveraged forward through the Southern Bell capital structure to arrive at a return for AT&T and (2) a direct DCF analysis of AT&T.

In addition to the above witnesses who presented direct testimony in the case, the Company also presented the rebuttal testimony of Dr. James H. Vander Weide who addressed the use of the CAPM by Public Staff witness Watson.

The issue of double leverage as it relates to the capital structure has been presented previously; therefore, the remaining principal issue to be discussed with respect to the proper determination of the cost of common equity capital to Southern Bell is the risk inherent in owning AT&T common equity. Both Company witnesses cite two factors to indicate that the risk of AT&T has increased during the recent past: an increase in competition in the telecommunications industry and rapidly changing telephone technology. Both Company witnesses perceive the relative risk of AT&T to be equal to the risk of the market as a whole.

Public Staff witness Watson contends that the return on common equity of AT&T should be adjusted downward from the overall market return due to the lower inherent risk of owning AT&T stock.

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. 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. Whatever return allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "[to] enable the public utility by sound managment to produce a fair profit for its stockholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors."

The return allowed must be burden ratepayers any more than is necessary for the utility to continue to provide adequate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133(b)

> "...supports the inference that the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Consitution of the United States.... State ex rel. Utilities Commission v. Duke Power Co., 285 N.C. 377, 206 S.E. 2d 269 (1974)."

The nature of the evidence in a case such as this makes it extremely difficult to balance all the opposing interests, since much, if not all, of the evidence is based on individual witnesses' perceptions and interpretations of trends and data from the capital markets. However, the evidence in this case is clear on at least one point: an investment in AT&T, whether equity or debt, is not very risky. The reputable investment advisory services mentioned at the hearing (e.g., Standard and Poor's, Moody's, and Value Line) consider AT&T to be a stable and secure company. In general, AT&T has achieved the highest bond ratings, the highest stock ratings (when rated for safety), and impressive investor acceptance. This level of safety, stability, and investor acceptance must be considered in determining the investors' return requirements used to determine the cost of equity capital and ultimately the fair rate of return. Moreover, the evidence is clear that the

financial impact of the affiliated parent-subsidiary relationship which exists between AT&T and Southern Bell must be considered in arriving at the fair rate of return. However, the question remains as to what extent the affiliated relationship should affect the cost of equity capital and, consequently, the fair rate of return.

As previously stated, the fair rate of return is determined by weighing the individual cost rates for the components of the capital structure by each components's respective weight (capitalization ratio) in said capital structure. Therefore, the full or partial impact of double leverage may be reflected by adjusting the subsidiary's capitalization ratios and cost rates; by adjusting only the subsidiary's cost of equity capital; or by any combination of the two. The Commission has adopted the latter methodology for purposes of determining the fair rate of return for use herein. Such methodology employs the Bell System's consolidated capital structure at April 30, 1979 (excluding cost-free capital and JDIC), and associated embedded cost rates and a cost rate for common equity adjusted to give further recognition to the parent-subsidiary relationship beyond that which would otherwise be attained had the Commission limited its determination in this regard solely to the Bell System's consolidated capital structure and its attendant costs.

The issue with respect to the proper rate-making treatment to be accorded cost-free capital and the issue with respect to the JDIC has been previously discussed and need not be repeated here.

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the fair rate of return that Southern Bell should have the opportunity to earn on the original cost of its North Carolina rate base for intrastate operations is 10.19%. Employing the Bell System's consolidated capital structure and associated costs, such fair rate of return will yeild a fair return on common equity of approximately 12.85%.

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 revenues 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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The Commission previously has discussed its conclusions regarding the fair rate of return which Southern Bell should be given the opportunity to earn.

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 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 and conclusions heretofore and herein approved by the Commission.

SCHEDULE I
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED APRIL 30, 1979
(000's Omitted)

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Local service	$253,917	$25,489	$279,406
Toll service	165,152	-	165,152
Miscellaneous	28,338	-	28,338
Uncollectibles	(1,745)	(99)	(1,844)
Total operating revenues	$445,662	$25,390	$471,052
Operating Revenue Deductions			
Operating expenses	219,910	-	219,910
Depreciation and amortization	66,429	-	66,429
Other operating taxes	46,562	1,523	48,085
Income taxes	34,434	11,752	46,186
Annualization adjustment	3,633	-	3,633
Total operating revenue deductions	370,968	13,275	384,243
Net operating income for return	$ 74,694	$12,115	$86,809

SCHEDULE II
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED APRIL 30, 1979
(000's Omitted)

	Present Rates	After Approved Increase
Investment in Telephone Plant		
Telephone plant in service	$1,153,776	$1,153,776
Telephone plant under construction	26,110	26,110
Telephone plant acquisition adjustment	4,612	4,612
Accumulated depreciation	225,948	225,948
Cost-free capital and customer deposits	(113,256)	(113,256)
Net investment in telephone plant	$ 845,294	$ 845,294
Allowance for Working Capital		
Cash	$ 4,740	$ 4,740
Materials and supplies	11,884	11,884
Customer funds advanced through operations	(200)	(200)
Accounts payable - plant in service	(5,394)	(5,394)
Accounts payable - materials and supplies	(4,313)	(4,313)
Total allowance for working capital	6,717	6,717
Original cost rate base	$ 852,011	$ 852,011
Rate of return on original cost rate base	8.77%	10.19%

SCHEDULE III
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED APRIL 30, 1979
(000's Omitted)

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$393,203	46.15	7.36	$ 28,940
Preferred stock	21,130	2.48	7.70	1,627
Common equity	437,678	51.37	10.08	44,127
Total	$852,011	100.00	8.77	$ 74,694
	Approved Rates - Original Cost Rate Base			
Long-term debt	$393,203	46.15	7.36	$ 28,940
Preferred stock	21,130	2.48	7.70	1,627
Common equity	437,678	51.37	12.85	56,242
Total	$852,011	100.00	10.19	$ 86,809

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Company witness Savage; Public Staff witnesses Sutton, Willis, Gerringer and Carpenter; and the Telephone Answering Services witnesses Howard and Beam testified concerning Southern Bell's proposed rate structure.

Witness Savage described the Company's overall pricing policies and principles and stated that he adhered to these policies and principles in developing the rate schedules he proposed in the proceeding. In general, it can be said that these policies and principles reflect the following: (1) supplemental charges and equipment are priced to cover the costs and provide a contribution toward the Company's overall revenue requirement where possible so as to keep basic rates lower than would otherwise be possible; (2) to the extent practical, those customers responsible for costs should be the source of revenues to recover those costs; (3) consideration should be given to relative costs, demand for service, equity in the distribution of charges and the development objectives of basic service; and (4) the rate

structure should achieve a balance of administrative ease and acceptability to customers.

Southern Bell's rate schedule proposals include increases in service charges, supplemental services, and equipment, intraexchange channel services and local exchange services. Basic flat rate increases of $.40 to $.50 per month for residential individual lines, $.30 to $.40 per month for residence two-party lines, $1.05 to $1.35 per month for business one-party lines and $.90 to $1.20 for business two-party lines were recommended by Company witness Savage. Additionally, the Company proposed altering the existing relationship for monthly rates which are directly related to flat rate service, regrouping certain exchanges, and implementing Optional Extended Area Service to replace the present Extended Community Calling (ECC) plan.

Witnesses for the Public Staff and for the telephone answering service Intervenors testified in opposition to certain of the Company's rate schedule proposals. The Public Staff presented the testimony of Leslie Sutton regarding the Company's proposed service connection charges; William Willis regarding business and residential services; Hugh Gerringer regarding OEAS; Millard N. Carpenter regarding rates and charges to the telephone answering industry, maintenance of service charges, and intraexchange mileage services. Telephone answering service witnesses Howard and Beam testified concerning specific company rate proposals affecting the telephone answering services.

The Commission, having carefully considered all the evidence regarding the rate design proposals of the Company presented in this proceeding, makes the following conclusions to be utilized as guidelines by the parties in the design of rates.

BASIC FLAT RATE

The Commission concludes that one-party residential rates should be increased $.30 per month for rate groups 1 - 5, $.35 per month for rate groups 6 - 9 and $.40 per month for rate group 10. Two-party residential rates should correspondingly increase $.20 per month for rate groups 1 - 3, $.25 per month for rate groups 4 - 8, and $.30 for rate groups 9 - 10.

UNBUNDLING

Company witness Savage proposed partial unbundling of rates for station telephone sets which would necessitate identification of over 670,000 customer credits. Public Staff witness Willis proposed a procedure for complete unbundling of rates for station telephone sets which would cause basic telephone service rates to be divided into two charges, an access line charge and a station telephone set charge. According to witness Willis, this procedure would be easier to administer and more comprehensible to the

customers. Company witness Savage, remarking on the concept of the complete unbundling of rates for station telephone sets, stated that subsequent to the development of his testimony the Company has acquired the capability to completely unbundle the rates for station telephone sets and agreed that this approach should be pursued.

Public Staff witness Carpenter recommended that no increase be allowed in the maintenance service charge without breaking the charge into smaller parts. He explained that the charge now covered a broad average of time requirements and recommended a charge of $17.50 for the first half-hour or less of time on the premises and a charge of $7.65 for each additional half-hour or fraction thereof. He stated that these charges should replace the present maintenance service charge for private line service, exchange service, and WATS service and would produce $507 in additional annual revenue.

The Commission concludes that complete unbundling of rates for station telephone sets as proposed by the Public Staff is appropriate. Further, maintenance of service charges should be broken into smaller charges as recommended by Public Staff witness Carpenter.

IMPAIRED HEARING

Witness Willis recommended that the rates for services used by people with impaired hearing be maintained at a level requested in the Commission's memorandum to all regulated companies dated January 23, 1979. The Company proposed to place these rates on a cost basis as determined by their calculations. The Commission finds that rates for services used by people with impaired hearing should be maintained at the level requested in the Commission's memorandum of January 23, 1979.

REGROUPING EXCHANGES

Company witness Savage proposed to regroup 12 exchanges due to growth that has caused the number of main stations and PBX trunks of each exchange to exceed their present upper rate group limits. Public Staff witness Willis supported this proposal and gave the same recommendation. Regrouping of the 12 exchanges as proposed by the Company is found to be proper by the Commission.

SERVICE CONNECTION CHARGES

The Commission concludes that the following service connection charges are reasonable and should be implemented.

Service Charges	Residential	Business
Primary service order	$11.35	$17.40
Secondary Service order	6.90	9.15
Record order	6.30	6.35
Premise visit	6.35	6.35
Central office work	6.85	8.35
Premise wiring	5.40	8.05
Jack	3.45	3.45
Equipment work	3.35	4.50
Secretarial line	17.50	17.50
Number change	6.85	8.35
Restoral - Denial	13.75	17.50
Customer request	6.85	8.35

TELEPHONE ANSWERING SERVICES

The Commission finds that the following revenue increases are appropriate for telephone answering services.

	Present Revenue	Approved Revenue	Increase Allowed
TAS Equipment			
Recurring	$305,405	$368,605	$ 63,200
Nonrecurring	12,650	63,200	50,550
Subtotal	$318,055	$431,805	$113,750
TAS PL Channels			
Recurring	324,991	377,100	52,109
Nonrecurring	1,630	8,150	6,520
Subtotal	326,621	385,250	58,629
Total	$644,676	$817,055	$172,379

OEAS

Company witness Savage and Public Staff witness Gerringer presented testimony and exhibits concerning Southern Bell's proposed conversion of its existing Extended Community Calling service offerings to a plan termed Optional Extended Area Service.

Witness Savage in his direct testimony presented the Company's reasons for proposing to convert its ECC plans to OEAS. He stated that the present ECC plans have been designed and offered where needed under a pricing structure based on billing system restrictions that existed until recently. The Company now has the ability to restructure these ECC plans to make its rates more sensitive to the actual use of each customer while also establishing such cost-saving features as peak-hour exclusion and off-peak hour discounts. The proposed rate levels are set so that each customer should be able to control his or her charges better than under the present ECC plans. In many cases they will be able to place their calls at charge levels below the present plans. He further stated that the proposed increases in the OEAS rates were established to position these offerings at consistent discounted price levels below

the short haul DDD charges that would otherwise apply to such calls and above the Company's present estimate of the prices that could be applicable under further options which they expect to be able to provide in a measured service environment.

Witness Gerringer in his direct testimony described the service offered under existing ECC plans, the service proposed to be offered under OEAS plans, and the service provided by EAS plans. He testified that there are a total of 24 plans referred to as ECC plans by Southern Bell and as Optional Calling Plans (OCP) by Central Telephone Company, General Telephone Company of the Southeast, and Barnardsville Telephone Company presently on file with the Commission as approved tariffs. The formats for both the ECC and OCP plans are identical and provide one-way optional extended calling to one or more exchange toll points. The service is available to one-party subscribers on customer-dialed (DDD type) calls for an initial time period of one hour per month for both residence and business subscribers on a 24-hour, seven-day-a-week basis. The OEAS proposal embodies significant format changes compared to the formats for the existing ECC and OCP plans. Mr. Gerringer stated that service offered under all forms of optional calling plans contrasts with EAS plans, which also extend calling to one or more exchange toll points, but are offered on a nonoptional two-way basis with unlimited calling at a flat rate charge for all subscribers in the exchanges served.

The Public Staff recommended that the format and name of the existing ECC plans be maintained and that no increases in the existing rates for the ECC plans be allowed since ECC service is an alternative to long-distance toll service and the Company did not propose any toll increases in this rate case. An increase in ECC rates at a time when toll rates are not being increased would further diminish any advantages which ECC offers to a user.

The Commission concludes that the existing ECC plan is adequate and should be maintained by the Company. In the Commission's opinion, the existing ECC plan has provided an advantageous and useful service in the past and the proposed OEAS plan with its added complexity would not be of any greater advantage or usefulness to the customer.

OTHER RATES AND CHARGES

Additional rate schedule changes necessary to produce the increase in annual gross revenue requirements approved herein shall be attained by increasing such rates to the proposed Phase I level plus a uniform percentage of the Phase II rates. Any rate schedule proposals, contrary to this general methodology should be accompanied with an explanation of the necessity and appropriateness of such a deviation. The Commission further concludes that specific proposals should be made by the Company and any other

interested party in regard to those services with rate levels that are directly related to an associated basic service rate for which the Company proposed to change the relationship.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Southern Bell Telephone and Telegraph Company, be, and hereby is, authorized to adjust its telephone rates and charges to produce, based upon stations and operations as of April 30, 1979, an increase in annual gross revenues of $25,489,000.

2. That the Company proposed specific rates, charges, and regulations necessary to implement the increase in local service revenues herein approved in accordance with the guidelines established by this Commission in Evidence and Conclusions for Finding of Fact No. 15 within 10 days of the date of this Order. Work papers supporting such proposal should be provided to the Commission and all parties of record (formats such as item 33 of the minimum filing requirements, NCUC Form P-1 are suggested). Exceptions, alternative rate proposals and comments to the Company's rate schedule proposals shall be filed within 5 days thereafter.

3. That the rates, charges, and regulations necessary to increase annual gross revenues as authorized herein be effective upon issuance of a further Order approving the tariffs filed pursuant to Paragraph 2 above.

4. That Southern Bell take action to meet, or continue to meet, the service objectives as shown on Appendix A of this Order.

5. That Southern Bell ensure that the marketing of its "Design Line" phones is not misleading to potential purchasers, and in connection with this effort,

a. instruct the sales personnel in the Company's Phone Stores to inform customers purchasing Design Line equipment that the electronic components of the set remain the property of the Company after purchase and to inform the customers of any restrictions as to the set's use; and

b. ensure that in printed advertising of Deisgn Line equipment a notice will appear conspicuously informing the prospective purchaser that the electronic components of the set remain the property of the Company after sale and that there may be restrictions as to the use of the set.

6. That Southern Bell shall, within 18 months from the issuance date of this Order, file proposed optional usage sensitive tariffs for all ESS exchanges along with any offsetting increases or decreases in revenue requirements

including costs of measuring, administrating, and billing. Further, five copies of the detailed work papers in support of the aforementioned tariffs and costs shall be filed with the Chief Clerk of the Commission. Such work papers shall clearly reflect the usage profile of local service subscribers including the number of calls, the duration(s) of calls, the call distance(s) and the time(s) of day.

7. That Southern Bell shall give notice of the rate increase approved herein by first-class mail to each of its North Carolina customers during the next billing cycle following the filing and acceptance of the rate schedules described in Ordering Paragraph 2 above. Such Notice to Customers shall be submitted to the Commission for approval prior to issuance.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of February 1980.

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

Commissioner Hammond, dissenting.

APPENDIX A

Quality of Service Objectives

Intraoffice completion rate	99%
Interoffice completion rate	98%
Direct distance dialing completion rate	95%
EAS transmission loss (dialed test number)	2 db - 10 db range (95%)
Intrastate toll transmission loss (dialed test number)	3 db - 12 db range (95%)
EAS trunk noise (dialed test number) on 95% of tests	30 dbrnc maximum
Intrastate toll trunk noise (dialed test number) on 95% of tests	33 dbrnc maximum
"0" level operator answer time	90% within 10 seconds
DDD ONI operator answer time	95% within 5 seconds
Directory assistance operator answer time	85% within 10 seconds
Outside public paystations found out-of-order on test	10% maximum
Business office answer time	90% within 10 seconds
Repair service answer time	90% within 20 seconds

Total customer trouble reports 6 per 100 stations
Subsequent reports 10% or less of total reports
Repeat reports 10% or less of total trouble reports
95% of out-of-service trouble reports cleared within 24 hours
90% of regular service orders completed within 5 working days
New service orders held over 14 days not to exceed 0.1% of total stations
Regrade applications held over 14 days not to exceed 1% of total stations
5% or less of regular new service installation appointments not met for company reasons.

HAMMOND, COMMISSIONER, Dissenting: I disagree with the majority on their handling of the issue of an appropriate capital structure for Southern Bell and the associated issue of the embedded cost of capital. These two decisions impinge directly upon the total revenue requirements and the return on equity which should be allowed the Company.

The central issue is whether or not the Commission is willing to recognize the concept of double leverage where holding companies own all or virtually all of the equity in utility operating companies. The Southern Bell case is a classic example of the double leverage issue. Numerous other telephone utilities in North Carolina fit the same mold (e.g., Carolina Telephone and Telegraph Company parented by Telecommunciations, Inc., Central Telephone

Company parented by Central Telephone and Utilities Corporation, and some seven other similar utility companies).

Several subsidiary utilities, where the issue of double leverage arose, have been before the Commission during the past two and one half years. In most of these cases a panel of three Commissioners heard these cases and deferred a decision on the issue of double leverage until the full Commission had an opportunity to hear the arguments pro and con. The Southern Bell case provided that opportunity and the majority chose to dismiss the issued and continue with the philosophoy of "business as usual."

It is not necessary to restate the argument for the recognition of the concept of financial leverage. The record is replete with justifications pro and con.

In simple terms the use of financial leverage by a holding company, owning all of a subsidiary operating utility company, enables that holding company to use debt capital (at a lower cost) to achieve a level of earnings available to common equity (at a higher rate).

In this case the majority allowed a 12.85 percent return on common equity without recognizing the full beneficial results of double leverage by virtue of the fact that Southern Bell is a wholly owned subsidiary of American Telephone and Telegraph Company. The net result of this decision is that, with a $25,489,000 gross revenue increase, Southern Bell is, in fact, being allowed to earn 13.94 percent on common equity, when the impact of double leverage is recongized.

Stated another way, if a fully leveraged capital structure had been used by the majority and a 12.85 percent return on common equity allowed, then the gross revenue increase would have been only $16,516,000 or some $8,973,000 less than that approved by the majority.

It is my strong conviction that the issue of double leverage should have been confronted head-on by the Commission and that, on the basis of the criterion of equity for the average customer of Southern Bell, the beneficial results of double leverage should have been distributed between both the customer and the company, rather than flowing entirely to Southern Bell and AT&T.

I cannot in good conscience be a party to such an inequitable distribution of benefits from the advantages of holding company operations. Why must the benefits always flow to the company? My argument is not for a one way flow of benefits to the customer. I am convinced that most customers of Southern Bell or any other utility will be satisfied with an equal break, where the company and the customer share in whatever rewards might come down the pike.

In an environment of extreme economic uncertainty, both the utility company and the customer must demonstrate a willingness to sacrifice and "give a little." I have seen that willingness demonstrated by many utility customers who have conserved on their use of electricity, natural gas, and other utilities. It is incumbent upon the Commission to assure that the utility companies do their share in our struggle against inflation.

The failure of the majority to face up to the issue of double leverage and to reach a decision that would result in shared benefits between Southern Bell and Southern Bell customers, ignores, in my opinion, the dictates of equity.

Leigh H. Hammond, Commissioner

DOCKET NO. P-55, SUB 777

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Southern Bell Telephone and) ORDER
Telegraph Company for an Adjustment in Its) DENYING
Rates and Charges Applicable to Intrastate) MOTION FOR
Telephone Service in North Carolina) RECONSIDERATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 21, 1980, at 10:00 a.m.

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

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Joyner & Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Southern Bell Telephone and Telegraph 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

Robert W. Sterrett, Jr., Solicitor, Southern Bell Telephone and Telegraph Company, Atlanta, Georgia 30303
For: Southern Bell Telephone and Telegraph Company

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. (NCTMA)

Vaughan S. Winborne, Attorney at Law, 1108 Capital Club Building, Raleigh, North Carolina 27601

For: Charlotte Telephone Answering Services, Inc.; Telephone Answering Service, Inc. (Charlotte); Answer-Phone, Inc. (Charlotte); Answering Services, Inc. (Statesville); Telephone Answering

Service, Inc. (Burlington); Telephone Answering Service, Inc. (Greensboro); Answering Charlotte, Inc.; Ans-A-Phone Communications, Inc. (Greensboro); Answerphone, Inc. (Raleigh); Telephone Answering Services of Gastonia; Office Communications Company (Winston-Salem); and Doctors Exchange, Williams Telephone Answering (Raleigh) (herein referred to as Telephone Answering Services)

For the Public Staff:

Jerry B. Fruitt, Chief Counsel, Public Staff-North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On February 7, 1980, the Commission issued an "Order Granting Partial Increase" in this docket. On February 15, 1980, the Public Staff - North Carolina Utilities Commission (Public Staff) filed "Exceptions and Notice of Appeal to the Court of Appeals" and "Motion For Reconsideration and Information In Support Thereof." In moving for reconsideration, the Public Staff requested the Commission to set the matter for oral argument at the earliest possible date. The Public Staff further requested the Commission to reconsider its prior "Order Granting Partial Increase" insofar as said Order failed to require imputation of any interest expense to that portion of Southern Bell's investment in rate base supported by the Job Development Investment Tax Credit (JDIC).

By Commission Order dated February 21, 1980, the Public Staff's "Motion For Reconsideration" was set for oral argument on Friday, March 7, 1980, at 10:00 a.m. On March 4, 1980, Southern Bell Telephone and Telegraph Company (Southern Bell or Company) filed a Response to the Public Staff's "Motion For Reconsideration" and on March 5, 1980, the Company filed a "Motion For Continuance" of the oral argument which was then scheduled for March 7, 1980. By Order dated March 6, 1980, the Commission rescheduled the oral argument for Friday, March 21, 1980, at 10:00 a.m.

Oral argument on the Public Staff's "Motion For Reconsideration" was subsequently heard by the full Commission at the appointed time and place. All participating parties were represented by counsel.

Based upon a careful consideration of the entire record in this proceeding, the Public Staff's "Motion For Reconsideration," and the oral argument heard thereon, the Commission is of the opinion, finds, and concludes that its treatment of the issue of JDIC in its "Order Granting Partial Increase" dated February 7, 1980, was both correct and fully supported by the record. Accordingly, the

Commission further finds and concludes that the Public Staff's "Motion For Reconsideration" should be denied.

Upon consideration of the issues raised herein by the Public Staff, the Commission reaffirms its "Order Granting Partial Increase" wherein it was determined that it would not be proper to impute any interest expense to that portion of Southern Bell's investment in rate base which is financed and supported by JDIC.

Although the issues raised herein by the Public Staff concerning the proper rate-making treatment of JDIC may appear somewhat complex upon initial considertion, the Commission believes that, in reality, the issues are rather simple and straightforward. Simply stated, the public Staff has treated JDIC as if this investment tax credit had been contributed by each component of the Company's capital structure in the same ratio as those components bear to the whole. Therefore, the methodology advocated herein by the Public Staff treats a portion of JDIC as if it were capital supplied by creditors, a portion as if it were capital supplied by preferred stockholders, and the remainder as if it were advanced by the common shareholders. On this basis, the amount of JDIC attributed to the creditors or debt holders multiplied by the embedded cost of debt results in an amount of hypothetical interest expense related to JDIC. This hypothetical interest expense is then used as a deduction in determining the Company's test year level of income tax expense for rate-making purposes.

In contrast to the methodology advocated herein by the Public Staff, the Commission decided in its Order dated February 7, 1980, that all effects of JDIC should be excluded from the determination of interest expense to be used in developing the level of the Company income tax expense included in the cost of service. Hence, the methodology used by the Commission attributes JDIC entirely to the Common shareholders. This treatment is specifically mandated and prescribed by Section 1.46-6 of the Internal Revenue Code of Federal Regulations.

Clearly, under Section 1.46-6 of the Internal Revenue Code, the Commission may only treat JDIC as though it were capital contributed by the common shareholders. Therefore, in computing the Company's tax liability, no imputed interest expense may lawfully be calculated on any portion of JDIC. Rather, JDIC must be treated as capital supplied by common shareholders and must be given a return no less than the overall cost of capital determined to be appropriate by this Commission. In this regard, the Commission strongly believes, and hereby reaffirms its belief, that the treatment of JDIC determined to be proper in its "Order Granting Partial Increase" dated February 7, 1980, was fair and reasonable and the only treatment which is permissible under Section 1.46-6 of the Internal Revenue Code. The Commission has properly treated the issue of JDIC in this case in finding that there should be no imputation

of interest expense to that portion of Southern Bell's investment in rate base supported by JDIC.

Accordingly, the Commission is of the opinion that the "Motion For Reconsideration" filed herein by the Public Staff must be denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the Public Staff's "Motion For Reconsideration" filed in this docket on February 15, 1980, be, and the same is hereby, denied.

2. That the "Order Granting Partial Increase" issued by the Commission on February 7, 1980, be, and the same is hereby, reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of April 1980.

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

DOCKET NO. P-75, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Barnardsville Telephone Company and Southern Bell Telephone and Telegraph Company: Extended Area Service	) ORDER FOR IMPLEMENTATION) OF EXTENDED AREA SERVICE) BETWEEN BARNARDSVILLE) AND ASHEVILLE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 24, 1980

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Leigh H. Hammond, Edward B. Hipp, John W. Winters, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Applicant:

Phillip J. Smith, Attorney at Law, VanWinkle, Buck, Wall, Starnes & Davis, P.A., 18 Church Street, Asheville, North Carolina 28807

For the Respondent:

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

For the Intervenor:

Jerry B. Fruitt, Chief Counsel, 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 was initiated by a letter and a Petition from Representative James McClure Clarke, 43rd District, filed February 26, 1979. The Petition had approximately 114 signatures of Barnardsville Telephone Company subscribers requesting toll-free service (Extended Area Service, EAS) from Barnardsville to Asheville and from Asheville to Barnardsville.

Barnardsville Telephone Company (Barnardsville), located in a highly rural area north of Asheville, is a subsidiary of Telephohe and Data Systems, Inc., of Madison, Wisconsin. The Public Staff's Station Development Report of February 1979 indicated that Barnardsville had on its one exchange 735 telephones in service. Southern Bell Telephone and Telegraph Company (Southern Bell) is a subsidiary of American Telephone and Telegraph Company of New York. According to the aforementioned Public Staff Report,

Southern Bell serves, in addition to the Asheville exchanges, 92 other North Carolina exchanges and had 2,098,755 telephones in service in North Carolina.

At the Commission's Regular Staff Conference on March 19, 1979, the Public Staff recommended that Barnardsville and Southern Bell do a full EAS cost study to determine each company's costs and rate requirements to cover the cost of establishing EAS between Barnardsville and Asheville. This recommendation was adopted by the Commission. As a result, Chariman Robert. K. Koger, by letter dated March 19, 1979, requested the companies to determine within 90 days the costs and the increase in rates needed to provide EAS between the exchanges of Barnardsville and Asheville.

On June 20, 1979, Chairman Koger received a letter and the EAS Cost Study from Barnardsville. The report showed that the estimated plant investment to furnish EAS between Barnardsville and Asheville totalled $76,300, and that an estimated additional $5,800 would be required to offset commercial and billing costs for a new directory and numbers for phones.

On June 21, 1979, Southern Bell transmitted to the Commission the costs and rate requirements of establishing EAS between the Barnardsville and Asheville exchanges. Southern Bell estimated that over the 10-year period 1980-1989 it would experience a net loss of $355,800. Thus, Southern Bell estimated that additional revenues of $.08 per month for individual line residence subscribers and $.20 per month for individual line business subscribers would be required if the proposed EAS were implemented.

Barnardsville filed a four-page letter dated July 23, 1979, detailing the EAS cost study results for Barnardsville -Asheville EAS. In this letter, Barnardsville expressed a desire to further discuss this matter with the staff and possibly representatives of the Bell System before taking a survey of subscribers.

The matter was again brought before the Commission by the Public Staff at the Regular Staff Conference on December 17, 1979. The Public Staff recommended that an EAS poll of the Barnardsville subscribers be conducted from January 21, 1980, through February 2, 1980, using a rate increase of $2.75 to determine their interest for EAS to Asheville. A motion to accept the Public Staff's recommendation passed. As a result, a letter was sent from the Commission to Barnardsville Telephone Company authorizing Barnardsville Telephone Company to conduct an EAS poll of its subscribers using a monthly basic increase of $2.75.

On February 15, 1980, Barnardsville Telephone Company pursuant to North Carolina Utiities Commission Rule R1-7 filed a Motion seeking to postpone a decision regarding the establishment of EAS between the Barnardsville and Asheville exchanges for 90 days.

The matter was again placed on the Public Staff agenda and presented to the full Commission at the Regular Staff Conference of February 18, 1980. At this conference the Public Staff and Southern Bell presented their respective positions and answered questions posed to them by the Commission.

The results of the poll were reported as follows:

No. of ballots mailed	600
No. of eligible ballots returned	390
Percent of eligible ballots returned	65.0%
No. of eligible ballots returned voting in favor	294
Percent of eligible ballots returned voting in favor	75.4%
Percent of ballots mailed voting in favor	49.0%

The Public Staff concluded that there exists substantial interest in EAS between Barnardsville and Asheville and urged implementation of EAS increasing the Barnardsville rates to the $2.75 used when the customers were polled. In the opinion of the Public Staff even a minor increase would not be acceptable to the Asheville subscribers and the Staff took the position that no rate increase should be placed on the Asheville subscribers.

Mr. Clemmons called the attention of the Commission to the Barnardsville's motion filed February 15, 1980, requesting postponement of a decision for 90 days. He asserted that Barnardsville has been closely involved with this matter from its inception, and used the $2.75 increase to poll its subscribers, and that the decision on whether or not to implement EAS should not be extended excessively.

Dave Miller stated on behalf of Southern Bell that Southern Bell offers Extended Community Calling (ECC) from Asheville to Barnardsville and believes ECC meets the needs of its subscribers; that Southern Bell generally opposes any expansion of EAS; and that if EAS is implemented the estimated future 10-year net present cost to Southern Bell would be $355,000.

The recommendation of the Public Staff was adopted by the Commission, and by letter of February 18, 1980, the Commission authorized Barnardsville and Southern Bell to implement said EAS service between Barnardsville and Asheville.

On March 4, 1980, Barnardsville filed a Petition for a formal hearing on the questions whether or not to institute EAS between Barnardsville and Asheville and, if so, at what additional rate, and to allow 90 days from the date of the Petition so that the company could conduct studies on the

effect of changing toll settlement procedures from the present standard contract basis to actual cost basis of separation.

The Public Staff on March 14, 1980, filed a Reply of the Public Staff to Barnardsville's Petition and Motion to Deny. The Commission set the Petition, Motion, and Reply to Oral Argument.

Based upon the record herein of the proceedings for extended area service, the Commission makes the following

FINDINGS OF FACT

1. Barnardsville Telephone Company is a regulated public utility holding a franchise from the North Carolina Utilities Commission under Chapter 62 of the General Statutes to provide public telephone service in and around its central office exchange in Barnardsville, North Carolina.

2. Southern Bell Telephone & Telegraph Company is a regulated telephone company holding a franchise from the North Carolina Utilities Commission under Chapter 62 of the General Statutes to provide public telephone service at 93 central office exchanges in North Carolina with 2,098,755 telephones in service in North Carolina, including the central office exchange in Asheville, North Carolina.

3. That Barnardsville Telephone Company is a wholly owned subsidiary of Telephone & Data Systems, Inc., of Madison, Wisconsin; that the sole telephone operations of Barnardsville Telephone Company consists of 735 telephones in and around the central office exchange in Barnardsville in Northeast Buncombe County, approximately 25 miles from Asheville, North Carolina; that the total other telephone affiliations of the parent Telephone & Data Systems, Inc., in the State of North Carolina are the operation of its subsidiary, Service Telephone Company in and around Fair Bluff, North Carolina, with 1,379 telephones in service.

4. That subscribers to Barnardsville Telephone Company have a calling scope consisting solely of the 735 telephones in the Barnardsville exchange that can be called as local calls, and all other calls, including those to the county seat at Asheville and calls to the nearby communities of Stocksville and Weaverville in Buncombe County, are all long-distance toll calls under the present calling scope and tariffs of Barnardsville Telephone Company.

5. That on February 26, 1979, a petition was filed with the Utilities Commission signed by 114 subscribers of Barnardsville Telephone Company, requesting toll free service from Barnardsville to Asheville and from Asheville to Barnardsville.

6. That pursuant to said petition, the Utilities Commission initiated its standard historical procedure for establishing EAS between Barnardsville and Asheville, and by letter of March 19, 1979, to Barnardsville Telephone Company and to Southern Bell Telephone & Telegraph Company, directed both companies to determine within 90 days the cost and increase in rates to provide EAS between the exchanges of Barnardsville and Asheville.

7. That pursuant to said standard EAS procedure, Barnardsville Telephone Company reported the cost of said service to the Utilities Commission by letter of June 20, 1979, and Southern Bell Telephone & Telegraph Company reported such cost to the Commission by letter of June 21, 1979.

8. That on July 23, 1979, Barnardsville Telephone Company filed a four-page letter with the Public Staff of the Utilities Commission detailing said cost study results and requesting conferences between the Public Staff and Southern Bell before making a survey of the subscribers.

9. That on December 17, 1979, the Public Staff at the regular conference of the Commission, recommended that an EAS poll be conducted of Barnardsville's subscribers using a rate increase of $2.75 per month for such EAS for Barnardsville's customers, to determine their interest for EAS to Asheville. The Commission adopted the recommendation and authorized that the poll be conducted.

10. That pursuant to the letter from the Commission following said public conference, Barnardsville Telephone Company mailed a postal ballot to its customers for return as the EAS poll of its subscribers for or against EAS to Asheville at a rate increase of $2.75 per month.

11. That on February 18, 1980, the Public Staff reported to the Commission that it had tabulated the returned ballots of customers and that 75.4% of the eligible ballots returned were in favor of EAS at the $2.75 per month as submitted to them by Barnardsville, pursuant to Commission authorization.

12. That pursuant to said report of the poll and having the results of the poll at its public conference on February 18, 1980, the Commission voted to have said EAS instituted between Barnardsville and Asheville, and by letter of February 18, 1980, to Barnardsville, and Southern Bell authorized the establishment of EAS between said exchanges and requested the two companies to coordinate the action necessary to establish such service.

13. That on March 4, 1980, Barnardsville filed a petition requesting a formal hearing on the question of EAS between Barnardsville and Asheville, and on March 14, 1980, the Public Staff filed a reply to Barnardsville's petition and motion to deny and the Commission heard said motion of

Barnardsville and reply of the Public Staff, together with participation by Southern Bell in oral argument before the full Commission on April 24, 1980.

CONCLUSIONS

The Commission has reviewed the arguments of Barnardsville, Southern Bell, and the Public Staff and the record of the proceedings herein, and is of the opinion and so concludes that the entire proceeding herein beginning with the petition of the Barnardsville customers on February 26, 1979, follows the standard historical procedure for initiation and institution of EAS. Barnardsville and Southern Bell have participated by making the cost studies, and the polling by Barnardsville of its customers, which is the established method of providing EAS between two exchanges in North Carolina. A majority of the eligible voting customers having voted in favor of the proposition submitted to them by the franchised telephone company operating their exchange, the customers have a right to the implementation of said EAS.

EAS is the standard method for providing basic access to the essential calling scope of a telephone exchange. It is the method by which a customer can reach essential public services available at the county seat, including law enforcement, fire protection, medical services, and necessary educational and social services. With a calling scope of only 735 telephones in the small community of Barnardsville, the Barnardsville customers have less than adequate service for the $9.55 per month basic rate for residential one-party service now in effect, so long as they have to place a long-distance call to reach essential and necessary services.

The primary issue raised by Barnardsville is its request, filed after the vote was counted, for a hearing to determine if EAS should be implemented, and, if so, at what increased rate to its customers.

It comes too late at this stage of the proceedings for Barnardsville to question the implementation of EAS after it has already submitted a poll to its customers to elect EAS between Barnardsville and Asheville at the increased rate of $2.75 a month and the ballots have been counted and the results announced in favor of EAS.

The subscribers have spoken, on a vote submitted by Barnardsville, and Barnardsville cannot be heard now to seek a further hearing in an attempt to increase the rate at which said EAS would be offered between Barnardsville and Asheville.

Barnardsville contends in its petition for hearing and in its oral argument that it misconstrued the negotiations in which the $2.75 was arrived at for the increased rate for

EAS and that it wants an opportunity to show that the increase should be much greater than $2.75. If Barnardsville has evidence that the $2.75 rate increase would not adquately cover the cost of its overall service in Barnardsville after the institution of EAS, its proper remedy would be to file a general rate case and prove the amount of the general telephone rate required to provide said service. The record shows that it will be approximately two years before the EAS can be implemented. There is ample time for Barnardsville to show whether it needs additional general revenue to earn the rate of return provided by law in North Carolina, and the Commission concludes that Barnardsville should not be heard at this time to go behind the vote which it submitted to its subscribers, and the subscribers having voted for the service should not be denied the results of the vote.

Barnardsville participated from March 19, 1979, through February 19, 1980, in a standard procedure for investigating requests for EAS by conducting the cost studies and the poll of its customers without any objection or exception on its part. It negotiated with the Public Staff as to the amount of the increased rate involved and when the Public Staff reported the negotiations to the Commission at an increased rate of $2.75 per month, and the Commission authorized Barnardsville to submit said rate to its customers in a poll to vote on EAS, Barnardsville conducted said poll without objection and exception.

It is unjust for Barnardsville to mail its customers a ballot for them to vote on EAS to Asheville at a rate increase of $2.75 per month and then when 75.4% of the eligible ballots were for said service at an increase of $2.75 per month, that Barnardsville would then seek to have further hearings on the amount of said increased rate.

The Commission concludes that the entire proceedings from March 1979 through February 1980 and the oral argument on April 24, 1980, all constitute a statndard administrative proceeding in which Barnardsville participated fully as a party with correspondence and reports to the Commission and by taking a poll of its customers, and that it is bound by the results of said poll. The entire process constitutes an administrative proceeding. If Barnardsville had wanted further proceedings on the $2.75 rate increase, it should have raised the issue when it was being negotiated and before it affirmatively mailed to its customers a ballot for their vote on EAS at the $2.75 monthly increase. By sending out the vote without objection or exception, Barnardsville is estopped to say now that it wants further opportunity in this docket to show inadequate revenue for the service. The procedure observed for the EAS in this case is the standard procedure followed in scores of other votes conducted for EAS between other exchanges in North Carolina. Barnardsville has waived any objection to the $2.75 rate increase by submitting it to its customers for their vote.

To say that Barnardsville is bound by the results of the vote which it submitted to its customers is not to say that Barnardsville has no relief to cover the cost of the service if it does not have adequate revenue to provide a fair return on its investment in North Carolina. The EAS increase of $2.75 per month is only one source of revenue to Barnardsville to support its investment in plant and service in North Carolina. Barnardsville also receives a monthly charge of $9.55 per month for residential one-party service for the base rate service from its customers, plus a significant amount of toll revenue from its customers. It always has the remedy of filing for a rate increase and for a hearing on the adequacy of its revenue to support its investment. If its present base rates plus its toll revenue and the $2.75 per moonth increase for EAS does not support its overall investment in North Carolina, Barnardsville has the right to file for an increase in the base rates and secure a thorough investigation and hearing on the rate which will produce an adequate return.

Based upon the above, the Commission concludes that Barnardsville, having fully participated from March 1979 through February 1980 in the EAS proceedings herein and having submitted a ballot to its customers for EAS at an increase of $2.75, is now obligated to implement the EAS which its customers voted for.

IT IS, THEREFORE, ORDERED as follows:

1. That Barnardsville proceed to change the billing method for service between its exchange in Barnardsville and Southern Bell in Asheville, North Carolina, from message toll to flat rate extended area billing service at the rate increase submitted to the vote of its customers; to wit, $2.75 per month.

2. That Southern Bell is hereby ordered to implement EAS between its exchange in Asheville and the exchange in Barnardsville, North Carolina, and to include said cost of service in its rate base to be included in its overall revenue requirements for which it is entitled to a fair return in its general level of rates.

3. That Barnardsville and Southern Bell shall report within 30 days of the date of this Order the schedule for making said changes to EAS between Barnardsville and Asheville.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July 1980.

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

COMMISSIONERS TATE, CAMPBELL, AND LEARY DISSENTING: We respectfully dissent from the Commission's decision ordering

EAS between Barnardsville and Asheville on the grounds that it is contrary to statutory authority, in violation of due process, and contrary to the interest of the utilities and their subscribers.

The Commission is empowered to order EAS (Extended Area Service), which involves the increasing of subscriber's toll-free calling scope to adjoining communities by virtue of G.S. 62-42(a). This statute reads as follows:

> "(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 charges 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."

This statute expressly requires notice and hearing. But what type of hearing is required? It is our opinion that inasmuch as the ordering of EAS necessarily involves a determination of questions of fact, as well as law and policy, the Commission was required to conduct an evidentiary hearing pursuant to G.S. 62-23, 62-60, and 62-65(a). G.S. 62-23 provides in pertinent part as follows: "In proceedings in which the Commission is exercising functions judicial in nature, it shall sit in a judicial capacity as provided in G.S. 62-60." In making its decision in this matter, the Commission was acting in a judicial capacity and entered an order after making findings and conclusions, therefore, the Commission should have met the very specific requirements of GS. 62-65(a) regarding the taking of sworn testimony, cross-examination, etc.

The only "hearings" involved in this case did not meet the requirements of G.S 62-60 and 62-65(a). The proceedings of record were two recorded staff conferences, involving an informal receipt of unsworn information by the Commission and a later oral argument on the question of whether a further formal hearing should be held.

Furthermore, by failing to allow a full evidentiary hearing in this case, the Commission has acted in violation of the due process clause of the United States Constitution, and the Constitution of North Carolina. The due process principle is well stated in Philadelphia Co. vs. SEC, 175 F.2d at 817 (1948):

> "It is elementary also in our system of law that adjudicatory action cannot be validly taken by any tribunal, whether judicial or administrative, except upon a hearing wherein each party shall have opportunity to know the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument. This is a requirement of the due process clause..."

The majority asserts that the procedure used in this case, wherein the Commission ordered EAS on the basis of the results of a poll, is the "standard proceeding" and the "historical process" used by the Commission in implementing EAS. This is misleading. Although the Commission has occasionally authorized utilities to implement EAS on the basis of a poll and without a hearing; prior to this decision, it has never ordered such implementation without a hearing and over the objection of a utility. In several cases the Commission has followed the procedure of conducting a hearing and a poll in determining whether to implement EAS. In fact, in the pending Stanly County EAS case, P-55, Sub 776, the Commission is conducting a hearing to determine costs and the necessity for a poll.

Apparently, the Commission recognized, at least during the initial phase of this "proceeding," that it could not order EAS on the basis of a poll and information received at a staff conference. This is revealed by the fact that on February 18, 1980, the Commission issued a letter, and not an order, from the Chairman which merely authorized the establishment of EAS between the Barnardsville and Asheville exchanges. It was only after Barnardsville and Southern Bell requested an evidentiary hearing, and after oral argument on whether such a hearing should be held, that the Commission ordered the companies to implement EAS.

We are further constrained to point out that Barnardsville was given only three working days' notice of the February 18, 1980, Staff Conference at which EAS was authorized, and that Barnardsville did not appear at this conference. However, in spite of this inadequate notice, Barnardsville

filed a Motion seeking postponement of the Commission's decision pending completion of a cost study relating to the effect of converting to a cost basis on toll revenue settlements. Notwithstanding this Motion, and the substantial issues raised therein, the Commission proceeded to its decision and apparently ignored the Motion.

Considering the fact that EAS cannot be implemented until the latter part of 1981, we cannot understand why the majority feels a need to ignore the substantial questions of fact, policy, and law raised by the companies and to hurriedly rush to judgment. We do not believe these procedures were consistent with normal Commission procedures.

Aside from the legal defects in the Commission's order, the order is not in the best interests of Barnardsville's subscribers. The Company's current rates for residential customers are $9.55, plus an additional $2.75 for EAS, per month. If Barnardsville's contention that an additional subscriber rate of $5.36 is needed to recover the actual costs of EAS under present settlement methods is correct, the $2.75 charge will cause a revenue shortfall of $2.61 which will have to be made up in basic rates. If the Company's contention that an additional subscriber rate of as much as $10.42 would be needed to cover plant expense and toll losses if the Company were to settle with Southern Bell on a cost basis, then the resulting revenue shortfall would be $10.42 less $2.75, or $7.67. Although we do not know to what extent these figures are reliable, we do believe that the only proper way to determine their accuracy is to conduct an evidentiary hearing.

If these figures should prove to be accurate, and considering current rates of inflation, and the need for rate relief (caused at least in part by the hasty decision to implement EAS) Barnardsville's residential rates may be as high as $20.00 per month in the not too distant future. In a rural community with many subscribers living on fixed incomes, the effect of such excessive rates would be devastating.

We doubt that those customers who voted in favor of EAS on the basis of an additional charge of $2.75 would have so voted had they been informed that the likely real economic cost associated with EAS will be at least an additional $4.00 to $5.00 which will eventually show up in their rates. This is especially true since Barnardsville offers an "Optional Calling Plan" which allows a subscriber to call Asheville at a monthly rate of $2.50 per hour for residential customers and $4.00 per hour for business customers. We doubt that many of Barnardsville's subscribers were aware of this service at the time the poll was conducted.

We also disagree with the Commission's decision to charge Asheville's Southern Bell customers nothing, and to pass the

additional costs for Bell on to its other subscribers throughout the State. Our concern again is that the consumer who will end up paying for EAS in Asheville, that is the customer in Charlotte, Wilmington, and elsewhere who has never been given any notice that his rates will be raised in order that the citizens of Asheville can have EAS service to Barnardsville. This is particularly ironic since in the calling study it was shown that between 97 and 98 percent of all the Asheville customers did not make any calls at all to Barnardsville and it is, therefore, of dubious merit to even the customer who has obtained this additional service.

In summary, under the guise of consumer interest, the majority has in this case provided Barnardsville with free calling to Asheville at a charge of $2.75 per month. However, the majority's decision to charge less than the full cost of providing this EAS service will result in an additional rate case and the potential and hidden cost will be charged to Barnardsville's customers. On the other hand, Asheville customers are being provided the additional service of calling Barnardsville (although some 97% have expressed no interest in making any calls to Barnardsville) without any charge whatsoever and the ratepayers throughout the State will be asked to pay for the additional equipment and the loss of toll revenue of Southern Bell flowing from this Commission decision. These are the unpalatable facts and perhaps the Commission's reluctance to have a hearing was an unconscious decision to prefer not to deal with these facts.

Sarah Lindsay Tate
A. Hartwell Campbell
Douglas P. Leary
July 2, 1980

HAMMOND, COMMISSIONER, CONCURRING: The dissenting minority may inadvertently mislead the general public and overstate the argument that the Commission's decision ordering EAS between Barnardsville and Asheville is contrary to statutory authority, in violation of due process and contrary to the interests of the utilities and their subscribers.

The rigidity of the requirement for hearings in G.S. 62-71 is subject to varied interpretation. The Court has ruled that an informal conference between members of the Commission and representatives of a utility involved in a rate proceeding which was called at the suggestion of the Commission and which involved only a single question and at which no testimony and no record was taken was not a formal hearing within the meaning of G.S. 62-71 [State ex rel. North Carolina Utilities Commission v. Municipal Corporations, 243 N.C. 193, 90 S.E. 2d 519 (1955)]. Based on this ruling regarding "what is not a formal hearing," it would seem reasonable to suggest that the regular Commission meeting which is scheduled at a specific time each week, open to the general public, and at which a record is taken

could be interpreted as a formal hearing within the meaning of the statutes. In numerous instances the court has ruled that the Commission, acting in a judicial capacity, has a greater degree of flexibility and informality than a Court of general jurisdiction. For example:

"Liberality and informality is essential to the workings of the Commission." [State ex rel. Utilities Commission v. Carolinas Commission for Industrial Power Rates & Area Development, Inc., 257 N.C. 560, 126 S.E. 2d 325 (1962)].

"The procedure for the Commission is, however, not as formal as that in litigation conducted in the Superior Court." [State ex rel. North Carolina Utilities Commission v. Carolina Tel. & Tel. Company, 267 N.C. 257, 148 S.E. 2d 1-0 (1966)].

"Since the regulation of public utilities is a continuing and continuous process as to each utility, procedure before the Commission must be more or less informal and not confined by technical rules in order that regulation may be consistent with changing conditions." [State ex rel. Utilities Commission v. Associated Petroleum Carriers, 13 N.C. app 554, 186 S.E. 2d 612 (1972)].

"Great liberality is indulged in pleadings and proceedings before the Commission. The technical and strict rules of pleadings applicable in ordinary Court proceedings do not apply." [State ex rel. Utilities Commission v. Carolina's Commission for Industrial Rates and Area Development, Inc., 257 N.C. 560, 126 S.E. 2d 325 (1962)].

It is difficult to see where the procedure followed in ordering EAS between Barnardsville and Asheville does serious violence to the requirements of G.S. 62-23, 62-60, or 62-65(a). A review of the Commission decisions regarding EAS during the past five to ten years reveals that hearings were held in only two instances out of 23 cases where EAS was ordered. In most of the other cases EAS was ordered on the basis of results of polls. This research further shows that there have been cases where EAS was established without a poll, without hearing, and without an increase in subscriber rates. The procedure followed in the Barnardsville-Asheville instance fits well within past Commission policies and procedures.

The argument that the $2.50 optional calling plan is a viable option ignores the fact that it provides only for service to Asheville and not to other areas of Buncombe County. In Docket No. P-75, Sub 23, Barnardsville's last general rate case, numerous public witnesses testified on June 13, 1979, regarding their inability to call beyond the Barnardsville area other than by long distance. These witnesses pointed out that the doctors, the two hospitals that serve Buncombe County and surrounding counties are located in Asheville and that the local high school is located in Weaverville. Likewise, the County law

enforcement offices are located in Asheville and require long distance calls in emergency situations. This testimony further pointed out that Barnardsville is the only area of Buncombe County that does not have toll free service to the County seat in Asheville. One witness who subscribed to the optional calling plan pointed out that it did not allow her to call Weaverville, where the high school is located, withoug making a long distance call.

The one common thread of concern that ran through the testimony of all public witnesses in the general rate case (Docket No. P-75, Sub 23) was a concern about the limited calling scope and the need for EAS to the remainder of Buncombe County (see transcript Vol. 3 dated June 13, 1979).

The Commission should and did consider, in its determination of what constitutes adequate service, the need for citizens to have ready access to local govermental units, hospitals, doctors, schools, law enforcement agencies, religious institutions, and the cultural amenities. It is not in the public interest to allow a small community, sitting in the shadow of a major metropolitan area, to remain isolated communications-wise.

Strict adherence to technical rules should not be used to constrain the ability of the Commission to respond to changing economic and social circumstances.

I, therefore, strongly concur in the decision of the majority and feel that justice has been done.

Leigh H. Hammond, Commissioner
July 2, 1980.

DOCKET NO. W-354, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Service for Bent Creek and Mt. Carmel Acres Subdivisions, Buncombe County, North Carolina	) RECOMMENDED ORDER GRANTING INCREASE IN RATES

HEARD IN: Conference Room, Department of Social Services, 35 Woodfin Street, Asheville, North Carolina, on November 6 and 7, 1979, and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on December 6, 1979

BEFORE: Robert P. Gruber, Hearing Examiner

APPEARANCES:

For the Applicant:

Edward S. Finley, Jr., Joyner and Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

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

For the Residents of Bent Creek and Mt. Carmel Acres Subdivisions:

Robert F. Orr, Orr and Payne, Attorneys at Law, P.O. Box 7163, Asheville, North Carolina 28807

GRUBER, HEARING EXAMINER: On July 2, 1979, the Applicant, Carolina Water Service, Inc., of North Carolina (hereinafter Carolina Water Service, Inc., Carolina, Applicant, or Company), filed an application with the Commission for authority to increase rates for water and sewer service for Bent Creek and Mt. Carmel Acres Subdivisions in Buncombe County. In its application, the Applicant proposed an annual increase in gross revenues of $34,370.

By Order issued August 9, 1979, the Commission declared the matter a general rate case, suspended the proposed rates pursuant to G.S. 62-134, scheduled the matter for public hearing in Asheville, and required the Applicant to give public notice of its application. Public notice was furnished to each customer by the Applicant and was

published in the Buncombe County area. The notice stated that anyone desiring to protest the application, or to intervene, should file protest or intervention with the Commission by the date specified in the notice.

On September 14, 1979, the Public Staff filed Notice of Intervention. Such notice is deemed recognized pursuant to Rule R1-19(3) of the Commission Rules and Regulations.

On October 15, 1979, Robert F. Orr, attorney-at-law, filed Notice of Intervention on behalf of the residents of Bent Creek and Mt. Carmel Acres Subdivisions. This Intervention was allowed by Order of the Commission dated October 29, 1979.

The matter came on for hearing as scheduled. Some 125 customers attended the evening hearing on November 6, 1979. Twenty-two customers testified at the hearing and voiced complaints about water service or opposed the proposed rate increase. Their testimonies may be summarized as follows:

1. Mary Arrington, a Bent Creek resident and an employee of the Bank of Asheville and Century 21 Realty, testified as to service complaints. She stated that in the past few years there has been an increase of dirt and silt in the lines such that she has had to wash her clothes at the Laundromat and that the water varies between clear and muddy. She also testified as to a problem with a leaking water meter and as to the amount of the proposed increase.

2. James L. Burgess, a Mt. Carmel Acres resident and owner of a private duty nursery, complained about rust and sediment in the water. He stated that his underwear turns red when washed in the water. He also complained about the amount of the rate increase.

3. W.H. Arthur, a Mt. Carmel Acres resident and employee of W.H. Arthur Company, testified that in order to get clean water he has found it necessary to place Styrofoam cartridge filters in his water line and to change these filters every two weeks.

4. Joe Tipton, a Lees Ridge resident, testified that the water is frequently so dirty that he cannot see the bottom of the bath tub and that he must drain the water heater every month. He further complained that when he calls the Company to complain, he always gets an answering service and has not been able to talk to Company employees.

5. Sherman Young, a Mt. Carmel Acres resident and an accountant, complained about the quality of service and the amount of the rate increase. He testified that the screen filter on his washing machine is continually "getting clogged up." He testified that his pressure regulator has become clogged with rust and sand and that he has had to install in-line filters to correct the problem.

6. Linda Guthrie, a Lees Ridge resident and a homemaker and free-lance artist, testified that her water was discolored and contained sediment and that her bath water is sometimes an orange to dark brown color. She exhibited a discolored wash cloth at the hearing to show the effect of the water on her laundry. She also presented dirty water filters from her plumbing for the Examiner's inspection.

7. Stephen Hill, a resident of Lees Ridge and a sales representative for Metropolitan Life Insurance Company, complained of dirty water. He stated that his pressure regulator has become so clogged with particles that it has had to be replaced.

8. Mike Walker, a resident of Lees Ridge and an industrial engineer, complained of discolored water. He stated that he has found it necessary to place filters in all of his faucets and drain his hot water heater on a monthly basis. He also described an incident where the Company had improperly repaired a main leak and had cut his service off. The incident occurred during a weekend, and when he cut his system back on he had to flush mud and rocks out of the system because the repair people had put the system back together improperly.

9. Howard Koges, Jr., a resident of Mt. Carmel Acres and a funeral director, complained that the poor quality of his water caused food discoloration and that ice made in his refrigerator was discolored.

10. William E. Klint, a resident of Mt. Carmel Acres and a weather bureau employee, testified that he has experienced problems with discolored water and low pressure. He stated that on several occasions the pressure-reducing valve of his home had been blocked by sand and rust. He also testified that his family's clothing had been stained by the impure water and that on occasion he had found the water in the water heater was a reddish brown color and he had attempted to flush it clean.

11. Samuel Penland, a resident of Mt. Carmel Acres and a real estate agent, complained of impure and discolored drinking water. He also complained about the size of the rate increase and of difficulties in contacting employees of the Company.

12. Bruce Rankin, a resident of Bent Creek and a material control manager, testified against the amount of the rate increase. He also stated that in his opinion it was not necessary for the Company to employ two persons to read meters.

13. Edwin Webb, a Bent Creek resident and coordinator of Pharmacy Education Programs for the Mountain Area Health Education in Asheville, testified that his water is not clear but that his service has improved since Carolina Water Service had taken over the system. He stated that placement

of filters in his faucets has markedly helped the quality of the water.

14. Herbert Keith, a resident of Bent Creek and a Bell System Engineer, testified concerning water quality in Bent Creek. He stated that in his opinion the water was corrosive and caused leaks in the system.

15. Wylie Lorie, a Bent Creek resident and an employee of Southern Railway, testified to problems he had in 1973 (which was well before the Applicant took over the system).

16. Joe Carter, of Bent Creek, complained that the hands of his water meter had rusted off and that he felt his bills were too high.

17. James F. Garner, a resident of Bent Creek and an employee of Aetna Life and Casualty Company, complained that he had complained of problems with water pressure at the previous rate hearing and that neither the Company nor the Commission Staff had followed through on correcting the problem. He stated that he still has a water pressure problem.

18. Mitchell Garrison, a resident of Mt. Carmel Acres and a Brendel's security employee, testified that he has had problems with incorrect water bills in the past.

19. Eddie Shoff, of Bent Creek, complained about the size of the rate increase, and he questioned the Company's transportation expenses as being excessive.

20. Robert Whittenmore, of Bent Creek, testified that he opposed an increase in the sewer rates.

21. Richard Gueho, of Bent Creek, complained that he did not like the water quality, but he did not specify in what respect it was deficient other than to speculate that it might cause cancer.

22. Thomas W. Wiley, of Bent Creek, complained about the amount of the rate increase and complained that the water was corrosive.

The Applicant offered the following witnesses who testified in support of the application:

Millard Shriver, Vice President and Chief Operating Manager of Carolina Water Service, Inc., and Patrick J. O'Brien, Treasurer of the Utilities, Inc., parent corporation of Applicant. Mr. Shriver testified that service in the Bent Creek and Mt. Carmel Acres area has improved since its acquisition by the Applicant and that the Company has incurred approximately $126,000 in upgrading the system since its acquisition in 1976.

The Public Staff presented testimony of the following witnesses:

Jesse Kent, Jr., Public Staff Accountant, testified as to test year revenues and expenses, original cost net investment, rate of return on the Company's original cost net investment, and the operating ratio of the Company. Mr. Kent accepted the Company's revenue and expense adjustments as shown in its application except for a $149 adjustment for interest on customer deposits.

Henry Payne, Acting Director of the Public Staff Water Division, testified with respect to the service provided by the Company. Mr. Payne recommended that an investigation be conducted to determine if iron bacteria are present and, if present, that steps be taken for their elimination. Mr. Payne recommended that the Company look into the possibility of alternative methods of controlling the iron content of the water. He suggested that chemical oxidation or aeration followed by filtration be investigated. He also suggested stronger preventive maintenance.

FINDINGS OF FACT

1. Carolina Water Service, Inc., of North Carolina is a public utility corporation organized and existing under the laws of the State of North Carolina and is engaged in the business of providing water utility service in five subdivisions and sewer service in two subdivisions in North Carolina.

2. The Applicant currently furnishes water service under its Certificate of Public Convenience and Necessity utilizing the following rates:

Bent Creek
Mt. Carmel Acres
WATER RATE SCHEDULE

METERED RATES: (Residential Service)

Up to first 400 cubic feet -
minimum - $4.40
Next 3,600 cubic feet per month - $1.00 per 100 cubic feet
Over 4,000 cubic feet per month - $ .73 per 100 cubic feet

3. The Applicant proposes to charge the following rates for water service:

Bent Creek
Mt. Carmel Acres
WATER RATE SCHEDULE

METERED RATES: (Residential Service)

Up to first 400 cubic feet - minimum - $5.80
Next 3,600 cubic feet per hundred - $1.35
Over 4,000 cubic feet per hundred - $ .96

4. The Applicant currently furnishes sewer service under a Certificate of Public Convenience and Necessity utilizing the following rates:

FLAT RATE: (Residential Service) $ 8.00 per month

5. The Applicant proposes to charge the following rates for sewer service:

FLAT RATE: (Residential Service) $11.00 per month

6. The Company also proposes a finance charge for late payment of 1% per month, a collection charge for late payment of $2.00, and a charge for NSF checks of $3.00.

7. The water service provided by the Applicant to its customers is inadequate, and its sewer service is adequate.

8. The Applicant's original cost of its plant in service for providing water and sewer service to its customers in Bent Creek and Mt. Carmel Acres Subdivisions is $754,930. A reasonable allowance for cash requirements is $9,599. The Company's total investment and working capital allowance is $764,529.

9. The reasonable amount of deductions from the Applicant's total investment and working capital of $559,562 consists of the following: accumulated depreciation in the amount of $182,349; utility plant acquisition adjustment in the amount of $284,942; contributions in aid of construction in the amount of $88,339; average tax accruals in the amount of $1,449; and customer deposits in the amount of $2,483.

10. The Applicant's reasonable original cost net investment in water service is $119,669, and in sewer service is $89,298 for a total reasonable original cost net investment of $204,967.

11. For the test period, the Applicant's end-of-period level of customers is 477 and the average level of usage of its customers is 898 cubic feet per month.

12. Under its present rates, the Company's approximate gross annual revenues for the test year, after accounting and pro forma adjustments, are $101,322, and its test year operating revenue deductions, including taxes and depreciation, are $109,322.

13. Under its proposed rates, the Company's approximate gross annual revenues for the test year, after accounting and pro forma adjustments, would be $135,692, and its test year operating revenue deductions, including taxes and depreciation, would be $119,998, its rate of return on original cost net investment would be 7.66%, and its operating ratio would be 91.95%.

14. Under the rates herein approved, the Company will have an opportunity to earn an additional $25,784 in annual revenues. Under approved rates, the Company's approximate gross annual revenues for the test year, after accounting and pro forma adjustments, will be $127,106, and its test year operating revenue deductions, including taxes and depreciation, will be $115,553. Its rate of return on original cost net investment will be 5.64% which is just and reasonable considering the present level of service.

15. If the water service of the Applicant had been adequate, a rate of return of 7.66%, which was proposed by the Applicant, would have been just and reasonable.

16. The proper rates to be charged by Carolina Water Service, Inc., of North Carolina are those contained in Appendix A attached hereto.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-6

The evidence for these findings of fact is taken from the application and from the tariff records on file with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence as to the quality of service consists of the testimony of the public witnesses, Henry Payne, Acting Director of the Public Staff Water Division, and Millard Shriver and Patrick J. O'Brien for the Applicant.

The testimony of the public witnesses has been previously summarized. The most prevalent customer complaint concerned the presence of discolored water caused by excessive iron concentrations and the existence of sediment, sand, or dirt in their water. Some customers complained that they often experienced unpleasant tasting and discolored drinking and bathing water and that they had to frequently drain and flush their hot water tanks or install filters in their faucets in order to obtain clear water. Some customers complained that they had to replace pressure regulators due to their being clogged by sand or dirt. Others complained that the water was corrosive. Other complaints concerned billing computations, defective meters, improper water pressure, and leaking meters. There was also testimony concerning the Company's unsatisfactory response to service and billing complaints.

Mr. Payne of the Public Staff testified that based on the testimony of the public witnesses, he suspected the presence of iron bacteria and he recommended that an investigation be conducted to determine if bacteria are present. He also suggested possible methods for controlling the iron content of the water. Mr. Payne stated that the water in Mt. Carmel Acres is generally of a better quality than the water in Bent Creek.

Witnesses for the Applicant testified that they have invested some $126,000 since 1976 in improving the system. Most of these expenditures were made to alleviate pressure problems that existed when the system was purchased and to improve storage capacity. The Company testified that it had tried several methods to improve the iron content of the water with varying degrees of success.

The Hearing Examiner recognizes that the Applicant has made significant progress in improving the level of water service in Bent Creek and Mt. Carmel Acres, particularly in regard to pressure and water availability problems. The Examiner is also convinced that the Company is willing to take reasonable measures to correct the problems of water discoloration as it now exists. Nevertheless, the Examiner is constrained to conclude that the overwhelming testimony of the public witnesses in this case shows that the overall level of water service at the present time is not adequate. The testimony of the various witnesses has been summarized in some detail, and after hearing these witnesses and observing their demeanor, the Examiner finds their testimony to be strong evidence that the water is frequently of such poor quality as to cause considerable inconvenience and some additional expense to the Applicant's customers. The Applicant's drinking water frequently is discolored and contains iron or sediment or tastes of chemicals. Many customers are forced to install tap filters or drain their water tanks in order to obtain acceptable water.

The Applicant should fully investigate why its water is discolored, particularly with respect to iron bacteria, and more fully explore feasible and economical means of correcting the problem and make a report to the Public Staff concerning its findings.

The Applicant needs to place a greater emphasis on Communicating with its customers and handling its customers' complaints. The Applicant appears to be making greater efforts in this regard and should continue such efforts.

There were few complaints in regard to sewer service and the Examiner concludes that sewer service is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 AND 9

The evidence for Findings of Fact Nos. 8 and 9 is contained in the testimony and the exhibits of Applicant witness O'Brien and Public Staff witness Kent.

Applicant computed its working capital allowance by using a 45-day total of $11,844. Public Staff witness Kent computed the working capital allowance by taking one-eighth of the balance of the operating and maintenance and general expense less purchased power less interest on customer deposits and arrived at a total allowance of $9,599. Public Staff witness Kent then reduced rate base by deducting accrued taxes in the amount of $1,449 and customer deposits in the amount of $2,483. Applicant did not disagree nor take issue with the adjustments made by witness Kent. The Hearing Examiner therefore concludes that the Applicant's reasonable original cost net investment is $204,967.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 - 13

The evidence for Findings of Fact Nos. 10 through 13 is contained in the testimony and exhibits of Applicant witness O'Brien and in the testimony and exhibits of Public Staff witness Kent. On its income statement, Applicant deducted interest paid during the test year on customer deposits in the amount of $149 from net operating income rather than as a pretax operating income deduction. Public Staff witness Kent deducted the interest on customer deposits as an operating expense revenue deduction which also reduced federal income tax expense under the proposed rates. Applicant did not disagree or take issue with this adjustment by the Public Staff. Other than this adjustment, the Public Staff did not take issue with any of the Applicant's accounting adjustments, nor did it question the level of any specific expense item.

Questions were raised by the Intervenor through cross-examination concerning the appropriateness of certain expense items, specifically operating and administrative expenses allocated from the service company or other operating affiliates to Carolina Water Service, Inc. Through extensive cross-examination, Intervenor established that the Applicant might have applied various methods for allocating expenses from the parent company to the subsidiary. However, the Examiner concludes that the allocation methods actually applied were reasonable and that the allocated general and operating and maintenance expenses derived by such allocations were reasonable, including those paid to Water Service, Inc.

Intervenor urged the Examiner to disallow $19,471 in expenses paid for outside services to Water Service Corporation (Water Service), Carolina's affiliate corporation, on the grounds that Carolina and Water Service had not obtained Commission approval of the service agreement between Water Service Corporation and Carolina Water Service, Inc., pursuant to G.S. 153(b). Based on Mr. O'Brien's testimony it appears that under this agreement, Water Service and Carolina are both subsidiaries of or affiliated with Utilities, Inc., and Water Service, Inc., operates as the service company for Carolina and the other

subsidiaries by providing them with technical, legal, accounting, bookkeeping, and management services.

Considering the fact that the allocations and expenses have been found to be reasonable and that the Applicant and its customers have received the benefits of services rendered by Water Service Corporation, it would be unfair to disallow these operating expenses as test period expenses simply because the contract pursuant to which the services were performed was not approved by the Commission. This is expecially true since the Applicant has operated at a deficit and did not pay any service fees during the test period. Applicant should not be further penalized for its inadvertence in obtaining Commission approval of its service agreement since it has been found that charges paid to the service corporation are reasonable.

The Hearing Examiner concludes that the Company's approximate gross operating revenues for the test year under the present rates and after giving effect to accounting and pro forma adjustments are $101,322. The level of test year deductions, after accounting and pro forma adjustments, is $109,322 under the present rates. Under its present rates, the Applicant has for the test year a negative rate of return of (.390%) and an operating ratio of 112.61%. Such a negative rate of return is unjust and unreasonable, and the Applicant is clearly in need of rate relief.

Under the Applicant's proposed rates, gross operating revenues would be $135,692, and after giving effect to accounting and pro forma adjustments, total deductions would be $119,998, for a rate of return on original cost net investment of 7.66% and an operating ratio of 91.95% ($119,998 plus $4,774 interest divided by $135,692). A rate of return of 7.66% would be fair and reasonable for a utility providing adequate service, and had the Applicant provided adequate service, a 7.66% return would be just and reasonable for the Applicant. However, the failure of Carolina Water Service, Inc., of North Carolina to provide adequate service is a material factor to be considered in establishing the fair rate of return in this case. Where service is found to be inadequate, the Commission is permitted to impose a penalty by granting a lower rate of return than it otherwise would have allowed, provided that the penalty is quantified.

The Examiner concludes that the proposed rates should not be approved, but that rates which result in additional annual revenues of $25,784 and a rate of return of 5.64% should be approved. This amounts to a penalty in allowed return of 2.02%. Under the approved rates, the Applicant's approximate gross operating revenues will be $127,106, its gross operating deductions will be $115,553, and its operating ratio will be approximately 95%.

The Examiner further concludes that the extreme remedy of denying the Applicant any rate relief whatsoever is not

justified in this case. Failure to allow any rate increase would cause the Applicant to continue to operate at a deficit and would be confiscatory. The Applicant is making an effort to improve the quality of its service and has invested $126,000 in the system since 1976, and therefore, so drastic a remedy would not be fair and reasonable.

The following schedule summarizes 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 incorporate the findings and conclusions heretofore made by the Hearing Examiner.

CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA
STATEMENT OF OPERATING INCOME, EXPENSES
RETURN ON INVESTMENT

	Present Rates	Increase Approved	After Approved Increase
Operating Revenue			
Sales of water	$ 53,968	$ 8,996	$ 62,964
Sewer service	46,176	16,788	62,964
Miscellaneous	1,178	-	1,178
Total	$101,322	$25,784	$127,106
Operating Revenue Deductions			
Operation & Maintenance			
Salaries	$ 25,944	$ -	$ 25,944
Purchased power	15,606	$ -	15,606
Chemicals	3,607	-	3,607
Maintenance & repairs	7,572	-	7,572
Maintenance-testing	1,474	-	1,474
Transportation expense	5,727	-	5,727
Interest on customer deposits	149	-	149
Operating expenses charged to plant	(1,341)	-	(1,341)
Outside services - Water Service Corp.	9,735	-	9,735
General Expenses			
Administrative Salaries	$ 4,182	$ -	$ 4,182
Office suplies and other expenses	2,282	-	2,282
Regulatory Commission Expense	1,800	-	1,800
Uncollectible accounts	1,002	258	1,260
Rent	941	-	941
Office utilities	3,292	-	3,292
Miscellaneous	835	-	835
Outside service - general - Water Service Corp.	9,736	-	9,736
Total operating & maintenance	$ 92,543	$ 258	$ 92,801
Depreciation	7,800	-	7,800
Taxes - other than income	8,979	1,367	10,346
Taxes - State income	-	683	683
Taxes - Fed. income	-	3,923	3,923
Total operating revenue deductions	$109,322	$ 6,231	$115,553
Net operating income	(8,000)	19,553	11,553
Interest expense	4,774	-	4,774
Net Income	$(12,774)	($ -)	$ 6,779

Original Cost Net Investment		
Plant in service	$754,930	$ -
Working capital	9,599	-
	$764,529	-
Less: accumulated depreciation	-	182,349
Acquisition adjustment	-	284,942
Contributions in aid	-	88,339
Average tax accruals	-	1,449
Customer deposits	-	2,483
Total	-	$559,562
Original Cost Net Investment	-	$204,967
Rate of Return on Original Cost Net Investment		
Approved		5.64%
Proposed		7.66%
Penalty		2.02%

EVIDENCE AND CONCLUSIONS FOR FINDINGS of FACT NOS. 14 - 16

The evidence and conclusions discussed herein support the approval of rates which will allow the Applicant to earn an additional $25,784 in annual revenues on its combined water and sewer operations. Under the Applicant's present rates, an average customer using 496 cubic feet of water per month pays approximately $9.40 per month for water. Under its proposed rates this customer would have paid approximately $12.50 per month. Under the approved rates the average customer will pay $11.00 per month for water service.

Under the Applicant's present rates, customers are charged a flat $8.00 per month for sewer service. Under the proposed rates the charge would be $11.00 per month. Sewer service is adequate, and the Examiner concludes that a charge of $11.00 per month for sewer service is reasonable and should be approved.

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.

The increase in Carolina's water and sewer rates approved herein may 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, Carolina is operating

in a loss position. Under its present rates, the Applicant suffered a $12,772 loss during the test period. 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 and has incurred during the past three years, the Examiner believes that the hardship provision should apply in this proceeding. The Examiner therefore concludes that the rate increases approved herein are in compliance with Section 705A-6 of the COWPS' voluntary wage and price guidelines.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Carolina Water Service, Inc., of North Carolina be, and hereby is, authorized to adjust its rates and charges to produce an annual increase in revenues of $25,784.

2. That the schedule of rates attached hereto as Appendix A be, and hereby is, approved for water and sewer service rendered by Carolina Water Service, Inc., of North Carolina subject to the conditions set forth herein.

3. That said schedule of rates be, and hereby is, deemed to be filed with the Commission pursuant to G.S. 62-138.

4. That on or before June 1, 1980, Carolina Water Service, Inc., file with the Water Division of the Public Staff a report concerning the costs and feasibility of improving the iron content of the water in Mt. Carmel Acres and Bent Creek.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of February 1980.

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

APPENDIX A
SCHEDULE OF PROPOSED RATES
CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA
Bent Creek/Mt. Carmel Acres - Buncombe Co.

METERED WATER RATES: (Residential Service)

Up to first	400	cubic feet - minimum -	$5.00
Next	3,600	cubic feet per month -	$1.20 per 100 cubic feet
Over	4,000	cubic feet per month -	$ .96 per 100 cubic feet

FLAT SEWER RATE: (Residential Service)

$11.00 per month

CONNECTION CHARGES: None

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: Twenty-one (21) days after billing date

BILLING FREQUENCY: Shall be bimonthly, for service in arrears

FINANCE CHARGE FOR LATE PAYMENT: 1% per month

COLLECTION CHARGE FOR LATE PAYMENT: $2.00

CHARGE FOR PROCESSING NSF CHECKS: $3.00

DOCKET NO. W-354, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Service for Bent Creek and Mt. Carmel Acres Subdivisions, Buncombe County, North Carolina	) 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 9, 1980, at 10:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners John W. Winters, A. Hartwell Campbell, and Douglas P. Leary

APPEARANCES:

For the Applicant:

Edward S. Finley, Jr., Joyner and Howison, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

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

For the Intervenor Residents of Bent Creek, Lee's Ridge, and Mt. Carmel Acres Subdivisions:

Robert F. Orr, Orr and Payne, Attorneys at Law, P.O. Box 7163, Asheville, North Carolina 28807

BY THE COMMISSION: On February 19, 1980, a "Recommended Order Granting Increase in Rates" was entered in this docket. The Hearing Examiner was Robert P. Gruber. On March 25, 1980, counsel for and on behalf of the intervening residents of Mt. Carmel, Lee's Ridge, and Bent Creek Subdivisions filed certain Exceptions to the Recommended Order. On March 27, 1980, the Applicant filed a Motion in response to said Exceptions. Oral argument on the Exceptions was subsequently heard by the Commission on April 9, 1980.

Based upon a careful consideration of the entire record in this proceeding, including the Exceptions which were

filed to the Recommended Order by the Intervenor and the oral argument heard thereon, the Commission is of the opinion, finds, and concludes that the findings, conclusions, and ordering paragraphs contained in the Recommended Order are all fully supported by the record. Accordingly, the Commission further finds and concludes that the Recommended Order dated February 19, 1980, should be affirmed and that each of the Exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the Exceptions to the Recommended Order filed herein by the Intervenor be, and each is hereby, overruled and denied.

2. That the Recommended Order entered in this docket on February 19, 1980, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of April 1980.

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

Commissioners Koger, Hammond, and Tate did not participate.

TABLE OF ORDERS
Not Printed
Detailed Outline

I. ELECTRICITY

A. Electric Service Areas

Virginia Electric and Power Company and Edgecombe - Martin County Electric Membership Corporation - ES-84, Sub 1 (10-3-80)

Mecklenburg Electric Cooperative - ES-95 (2-12-80)

Edgecombe-Martin County and Pitt & Green Electric Membership Corporations - ES-96 (4-10-80)

B. Rates

Carolina Power & Light Company - E-2, Sub 366 (3-31-80); E-2, Sub 380 (1-4-80); E-2, Sub 380 (1-22-80);

ADJUST ELECTRIC RATES AND CHARGES PURSUANT TO G.S. 62-134(e)

Carolina Power & Light Company - E-2, Sub 383 (2-19-80); E-2, Sub 393 (6-16-80); Errata (6-19-80): Errata (8-20-80); E-2, Sub 402 (10-24-80)

Duke Power Company - E-7, Sub 287 (2-19-80); E-7, Sub 295 (6-16-80); E-7, Sub 302 (10-21-80)

Virginia Electric and Power Company - E-22, Sub 252 (2-21-80): Errata (3-14-80); E-22, Sub 255 (6-16-80); Errata (6-19-80); E-22, Sub 256 (10-17-80); Errata (10-24-80); E-22, Sub 256 (11-21-80)

C. Securities

Carolina Power & Light Company - E-2, Subs 315 and 327 (11-26-80); E-2, Sub 357 (6-12-80); E-2, Sub 382 (1-31-80); E-2, Sub 386 (2-13-80); E-2, Sub 389 (4-11-80); E-2, Sub 397 (9-3-80); E-2, Sub 399 (8-29-80); E-2, Sub 403 (10-22-80); E-2, Sub 405 (12-9-80)

Duke Power Company - E-7, Sub 288 (2-8-80); E-7, Sub 298 (8-14-80)

D. Miscellaneous

Carolina Power & Light Company - Denying Petition to Reopen Hearing for a Certificate of Public Convenience and Necessity for the Shearon Harris Plants - E-2, Sub 203 (5-20-80); Order for Production of Cost Feasibility Data by CP&L for National Spinning Company, Inc. - E-2, Sub 388 (7-7-80); Granting Participation in Pooled Inventory Management System - E-2, Sub 400 (11-26-80)

Duke Power Company - Approving Proposed Accounting Methodology and Allowing the Assumption of Outstanding Debt of Eastover Land Company - E-7, Sub 301 (9-19-80); Approving Use of Revised Service Agreement Card and New Contract Card for Time-Of-Day Customers - E-7, Sub 305 (12-3-80)

Laurel Hill Electric Company, Inc. - Dismissing Filing for Adjustment of Retail Fuel Charge Without Prejudice - E-10, Sub 12 (9-25-80)

Nantahala Power and Light Company - Clarifying Procedures and Affirming Filing Schedules - E-13, Sub 29 (12-22-80)

II. FERRY BOATS - Rates

Carteret Boat Tours, Inc. - A-23, Sub 2 (6-23-80)

III. GAS

A. Rates - Curtailment Tracking Adjustment

North Carolina Natural Gas Corporation - G-21, Sub 177A (1-23-80); G-21, Sub 177A (8-25-80); G-21, Sub 177C (10-29-80)

Pennsylvania & Southern Gas Company (North Carolina Service Division) - G-3, Subs 76A and 76B (4-11-80); G-3, Subs 76A and 76B (4-16-80)

United Cities Gas Company - G-1, Sub 75 (8-11-80)

B. Rates - Exploration Tracking Adjustment

North Carolina Natural Gas Corporation - G-21, Sub 211 (7-1-80); Errata (7-24-80); G-21, Sub 217 (12-23-80)

Pennsylvania & Southern Gas Company (N.C. Gas Service Division) - G-3, Sub 94 (1-23-80); G-3, Sub 97 (7-23-80); G-3, Sub 100 (12-23-80)

Piedmont Natural Gas Company, Inc. - G-9, Sub 200 (7-1-80); Errata (7-24-80); G-9, Sub 205 (12-23-80)

Public Service Company of North Carolina, Inc. - G-5, Sub 158 (6-27-80); Errata (7-2-80); Errata (7-24-80); G-5, Sub 162 (12-30-80)

United Cities Gas Company - G-1, Subs 47F and 76 (1-24-80); G-1, Sub 79 (8-6-80); G-1, Sub 82 (12-30-80)

C. Rates - Depreciation Rates

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D. Rates - Purchased Gas Adjustment

North Carolina Natural Gas Corporation - G-21, Subs 165 and 181 (1-4-80); G-21, Subs 208 and 204 (3-13-80); G-21, Sub 209 (4-1-80); G-21, Sub 212 (8-29-80); G-21, Subs 212 and 213 (10-21-80); Errata (10-24-80); G-21, Sub 213 (8-29-80); G-21, Sub 214 (12-3-80); G-21, Sub 215 (12-30-80); G-21, Sub 216 (12-30-80)

Pennsylvania & Southern Gas Company (N.C. Gas Service Division) - G-3, Subs 82, 83, 93, & 94 (1-3-80); G-3, Sub 96 (3-12-80); G-3, Sub 99 (9-3-80); G-3, Sub 101 (12-30-80)

Piedmont Natural Gas Company, Inc. - G-9, Subs 165, 179, 193, and 194 (1-15-80); G-9, Sub 198 (2-27-80); G-9, Sub 202 (8-6-80); Amended (8-13-80); G-9, Sub 203 (8-28-80); G-9, Sub 206 (12-23-80)

Public Service Company of North Carolina, Inc. - G-5, Sub 155 (3-18-80); G-5, Sub 159 (8-29-80); G-5, Sub 160 (8-29-80); G-5, Sub 160 (9-4-80); G-5, Sub 161 (12-30-80)

United Cities Gas Company - G-1, Sub 77 (3-17-80); G-1, Sub 81 (9-3-80); G-1, Sub 83 (12-23-80)

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Greyhound Lines, Inc. - B-105, Sub 39 (8-7-80)

I. Sales and Transfers
Macon Tours - C-2345 from Macon Tours - B-345, Sub 1 (6-18-80)

J. Miscellaneous
Greyhound Lines, Inc. - Granting Petition for Separate Passenger Bus Station at Asheville; B-7, Sub 95 (3-7-80)
Motor Bus Common Carrier - Allowing Petition to Withdraw Proposed Tariff Increases, Cancel Hearing, and Approve Charter Fares Being Charged (Wilson Bus Co., Inc., and McGill's Taxi and Bus Lines, Inc., d/b/a Asheboro Coach Co.) - B-296 Sub 6 (9-24-80)

VI. MOTOR TRUCKS

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B&B Lines, Inc. - T-1992 (6-25-80)
B and W Trucking Company - T-2055 (6-20-80)
Coastal Armored Car Service, Inc. - T-2025 (4-9-80)
Coastal Transport, Inc. - T-214, Sub 3 (10-15-80)
Colonial Refrigerated Transportation, Inc. - T-2004 (3-25-80)
Dependable Feed Service, Inc. - T-1951, Sub 1 (5-20-80)
Griffith, David, Trucking - T-2009 (1-21-80)
East Spencer Moving Corporation, The - T-2031 (8-4-80)
Key Recovery - T-2039 (4-29-80)
Marine Transport Company - T-1960, Sub 3 (7-30-80)
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Barnett Truck Lines, Inc., D & L Trucking, Inc., and Rogers Transportation Transportation Company, Inc. - T-1012, Sub 7; T-1936, Sub 3, and T-462, Sub 4 (11-18-80)
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Columbus Motor Lines, Inc. - T-304, Sub 8 (8-11-80)
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Eastern Delivery Service, Inc. - T-1889, Sub 5 (8-4-80)
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HML Company - T-2040, Sub 1 (12-10-80)
Haines, Earl, Inc. - T-1751, Sub 2 (2-26-80)
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Herman Bros., Inc. - T-2021 (2-26-80)
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Lenoir Transfer Company, Inc. - T-41, Sub 5 (11-24-80)
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Lisk, Howard, Inc. - T-1685, Sub 6 (1-7-80)
McClendon, Glenn, Trucking Company, Inc. - T-1803, Sub 1 (1-21-80); T-1803, Sub 2 (1-16-80)
Nu-Car Carriers, Inc. - T-2068 (10-14-80)
Observer Transportation Company - T-107, Sub 12 (8-21-80)
Paul, Charles Furney - T-1974, Sub 1 (5-15-80); Amendment (5-22-80)
Pembroke Trucking Company, Inc. - T-2041 (6-2-80)
Piedmont Home Delivery and Services Company - T-2033 (4-22-80)
Pinebluff Mobile Home Park - T-2035 (6-24-80)
Red Line Courier Service - T-1976, Sub 2 (1-18-80)
Regional Storage & Transport, Inc. - T-1906, Sub 1 (8-1-80)
Scotchman's Homes - T-2002 (1-21-80)
Smith, Patricia Smith, and William Thomas Smith - T-2045 (9-2-80)
Southern Freight Service, Inc. - T-2052 (8-20-80)
Super Motor Lines, Inc. - T-155, Sub 5 (10-8-80)
Triangle Express - T-2074 (12-11-80)
321 Equipment Leasing Company - T-2078 (12-10-80)
Wicker Services, Inc. - T-65, Sub 9 (12-9-80)
Willetts Brothers Trucking - T-2065 (12-23-80)
Worsley Transport, Inc. - T-1545, Sub 3 (6-18-80)
Young Mobile Home Sales - T-2050 (8-27-80)
Zackley Rite Trucking Co., Inc. - T-2019 (11-26-80)

C. Authority Granted - Contract Carrier (Recommended Orders)

Avery Trucking Co., Inc. - T-2071 (11-17-80)
Bailey's Delivery Service - T-2024 (5-6-80)
Boone, A.G., Company, The - T-24, Sub 4 (7-30-80)
Builder's Transport, Inc. - T-1638, Sub 4 (5-6-80)
Cabarrus Consolidating and Management Company - T-2070 (11-12-80); Errata (11-14-80)
Continental Transport Systems, Inc. - T-2037 (5-21-80)
Creswell Grain Co., Inc. - T-2003 (4-4-80)
Dalton, Cephus J. - T-2060 (12-23-80)
Ford's Contracting Service - T-2081 (12-1-80)
HML Company - T-2040 (5-23-80)
Harrell, R. O., Inc. - T-2064 (9-16-80)
Harris, William Lester - T-2048 (6-25-80)
Hudson Transportation, Inc. - T-2044 (6-10-80)
K.B.D. Service - T-2038 (6-10-80)
Kugler, George W., Inc. - T-2027 (2-26-80); T-2027, Sub 2 (8-21-80); Errata (8-22-80)
Livestock Supply Company, Inc. - T-1993, Sub 2 (12-22-80)
Marine Transport Company - T-1960, Sub 2 (9-2-80)
Rawley, J.W. - T-2058 (12-23-80)
Riggan, George E. - T-2067 (9-18-80)
Santee Cement Carriers, Inc. - T-1412, Sub 1 (1-7-80)
Scott, Dennis Michael - T-2059 (12-23-80)
Snow, Ted B. - T-2057 (12-23-80)
Task Force of Raleigh, Inc., The - Errata to Recommended Order of 12-27-79 - T-2008 (5-13-80)
Tilton's Delivery Service - T-2076 (11-6-80)

United Merchants Trucking, Inc. - T-2043 (6-9-80)
Vaughn, Willard - T-2061 (12-23-80)
Wheeler Associates - T-2012 (8-11-80)

D. Certificates/Permits Amended

Billings Transfer Corporation, Inc. - T-273, Sub 3 (11-20-80)
Dietz Motor Lines, Inc. - T-1300, Sub 3 (7-24-80)
Ezzell Trucking, Inc. - T-1536, Sub 4 (1-24-80)
LDF, Inc. - T-1982, Sub 1 (2-5-80)
Iredell Milk Transportation, Inc. - T-1647, Sub 3 (1-28-80)
Tar Heel Industries, Inc. - T-1701, Sub 3 (1-9-80)
Task Force of Raleigh, Inc., The, - T-2008, Sub 1 (6-9-80)
Thomas, Jimmy Edward - T-1968 (2-5-80)

E. Certificates/Permits Cancelled

Autry Trucking Company - C-501 - T-643, Sub 4 (12-3-80)
Blackmon, Jeffery - C-517 - T-665, Sub 4 (7-22-80)
Piedmont Mobile Home Movers - C-1035 - T-1691, Sub 1 (7-21-80)
Rape Grain Company - C-300 - T-1878, Sub 2 (4-22-80)
Riggan, George E. - P-381 - T-2067 (11-4-80)
Task Force of Raleigh, Inc., The - P-340 - T-2008, Sub 1 (7-21-80)
Wilson Freight Company - C-576 - T-1475, Sub 1 (12-10-80)

F. Complaints (Recommended Orders)

Burlington Industries, Inc. - Dismissing Complaint Against Thurston Motor Lines, Inc. - T-1287, Sub 31 (3-31-80)
Jiffy Moving & Storage Company - Complaint of Ms. Nonie Ward Pittman - T-1287, Sub 34 (10-24-80); Dismissing Complaint of Ms. Frances S. McDowell - T-1287, Sub 35 (12-5-80)
West's Durham Transfer & Storage, Inc. - Complaint of Durham Transfer & Storage, Inc. - T-1287, Sub 32 (11-19-80)

G. Leases

Bunch Trucking Company, Inc. - C-259 from J.D. McCotter, Sr. - T-2056 (8-15-80)
C T Trucking, Inc. - C-191 from Cox Trucking Company - T-2053 (9-29-80)
Cox Trucking Company - C-191 from State Trucking Co. - T-2053 (7-14-80)
Freightways of North Carolina, Inc. - C-405 from Carolina Transport Express, Inc. - T-2010 (4-24-80)
Truck Air of Georgia, Inc. - C-405 from Carolina Transport Express, Inc. - T-2088 (10-21-80); C-405 from Carolina Transport Express, Inc. - T-2088 (12-4-80)

H. Mergers

Parsons, G.G., Trucking Co. - C & S Motor Express, Inc., into G.G. Parsons Trucking Co. - T-1784, Sub 1 (10-15-80)
Shamrock Transport Company and Taylor Oil Company, C-375, into Taylor Oil Company and Transfer of C-375 from Taylor Oil Company to Shamrock Transport Company - T-2073 and T-6, Sub 10 (8-15-80)

I. Name Changes

AFB Freight System, Inc. - from Arkansas - Best Freight System, Inc. (C-412) - T-1583, Sub 1 (11-20-80)
Brevard Moving and Storage Co., Inc. - Amending Corporate Name (C-857) - T-1236, Sub 4 (1-23-80)
Harrison Moving and Storage, Inc. - from National Moving & Storage (C-928) - T-1379, Sub 2 (1-28-80)
Setzer Transportation Company from Setzer Leasing, Inc. (P-336) - T-1989 (1-28-80)
Smith, Patricia Smith, and William Thomas Smith - T-2045 (4-16-80)
Wicker Services, Inc. - from Wicker Pick-Up & Delivery Service, Inc. (C-399) - T-65, Sub 8 (6-4-80)

J. Rates

Chemical Leaman Tank Lines, Inc. - T-663, Sub 15 (1-18-80)
Evans, Donald, Mobile Home Movers, Inc. - T-1854, Sub 2 (4-25-80)
Harper Trucking Company, Inc. - T-521, Sub 29 (11-20-80); Final - T-521, Sub 29 (11-20-80)
Media Express, Inc. - T-1722, Sub 6 (10-2-80); Errata (10-3-80); Amended Errata (10-6-80)
Mid-State Delivery Service, Inc. - T-368, Sub 11 (10-29-80); Affirmed (10-29-80); Errata (10-30-80)

K. Rates-Truck

Motor Common Carriers - T-825, Sub 248 (3-17-80)
Observer Transportation Company, Inc. - T-107, Sub 13 (12-5-80); Final Order (12-5-80)
Ricks' Trailer Park - T-1405, Sub 3 (1-21-80)
Schwerman Trucking Company - T-1367, Sub 8 (6-11-80)
United Parcel Service, Inc. - T-1317, Sub 17 (12-10-80)

L. Sales and Transfers

Alexander Trucking Company of Davidson, Incorporated - C-63 from Alexander Trucking Company - T-263, Sub 8 (1-28-80)
All-American Moving & Storage Company, Inc. - C-135 from Tilmon R. Coltrain - T-2023 (3-19-80)
American Movers, Inc. - From William F. Hicks and John G. Rafferty to Direct Systems, Inc. - T-2090 (12-8-80)
B & B Lines, Inc. - C-97 from Old Dominion Freight Line, Inc. - T-1992, Sub 1 (10-15-80)
B-Freight Lines, Ltd. - C-526 from Harper H. Sutton Transportation Company - T-2029 (3-19-80)
Burks' Moving and Storage - C-710 from Mallonee Village Warehouse, Inc. - T-2020 (2-7-80)
Burks' Moving and Storage, Inc. - C-710 from Burks' Moving and Storage - T-2020, Sub 1 (4-8-80)
Canniff, Robert Taylor - C-630 from Morehead Moving and Storage - T-2011 (1-8-80)
Carpenter Trucking Company, Inc. - 508 from Carpenter Trucking Company - T-541, Sub 2 (1-8-80)
Coats, Kenneth L. - C-986 from Lewis C. Coats Trailer Moving Co. - T-2049 (7-11-80)
Coats, Lewis C., Trailer Moving Co. - C-821 from Cooper's Mobilehomes Moving Service, Inc. - T-1633, Sub 3 (5-20-80)

Norfolk Southern Railway Company - Overruling Exceptions and Affirming Order of 12-11-79 - R-4, Sub 112 (7-29-80); Granting Petition to Remove Portion of Side Track at Fayetteville - R-4, Sub 135 (10-17-80)
Seaboard Coast Line Railroad Company - Retire Its Team Track at Conetoe and Show Status of Conetoe as a Private Siding Station - R-71, Sub 92 (2-13-80)
Southern Railway Company - Retire and Remove a Portion of Side Track No. 26-21, Winston-Salem - R-29, Sub 317 (4-2-80); Remove Side Track No. 1-8, Mt. Airy - R-29, Sub 319 (12-30-80); Remove Side Track No. 1-38, Mt. Airy - R-29, Sub 320 (12-30-80); Remove Nunc Pro Tunc Side Track No. 100-8, North Wilkesboro; R-29, Sub 323 (1-24-80); Remove a Portion of Side Track No. 4-7, Griffith - R-29, Sub 327 (7-29-80); Produce to Dennis J. Winner the Side Track Agreement Between Southern and Prior Owners of Mr. Winner's Property - R-29, Sub 331 (7-30-80); Remove Track No. 70-1, Valdese - R-29, Sub 334 (11-26-80); Remove Side Track No. S-36-2, Statesville - R-29, Sub 338 (11-20-80)

I. Tariffs

Rail Common Carriers - R-66, Sub 117 (4-11-80); R-66, Sub 121 (11-7-80)

J. Miscellaneous

Trustees of REA Express. Inc., and CT Transport, Central Transport, Inc. - Cancelling R-5 - R-5, Sub 262 and T-1977 (9-17-80)
Graham County Railroad Company - Recommended Order Approving Application - R-22, Sub 5 (12-2-80)
Rail Common Carriers - Allowing Motion to Strike Ordering Paragraph No. 8 in the Commission Order of 12-17-79 - R-66, Sub 109 (1-22-80)
Southern Railway Company - Overruling Exceptions and Affirming Recommended Order of 8-28-80 - R-66, Sub 112 (9-24-80)
Rail Common Carriers - Allowing Notice and Publication on Less Than 30-Day Notice - R-66, Sub 122 (7-10-80)
Seaboard Coast Line Railroad Company - Granting Application to Waive Undercharges and Award Reparation - R-71, Sub 95 (11-19-80)

VIII. TELEPHONE

A. Complaints

Carolina Telephone and Telegraph Company - Complaint of Brandt Industries, Inc., et al. - P-7, Sub 642 (3-13-80); Closing Docket - P-7, Sub 642 (6-25-80)
Central Telephone Company - Closing Docket in Complaint of Harry L. Conley, et al. - P-10, Sub 380 (1-15-80); Declaring Dispute to Be Moot in Complaint of Ms. Susie B. Creadick - P-10, Sub 388 (7-31-80)
General Telephone Company of the Southeast - Complaint of Mrs. Trellie Jeffers - P-19, Sub 179 (8-13-80)

Southern Bell Telephone and Telegraph Company, Chapel Hill Telephone Company, and General Telephone Company of the Southeast - Complaint of Triangle Telecasters, Inc. - P-89, Sub 2 (1-14-80); Southern Bell to Provide Telephone Service to Northpoint Commercial Plaza - P-89, Sub 16 (7-16-80)
Southern Bell Telephone and Telegraph Company - Complaint of Town of Pineville (Pineville Telephone Company) - P-89, Sub 17 (12-10-80)

COMPLAINTS - DOCKETS CLOSED
Southern Bell Telephone and Telegraph Company - Complaint of Daniel K. Fulk - P-55, Sub 782 (9-3-80); Complaint of Sam Rawls - P-55, Sub 783 (9-3-80); Complaint of Dallas S. Bunton - P-55, Sub 785 (9-16-80)
Western Carolina Telephone Company - Corps Style, Incorporated - P-58, Sub 116 (8-15-80)

B. Rates
Aircall, Inc. - P-82, Sub 11 (6-26-80)
Pineville Telephone Company - P-120, Sub 8 (7-25-80)
Southern Bell Telephone and Telegraph Company - P-55, Sub 777 (2-19-80)

C. Sales and Transfers
Patterson Anserphone Communications Enterprises, Inc. - from Greenville Radio Dispatch - P-119, Sub 6 (1-4-80)

D. Securities - Authority to Issue and Sell
Anser-Quik Enterprises, Inc. - P-110, Sub 9 (1-18-80)
Carolina Telephone and Telegraph Company - 30-Year Debentures ($40,000,000) - P-7, Sub 651 (1-14-80); 30-Year Debentures ($50,000,000) - P-7, Sub 651 (4-24-80)
Central Telephone Company - Bonds, Series CC - P-10, Sub 393 (5-5-80)
The Concord Telephone Company - Nonvoting Common Stock - P-16, Sub 141 (6-13-80)
Continental Telephone Company of Virginia - First Mortgage Bonds - P-28, Sub 31 (4-15-80); ($15,000,000) - P-28, Sub 32 (9-24-80)
General Telephone Company of the Southeast - First Mortgage Bonds and Common Stock - P-19, Sub 178 (3-5-80)
Mid-Carolina Telephone Company - $9,547,024.67 of Exchange Bonds and Approval of Third Supplemental Indenture - P-118, Sub 15 (5-8-80); $6,220,000 of Exchange Bonds and Execute and Deliver a Fourth Supplemental Indenture - P-118, Sub 17 (10-10-80)

E. Service Areas
Carolina Telephone and Telegraph Company - P-7, Sub 654 (9-23-80)
Southern Bell Telephone and Telegraph Company - P-55, Sub 776 (10-20-80)

F. Tariffs
Carolina Telephone and Telegraph Company - P-7, Sub 653 (7-1-80)

E. Rates For Water/Sewer Service

Sugar Mountain Utility Company - W-482, Sub 2 (7-14-80); Amendment (8-7-80)
Superior Well Supply Company, Inc. - W-524, Sub 1 (7-14-80)
Umstead Water Company - W-282, Sub 1 (10-31-80)
Waterco, Inc. - W-80, Sub 27 (2-19-80)
Westgate Utilities Co., Inc. - W-239, Sub 2 (10-1-80)

F. Sales and Transfers

Beech Mountain Utility Corporation - from Carolina Carribean Utility Company - W-300, Sub 6 (6-12-80)
Brookwood Water Corporation - from Montclair Water Company - W-177, Sub 16 (9-18-80); Clarification Order (9-26-80)
Carolina Water Service, Inc., of North Carolina - from Gay Mountain Corporation - W-354, Sub 7 (4-25-80); from Crystal Mountain Corporation - W-254, Sub 8 (4-25-80); from North Carolina National Bank - W-354, Sub 9 (4-25-80); from Woodrow Utilities, Inc. - W-354, Sub 10 (3-11-80); from Carolina Forest Utilities, Inc. - W-354, Sub 11 (3-11-80); from Ski Mountain Service Corporation - W-354, Sub 12 (3-11-80); from General Homes Corporation - W-354, Sub 14 (5-14-80); from Waterco, Inc. - W-354, Sub 15 (10-23-80); Final Order (10-24-80)
Chimney Rock Water Works - from James C. Morris (Deceased) - W-102, Sub 5 (5-30-80)
Dockery's Water Systems - from David Dockery - W-721 and W-721, Sub 1 (10-21-80)
Fairways Waterways, Inc. - from R.E. Thomas Properties, Inc. - W-597, Sub 1 (6-4-80)
Highlands Country Club - from Highlands Nantahala Company, Inc. - W-719 (9-9-80)
Jones, James A. - from Cash and Webber - W-713 (7-10-80)
Kimberly Court Water System - from Robert Yarbrough and Lewis Burge to William Lineberger - W-350, Sub 1 (4-10-80); from William Lineberger - W-350, Sub 2 (10-3-80)
LaGrange Waterworks Corporation - from Rosewood Water Company -W-200, Sub 8 (1-29-80)
Lewis Water Company, Inc. - from Robert Bare Construction Company Inc., and Jack Moore - W-716; W-716, Subs 1 and 2 (8-12-80)
Mid South Water Systems, Inc. - from Bridges Community Water System, Inc. - W-720 (11-7-80); Errata (11-18-80)
Milstead Community Water System - from Community Water System -W-718 (9-9-80)
Morgan, John H. to Trustees of Hollyview Road and Water Association (Homeowner's Association) - W-552, Sub 2 (1-23-80)
Ocean Side Corporation to the Town of Sunset Beach - W-636, Sub 1 (4-23-80)
Piedmont Estates Water System - from Willie L. Frank - W-581, Sub 2 (4-21-80)
Pope, Mrs. A. R. - to the City of Hendersonville - W-485, Sub 1 (8-7-80)