SEVENTY-FIRST REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1981 THROUGH DECEMBER 31, 1981

SEVENTY-FIRST REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1981, through December 31, 1981

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, 1981

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, 1981, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1981, and ending December 31, 1981.

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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of the

North Carolina Utilities Commission

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DOCKET NO. M-100, SUB 78

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Cost-Based Rates, Load Management, and Conversation Oriented End-Use Activities	) ORDER ESTABLISHING REFUND OF ENERGY) AUDIT FEE BY VIRGINIA ELECTRIC AND) POWER COMPANY UNDER THE NORTH) CAROLINA RESIDENTIAL CONSERVATION) PROGRAM ON EXPERIMENTAL BASIS

BY THE COMMISSION: On September 22, 1981, Virginia Electric and Power Company requested that customers charged $10 for on-site energy audits under the Residential Conversation Service Program be refunded the $10 where the customers subsequently install approved conservation measures.

Vepco proposed the refund as an added incentive for the customer to install the recommended conservation measures. The refund will also enable the Company, the Energy Division, and the Commission to more accurately evaluate the effectiveness of the program.

The Public Staff recommended that the refund be approved subject to modifications, to which the Company has agreed.

Based upon the foregoing, the Commission is of the opinion that the Company's proposal be adopted, as modified.

IT IS, THEREFORE, ORDERED that under the North Carolina Residential Conservation Service Program, Virginia Electric and Power Company shall refund the $10 fee collected from each customer who received a Class A on-site energy audit and who, as a result of the audit, subsequently installed the approved conservation measures.

ISSUED BY ORDER OF THE CHAIRMAN.
This the 12th day of November 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

(SEAL)

GENERAL ORDERS - GENERAL

DOCKET NO. M-100, SUB 78
DOCKET NO. E-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of Cost-Based Rates, Load Management and Conservation Oriented End-Use Activities	) ORDER) CONCERNING
and	) FILING OF) REPORTS ON
Determination of Rates for Purchase and Sale of Electricity Between Electric Utilities and Qualifying Cogenerators or Small Power Producers and Rulemaking Concerning Conditions and Requirements for Such Service	) STATUS OF) COGENERATION) AND SMALL) POWER PRODUCTION

BY THE CHAIRMAN: On June 6, 1979, the North Carolina Utilities Commission issued an Order in Docket No. M-100, Sub 78, whereby each electric utility subject to said Order was thereafter required to file reports with the Commission by May 1 and November 1 of each year detailing the receipt of applications for cogeneration service. On September 21, 1981, the Commission issued an Order in Docket No. E-100, Sub 41, whereby each electric utility subject to the jurisdiction of this Commission is required to file by August 1 and February 1 of each year, a summary of the cogeneration and small power producer activity of the utility during the previous January - June or July - December periods, including changes in the numbers and capacities of facilities under contract and names of qualifying facilities over five kilowatts.

Based upon a letter request filed in Docket No. M-100, Sub 78, on October 30, 1981, by Carolina Power & Light Company, the Chairman concludes that electric utilities should not be required to continue to file cogeneration reports in Docket No. M-100, Sub 78, but that such reports should henceforth be filed in conformity with the requirements of decretal paragraph number 5 of the Order heretofore entered by the Commission on September 21, 1981, in Docket No. E-100, Sub 41.

IT IS, THEREFORE, ORDERED that the cogeneration reports required to be filed by Commission Order entered in Docket No. M-100, Sub 78, on June 1, 1979, be, and the same are hereby, discontinued and that future cogeneration and small power production status reports need be filed only in Docket No. E-100, Sub 41, pursuant to the requirements set forth in decretal paragraph number 5 of the Order entered in that docket on September 21, 1981.

ISSUED BY ORDER OF THE CHAIRMAN.
This the 17th day of November 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Rule R1-17(b)(12) of the Rules and Regulations of the North Carolina Utilities Commission) ORDER DISCONTINUING PROCEEDING) (R1-17(b)(1)) AND CLOSING) DOCKET

BY THE COMMISSION: This docket was instituted on August 10, 1978, when the Commission issued a Notice of Proposed Rule Change. In the Notice the Commission stated that the extensive filings required by Commission Rule R1-17(b)(12) may be an unnecessary burden on the railroads when an application for a rate increase involves only one commodity and affects only a small portion of a railroad's rate structure. The Commission proposed to modify Rule R1-17(b)(12) so as to provide for more simplified filing requirements in instances where an increase is sought on a single commodity rail rate. Extensive hearings, conferences, and reports took place on the proposed rule change.

On October 14, 1980, the Staggers Rail Act of 1980 was signed into law by President Carter. The Act provided, among other things, that intrastate single commodity rail rates must be fixed in conformity with the standards and procedures of the Staggers Act.

On May 29, 1981, the General Assembly enacted Chapter 476, Session Laws of 1981, which adds a new subsection to G.S. 62-133 to read as follows:

> "The Commission is not authorized to entertain applications filed on behalf of intrastate rail carriers to fix rates for a single commodity or to fix rates for groups of commodities which constitute less than a general rate increase."

Upon consideration of the enactment of Chapter 476, the Commission is of the opinion that this proceeding should be discontinued and the docket closed.

IT IS, THEREFORE, ORDERED that this proceeding be discontinued and that this docket be closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of June 1981.

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

DOCKET NO. M-100, SUB 82

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Required Statement of Conformity with Voluntary Wage and Price Guidelines) ORDER) RESCINDING RULE

GENERAL ORDERS - GENERAL

BY THE COMMISSION: On January 23, 1979, the Commission issued its Order amending Commission Rule R1-17 to include the requirement that every general rate application include an explanation of how the requested rate increase complies with the anti-inflation guidelines promulgated by the Council on Wage and Price Stability or to demonstrate why it should not comply.

On January 29, 1981, the President of the United States issued Executive Order 12288, (Federal Register Volume 46, No. 21, Monday, February 2, 1981) which terminated the Wage and Price Regulatory Program.

The Commission, therefore, concludes that its rules should be amended to reflect said termination.

IT IS, THEREFORE, ORDERED as follows:

That Commission Rule R1-17(b)(9)(g) is hereby rescinded.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of April 1981.

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

DOCKET NO. M-100, SUB 85

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Rule Revision Request for Deregulation) RECOMMENDED ORDER EXEMPTING
Soybean Meal Motor Carriers in North Carolina) SOYBEAN MEAL FROM REGULATION
) (RULE R2-52)

HEARD IN: Room 215, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, 27602, on October 1 and 2, 1980

BEFORE: Commissioners A. Hartwell Campbell (Presiding), Leigh H. Hammond, and Sarah Lindsay Tate (Commissioner Hammond did not participate in the decision.)

APPEARANCES:

For the Public Staff:

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

For the Intervenors:

J. Melville Broughton, Jr., Broughton, Wilkins, & Crampton, Attorneys at Law, P. O. Box 2387, Raleigh, North Carolina 27602
For: North Carolina Poultry Federation, Inc.

James M. Kimzey, Kimzey, Smith & McMillan, Attorneys at Law, P. O. Box 150, Raleigh, North Carolina 27602
For: Cargill, Inc., and Ralston Purina Company

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P. O. Box 2246
For: B&W Grain and Feed Service, Inc., Bowling, Inc., and Riverside Transportation, Inc.

BY THE COMMISSION: James A. Graham, Commissioner, Department of Agriculture, State of North Carolina, Raleigh, North Carolina; Tom Farmer, Executive Secretary, Pork Producers Association, Inc., Raleigh, North Carolina; John A. Guglielmi, Vice President, Commodity Purchasing, Holly Farms Poultry Industries, Inc., Wilkesboro, North Carolina; R. G. Gurley, President Gurley's Inc., Selma, North Carolina; James F. Wilder, Executive Vice President, North Carolina Soybean Producers Association, Inc., Raleigh, North Carolina; and John J. Crane, Harris-Crane, Inc., Charlotte, North Carolina, each wrote the Commission a letter requesting that soybean meal be declared an exempt commodity by this Commission. They alleged that the exemption of soybean meal from the Commission's regulations would allow the better coordination of the hauling of soybeans and soybean meal and would result in a significant savings of fuel costs for the poultry, livestock, and bean processing industries.

Having considered these letters, the Commission concluded that it should initiate a rule-making investigation to consider whether or not to modify Commission Rule R2-52 to make soybean meal exempt from Commission regulation. Accordingly, the Commission proposed for consideration a new subsection to Rule R2-52 which would read as follows:

"Rule R2-52...(a) Transportation of the following commodities is exempted from regulation:

(8) Soybean meal, in truckloads."

By Order issued on August 26, 1980, the Commission set a public hearing on this matter on October 1, 1980, for the purpose of considering comments and taking testimony. Copies of the Order were served upon all carriers with authority to haul soybean meal and upon all persons who had written to the Commission requesting the exemption.

On September 22 and 29, 1980, the Commission issued Orders allowing petitions of intervention on behalf of Ralston Purina Company, the North Carolina Poultry Federation, Inc., Cargill, Inc., B&W Grain & Feed Services, Inc., I. W. Bowling, Inc., and Riverside Transportation Company, Inc.

The Commission received numerous letters from interested persons stating their desire to appear at the hearing and requesting to offer testimony. The

Commission also received an affidavit from Zackley Rite Trucking, Inc., in opposition to the proposed rule revision.

On October 1, 1980, in The Commission's Hearing Room, Raleigh, North Carolina, the Commission heard the various witnesses in this docket who appeared to give testimony.

The Honorable James A. Graham, Commissioner of Agriculture of North Carolina, testified stating that he supported deregulation of soybean meal. Also testifying in support of deregulation were: James F. Wilder, Executive Vice President of the North Carolina Soybean Producers Association; John W. Sledge, President of North Carolina Farm Bureau Federation; John A. Guglielmi, Vice President of Holly Farms Poultry Industries, Inc.; Lloyd M. Massey, Master of the North Carolina State Grange; Ben B. Everett, Jr., a farmer and soybean producer in Halifax County; Edward H. Weaver, a farmer; Bill Welfare, of Snow Hill Milling Company; Marc A. Johnson, Associate Professor of Economics and Business at North Carolina State University; John J. Crane, of Harris-Crane, Inc.; W. Jay Derby, Purchasing Agent of Goldsboro Milling Company; Flint Harding, Plant Manager of Cargill, Inc.; and John W. Wagnon, Jr., and Douglas T. Fink of Ralston Purina Company.

Intervenors resisting any change in the present regulation of soybean meal who testified were: Mrs. I. W. Bowling of I. W. Bowling, Inc.; Curtis J. Whitley of B&W Grain & Feed Services, Inc.; Dennis Adams Peacock of Riverside Transportation Company, Inc.; and Zack Royce Bissette of Zackley Rite Trucking, Inc.

WITNESSES IN FAVOR OF EXEMPTING SOYBEAN MEAL

James A. Graham, Commissioner of Agriculture, State of North Carolina, testified as to the critical financial condition of the farmers of North Carolina, and his responsibility as Commissioner of Agriculture to help the farmers of the State lower some of their cost; he contended that one way to accomplish this is through the deregulation of soybean meal. He gave examples of how there would be savings from the standpoint of fuel and "trucking efficiency." He spoke specifically of the present situation where a trucker takes a farmer's soybeans to a processor but then has to return empty; whereas, under deregulation the trucker could bring back soybean meal, resulting in a full load each way with obvious savings and efficiency.

James F. Wilder, Executive Vice President of the North Carolina Soybean Producers Association, testified that the "Federal Motor Carrier Act of 1980" signed into law on July 1, 1980, exempts soybean meal and similar feed ingredients from interstate truck regulation by the Interstate Commerce Commission. He pointed out that soybean meal moving in interstate commerce as an exempt agricultural commodity places intrastate truck shipments within North Carolina at a competitive disadvantage. He emphasized that intrastate truck deregulation of soybean meal would be a step towards conserving energy and increasing productivity, thereby benefiting soybean farmers, poultry and livestock producers, and all the consumers of the State.

John W. Sledge, President of the North Carolina Farm Bureau Federation, testified that his organization represented more than 185,000 family members in

North Carolina and that the organization has for a long time been concerned about the movement of agricultural commodities in interstate and intrastate commerce. He spoke of the legislative efforts of his organization to exempt from regulation all poultry and livestock feed destined to an agricultural production site or business enterprise engaged in sales to agricultural producers. He pointed out that deregulation in North Carolina would not deny any of the present motor carriers their right to continue to haul the product but that it would allow truckers who haul soybeans from farms or processing plants to haul soybean meal on the trip back.

John A. Guglielmi, Vice President in Charge of Commodity Purchasing for Holly Farms Poultry Industries, Inc., strongly urged adoption of the proposed rule change. He indicated that in the recent past the Commission has responded to poor service of regulated carriers by granting additional permits to haul soybean meal. However, the poultry industry in North Carolina needs more haulers. Soybean meal constitutes 20% to 25% of the average poultry feed formula. Holly Farms uses over 140,000 tons of soybean meal annually at a cost of over $28 million. Deregulation is thus important to the consumers of the State and the poultry industry. Savings in fuel and improvement in competition and efficiency fully justify the proposed rule.

Lloyd M. Massey, Master of the North Carolina State Grange and a producer of soybeans, stated the Grange had been urging a more adequate transportation system to move farm products to market at more reasonable cost and convenience. Thus soybean meal should be deregulated.

Ben B. Everett, Jr., farmer and producer of soybeans and general crops, Halifax County, pointed out that he had for a long time shipped soybeans by rail to Raleigh and to Norfolk and that his feed and fertilizer came to him by rail. Most of his grain now moves by licensed haulers supplementing farm income; every possible "backhaul" would be a help to these truckers. He pointed out that a trucker going to Norfolk can bring back a load of soybean meal unregulated; whereas, if he goes to Raleigh at the present time he cannot return with meal.

Edward H. Weaver, Route 1, Princeton, North Carolina, trucker and farmer, testified that when trucks come into mills like Ralston Purina and Cargill with "a load of beans, most of them today go back empty unless they trip lease." He pointed out that he must trip lease under a company having soybean rights in order to haul meal back and that to do this he has to make prior arrangements. He also has to pay the company having the rights about 15% or 20%. If he did not have to pay this extra charge to trip lease and could make a haul back in his own truck with meal, then that savings could be passed on to the farmer.

Bill Welfare, Snow Hill Milling Company, Snow Hill, North Carolina, stated that he is connected with a grain elevator and part of his work involves buying and selling soybeans. He hauls the soybeans to mills in Fayetteville and Raleigh, after buying them directly from the farmer, and resells them in Fayetteville and Raleigh. After taking beans in his own truck to these two points, he has to come back empty; he would like to get some freight by hauling soybean meal back to places in his area. He emphasized that the cost of freight is a large part of the spread between the purchase price and selling price in dealing in soybeans. The farmer would benefit from the lower cost.

Marc A. Johnson, Associate Professor of Economics and Business, North Carolina State University, Raleigh, North Carolina, testified that he had specialized in the economics of agriculture transportation issues for approximately seven years and that he was testifying as a public witness to present results of a study. Dr. Johnson's statement emphasized the following:

1. His purpose in testifying is to establish that estimated effects of soybean meal deregulation for truck transport are based on an economically and logistically sound and realistic measure of regulatory-rule-determined empty truck mileage.

2. Avoidable truck cost and fuel losses are direct, absolute measures of the costs of regulatory rules.

3. Logistical requirements for fronthaul-backhaul coordination include volumes of commodity flow moving in opposite directions between two areas, commodity flow moving at the same time, and commodities moving which are capable of being moved in the same truck equipment. Under competitive, unregulated conditions, these requirements are necessary and sufficient for a degree of backhaul coordination equivalent in volume to the smallest-volume directional flow.

4. Evidence shows that logistical requirements for soybean and soybean meal backhaul coordination are fulfilled in North Carolina and that regulation-determined empty truck mileage potentially could be saved by reclassifying soybean meal as an exempt commodity for trucking.

5. North Carolina has substantial poultry and hog feeding industries located in the region of concentrated soybean production, which is mainly the Coastal Plain region of the State.

6. Soybean meal is the principal form of protein in hog and poultry feed.

7. The presence of soybean production and meal use in the same area provides the potential for two-way commodity flows between the soybean producing region and the soybean processing plants.

8. Fuel savings attributable to the reclassification could amount to 48,000 to 56,000 gallons per year.

9. The financial value of trucking resources which could be saved with the rule change could amount to from $1.5 to $1.7 million. These estimates of a savings are "fairly conservative."

John J. Crane, associated with Harris-Crane, Inc., commodity brokers, testified that most of the soybean meal produced by North Carolina soybean crushers is delivered within a 200-mile radius. He pointed out that rail service is extremely inadequate for short hauls of soybean meal. The witness testified that soybean crushing plants are now striving for better truck operation by loading trucks more hours of the day and night. In most instances trucks that are unloading beans could be utilized for meal that is needed in mixing plants, if meal is an exempt item. He emphasized that there are not enough trucks at the present time. He did not feel the regulated trucks should

have anything to fear with deregulation. Deregulation of soybean meal solves a problem of regulated trucks not being available as quickly as needed.

W. J. Derby, Purchasing Agent for Goldsboro Milling Company, testified that Goldsboro Milling Company is an integrated turkey producer and also operates a large turkey hatchey, producing about four million turkeys and hatching about 11 million poults annually. The company buys about 20,000 tons (800 truck loads) of soybean meal annually with a vast majority originating in Raleigh and Fayetteville. In past years most of this came by rail, but with higher rail rates the company now buys 95% by truck. Deregulation of soybean meal will eliminate empty backhauls and reduce rates. He presented a model for 1981 showing that if meal is deregulated there could be a saving of 9,000 gallons of fuel in connection with his company's operations. Better, more effective use of trucks will allow the company cheaper freight rates, ranging from $3,00 to $1.00 per ton. This savings (average $2.00 per ton) will equal $30,000 annually. If agriculture in North Carolina is going to be a competitive, productive entity, soybean meal must be deregulated.

Flint Harding, Jr., Plant Manager, Cargill, Incorporated, testified that Cargill operates in Fayetteville a soybean processing plant and vegetable oil refinery. His plant receives approximately 22 million bushels of beans a year, of which 70% come by truck and 30% by rail. He further testified that approximately 22,000 truckloads per year of beans were shipped to his plant in intrastate commerce from farmers in North Carolina and that most of these trucks go out empty. He also testified that Cargill shipped out approximately 480,000 to 485,000 tons of meal per year and that 55% of that was shipped by truck, or approximately 13,000 truckloads of meal per year. Of these 13,000 truckloads, he estimated that at least 90% of them arrive empty, so that less than 10% have a double haul of beans into the plant with meal out. He further testified that all freight on the meal and the beans is paid for by the farmer or processor. He testified that the farmer and the processor, rather than Cargill, would benefit on lower rates resulting from deregulation. He stated that there would be a savings of from one to two dollars per turn on double loads; since there were 266,000 tons of meal going out by truck per year, that could result in a savings of anywhere from $266,000 to $532,000 a year as the number of double loaded vehicles increased as a result of deregulation. He also testified that approximately 140,000 gallons of gasoline could potentially be saved with two-way hauls taking the place of the existing one-way traffic. These figures indicate a much higher potential saving than those found in Mr. Johnson's studies and confirm Mr. Johnson's testimony that his figures were conservative. He stated on cross-examination that there was nothing to prevent regulated carriers now carrying soybeans from continuing to carry them if soybeans were deregulated. He testified that the present regulated haulers, with the exception of Mr. Whitley, do not engage in two-way hauls.

John W. Wagnon, Jr., buying manager for Ralston Purina Company in North Carolina, testified that the Ralston Purina plant in Raleigh is a soybean processing plant producing soybean oil and meal. He testified that his plant processes in excess of 300,000 tons of soybeans a year, yielding 60,000 tons of oil and around 225,000 tons of meal. He also testified that approximately 95% of those shipments moved within the State of North Carolina and the majority of them moved by truck. He stated that there are 329 grain dealers in North Carolina who handle soybeans, and only 123 of these are located on a railroad.

He testified that less than 5% of those trucks which come into his plant with beans are reloaded with soybean meal before leaving the plant. He also stated that on an average day there are an average of 21 trucks leaving with meal and that there were less than an average of three a day that arrive loaded with beans that left with meal. He testified that the farmer or the user of the meal would benefit from any lower rate. He also stated he thought Mr. Johnson's conclusions concerning the savings to be realized by deregulation were very conservative. He stated that the farmers of North Carolina would benefit from deregulation of soybean meal.

WITNESSES IN OPPOSITION TO THE EXEMPTION OF SOYBEAN MEAL

Mrs. I. W. Bowling testified that she is connected with I. W. Bowling, Inc., which holds common carrier authority (Certificate No. C-1077) from the Commission to haul all feed ingredients statewide. She stated that her company is transporting soybean meal on a regular basis year-round; that in 1979 the company transported 917 loads of soybean meal, at a revenue from these moves of $61,871.48. The company's total revenues from all operations in 1979 was $120,915. For the year 1980 (through August) the company transported 270 loads of soybean meal, with revenues therefrom of $38,089. Ninety percent of the company's soybean meal moves comes out of Fayetteville and is transported back to the Bonlee-Goldston area in Chatham County. The trucks go to Fayetteville empty. The company at present operates three trucks, with an investment therein of $150,000 to $200,000. The company pays collision and liability insurance premiums in excess of $13,000 a year.

Curtis J. Whitley, of B&W Grain Feed Service, Inc., testified that he was connected with the management of B&W Grain Feed Service, Inc., and that it holds common carrier authority (Certificate No. C-1114). He testified that he carried both soybean meal and soybeans and indicated the number of loads and revenue produced therefrom. In 1980, B&W transported 801 truckloads of soybean meal and realized revenues of $169,198 therefrom. He also testified that a grain company owns B&W Trucking Company and operates a grain-buying and storage facility. He testified he handled things other than soybean meal, such as wheat mids, and he tries not to let his trucks run empty. Mr. Whitley testified on cross-examination that only three or four of the 23 authorized carriers were carrying soybean meal.

Dennis Adams Peacock, President of Riverside Transportation Company, testified that Riverside Transportation Company was a common carrier (Certificate No. C-1084) in North Carolina carrying animal feed and feed ingredients, among other things. He testified as to the number of shipments and the revenue produced by his soybean meal shipments. During 1980 (through August) the company transported 240 truckloads of soybean meal, with revenues of $53,000. He stated that he had not been successful in coordinating backhauls of soybean meal with soybean shipments. He testified that most of his meal hauled was strictly on an emergency basis, but that he hauled both to and from Cargill and Ralston Purina. He stated that in addition to soybeans he hauls pinebark, fishmeal, meatmeal, feathermeal, blood, and a lot of coal.

Zack Royce Bissette, Zackley Rite Trucking, Inc., testified that his company carried soybean meal under authority contained in a Recommended Order and that he had only been in the business for a few weeks. He testified that he was

averaging carrying about 10 loads of soybean meal a week and did not desire to transport soybeans. He stated the cost of his equipment ($320,000) and the type of equipment which he uses. On cross-examination he stated that he had begun operation under trip leases to Mr. Peacock's firm since 1977, but that he had been operating illegally from 1967 to 1977. Once he started operating on the trip leases he had to pay 15% to the owner of the rights just to haul the beans, and that was over and above his profit.

Upon consideration of 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 production of soybeans in North Carolina is an important agricultural commodity that has increased in volume in recent years.

2. The poultry industry in North Carolina has grown in recent years and there are many poultry processing plants in the State at various locations.

3. The continued production and increase in production of soybeans in North Carolina is essential to the poultry and livestock industries in North Carolina. Soybean meal is an important ingredient in poultry and livestock feed, it being the principal source of protein.

4. The producers of soybeans in North Carolina, as well as all farmers, are worse off financially than a year ago; during the period from September 1979 through August 1980 the index of prices received by North Carolina farmers and producers rose 7%, while the index of prices paid by farmers rose 13%, a spread between cost and revenue of 6%.

5. The cost of transportation is a vital factor in the expense of hauling soybeans and soybean meal, both as to the producers of soybeans and the processors of soybean meal. Since rail transportation of soybean meal has proven ineffective and inadequate in North Carolina, transportation of soybeans and soybean meal by trucks has been steadily increasing to a dominant position for producers and for processors.

6. In North Carolina, there are substantial poultry and livestock feeding industries located in those counties where the production of soybeans is concentrated. Further, the commercial and farm storage of soybeans is located primarily in the region of concentrated soybean production.

7. In the counties of North Carolina where soybean production is the heaviest there are many movements by truck of soybeans from the farm or storage facility to soybean processing plants such as Cargill in Fayetteville and Ralston-Purina in Raleigh. Cargill receives about 22,000 truck loads of soybeans per year in intrastate commerce, and Ralston-Purina receives a similar amount. These processors convert the raw soybeans to soybean meal.

8. The transportation of soybeans is exempt from regulation by this Commission. Most or nearly all of the transportation of soybeans from farm or storage facility to processing plants is by exempt haulers.

9. Most of the truck loads of soybeans that are received by the major soybean processors, Cargill and Purina, leave the plants empty as a result of the present regulatory scheme which requires a Certificate from this Commission to transport soybean meal. This situation, whereby exempt truckers carry soybeans to the processing plants and leave empty, creates what is known as an "empty back haul."

10. Soybeans and soybean meal are carried at the same time of the year and in similar truck equipment.

11. The presence of soybean production and soybean meal use in the same area of North Carolina provides the opportunity for two-way commodity flows between the soybean-producing region and the soybean-processing plants.

12. The reclassification of soybean meal as an exempt commodity for truck transportation in North Carolina will allow the exempt haulers of soybeans to coordinate soybean meal backhauls with the front hauls of soybeans to the processors, thereby reducing empty truck miles and yielding fuel, truck costs and highway use savings. Also, since exempt haulers of soybeans originate loads in soybean producing counties, these haulers are in a position to know the demands for loads of soybean meal by feed blenders located in soybean-producing counties. Consequently, reclassification would make meal hauls directly available for backhaul to those truckers who best know the demands for meal hauls.

13. The logistical requirements for soybean-soybean meal backhaul coordination are fulfilled in North Carolina. These requirements were established by Dr. Marc A. Johnson and Dr. William S. Tyny in a study entitled "Effects of Re-Classifying Soybean Meal as an Exempt Commodity for Truck Transport in North Carolina." The requirements include:

a. Volumes of commodity flow moving in opposite directions between two areas,

b. Commodity flow moving at the same time, and

c. Commodities moving which are capable of being moved in the same truck equipment.

14. Fuel savings attributable to the reclassification of soybean meal as an exempt commodity could amount to at least 48,000 to 56,000 gallons per year.

15. The financial value of trucking resources which could be saved by reclassification could amount to $1,500,000 to $1,700,000. Most of these savings would be passed on to soybean producers and consumers of poultry and livestock products.

16. Reclassification of soybean meal will allow a greater utilization of all trucks in North Carolina that are available to haul this important commodity, thereby improving competition and bringing about greater efficiency. Soybean producers, processors, and the consuming public would be benefited.

17. There continues to be a need in North Carolina for additional truck transportation of soybean meal, and such additional transportation would be a benefit to all segments of the soybean industry in North Carolina.

18. There are 23 motor truck carriers holding certificates from this Commission to haul soybean meal; of this number, only four entered protests and testified in opposition to the proposed exemption. There are only four or five active carriers of soybean meal at the present time. The four Intervenor carriers operate in total only 21 tractors and two straight trucks. The Commission, taking judicial notice of the Intervenors' tariffs on file with it, finds, for example, that the rate (excluding fuel surcharge) for the transportation of soybean meal between Raleigh and Goldsboro is $7.00 per ton in Riverside's Tariff N.C.U.C. No. 4; $4.80 per ton in B&W Grain's Tariff N.C.U.C. No. 1; $5.73 in I. W. Bowling's NCMCA Tariff 10-H, N.C.U.C. No. 117; and $6.22 per ton in Zackly Rite's Tariff N.C.U.C. No. 1.

19. The exemption of soybean meal will not adversely affect the ability of the certificated carriers to operate, since they will retain the right to transport soybean meal and other commodities included within their certificate.

20. Numerous public witnesses testified in favor of the Commission declaring soybean meal an exempt commodity, including the Commissioner of Agriculture of the State of North Carolina, the officials of various farm organizations, and soybean farmers and processors. No public witnesses testified in opposition to reclassifying soybean meal as an exempt commodity. The only witnesses testifying against the proposed reclassification were representatives of trucking companies holding certificates to haul soybean meal.

CONCLUSIONS

1. The Commission concludes that the transportation of soybean meal in truck loads should be exempted from regulation under the Public Utilities Act (except as provided in G. S. 62-260(g) and G. S. 62-281) and that Commission Rule R2-52 should accordingly be amended by adding a new subsection (8) thereto so as to read, in relevant part, as follows:

"Rule R2-52. Exemption of clay, fertilizer, lumber, grain, pipe, peanuts, cotton seed, etc. - (a) Transportation of the following commodities is exempted from regulation:

.....

(8) Soybean meal, in truckloads."

2. In so deciding that soybean meal should be declared an exempt commodity, the Commission further finds and concludes that the transportation of soybean meal in truck loads in intrastate commerce is of such a nature and character as not substantially to affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in intrastate commerce. G.S. 62-261 (8).

The Commission further concludes:

3. The exemption of soybean meal approved herein will bring about substantial fuel savings of at least 48,000 to 56,000 gallons per year.

4. The value of trucking resources which could be saved by the exemption approved herein could amount to $1,500,000 to $1,700,000 and most of the savings would be passed on to soybean producers and to consumers of poultry and livestock products.

5. The exemption of soybean meal will allow a greater utilization of all trucks in North Carolina that are available to haul this important commodity, thereby improving competition and bringing about greater efficiency in transportation of soybean meal.

6. The reclassification of soybean meal as an exempt commodity will not endanger or impair the operations of existing carriers who hold certificates from this Commission.

7. As a result of the savings and greater efficiency that will flow from the declaration of soybean meal as an exempt commodity, the public interest will be served thereby.

The adoption herein of Commission Rule R2-52(8) declaring soybean meal in truck loads to be exempt from regulation is but the latest in a long line of rule-making proceedings exempting specific commodities from regulation by this Commission. See, for example, Commission Rules R2-49 (fresh cucumbers), R2-50 (wrecked or disabled motor vehicles), R2-52 (clay, concrete or shale products; dry fertilizer; lumber; grain, other than seed grain; peanuts; cotton seed), and R2-53.1 (native fresh vegetables, fruits and orchard products). These Rules have been adopted in various dockets since 1962 pursuant to the Commission's statutory authority to exempt various commodities from regulation. The exemption over the years of the various commodities enumerated above cannot be legally distinguished from the case at hand. This longstanding practice of the Commission is, in and of itself, evidence of the authority of the Commission to so act.

The evidence in this proceeding amply supports the Commission's declaration of soybean meal as an exempt commodity. The evidence clearly establishes the importance of soybeans and soybean meal in the economy of North Carolina. Most or nearly all truck loads of soybeans that are received by the soybean processors in North Carolina (Cargill and Purina) are hauled by exempt carriers. Under the present regulatory scheme these haulers are not allowed to return home with truck loads of soybean meal, even though "home" is most likely in that area of North Carolina that has a high concentration of soybean meal use. Empty back hauls are the result. As the evidence and the findings herein point out, soybean production and soybean meal use largely exist in the same area of North Carolina, thereby providing for two-way commodity flows between the soybean-producing region and the soybean-processing plants. The reclassification of soybean meal as an exempt commodity will afford the exempt haulers of soybeans ample opportunity to coordinate soybean meal back hauls with their front hauls of soybeans to the processors. There will be attendant savings to farmers and to consumers of poultry products. There will also be greater efficiency in the transportation of soybeans and soybean meal.

The evidence in this proceeding also amply demonstrates that the exemption of soybean meal approved herein will not substantially affect or impair uniform regulation by the Commission of transportation by motor carriers engaged in intrastate commerce. As the Public Staff pointed out in its Proposed Order supporting the exemption of soybean meal, the present economic regulation of soybean meal has not been uniform in the sense that all rates are the same for like transportation services. Finding of Fact No. 18 above found that the four Intervenor carriers each charged different rates for the transportation of soybean meal for the same distance. As the Public Staff further pointed out in its Proposed Order, the exemption of soybean meal would not impair any uniformity of entry regulation, but would, on the contrary, improve the availability of transportation to meet the needs of the processors and users of soybean meal. The total number of common carriers authorized to transport soybean meal is 23. Curtis J. Whitley, Manager of B&W Grain & Feed Services, Inc., a certificated carrier, acknowledged that there are only four or five active carriers of soybean meal in intrastate commerce. This means that 23 carriers demonstrated a public need for the service, but only four or five of these carriers are currently fulfilling the obligation to serve. The fact that 23 carriers are certificated to transport soybean meal is indicative of this Commission's previous efforts to assure that the transportation needs of the soybean meal industry would be adequately met. The fact that only four or five of these 23 carriers are actively performing the service is of great concern to this Commission. The soybean meal industry is too important an industry in North Carolina to be left in this transportation posture. The exemption of soybean meal approved herein will allow a greater utilization of all trucks in the State that are available to haul soybean meal.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

(1) That the transportation of soybean meal, in truck loads, be, and the same is hereby, exempted from regulation under the North Carolina Public Utilities Act, except as provided in G. S. 62-260(g) and G. S. 62-281.

(2) That Commission Rule R2-52, be, and the same is hereby, amended by adding the following subsection:

"(8) Soybean meal, in truck loads."

(3) That this Order shall become effective on and after the effective date hereof and shall remain in effect until vacated or modified by further order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of January 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

GENERAL ORDERS - GENERAL

DOCKET NO. M-100, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Proposed Rule Revision - Request to Include Gasohol in Group 3, Petroleum and Petroleum Products, Rule R2-37	) ORDER AMENDING) RULE R2-37, GROUP 3,) TO INCLUDE GASOHOL

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 23, 1981, at 10:00 a.m.

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Intervenor:

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P. O. Box 2246, Raleigh, North Carolina 27602
For: Tidewater Transit Company

PARTIN, HEARING EXAMINER: On February 17, 1981, the Commission issued an Order instituting a rulemaking proceeding to consider whether or not to modify Commission Rule R2-37 to include gasohol in the description of Group 3, petroleum and petroleum products. The Order scheduled a public hearing on the proposed rule amendment but provided that if no substantial protests or petitions to intervene were filed on or before April 13, 1981, the matter would be decided on the record without a hearing.

A copy of the Order was served upon all carriers of petroleum products.

The Public Staff filed Notice of Intervention on March 18, 1981, and Tidewater Transit Co. filed Petition to Intervene on April 10, 1981. As a result of these interventions the Commission reaffirmed the hearing schedule in this docket.

The matter came on for hearing as schedule. Tidewater Transit Co. was present and represented by counsel. Tidewater offered the testimony of Charles W. Smith, President of the Company, and Wayne A. Mallard, Jr., President of Mallard Oil Company.

No one else appeared at the hearing.

FINDINGS OF FACT

1. Gasohol is a blend or mixture of approximately nine parts gasoline to one part alcohol.

2. Gasohol is a relatively new product and its use as a fuel for motor vehicles is growing in North Carolina.

3. Gasohol is to a large extent retailed by persons and firms that also market gasoline.

4. Commission Rule R2-37 defines petroleum and petroleum products to include "gasoline, natural or blended."

5. There is a demonstrated need to amend Rule R2-37, Group 3, to include gasohol, so as to allow all certificated carriers of petroleum and petroleum products to transport gasohol within their operating territories and thereby eliminate wasteful and inefficient use of equipment.

CONCLUSIONS

1. Commission Rule R2-37, Group 3, should be amended to include gasohol.

2. The certificates of all existing common carriers of petroleum and petroleum products, in bulk, in tank trucks, should be amended to authorize the transportation of gasohol between all points within their present operating territories.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R2-37, Group 3, be amended by inserting the word "Gasohol" immediately after the term "Gas, liquefied Petroleum" and before the term "Gas Oil."

2. That the certificates of all existing common carriers of petroleum and petroleum products, in bulk, in tank trucks, be amended to authorize the transportation of gasohol between all points within their present authorized operating territories.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of May 1981.

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

DOCKET NO. M-100, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Rule Revision - Request to Include Gasohol in) ORDER CORRECTING
Group 3, Petroleum and Petroleum Products, Rule R2-37) CAPTION

PARTIN, HEARING EXAMINER: The Order issued in this docket on May 8, 1981, should have been issued as a Recommended Order, with the time for filing exceptions attached thereto.

IT IS, THEREFORE, ORDERED as follows:

1. That the caption to the Order of May 8, 1981, shall be amended to read "RECOMMENDED ORDER AMENDING RULE R2-37, GROUP 3, TO INCLUDE GASOHOL."

2. That the attached sheet giving the time for filing exceptions to the Recommended Order shall be attached to the front of the Recommended Order and made a part thereof.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of May 1981.

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

DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of the Commission's Safety Rules and Regulations Rule 8-26 and R9-1	))	NOTICE OF RULE REVISION

BY THE COMMISSION: On October 27, 1972, the Commission issued an Order in Docket No. E-100, Sub 11 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 Electrical 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. On January 7, 1980, the Commission took judicial notice of the fact that the National Electrical Safety Code was being completely revised for the new edition and closed Docket No. E-10, Sub 11. The Commission advised the public and all electric utilities in the January 7, 1980, order that when copies of the new edition of the National Electrical Safety Code became available for general consideration, the Commission would institute a new rulemaking proceeding to consider adoption of such revised rules and regulations. The 1981 Edition of the National Electrical Safety Code (American National Standard ANSI C2.1981) was issued on September 5, 1980. Under American National Standards Institute rules, ANSI C2.1981 became effective nationally 180 days after issuance.

GENERAL ORDERS - GENERAL

The National Electrical Safety Code is a concensus standard and is promulgated under the rules of the American National Standards Institute (ANSI). The working subcommittees include broad representation from all facets of utility related fields, including senior staff from this Commission. As a result of this Commission's efforts, the NESC is now regularly updated on a published three-year cycle. Although Parts 1, 3, and 4 were updated in the early 1970's, the 1977 Edition was the first significant revision of Part 2 of the Code since the late 1930's. All parts of the Code were revised in the 1981 Edition according to the Change Proposals received by the code subcommittees. Because the utilities and other interested parties have had the opportunity to have input to this national concensus code through two recent revisions of the code, the Commission is of the opinion that their substantial proposals have been given due attention in the 1981 Edition of the National Electrical Safety Code, ANSI C2.1981. Unless significant cause is shown otherwise, the Commission concludes that ANSI C2.1981 should be adopted as the safety rules of this Commission, to apply to all electric, telephone and telegraph companies which operate in North Carolina under the jurisdiction of this Commission, and that Rules R8-26 and R9-1 should be revised accordingly.

IT IS, THEREFORE, ORDERED, that unless significant protest and request for hearing is received on or before October 14, 1981, the Commission will adopt the 1981 Edition of the National Electrical Safety Code, ANSI C2.1981, as its safety rules and will revise Rules R8-26 and R9-1 as shown on Appendix A on the basis of its knowledge and the record.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

APPENDIX A

REVISED RULES

Rule R8-26. Safety rules and regulations - American National Standard ANSI C2 1981, the 1981 Edition of the National Electrical Safety Code, is hereby adopted by reference as the electric and communications safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of this Commission. (A copy of the National Electrical Safety Code may be obtained from the Standards Division, Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.) (NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. M-100, Sub 6, 11/4/68; NCUC Docket No. M-100, Sub 89, 10/ /81)

Rule R9-1. Safety rules and regulations - American National Standard ANSI C2.1981, the 1981 Edition of the National Electrical Safety Code, is hereby adopted by reference as the electric and communications safety rules of this Commission and shall apply to all telephone and telegraph utilities which operate in North Carolina under the jurisdiction of this Commission. (A copy of the National Electrical Safety Code may be obtained from the Standards Division, Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street,

New York, New York 10017.) (NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. M-100, Sub 6, 11/4/68; NCUC Docket No. M-100, Sub 89, 10/ /81)

DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision of the Commission's Safety Rules and Regulations Rule 8-26 and R9-1	) ORDER ADOPTING THE 1981) EDITION OF THE NATIONAL) ELECTRICAL SAFETY CODE) ANSI C2.1981

BY THE COMMISSION: On September 14, 1981, the Commission issued a Notice of Rule Revision and ordered "that unless significant protest and request for hearing is received on or before October 14, 1981, the Commission will adopt the 1981 Edition of the National Electrical Safety Code, ANSI C2.1981, as its safety rules and will revise Rules R8-26 and R9-1 as shown on Appendix A on the basis of its knowledge and the record.

No protests or requests for hearing were received.

IT IS, THEREFORE, ORDERED THAT

Commission Rules R8-26 and R9-1 are hereby amended as revised in Appendix A attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of December 1981.

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

APPENDIX A

REVISED RULES

Rule R8-26. Safety rules and regulations - American National Standard ANSI C2.1981, the 1981 Edition of the National Electrical Safety Code, is hereby adopted by reference as the electric and communications safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of this Commission. (A copy of the National Electrical Safety Code may be obtained from the Standards Division, Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.) (NCUC Docket No. M-100, Sub 1, 9/18/63; NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. M-100, Sub 6, 11/4/68; NCUC Docket No. M-100, Sub 89, 12/17/81)

Rule R9-1. Safety rules and regulations - American National Standard ANSI C2.1981, the 1981 Edition of the National Electrical Safety Code, is hereby adopted by reference as the electric and communications safety rules of this Commission and shall apply to all telephone and telegraph utilities which operate in North Carolina under the jurisdiction of this Commission. (A copy of

the National Electrical Safety Code may be obtained from the Standards Division, Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, New York 10017.) (NCUC Docket No. M-100, Sub 5, 7/15/65; NCUC Docket No. M-100, Sub 6, 11/4/68; NCUC Docket No. M-100, Sub 89, 12/7/81)

GENERAL ORDERS - ELECTRICITY

DOCKET NO. E-100, SUB 25

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Electric Utility Demonstration Project: Implementation of Experimental Time-of-Day Rates for Carolina Power & Light Company and Blue Ridge Electric Membership Corporation	)	ORDER ACCEPTING FINAL REPORTS, PRESENTING STUDY RESULTS, AND CLOSING DOCKET

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 5, 1980, at 10:00 a.m.

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

APPEARANCES:

For Carolina Power & Light Company:

Richard E. Jones, Associate General Counsel, Carolina Power & Light Company, Box 1551, Raleigh, North Carolina

For the North Carolina Utilities Commission and the Research Triangle Institute:

Wilson B. Partin, Jr., Deputy General Counsel, North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina

BY THE COMMISSION: On March 8, 1977, the Commission issued an Order in this docket setting an investigation and hearing on experimental time-of-use (TOU) electricity rates. By orders issued on June 6, 1977, Carolina Power & Light Company (CP&L) and Blue Ridge Electric Membership Corporation (Blue Ridge) were authorized to implement TOU electric rates on some of their customers as part of the North Carolina Electric Utility Demonstration Project. The orders provided that the rates were to remain in effect through May of 1979 and thereafter on an optional basis.

The Demonstration Project was a cooperation undertaking between the Commission and the United States Department of Energy (formerly, the Federal Energy Administration). The implementation of this project fulfilled two legislative purposes:

(a) The experimental rates would assist the Commission in fixing just and reasonable rates, as it is required to do under Chapter 62 of the General Statutes; and

(b) The experimental rates would enable the Commission to carry out the mandate of G. S. 62-155, which requires the Commission to study time-of-use rates for implementation in North Carolina.

Research Triangle Institiute (RTI) was contracted by the Commission to design, coordinate, and execute the project in cooperation with CP&L and Blue Ridge.

On or about August 1, 1980, RTI filed its draft final reports of the demonstration project with the Commission.

Thereafter, on August 8, 1980, the Commission issued an Order scheduling a hearing on the demonstration project results.

The matter came on for hearing before the Commission on September 5, 1980. The Commission heard the testimony of Dr. Allen K. Miedema, Manager of the Economics Department of RTI; Norris L. Edge, Manager of the Rates and Service Practices Department, CP&L; and Taylor Bingham, head of the Environmental Economic Section in the Department of Economics, RTI, who testified on the Blue Ridge project.

On January 5, 1981, RTI filed with the Commission the final reports in the North Carolina Rate Demonstration Project: the Carolina Power & Light Company Study, Volumes I and II; the Blue Ridge EMC Study, Volumes I and II; and the Project Library, consisting of four volumes.

The Commission hereinafter presents the abstracts prepared by RTI in the CP&L and Blue Ridge final reports and adopts the findings therein as the findings of the Commission.

CAROLINA POWER & LIGHT COMPANY STUDY

The Carolina Power & Light Company Rate Demonstration Project was conducted to observe the effects of time-of-use electricity rates on household electricity consumption. Under time-of-use (TOU) rates higher prices are charged for electricity used during those times when demand and system costs are higher; and lower prices, when demand and system costs are lower. In this project 514 residential customers were placed on a number of seasonal time-of-use electricity rates for periods of 14 to 18 months starting October 1977 and February 1978 and ending in May 1979. A total of 86 customers on the existing rate served as a control group. Participation in the study was mandatory and customers did not receive incentive or participation payments.

Three rate forms which could be implemented under current North Carolina rate-making regulations were compared with the control rate. Variations of one of these rates were used, along with that rate, to estimate own- and cross-price elasticities of demand for electricity consumption by time-of-use and additional subsamples of customers assigned to the two other rates were offered free installation and ownership of certain demand management devices called `interlocks.´

Electricity consumption patterns under TOU rate schedules T05, T10, and T11 were examined by rating period (peak, intermediate, base, and overall) for both the average day of the month and for the day of system peak.

In comparing TOU rates T10 and T11 with the control rate, some evidence was found of conservation of electricity during the summer period. Consumption was

generally less under the TOU rates in all rating periods and in many instances the monthly decreases were statistically significant. This pattern was reversed during the winter months as the estimated levels of consumption under the TOU rates were generally higher than for the control group rate schedule in all rating periods. The monthly increases were not, in most cases, statistically significant.

Relative to the control rate, TOU rate T05 showed no significant effect on consumption patterns. Usage under T05 was not significantly different from the control group for any of the rating periods in any month. However, base-period usage was slightly higher in every month. The above patterns hold for both the average day of the month and the day of system peak.

Other variables (i.e., 60- and 15-minute noncoincident demand, maximum diversified demand, and demand at the time of monthly system peak) were observed to follow this same pattern of lower values under the TOU rates during the summer and higher values during the winter months. Generally, the differences were not statistically significant.

TOU customers knew that the experiment was limited to a 14- to 18-month period, and thus they had little incentive to invest in any appliances or home improvements that might be attractive under the TOU rate but only over a longer period. So these short-term results may not represent the long-term response of these or similar customers to the TOU rates tested.

The results for the comparative analyses apply to approximately 94 percent of the sampled population that was still in the service area on April 1, 1978, the date for which meter installation was complete for all study participants.

Generally, the results of the CP&L study leave some questions about the advisability of implementing TOU rates of the type used in the experiment. Even though all of the TOU rates seemed to reduce electricity consumption during some hours, there was no reliable evidence that they would reduce the need for generating and transmission capacity. So the main effect of implementing these TOU rates would be to reduce the total electricity usage of residential customers but not necessarily their demands on CP&L capacity. It is questionable whether the resulting fuel cost savings to CP&L would alone offset the additonal cost of metering usage by time of day, at the present costs of TOU meters.

Responses to a post-experimental survey of experimental and control group customers participating in the TOU study indicated that all groups of customers had quite similar demographic, fuel, and appliance ownership characteristics. A substantial number of all customers, including those on the existing residential rate, reported several efforts to conserve electricity. Survey responses also showed that participants tried to curtail electricity usage to take specific advantage of the TOU rates and that, overall, TOU rate customers expressed satisfaction with their bills under the TOU rates. While only one-fifth of the TOU participants knew the precise details of their experimental rates, most were aware of the implications of TOU pricing. In general, well over half of the customers had favorable reactions to the experimental rates and the utility, and about one-third chose to continue on the TOU rates at the conclusion of the study.

In part because their bills did not include a charge for TOU metering, a majority of the experimental customers on the three main TOU rates had lower bills than they would have if billed on the existing residential rates. The average annual saving ranged from $20 to $42. The remaining experimental customers paid from $10 to $25 more per year than they would have on the existing residential rates.

BLUE RIDGE EMC STUDY

The BREMC study was conducted to observe the effect of a time-of-use electricity rate schedule on household electricity consumption. Under time-of-use (TOU) rates higher prices are charged for electricity used during those times when demand and system costs are higher; and lower prices when demand and system costs are lower. In this project 102 residential customers were placed on a seasonal time-of-use electricity rate for a 12-month period beginning in October 1977. The experimental rate schedule used three daily rating periods during the winter and two during the summer. A total of 98 customers on the existing rate served as a control group. Participation in the study was mandatory, and customers did not receive incentive or participation payments.

Electricity consumption patterns were examined by rating period (peak, intermediate, base and overall) for both the average day of the month and for the day of system peak. The results indicated that throughout the 12-month study period, consumption patterns under the TOU rate schedule differed very little from those under the existing (declining block) rate schedule. There was no indication either of a shifting of electricity usage by those on the TOU rate from the period of highest price to the period of lowest price, or of a conservation effect by customers on the TOU rate schedule. In general, the findings of this study showed a negligible response to the TOU rate schedule used in the experiment. Since the sample size was large enough to enable experimenters to detect any significant responses to the experimental rate, failure to isolate effects attributable to time-of-use pricing of electricity does not affect the credibility of the study or lessen the importance of the results.

Two types of analyses were conducted. The first, a comparative analysis, was completed for all 12 months of the experimental period and applied to electricity consumption patterns by rating period (peak, intermediate, base, and overall) for both the average day of the month and for the day of system peak. The results indicated that throughout the 12-month study period, consumption patterns under the TOU rate schedule differed very little from those under the existing (declining block) rate schedule. There was no indication either of a shifting of electricity usage by those on the TOU rate from the period of highest price to the period of lowest price, or of a conservation effect by customers on the TOU rate schedule. In general, this analysis showed a negligible response to the TOU rate schedule used in the experiment.

The second type of analysis, regression analysis, was conducted for the average weekday in the peak month, February. The findings of the two methods were fundamentally the same - the percentage changes in consumption caused by TOU rates were generally less than 15 percent in absolute value, regardless of the time of day.

Both methods were also applied to estimate shifts in consumption by high usage customers. For them the estimated shifts were generally larger in percentage terms and more often in the expected direction. However, the shifts were generally not found to be different from zero by a statistically significant margin. Still, these estimated differences could be real but too small to detect with the relatively small size of the sample allocated to high-usage customers alone.

Instead, the sample was designed and allocated primarily to detect significant responses by nearly all BREMC residential customers. Since the sample was large enough to achieve that purpose, failure to isolate effects of this particular TOU rate does not affect the credibility of the study or lessen the importance of the results.

TOU customers knew that the experiment was limited to a 12-month period, and thus they had no incentive to invest in any appliances or home improvements that might be attractive under the TOU rate only over a period longer than one year. So these short-term results may not represent the long-term response of these or similar customers to the TOU rate tested.

CONCLUSIONS

The RTI reports contain valuable evidence on the potential effects of time-of-use rates. The project has demonstrated that TOU rates will very likely cause residential customers to conserve electricity. It also indicates, however, that the magnitude of potential capacity savings attributable to such rates are highly uncertain. These results suggest that the rate differentials tested in this experiment were not of a magnitude sufficient to cause a shift in electric usage patterns that would make it cost effective at this time to require TOU rates for all residential customers. In other words, the cost of the metering equipment required for mandatory TOU rates would exceed any savings derived from reductions in peak demand. A combination of TOU rates and direct load control programs such as devices to interrupt water heaters, air conditioners, or other major appliances may improve the cost effectiveness in the future. Likewise, the development of new and cheaper metering technology will lead to a more favorable benefit-cost ratio.

Nonetheless the studies indicate some promise for the selective implementation of TOU rates. This approach is suggested in part by the detection of somewhat greater responsiveness to TOU rates among residential customers using large amounts of electricity. It is also suggested by the finding of generally positive attitudes toward TOU rates among customers in the two experiments. At the conclusion of the CP&L study those customers on the experimental TOU rates were given the opportunity to continue service on a TOU schedule. Approximately 200 customers initially elected to continue service on a TOU schedule.

This project and the studies resulting therefrom have been important to the Commission in its consideration of TOU rate schedules that have been approved for implementation on a voluntary basis by the major electric utilities in North Carolina. The Commission will continue to monitor new developments in TOU metering technology and the costs of TOU meters relative to the costs of additional generating facilities. The results of this project will provide the

basic framework for an ongoing examination by the Commission of the potential benefits from both direct and indirect load management programs. The project has also provided critical input into the Commission's annual load forecasts proceedings.

IT IS, THEREFORE, ORDERED that the final reports filed by the Research Triangle Institute in this docket for the CP&L and Blue Ridge projects be accepted and adopted as the final reports of the Commission in fulfillment of its obligations under the Demonstration Project and that this docket be closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of May 1981.

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

DOCKET NO. E-100, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Investigation and Rulemaking Relating Information to Electric Utility Consumers	) ORDER ADOPTING FINAL RULES ON) INFORMATION TO ELECTRIC UTILITY) CONSUMERS

BY THE COMMISSION: On October 14, 1980, the Commission issued an Order in this docket entitled "Order Setting Forth Findings With Respect to PURPA Standards Regarding Master Metering, Automatic Adjustment Clauses, and Information to Consumers." Attached to said Order as Appendix A were certain proposed rules regarding information to be provided to consumers upon which the parties to this proceeding were invited to file comments not later than November 14, 1980. Comments on the proposed rules were subsequently filed by Duke Power Company, Carolina Power & Light Company, Virginia Electric and Power Company, and the Intervenors Lillia Brooks, et al., wherein changes in the proposed rules were suggested. No other party to this proceeding filed any comments with respect to the proposed rules on information to consumers.

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 information to electric utility consumers 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 information to electric utility consumers which are set forth in Appendix A attached hereto are entirely fair and equitable to the regulated electric 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 October 14, 1980, the Commission adopts the final rules on information to electric utility consumers as set forth in Appendix A attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That Rules R8-48 through R8-51, which rules are attached hereto as Appendix A, be, and the same are hereby, adopted as final rules of this Commission.

2. That Rules R8-48 through R8-51, as set forth in Appendix A attached hereto, shall be effective on and after March 1, 1981.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of January 1981.

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

APPENDIX A
Article 11

Information to Electric Utility Consumers

Rule R8-48. Information to be Provided to New Consumers.

(a) Each utility shall provide to each of its new consumers within sixty (60) days after commencement of service a clear and concise explanation of the rate schedule(s) applicable to such consumer. This can be accomplished in one of the following manners at the option of the utility:

(1) A description of the rate schedules, special clauses, and riders which are reasonably available to the consumer with respect to the customer's particular rate classification or usage pattern (e.g., residential, small commercial, general service, large power).

(2) A copy of applicable rate schedules or similar documents on file with the Commission which contain such information.

(3) A combination of items (1) and (2) above to inform the customer of rate schedules available to that particular service.

(4) The information stated in (1) and (2) above may also be provided to a new consumer prior to commencement of service at the utility's option if such is normally provided in the course of routine service negotiation.

(5) In addition to the above, each new consumer is to be furnished either a summary description of the current procedures whereby the utility, pursuant to provisions of North Carolina General Statute Section 62-134(e), is permitted to increase or decrease its rates based solely

upon the cost of fuel used in generation or production of power, or a copy of the Commission rule setting forth such procedures.

(b) Each utility is encouraged, but is not required, to furnish the following information to each new consumer at the time that it provides the information required to be provided by subparagraph (a) of this rule:

(1) an explanation of its policies and rules with respect to consumer credit;

(2) an explanation of its policies and practices with respect to meter reading and billing cycles;

(3) an explanation of its service termination and reconnect procedures;

(4) general company information concerning reporting power failures, billing information, requests for service changes, and the like; and

(5) energy conservation tips and load management information.

(c) Nothing in this rule shall be construed to conflict with the provisions of Rule R8-25(a) or to negate the duty of the utility to supply any information to a consumer upon request as provided in that rule.

Rule R8-49. Notification to Consumers of Tariff Changes.

(a) Unless otherwise ordered by the Commission, each utility that files an application with the Commission seeking to change its rate tariffs, excluding adjustments of base rates for fuel costs, shall publish notice of such application in the local news media within thirty (30) days of the date of the Commission's order requiring such notice to be filed relative to the subject application. In addition, each utility will provide a bill insert notifying its consumers of such application within sixty (60) days of the Commission's order. The form of such notices will be supplied to the utility by the Commission and will normally contain the following information:

(1) a description of the overall amount of the increase applied for in terms of dollars and in terms of percentage increase over current levels, and any proposed changes in tariff designs or tariff availability clauses;

(2) a brief comparison of present versus proposed billings for the major rate categories for specified usage levels;

(3) a schedule of times, dates, and locations of public hearings to be held with respect to the application;

(4) a schedule of filing deadlines for persons interested in intervening in the case and a reference to Commission rules specifying the procedures for intervening;

(5) a specification of a location where interested parties can review the documentation filed in support of the rate application and where copies of the proposed rate tariffs and pleadings filed in the case can be obtained by the general public; and

(6) any other information deemed appropriate by the Commission with regard to the utility's application.

Rule R8-50. Notification of Available Rate Schedules and Breakdown of Company Operating Expenses. -

(a) At least once each calendar year, each electric utility shall notify its consumers of the rate schedules that are available within the rate classification in which such consumer falls. Such notice should contain brief summaries of all rate schedules within a consumer's rate classification. In addition, the notice shall contain a statement that "Complete Rate Schedules are available upon request." Each utility shall annually notify the Commission of the completion date of this notification.

(b) Each electric utility shall annually provide to each of its consumers a breakdown of its operating expenses for the most recent available twelve (12) month period expressed as a percent of each dollar of revenue. This information may be communicated graphically as part of a regular bill insert, or if the utility does not include inserts with its bills, in a special mailing.

Rule R8-51. Provision of Past Billing History Upon Consumer Request. - Each utility, upon the request of one of its consumers, shall provide the past billing information of such consumer as provided in this rule. The minimum information which shall be provided shall include the following in an easily understood format: the name of the rate schedule under which such consumer is served; a clear specification of the months and years of data supplied (twelve-month minimum); and a clear itemization of the demand billing units, basic facilities charge, KWH usage, and dollar amount of bills for each bill rendered during the period to which the data relates. The utility may charge up to $5.00 for all subsequent requests for a past billing history made by the same consumer for the same service location within a twelve (12) month period.

DOCKET NO. E-100, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Consideration of Electric Rate Design and Regulatory Standards Pursuant to the Public Utility Regulatory Policies Act (PURPA) of 1978	) ORDER SETTING FORTH FINDINGS WITH RESPECT TO) PURPA STANDARDS REGARDING COST OF SERVICE,) DECLINING BLOCK RATES, TIME-OF-DAY RATES,) SEASONAL RATES, INTERRUPTIBLE RATES, LOAD) MANAGEMENT TECHNIQUES, AND LIFELINE RATES

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 9, 10, 11, and 17, 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 Respondents:

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

Edgar M. Roach, Jr., and Stephanie C. Wilson, Hunton & Williams, Attorneys at Law, BB&T Building, Suite 400, Fayetteville Street Mall, Raleigh, North Carolina 27602
For: Virginia Electric and Power Company

W. Edward Poe, Jr., & Edward L. Flippen, Assistant General Counsel, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

For the Intervenors:

Augustus S. Anderson, Jr., East Central Community Legal Services, P.O. Box 1731, Raleigh, North Carolina 27602, and

Amy L. Cox, Staff Attorney, Catawba Valley Legal Services, 403 S. King Street, Morganton, North Carolina 28655, and

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

Paul E. Meyer, Staff Attorney, Central Carolina Legal Services, Inc., P.O. Box 3467, Greensboro, North Carolina 27402
For: Intervenors Lillia Brooks, et al.

Frank Crawley, North Carolina Attorney General's Office, Box 629, Raleigh, North Carolina 27602, and

Jerry B. Fruitt, Chief Counsel, and 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

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602, and

Henry R. MacNicholas, McNees, Wallace & Nurick, Attorneys at Law, 100 Pine Street, Harrisburg, Pennsylvania 17108
For: Abbott Laboratories, Inc.; Air Products & Chemicals, Inc.; American Cyanamid Company; Broyhill Furniture Industries, Inc.; Carter-Weber, Inc.; Champion International Corporation; Corning Glass Works (Inc.); Drexel Heritage Furnishings, Inc.; Federal Paperboard Company, Inc.; Ideal

Basic Industries, Inc.; Lithium Corporation of America; Mallinckrodt, Inc.; Monsanto North Carolina, Inc.; Olin Corporation; Owens-Illinois; PPG Industries, Inc.; R. J. Reynolds Industries, Inc.; The Black and Decker Manufacturing Company; The Firestone Tire & Rubber Company; The General Tire & Rubber Company; Union Carbide Corporation; Weyerhauser Company; and W. R. Grace & Company, Airmold Products

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Kimberly-Clark Corporation

BY THE COMMISSION: The Public Utility Regulatory Policies Act of 1978 (PURPA) became law on November 9, 1978, as a part of the National Energy Act. The provisions of Title I of PURPA require each state regulatory authority (with respect to each covered electric utility for which it has rate-making authority) to consider 11 rate design and regulatory standards and the concept of lifeline rates within statutorily mandated time periods.

On August 14, 1979, the North Carolina Utilities Commission issued an Order scheduling a public hearing to commence May 6, 1980, and continuing at the Commission's discretion, to consider the 11 PURPA standards and also the lifeline rates concept. The Commission Order made Carolina Power & Light Company, Virginia Electric and Power Company, Duke Power Company, and the Public Staff parties of record.

By Order issued January 21, 1980, the Commission established the sequence within which the PURPA standards and the lifeline rates concept would be considered. The hearing on the standards concerning master metering, automatic adjustment clauses, and information to consumers was scheduled to begin on May 6, 1980, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The Commission further determined that the May 6, 1980, hearing would be continued until September 9, 1980, at which time hearings would be held concerning the other PURPA standards not previously considered and the lifeline rates concept. The Order required that the Notice of Hearing attached thereto be published by the utility companies which had been made parties of record by the August 14th Order.

The Public Staff filed a Notice of Intervention on January 22, 1980.

On March 20, 1980, the Conservation Council of North Carolina filed a Motion to Intervene, which the Commission granted by its Order issued March 24, 1980.

On March 26, 1980, the North Carolina Textile Manufacturers Association, Inc., filed a Petition to Intervene, which the Commission allowed by its Order issued March 28, 1980.

On March 31, 1980, Lillia Brooks, Flora Cannady, Katherine E. Henderson, Francis C. Hill, Eva Ramsey, and Mary Ransom filed a Petition to Intervene, which was allowed by Commission Order of April 2, 1980.

On April 1, 1980, Ralph McDonald of the Raleigh law firm of Bailey, Dixon, Wooten, McDonald & Fountain filed a Petition to Intervene on behalf of 20 named industries. The Kudzu Alliance also filed a Petition to Intervene on that same date. Both of these Petitions to Intervene were allowed by Commission Orders issued April 4, 1980.

On April 30, 1980, the Attorney General of the State of North Carolina filed a Notice of Intervention in this docket.

The initial hearing was held on May 6, 1980, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. The standards discussed were master metering, automatic adjustment clauses, and information to consumers. The Commission received the testimony of the public witnesses, the testimony of the witnesses appearing on behalf of the Public Staff, and the testimony of the witnesses appearing on behalf of the three utilities involved.

On October 14, 1980, the Commission issued its Order on the three topics discussed in the May hearing. Briefly, the Commission concluded:

1. The Commission declined to adopt the standard on master metering based on current North Carolina G.S. 143-151.42 which prohibits master metering in new residential applications.

2. The Commission declined to adopt the standard on automatic adjustment clauses based on current North Carolina G.S. 62-134(e) and Commission Rule R1-36 which encompass and exceed the provisions set forth by PURPA.

3. The Commission declined to adopt the standard on information to customers and established a rule-making proceeding to consider additional requirements concerning utilities' information to customers.

On June 5, 1980, a Petition to Intervene in this proceeding was filed by counsel for and on behalf of Kimberly-Clark Corporation.

By Order dated July 22, 1980, the Commission scheduled five evening hearings for the purpose of receiving testimony from members of the using and consuming public with regard to this docket. These hearings were to be held in Raleigh, September 9; Asheville, September 22; Greensboro, September 22; Wilmington, September 29; and Charlotte, September 29, 1980.

At the evening hearing held in Raleigh on September 9, 1980, the following public witnesses appeared and offered testimony: Jim Overton, Robert Eidus,

Gary Gumz, Henry S. Cole, Elisa Walter, Marilyn Butler, Meredith Emmett, Jeff Wyckoff, Helene Robertson, Angelo Melvin, Steve Schewel, Dan Reed, Kenneth Foscue, Heyward Robinson, John Runkle, Lee Richardson, Jeff Lockwood, James Cuomo, and Wells Eddleman.

During the evening hearing held in Greensboro on September 22, 1980, the following public witnesses appeared and offered testimony: Jim Harrison, Sadie Lawson, Mildred Chapman, Linda Hatfield, Minnie Gant, Addie Hooker, David Atkerson, Dr. Lawrence Morse, Art Donsky, Howard Luehrs, Barbara Darr, Stephanie Clark, Dan Besse, Walt Clark, Richard Zweigenhaft, and Robert Williams.

At the evening hearing held in Asheville on September 22, 1980, the following witnesses testified: Helen T. Reed, Tish Robbins, C. L. Satterfield, and Foster Aldridge.

At the evening hearing held in Wilmington on September 29, 1980, the following witnesses appeared and offered testimony: Ernest F. Yacht, Alfreda Webb, Vashti Sinclair, and Robert Hughes, Sr.

During the evening hearing held in Charlotte on September 29, 1980, the following public witnesses testified: Clarence Sebastian, Roy C. Lowe, Jesse Riley, Roxi McLean, and Mae Combs.

The comments given during testimony presented by the public witnesses were generally similar in nature. Many comments were heard concerning removal of declining block rates from the utilities' rate structures. Many witnesses felt that declining block rates do not promote conservation, that such rates favor larger commercial and industrial users rather than residential customers, and that such rates are, therefore, inequitable.

A number of public witnesses also testified that rates should be based on the marginal cost of providing service rather than the accounting cost. They felt that marginal costs would be more equitable and promote conservation.

Testimony was also presented advocating a lifeline rate. Many public witnesses stated that a lifeline rate would allow poor and needy utility customers an opportunity to save money on utility bills, and that such money could be used to purchase other essentials. Many public witnesses testified that such a rate would be especially useful to those persons on fixed incomes.

On July 31, 1980, the Commission received for filing the comments and testimony of Duke Power Company concerning the six standards not previously discussed and the lifeline rate concept. On August 1, 1980, the Commission received for filing the testimony of Carolina Power & Light Company, the testimony of Virginia Electric and Power Company, the testimony of Wells Eddleman, a member of the Kudzu Alliance, the testimony of H. Randolph Currin, Jr., of Currin and Associates, Inc., on behalf of the Public Staff, the testimony of J.B. Kennedy, of the Electricity Consumers Resource Council for the Carolina Industrial Group of Fair Utility Rates (CIGFUR), the testimonies of Mark Drazen, Alan Chalfant, and Nicholas Phillips, Jr., of Drazen-Brubaker and Associates, Inc., on behalf of the CIGFUR, and the testimony of Colin S. Tam, on behalf of Air Products & Chemicals, Inc.

On August 21, 1980, a Petition to Intervene in this docket was filed by the Carolinians for Safe Energy, which petition was allowed by Commission Order dated August 29, 1980. On August 29, 1980, the North Carolina Public Interest Research group filed a Petition to Intervene in this proceeding. The Commission allowed said party to intervene by Order dated August 29, 1980.

On September 9, 1980, the Commission received a Petition to Intervene from Air Products & Chemicals, Inc., R.J. Reynolds Industries, Inc., and W.R. Grace and Co, Airmold Products, which Petition was allowed by the Commission.

Upon call of the matter for hearing at 10:00 a.m., on September 9, 1980, Jerry B. Fruitt, Chief Counsel of the Public Staff of the North Carolina Utilities Commission, presented opening comments to the Commission outlining the Public Staff's views on the six standards which were to be discussed in these hearings as well as the concept of lifeline rates. Thomas Eller, representing the North Carolina Textile Manufacturers Association (NCTMA), noted in his opening comments that the North Carolina Utilities Commission had instituted long before the enactment of PURPA all of the programs specified in PURPA and was a leader in the nation in these various areas. He also noted that the North Carolina Utilities Commission, through its leadership in the regulatory field, was one of the principal reasons why the individual states did not lose their jurisdiction entirely in the PURPA Act passed by the Federal legislature.

The Public Staff presented a panel of witnesses consisting of H. Randolph Currin, Jr., Randolph G. Brecheisen, and Robert F. Drennan, Jr., of Currin and Associates, Inc. After reviewing the requirements of PURPA, Mr. Currin, who was the Public Staff's primary witness, summarized the Public Staff's recommendations with regard to the six standards under consideration, as well as the lifeline rate concept. On the subject of cost of service, witness Currin testified that the current reporting procedures required by the Commission clearly meet or exceed the requirements specified in section 115 (a) of PURPA. Based on his review of past Commission Orders, he concluded that the Commission has substantially considered the PURPA standard relating to cost of service. In order to ensure future compliance, witness Currin recommended that each utility continue to file fully distributed cost-of-service studies and proposed rates which are based on long-run marginal costs. In addition, he recommended that the Commission should continue to require each utility to present evidence before the Commission in general rate case proceedings which supports the design of the utility's rate schedules. He recommended that the Commission report to the Department of Energy that it was already in compliance with the intent of the cost-of-service standard.

As to declining block rates, witness Currin stated that the Commission had long stressed that energy charges should be equally allocated to all kilowatt-hour blocks in an effort to avoid wasteful energy consumption by consumers. This is in compliance with the intent of PURPA in this area and has been the case, he testified, since 1973. The Commission Staff, prior to 1977, and the Public Staff, since 1977, have advocated that utility rates should reflect variable costs associated with producing the additional units of energy. He therefore recommended that the Commission report to the Department of Energy that it has already implemented the PURPA standard relating to declining block rates.

In the area of time-of-day rates, witness Currin noted that the Commission established Docket No. E-100, Sub 21, in 1975, for the purpose of investigating peak-load pricing methods, time-of-day metering, conservation, and load management techniques. Subsequent to this, the Commission had ordered numerous customer trial applications of time-of-day rates. A final determination of the cost effectiveness of time-of-day rates has not been made by the Commission pending completion of the customer trial projects, which it previously ordered.

Witness Currin recommended that the Utilities Commission should report to the Department of Energy that it has investigated time-of-day rates, that these rates will be gradually phased in where cost effective and, therefore, that the Utilities Commission is in compliance with, and has, in fact, already implemented, the PURPA time-of-day rate standard.

Witness Currin also noted that, in an effort to promote efficiency and equity of rates, the Commission should investigate the possible adoption of time-of-day rates with metering surcharges where such rates without a surcharge have been found not to be cost effective.

The fourth standard discussed was that of seasonal rates. Again, citing the evidence and testimony from previous Commission rulings, witness Currin noted that the Utilities Commission had ordered the adoption of seasonal rates to reflect seasonal cost differences. At present, all three major electric utilities subject to the PURPA standard have some type of seasonal rates in effect. Witness Currin noted that Duke may not be in compliance with the true intent of the PURPA seasonal rates standard in that its present winter discount may not be cost justified in light of the nearly equal magnitude of the utility's summer and winter peaks. He noted that possibly only Vepco is in compliance with the PURPA standard from the viewpoint of an on-peak versus off-peak cost basis. He therefore recommended that the North Carolina Utilities Commission instruct Duke, CP&L, and Vepco to present before the Commission evidence concerning the cost basis for their existing summer/winter differentials, and further present evidence concerning the advisability of adopting seasonal differentials which encompass possible on-peak (summer/winter) versus off-peak (other months) cost variations. However, he recommended that the Utilities Commission report to the Department of Energy that it has previously implemented, and is fully in compliance with, the PURPA seasonal rates standard contained in section 111(d)(4).

The next PURPA standard discussed was that of interruptible rates. Witness Currin noted that the Commission had reviewed this concept in Docket No. E-100, Subs 21, 32, and 35, and Docket No. M-100, Sub 78. In 1978 the Commission ordered that the three major electric utilities of the State develop interruptible rates primarily for large industrial loads as well as for the direct control of certain residential loads. The electric utilities filed such rates in September 1979, and these rates were tentatively approved by the Commission in November 1979 for implementation. Therefore, witness Currin recommended that the Commission report to the Department of Energy that it has previously implemented the PURPA interruptible rate standard.

Load management techniques was the sixth rate-making standard discussed. Witness Currin explained that in 1975 the North Carolina General Assembly ordered the Utilities Commission to study and implement methods by which

utilities and consumers could conserve energy through the more efficient utilization of all resources. The Commission embarked on several investigations of methodologies to ensure the most efficient utilization of utility resources. The Commission ordered the utilities to develop numerous pricing alternatives as well as to investigate direct and indirect load management programs. The Commission conducted hearings on this subject in Docket No. E-100, Subs 21, 25, 32, and 35, and Docket No. M-100, Sub 78.

The Commission has also retained outside consultants to assist it in developing the most cost effective load management programs for implementation by each of the major utilities in the State.

In reviewing the efforts to date of the Utilities Commission, CP&L, Duke, and Vepco in the area of load management, witness Currin testified that the PURPA requirements for the load management standards were being fulfilled. He therefore recommended that the Commission report to the Department of Energy that it has implemented the PURPA standard relating to load management and has been actively involved in promoting electric load management in North Carolina since 1975.

The last topic discussed by witness Currin concerned the concept of lifeline rates. He recommended that the Commission should notify the Department of Energy that, after full evidentiary hearings, the Commission has determined that lifeline rates are not appropriate for implementation at this time. There were two primary reasons for this recommendation.

First, the North Carolina General Statutes give no explicit authority to the Utilities Commission to appropriate money to "needy" consumers to help them pay their electric bills. The Commission is expressly prohibited by G.S. 62-140 from approving discriminatory rates which would intentionally tax some consumers so that other low usage and/or low income users may be subsidized. Until such time as the General Assembly grants authority to the Commission to implement a lifeline rate, the Commission is prohibited from doing so.

Second, the Utilities Commission is currently studying the concept of a lifeline rate in its investigation of the so-called Supplemental Security Income (SSI) rate. This experiment is designed to collect data in response to the General Assembly's mandate to the Utilities Commission to study the feasibility of lifeline rates. Since data for this experiment will not be available until late 1981, the Commission has not yet communicated its findings to the General Assembly. If this data shows that the SSI rate is justified solely on the basis of cost of service, it could be permanently implemented. If the rate is found not be to be cost justified, G.S. 62-140 would prohibit its continuance.

Samuel Behrends, Jr., Vice President for Corporate Regulatory Policy of Carolina Power & Light Company, testified on behalf of his company. In witness Behrends' opening comments, he noted that even though the Commission was holding a generic proceeding on the PURPA standards, the determination to be made by the Commission according to PURPA must be on a utility-by-utility basis. In addition, a separate determination must be made for each standard for each utility. He went on to note that the Commission's task was first to determine whether each standard was appropriate, if implemented by CP&L, in order to carry out any of the three purposes of section 101 without negatively impacting either

of the other two purposes. After the Commission makes this basic determination, it must then decide whether the standard should be implemented or partially implemented, or have a phased-in implementation, or not be implemented at all by CP&L.

Finally, witness Behrends stressed to the Commission that Congress made it very clear in PURPA that regulatory agencies would have broad discretion in determining the degree to which it would be appropriate to implement each of the PURPA standards.

With respect to the cost-of-service standard, witness Behrends noted that CP&L has followed the concept that rates for a class should attempt to approximate the cost of serving the class. That principle has been followed by the company whether it had elaborate studies to use or whether it had general perception or some intuition, as in prior years. Witness Behrends stated that the company now uses detailed cost allocation studies which are based on a mature load research program. Thus, he concluded, CP&L has long considered the principle appropriate for ratemaking and believes that it should be declared appropriate for the PURPA purposes.

Witness Behrends did take exeption to one particular aspect of the PURPA cost-of-service standard. This exception concerned the statement whereby the Commission should take into account the extent to which total costs are likely to change if capacity is added to meet the peak demand relative to the base demand and additional kilowatt-hours are delivered. He concluded that if the Commission were to drop this portion of the standard, it would be sound policy to find that the standard is appropriate for CP&L and that CP&L should implement it. Based on the studies filed in CP&L's rate cases, the Commission should find that CP&L is implementing the standards to the maximum extent practicable.

Witness Behrends viewed the declining block rates standard as simply a specific application of the cost-of-service standard. In his view it is appropriate for implementation by CP&L. Since CP&L has a virtually flat energy component charge in its rates at present, he concluded that the company is already implementing it and that the Commission should so find.

As to the time-of-day rates standard, witness Behrends stated that CP&L has no difficulty with whether the concept of time-of-day rates is appropriate to improve conservation and use of facilities and is applicable in given situations, but that implementation raises several problems. He noted that customer response to the time-of-day rates is almost unknown at present, and where there are some indications, it appears that a change to time-of-day rates is not worth while. He then described the present activity of CP&L in the area of time-of-day rates. This activity involves a study which was made in conjunction with the Blue Ridge Electric Membership Corporation and the Research Triangle Institute. Witness Behrends briefly described the results from this study, which had been presented to the Commission several days prior to the hearing of September 5, 1980. The preliminary results of this study indicate that, because of the relatively low electricity rates in North Carolina, time-of-day rates are not cost effective in this State. He also noted that Vepco had filed testimony in this docket concerning its studies of large residential time-of-use rates, which also indicated a lack of cost effectiveness. He stressed that the company would continue to gather further data and examine it to

determine whether or not some net benefits might come from subgroups of its residential rate classes, so as to make the implementation of time-of-day rates cost effective. He noted that the Commission would be justified in finding that the PURPA standards should be implemented as rapidly as studies and research determine that the cost effectiveness of time-of-day rates is favorable for the class under consideration.

As to the seasonal rates standard, witness Behrends explained that CP&L has seasonal rates for most of its customers either in the per unit charges or through the operation of seasonal ratchets. These two techniques seem to be working well. The company's customers have recognized the importance of, and have acted to control, their demand loads. CP&L therefore concludes that the standard is appropriate for improved facilities used by the company and fulfills one of the three PURPA purposes, that reasonable implementation by CP&L is warranted, and that the company is currently implementing it.

Concerning the interruptible rate standard, witness Behrends stated that the interruptible service principle seems to contribute to the conservation and optimization of efficiency of use purposes of Title I of PURPA, and thus warrants a determination that it is an appropriate standard. The standard, however, presents a situation where the State regulatory authority should decide to implement the standard only partially. In the Joint Statement accompanying the Act, Congress recognized that at times partial, rather than full, implementation by the State authority would be the preferable course of action. The degree of implementation of this standard needs to be governed by the practicality of offering such a rate. Witness Behrends noted that the cost of administering the rate for a small customer would far exceed any benefits that might be gained from interrupting the service and would not serve the purpose of the Act. He went on to explain CP&L's interruptible rate, which offers a substantial discount and starts at a rather low level of load in order to qualify (3,000 Kw of which only 1,000 need be subject to interruption). In addition, customers have shown an interest in an interruptible standby rate which is now pending before the Commission.

As to the load management techniques standard, the specific statute states three criteria: techniques must be practicable and cost effective, must be reliable, and must provide useful energy or capacity management. CP&L presently has a number of various load management techniques under study. However, the available data and knowledge about customer responses to these techniques are not adequate at present to accurately determine if the long-run cost savings to the utility are likely to exceed the long-run cost of implementation, which the PURPA standard requires. Nevertheless, the company is moving ahead with its investigation to determine the practicality, cost effectiveness, reliability, and usefulness of various load control techniques. Several of the load management programs cited by witness Behrends were CP&L's thermal storage/alternate energy source schedule for residential customers, thermal storage for general service customers, improved residential insulation programs, and the recently introduced electric water heater load control program.

In addressing the subject of lifeline rates, witness Behrends noted that the Joint Statement accompanying the PURPA standards recognized that any such rates would be an exception to the cost-of-service standard and that a certain portion of such a rate to residential electric consumers would thus not necessarily

reflect the cost of providing service to the beneficiaries of the exceptive rate. He went on to state that lifeline rates typically provide a low cost initial block for residential service. If the utility is to earn its allowed revenue requirement, this below-cost charge requires a subsidy from other rate classes. Hence, lifeline rates are mechanisms for income redistribution.

Witness Behrends stated that CP&L was concerned about the low income and fixed income people in its service territory. However, the available information on the subject does not show that the lifeline rates which have been proposed in the past, or which may be in existence, effectively address the needs of the poor. The studies made on the subject tend strongly to show two basic flaws in the lifeline rates concept. The first one is that lifeline rates do not necessarily benefit the persons whom they are intended to benefit, if the purpose is to provide relief to the poor. If the purpose is to provide a special benefit to the residential class without regard to pecuniary status, then the second flaw becomes obvious; that is, the residential class is calling on the other classes to provide a subsidy to it. Such a concept violates the principle that rate classes should, to the maximum extent practicable, cover the full cost, including capital costs, of serving them and not be called upon to cross-subsidize other classes. He also reminded the Commission that lifeline rates are contrary to the present call for providing proper price signals to customers in order to encourage conservation. To reinforce the inappropriateness of lifeline rates and to emphasize a point that lifeline rates will not benefit the low income families for which they are intended, witness Behrends noted that CP&L had just completed an investigation of the usage patterns of its customers who participated last winter in the federally assisted fuel purchase program. The results of that investigation indicate that the majority of those customers, who were certified by government agencies as needing financial assistance to pay their fuel bills, would not benefit from a lifeline rate, even if the lifeline rate were set as high as 500 kilowatt-hours per month. During the time period of the investigation, which was from July 1979 through June 1980, CP&L's average residential customer consumed 993 kilowatt-hours per month. But the customers on the federally assisted fuel purchase program averaged using 1,264 kilowatt-hours per month. Witness Behrends concluded that this is a further demonstration that a lifeline rate would not benefit low income customers, especially those who heat with electricity. He stated that the relatively high usages of these customers in the fuel program show that realistic relief as far as heating purposes probably lies in the area of conservation measures, such as insulation, administered by the same government agencies that supervise the fuel assistance program, thereby reaching low income groups regardless of the type of energy on which they rely for heating.

M.T. Hatley, Jr., Vice President - Rates, and Donald H. Denton, Jr., Vice President - Marketing, testified on behalf of Duke.

Witness Hatley, in discussing the cost-of-service standard, noted that Duke routinely files both jurisdictional and fully distributed cost-of-service studies with the North Carolina Utilities Commission. The jurisdictional cost-of-service study identifies that portion of revenues, operating expense, and rate base related to providing service in North Carolina. Witness Hatley stated that the North Carolina rate-making statute, G.S. 62-133, requires that the test-period data consist of the 12 months of historical operating expense

incurred prior to the date increased rates are to become effective. There is no specific reference in this statute to embedded cost as such; however, the statute implies the fixing of the rates based on embedded cost.

Witness Hatley explained that a fully distributed cost-of-service study identifies that portion of electric revenues, operating expenses, and rate base items for providing service to each rate schedule. Under a given set of rate schedules, this study shows the extent to which each rate reflects cost of service. Duke's cost-of-service studies use the summer peak as the primary allocation factor for rate design. This technique has been used in the design of the retail rate schedules for approximately 10 years.

Witness Hatley noted in the Commission's Final Order in Docket No. E-7, Sub 262, issued on October 8, 1979, that "Duke has filed cost-of-service studies based on summer peak, winter peak, and the average of summer and winter peak for present and proposed rates. The rate designs and allocation methods approved herein are, to the extent practicable, based on cost of service. The Commission concludes that this...is appropriate and consistent with State law."

In conclusion, witness Hatley stated that the Commission has already implemented the basic intent of the PURPA standard as it relates to cost of service and he believes the formal adoption of these standards to be unnecessary. The adoption of a standard or concept, whose interpretation is subject to change by an agency outside the control of this Commission, could require later implementation of policies regarding these standards which were not contemplated nor intended by this Commission. Therefore, the Commission should reject the PURPA cost-of-service standard.

Relating to the declining block rate standard, witness Hatley indicated that Duke presently has no rate schedule in which the energy component declines as the kilowatt-hour consumption increases. The Commission concluded in its Final Order in Docket No. E-7, Sub 262, dated October 8, 1979, "The energy component of the rate schedules, particularly with regard to residential rates, are uniform. There are no declining block rates as defined by PURPA. Some of the rates appear to decline, but this merely reflects that customer and/or demand cost are being recovered fully prior to the tail block. The Commission concludes that this is appropriate and consistent with State law."

Witness Denton addressed the time-of-day rates standard. He noted that after conducting its own studies and arriving at the conclusion that time-of-day rates were cost effective for a certain segment of its customers, Duke requested of the Commission and received approval with regard to the implementation of a residential time-of-day rate available to customers served from its bidirectional communications system. Studies of the general service and industrial customer classification were extended beyond the studies of the residential customer class in order to provide additional information. Duke is, however, currently prepared to offer a general service and an industrial time-of-day rate to its customers subject to the approval of the rate by the Commission. Witness Denton summarized by stating that he felt that this Commission and Duke had complied with the PURPA standards relating to time-of-day rates in an effort to effect a significant reduction of the growth rate of its demand peak.

Concerning seasonal rates, witness Hatley noted that Duke, in addition to the seasonal difference in its time-of-day schedules, has residential schedules which also have a summer/winter rate differential. This differential has been in effect since 1978.

With respect to interruptible rates, witness Denton noted that Duke had filed with the Commission and received approval for an interruptible provision in its general service and industrial rate schedules. Currently, there are no customers on these rate schedules, and Duke is revising the rate schedule in an effort to attract customers to the rate. Witness Denton explained that Duke had an industrial and commercial interruptible goal of 96 megawatts summer and 93 megawatts winter and intended for this to be achieved as a minimum. Therefore, it would be revising the present interruptible rate schedule in an effort to attract customers, so that it can achieve its goal. Witness Denton summarized by stating that he felt that Duke and the Commission were in compliance with the goals and intent of PURPA in the area of interruptible rates.

Concerning load management techniques, witness Denton explained that Duke currently has in its residential rate schedule provisions for voluntary control of water heaters and air conditioners. He also noted that the company had filed with the Commission a parallel generation rate to encourage cogeneration in small power production. The company feels that there is an opportunity to develop economically justifiable cogeneration in small power production on its system, which would assist the company in accomplishing its overall load management objective. He summarized by stating that Duke was in compliance with the load management standards of PURPA.

Relating to the lifeline rate concept, witness Hatley explained that the lifeline section of PURPA requires the Commission to determine if utilities should implement a lower than cost-of-service rate for essential needs of residential or electric consumers. This is in conflict with the PURPA cost-of-service standard which requires the rates of each class to be based on cost of providing service to such class. Witness Hatley felt that pricing electricity usage below cost may encourage increased energy consumption and, therefore, be in conflict with the purpose of conservation of energy. Therefore, equitable rates to electric consumers cannot be achieved when the pricing of part of the electric usage is below cost (requiring subsidization), or above cost, for the remaining electric energy usage.

Duke does not have any rates that are recognized as lifeline rates. However, the Commission in its Final Order in Docket No. E-7, Sub 237, set forth an experimental rate which was applicable to the residential customers receiving SSI administered by the Social Security Administration and to customers who are heads of household. These rates charge a reduced price for the first 350 kilowatt-hours of usage billed each month. Duke currently had approximately 8,600 customers on the SSI rate.

Robert S. Gay, Executive Manager of Rates and Regulations for Vepco, testified on behalf of his company. In his opening remarks, witness Gay stated that Vepco supports three purposes of Title I of PURPA, which are (1) the encouragement of conservation of energy supplied by electric utilities, (2) the optimization and the efficiency of use of facilities and resources by electric utilities, and (3) equitable rates to consumers. He stated that the cost-of-

service standard provides that, to the maximum extent practicable, rates shall be designed to reflect cost of service to each customer class to which such rates are applicable. This shall be done on the basis of methods prescribed by the Commission and, to the maximum extent practicable, shall permit identification of differences in costs incurred attributable to daily and seasonal time-of-use service. He stated that Vepco has based its rates on embedded cost-of-service principles for many years. Mr. Gay testified that, although there appears to be some dispute as to whether or not section 115(a) of PURPA requires marginal cost studies to be made, Vepco believes that there is a definite place for both the marginal cost studies and embedded cost studies in the rate-making process. The embedded cost studies have long been used for determining the relative contribution of each customer class' total cost; whereas the marginal cost studies serve as useful tools in the rate design, providing a means of determining the appropriate price signals to effect, as nearly as practicable, an optimal authorization of economic resources. Under either methodology, Vepco is prepared to provide the required cost studies. Witness Gay noted that, following the embedded cost-of-service principles which are the specific policies of the Commission, Vepco's rates in North Carolina are based as nearly as practicable on uniform rates of return among the respective class of customers for the appropriate historical test year and that each rate schedule recognized cost causation characteristics within each class. Vepco believes that the rates subject to the jurisdiction of this Commission are consistent with the cost-of-service standard.

With regard to the declining block rates standard, witness Gay stressed that the standard requires cost justification where the energy component declines in price as consumption increases. He noted that within each rate which Vepco has on file in North Carolina the energy component of cost is constant for that rate; that is, it does not decline. Because of varying line loss cost factors, the energy component may differ slightly among classes, but under the present rate structure the amount attributable to the energy component in each rate does not decline as consumption increases.

In certain of Vepco's rates where the demand component of cost and a portion of the customer component are recovered through the kilowatt-hour charges, the declining block structure for the rate as a whole is utilized in order to track cost. This principle is in no way proscribed in PURPA section 111(d)(2), which relates expressly to the amount attributable to the energy component. Therefore, Vepco feels that its rates are in full compliance with the PURPA standard in this area.

Regarding time-of-day rates, witness Gay indicated that Vepco had been considering this topic extensively in Docket No. E-100, Subs 21, 32, and 35, and Docket No. M-100, Sub 78. Vepco and other utilities in the State submitted in these dockets a series of proposals for time-of-use rates and implementation plans, supporting cost studies, and testimony or affidavits. As a result of these studies, Vepco submitted a residential time-of-usage rate for Commission approval on September 24, 1979. Implementation of this program began in April 1980 and, at the time of the testimony in the hearing, approximately 1,350 of its North Carolina customers had responded to the company's offer for additional information concerning the program and 88 of these customers had volunteered for the program.

Witness Gay, however, indicated that Vepco did not endorse the mandatory application of residential time-of-usage rates at this time. The key to successful application of such rates hinges on a favorable cost/benefit ratio. Based on the company's experience thus far with the residential time-of-usage power programs, witness Gay stated he did not know whether the long-run benefits of such rates would likely exceed the cost of implementing them. As an example, he cited the implementation of a pilot program with its Virginia customers. A post-implementation survey indicated that despite the massive customer education program which the company had undertaken, many customers demonstrated lack of knowledge of how to respond to the time-of-usage rate structure and a lack of acceptance of its proposed mandatory application. Nearly 40% of the participants were dissatisfied with the program. Unless there is substantial customer acceptance, the benefits of reduced on-peak usage and reduced on-peak demand will not be realized. For these reasons Vepco believes that the task of customer education concerning this concept could best be served through a voluntary program.

Therefore, the company does not believe that the time-of-day rate standard should be adopted at this time, since the wording of the applicable PURPA standard would appear to require time-of-day rates unless a determination is made that they would not be cost effective. The company believes that time-of-day rates should not be mandatory unless and until they are shown to be cost effective.

Concerning the seasonal rate standard, witness Gay reiterated that Vepco has had some form of seasonal rates in effect in North Carolina since 1971. In the company's current residential schedule and small general service schedule, there is a seasonal price differential in the kilowatt-hour charges; the large general service schedule contains a seasonal demand ratchet. Witness Gay noted that the summer/winter price differentials in its rate structure have been instrumental in closing the gap between the seasonal peaks and in leading towards the eventual transition to a winter peaking condition, with a consequent beneficial effect on the company's overall load curve. Witness Gay concludes that the company should continue the seasonal pricing differentials and, therefore, is in compliance with the PURPA standard.

The interruptible rate standard was the next topic discussed by witness Gay. He noted that based on Vepco's analysis of the concept and its experience to date throughout the entire service system, it believes that interruptible rates are not of universal interest or applicability. Moreover, in order for there to be any potential long-term benefits to the utility and to the general ratepayer sufficient to justify the billing credits offered to customers contracted for interruptible service, he believes that it is essential that such service be restricted to customers with curtailable load of a certain minimum level.

In September 1979, Vepco filed a Rate Schedule 9 (Separately Metered Interruptible Service) together with a description showing the derivation of that rate. This rate requires a commercial or industrial customer to have a minimum of 2,500 Kw load that can be separately metered. There are presently 17 customers in Vepco's North Carolina service area who can potentially qualify for the interruptible rate. Although each of these customers has been visited by a Vepco representative, no customer to date has agreed to participate in the program. Witness Gay feels that the company's filing of the rates with the

North Carolina Commission is in compliance with the intent of the PURPA standard. He noted further that if the Commission elects to adopt this particular standard, Vepco recommends that the language be modified to restrict such service to customers contracting for 2,500 Kw or more of interruptible service.

Relating to the load management standard, witness Gay indicated that Vepco, along with the Commission, had thoroughly studied this concept in numerous dockets. In this area Vepco has several pilot programs underway, primarily in the area of the residential water heating program as well as a time clock-controlled program. He felt these activities, along with those the company presently has in progress, sufficiently satisfy the standard relating to PURPA in this area.

Regarding the concept of lifeline rates, witness Gay stated that Vepco's position was that it shared the universal concern over the impact of the increasing cost of energy and all other costs of living on low income customers and those with fixed incomes. However, Vepco is nevertheless fundamentally opposed to the adoption of lifeline rate forms because that approach is an inefficient, ineffective, and inequitable means of dealing with the problem. Moreover, the lifeline rates method is duplicative of other, more direct methods of providing financial assistance for those in need. He indicated that Federal and State programs are already in existence to provide financial assistance on fuel and utility bills to the needy, to the elderly, to low income citizens, and to certain handicapped persons. He also pointed to several other State and Federal programs which are designed to assist the poor with their electric bills. He stated that the best solution to the problem of providing needed aid in meeting utility costs is to continue to provide financial assistance through governmental agencies, rather than attempting an artificial manipulation of the entire electric utility rate structure and subsidization of one group of customers by other customers. He felt that the existing agencies are better equipped to determine appropriate levels of assistance and to screen applicants. Also, these agencies have in place the organization to accomplish such purposes more effectively and to coordinate activities with other related governmental programs as opposed to forcing Vepco into undertaking such a program.

Witness Gay went on to explain why the lifeline concept constitutes an effective means of dealing with the program of helping low income or fixed income customers to cope with rising utility costs. This view was based on the results of several studies that Vepco had undertaken in an attempt to determine if there was any correlation between energy usage and income level. He cited a report to the West Virginia Public Service Commission in December 1975, which showed that any lifeline or a low first block rate will afford the same benefit for as many moderate and middle income customers as it does to the tax subsidized poor. He went on to explain that usage patterns are also significantly affected by other items such as type of structure, mix of appliances, type of heat, degree of insulation, size of household, etc. In summary, he indicated that because of the inherent implementation problems in the lifeline concept, he felt that the Commission should not adopt lifeline rates for customers at levels below cost of service, where the revenue deficit was to be recovered from other customers. Also, he recommended that subsidies of the type that would be provided by a lifeline rate should be met by the

implementation of an expanded lower income energy assistance program, which would provide financial assistance to those with the demonstrable need of aid in meeting fuel and utility bills.

C. Edward Scott III, an Engineer with the R.J. Reynolds Tobacco Company in Winston-Salem, North Carolina, spoke on the efforts of the R.J. Reynolds Industries, R.J. Reynolds Tobacco Company, and R.J. Archer, Incorporated, in the area of energy conservation. Witness Scott summarized the large investment in physical plant and human resources which the Reynolds companies have committed to North Carolina. Much of this commitment and that of numerous other industries in the State came about as a result of the North Carolina favorable industrial climate. Through the leadership of the General Assembly and the Governor, the State has offered an attractive package to prospective industries for expansion and relocation in the State. A keystone in this package is the fair distribution of the cost of utilities service for all classes of consumers. A regulatory climate of fairness and objectivity has been a major stimulant for industrial growth. Witness Scott congratulated the Utilities Commission on its use of the true cost-of-service concept in establishing rates for customers in North Carolina.

Witness Scott explained that the various Reynolds companies in North Carolina required electrical demand from their power suppliers from a high of 40 megawatts during the day to a low of approximately 30 megawatts at night. He cited such consistent electrical use as a reliable demand base for the utility, which in effect minimizes peaking and allows the utility to economically schedule their more efficient electrical generating units. Reynolds is very conscious of energy management and is therefore happy that its consistent use pattern is beneficial to the utilities and their other customers.

Seven years ago the Reynolds Tobacco Company formed an energy management program in an effort to reduce its energy consumption. Since that time other companies in the Reynolds group have formed their own committees and are achieving significant savings in all forms of energy usage. Since the various energy management programs were formed in 1973, it is estimated that a total of more than 11 trillion BTUs have been saved in Reynolds' North Carolina operations. Of these savings, it is estimated that approximately 400 million Kwhs are included. These total savings represent an energy utilization improvement (energy per unit of product) of more than 25%. Translating this into dollars results in savings of nearly $25 million. Techniques such as more efficient design of new buildings, power factor correction, use of energy efficient motors, lighting optimization, heating and air conditioning system modification, installation of heat removal systems, process modifications, etc., were used to achieve these savings.

Witness Scott summarized by stating that Reynolds and other industries are very serious about their energy management programs and wish to emphasize that electrical energy costs are extremely important to all industrial operations. Citing an increase in Reynolds' electrical cost of almost 200% since 1972, he stated that the industrial class of customers was also experiencing significant cost increases along with the residential consumers.

Wells Eddleman, Route 1, Box 183, Durham, North Carolina, testified on behalf of the Kudzu Alliance. In his opening comments, he urged the Commission to

consider the goals of fairness, conservation, and efficiency that are shared by PURPA and North Carolina's current energy policy. He urged the Commission to consider using the PURPA standards in ratemaking with an aim toward encouraging the most effective ways to increase efficiency and save energy and resources in a fair manner. Concerning the subject of cost of service, witness Eddleman felt that pricing below long-run marginal costs was unfair. He stated that the problem is aggravated by low rates to all electric heat pump customers, whose large contributions to peak demand are a major reason peak demand increases. He went on to explain that he does not like the facilities charge since this charge is, in his opinion, regressive in nature and impacts more severely on the poor people. He felt that in establishing rates the Commission must consider current, short-run, and long-run marginal costs and that the total revenues of the class of customers must cover the cost of that particular class. Concerning declining block rates, he felt that the energy charge that a customer pays should increase with use. This would reflect again the marginal cost approach.

Witness Eddleman favored the concept of time-of-day pricing. He stated that, for time-of-day pricing to work, computerized meters and economical thermal storage devices would be necessary. Further, if the rates are properly designed so that there are high peak prices, it may cause shifts by consumers to alternate fuels. Unfortunately, however, there is little direct incentive for a power company with more than adequate reserve and lots of plant under construction to use the most economical means of implementing time-of-day pricing. He recommended that the Commission reduce the allowed rate of return on investment for those power companies who do not make good progress in reducing their peak.

Concerning the seasonal rates standard, witness Eddleman testified that costs are obviously higher in the summer and winter for the power company. With the present fuel adjustment procedure in effect in the State, he stated that the consumers who use power during the peak periods were not being properly charged for this usage. He therefore recommended that the fuel adjustments be delayed by six months. This action would force the high fuel costs of the summer months to be borne during the winter and vice versa. This would act as a pricing mechanism to alert the consumers who use power during the peak periods that the cost for this usage is very significant.

In his discussion of the lifeline concept, witness Eddleman addressed this issue in combination with the objectives of the other PURPA standards previously discussed. Witness Eddleman explained that natural resources, the power supplier, its customer, and the rate tariff were all a part of a broad system whereby change in one component of the system interacts in some way, either good or bad, with the others. If effective load management and energy conservation are to be truly achieved, he feels that the customer must be alert as to how his actions affect the system's other components. Utilizing a marginal cost approach, he designed a set of rates using the Duke residential classification, where the average residential consumer would not see an increase in his rate over the present rate now in effect. However, under the theory that the very low user is not contributing to the peak of the utility and thereby not forcing additional expensive construction, these customers would see their bill drop from $4.78 to $0.20 at 10 Kw of usage. As the usage increases, the customer's bill goes up drastically, so that at 3,000 Kwh usage the bill would increase from its present range of $106-$136 to a proposed level of $285. Such a rate

design would create an incentive to the consumer to undertake steps to reduce demand and consumption, as well as not to penalize the small consumer, many of whom are poor and needy. Under such a rate schedule, all parties would benefit in that natural resources would be preserved through conservation, the utility would not be required to build as much plant, many consumers who cannot afford the high electric rates and use very little energy would receive a rate reduction, and those consumers contributing to the peak would pay their fair share toward the cost of new plant to meet that peak. Witness Eddleman recommended that the Commission take such actions as this to improve efficiency, conservation, and fairness in the State's power systems.

Relating to interruptible rates, witness Eddleman urged the Commission not to approve such rates whereby the power cost for the customer only recovers the fuel cost and no capacity cost. Such a rate would force the other customers on the system to pay for the power plants serving the interruptible consumer. However, customers with standby generators or their own cogeneration to meet essential loads can benefit from an interruptible rate. Such a rate would encourage efficiency and conservation by reflecting the savings during interruptible periods, while avoiding the marginal costs of additional capacity. He noted that the three major electric power suppliers of the State offer an interruptible rate, but that no customers are currently on the rate. He felt that the Commission should establish a minimum level of interruptible load to help control growth and rising energy costs. The Commission should then establish a timetable for achieving this goal and state that failure to achieve this goal would have an adverse impact on the company's allowed rate of return.

Witness Eddleman also urged that the residential and small general and industrial customers be allowed to participate in an interruptible effort through the control of appliances and other small electrical loads.

Witness Eddleman strongly endorses the concept of load management. In addition to techniques such as interruption of loads, time-of-day rates, and other general methodologies, he offers numerous other examples where peak demand can be reduced by a large number of customers. Those examples included insulating water heaters, using under-voltage circuit breakers for water heaters and refrigeration loads (reduction of demand at time of system peak by sensing under-voltage on distribution system), using reflective coatings on the roof of a structure, and using solar shading of roof-mounted air conditioning units.

With respect to the insulation of water heaters, witness Eddleman went through an analysis to illustrate that the power companies should be providing this service at no charge for its customers, instead of constructing new expensive power plants.

Dr. E. Roy Weintraub spoke as a representative of the Duke Faculty Committee for Alternatives to Nuclear Power. He endorsed the concept of marginal cost pricing and urged the Commission to adopt the PURPA cost-of-service standard. He stated that the concept of marginal cost pricing was a simple idea related to the principle of optimization. Marginal pricing does not require highly sophisticated theoretical reasons for its implementation, as the concept is well established in utilities literature. Dr. Weintraub sought to dispel frequently discussed problems of marginal pricing, such "excess" revenues and ease of embedded cost versus marginal costs, by citing the efforts of others in the field.

Concerning declining block rates, Dr. Weintraub stated that it was difficult to justify such rates in conjunction with marginal costing.

Dr. Weintraub explained to the Commission about the doctorial dissertation efforts of two Duke University students in the area of time-of-day rates. One study concerned residential time-of-day rates in which the demand elasticity estimates were low. However, he felt that this was due more to the short-run nature of the experiment than to a reflection of the time-of-day concept. He also quoted a second study concerning industrial customers on time-of-day rates. This study showed very little consumption variation between customers on the time-of-day rate and a control group. This result did not surprise Dr. Weintraub, because the study was not long-term. Had the industries been placed on the time-of-day rate for a long period, he felt that shifts in usage pattern and the development of cogeneration would have occurred as industries expended monies in an effort to reduce utility bills.

Dr. Weintraub stated that the double winter-summer peak in North Carolina utility consumption could be smoothed by the introduction of a seasonal rate. However, he did not endorse rates which would create a flat load curve because the off-peak times are necessary to perform scheduled plant maintenance.

Interruptible rates on the surface appear to be attractive, but Dr. Weintraub felt that such rates may be giving an incorrect pricing signal to the consumer. He viewed such rates as being effectively equivalent to an infinite price for the interrupted period.

In the view of Dr. Weintraub, lifeline rates are more a concept than a precise formula. Marginal pricing should be considered in this matter. If marginal pricing were instituted, any resulting revenues could be given back to all consumers through the use of a negative monthly service charge. Using several examples, he explained that a rate based on marginal cost would likely raise the Kwh charge, and the resulting demand quantity change could be used to reduce low user bills without significant change in high user bills. In conclusion, Dr. Weintraub felt that lifeline rates are best defended as a social dividend that would arise from rational pricing of electricity rather than as an income redistribution or social welfare system.

James F. McMullen, Purchasing Manager for Energy - Pisgah Forest Plant, Ecusta Power and Film Group of Olin Corporation, spoke on behalf of his company. He urged the Commission to use rates based on cost of service, as he perceived this to be the fairest way to charge for electricity. He stated that Olin was not in favor of lifeline rates and that aid to the disadvantaged could be served by governmental agencies using general tax revenues. The imposition of noncost related rates on Olin would have a profound effect on the company since its demand is essentially inelastic. This would place Olin and other industrial customers at a competitive disadvantage.

Witness McMullen stated further that Olin would be interested in cogeneration or an interruptible rate in an effort to help reduce peak demand.

Clarence W. Hollerung, Electrical and Instrument Supervisor at the Monsanto Textile Plant in Fayetteville, North Carolina, said that the Fayetteville plant is a filament polyester plant which operates year round. The plant's load

factor is nearly 92%. Being such a large consumer of energy, Monsanto has instituted energy reduction programs designed to achieve a 25% decrease in usage in 1980 over a 1972 base. The goal at the Fayetteville plant, however, is for a 42% reduction. Techniques such as power factor correction, use of more efficient lighting systems, steam trap maintenance, etc., are being used to achieve savings of nearly $700,000 in electric power on an annualized basis at the plant.

Monsanto's goal on the corporate level for 1985 is a 35% reduction, the Fayetteville plant's goal is 53.4%.

Witness Hollerung urged the Commission to design rates based on actual costs. Shifts in the costing methodology would cause Monsanto difficulty in evaluating actual savings in energy costs.

Alan Chalfant, an economist for Drazen-Brubaker & Associates, Inc., testified on behalf of the Carolina Industrial Group for Fair Utility Rates (CIGFUR). Witness Chalfant addressed the Commission on PURPA's cost-of-service standard. He recommended that the Commission specify actual embedded costs for the basis of implementing the standard and reject the concept of marginal costing for the purposes of rate design. He rejected the concept of marginal pricing at three levels.

1. Theoretical Level: The necessary assumptions underlying the validity of the marginal cost pricing proposition are absent in the real world.

2. Interpretive Level: The concept that the underlying theory considered to be marginal cost is not the same as the marginal costs which proponents have attempted to calculate.

3. Practical Level: Marginal cost pricing proponents have been unsuccessful in their attempts to calculate marginal cost, and had such attempts actually been successful, the Commission's current methods of determining revenue requirements for allocation to the various classes of consumers would prevent the application of such costs to electric rates.

At the theoretical level, witness Chalfant discussed the various rationales for marginal pricing; that being a quest for "Pareto optimality" and the goal of maximizing "consumers' surplus." He concluded that marginal cost pricing of electricity cannot guarantee Pareto optimality and that the concept of consumers' surplus is a one-dimensional yardstick because it ignores the relationship of electricity with the rest of the economy, in addition to relying on very restrictive assumptions.

Witness Chalfant dismissed the argument that long-run marginal cost equals short-run marginal cost. Long-run marginalists make this assumption for the optimal utility which accurately forecasts demand, future generation mix, fuel prices, etc. He concluded that this is not a reality.

Witness Chalfant also concluded that many marginalists equate marginal costs to social costs. However, he dismissed this argument by stating that externalities at work in the system cannot be quantified and therefore the marginalists have not accounted for all of the costs in their analyses.

Concerning the practical level, witness Chalfant described several attempts at determining marginal costs. These efforts have been less than successful in his view and highlight the difficulties marginalists have with the issue of excess revenues resulting from such rates. He pointed to several methods of defusing this excess revenue problem. The first is to charge the industrial customers at the marginal rates and use the excess revenues to subsidize other categories. Another method is to charge the most inelastic customers at the marginal rate, typically industrial customers, and refund the excess according to the elasticity of demand for the class. This would result, in his view, of a value-of-service concept as opposed to a cost-of-service concept.

Concerning whether the PURPA standard requires a marginal cost approach, witness Chalfant felt that if such an approach was intended, it would have been more directly stated. The Statement of Managers accompanying the Act explains that embedded cost analysis is not being excluded from consideration. The Conferees did seem to imply some form of peak responsibility method in the analysis, especially when considering time-of-use or interruptible rates.

Nicholas Phillips, Jr., of Drazen-Brubaker & Associates, Inc., testified on lifeline rates on behalf of CIGFUR. He discussed four traditional justifications for lifeline rates and sought to explain the fallacies in them. They are as follows:

1. Welfare Argument: Low-use customers have low income and high income relates to high-energy usage.

2. Conservation Argument: Higher prices charged larger users will induce them to conserve, whereas the small user cannot reduce his consumption any further.

3. Marginal Cost Argument: Electric rates based on marginal costs would create excess revenues which could be given back to consumers through reduced facilities charge and declining block rates with reduced early blocks.

4. Cost Assignment Argument: Low cost energy sources would be assigned to the initial portion of usage and higher cost sources to high-usage customers.

Witness Phillips notes that each argument is designed to create utility rates which affect someone's social goal. Given that the revenue requirements of the utility are fixed by a regulatory body, designing rates to satisfy one or more of the above arguments will necessitate rates discriminatory to certain classes of customers.

Concerning the "welfare argument," witness Phillips notes that electric rates are being unduly blamed for the welfare problem, whereas poverty is a much larger problem. The focus on electric rates arises because such rates are controlled by a regulatory body and not by the marketplace. Citing the 1975 study of the West Virginia Public Service Commission, which showed that lifeline rates benefitted high-income people as well as low-income people, witness Phillips concluded the welfare argument was invalid because of its imprecision in helping the intended group.

Lifeline rates for low levels of usage, although designed to help low-income customers, are discounted as inefficient because, in addition to helping some low income customers, they also aid a large number of owners of seldom used second homes, apartment dwellers, and electric customers who use gas and oil for heating. The remaining low-income users are hurt by lifeline rates because they use normal levels of electricity which would be priced higher to make up for revenue lost by the lifeline rate.

Attempts to force additional revenue requirements on the industrial class in an effort to conserve energy will likely be ineffective because of the relatively high inelasticity of energy usage by industrial customers.

Witness Phillips discounted the marginal cost argument as being speculative and directed attention to the testimony of witnesses Chalfant and Drazen who examined this concept in more detail.

The cost assignment argument is discounted because of its impracticality. Rates under cost assignment would assign low-cost sources of energy to the initial block of a rate and high costs to the terminal blocks. Another scenario would attempt to assign old plant to old usage and new plant to new usage.

Summarizing, witness Phillips noted the worthwhile goals of lifeline rates to aid the poor and promote conservation, but stated that such goals do not produce good rates. The purpose of utility regulation is not to cure the ills of our society. He recommended that an energy stamp program be instituted, which would be a better alternative than lifeline rates and would be more equitable to all ratepayers as well as provide more effective benefits to the needy.

Mark Drazen of Drazen-Brubaker & Associates, Inc., filed testimony on behalf of CIGFUR. Concerning cost of service, he recommended that the Commission continue the use of the current cost-of-service methodology. He recommended that the embedded cost approach be used over any marginal cost analysis, which creates a number of pricing problems for the rate makers. He drew this conclusion because of the difficulty in the use of actual book costs in the rate-making process, the difficulty of actual revenues exceeding required revenues, no generally acceptable computational definition of marginal costs, no guarantee that marginal costs will better allocate resources than current methodologies, and the fact that marginal costs are not required to design time-differentiated or seasonal rates.

Addressing the declining block rate standard, witness Drazen pointed out that the standard applies only to the energy component. The utility industry can still be considered a declining cost industry in many areas. He endorsed this standard if it is literally interpreted by regulators that the general concept of a declining block rate is acceptable if such a rate collects demand and/or customer charges along with energy costs in a multi-block rate.

Concerning seasonal and time-of-day rates, witness Drazen stated that these rates are a logical extension of cost of service. He stated that such rate concepts have been implemented in the industrial sector, evidenced by seasonal demand ratchets and time-of-use rates. He recommended that the residential and commercial sectors should be considered with respect to these types of rates, since their usage is generally seasonal in nature and has day-to-day and hour-to-hour fluctuations.

Witness Drazen endorsed interruptible rates if such rates are not mandatory and can be designed so as to achieve the utility's goal without adverse effect on the customer.

On the matter of load management, witness Drazen endorsed any concept which can reduce a utility's peak demand. As in the case of interruptible rates, he suggested that load management programs should be voluntary in nature and that the customer should bear any special costs associated with the program.

Colin S. Tam, Manager of Electricity Supply, Air Products and Chemicals, Inc., Corporate Energy Department, Allentown, Pennsylvania, provided testimony on behalf of Air Products' North Carolina plants. His testimony was limited to discussion of interruptible rates for industrial customers. Specifically, he urged the Commission to require Duke to develop a curtailable service rate which more accurately reflects the long-term value such a rate can provide for Duke.

Witness Tam's company operates an air separation plant in Reidsville, North Carolina, which produces liquid oxygen and nitrogen through the cryogenic separation of air. This process is very energy intensive (more than 79% of the variable costs of production is for electricity), and Air Products has sought ways to curtail its usage through more efficient design and operation of its plants.

Witness Tam stated that Duke's present interruptible tariff does not adequately reward the interruptible customer for the expense associated with an interruption. He strongly contends that if proper rate design can induce customers to participate in the rate (Duke currently has no one on the rate), this will benefit the utility, the interruptible customers, as well as the other customers of the utility since peak demand is reduced.

Witness Tam recommended the following:

1. Duke should be ordered to develop, in conjunction with interested customers, an acceptable interruptible service tariff.

2. A change in the calculation of the credit for interruption should not be tied to load factor or the customer.

3. There should be a significant increase in the per kilowatt credit to the customer over the current levels.

4. There should be a specification in the tariff to include a reasonable maximum hourly limit of interruption in relation to the frequency of interruptions. Currently, Duke's rate only specifies maximum annual hours of interruption.

Richard P. Torre of Akron, Ohio, provided testimony on behalf of the General Tire and Rubber Company. He related the importance of electricity in the manufacturing of rubber tires. Electricity is an inelastic resource in the tire industry. Recognizing this, General Tire has embarked on an energy conservation program along with other tire manufacturers. In 1979 at its Charlotte manufacturing plant, General Tire has been able to achieve a 21.6% savings in

energy when compared to a 1972 base year. These savings have been made possible through aggressive maintenance and housekeeping efforts.

Witness Torren stated that General Tire was in favor of cost-based rates. The company did not favor the concept of lifeline rates, as this was merely an income redistribution plan being disguised as an energy conservation plan. Such a rate would distort the cost picture to the point that energy conservation decisions also would be distorted, thereby lessening the likelihood of achieving energy conservation goals.

Jay B. Kennedy, Executive Director of the Electricity Consumers Resource Council (ELCON), filed testimony on behalf of its members. ELCON is a nonprofit association of 16 large industrial users of electricity, 10 of whom have plants located in North Carolina. Concerning the cost-of-service standard, he endorsed the concept of cost-based rates. Penalty or subsidy pricing of electricity is contrary to statute and is preferential in nature. Such rates do not provide accurate pricing signals to consumers, thereby making rationale decisions relating to conservation more difficult. ELCON's position is that electric rates should be based on today's actually incurred cost, and not on costs evaluated on often confusing hypothetical distortions of economic theory. He dismissed marginal cost pricing in ratemaking, citing a detailed study of marginal cost pricing by the Ontario Energy Board (December 1979). Specific portions of this report are provided in witness Kennedy's testimony. With the use of the peak responsibility method of allocating capacity costs, adjustments for fuel expense through monthly or quarterly adjustment clauses, inclusion of construction work in progress (CWIP) in the rate base, and the normalization of depreciation and other expenses are aimed at ensuring that the customer's bill reflects as nearly as possible the cost of providing him service.

Witness Kennedy endorsed the concept of time-of-day or seasonal rates so long as such rates are properly designed to reflect actually incurred costs. Such an approach would include determination of the total cost of service, allocation of that cost to the appropriate time periods, and then distribution of the cost to the classes of customers based on load data regarding their time of consumption and delivery characteristics. He cautioned the Commission not to use such rates as a form of penalty pricing for the industrial sector or as an effort to force a reduction in peak demand. Because of the nature of many industrial operations, reductions in peak demand cannot be easily obtained.

Concerning declining block rates, witness Kennedy notes that the standard applies only to the energy component of the rate. Therefore, PURPA does not mandate that such rates be eliminated. PURPA's declining block rate standard is acceptable to him as long as the basis for the design of the rate is based on actually incurred costs.

With respect to interruptible rates, witness Kennedy states that such rates will not be beneficial to most of the industrial customers. Only in cases where the interruptions will not place burdens on production and efficiency will an industry be interested in such a rate. He urged that such rates be voluntary. Although the utility may not attract a significant number of customers to such a rate, it should nonetheless attempt to do so, because of the potential benefit to the utility and its other customers.

As to load management techniques, witness Kennedy endorsed such efforts if they are cost-effective for the utility and the customer. Such efforts should be a voluntary effort on the part of the customer.

Witness Kennedy rejected the concept of lifeline rates because they are not cost-based, are ineffective for aiding the needy, and are discriminatory to certain rate classes depending on from whom the lifeline deficits are to be recovered. He stated that the problem of the impoverished is a social problem and not a rate-making problem. To state that the purchase of electricity is more vital than other types of purchases by the poor is false. This problem should be addressed through other agencies which specialize in getting aid to those in need.

Richard Conlin, Legislative Network Coordinator for the Solar Lobby, appeared before the Commission as an expert in Policy Analysis and Public Administration.

Witness Conlin's testimony centered on the use of marginal cost pricing to properly reflect to the consumer the true cost of each additional unit of energy. By establishing rates which are set equal to marginal costs, this will ensure that the utilities' cost of expansion will be covered. He recognized that a windfall profit would result for the utility using such rates. He therefore proposed that customer classes which are primarily responsible for the utility's growth and which have the greatest elasticity of demand should have rates at or near marginal costs. Rates for other customers would deviate from marginal costs according to their relative elasticity and contribution to growth.

To achieve this goal, witness Conlin proposed inverted rates using a three-tiered structure with at least a 1¢ difference between tiers. In this way, the customers with heavy usage who are causing growth in the utility will be forced to pay a greater share of the utility's cost. He stated that this also would constitute a lifeline approach to the small users who generally are the poor and needy.

Based upon a careful consideration of all of the foregoing, the Commission makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company, Duke Power Company, and Virginia Electric and Power Company, being duly licensed public utilities subject to the jurisdiction of this Commission, hold franchises to provide electric utility service in their respective territories in the State of North Carolina. Said electric utilities are subject to the applicable provisions of the Public Utility Regulatory Policies Act of 1978.

2. The Commission has now complied with the applicable provisions of PURPA requiring public notice and hearings to be held with respect to the six rate-making standards of section 111 of PURPA, regarding cost-of-service, declining block rates, interruptible rates, seasonal rates, load management techniques, and time-of-day rates, and with respect to section 114 of PURPA, relating to the concept of lifeline rates.

3. The pertinent provisions of PURPA require this Commission to make, with respect to each electric utility for which it has rate-making authority and which is subject to Title I of PURPA, a determination concerning whether or not it is appropriate to implement each of the standards of section 111(d) of PURPA to carry out the purposes of Title I of that Act. The Commission may then implement any such standard determined to be appropriate or may decline to do so. If it declines to do so, the reasons must be stated in writing. In addition, the Commission must determine, for each such utility, whether lifeline rates as described in section 114 of PURPA should be implemented.

The purposes of Title I of PURPA are contained in section 101 thereof and are as follows:

"(1) conservation of energy supplied by electric utilities;

(2) the optimization of the efficiency of use of facilities and resources by electric utilities; and

(3) equitable rates to electric consumers."

4. Section 111(d)(1) of PURPA provides that the rates charged by an electric utility for providing electric service to each class of electric consumers "shall be designed, to the maximum extent practicable, to reflect the costs of providing electric service to such class as determined under section 115(a)."

Section 115(a) of PURPA provides as follows:

"(a) COST OF SERVICE. - In undertaking the consideration and making the determination under section 111 with respect to the standard concerning cost of service established by section 111(d)(1), the costs of providing electric service to each class of electric consumers shall, to the maximum extent practicable, be determined on the basis of methods prescribed by the State regulatory authority (in the case of a State regulated electric utility) or by the electric utility (in the case of a nonregulated electric utility). Such methods shall to the maximum extent practicable

(1) permit identification of differences in cost-incurrence, for each such class of electric consumers, attributable to daily and seasonal time of use of service and

(2) permit identification of differences in cost-incurrence, attributable to differences in customer demand, and energy components of cost. In prescribing such methods, such State regulatory authority or nonregulated electric utility shall take into account the extent to which total costs to an electric utility are likely to change if:

(A) additional capacity is added to meet peak demand relative to base demand; and

(B) additional kilowatt-hours of electric energy are delivered to electric consumers."

5. The North Carolina Utilities Commission has, for more than a decade, placed great emphasis on costs of service in its determination of just and reasonable electric utility rates in order to reflect costs of service and to recognize changes in long-run incremental costs. This Commission requires annual fully distributed cost-of-service studies from each of the major electric utilities and considers both embedded costs and marginal costs in setting rates.

6. Section 111(d)(2) of PURPA provides as follows:

"(2) DECLINING BLOCK RATES. - The energy component of a rate, or the amount attributable to the energy component in a rate, charged by any electric utility for providing electric service during any period to any class of electric consumers may not decrease as kilowatt-hour consumption by such class increases during such period except to the extent that such utility demonstrates that the costs to such utility of providing electric service to such class, which costs are attributable to such energy component, decreases as such consumption increases during such period."

7. Since 1973, the North Carolina Utilities Commission has required that the costs associated with production of energy should be equal in each block of each rate in order to avoid wasteful consumption of electricity by electric utility customers. Customer costs and demand costs differ between rate blocks to reflect differing customer costs and demand characteristics. CP&L, Duke, and Vepco presently have no rates in effect in which the energy component of the rate declines.

8. Section 111(d)(3) of PURPA provides as follows:

"(3) TIME-OF-DAY RATES. - The rates charged by any electric utility for providing electric service to each class of electric consumers shall be on a time-of-day basis which reflects the costs of providing electric service to such class of electric consumers at different times of the day unless such rates are not cost-effective with respect to such class, as determined under section 115(b)."

Section 115(b) of PURPA provides as follows:

"TIME-OF-DAY RATES. - In undertaking the consideration and making the determination required under section 111 with respect to the standard for time-of-day rates established by section 111(d)(3), a time-of-day rate charged by an electric utility for providing electric service to each class of electric consumers shall be determined to be cost-effective with respect to each such class if the long-run benefits of such rate to the electric utility and its electric consumers in the class concerned are likely to exceed the metering costs and other costs associated with the use of such rates."

9. In 1975, the North Carolina General Assembly enacted G.S. 62-155, which, in pertinent part, requires this Commission to study the feasibility of implementing a system of nondiscriminatory on-peak/off-peak pricing. Since enactment of this statute, this Commission has ordered a number of different on-going types of studies aimed at determining the feasibility of time-of-use

rates for the State's electric ratepayers. Results for some of these studies have shown the merit of such rates, such as in the case of Duke's residential class, and the Commission has ordered both Duke and CP&L to offer such a rate on a voluntary basis to any interested residential customers.

10. Section 111 (d)(4) of PURPA provides as follows:

"(4) SEASONAL RATES. - The rates charged by an electric utility for providing electric service to each class of electric consumers shall be on a seasonal basis which reflect the costs of providing service to such class of consumers at different seasons of the year to the extent that such costs vary seasonally for such utility."

11. As early as in a 1971 Vepco case, the North Carolina Utilities Commission recognized the benefit of seasonal rates in helping to smooth a utility's annual load curve. G.S. 62-155 requires this Commission to investigate the billing of electric customers so as to reflect the costs associated with serving them at peak times; seasonal rates are a tool in this effort. At present, Duke, CP&L, and Vepco have a residential seasonal rate and some form of demand ratcheting or seasonal energy charge for their large power users.

12. Section 111(d)(5) of PURPA provides as follows:

"(5) INTERRUPTIBLE RATES. - Each electric utility shall offer each industrial and commercial electric consumer an interruptible rate which reflects the cost of providing interruptible service to the class of which such consumer is a member."

13. Prior to the passage of G.S. 62-155 in 1975, this Commission had begun to study numerous techniques designed to reduce the peak demand of electric utilities. One of these techniques was interruptible rates. Subsequent to 1975, the Commission continued investigating the interruptible rate concept and, in 1978, ordered the State's electric utilities to develop interruptible rates for industrial customers and for direct control of certain residential loads, primarily water heaters. In the fall of 1979, the utilities filed interruptible rates pursuant to the Commission Order; these rates were approved for implementation in November 1979, by an Order entered in Docket No. M-100, Sub 78

14. Section 111(d)(6) of PURPA provides as follows:

"(6) LOAD MANAGEMENT TECHNIQUES. - Each electric utility shall offer to its electric consumers such load management techniques as the State regulatory authority (or the nonregulated electric utility) has determined will

(A) be practicable and cost-effective, as determined under section 115(c),

(B) be reliable, and

(C) provide useful energy or capacity management advantages to the electric utility."

Section 115(c) of PURPA provides as follows:

"(c) LOAD MANAGEMENT TECHNIQUES. - In undertaking the consideration and making the determination required under section 111 with respect to the standard for load management techniques established by section 111(d)(6), a load management technique shall be determined, by the State regulatory authority or nonregulated electric utility, to be cost-effective if

(1) such technique is likely to reduce maximum kilowatt demand on the electric utility, and

(2) the long-run cost-savings to the utility of such reductions are likely to exceed the long-run costs to the utility associated with implementation of such technique."

15. Load management techniques were also under active study by this Commission prior to the passage of G.S. 62-155 in 1975. Subsequently, extensive investigations into numerous load management techniques, load forecasting methodologies, and related tariff designs were completed. This effort is continuing in many areas; the regulated electric utilities and outside consultants are assisting the Commission in determining the most cost-effective means of limiting the growth of the electric utilities' demand.

16. Section 114 of PURPA states the following concerning the concept of lifeline rates:

"(a) LOWER RATES. - No provision of this title prohibits a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or a nonregulated electric utility from fixing, approving, or allowing to go into effect a rate for essential needs (as defined by the State regulatory authority or by the nonregulated electric utility, as the case may be) of residential electric consumers which is lower than a rate under the standard referred to in section 111(d)(1).

"(b) DETERMINATION. - If any State regulated electric utility or nonregulated electric utility does not have a lower rate as described in subsection (a) in effect 2 years after the date of the enactment of this Act, the State regulatory authority having ratemaking authority with respect to such State regulated electric utility or the nonregulated electric utility, as the case may be, shall determine, after an evidentiary hearing, whether such a rate should be implemented by such utility.

"(c) PRIOR PROCEEDINGS. - Section 124 shall not apply to the requirements of this section."

17. G.S 62-130 authorizes this Commission to "...fix, establish or allow just and reasonable rates for all public utilities subject to its jurisdiction...." G.S. 62-133 requires the Commission to consider the rate request of a utility on the basis of original cost less depreciation. Also, G.S. 62-140 prohibits rates which grant unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. Thus, the North Carolina General Statutes prohibit the Commission from implementing lifeline rates which, by definition, are not cost-based. Lifeline rates have been shown to be an inefficient means of income transfer.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding of fact is contained in the Commission's files, the testimony of the Public Staff witnesses and that of the witnesses for the three electric utility companies here involved, as well as in the Commission's Order of August 14, 1979, in this docket. This finding of fact is jurisdictional in nature and it does not appear that the jurisdiction of this Commission over the three electric utilities here involved is a controverted issue in these proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2 AND 3

The evidence for these findings of fact, regarding the type of hearing and consideration which PURPA requires this Commission to give to the six rate-making standards and the concept of lifeline rates and regarding the actions which this Commission is required or permitted to take with respect to those six standards and the concept of lifeline rates, is contained in the testimony and exhibits of the witnesses testifying on behalf of the Public Staff and the three electric utilities here involved.

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

The evidence for these findings of fact is contained in section 111(d)(1) and section 115(a) of PURPA and in the testimony of the witnesses appearing on behalf of the three electric utilities here involved. Testimony was received which summarized the history of the Commission's emphasis on cost-of-service methodologies in its determination of just and reasonable electric rates. This Commission has long recognized that the proper pricing of electricity in this State is essential in order to provide appropriate signals to enable consumers to make efficient consumption-related decisions and to prevent undue discrimination between customers.

Based on the record, the Commission has substantially addressed the subject of cost of service as outlined in PURPA. In Docket No. E-2, Sub 229 (CP&L), and Docket No. E-7, Sub 159 (Duke), the Commission explicitly addressed the design of rates which reflects costs as described in section 115(a). This Commission found that the rates of the two utilities were substantially effective in reflecting cost of service, recognizing changes in long-run incremental costs and requiring classes of consumers to pay their fair share of the costs to serve them. Inasmuch as the rates of Vepco have been determined and reviewed by this Commission in accordance with the same general standards applied to CP&L and Duke, the rates of Vepco also achieve the intent of PURPA as it relates to cost of service.

Long before enactment of PURPA, this Commission began to utilize the concept of cost of service to assign fair and reasonable costs among classes of electric utility customers in order to ensure that fair and reasonable rates are designed to provide proper pricing signals to customers and to meet the revenue requirements of the utility. The Commission further notes that testimony was also presented at the hearing concerning the uncertainties of the meaning of portions of the special rule of section 115(a) and concerning its potential for impeding the regulatory process; e.g., there is controversy concerning

interpretations of PURPA requirements as proposed by the Department of Energy in its Voluntary Guideline for the Cost of Service Standard Under the Public Utility Regulatory Policies Act of 1978 published at 45 Fed. Reg. 58760 (Sept. 4, 1980). In view of the procedural constraints of G.S. 62-133 concerning determination of revenue requirements and the Commission's past activities in this area, the Commission accepts, in part, the specific PURPA cost-of-service standard and has in fact already implemented parts thereof. Therefore, the Commission will continue to consider, adopt, and follow sound cost-of-service principles in designing electric utility rates in North Carolina, and will, at the same time, also implement, to the maximum extent practicable, those portions of the PURPA cost-of-service standard found to be consistent with applicable State law and the rate design principles followed by this Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6 AND 7

The evidence for these findings of fact is contained in section 111(d)(2) of PURPA, the testimony of the witnesses appearing on behalf of the Public Staff, the testimony of the witnesses appearing on behalf of the three utilities here involved, and the testimony of witnesses Mark Drazen and Jay B. Kennedy.

This Commission, in conjunction with its efforts in the area of cost of service, has sought to identify the three major cost components of electric service: (1) demand or capacity costs, (2) energy costs, and (3) customer costs. Utilizing this information, the Commission has ordered the three utilities subject to this proceeding to design cost-based rates to recover these costs. With the sharp increases in fuel expenses in the early 1970s, the Commission has focused on this area and has sought to ensure that customers at all usage levels are being charged the average variable cost of producing additional units of energy.

The Commission rejects the concept of an inverted rate structure as proposed by witnesses Eddleman and Conlin. As has been stated in other Orders of this Commission, the revenue instability of such rates renders them impractical; the excess revenues which may be generated in witness Conlin's scenario are unlawful in view of G.S. 62-133.

Based upon all of the foregoing, the Commission concludes that continued implementation of the PURPA standard on declining block rates is appropriate and consistent with the purposes of PURPA and otherwise applicable State law.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 AND 9

The evidence for these findings of fact is contained in section 111(d)(3) and section 115(b) of PURPA, the testimony of the witnesses appearing on behalf of the Public Staff and the testimony of the witnesses appearing on behalf of the three utilities here involved.

This Commission began investigations into time-of-use pricing concepts when the General Assembly, by the enactment of G.S. 62-155 in 1975, authorized the Commission to undertake the review of methodologies in the load management area. This statute, in pertinent part, states:

"(b) If the Utilities Commission after study determines that conservation of electricity and economy of operation of the public utilities will be furthered thereby, it shall direct each electric public utility to notify its customers by the most economical means available of the anticipated periods in the near future when its generating capacity is likely to be near peak demand and urge its customers to refrain from using electricity at these peak times of the day...."

G.S. 62-155(d) further provides, in pertinent part, as follows:

"The Commission shall study the feasibility of and, if found to be practicable, make plans for the public utilities to bill customers by a system of nondiscriminatory peak pricing, with incentive rates for off-peak use of electricity charging more for peak periods than for off-peak periods to reflect the higher cost of providing electric service during periods of peak demand on the utility system...."

The topic of time-of-day rates is being continually studied by the Commission in cooperation with Duke and CP&L; Vepco is studying the concept in Virginia. This Commission is on record as endorsing time-of-day rates on a voluntary basis and is continuing to study the feasibility of such rates under different conditions. The Commission has, since 1975, been systematically reviewing the concept of time-of-day pricing and actively pursuing appropriate use of such methods. The Commission has approved the implementation of voluntary rates for Duke's residential class and recently ordered CP&L to file such rates. This matter will be considered in Vepco's current rate case. Therefore, the Commission concludes that continued implementation of the PURPA standard on time-of-day rates is appropriate to carry out the purposes of PURPA and is also consistent with the applicable laws of the State of North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 11

The evidence for these findings of fact is contained in section 111(d)(4) of PURPA, the testimony of the witnesses appearing on behalf of the Public Staff and the testimony of the witnesses appearing on behalf of the three utilities here involved.

PURPA suggests that electric rates should be priced on a seasonal basis if studies show seasonal fluctuations in the cost of service. The Conference Report accompanying PURPA notes that PURPA does not require that such rates be fully implemented, but instead, that a seasonal price differential apply in the rates to reflect the cost differentials where it can be shown that seasonal fluctuations in cost do occur.

The Commission implemented a seasonal rate differential with respect to the rates of Vepco in 1971 to reflect the costs of meeting Vepco's sharp summer peak. In 1976 the Commission ordered CP&L to institute a summer/winter price differential for its electric heating customers. In 1978 the Commission ordered Duke to implement a summer/winter price differential for its all electric and conservation rates. Today, the residential rates of all of the major electric utilities in North Carolina reflect a summer/winter price differential in an attempt to stem consumption during the summer peak period. In addition, the Commission has endorsed the uses of demand ratcheting

principles for large power users. Duke and CP&L's electricity usage patterns have changed from summer peaking to balanced peaking.

Witness Currin, speaking on behalf of the Public Staff, questioned whether the rate differentials of the Duke and CP&L rates were cost justified in light of the near equal magnitude of the summer and winter peaks of the companies. He recommended that the utilities provide cost justification with each rate case for any existing seasonal pricing differentials. The Commission has concurred with this point and has, in recent rate cases, ordered utilities to file appropriate information with subsequent cases to allow periodic review of seasonal differentials. However, the Commission rejects the position that allocation methods should be immediately changed whenever utilities, with the aid of seasonal pricing, finally achieve balanced peaks. To do so would be contrary to appropriate costing principles.

This Commission has previously recognized the appropriateness of seasonal rates as a load management tool. The legistative mandate to the Commission in 1975, G.S. 62-155, ordered the Commission to develop on-peak/off-peak style rates, of which seasonal rates are a variation. The Commission's actions in this area since 1971 demonstrate that continued implementation of the PURPA standard related to seasonal rates is entirely appropriate and consistent with the purposes of PURPA and applicable State law.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 AND 13

The evidence for these findings of fact is contained in section 111(d)(5) of PURPA, the testimony of the witnesses appearing on behalf of the Public Staff, the testimony of the witnesses appearing on behalf of the three utilities here involved, and the testimony of witnesses Tam, Drazen, Kennedy, and Eddleman. The Public Staff and utility witnesses discussed the development of interruptible rates in North Carolina. The other witnesses, Tam, Drazen, Kennedy, and Eddleman, also endorsed the concept of interruptible rates as being beneficial to utilities, interruptible customers, and all utility customers by reducing peak demand growth.

The Commission has been investigating this concept as a part of the 1975 G.S 62-155 mandate previously discussed. All three electric utilities which are parties to this proceeding presently offer voluntary interruptible rates which comply with the PURPA interruptible rate standard.

The Commission recognizes that such a rate design will only attract a limited number of customers because of the costs and operational problems which such a rate will have on a business operation. The Commission notes the comments of witness Tam in this regard. Recognizing that the task of attracting customers to such a rate will be difficult, the Commission is nevertheless committed to ensuring that such a viable alternative is promoted by the utilities. The Commission does not agree with witness Eddleman who wishes to punish the utilities for not achieving a predetermined goal of interruptible load. Because of the general types of industries in North Carolina and the generally low electricity rates in the State, inducement of customers to such a rate will be difficult. However, as in the case of witness Tam and his company, Air Products, Inc., there are companies who are very interested in pursuing an interruptible style rate. Therefore, this Commission feels that each of the

utilities involved should actively seek the comments of its major industrial customers in an effort to determine a common basis of the development of a cost-based interruptible rate which is administratively feasible to both parties. Accordingly, the Commission concludes that each utility should file, as a part of its annual load forecast, a statement as to status of its efforts in obtaining interruptible customers. This statement should include the number of customers contacted concerning the rate, sampling of responses from those customers, number of customers on the rate, if applicable, and the amount of interruptible load, time, reason, and duration of interruptions during the past year.

Therefore, the Commission concludes that continued implementation of the PURPA standard on interruptible rates is appropriate in North Carolina and consistent with the purposes of PURPA and the laws of this State.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 AND 15

The evidence for these findings of fact are contained in section 111(d)(6) and section 115(c) of PURPA, the testimony of the witnesses appearing on behalf of the Public Staff, and the testimony of the witnesses appearing on behalf of the three utilities here involved.

Subsequent to the passage in 1975 of G.S. 62-155, this Commission has held numerous hearings (Docket Nos. E-100, Subs 21, 25, 32, and 35, and Docket No. M-100, Sub 78) on the subject of load management techniques. In addition to the activities in these dockets, the Commission retained outside consultants to advise the Commission as to the most cost effective methods of accomplishing load management for the State's major electric utilities.

Continued implementation of the PURPA standard relating to load management techniques is appropriate to carry out the purposes of PURPA and is also entirely consistent with G.S. 62-155 which requires the exploration of means of controlling peak demand. The actions of the Commission since 1975 in this area have been significant and this Commission remains committed to the concept of load management in an effort to conserve energy through the efficient utilization of all resources.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 16 AND 17

The evidence for these findings of fact is contained in section 114 of PURPA, the testimony of the witnesses appearing on behalf of the Public Staff, and the testimony of the witnesses of the three utilities here involved.

The Commission has not formally communicated its findings on the issue of lifeline rates to the General Assembly. The North Carolina General Statutes give no explicit authority to the Commission to appropriate money to "needy" consumers to help them pay their electric bills. The Commission is expressly prohibited by G.S. 62-140 from approving discriminatory rates which would intentionally tax some consumers so that other low usage and/or low income users may be subsidized. Until such time as the General Assembly grants authority to the Commission to implement a lifeline rate, the Commission is prohibited from doing so.

As previously discussed, the SSI rate is "an experiment to collect data in response to the mandate...to study the feasibility of lifeline rates." If the data shows that the SSI rate is justified solely on the basis of cost of service, then such rates could be permanently implemented on a statewide basis. If the rate is found not to be cost justified, G.S. 62-140 would prohibit continuance of the rate.

In addition, the information available to the Commission indicates that lifeline rates are not efficient as a means of helping those in need. Many of these individuals have normal electricity use patterns and would be penalized if rates for normal usage levels were increased to offset the revenue loss generated by introduction of underpriced lifeline rates for low levels of usage. This matter is presently under contract for further study.

Therefore, after evidentiary hearings in compliance with the determination portion of PURPA section 114(b), this Commission concludes that it should decline to implement the concept of lifeline rates as outlined in section 114 of PURPA.

IT IS, THEREFORE, ORDERED as follows:

1. Having found that this Commission already requires on an annual basis from each utility here involved fully distributed cost-of-service studies utilizing embedded as well as marginal cost methodologies, the Commission adopts the standard on cost of service as set forth in section 111(d)(1) of PURPA to the extent that it does not conflict with the provisions of G.S. 62-133 concerning determination of revenue requirements. Therefore, based on the Commission's past policies and activities in this area, the Commission will continue to consider, adopt, and follow sound cost-of-service principles in designing electric utility rates in North Carolina and will continue to implement, to the maximum extent practicable, those portions of the PURPA cost-of-service standard found to be consistent with applicable State law and the rate design principles found appropriate by this Commission.

2. Having found that this Commission has long required that the energy cost on a per Kwh basis be uniformly assigned to each block in a utility's rates and that the number of declining block charges of the State's electric utilities have been significantly reduced, the Commission continues its previous adoption and implementation of the standard on declining block rates as set forth in section 111(d)(2) of PURPA.

3. Having found that North Carolina General Statute 62-155 requires this Commission to explore on-peak and off-peak electric tariffs, that the Commission has ordered numerous experiments into the cost effectiveness of time-of-use rates, that the Commission has approved the voluntary implementation of such rates for the residential customers of Duke Power Company and that Carolina Power & Light Company and Virginia Electric and Power Company presently have time-of-day rates on file which are under consideration by this Commission, this Commission continues its previous adoption and implementation of the standard on time-of-day rates as set forth in section 111(d)(3) of PURPA.

4. Having found that this Commission has ordered the design of a summer/winter price differential in the residential rates of the State's

electric utilities and has also approved the implementation of seasonal demand ratchets for large power users and that such rates have helped to move North Carolina's electric utilities toward balanced peaks, this Commission continues its previous adoption and implementation of the standard on seasonal rates as set forth in section 111(d)(4) of PURPA.

5. Having found that G.S. 62-155 requires this Commission to explore the concept of short duration interruptible load and that this Commission has approved for implementation such rates by CP&L, Duke, and Vepco, this Commission continues its previous adoption and implementation of the standard on interruptible rates as set forth in section 111(d)(5) of PURPA. Further, each of the electric utilities subject to this Order is hereby required to file, as a part of its annual load forecast, a statement concerning the status of its efforts in obtaining interruptible customers. This statement shall contain the number of customers contacted concerning the rate, sampling of responses from those customers (including negative responses which shall provide specific reasons for refusal), number of customers on the rate, if applicable, and the amount of interruptible load, time, reason, and duration of interruptions during the past year.

6. Having found that G.S. 62-155 requires this Commission to explore numerous load management techniques in an effort to control peak demand growth and that this Commission has systematically been studying and implementing such techniques for five years in conjunction with the three electric utilities here involved, this Commission continues its previous adoption and implementation of the standard relating to load management techniques as set forth in section 111(d)(6) of PURPA.

7. Lifeline rates, having been shown to be inefficient as a means of income transfer, and having been shown to be contrary to G.S. 62-140 which prohibits this Commission from approving rates which are unreasonable or unduly discriminatory, are not appropriate and are not approved for use in North Carolina. Implementation of lifeline rates pursuant to section 114 of PURPA is therefore declined. However, this Commission shall continue to examine the effectiveness of other rate forms such as the current Duke Power Company system "SSI" rate experiment which examines the effect of lower rates to approximately 8,600 customers who receive Supplemental Security Income (a group which the experiment may show to be low-use, high load-factor customers), which may coincidently achieve some of the same objectives as lifeline rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of February 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

GENERAL ORDERS - ELECTRICITY

DOCKET NO. E-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Determination of Rates for Purchase and Sale of Electricity Between Electric Utilities and Qualifying Cogenerators or Small Power Producers and Rulemaking Concerning Conditions and Requirements for Such Service	) RECOMMENDED ORDER) APPROVING RATES AND) TERMS AND CONDITIONS AND) SETTING FURTHER HEARING) ON WHEELING PROVISIONS

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on January 6-8, and January 26, 1981.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioner Edward B. Hipp

APPEARANCES:

For the Respondents:

John Bode, Bode, Bode and Call, Attorneys at Law, P. O. Box 391, Raleigh, North Carolina 27602
For: Duke Power Company

W. Edward Poe, Jr., Attorney, Duke Power Company, P. O. Box 33189, Charlotte, North Carolina 28242

Edgar M. Roach, Jr., Hunton and Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602, and Douglas Michael Palais, Hunton and Williams, Attorneys at Law, P. O. Box 1535, Richmond, Virginia 23212
For: Virginia Electric and Power Company

Stephani C. Wilson and James E. Tucker, Hunton and Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602
For: Nantahala Power and 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.

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P. O. Box 2246, Raleigh, North Carolina 27602
For: Olin Corporation, PPG Industries, Inc., The Singer Company, Weyerhauser Company, and Kemp Furniture Industries, Inc.

Louis B. Meyer, Lucan, Rand, Rose, Meyer, Jones and Orcutt, Attorneys at Law, Box 2008, Wilson, North Carolina 27895
For: ElectriCities of North Carolina

For the Public Staff:

G. Clark Crampton, Staff Attorney, North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602, and Jerry B. Fruitt, Chief Counsel, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: The Federal Public Utility Regulatory Policies Act of 1978 (PURPA), Section 210, prescribes the responsibilities of the Federal Energy Regulatory Commission (FERC) and the State regulatory authorities for encouragement of the development of cogeneration and small power production.

Cogeneration facilities simultaneously produce two forms of useful energy, such as electric power and steam. Cogeneration facilities use significantly less fuel to produce electricity and steam (or other forms of energy) than would be needed to produce the two separately. Thus, by using fuels more efficiently, cogeneration facilities can make a significant contribution to the effort to conserve energy resources.

Small power production facilities use biomass, waste, or renewable resources, including wind, solar, and water, to produce electric power. Reliance on these sources of energy can reduce the need to consume traditional fossil fuels to generate electric power.

Section 210 of PURPA requires the FERC to prescribe such rules as it determines necessary to encourage cogeneration and small power production, including rules requiring electric utilities to purchase electric power from and to sell electric power to cogeneration and small power production facilities. Additionally, Section 210 of PURPA authorizes the FERC to exempt qualifying facilities from certain federal and State law and regulation.

Under Section 201 of PURPA, cogeneration facilities and small power production facilities which meet certain standards and which are not owned by persons primarily engaged in the generation or sale of electric power can become "qualifying facilities," and thus become eligible for the rates and exemptions set forth under Section 210 of PURPA.

Each electric utility is required under Section 210 to offer to purchase available electric energy from cogeneration and small power production facilities which obtain qualifying status under Section 201 of PURPA. For such purchases, electric utilities are required to pay rates which are just and reasonable to the ratepayers of the utility, in the public interest, and which do not discriminate against cogenerators or small power producers.

The FERC issued its rules with respect to Section 210 of PURPA in its February 19, 1980, amendment of Subchapter K, Part 292, Subparts A; C, D, and F of Chapter I, Title 18, Code of Federal Regulations, effective March 20, 1980. These FERC rules provide that electric utilities must purchase electric energy and capacity made available by qualifying cogenerators and small power producers at a rate reflecting the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from

other suppliers. To enable potential cogenerators and small power producers to be able to estimate these avoided costs, the rules require electric utilities to furnish data concerning present and future costs of energy and capacity on their systems.

The FERC rules further provide that electric utilities must furnish electric energy to qualifying facilities on a nondiscriminatory basis, and at a rate that is just and reasonable and in the public interest. They must also provide certain types of service which may be requested by qualifying facilities to supplement or back up those facilities' own generation. All qualifying cogeneration facilities and certain qualifying small power production facilities are exempted by the FERC from certain provisions of the Federal Power Act, from all of the provisions of the Public Utility Holding Company Act of 1935 related to electric utilities, and from State law or regulation respecting electric utility rates and the financial and organizational regulation of electric utilities.

The implementation of these rules is reserved to the State regulatory authorities and nonregulated electric utilities. That implementation may be accomplished by the issuance of regulations, on a case-by-case basis, or by any other means reasonably designed to give effect to the FERC's rules.

As a part of its responsibility in these matters, the North Carolina Utilities Commission will determine the rates, charges, and conditions for the sale of electric energy and electric capacity between electric utilities and qualifying cogenerators or small power producers in North Carolina. In addition, the Commission will determine the relative responsibilities of utilities and qualifying facilities with respect to system protection, service reliability, interconnection of privately owned generation sources with the utility grid, and other matters affecting such service.

Under Section 210 of PURPA and the corresponding FERC regulations, each regulated utility is required to file projections of its incremental energy and capacity costs and its capacity construction schedules with its state regulatory authority for review and use in setting appropriate rates for purchase and sale of electricity between electric utilities and qualifying facilities. The first filings of this data were required by November 1, 1980. The rates determined by the Commission will be appropriate for the type of service involved and will reflect the costs avoided by the utility as a result of purchasing generation from the qualifying facility.

In determining avoided costs, the FERC regulations require that the following factors are to be taken into account to the extent practicable:

1. The data filed with the Commission concerning incremental generation costs;

2. The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

    i. The ability of the utility to dispatch the qualifying facility;

ii. The expected or demonstrated reliability of the qualifying facility;

iii. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement, and sanctions for noncompliance;

iv. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

v. The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

vi. The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and

vii. The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities;

3. The relationship of the availability of energy or capacity from the qualifying facility as derived in subparagraph 2, to the ability of the electric utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

4. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

Under PURPA, no electric utility is required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.

PURPA also requires that, upon a request of a qualifying facility, each electric utility shall provide supplementary power, back-up power, maintenance power, and interruptible power unless the Commission finds that compliance with such a requirement will impair the electric utility's ability to render adequate service to its customers or place an undue burden on the electric utility.

Because of the complex matters which must be considered and the several types and levels of determinations required with respect to appropriate rules and rate schedules, the Commission concluded that it would be helpful to separate the hearing process into a Phase I to set the issues and a Phase II to make final determinations. Such a two-part proceeding was established by the Commission's Order of June 3, 1980, in this docket. Each regulated electric utility in the State was made a party of record by the Order and, as such, was required to file comments and suggestions on the matter and to publish the "Notice of Hearing" attached to the Order to invite participation in this docket.

Petitions for Intervention were received from the following parties: ElectriCities of North Carolina, North Carolina Textile Manufacturers Association, Inc., Kudzu Alliance, Howard F. Twiggs, Energy Law Institute of the Franklin Pierce Law Center, Olin Corporation, PPG Industries, Inc., The Singer Company, Weyerhaeuser Company, and the Public Staff of the Commission. The Commission granted all of the petitions for intervention.

In Phase I, for which a hearing was held as scheduled on July 22, 1980, in the Commission Hearing Room, the Commission considered comments and suggestions from electric utilities, the Public Staff, and the general public concerning the types of data which should be filed by the utilities on November 1, 1980; the types of rules, if any, which should be considered to implement Section 210 of PURPA; and other issues which needed to be addressed by the Commission in Phase II. Phase I was intended to allow statements of views by all parties concerning what determinations must be made as well as the manner in which these determinations should be made and the results applied.

Utilizing the results of the Phase I hearing, the Commission issued an Order on August 20, 1980, requiring that Carolina Power & Light Company (CP&L), and Virginia Electric and Power Company (Vepco) file responses to data listed in three appendices of that Order. Appendix A included the avoided cost information required by FERC Rule 292.302(b) and other historical and projected data. Responses to Appendix A were requested and received by November 1, 1980. Appendix B included proposed rates, service standards, and proposed form contracts. This information was requested and received by December 15, 1980. Appendix C provided proposed Rule R8-50 for comments, which were requested and received by November 1, 1980.

The Commission issued a subsequent Order on September 19, 1980, scheduling the Phase II public hearing in this matter to begin at 9:30 a.m., on Tuesday, January 6, 1981, in the Commission Hearing Room. Each regulated electric utility and other previous parties to this proceeding were made parties of record by this Order. Testimony of the parties to this proceeding was scheduled to be filed on December 15, 1980. This Order also required the utilities to publish a Notice of Phase II Public Hearing attached to the Order.

On October 20, 1980, CP&L made early filings and petitioned the Commission's acceptance of their responses to Appendix A, Items 3 and 9. The Item 3 filing consisted of approximately 3,150 pages of hourly incremental fuel costs and logs of generating operation. Item 9 included cost-of-delay studies made for the July 1979 Load Growth Hearing under Docket No. E-100, Sub 35. A hearing was scheduled as part of the weekly Commission Conference to consider CP&L's request. Based on the Public Staff's requests, CP&L was requested to file additional copies of the Item 3 information and to provide more current cost-of-delay information for Item 9. The additional copies of Item 3 information were filed on October 31, 1980, and the revised Item 9 information was filed on November 7, 1980.

Responses on the Appendix A and Appendix C data requests were received from CP&L, Duke Power Company (Duke), Nantahala Power and Light Company (Nantahala), and Vepco in accordance with the November 1, 1980, filing schedule date. Responses to the Appendix B data request and testimony for the Phase II hearing were received from CP&L, Duke, Nantahala, and Vepco on December 15, 1980.

Testimony was also received from ElectriCities and Weyerhaeuser Company on December 15. The Public Staff filed a petition for late filing which was granted by this Commission. The Public Staff filed testimony on December 17, 1980. The Kudzu Alliance filed a petition for late filing and filed rebuttal testimony on December 23, 1980.

The Phase II hearing began as scheduled on January 6, 1981. Louis B. Meyer, representing the ElectriCities of North Carolina, made a brief statement concerning ElectriCities' unique position in this proceeding. The ElectriCities are not regulated by this Commission and none are large enough to be required to develop the avoided cost data specified in the FERC Order 69. Given the relatively small size of many of the ElectriCities' members, they could not accept the energy supplied from a large cogenerator and would have to transmit such power to their wholesale supplier. Such an arrangement would fall under the jurisdiction of this Commission. Mr. Meyer requested the Commission's consideration of the special circumstances concerning such an arrangement. Having presented his statement, Mr. Meyer was excused for the remainder of the hearing.

The general order of presentation was established as public witnesses, utilities, Public Staff, and intervenors.

The Chapel Hill Antinuclear Group Effort (CHANGE), the Conservation Council of North Carolina (CCNC), and the Environmental Law Project of the University of North Carolina Law School (ELP) presented Daniel Read, who testified that cogeneration would have fewer risks than nuclear generation and requested the Commission to substantially increase cogeneration buy-back rates to encourage industrial cogeneration.

CCNC also presented Dr. Lavon Page, who testified that rates should be set by the price the utilities would commit themselves to for providing power from new capacity during a future time frame.

Solarbreeze Energy, Inc., presented Bill Williamson, who testified that, to encourage residential small power production, buy-back rates should be on a time-of-day basis while supplementary rates should be the same rate as the customer is currently paying, without additional meter and interconnection costs.

Howard Twiggs, representing himself, testified that he is co-owner of a dam site and requires 5.6 cents/Kwh, including energy and capacity credits, to make his project feasible. Mr. Twiggs also testified that the encouragement of small power production by reasonable rates would provide advantages in low levels of pollution, less environmental damage, reduction in oil dependency, and increases in employment. In addition, Mr. Twiggs testified that long-term contracts would be beneficial to low head hydro developers.

Representative John Jordan, a member of the North Carolina General Assembly and a dam owner and developer, testified, representing himself, that Senate Bill 1035 was ratified by the North Carolina General Assembly to authorize and encourage this Commission to grant long-term rate averaging to encourage small-scale hydro production. Representative Jordan also testified that the Senate subcommittee which developed this bill recommended a rate of 5.5 cents/Kwh to make small-scale hydro projects viable.

CP&L offered the testimony of Bobby L. Montague, Manager of System Planning and Coordination, and Norris L. Edge, Vice President of Rates and Service Practices. Mr. Montague testified concerning the calculation of CP&L's energy credits and proposed Power Purchase Agreement, which includes an Application, the rate schedule, and Terms and Conditions. The Terms and Conditions include interconnection charges and service standards. Mr. Montague also testified concerning suggested changes to proposed Rule R8-50 and the establishment of an independent party for assisting developers in interpreting and applying PURPA standards. Mr. Edge testified concerning the development of CP&L's Rate Schedule CSP-1 and the derivation of the capacity credit and customer charge. Mr. Edge also testified that it was not appropriate for other than "new" capacity, as described in FERC Rule 292.304(b)(1), to receive capacity credits, unless that financial need was demonstrated to be required for that capacity to remain in operation.

Duke presented the testimony of Donald H. Denton, Jr., Vice President of Marketing, and Donald H. Sterrett, Manager of System Planning. Mr. Denton testified concerning the applicability of Duke's IP Rate, for Industrial Service Parallel Operation; PP Rate, for Power Production - Cogeneration; and PG Rate, for Parallel Generation. Mr. Denton also testified concerning development of Duke's Load Management Program. Mr. Sterrett testified concerning the derivation of Duke's energy and capacity credits, service standards, and standard contract form.

Vepco presented the testimony of H. M. Wilson, Jr., Manager of Rates; Dr. James N. Kimball, Supervisor of Cost Allocations; and James T. Emery, Supervisor of Circuit Calculations. Mr. Wilson presented Vepco's Rate Schedule 10, for Cogeneration and Small Power Producer Service; Rate Schedule 12, for Power Purchase from and Sales to Cogenerators and Small Power Producers ("new" capacity under 100 Kw); and Rider I, for Purchase of Excess Electricity from and Sales to Residential or Small General Service Customer. Mr. Wilson testified as to the applicability of these rates, discussed interconnections costs, proposed a time-of-usage fuel allocation factor, and recognized the difference between "old" and "new" capacity as described in FERC Rule 292.304(b). Dr. Kimball presented the costing methodology used by Vepco in developing their proposed rates. Mr. Emery discussed protective equipment and standards of operating safety concerning interconnections with qualifying facilities.

Nantahala presented the testimony of N. Edward Tucker, Director of Rates, Research, and Corporate Planning, who testified that Nantahala is in a unique position of having all hydro generation and contracts with TVA for all additional power requirements. Mr. Tucker also testified that, although Nantahala was included in this Commission's Orders, PURPA Section 210 does not currently require its compliance with the FERC rules regarding implementation of avoided cost rates due to Nantahala's total sales being lower than the limit of applicability.

Weyerhaeuser offered the testimony of Richard E. Tyler, Electric Power Manager, who testified that specific rates should not be mandated but should be negotiated between the utility and the cogenerator.

Singer Furniture Company presented William A. Kozart, Jr., Director of Facilities Engineering, who testified that Singer proposes to use wood waste to

produce steam, which would drive an induction generator, to be used to offset their own load.

Kemp Furniture Company presented the testimony of John W. Thompson and William Kemp, Executive Vice President. Mr. Thompson testified concerning Kemp's plans to install a wood waste cogeneration facility which required 6.5 cents/Kwh to be feasible. Mr. Thompson also testified concerning the aspects of wheeling power from one plant to another plant across the utility's grid. Mr. Kemp testified that CP&L's capacity credits should be based on the cost of future units.

Kudzu Alliance presented Wells Eddleman, who testified concerning a proposed method of calculating and implementing avoided cost rates. Mr. Eddleman also supported the use of long-term contracts.

The Public Staff offered the testimony of Dr. Robert Weiss, Staff Economist, who presented proposed rates for CP&L, Duke, and Vepco, and testified concerning the methodology used for the rate calculations.

At the conclusion of testimony presentation on January 8, 1981, the Chairman requested the utilities to develop levelized avoided cost data for the next three consecutive five-year periods, through 1995; for the next 10 years (1981-1990); and for the next 15 years (1981-1995). A continuation of the hearing was scheduled for Monday, January 26, 1981, at 10:30 a.m. in the Commission Hearing Room to present the requested data.

During the hearings on January 6, 7, and 8, 1981, the discussions of the various differentials between the costs which could be avoided and the rates now being charged were not clear as to whether the filed rates reflected appropriately the costs that the ratepayers would be avoiding with respect to the transmission and transformation losses if a cogenerator or small power producer introduced power directly to the distribution system. Therefore, the Commission issued an Order on January 9, 1981, requiring each utility to file an amount to reflect avoided line and transformation losses which would reflect the interconnection of a cogeneration or small power production facility at the distribution level and also at the transmission level.

The hearing was continued as scheduled on January 26, 1981, at which time the utilities presented witnesses to explain their long-term levelized avoided cost data and line loss calculations. CP&L presented Norris L. Edge, Duke presented Donald L. Sterrett, Vepco presented Harold M. Wilson, and Nantahala filed a Statement of Noncompliance.

The Commission heard one additional witness during this continuance, Terrence L. O'Rourke, Executive Vice President of Consolidated Hydroelectric Corporation and former counsel to FERC involved with the development of PURPA. Mr. O'Rourke testified as to his interpretation of the intent of PURPA. Mr. O'Rourke also testified that long-term contracts were permissible under PURPA, according to his understanding of PURPA's intent.

On February 18, 1981, the Public Staff moved that the affidavit of John Warren concerning small hydroelectric development be admitted into evidence and said motion was granted without objection.

Oral arguments in this docket were presented on February 18, 1981. Participating were attorneys for the four utilities, the Public Staff, and several industrial intervenors.

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

FINDINGS OF FACT

1. CP&L, Duke, and Vepco are subject to the provisions of PURPA, Section 210 requiring that rates for the purchase of electric power from qualified cogenerators and small power producers be put into effect. Nantahala Power and Light Company is not subject to the provisions of PURPA, Section 210 at this time, but Nantahala is subject to G.S. 62-156.

2. When cost-effective, electricity from cogeneration and small power production facilities can be desirable additions to our electricity supply system, lessening the need for the use of fossil fuels and the construction of large central station generating plants.

3. This Commission is required to implement Subpart C of the rule concerning cogeneration and small power-production issued by the Federal Energy Regulatory Commission. "Such implementation may consist of the issuance of regulations, an undertaking to resolve disputes between qualifying facilities and electric utilities arising under Subpart C, or any other action reasonably designed to implement such subpart (other than paragraph 292-302 thereof)."

4. A great variety of power producing methodologies and equipment can fall under the rubric of "qualifying facility."

5. It is appropriate for the rates set by this Commission for purchase of power by electric utilities from qualifying facilities to be designed to reflect the utility's avoided costs, including both short-run costs and long-run costs. These rates should reflect variations in cost by time-of-day. The short-run avoided energy costs may be estimated with sufficient accuracy by a production costing model such as PROMOD. To this it is proper to add an allowance for variable O & M costs, working capital, and transmission losses. Capacity credits are an appropriate part of the rates for purchase of electric power from qualifying facilities.

6. The average industrial revenues per kilowatt-hour for CP&L, Duke, and Vepco in 1980 were as follows: CP&L - 3.03 cents/Kwh, Duke - 2.67 cents/Kwh, and Vepco - 4.37 cents/Kwh.

7. Fixed, long-term levelized rates are appropriate complementary alternatives to annual purchase rates which change over time.

8. The energy credit which is appropriate for purchase of electricity from qualifying facilities in a peak or an off-peak time period is the average of the expected hourly incremental costs of the power generation or purchase which the utility can avoid during that time period by purchasing from the qualifying facility. The appropriate payment for such purchase should depend on the

amounts of qualifying facility production during the on-peak periods and the off-peak periods of the purchasing utility. Purchase rates should parallel the utility's avoided costs in each of those periods.

9. The on-peak and off-peak periods shown in Appendix A are appropriate for use in this proceeding. The following are the peak hours by day and year for CP&L, Duke, and Vepco. Nantahala rates do not differentiate between peak and off-peak times.

	Peak Hours Per Day Monday-Friday	Annual Peak Hours During Peak Months	Annual Peak Hours During Off-Peak Months	Annual Peak Hours Total
CP&L	12	1046	2074	3120
Duke	16	2766	1394	4160
Vepco	14	1230	2410	3640

10. The planning and construction time for new nuclear and coal plants range from 12 to 14 years for nuclear and 8 to 10 years for coal. The major utilities in North Carolina are primarily planning and/or constructing nuclear facilities.

11. The use of the cost of a peaking unit as the basis for determining a capacity credit is reasonable for annual contracts and the shorter long-term contracts, but a base unit cost is appropriate for determining the capacity credit for long-term contracts of 11 years or longer.

12. It is appropriate for annual purchase rates to include provisions for adjusting avoided costs over time. Adjustments are not appropriate during the life of fixed-term contracts which are designed on the basis of projections of avoided costs which take into account future inflation. It is appropriate for annual purchase rates to be adjusted currently each time a fuel cost adjustment factor is applied to retail rates and each two years as new avoided cost data is fixed.

13. In general, the utilities' filed contract documents are reasonable, including the terms of the contracts, payment plans for interconnection facilities charges and customer charges. It is appropriate that the seller (qualifying facility) bear the reasonable and ordinary costs required to interconnect such facility to the utility's system. It will be necessary for the utilities to refile individual contracts consistent with the lengths and types of contracts required herein.

14. It is appropriate for utilities to negotiate individual contracts with cogenerators and small power producers without obtaining prior Commission approval. Such negotiated contracts must be consistent with the provisions found appropriate by the Commission in the standard rates which are set herein. All contracts, negotiated or otherwise, are subject to Commission action upon complaint by any party.

15. The waiver of payment of capacity credits for facilities whose construction began before November 9, 1978, is appropriate unless the operator of such facility demonstrates the financial need for the payment of capacity credits to continue the operation of such facility and to continue the benefits from such facility over the foreseeable future. In addition, it is appropriate to phase in capacity credits for existing cogenerator and small power producers over a ten-year period.

16. The standard rates attached in Appendix A are just and reasonable.

17. The Proposed Rule R8-50 is not necessary or reasonable.

18. Wheeling of power through one utility to another may be a cost-efficent means of improving power supply.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is found in Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), of which the Commission takes notice, and in the testimony of Ed Tucker of Nantahala Power and Light Company. This finding is procedural and is uncontested and uncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding of fact can be found in the testimony of almost every witness who testified in the Phase II proceedings. Development of cost-effective cogeneration and small power production can reduce the nation's and the State's dependence on foreign oil, insulate the State's electricity consumers from interruptions in the delivery of coal, reduce the environmental impact resulting from the burning of fossil fuels at large generating stations, and lessen the need for the utilities to raise capital to finance construction projects.

As appears from the language of the pertinent portions of PURPA and the legislative history of that Act, the Congress found that cost-effective cogeneration and small power production could be encouraged by removal of some of the State and federal regulatory burden on small producers of electricity, and by setting purchase rates and terms and conditions that are fair and reasonable and in the public interest. The provisions of PURPA and the FERC rules promulgated pursuant to them have removed such burdens and established guidelines for the implementation of the requirement that such rates be established.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding is contained in the rules and regulations issued by the Federal Energy Regulatory Commission (FERC) pursuant to PURPA.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT. NO. 4

Cogeneration is the combined production of power and useful heat by the sequential use of energy from one fuel source. The reject heat of one process becomes the energy input into a subsequent process. Small power producers are

defined as facilities generating not more than 80 megawatts of electric power and which employ renewable resources such as water power, solar energy, wind energy or geothermal energy, or biomass or waste as a primary fuel.

Most of the testimony heard in these Phase II proceedings concerned cogeneration or low-head hydro, but there was also testimony concerning the use of wind generators for residences. In any case, it is clear that there is a wide variety of machinery and techniques which might be used by potential qualifying facilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The mandate of the pertinent FERC rules clearly indicate that rates set below the utility's avoided cost do not satisfy the FERC's interpretation of PURPA. Similarly, rates that are set above the utility's avoided cost are not required or permitted by PURPA. In an appropriate case, however, the FERC rules do permit rates to be set above avoided cost where the basis for doing so is state law or policy rather than PURPA.

The Commission believes that, in calculating avoided costs, or marginal costs, or incremental costs, it is necessary to look at both the short-run and long-run. In the short-run, an electric utility generally increases its electrical supply to meet demand by burning more fuel. It dispatches its lowest variable cost plants first and works its way up to its highest variable cost units. In the long run, the company can construct new units that may be more efficient than existing units or may use a fuel that is now relatively less expensive.

In calculating the avoided costs of a utility, it is appropriate to examine both the utility's current behavior in response to changes in load and its prospective longer run behavior. The initial response to a decrease in load, or to an increase in electricity supplied by qualifying facilities, is a reduction in fuel burned (plus certain related costs such as variable O & M). However, if the lower load is projected to continue, the utility can alter its construction schedule by cancellation of one or more generating units, deferral of one or more generating units, substitution of smaller generating units for larger generating units or by a combination therof. While a relatively small increment of power from a particular qualifying facility that may or may not exist 10 or 15 years from now does not imply that a utility can cancel a nuclear unit, the Commission concludes that it is proper and appropriate to look at the aggregate of all qualifying facilities likely to come on line in assessing the impact upon the utility involved.

The presence of each qualifying facility clearly does have two effects. For the present, it increases the probability that the utility can meet its load, and it changes the expected future load which must be met by the utility's generation system. These effects can have value, depending on the reserve and growth situation of the utility involved. Utilities traditionally build generating capacity in excess of expected demand to allow for outages of some units and/or unexpectedly high demand on the system. This Commission has set 20% as a reasonable reserve margin target for the utilities under its jurisdiction. For utilities that have reserves substantially in excess of this, the additional reliability value of additional capacity (i.e., from a particular

qualifying facility) would be small, as the higher the reserve margin the lower the probability that a utility would be unable to meet its load. The lower the reserve margin, the higher the probability that not all loads could be served and thus the greater the value of additional capacity provided at the time of peak.

The relationship of load growth to the value of capacity is an extension of the foregoing. For a utility that has adequate reserves, has very low or zero or negative growth in peak demand, and is thus not adding capacity (or other equipment, such as load management devices, designed to help it meet load) the incremental value of capacity offered to the utility would be zero. That is, with respect to capacity for a utility with excess reserves, an additional unit of demand causes no real resources to be committed, and a reduction in load allows no real resources to be saved.

The three larger utilities regulated by this Commission (Duke, CP&L, and Vepco) are each expecting positive growth and are engaged in long-range construction programs and in load management programs to meet that growth. In designing their construction programs, the companies can choose between more expensive baseload units that use cheaper fuel and less expensive peaker units that burn more expensive fuel. The peaker units require significantly less construction time than the nuclear or coal baseload units. Generally, because the price of fuel used in peaker units is so high, the utilities have committed themselves to construction of baseload units, with time frames for construction in the 10- to 14-year range. As projections of load growth change, and these projections have been volatile in recent years, the utilities have adjusted their construction schedules accordingly.

It is clear that the payments to be received by the qualifying facilities should reflect the short-run avoided energy costs (plus some other costs that vary with production) plus a capacity credit to reflect increased reliability that they will be providing to the system in the near term and the contribution that the qualifying facilities would be making which would allow the utilities to alter their construction schedules so as to reduce or avoid adding capacity in the future.

The allowance of capacity credits in the rates paid to qualifying facilities does not require an ironclad commitment by the qualifying facility to actually be on line in 10 or 15 years. The companies build facilities to meet the projected load growth that they expect to occur in the next decade, even though more or less growth may actually occur. The utilities rely on various techniques to forecast load growth and future load. Assuming that a certificate of public convenience and necessity has been obtained, and the facility generally fits into the Plan and Forecast adopted by this Commission, the company will typically be allowed to recoup from its then current customers the full cost of the facility. The value of additional generation depends upon the present or expected difference between present plant construction and actual load.

Although it is undoubtedly true that there will be some qualifying facilities which will come on line and generate electricity, receive some capacity credits, and then close up shop never to be heard from again, not allowing the utility any real savings on capacity through changes in its construction schedule,

presumably others will come on line to replace those. Thus, while some will fail, others will succeed and the utility will benefit from the aggregate result.

At this point in time, utilities appear to be postponing plant construction for primarily financial reasons, not operational ones. Clearly, the addition of as much generation from outside sources as possible will enhance future operations. The question of the appropriate level of capacity credit is an important one. It is appropriate to consider that generation capacity under long-term contract is worth more than generation capacity under short-term contract. For purposes of setting the rates herein, the Commission concludes that the capacity credit for long-term contracts affecting the planning horizon should be based on the avoided costs of base load capacity and the capacity credit for shorter term contracts should be based upon the avoided costs of peaking capacity.

In this proceeding, short-run marginal energy costs were calculated by each of the three utility companies through the use of PROMOD, a computer model which simulates the load placed on the utility and its response to that load, including the dispatch of units and planned and forced outages. Carolina Power & Light Company then added an increment of variable O & M costs that would be saved plus an allowance for working capital to compensate for any reduction in fuel expense and fuel stock-pile investment and a transmission loss adjustment to express the avoided energy cost at the qualifying facility service level. These adjustments are proper and an equivalent adjustment has been made in the rates this Commission is setting for Duke and Vepco.

The PROMOD results submitted as avoided energy costs appear to be the best notes however that there was some incredulity expressed by some witnesses that, with acknowledged incremental fuel costs for combustion turbines in the 10 cents to 15 cents per kilowatt-hour range the avoided energy costs filed should be much lower than that. The explanation lies in the fact that the combustion turbines are run only for a relatively few hours each month and thus these high energy costs could be avoided for only a few hours each month. During the rest of the peak hours, some unit with lower avoided costs is the marginal unit. PROMOD takes these matters into account in its calculations.

In calculating avoided costs which would be appropriate for use in a long-term rate, CP&L and Duke each projected changes in fuel costs by year prior to running PROMOD. Vepco did not. Vepco used current fuel costs and proposed to take account of the higher fuel costs it will inevitably face by a type of fuel adjustment clause. One of the reasons for this is that Vepco had a minimum contract length of one year but Duke and CP&L proposed a minimum of five years. Vepco's approach is not acceptable as a sole option but may have merit under some circumstances. Vepco should use fuel cost projections in running PROMOD and these should be the basis of the rates payable to qualifying facilities for long-term contracts.

The avoided energy costs calculated by PROMOD are forecasts which are based on assumptions about fuel prices, availability of the various units, and load on the system. It was suggested by Dr. Weiss, the witness for the Public Staff, that qualifying facilities have the option of being paid according to actual avoided energy costs. This idea could have merit if done without a great deal

of administrative complexity or cost. The system would call for the calculation each month of on-peak marginal energy costs and off-peak marginal energy costs. The qualifying facility would be paid for that month according to its contribution of kilowatt-hours during the peak period and its contribution of kilowatt-hours during the off-peak period.

Dr. Weiss testified that the merit of this approach is that it allows the qualifying facilities to obtain actual avoided costs rather than such as presently estimated and that it allows flexibility. It would provide a means of giving qualifying facilities the highest payments during the times when the costs of the utilities would be highest. For example, during periods of high demand or very expensive supply (due to forced outages of nuclear plants, for example) qualifying facilities which adjusted their output upward would achieve high returns. This would be a useful and proper simulation of the competitive market. The Commission concludes, however, that the demand for such a rate has not been shown to be great enough to require the setting up of its costly administrative procedure at this time. The other parties in this docket are interested in either a short-term or long-term contract which specifies beforehand what the payments will be for what hours of generation. However, the Commission also concludes that the utilities and qualifying facilities should be allowed to contract for an after-the-fact rate based on the actual costs avoided as a result of the qualifying facility operation. In that case, however, such contracting qualifying facility should pay the costs of administering the data gathering process which would determine such rates.

It is clear from the data submitted by CP&L, Duke, and Vepco that costs on each system vary by time of day and that rates paid to qualifying facilities should vary by time of day. This is the only way to track avoided costs properly and give the correct signals as to which types of qualifying facilities should be built and on what schedule they should be operated. Additional capacity on a system is generally added to help the system meet increases in daily and seasonal peak demands. The Commission concludes that it is proper to allocate the capacity credit component of the rates to the peak hours in the case of each of the three utilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

These numbers are derived from the monthly operating and financial statements filed with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Evidence supporting this finding of fact is contained in the testimony of Mr. Twiggs, Mr. Eddleman, Mr. O'Rourke, and Representative Jordan, and in the Supplementary Information for Section 292.304(d) of FERC Order 69 and N. C. Senate Bill 1035, as ratified, of which the Commission takes notice. The Commission recognizes the operational and financial characteristics of small scale hydro facilities and concludes that long-term levelized rates appropriately match these characteristics. Some cogeneration facilities may also be well served by long-term contracts. However, either should be free to choose an annual rate or to negotiate a short-term rate if that would provide greater inducement to install the nonutility generation.

The Commission also takes notice of FERC Order 69 paragraph 292.304(b)(5) which specifically allows levelized long term rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Evidence supporting this finding is contained in the testimony of CP&L witnesses Montague and Edge, Duke witness Sterrett, and Public Staff witness Weiss. The Commission recognizes that avoided energy costs for an electric utility vary hour-by-hour and that such costs reflect the operation of the most efficient unit that has not already been dispatched. Such a unit may use coal or oil depending on system and load level. While these costs may be as much as 10 cents per Kwh for I.C. turbine production, such production occurs only rarely among the peak hour generation. Most of the peak generation is produced by increasing the output of steam generation facilities. The Commission concludes that energy credits used in avoided cost rate design should reflect an average of such incremental avoided costs calculated over the hours in the appropriate peak and off-peak periods.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The on-peak and off-peak periods proposed by the companies are consistent with information filed in the load forecast and other hearings in recent years, are consistent with those used in other time-of-day rates of the companies, and are appropriate for use in this proceeding as shown in Appendix A.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Testimony in this docket and in past load forecast dockets indicates that the planning and construction time for nuclear facilities is from 12 to 14 years. For coal facilities, this time is from 10 to 12 years. In order for a qualifying facility to significantly affect construction plans, its contract length should exceed 10 years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Evidence supporting this finding is contained in the testimony of CP&L witness Edge and Public Staff witness Weiss. Mr. Edge testified that he disagreed with Dr. Weiss' calculations of avoided capacity cost which were based on the cancellation of the company's planned 720 megawatt Mayo No. 2 unit, and that estimates of cogeneration and small power production capacity were not of sufficient magnitude to allow cancellation of the Mayo Unit. Mr. Edge further stated that Dr. Weiss should have included the fuel cost savings as an offset to the capacity cost of the Mayo unit and that when such savings are accounted for the resulting capacity cost is substantially equal to the credit derived by the use of a peaking unit. Dr. Weiss stated that the use of a peaking unit was a credible approach and that he agreed that fuel cost savings should be included under his Mayo unit cancellation scenario. Duke witnesses Denton and Sterrett stated that Duke used a peaking unit for deriving its capacity credit.

The Commission recognizes the appropriateness of using the cost of a turbine generator as a basis for the capacity credit for short-term contracts. However, contracts which run long enough to extend sufficiently into the planning horizon as to aid maximum economy in future construction are worth more to the utility

and its ratepayers than shorter contracts. The Commission concludes that the capacity credits for long-term contracts of 11 years or longer should be based upon the cost of a base load fossil unit.

The Commission also recognizes that extremely short-term contracts such as annual contracts have no effect on the construction schedule of a utility in the short run. It has been suggested, therefore, that such contracts should not include capacity credits. However, the Commission must take a long-term view of this situation. Certainly, it is possible that some cogenerators and small power producers may have different expectations of the future energy prices than does the Commission; such a producer may prefer a year-to-year contract with fuel cost adjustments. Such a contract may be ideal where it is desired to show a larger taxable income in later years when avoided energy costs will be higher (term contracts overpay now and underpay later). If an annual contract induces nonutility generation over the years, it can be expected to have a capacity impact similar to that of any other generation with a 10-year or less contract. Therefore, the Commission concludes that annual contracts should also have capacity credits based upon the cost of turbine generation. However, the Commission also concludes that the capacity credit in such a contract should not be increased more often than every five years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Almost every witness made comments concerning the appropriateness of the various credits proposed by the utilities and the Public Staff. Consonant with these comments were statements concerning adjustments which should or should not be made to these credits over time.

It is clear that it is appropriate to make available to cogenerators and small power producers both short-term and long-term contracts. Certainly there is the risk in any long-term contract that conditions may change and a party may be worse off than if under a short-term contract. On the positive side, however, is the certainty of the payments involved. As discussed previously, there may be a number of reasons why an annual changing contract may be preferred to a fixed long-term contract and vice versa.

After review of the testimony, the Commission concludes that it would be appropriate to allow both capacity and energy credits to be updated periodically for annual contracts but that no such adjustments are appropriate during the life of long-term contracts because the long-term contract credits include expected increases in avoided costs over the life of the contract.

The variable purchase rates should be updated every two years after new avoided cost data is filed by the utilities in response to the PURPA requirements. Between such updatings, such rates should be adjusted for changes in fuel costs at the same time that normal retail rates are changed. The Commission has examined the proposed method of Vepco for using approved retail rate fuel cost adjustment factors to adjust qualifying facility purchase rates. The Vepco proposal would maintain the off-peak/on-peak relationships and is appropriate for use by all companies to adjust such rates for changes in fuel costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The only controversial point associated with the contract documents concerned the contract term or period. Evidence supporting the finding is found in the testimony of CP&L witness Montague and Duke witness Denton. Mr. Montague proposed a five-year contract term which is consistent with present CP&L contracts for general service customers on the distribution system. Dr. Weiss proposed a one-year contract term, stating that it was in keeping with present utility contract procedures. CP&L pointed out that the standard CP&L contract is for a five-year period and not one year as suggested by Dr. Weiss. However, this only refers to some general service customers. Mr. Montague supported the five-year period as being a reasonable time period during which various administrative expenses could be recouped. Mr. Denton also supported the five-year period as being a reasonable contract period. The Commission has discussed above the necessity of providing alternatives to increase inducement of qualifying facilities and concludes that it is appropriate to have both annual and longer term contracts. The Commission recognizes that the expenses of the utility may differ slightly between the two.

Evidence supporting the seller's payment of costs required to interconnect a qualifying facility with a utility are found in the testimony of CP&L witness Montague, Duke witness Denton, and in Section 292.306 of FERC Order 69.

Evidence supporting the customer charge of Schedule CSP-1 is presented by witness Edge's testimony and Exhibit 5. No other evidence concerning customer charges was presented.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Evidence supporting this finding is found in the testimony of Public Staff witness Weiss and Weyerhaeuser witness Tyler. Dr. Weiss' testimony stated, "The parties should be encouraged to agree on rates and conditions with minimum Commission intervention. The regulatory burden on both utilities and qualifying facilities can be kept to a minimum if the parties negotiate in good faith." Mr. Tyler emphasized the flexibility required to negotiate an agreement beneficial to both parties. The Commission recognizes the benefits that may arise from such negotiations, if carried forth in good faith, and encourages all utilities and potential sellers of power to negotiate reasonable contractual arrangements where appropriate.

It is apparent that there exists a potential for a utility to insist upon a great many terms and conditions which might appear to be unwarranted, unnecessary, unreasonable, or burdensome to a would-be cogenerator or small power producer. Likewise, there exists the potential for a qualifying facility to insist upon terms or conditions which might adversely affect the ratepayers. The Commission will not attempt to promulgate the exact text of an approved form of agreement for use by each of the utilities. The Commission will and does, however, insist that each form of contract used include a provision indicating that, notwithstanding any other term or condition or provision of the contract, this Commission will be the final authority as to whether the terms and conditions of the contract are fair, reasonable, necessary and enforceable in the event of any controversy or dispute between the parties thereto and that the Commission will hold complaint proceedings in order to resolve any such

disputes. The Commission further concludes from the evidence that it should keep abreast of the activity in this area. Accordingly, the Commission concludes that each regulated utility should be required to file semiannual reports showing the name and appropriate characteristics of any cogenerator or small power producer added to or dropped from the system within the previous six months. In addition, a copy of each negotiated contract should be filed with the Commission within 90 days of execution and at least 30 days before any payment or construction or other effective action by the utility thereunder begins.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Evidence supporting this finding is found in the testimony of CP&L witness Edge. Mr. Edge testified that full avoided cost should not be paid to cogenerators or small power producers that operate "old" capacity. "Old" capacity is defined by FERC Order No. 69 as capacity whose construction commenced before November 9, 1978 (Section 292.304(b)). Mr. Edge further stated that full avoided cost payment to old qualifying facilities could result in higher rates to the utilities' existing customers which is not in accordance with the intent of PURPA. He further stated that such facilities had been justified by their owners based on past economic conditions and that they should continue to operate under such conditions. Duke witness Denton and Vepco witness Wilson also noted the distinction between "old" and "new" capacity, and the authority granted the Commission to set rates at less than full avoided cost for "old" capacity. The Commission recognizes, however, that capacity credits are appropriate for expansion capacity or when significant repair has been made in order to continue operation. However, in the interest of smooth administration of the program and transition into the future years, it is concluded that it would be appropriate to phase in capacity credits at the rate of 10% per year over the next 10 years for "old" capacity which chooses or negotiates a contract as approved herein. In 1991, all "old" cogenerators or small power producers should be receiving the same rates as the "new" ones.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Each of the major utilities and the Public Staff filed rate proposals for the purchase of power by the utilities from cogenerators and/or small power producers. As could be expected from a group with diverse backgrounds and interests, the proposals were individualistic in character and purpose. During the hearing, the salient points of each proposal were discussed with the various witnesses. Many of the witnesses adopted or agreed to the possible merit of points made in other proposals. The testimony of several witnesses, including the affidavit of John Warren, indicated that few new hydroelectric installations could come on line before 1983.

The Commission has reviewed the entire record and has concluded the following:

1. The rates should reflect the differences in value to the utility and its ratepayers of generation by qualifying facilities in the on-peak hours and in the off-peak hours. These hours are different between utilities because of different load patterns.

2. Capacity credits should reflect the differences in value of on-peak generation in peak months and in off-peak months. The peak months are different between utilities.

3. The characteristics of the individual proposals by the major utilities should be preserved as much as possible in order to see which characteristics prove to be most appropriate in the long term.

4. Each utility should offer the standard rates approved in Appendix A but should be encouraged to enter into contracts with other terms as long as such contracts are mutually beneficial and are consistent with the levels of prices allowed in Appendix A, as modified for differences in contract terms or conditions of service.

There are various reasons why both annual and long-term contracts should be available, including financing, tax, operations, and future load requirement considerations.

Vepco proposed a set of rate schedules which would be contracts of one year or longer and which would be adjusted by fuel cost adjustment factors. The other utilities proposed minimum five-year contracts and were generally not clear as to whether fuel cost adjustment factors were proposed to apply or whether the rates were proposed to be updated annually or otherwise. Various witnesses proposed the availability of long-term contracts, especially for hydroelectric generators.

The Commission concludes that there is merit in offering qualifying facilities a choice between firm, long-term contracts and adjustable, annual contracts, as long as the energy and capacity credits properly reflect the value of such production over the time period(s). Consequently, the Commission has adopted the rate forms in Appendix A as a reasonably consistent and standard set of rates for application across the State.

The Commission agrees with the Public Staff and CP&L that capacity credits should be based on the average kilowatt generated during peak hours--in effect a capacity credit per peak kilowatt-hour. The Commission also concludes that there is value to capacity during peak hours of every month. However, Duke's point that such capacity is more valuable during peak-use months is valid. The divergent viewpoints taken in the discussions by various witnesses concerning the value of short-term contract capacity are valid to varying degrees. The Commission concludes that, while there is value to the aggregate generation from short-term contracts, the long-term contracts which can affect planning have significantly more value. The Commission, therefore, concludes that the standard rates adopted by the Commission for purchase by utilities of power from cogenerators and small power producers should reflect the company's proposed annual capacity credits for contracts of 10 years or less and should reflect the Public Staff's proposed annual capacity credits for contracts of 11 years or more.

The Commission concludes that the cost methodology proposed by CP&L and adopted by the Public Staff, which essentially includes energy costs developed with the PROMOD model, some extra operation and maintenance expenses, transmission losses, and associated working capital, is reasonable. In setting

the rates for CP&L in Sheet 1 of Appendix A, the Commission has utilized the 1983 to 1995 projections of incremental cost filed by CP&L, added two additional years estimated costs, and levelized these avoided costs over the 5-, 10-, and 15-year periods at a discount rate of 9.5%. These rates are based upon the costs which would be avoided by the first 100 megawatts of cogenerator or small power production and are consistent with the PURPA requirements.

The data filed by Duke are based on the first 2 megawatts only and are not consistent with the PURPA 100 megawatt block. The Commission increased the annual rates proposed by Duke by approximately 20% for estimated avoided transmission losses and working capital costs. The Commission then adjusted the year-by-year long-term data filed by Duke to be consistent therewith and levelized these avoided costs over 5-, 10-, and 15-year periods in the same manner as for CP&L.

Vepco presented a special data problem. The Company, for whatever reason, does not appear to have made cost projections beyond 1989 and did not make the 15-year data filings requested by the Commission. In addition, the projections that were filed for the intervening years were later changed after the hearing. Attempts by the Commission to use Vepco data in preparation of long-term rates were frustrated by the paucity and uncertainty of the data. For that reason, the Commission examined the proportional increases between annual rates and long-term rates for CP&L and Duke and applied similar ratios to the Vepco annual rates to obtain the 5-, 10-, and 15-year rates shown in Sheet 3 of Appendix A. The Commission concludes that, while the other rates should become effective as soon as possible after the rates and terms and conditions are refiled in accordance with this Order, Vepco or any other party should be allowed to show cause at the next hearing, to be scheduled primarily to hear arguments concerning wheeling rates, if there is any reason why the rates for Vepco shown in Appendix A should not be implemented.

Nantahala presents a unique problem because of its relationship for purchase of power from TVA. The Commission recognizes that its power purchase contract will shortly end and that long-term rates for purchase from qualifying facilities would not be appropriate at this time. Accordingly, only the annual rates shown in Sheet 4 of Appendix A are required in the interim.

The Commission recognizes that PURPA requires the avoided cost data to be filed every two years. The Commission concludes that it is appropriate, then, to set new rates every two years which would apply to the qualifying facilities which begin production or which recontract during the period. Under this system, capacity credits and energy credits would both be updated at the end of long-term contracts. For annual contracts, however, energy credits would be updated every two years with fuel cost adjustment factors being applied in the interim in the manner proposed by Vepco. Capacity credits should not be updated except each five years. This process will appropriately reflect the value of the production received.

EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 17

The Proposed Rule R8-50 would be consistent with PURPA but does not appear to be appropriate for use with the rates approved herein. Certainly such a proposal is not appropriate for the long-term contracts. Because the annual

contracts will be updated periodically, the price should be set close enough on a prospective basis to preclude the necessity of suspension of purchase for economic reasons. Proposed Rule R8-50 would only create uncertainty as to the payments which would be received by qualifying facilities and would be expected therefore to lessen the amount of such generation which may be forthcoming. Therefore the Commission declines to implement the proposed rule.

The fixed, long-term contract energy credits are based upon projections of future avoided costs levelized over the period. Because of this, the qualifying facility will be paid greater than actual avoided cost during the early years of the contract and less than the avoided cost in the later years. If the qualifying facility produces during the entire life of the contract, it is a break-even situation for the ratepayers. However, the fixed, long-term contracts pose a problem to the ratepayers if the cogenerator or small power producer fails to continue service for the full length of the contract term. In that case, the qualifying facility will have been overpaid for the initial production. The utilities have proposed that long-term contracts include a provision to require repayment of certain monies if the qualifying facility does not complete the contract. The Commission concludes that it is necessary and appropriate for qualifying facilities which do not complete the full term of their contracts to reimburse the utility for the energy and capacity credits received in excess of that which would have been received under annual contracts.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

A number of witnesses indicated the possible desirability of allowing wheeling either through utilities or intra-utility between plants operated by the owner of a qualifying facility. The evidence in this docket is not sufficient to determine the complete set of wheeling services which are needed or the cost of administering and providing such services. The Commission concludes that further hearing should be held in this docket to consider the question of wheeling services and rates which might appropriately apply to the generation from qualifying facilities.

IT IS, THEREFORE, ORDERED that:

1. Further hearing in this docket is hereby scheduled beginning Tuesday, June 30, 1981, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, for the purpose of determining appropriate requirements, provisions, costs and rates for wheeling power.

2. CP&L, Duke, Vepco, Nantahala, and the Public Staff shall, within 45 days of the effective date of this Order, make filings, including testimony and data, concerning rates and requirements for wheeling services, specifically addressing, as a minimum, the matters of wheeling through one utility to another and wheeling from one customer installation to another installation of the same customer. Intervenors proposing to offer expert testimony shall file such testimony on or before June 5, 1981.

3. CP&L, Duke, and Nantahala shall offer through published tariffs and shall pay the avoided cost rates shown in Appendix A attached hereto until such rates are modified by subsequent Order of the Commission. Each above utility and

Vepco shall, within 45 days from the effective date of this Order, file tariffs and terms and conditions consistent with the provisions as originally proposed by them and as directed to be modified by the findings, conclusions, and rates allowed in this Order. Each company is permitted to negotiate contracts with different features as long as such contracts are consistent with the findings and conclusions of this Order.

4. Any party desiring to show cause why the rates shown in Appendix A for Vepco should not be implemented shall, within 45 days of the effective date of this Order, file such data and testimony as it wishes to be considered. If such cause is requested to be considered, such consideration shall take place at the conclusion of the testimony on wheeling in the hearing scheduled above; otherwise, the Vepco rates shall become effective at the same time as those of the other utilities.

5. Every arrangement or agreement, exclusive of standard contract rates as approved herein, entered into between a public utility regulated by this Commission and any cogenerator or small power producer operating a qualifying facility within this State, relative to the rates and/or terms and conditions to be paid by such utility to such cogenerator or small power producers for any energy or capacity made available to the utility from a qualifying facility, shall:

(a) Be reduced to writing signed by both parties;
(b) Contain a provision in bold type on its face which reads as follows:

"The terms and conditions of this agreement have neither been reviewed nor approved by the North Carolina Utilities Commission and all such terms and conditions are subject to being modified in whole or in part or being declared null and void ab initio upon review of such in a complaint proceeding before the North Carolina Utilities Commission."; and

(c) A copy thereof shall be filed with the North Carolina Utilities Commission promptly upon original execution along with copies of any subsequent amendment(s) thereto.

6. Each electric utility under the jurisdiction of this Commission shall each year file by August 1 and February 1, a summary of the cogeneration and small power producer activity of the utility during the previous January-June or July-December period, including changes in the numbers and capacities of facilities under contract. Names of qualifying facilities over five kilowatts shall be furnished.

7. Capacity credits for "old" facilities shall be phased in at the rate of 10% per year until the full credit is given in 1991, without prejudice to such other terms as the parties may negotiate for individual plant situations. Such plants shall be entitled to full energy credits.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1981.

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

APPENDIX A
Sheet 1 of 4

CAROLINA POWER & LIGHT COMPANY

Standard Cogeneration and Small Power Producer Rates (Cents/Kwh)

	Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
Energy Credits:				
Peak Kwh	2.80*	3.69	4.40	5.55
Off-peak Kwh	2.07*	2.83	3.31	4.04
Capacity Credits:				
Peak Kwh--summer months	1.49	1.49	1.49	2.39**
Peak Kwh--nonsummer months	1.29	1.29	1.29	2.08**

*Annual rate energy credits will be updated every two years. In the interim, Fuel Cost Adjustment Factors will apply to the annual rate energy credits.

**Applies to contracts of eleven years or longer.

On-Peak Hours:
Billing Months of May-October:
The hours beginning 10:00 a.m. and ending 10:00 p.m. Monday-Friday.

Billing Months of November-April:
The hours beginning 6:00 a.m. and ending 1:00 p.m. and the hours beginning 4:00 p.m. and ending 9:00 p.m. Monday-Friday.

Off-Peak Hours:
All other hours.

Summer Months:
The summer months are the billing months of July-October; the nonsummer months are all other billing months.

Note: Capacity credits shall be constant at the initial level for the life of a long-term contract. Capacity credits for annual contracts shall be at the initial level but shall be updated once every five years.

Example Average Total Credits Under Different Operating Conditions (cents/Kwh)

Cogeneration	or	Hydroelectric	Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
35% on-peak	or	no storage	2.80	3.61	4.17	5.33
75% on-peak	or	some storage	3.64	4.49	5.15	6.81
90% on-peak	or	good storage	3.95	4.83	5.51	7.36
100% on-peak	or	maximum storage	4.16	5.05	5.76	7.73

Note: The CP&L average 1980 industrial rate was 3.03 cents/Kwh.

APPENDIX A
Sheet 2 of 4

DUKE POWER COMPANY

	Standard Cogeneration and Small Power Producer Rates (Cents/Kwh) Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
Energy Credits:				
Peak Kwh	2.38*	3.01	4.15	5.20
Off-peak Kwh	1.79*	2.26	3.13	3.91
Capacity Credits:				
Peak Kwh--peak months	1.11	1.11	1.11	1.66**
Peak Kwh--off-peak months	0.66	0.66	0.66	1.00**

*Annual rate energy credits will be updated every two years. In the interim, Fuel Cost Adjustment Factors will apply to the annual rate energy credits.

**Applies to contracts of eleven years or longer.

On-Peak Hours:
The hours beginning 7:00 a.m. and ending 11:00 p.m. Monday-Friday.

Off-Peak Hours:
All other hours.

Peak Months:
The peak months are the billing months of July-October and January-April. Off-peak months are the billing months of November, December, May and June.

Note: Capacity credits shall be constant at the initial level for the life of a long-term contract. Capacity credits for annual contracts shall be at the initial level but shall be updated once every five years.

Example Average Total Credits Under Different Operating Conditions (cents/Kwh)

Cogeneration	or	Hydroelectric	Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
48% on-peak	or	no storage	2.53	3.08	4.08	5.22
75% on-peak	or	some storage	2.95	3.54	4.61	5.96
90% on-peak	or	good storage	3.18	3.80	4.91	6.37
100% on-peak	or	maximum storage	3.34	3.97	5.11	6.64

Note: The Duke average 1980 industrial rate was 2.67 cents/Kwh.

APPENDIX A
Sheet 3 of 4

VIRGINIA ELECTRIC AND POWER COMPANY

	Standard Cogeneration and Small Power Producer Rates (Cents/Kwh) Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
Energy Credits:				
Peak Kwh	4.23*	5.07	6.76	9.30
Peak Kwh--nonsummer months	3.59*	4.30	5.74	7.89
Off-Peak Kwh	2.62*	3.15	4.20	5.77
Capacity Credits:				
Peak Kwh--summer months	1.61	1.61	1.61	2.50**
Peak Kwh--nonsummer months	1.45	1.45	1.45	2.25**

*Annual rate energy credits will be updated every two years. In the interim, Fuel Cost Adjustment Factors will apply to the annual rate energy credits.

**Applies to contracts of eleven years or longer.

On-Peak Hours:
The hours beginning 8:00 a.m. and ending 11:00 p.m. Monday-Friday.

Off-Peak Hours:
All other hours.

Summer Months:
The summer months are the billing months of June-September. All other billing months are nonsummer months.

Note: Capacity credits shall be constant at the initial level for the life of a long-term contract. Capacity credits for annual contracts shall be at the initial level but shall be updated once every five years.

Example Average Total Credits Under Different Operating Conditions (cents/Kwh)

Cogeneration	or	Hydroelectric	Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
42% on-peak	or	no storage	3.39	4.37	5.62	7.84
75% on-peak	or	some storage	3.99	5.34	6.74	9.47
90% on-peak	or	good storage	4.27	5.77	7.33	10.21
100% on-peak	or	maximum storage	4.45	6.06	7.59	10.70

Note: The Vepco average 1980 industrial rate was 4.37 cents/Kwh.

APPENDIX A
Sheet 4 of 4

NANTAHALA POWER AND LIGHT COMPANY

	Standard Cogeneration and Small Power Producer Annual Rate (Cents/Kwh)
Energy Credit:	
All Kwh	2.05
Capacity Credits:	
Peak Kwh	2.50

On-Peak Hours:
To be provided to seller each December for the following year. Hours will be approximately 50 per week with a minimum of 2500 peak hours per year.

Example Average Total Credits Under Different Operating Conditions (cents/Kw

Cogeneration	or	Hydroelectric	(Cents/Kwh)
30% on-peak	or	no storage	3.12
75% on-peak	or	some storage	4.04
90% on-peak	or	good storage	4.35
100% on-peak	or	maximum storage	4.55

DOCKET NO. E-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Refiling by Nantahala Power and Light Company of Rates) ORDER APPROVING
to be Paid to Small Power Producers and Co-generators) RATES

BY THE COMMISSION: On April 23, 1981, Nantahala Power and Light Company refiled tariffs to be paid to Small Power Producers and Cogenerators, as a result of Commission Order dated March 10, 1981. This refiling is a result of TVA's increase in rates charged to Nantahala for purchased power.

The Commission has reviewed the refiled tariffs and is of the opinion that the purchased power increase is justified to be passed through as an increase in avoided cost, resulting in an increase in rates to be paid to qualifying facilities.

IT IS, THEREFORE, ORDERED that:

The adjusted tariffs as refiled pursuant to Commission Order dated March 10, 1981, be approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of June 1981.

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

DOCKET NO. E-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Determination of Rates for Purchase and Sale of Electricity Between Electric Utilities and Qualifying Cogenerators or Small Power Producers and Rulemaking Concerning Conditions and Requirements for Such Service	) RECOMMENDED ORDER APPROVING RATES) AND TERMS AND CONDITIONS AFTER) RECONSIDERATION AND RESCHEDULING) FURTHER HEARING ON WHEELING) PROVISIONS)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina--Original case heard on January 6-8 and January 26, 1981--Oral argument heard on June 3, 1981

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioner Edward B. Hipp

APPEARANCES:

For the Respondents:

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

W. Edward Poe, Jr.; Attorney, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

Edgar M. Roach, Jr.; Hunton and Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602; and Douglas Michael Palais', Hunton and Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212
For: Virginia Electric and Power Company

Stephani C. Wilson (January only) and James E. Tucker (January only); Hunton and Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Nantahala Power and Light Company

For the Intervenors:

Thomas R. Eller, Jr. (January only), Attorney at Law; P. O. Drawer 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

Thomas Erwin (June only); P.O. Box 928, 115-1/2 W. Morgan Street, Raleigh, North Carolina 27602
For: The Kudzu Alliance

Ralph McDonald; Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Olin Corporation, PPG Industries, Inc., The Singer Company, Weyerhauser Company, and Kemp Furniture Industries, Inc.

Louis B. Meyer (January only); Lucas, Rand, Rose, Meyer, Jones and Orcutt, Attorneys at Law, Box 2008, Wilson, North Carolina 27895
For: ElectriCities of North Carolina

For the Public Staff:

G. Clark Crampton, Staff Attorney (January only), Jerry B. Fruitt, Chief Counsel (January only), and Robert F. Page, Staff Attorney (June only); North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: The Federal Public Utility Regulatory Policies Act of 1978 (PURPA), Section 210, prescribes the responsibilities of the Federal Energy Regulatory Commission (FERC) and the State regulatory authorities for encouragement of the development of cogeneration and small power production.

Cogeneration facilities simultaneously produce two forms of useful energy, such as electric power and steam. Cogeneration facilities use significantly less fuel to produce electricity and steam (or other forms of energy) than would be needed to produce the two separately. Thus, by using fuels more efficiently, cogeneration facilities can make a significant contribution to the effort to conserve energy resources.

Small power production facilities use biomass, waste, or renewable resources, including wind, solar, and water, to produce electric power. Reliance on these sources of energy can reduce the need to consume traditional fossil fuels to generate electric power.

Section 210 of PURPA requires the FERC to prescribe such rules as it determines necessary to encourage cogeneration and small power production, including rules requiring electric utilities to purchase electric power from and to sell electric power to cogeneration and small power production facilities. Additionally, Section 210 of PURPA authorizes the FERC to exempt qualifying facilities from certain federal and State law and regulation.

Under Section 201 of PURPA, cogeneration facilities and small power production facilities which meet certain standards and which are not owned by persons primarily engaged in the generation or sale of electric power can become "qualifying facilities," and thus become eligible for the rates and exemptions set forth under Section 210 of PURPA.

Each electric utility is required under Section 210 to offer to purchase available electric energy from cogeneration and small power production facilities which obtain qualifying status under Section 201 of PURPA. For such purchases, electric utilities are required to pay rates which are just and reasonable to the ratepayers of the utility, in the public interest, and which do not discriminate against cogenerators or small power producers.

The FERC issued its rules with respect to Section 210 of PURPA in its February 19, 1980, amendment of Subchapter K, Part 292, Subparts A, C, D, and F of Chapter I, Title 18, Code of Federal Regulations, effective March 20, 1980. These FERC rules provide that electric utilities must purchase electric energy and capacity made available by qualifying cogenerators and small power producers at a rate reflecting the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers. To enable potential cogenerators and small power producers to be able to estimate these avoided costs, the rules require electric utilities to furnish data concerning present and future costs of energy and capacity on their systems.

The FERC rules further provide that electric utilities must furnish electric energy to qualifying facilities on a nondiscriminatory basis, and at a rate that is just and reasonable and in the public interest. They must also provide certain types of service which may be requested by qualifying facilities to supplement or back up those facilities' own generation. All qualifying cogeneration facilities and certain qualifying small power production facilities are exempted by the FERC from certain provisions of the Federal Power Act, from all of the provisions of the Public Utility Holding Company Act of 1935 related to electric utilities, and from State law or regulation respecting electric utility rates and the financial and organizational regulation of electric utilities.

The implementation of these rules is reserved to the State regulatory authorities and nonregulated electric utilities. That implementation may be accomplished by the issuance of regulations, on a case-by-case basis, or by any other means reasonably designed to give effect to the FERC's rules.

As a part of its responsibility in these matters, the North Carolina Utilities Commission will determine the rates, charges, and conditions for the sale of electric energy and electric capacity between electric utilities and qualifying cogenerators or small power producers in North Carolina. In addition, the Commission will determine the relative responsibilities of utilities and qualifying facilities with respect to system protection, service reliability, interconnection of privately owned generation sources with the utility grid, and other matters affecting such service.

Under Section 210 of PURPA and the corresponding FERC regulations, each regulated utility is required to file projections of its incremental energy and capacity costs and its capacity construction schedules with its state regulatory authority for review and use in setting appropriate rates for purchase and sale of electricity between electric utilities and qualifying facilities. The first filings of this data were required by November 1, 1980. The rates determined by the Commission will be appropriate for the type of service involved and will reflect the costs avoided by the utility as a result of purchasing generation from the qualifying facility.

In determining avoided costs, the FERC regulations require that the following factors are to be taken into account to the extent practicable:

1. The data filed with the Commission concerning incremental generation costs;

2. The availability of capacity or energy from a qualifying facility during the system daily and seasonal peak periods, including:

   i. The ability of the utility to dispatch the qualifying facility;

   ii. The expected or demonstrated reliability of the qualifying facility;

   iii. The terms of any contract or other legally enforceable obligation, including the duration of the obligation, termination notice requirement, and sanctions for noncompliance;

   iv. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility's facilities;

   v. The usefulness of energy and capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

   vi. The individual and aggregate value of energy and capacity from qualifying facilities on the electric utility's system; and

   vii. The smaller capacity increments and the shorter lead times available with additions of capacity from qualifying facilities;

3. The relationship of the availability of energy or capacity from the qualifying facility as derived in subparagraph 2, to the ability of the electric

utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

4. The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility, if the purchasing electric utility generated an equivalent amount of energy itself or purchased an equivalent amount of electric energy or capacity.

Under PURPA, no electric utility is required to purchase electric energy or capacity during any period during which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases, but instead generated an equivalent amount of energy itself.

PURPA also requires that, upon a request of a qualifying facility, each electric utility shall provide supplementary power, back-up power, maintenance power, and interruptible power unless the Commission finds that compliance with such a requirement will impair the electric utility's ability to render adequate service to its customers or place an undue burden on the electric utility.

Because of the complex matters which must be considered and the several types and levels of determinations required with respect to appropriate rules and rate schedules, the Commission concluded that it would be helpful to separate the hearing process into a Phase I to set the issues and a Phase II to make final determinations. Such a two-part proceeding was established by the Commission's Order of June 3, 1980, in this docket. Each regulated electric utility in the State was made a party of record by the Order and, as such, was required to file comments and suggestions on the matter and to publish the "Notice of Hearing" attached to the Order to invite participation in this docket.

Petitions for Intervention were received from the following parties: ElectriCities of North Carolina, North Carolina Textile Manufacturers Association, Inc., Kudzu Alliance, Howard F. Twiggs, Energy Law Institute of the Franklin Pierce Law Center, Olin Corporation, PPG Industries, Inc., The Singer Company, Weyerhaeuser Company, and the Public Staff of the Commission. The Commission granted all of the petitions for intervention.

In Phase I, for which a hearing was held as scheduled on July 22, 1980, in the Commission Hearing Room, the Commission considered comments and suggestions from electric utilities, the Public Staff, and the general public concerning the types of data which should be filed by the utilities on November 1, 1980; the types of rules, if any, which should be considered to implement Section 210 of PURPA; and other issues which needed to be addressed by the Commission in Phase II. Phase I was intended to allow statements of views by all parties concerning what determinations must be made as well as the manner in which these determinations should be made and the results applied.

Utilizing the results of the Phase I hearing, the Commission issued an Order on August 20, 1980, requiring that Carolina Power & Light Company (CP&L), and Virginia Electric and Power Company (Vepco) file responses to data listed in three appendices of that Order. Appendix A included the avoided cost information required by FERC Rule 292.302(b) and other historical and projected data. Responses to Appendix A were requested and received by November 1, 1980.

Appendix B included proposed rates, service standards, and proposed form contracts. This information was requested and received by December 15, 1980. Appendix C provided proposed Rule R8-50 for comments, which were requested and received by November 1, 1980.

The Commission issued a subsequent Order on September 19, 1980, scheduling the Phase II public hearing in this matter to begin at 9:30 a.m. on Tuesday, January 6, 1981, in the Commission Hearing Room. Each regulated electric utility and other previous parties to this proceeding were made parties of record by this order. Testimony of the parties to this proceeding was scheduled to be filed on December 15, 1980. This Order also required the utilities to publish a Notice of Phase II Public Hearing attached to the Order.

On October 20, 1980, CP&L made early filings and petitioned the Commission's acceptance of their responses to Appendix A, Items 3 and 9. The Item 3 filing consisted of approximately 3,150 pages of hourly incremental fuel costs and logs of generating operation. Item 9 included cost-of-delay studies made for the July 1979 Load Growth Hearing under Docket No. E-100, Sub 35. A hearing was scheduled as part of the weekly Commission Conference to consider CP&L's request. Based on the Public Staff's requests, CP&L was requested to file additional copies of the Item 3 information and to provide more current cost-of-delay information for Item 9. The additional copies of Item 3 information were filed on October 31, 1980, and the revised Item 9 information was filed on November 7, 1980.

Responses on the Appendix A and Appendix C data requests were received from CP&L, Duke Power Company (Duke), Nantahala Power and Light Company (Nantahala) , and Vepco in accordance with the November 1, 1980, filing schedule date. Responses to the Appendix B data request and testimony for the Phase II hearing were received from CP&L, Duke, Nantahala, and Vepco on December 15, 1980. Testimony was also received from ElectriCities and Weyerhaeuser Company on December 15. The Public Staff filed a petition for late filing which was granted by this Commission. The Public Staff filed testimony on December 17, 1980. The Kudzu Alliance filed a petition for late filing and filed rebuttal testimony on December 23, 1980.

The Phase II hearing began as scheduled on January 6, 1981. Louis B. Meyer, representing the ElectriCities of North Carolina, made a brief statement concerning ElectriCities' unique position in this proceeding. The ElectriCities are not regulated by this Commission and none are large enough to be required to develop the avoided cost data specified in the FERC Order 69. Given the relatively small size of many of the ElectriCities' members, they could not accept the energy supplied from a large cogenerator and would have to transmit such power to their wholesale supplier. Such an arrangement would fall under the jurisdiction of this Commission. Mr. Meyer requested the Commission's consideration of the special circumstances concerning such an arrangement. Having presented his statement, Mr. Meyer was excused for the remainder of the hearing.

The general order of presentation was established as public witnesses, utilities, Public Staff, and intervenors.

The Chapel Hill Antinuclear Group Effort (CHANGE), the Conservation Council of North Carolina (CCNC), and the Environmental Law Project of the University of North Carolina Law School (ELP) presented Daniel Read, who testified that cogeneration would have fewer risks than nuclear generation and requested the Commission to substantially increase cogeneration buy-back rates to encourage industrial cogeneration.

CCNC also presented Dr. Lavon Page, who testified that rates should be set by the price the utilities would commit themselves to for providing power from new capacity during a future time frame.

Solarbreeze Energy, Inc., presented Bill Williamson, who testified that, to encourage residential small power production, buy-back rates should be on a time-of-day basis while supplementary rates should be the same rate as the customer is currently paying, without additional meter and interconnection costs.

Howard Twiggs, representing himself, testified that he is co-owner of a dam site and requires 5.6 cents/Kwh, including energy and capacity credits, to make his project feasible. Mr. Twiggs also testified that the encouragement of small power production by reasonable rates would provide advantages in low levels of pollution, less environmental damage, reduction in oil dependency, and increases in employment. In addition, Mr. Twiggs testified that long-term contracts would be beneficial to low head hydro developers.

Representative John Jordan, a member of the North Carolina General Assembly and a dam owner and developer, testified, representing himself, that Senate Bill 1035 was ratified by the North Carolina General Assembly to authorize and encourage this Commission to grant long-term rate averaging to encourage small-scale hydro production. Representative Jordan also testified that the Senate subcommittee which developed this bill recommended a rate of 5.5 cents/Kwh to make small-scale hydro projects viable.

CP&L offered the testimony of Bobby L. Montague, Manager of System Planning and Coordination, and Norris L. Edge, Vice President of Rates and Service Practices. Mr. Montague testified concerning the calculation of CP&L's energy credits and proposed Power Purchase Agreement, which includes an Application, the rate schedule, and Terms and Conditions. The Terms and Conditions include interconnection charges and service standards. Mr. Montague also testified concerning suggested changes to proposed Rule R8-50 and the establishment of an independent party for assisting developers in interpreting and applying PURPA standards. Mr. Edge testified concerning the development of CP&L's Rate Schedule CSP-1 and the derivation of the capacity credit and customer charge. Mr. Edge also testified that it was not appropriate for other than "new" capacity, as described in FERC Rule 292.304(b)(1), to receive capacity credits, unless that financial need was demonstrated to be required for that capacity to remain in operation.

Duke presented the testimony of Donald H. Denton, Jr., Vice President of Marketing, and Donald H. Sterrett, Manager of System Planning. Mr. Denton testified concerning the applicability of Duke's IP Rate, for Industrial Service Parallel Operation; PP Rate, for Power Production - Cogeneration; and PG Rate, for Parallel Generation. Mr. Denton also testified concerning development of Duke's Load Management Program. Mr. Sterrett testified concerning the

derivation of Duke's energy and capacity credits, service standards, and standard contract form.

Vepco presented the testimony of H. M. Wilson, Jr., Manager of Rates; Dr. James N. Kimball, Supervisor of Cost Allocations; and James T. Emery, Supervisor of Circuit Calculations. Mr. Wilson presented Vepco's Rate Schedule 10, for Cogeneration and Small Power Producer Service; Rate Schedule 12, for Power Purchase from and Sales to Cogenerators and Small Power Producers ("new" capacity under 100 Kw); and Rider I, for Purchase of Excess Electricity from and Sales to Residential or Small General Service Customer. Mr. Wilson testified as to the applicability of these rates, discussed interconnections costs, proposed a time-of-usage fuel allocation factor, and recognized the difference between "old" and "new" capacity as described in FERC Rule 292.304(b). Dr. Kimball presented the costing methodology used by Vepco in developing their proposed rates. Mr. Emery discussed protective equipment and standards of operating safety concerning interconnections with qualifying facilities.

Nantahala presented the testimony of N. Edward Tucker, Director of Rates, Research, and Corporate Planning, who testified that Nantahala is in a unique position of having all hydro generation and contracts with TVA for all additional power requirements. Mr. Tucker also testified that, although Nantahala was included in this Commission's Orders, PURPA Section 210 does not currently require its compliance with the FERC rules regarding implementation of avoided cost rates due to Nantahala's total sales being lower than the limit of applicability.

Weyerhaeuser offered the testimony of Richard E. Tyler, Electric Power Manager, who testified that specific rates should not be mandated but should be negotiated between the utility and the cogenerator.

Singer Furniture Company presented William A. Kozart, Jr., Director of Facilities Engineering, who testified that Singer proposes to use wood waste to produce steam, which would drive an induction generator, to be used to offset their own load.

Kemp Furniture Company presented the testimony of John W. Thompson and William Kemp, Executive Vice President. Mr. Thompson testified concerning Kemp's plans to install a wood waste cogeneration facility which required 6.5 cents/Kwh to be feasible. Mr. Thompson also testified concerning the aspects of wheeling power from one plant to another plant across the utility's grid. Mr. Kemp testified that CP&L's capacity credits should be based on the cost of future units.

Kudzu Alliance presented Wells Eddleman, who testified concerning a proposed method of calculating and implementing avoided cost rates. Mr. Eddleman also supported the use of long-term contracts.

The Public Staff offered the testimony of Dr. Robert Weiss, Staff Economist, who presented proposed rates for CP&L, Duke, and Vepco, and testified concerning the methodology used for the rate calculations.

At the conclusion of testimony presentation on January 8, 1981, the Chairman requested the utilities to develop levelized avoided cost data for the next

three consecutive five-year periods, through 1995; for the next 10 years (1981-1990); and for the next 15 years (1981-1995). A continuation of the hearing was scheduled for Monday, January 26, 1981, at 10:30 a.m. in the Commission Hearing Room to present the requested data.

During the hearings on January 6, 7, and 8, 1981, the discussions of the various differentials between the costs which could be avoided and the rates now being charged were not clear as to whether the filed rates reflected appropriately the costs that the ratepayers would be avoiding with respect to the transmission and transformation losses if a cogenerator or small power producer introduced power directly to the distribution system. Therefore, the Commission issued an Order on January 9, 1981, requiring each utility to file an amount to reflect avoided line and transformation losses which would reflect the interconnection of a cogeneration or small power production facility at the distribution level and also at the transmission level.

The hearing was continued as scheduled on January 26, 1981, at which time the utilities presented witnesses to explain their long-term levelized avoided cost data and line loss calculations. CP&L presented Norris L. Edge, Duke presented Donald L. Sterrett, Vepco presented Harold M. Wilson, and Nantahala filed a Statement of Noncompliance.

The Commission heard one additional witness during this continuance, Terrence L. O'Rourke, Executive Vice President of Consolidated Hydroelectric Corporation and former counsel to FERC involved with the development of PURPA. Mr. O'Rourke testified as to his interpretation of the intent of PURPA. Mr. O'Rourke also testified that long-term contracts were permissible under PURPA, according to his understanding of PURPA's intent.

On February 18, 1981, the Public Staff moved that the affidavit of John Warren concerning small hydroelectric development be admitted into evidence and said motion was granted without objection.

Oral arguments in this docket were presented on February 18, 1981. Participating were attorneys for the four utilities, the Public Staff, and several industrial intervenors.

Based upon the foregoing, the testimony and exhibits offered at the hearings, and the Commission's file and record in this matter, the Commission made the following Findings of Fact in its Recommended Order of March 10, 1981.

FINDINGS OF FACT INCLUDED IN MARCH 10, 1981, RECOMMENDED ORDER

1. CP&L, Duke, and Vepco are subject to the provisions of PURPA, Section 210 requiring that rates for the purchase of electric power from qualified cogenerators and small power producers be put into effect. Nantahala Power and Light Company is not subject to the provisions of PURPA, Section 210 at this time, but Nantahala is subject to G.S. 62-156.

2. When cost-effective, electricity from cogeneration and small power production facilities can be desirable additions to our electricity supply system, lessening the need for the use of fossil fuels and the construction of large central station generating plants.

3. This Commission is required to implement Subpart C of the rule concerning cogeneration and small power-production issued by the Federal Energy Regulatory Commission. "Such implementation may consist of the issuance of regulations, an undertaking to resolve disputes between qualifying facilities and electric utilities arising under Subpart C, or any other action reasonably designed to implement such subpart (other than paragraph 292.302 thereof)."

4. A great variety of power producing methodologies and equipment can fall under the rubric of "qualifying facility."

5. It is appropriate for the rates set by this Commission for purchase of power by electric utilities from qualifying facilities to be designed to reflect the utility's avoided costs, including both short-run costs and long-run costs. These rates should reflect variations in cost by time-of-day. The short-run avoided energy costs may be estimated with sufficient accuracy by a production costing model such as PROMOD. To this it is proper to add an allowance for variable O & M costs, working capital, and transmission losses. Capacity credits are an appropriate part of the rates for purchase of electric power from qualifying facilities.

6. The average industrial revenues per kilowatt-hour for CP&L, Duke, and Vepco in 1980 were as follows: CP&L - 3.03 cents/Kwh, Duke - 2.67 cents/Kwh, and Vepco - 4.37 cents/Kwh.

7. Fixed, long-term levelized rates are appropriate complementary alternatives to annual purchase rates which change over time.

8. The energy credit which is appropriate for purchase of electricity from qualifying facilities in a peak or an off-peak time period is the average of the expected hourly incremental costs of the power generation or purchase which the utility can avoid during that time period by purchasing from the qualifying facility. The appropriate payment for such purchase should depend on the amounts of qualifying facility production during the on-peak periods and the off-peak periods of the purchasing utility. Purchase rates should parallel the utility's avoided costs in each of those periods.

9. The on-peak and off-peak periods shown in Appendix A are appropriate for use in this proceeding. The following are the peak hours by day and year for CP&L, Duke, and Vepco. Nantahala rates do not differentiate between peak and off-peak times.

	Peak Hours Per Day Monday-Friday	Annual Peak Hours During Peak Months	Annual Peak Hours During Off-Peak Months	Annual Peak Hours Total
CP&L	12	1046	2074	3120
Duke	16	2766	1394	4160
Vepco	14	1230	2410	3640

10. The planning and construction time for new nuclear and coal plants range from 12 to 14 years for nuclear and 8 to 10 years for coal. The major utilities in North Carolina are primarily planning and/or constructing nuclear facilities.

11. The use of the cost of a peaking unit as the basis for determining a capacity credit is reasonable for annual contracts and the shorter long-term contracts, but a base unit cost is appropriate for determining the capacity credit for long-term contracts of eleven years or longer.

12. It is appropriate for annual purchase rates to include provisions for adjusting avoided costs over time. Adjustments are not appropriate during the life of fixed-term contracts which are designed on the basis of projections of avoided costs which take into account future inflation. It is appropriate for annual purchase rates to be adjusted currently each time a fuel cost adjustment factor is applied to retail rates and each two years as new avoided cost data is fixed.

13. In general, the utilities' filed contract documents are reasonable, including the terms of the contracts, payment plans for interconnection facilities charges and customer charges. It is appropriate that the seller (qualifying facility) bear the reasonable and ordinary costs required to interconnect such facility to the utility's system. It will be necessary for the utilities to refile individual contracts consistent with the lengths and types of contracts required herein.

14. It is appropriate for utilities to negotiate individual contracts with cogenerators and small power producers without obtaining prior Commission approval. Such negotiated contracts must be consistent with the provisions found appropriate by the Commission in the standard rates which are set herein. All contracts, negotiated or otherwise, are subject to Commission action upon complaint by any party.

15. The waiver of payment of capacity credits for facilities whose construction began before Novemer 9, 1978, is appropriate unless the operator of such facility demonstrates the financial need for the payment of capacity credits to continue the operation of such facility and to continue the benefits from such facility over the foreseeable future. In addition, it is appropriate to phase in capacity credits for existing cogenerator and small power producers over a ten-year period.

16. The standard rates attached in Appendix A are just and reasonable.

17. The Proposed Rule R8-50 is not necessary or reasonable.

18. Wheeling of power through one utility to another may be a cost-efficent means of improving power supply.

In addition, the following were ordered by the Commision in its March 10, 1981 Recommended Order.

ORDERING PARAGRAPHS INCLUDED IN MARCH 10, 1981, RECOMMENDED ORDER

1. Further hearing in this docket is hereby scheduled beginning Tuesday, June 30, 1981, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, for the purpose of determining appropriate requirements, provisions, costs and rates for wheeling power.

2. CP&L, Duke, Vepco, Nantahala, and the Public Staff shall, within 45 days of the effective date of this Order, make filings, including testimony and data, concerning rates and requirements for wheeling services, specifically addressing, as a minimum, the matters of wheeling through one utility to another and wheeling from one customer installation to another installation of the same customer. Intervenors proposing to offer expert testimony shall file such testimony on or before June 5, 1981.

3. CP&L, Duke, and Nantahala shall offer through published tariffs and shall pay the avoided cost rates shown in Appendix A attached hereto until such rates are modified by subsequent Order of the Commission. Each above utility and Vepco shall, within 45 days from the effective date of this Order, file tariffs and terms and conditions consistent with the provisions as originally proposed by them and as directed to be modified by the findings, conclusions, and rates allowed in this Order. Each company is permitted to negotiate contracts with different features as long as such contracts are consistent with the findings and conclusions of this Order.

4. Any party desiring to show cause why the rates shown in Appendix A for Vepco should not be implemented shall, within 45 days of the effective date of this Order, file such data and testimony as it wishes to be considered. If such cause is requested to be considered, such consideration shall take place at the conclusion of the testimony on wheeling in the hearing scheduled above; otherwise, the Vepco rates shall become effective at the same time as those of the other utilities.

5. Every arrangement or agreement, exclusive of standard contract rates as approved herein, entered into between a public utility regulated by this Commission and any cogenerator or small power producer operating a qualifying facility within this State, relative to the rates and/or terms and conditions to be paid by such utility to such cogenerator or small power producers for any energy or capacity made available to the utility from a qualifying facility, shall:

(a) Be reduced to writing signed by both parties;
(b) Contain a provision in bold type on its face which reads as follows:

> "The terms and conditions of this agreement have neither been reviewed nor approved by the North Carolina Utilities Commission and all such terms and conditions are subject to being modified in whole or in part or being declared null and void ab initio upon review of such in a complaint proceeding before the North Carolina Utilities Commission."; and

(c) A copy thereof shall be filed with the North Carolina Utilities Commission promptly upon original execution along with copies of any subsequent amendment(s) thereto.

6. Each electric utility under the jurisdiction of this Commission shall each year file by August 1 and February 1, a summary of the cogeneration and small power producer activity of the utility during the previous January-June or July-December period, including changes in the numbers and capacities of facilities under contract. Names of qualifying facilities over five kilowatts shall be furnished.

7. Capacity credits for "old" facilities shall be phased in at the rate of 10% per year until the full credit is given in 1991, without prejudice to such other terms as the parties may negotiate for individual plant situations. Such plants shall be entitled to full energy credits.

On March 20, 1981, both Duke and Vepco filed motions seeking extensions of time to file exceptions; the extensions were granted on March 23, 1981.

On April 14, 1981, Vepco filed a motion for extension of time. On April 15, 1981, Vepco filed a motion for reconsideration of the Recommended Order and Duke and the Kudzu Alliance filed Exceptions.

On April 15, 1981, the Commission granted an extension of time to April 27 to file exceptions and until April 24 to file comments with respect to Vepco's motion for reconsideration.

On April 24, 1981, Nantahala filed its tariffs in response to the recommended order of March 10, 1981.

On April 27, 1981, Duke filed a letter in support of Vepco's motion seeking reconsideration. Also on that date, Vepco, Weyerhauser, and the Public Staff filed Exceptions.

On May 5, the Commission issued an Order scheduling oral argument on reconsideration for June 3, 1981. That hearing was held as scheduled.

The Public Staff excepted to the middle sentence of Finding of Fact No. 14 and to the last sentence of Ordering Paragraph No. 3 on the grounds that such might be misinterpreted in a manner which would deter experimentation with rate and contract provisions other than the standard rates herein approved. The Commission concludes that the excepted language should be stricken from the Order.

Vepco provided supporting affidavits of E. Paul Hilton, James N. Kimball and Johnnie M. Barr, Jr. which were received into evidence without objection and without cross-examination. Vepco did not object to the annual energy charge proposed in the Recommended Order but did specifically object to the long-term levelized energy and capacity payments for 5-, 10-, and 15-year standard rate contracts.

Vepco argued that the proposed 15-year levelized credits were approximately 225 percent of the actual avoided cost. The Commission had concluded, and continues to do so, that the long-term avoided costs could not be determined from the data available from Vepco. The Commission specifically addressed this fact in its March 10, 1981, Recommended Order. The evidence is no more convincing at this time than it was then.

Vepco essentially argued two points: first, there is a large potential for cogeneration in the Vepco service area; second, since the long-term avoided costs are significantly above the present day avoided costs, purchase on the long-term rates would result in large increases in rates for Vepco's eastern North Carolina service area ratepayers.

Although levelized payments over a long-term contract may benefit Vepco's customers in the long run, by stimulating cogeneration and small power production just as they may benefit the customers of CP&L and Duke, the relative proportions of cogeneration potential to total North Carolina public load make the immediate prospect of purchase of large blocks of power on long-term rates intolerable for Vepco's ratepayers while remaining attractive for the ratepayers of CP&L and Duke.

In addition, Vepco filed on August 28, 1981, an updated version of its original rate proposal. The updated version reflects the changes ordered by the Virginia State Corporation Commission. The new energy credits are 5.203¢ per on-peak kilowatt-hour and 3.132¢ per off-peak kilowatt-hour. The additional capacity credit would be negotiated depending upon the type and reliability of the generation system, and the length of the contract, among other things.

Since Vepco's annually changing credits are generally comparable with the 15-year fixed, long-term contract credits proposed for Duke and CP&L, and since such credits are based upon avoided costs, the Commission concludes that they will appropriately induce cost effective cogeneration and small power production within the Vepco service area in North Carolina. The Commission further concludes that, in the additional interest of reducing the costs of rate administration, given that North Carolina regulates less than 8 percent of Vepco's system, it is appropriate to adopt the cogeneration and small power production rates as filed in Virginia as far as it is practical to do so.

Vepco also excepted to the Commission proposal to phase in credits to existing cogeneration over a period of years. Vepco argued that PURPA did not require such and specifically provided for "old" facilities to obtain "new" rates upon the showing of the need for such rates for the facilities to remain viable. The Commission recognized in its March 10, 1981, Recommended Order that, with the need to refurbish or replace facilities over time, presently existing "old" facilities would become "new" facilities over time and would then become eligible for the "new" rates. The Commission proposed an orderly phased-in type of transition program that would not burden its already overcrowded docket system. Vepco argued that the approximately 150 megawatts of existing cogeneration did not need the "new" rates and that paying the "new" rates would result in increasing the costs to consumers. The Commission recognizes Vepco's argument that such rates are not necessary to encourage cogeneration that was viable under existing rates and recognizes the rate impact of paying more than necessary for such generation. However, the Commission also recognizes that it is imprudent to require existing small qualifying facilities to go through the negotiation process. Further, it is possible that some existing cogeneration could "need" the "new" rates earlier than would occur under the Commission's proposed phased-in transition program.

The Commission concludes that the standard rates adopted herein should apply to existing qualifying facilities 100 kilowatts or less in size and to all new qualifying facilities. Existing facilities over 100 kilowatts should negotiate appropriate contracts with the utilities, with the Commission being the final arbiter in the case of dispute. Long-term rates for small scale hydroelectric projects should be considered in the Fall 1982 hearings on the avoided cost data to be filed in June 1982. Until that time, if a small scale hydroelectric qualifying facility desires a long-term rate, the facility can negotiate such

rate with Vepco. If agreement cannot be reached, the Commission will consider the matter at hearing.

Vepco was joined by Duke in its exception to a portion of the longer term capacity costs proposed in the Recommended Order. Those capacity costs were based upon the testimony of Public Staff witness Weiss and included an added increment for load management costs. Since these load management costs will be incurred by the utilities regardless of the amount of new cogeneration and small power production which comes on line, such costs will not be "avoided" and should not be included in the calculation of capacity credits.

Duke made three exceptions to the March 10, 1981, Recommended Order. These concern the annual energy credits, the long-term energy credits, and the situation where a qualifying facility might fail before completing a long-term contract.

Because the Commission adopted the methodology for calculation of avoided costs proposed by CP&L, which was a slightly different methodology from that used by Duke, the Commission attempted to adjust Duke's filed energy numbers to the level which would have been reached using the CP&L methodology. Because the definition of a portion of the underlying cost numbers was not clear in the finest levels of details, the Commission inadvertently added to the original Duke numbers some amounts which were already included and, therefore, slightly overstated the Duke credits. Duke supplied the correct credits at the time of filing its exceptions. Although Duke objected to the use of the long-term rates, Duke proposed that if the energy credits were to be used, they should be based upon the 1982-1996 period discounted back to the beginning of 1982. That is the midpoint of the two-year cycle and the practical beginning point for most new cogeneration or small power production under consideration. The Commission agrees.

Duke correctly points out that the intention of the Recommended Order was to ensure that the ratepayers would not suffer if a qualifying facility did not meet a long-term obligation after having received credits based upon long-term avoided costs which were in excess of short-term avoided costs. Duke suggested that, for the ratepayers to be "made whole", the failing qualifying facility should be required to pay interest on the excess payments. Duke suggested that the interest rate should be the market rate at the time of reimbursement. The Commission concludes that such rate may not represent the cost to Duke and that the rate which should be used is the weighted average of new long-term debt incurred by the utility in the calendar year previous to that in which the contract was commenced. That rate should be explicitly stated in the contract beforehand.

Weyerhaeuser argued that the cogenerators should receive capacity credits based upon the cost of base load units instead of peaking units. The Kudzu Alliance correctly points out that the Commission should "not mix and match" different costs. The point is clear; it is inappropriate to mix incrementally based energy credits with average based capacity credits. It is also clear that, while the incremental energy cost avoided by the utilities when qualifying facilities come on line is relatively easy to determine, the appropriate complementary avoided capacity cost is difficult to determine. Kudzu also argues that the Commission should recognize in a specific dollar amount the

increased reliability resulting from the introduction of alternative sources of energy and capacity to the system. That is also difficult to do for several reasons.

I.C. Turbines have lives that typically span 20 to 30 or more years. Base load units typically are useful for 25 to 40 or more years. If a cogenerator comes on line and produces for less than these lengths of terms, the utility will not have avoided the full costs of these units. In addition, since the planning horizon for power plant construction is generally well over ten years, and since typical cogenerator or small hydro construction takes only one to three years, a typical qualifying facility will be committed for long after the utility has committed itself to construct its own facility. Thus, it can be ten years or more after a qualifying facility comes on line before any utility generation can be avoided. The standard rate format issued by the Commission directly allows the cogenerator or small power producer to participate in the "savings" to the utility produced by the qualifying facility long before such savings actually occur. Certainly it is possible for a qualifying facility to come on line, receive capacity credits for ten years, and leave the system without ever having allowed the utility to avoid any capacity costs. The Commission, however, takes a long-term view of this situation and concludes that it is reasonable to allow qualifying facilities to receive capacity credits in their earlier years in order to encourage more qualifying facilities to come on line.

If the Commission's program errs, it can be expected to overstate the benefit of such generation because the capacity credits paid by the utilities could be revised several times during the lifetime of the qualifying facilities. The capacity credits allowed in the shorter contracts are based upon the smaller cost of a peaking unit but, if the qualifying facilities last as long as the units which they would replace, the capacity credits will be revised several times during the life of the project. The capacity credits of longer term contracts are based on the higher costs of base load units, appropriately discounted for fuel savings, and would give more money to the owner of the qualifying facility both early in the life of the project and overall. A good argument can be made for not allowing any capacity credit for short-term contracts, but the Commission has concluded that every reasonable effort should be made to encourage cogeneration and small power production in an effort to aid North Carolina utilities in reducing the size of their capital expansion requirements.

After review of the entire evidence in this docket, including the matters available in the initial hearings and subsequent filings and arguments, the Commission makes, alters, or reaffirms the following

FINDINGS OF FACT

1. CP&L, Duke, and Vepco are subject to the provisions of PURPA, Section 210 requiring that rates for the purchase of electric power from qualified cogenerators and small power producers be put into effect. Nantahala Power and Light Company is not subject to the provisions of PURPA, Section 210 at this time, but Nantahala is subject to G.S. 62-156.

2. When cost-effective, electricity from cogeneration and small power production facilities can be desirable additions to our electricity supply system, lessening the need for the use of fossil fuels and the construction of large central station generating plants.

3. This Commission is required to implement Subpart C of the rule concerning cogeneration and small power-production issued by the Federal Energy Regulatory Commission. "Such implementation may consist of the issuance of regulations, an undertaking to resolve disputes between qualifying facilities and electric utilities arising under Subpart C, or any other action reasonably designed to implement such subpart (other than paragraph 292.302 thereof)."

4. A great variety of power producing methodologies and equipment can fall under the rubric of "qualifying facility."

5. It is appropriate for the rates set by this Commission for purchase of power by electric utilities from qualifying facilities to be designed to reflect the utility's avoided costs, including both short-run costs and long-run costs. These rates should reflect variations in cost by time-of-day. The short-run avoided energy costs may be estimated with sufficient accuracy by a production costing model such as PROMOD. To this it is proper to add an allowance for variable O & M costs, working capital, reduced fuel inventories, and transmission losses. Capacity credits are an appropriate part of the rates for purchase of electric power from qualifying facilities.

6. The average industrial revenues per kilowatt-hour for CP&L, Duke, and Vepco in 1980 were as follows: CP&L - 3.03 cents/Kwh, Duke - 2.67 cents/Kwh, and Vepco - 4.37 cents/Kwh.

7. Where power received from qualifying facilities is small relative to the overall demands of the service area, fixed, long-term levelized rates are appropriate complementary alternatives to short-term purchase rates which change over time. It is also appropriate to allow a qualifying facility to choose to supply service under a long-term capacity contract to choose to receive shorter term energy credits, or vice-versa.

8. The energy credit which is appropriate for purchase of electricity from qualifying facilities in a peak or an off-peak time period is the average of the expected hourly incremental costs of the power generation or purchase which the utility can avoid during that time period by purchasing from the qualifying facility. The appropriate payment for such purchase should depend on the amounts of qualifying facility production during the on-peak periods and the off-peak periods of the purchasing utility. Purchase rates should parallel the utility's avoided costs in each of those periods.

9. The on-peak and off-peak periods shown in Appendix A are appropriate for use in this proceeding. The following are the peak hours by day and year for CP&L, Duke, and Vepco. Nantahala rates do not differentiate between peak and off-peak times.

	Peak Hours Per Day Monday-Friday	Annual Peak Hours During Peak Months	Annual Peak Hours During Off-Peak Months	Annual Peak Hours Total
CP&L	12	1046	2083	3129
Duke	16	2777	1394	4171
Vepco	15	1318	2593	3911

10. The planning and construction time for new nuclear and coal plants range from 12 to 14 years for nuclear and 8 to 10 years for coal. The major utilities in North Carolina are primarily planning and/or constructing nuclear facilities.

11. The use of the cost of a peaking unit as the basis for determining a capacity credit is reasonable for annual contracts and the shorter long-term contracts, but a base unit cost is appropriate for determining the capacity credit for long-term contracts of fifteen years or longer.

12. It is appropriate for annual purchase rates to include provisions for adjusting avoided costs over time, but adjustments are not appropriate during the life of fixed-term contracts which are designed on the basis of projections of avoided costs which take into account future inflation. It is appropriate for only the annual purchase rates to be adjusted currently each time a fuel cost adjustment factor is applied to retail rates and each two years as new avoided cost data is fixed.

13. In general, the utilities' filed contract documents are reasonable, including the terms of the contracts, payment plans for interconnection facilities charges and customer charges. It is appropriate that the seller (qualifying facility) bear the reasonable and ordinary costs required to interconnect such facility to the utility's system. It will be necessary for the utilities to refile individual contracts consistent with the lengths and types of contracts required herein.

14. It is appropriate for utilities to negotiate individual contracts with cogenerators and small power producers without obtaining prior Commission approval. All contracts, negotiated or otherwise, are subject to Commission action upon complaint by any party.

15. The waiver of payment of capacity credits for facilities whose construction began before November 9, 1978, is appropriate unless the operator of such facility demonstrates the financial need for the payment of capacity credits to continue the operation of such facility and to continue the benefits from such facility over the foreseeable future.

16. The standard rates attached in Appendix A are just and reasonable.

17. The Proposed Rule R8-50 is not necessary or reasonable.

18. Wheeling of power through one utility to another may be a cost-efficent means of improving power supply.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is found in Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), of which the Commission takes notice, and in the testimony of Ed Tucker of Nantahala Power and Light Company. This finding is procedural and is uncontested and uncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding of fact can be found in the testimony of almost every witness who testified in the Phase II proceedings. Development of cost-effective cogeneration and small power production can reduce the nation's and the State's dependence on foreign oil, insulate the State's electricity consumers from interruptions in the delivery of coal, reduce the environmental impact resulting from the burning of fossil fuels at large generating stations, and lessen the need for the utilities to raise capital to finance construction projects.

As appears from the language of the pertinent portions of PURPA and the legislative history of that Act, the Congress found that cost-effective cogeneration and small power production could be encouraged by removal of some of the State and federal regulatory burden on small producers of electricity, and by setting purchase rates and terms and conditions that are fair and reasonable and in the public interest. The provisions of PURPA and the FERC rules promulgated pursuant to them have removed such burdens and established guidelines for the implementation of the requirement that such rates be established.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding is contained in the rules and regulations issued by the Federal Energy Regulatory Commission (FERC) pursuant to PURPA.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT. NO. 4

Cogeneration is the combined production of power and useful heat by the sequential use of energy from one fuel source. The reject heat of one process becomes the energy input into a subsequent process. Small power producers are defined as facilities generating not more than 80 megawatts of electric power and which employ renewable resources such as water power, solar energy, wind energy or geothermal energy, or biomass or waste as a primary fuel.

Most of the testimony heard in these Phase II proceedings concerned cogeneration or low-head hydro, but there was also testimony concerning the use of wind generators for residences. In any case, it is clear that there is a wide variety of machinery and techniques which might be used by potential qualifying facilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The mandate of the pertinent FERC rules clearly indicates that rates set below the utility's avoided cost do not satisfy the FERC's interpretation of

PURPA. Similarly, rates that are set above the utility's avoided cost are not required or permitted by PURPA. In an appropriate case, however, the FERC rules do permit rates to be set above avoided cost where the basis for doing so is state law or policy rather than PURPA.

The Commission believes that, in calculating avoided costs, or marginal costs, or incremental costs, it is necessary to look at both the short-run and long-run. In the short-run, an electric utility generally increases its electrical supply to meet demand by burning more fuel. It dispatches its lowest variable cost plants first and works its way up to its highest variable cost units. In the long run, the company can construct new units that may be more efficient than existing units or may use a fuel that is now relatively less expensive.

In calculating the avoided costs of a utility, it is appropriate to examine both the utility's current behavior in response to changes in load and its prospective longer run behavior. The initial response to a decrease in load, or to an increase in electricity supplied by qualifying facilities, is a reduction in fuel burned and fuel inventory (plus certain related costs such as variable O & M). However, if the lower load is projected to continue, the utility can alter its construction schedule by cancellation of one or more generating units, deferral of one or more generating units, substitution of smaller generating units for larger generating units or by a combination thereof. While a relatively small increment of power from a particular qualifying facility that may or may not exist 10 or 15 years from now does not imply that a utility can cancel a nuclear unit, the Commission concludes that it is proper and appropriate to look at the aggregate of all qualifying facilities likely to come on line in assessing the impact upon the utility involved.

The presence of each qualifying facility clearly does have two effects. For the present, it increases the probability that the utility can meet its load, and it changes the expected future load which must be met by the utility's generation system. These effects can have value, depending on the reserve and growth situation of the utility involved. Utilities traditionally build generating capacity in excess of expected demand to allow for outages of some units and/or unexpectedly high demand on the system. This Commission has set 20% as a reasonable reserve margin target for the utilities under its jurisdiction. For utilities that have reserves substantially in excess of this, the additional reliability value of additional capacity (i.e., from a particular qualifying facility) would be small, as the higher the reserve margin the lower the probability that a utility would be unable to meet its load. The lower the reserve margin, the higher the probability that not all loads could be served and thus the greater the value of additional capacity provided at the time of peak.

The relationship of load growth to the value of capacity is an extension of the foregoing. For a utility that has adequate reserves, has very low or zero or negative growth in peak demand, and is thus not adding capacity (or other equipment, such as load management devices, designed to help it meet load) the incremental value of capacity offered to the utility would be zero. That is, with respect to capacity for a utility with excess reserves, an additional unit of demand causes no real resources to be committed, and a reduction in load allows no real resources to be saved.

The three larger utilities regulated by this Commission (Duke, CP&L, and Vepco) are each expecting positive growth and are engaged in long-range construction programs and in load management programs to meet that growth. In designing their construction programs, the companies can choose between more expensive baseload units that use cheaper fuel and less expensive peaker units that burn more expensive fuel. The peaker units require significantly less construction time than the nuclear or coal baseload units. Generally, because the price of fuel used in peaker units is so high, the utilities have committed themselves to construction of baseload units, with time frames for construction in the 10- to 14-year range. As projections of load growth change, and these projections have been volatile in recent years, the utilities have adjusted their construction schedules accordingly.

It is clear that the payments to be received by the qualifying facilities should reflect the short-run avoided energy costs (plus some other costs that vary with production) plus a capacity credit to reflect increased reliability that they will be providing to the system in the near term and the contribution that the qualifying facilities would be making which would allow the utilities to alter their construction schedules so as to reduce or avoid adding capacity in the future.

The allowance of capacity credits in the rates paid to qualifying facilities does not require an ironclad commitment by the qualifying facility to actually be on line in 10 or 15 years. The companies build facilities to meet the projected load growth that they expect to occur in the next decade, even though more or less growth may actually occur. The utilities rely on various techniques to forecast load growth and future load. Assuming that a certificate of public convenience and necessity has been obtained, and the facility generally fits into the Plan and Forecast adopted by this Commission, the company will typically be allowed to recoup from its then current customers the full cost of the facility. The value of additional generation depends upon the present or expected difference between present plant construction and actual load and the resulting costs or savings.

Although it is undoubtedly true that there will be some qualifying facilities which will come on line and generate electricity, receive some capacity credits, and then close up shop never to be heard from again, not allowing the utility any real savings on capacity through changes in its construction schedule, presumably others will come on line to replace those. Thus, while some will fail, others will succeed and the utility will benefit from the aggregate result.

At this point in time, utilities appear to be postponing plant construction for primarily financial reasons, not operational ones. Clearly, the addition of as much generation from outside sources as possible will enhance future operations. The question of the appropriate level of capacity credit is an important one. It is appropriate to consider that generation capacity under long-term contract is worth more than generation capacity under short-term contract. For purposes of setting the rates herein, the Commission concludes that the capacity credit for long-term contracts which significantly affect the planning horizon should be based on the avoided costs of base load capacity; the capacity credit for shorter term contracts should be based upon the avoided costs of peaking capacity.

In this proceeding, short-run marginal energy costs were calculated by each of the three utility companies through the use of PROMOD, a computer model which simulates the load placed on the utility and its response to that load, including the dispatch of units and planned and forced outages. Carolina Power & Light Company then added an increment of variable O & M costs that would be saved plus an allowance for working capital to compensate for any reduction in fuel expense and fuel stock-pile investment and a transmission loss adjustment to express the avoided energy cost at the qualifying facility service level. These adjustments are proper. An equivalent calculation has been filed by Duke.

The PROMOD results submitted as avoided energy costs appear to be the best notes however that there was some incredulity expressed by some witnesses that, with acknowledged incremental fuel costs for combustion turbines in the 10 cents to 15 cents per kilowatt-hour range the avoided energy costs filed should be much lower than that. The explanation lies in the fact that the combustion turbines are run only for a relatively few hours each month and thus these high energy costs could be avoided for only a few hours each month. During the rest of the peak hours, some unit with lower avoided costs is the marginal unit. PROMOD takes these matters into account in its calculations.

In calculating avoided costs which would be appropriate for use in a long-term rate, CP&L and Duke each projected changes in fuel costs by year prior to running PROMOD. Vepco did not. Vepco used current fuel costs and proposed to take account of the higher fuel costs it will inevitably face by a type of fuel adjustment clause. One of the reasons for this is that Vepco had a minimum contract length of one year but Duke and CP&L proposed a minimum of five years. Vepco's approach has merit under the current circumstances.

The avoided energy costs calculated by PROMOD are forecasts which are based on assumptions about fuel prices, availability of the various units, and load on the system. It was suggested by Dr. Weiss, the witness for the Public Staff, that qualifying facilities have the option of being paid according to actual avoided energy costs. This idea could have merit if done without a great deal of administrative complexity or cost. The system would call for the calculation each month of on-peak marginal energy costs and off-peak marginal energy costs. The qualifying facility would be paid for that month according to its contribution of kilowatt-hours during the peak period and its contribution of kilowatt-hours during the off-peak period.

Dr. Weiss testified that the merit of this approach is that it allows the qualifying facilities to obtain actual avoided costs rather than such as presently estimated and that it allows flexibility. It would provide a means of giving qualifying facilities the highest payments during the times when the costs of the utilities would be highest. For example, during periods of high demand or very expensive supply (due to forced outages of nuclear plants, for example) qualifying facilities which adjusted their output upward would achieve high returns. This would be a useful and proper simulation of the competitive market. The Commission concludes, however, that the demand for such a rate has not been shown to be great enough to require the setting up of its costly administrative procedure at this time. The other parties in this docket are interested in either a short-term or long-term contract which specifies beforehand what the payments will be for what hours of generation. However, the Commission also concludes that the utilities and qualifying facilities

should be allowed to contract for an after-the-fact rate based on the actual costs avoided as a result of the qualifying facility operation. In that case, however, such contracting qualifying facility should pay the costs of administering the data gathering process which would determine such rates.

It is clear from the data submitted by CP&L, Duke, and Vepco that costs on each system vary by time of day and that rates paid to qualifying facilities should vary by time of day. This is the only way to track avoided costs properly and give the correct signals as to which types of qualifying facilities should be built and on what schedule they should be operated. Additional capacity on a system is generally added to help the system meet increases in daily and seasonal peak demands. The Commission concludes that it is proper to allocate the capacity credit component of the rates to the peak hours in the case of each of the three utilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

These numbers are derived from the monthly operating and financial statements filed with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Evidence supporting this finding of fact is contained in the testimony of Mr. Twiggs, Mr. Eddleman, Mr. O'Rourke, and Representative Jordan, and in the Supplementary Information for Section 292.304(d) of FERC Order 69 and N. C. Senate Bill 1035, as ratified, of which the Commission takes notice. The Commission recognizes the operational and financial characteristics of small scale hydro facilities and concludes that long-term levelized rates appropriately match these characteristics. Some cogeneration facilities may also be well served by long-term contracts. However, either should be free to choose an annual rate or to negotiate a short-term rate if that would provide greater inducement to install the nonutility generation. The Commission concludes that long-term standard rate options are not appropriate for Nantahala or Vepco at this time. Nantahala is presently tied to the Tennessee Valley Authority system and its incremental costs are its rate structure. That structure may change shortly. Vepco has a small service area in North Carolina and the additional costs of long-term credits above short-term credits in the early years of a long-term contract could as much as double the current rates. The Commission does not preclude, however, the negotiation of limited long-term rates by these utilities if such contracts are not detrimental to the welfare of their North Carolina consumers.

The Commission also takes notice of FERC Order 69 paragraph 292.304(b)(5) which specifically allows levelized long term rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Evidence supporting this finding is contained in the testimony of CP&L witnesses Montague and Edge, Duke witness Sterrett, and Public Staff witness Weiss. The Commission recognizes that avoided energy costs for an electric utility vary hour-by-hour and that such costs reflect the operation of the most efficient unit that has not already been dispatched. Such a unit may use coal or oil depending on system and load level. While these costs may be as much as

10 cents per Kwh for I.C. turbine production, such production occurs only rarely among the peak hour generation. Most of the peak generation is produced by increasing the output of steam generation facilities. The Commission concludes that energy credits used in avoided cost rate design should reflect an average of such incremental avoided costs calculated over the hours in the appropriate peak and off-peak periods.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The on-peak and off-peak periods proposed by the companies are consistent with information filed in the load forecast and other hearings in recent years, are consistent with those used in other time-of-day rates of the companies, and are appropriate for use in this proceeding as shown in Appendix A.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Testimony in this docket and in past load forecast dockets indicates that the planning and construction time for nuclear facilities is from 12 to 14 years. For coal facilities, this time is from 10 to 12 years. In order for a qualifying facility to significantly affect construction plans, its useful life should significantly exceed the planning and construction time for utility facilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Evidence supporting this finding is contained in the testimony of CP&L witness Edge and Public Staff witness Weiss. Mr. Edge testified that he disagreed with Dr. Weiss' calculations of avoided capacity cost which were based on the cancellation of the Company's planned 720 megawatt Mayo No. 2 unit, and that estimates of cogeneration and small power production capacity were not of sufficient magnitude to allow cancellation of the Mayo Unit. Mr. Edge further stated that Dr. Weiss should have included the fuel cost savings as an offset to the capacity cost of the Mayo unit and that when such savings are accounted for the resulting capacity cost is substantially equal to the credit derived by the use of a peaking unit. Dr. Weiss stated that the use of a peaking unit was a credible approach and that he agreed that fuel cost savings should be included under his Mayo unit cancellation scenario. Duke witnesses Denton and Sterrett stated that Duke used a peaking unit for deriving its capacity credit.

The Commission recognizes the appropriateness of using the cost of a turbine generator as a basis for the capacity credit for short-term contracts. However, contracts which run long enough to extend sufficiently into the planning horizon as to aid maximum economy in future construction are worth more to the utility and its ratepayers than shorter contracts. The Commission concludes that the capacity credits for long-term contracts of fifteen years or longer should be based upon the cost of a base load fossil unit.

The Commission also recognizes that extremely short-term contracts such as annual contracts have no effect on the construction schedule of a utility in the short run. It has been suggested, therefore, that such contracts should not include capacity credits. However, the Commission must take a long-term view of this situation. Certainly, it is possible that some cogenerators and small power producers may have different expectations of the future energy prices than

does the Commission; such a producer may prefer a year-to-year contract with fuel cost adjustments. Such a contract may be ideal where it is desired to show a larger taxable income in later years when avoided energy costs will be higher (term contracts overpay now and underpay later). If an annual contract induces nonutility generation over the years, it can be expected to have a capacity impact similar to that of any other generation with less than a 15-year contract. Therefore, the Commission concludes that annual contracts should also have capacity credits based upon the cost of turbine generation. However, the Commission also concludes that the capacity credit in such a contract should not be increased more often than every five years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Almost every witness made comments concerning the appropriateness of the various credits proposed by the utilities and the Public Staff. Consonant with these comments were statements concerning adjustments which should or should not be made to these credits over time.

It is clear that, where appropriate, the Commission should make both short-term and long-term contracts available to cogenerators and small power producers. Certainly there is the risk in any long-term contract that conditions may change and a party may be worse off than if under a short-term contract. On the positive side, however, is the certainty of the payments involved. As discussed previously, there may be a number of reasons why an annual changing contract may be preferred to a fixed long-term contract and vice versa.

After review of the testimony, the Commission concludes that it would be appropriate to allow both capacity and energy credits to be updated periodically for annual contracts but that no such adjustments are appropriate during the life of long-term contracts because the long-term contract credits include expected increases in avoided costs over the life of the contract.

The annual purchase rates should be updated every two years after new avoided cost data is filed by the utilities in response to the PURPA requirements. Between such updatings, such rates should be adjusted for changes in fuel costs at the same time that normal retail rates are changed. The Commission has examined the proposed method of Vepco for using approved retail rate fuel cost adjustment factors to adjust qualifying facility purchase rates. The Vepco proposal would maintain the off-peak/on-peak relationships and is appropriate for use by all companies to adjust such rates for changes in fuel costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The only controversial point associated with the contract documents concerned the contract term or period. Evidence supporting the finding is found in the testimony of CP&L witness Montague and Duke witness Denton. Mr. Montague proposed a five-year contract term which is consistent with present CP&L contracts for general service customers on the distribution system. Dr. Weiss proposed a one-year contract term, stating that it was in keeping with present utility contract procedures. CP&L pointed out that the standard CP&L contract is for a five-year period and not one year as suggested by Dr. Weiss. However,

this only refers to some general service customers. Mr. Montague supported the five-year period as being a reasonable time period during which various administrative expenses could be recouped. Mr. Denton also supported the five-year period as being a reasonable contract period. The Commission has discussed above the necessity of providing alternatives to increase inducement of qualifying facilities and concludes that it is appropriate to have both annual and longer term contracts. The Commission recognizes that the expenses of the utility may differ slightly between the two. The Commission concludes, however, that the minimum contract for capacity should be 5 years.

Evidence supporting the seller's payment of costs required to interconnect a qualifying facility with a utility are found in the testimony of CP&L witness Montague, Duke witness Denton, and in Section 292.306 of FERC Order 69.

Evidence supporting the customer charge of Schedule CSP-1 is presented by witness Edge's testimony and Exhibit 5. No other evidence concerning customer charges was presented.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Evidence supporting this finding is found in the testimony of Public Staff witness Weiss and Weyerhaeuser witness Tyler. Dr. Weiss' testimony stated, "The parties should be encouraged to agree on rates and conditions with minimum Commission intervention. The regulatory burden on both utilities and qualifying facilities can be kept to a minimum if the parties negotiate in good faith." Mr. Tyler emphasized the flexibility required to negotiate an agreement beneficial to both parties. The Commission recognizes the benefits that may arise from such negotiations, if carried forth in good faith, and encourages all utilities and potential sellers of power to negotiate reasonable contractual arrangements where appropriate.

It is apparent that there exists a potential for a utility to insist upon a great many terms and conditions which might appear to be unwarranted, unnecessary, unreasonable, or burdensome to a would-be cogenerator or small power producer. Likewise, there exists the potential for a qualifying facility to insist upon terms or conditions which might adversely affect the ratepayers. The Commission will not attempt to promulgate the exact text of an approved form of agreement for use by each of the utilities. The Commission will and does, however, insist that each form of contract used include a provision indicating that, notwithstanding any other term or condition or provision of the contract, this Commission will be the final authority as to whether the terms and conditions of the contract are fair, reasonable, necessary and enforceable in the event of any controversy or dispute between the parties thereto and that the Commission will hold complaint proceedings in order to resolve any such disputes.

The Commission further concludes from the evidence that it should keep abreast of the activity in this area. Accordingly, the Commission concludes that each regulated utility should be required to file semiannual reports showing the name and appropriate characteristics of any cogenerator or small power producer added to or dropped from the system within the previous six months. In addition, a copy of each negotiated contract should be filed with the Commission within 90 days of execution and at least 30 days before any

payment or construction or other effective action by the utility thereunder begins.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Evidence supporting this finding is found in the testimony of CP&L witness Edge. Mr. Edge testified that full avoided cost should not be paid to cogenerators or small power producers that operate "old" capacity. "Old" capacity is defined by FERC Order No. 69 as capacity whose construction commenced before November 9, 1978 (Section 292.304(b)). Mr. Edge further stated that full avoided cost payment to old qualifying facilities could result in higher rates to the utilities' existing customers which is not in accordance with the intent of PURPA. He further stated that such facilities had been justified by their owners based on past economic conditions and that they should continue to operate under such conditions. Duke witness Denton and Vepco witness Wilson also noted the distinction between "old" and "new" capacity, and the authority granted the Commission to set rates at less than full avoided cost for "old" capacity. The Commission recognizes, however, that capacity credits are appropriate for expansion capacity or when significant repair has been made in order to continue operation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Each of the major utilities and the Public Staff filed rate proposals for the purchase of power by the utilities from cogenerators and/or small power producers. As could be expected from a group with diverse backgrounds and interests, the proposals were individualistic in character and purpose. During the hearing, the salient points of each proposal were discussed with the various witnesses. Many of the witnesses adopted or agreed to the possible merit of points made in other proposals. The testimony of several witnesses, including the affidavit of John Warren, indicated that few new hydroelectric installations could come on line before 1983.

The Commission has reviewed the entire record and has concluded the following:

1. The rates should reflect the differences in value to the utility and its ratepayers of generation by qualifying facilities in the on-peak hours and in the off-peak hours. These hours are different between utilities because of different load patterns.

2. Capacity credits should reflect the differences in value of on-peak generation in peak months and in off-peak months. The peak months are different between utilities.

3. The characteristics of the individual proposals by the major utilities should be preserved as much as possible in order to see which characteristics prove to be most appropriate in the long term.

4. Each utility should offer the standard rates approved in Appendix A but should be encouraged to enter into contracts with other terms as long as such contracts are beneficial to the ratepayer.

There are various reasons why both annual and long-term contracts should be available, where appropriate, including financing, tax, operations, and future load requirement considerations.

Vepco proposed a set of rate schedules which would be contracts of one year or longer and which would be adjusted by fuel cost adjustment factors. The other utilities proposed minimum five-year contracts and were generally not clear as to whether fuel cost adjustment factors were proposed to apply or whether the rates were proposed to be updated annually or otherwise. Various witnesses proposed the availability of long-term contracts, especially for hydroelectric generators.

The Commission concludes that there can be merit in offering qualifying facilities a choice between firm, long-term contracts and adjustable, annual contracts, as long as the energy and capacity credits properly reflect the value of such production over the time period(s). Consequently, the Commission has adopted the rate forms in Appendix A as a reasonably consistent and standard set of rates for application across the State.

The Commission agrees with the Public Staff and CP&L that capacity credits should be based on the average kilowatts generated during peak hours - in effect a capacity credit per peak kilowatt-hour. The Commission also concludes that there is value to capacity during peak hours of every month. However, Duke's point that such capacity is more valuable during peak-use months is valid. The divergent viewpoints taken in the discussions by various witnesses concerning the value of short-term contract capacity are valid to varying degrees. The Commission concludes that, while there is value to the aggregate generation from short-term contracts, the long-term contracts which can affect planning have significantly more value. The Commission, therefore, concludes that the standard rates adopted by the Commission for purchase by utilities of power from cogenerators and small power producers should reflect the Company's proposed annual capacity credits for contracts of less than 15 and should reflect the Public Staff's proposed annual capacity credits for contracts of 15 years or more.

The Commission concludes that the cost methodology proposed by CP&L and adopted by the Public Staff, which essentially includes energy costs developed with the PROMOD model, some extra operation and maintenance expenses, transmission losses, reduced fuel inventory, and associated working capital, is reasonable. In setting the rates for CP&L in Sheet 1 of Appendix A, the Commission has utilized the 1982 to 1995 projections of incremental cost filed by CP&L, added one additional year's estimated costs, and levelized these avoided costs over the 5-, 10-, and 15-year periods at a discount rate of 9.5%. These rates are based upon the costs which would be avoided by the first 100 megawatts of cogenerator or small power production and are consistent with the PURPA requirements.

The original data filed by Duke were based on the first 2 megawatts only and were not consistent with the PURPA 100 megawatt block. In the March 10, 1981, Order, the Commission increased the annual rates proposed by Duke by approximately 20% for estimated avoided transmission losses and working capital costs. The Commission then adjusted the year-by-year long-term data filed by Duke to be consistent therewith and levelized these avoided costs over 5-, 10-,

and 15-year periods in the same manner as for CP&L.* In response to the March 10, 1981 Order, Duke corrected and refiled these levelized costs at the levels shown in Appendix A, Sheet 2 of 4.

Vepco presented a special data problem. The Company, for whatever reason, does not appear to have made cost projections beyond 1989 and did not make the 15-year data filings requested by the Commission. In addition, the projections that were filed for the intervening years were later changed after the hearing. Attempts by the Commission to use Vepco data in preparation of long-term rates were frustrated by the paucity and uncertainty of the data. For that reason, the Commission examined the proportional increases between annual rates and long term rates for CP&L and Duke and applied similar ratios to the Vepco annual rates to obtain the 5-, 10-, and 15-year rates shown in Sheet 3 of Appendix A in the March 10, 1981 Order. The Commission concluded that, while the other rates should become effective as soon as possible after the rates and terms and conditions are refiled in accordance with this Order, Vepco or any other party should be allowed to show cause at the next hearing, to be scheduled primarily to hear arguments concerning wheeling rates, if there was any reason why the rates for Vepco shown in Appendix A should not be implemented. After reconsideration and argument, and after filing by Vepco of updated annual credits, the Commission has concluded that the standard rates paid by Vepco to qualifying facilities should be annual rates only and should be reasonably identical to those filed by the Company in Virginia.

Nantahala presents a unique problem because of its relationship for purchase of power from TVA. The Commission recognizes that its power purchase contract will shortly end and that long-term rates for purchase from qualifying facilities would not be appropriate at this time. Accordingly, only the annual rates shown in Sheet 4 of Appendix A are required in the interim.

The Commission recognizes that PURPA requires the avoided cost data to be filed every two years. The Commission concludes that it is appropriate, then, to set new rates every two years which would apply to the qualifying facilities which begin production or which recontract during the period. Under this system, capacity credits and energy credits would both be updated at the end of long-term contracts. For annual contracts, however, energy credits would be updated every two years with fuel cost adjustment factors being applied in the interim in the manner proposed by Vepco. Capacity credits should not be updated except each five years. This process will appropriately reflect the value of the production received.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The Proposed Rule R8-50 would be consistent with PURPA but does not appear to be appropriate for use with the rates approved herein. Certainly such a proposal is not appropriate for the long-term contracts. Because the annual contracts will be updated periodically, the price should be set close enough on a prospective basis to preclude the necessity of suspension of purchase for economic reasons. Proposed Rule R8-50 would only create uncertainty as to the payments which would be received by qualifying facilities and would be expected therefore to lessen the amount of such generation which may be forthcoming. Therefore the Commission declines to implement the proposed rule.

The fixed, long-term contract energy credits are based upon projections of future avoided costs levelized over the period. Because of this, the qualifying facility will be paid greater than actual avoided cost during the early years of the contract and less than the avoided cost in the later years. If the qualifying facility produces during the entire life of the contract, it is a break-even situation for the ratepayers. However, the fixed, long-term contracts pose a problem to the ratepayers if the cogenerator or small power producer fails to continue service for the full length of the contract term. In that case, the qualifying facility will have been overpaid for the initial production. The utilities have proposed that long-term contracts include a provision to require repayment of certain monies if the qualifying facility does not complete the contract. The Commission concludes that it is necessary and appropriate for qualifying facilities which do not complete the full term of their contracts to reimburse the utility for the total energy and capacity credits received in excess of that which would have been received under annual contracts plus interest on the reimbursement. The interest should be calculated using the weighted average rate for new debt issued by the utility in the calendar year previous to that in which the contract commenced. If no debt was issued in that year, it would be appropriate to use the weighted average of the next immediately proceeding calendar year's issues. Such rate should be stated in the contract.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

A number of witnesses indicated the possible desirability of allowing wheeling either through utilities or intra-utility between plants operated by the owner of a qualifying facility. The evidence in this docket is not sufficient to determine the complete set of wheeling services which are needed or the cost of administering and providing such services. The Commission concludes that further hearing should be held in this docket to consider the question of wheeling services and rates which might appropriately apply to the generation from qualifying facilities.

IT IS, THEREFORE, ORDERED that

1. The Recommended Order issued on March 10, 1981, in this docket is hereby superceded by this Order. Further hearing in this docket is hereby scheduled beginning Tuesday, November 17, 1981, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, for the purpose of determining appropriate requirements, provisions, costs and rates for wheeling power.

2. CP&L, Duke, Vepco, Nantahala, and the Public Staff shall, on or before October 13, 1981, make filings, including memoranda of law, testimony and data, concerning rates and requirements for wheeling services, specifically addressing, as a minimum, the matters of wheeling through one utility to another and wheeling from one customer installation to another installation of the same customer. Intervenors proposing to offer expert testimony shall file such testimony on or before October 30, 1981.

3. CP&L, Duke, Vepco and Nantahala shall offer through published tariffs and shall pay the avoided cost rates shown in Appendix A attached hereto until such rates are modified by subsequent Order of the Commission. CP&L, Duke and Vepco

shall, within 45 days from the effective date of this Order, file tariffs and terms and conditions consistent with the provisions as originally proposed by them and as directed to be modified by the findings, conclusions, and rates allowed in this Order. The April 24, 1981, filing by Nantahala is hereby approved. Each company is permitted to negotiate contracts with different features. Where both annual and long-term rates are offered, qualifying facilities may choose different contract lengths for energy credits than capacity credits except that the contract period of the capacity credit shall not be shorter than the contract period of energy contract. The minimum length of the capacity contract is 5 years.*

4. Every arrangement or agreement, exclusive of standard contract rates as approved herein, entered into between a public utility regulated by this Commission and any cogenerator or small power producer operating a qualifying facility within this State, relative to the rates and/or terms and conditions to be paid by such utility to such cogenerator or small power producers for any energy or capacity made available to the utility from a qualifying facility, shall:

(a) Be reduced to writing signed by both parties, and
(b) Contain a provision in bold type on its face which reads as follows:

"The terms and conditions of this agreement have neither been reviewed nor approved by the North Carolina Utilities Commission and all such terms and conditions are subject to being modified in whole or in part or being declared null and void ab initio upon review of such in a complaint proceeding before the North Carolina Utilities Commission."

and

A copy thereof shall be filed with the North Carolina Utilities Commission promptly upon original execution along with copies of any subsequent amendment(s) thereto.

5. Each electric utility under the jurisdiction of this Commission shall each year file by August 1 and February 1, a summary of the cogeneration and small power producer activity of the utility during the previous January-June or July-December period, including changes in the numbers and capacities of facilities under contract. Names of qualifying facilities over five kilowatts shall be furnished.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of September 1981.

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

APPENDIX A
Sheet 1 of 4

CAROLINA POWER & LIGHT COMPANY

	Standard Cogeneration and Small Power Producer Rates (Cents/Kwh)			
	Variable Annual Rate	Fixed Long-Term Rates		
		5 yr.	10 yr.	15 yr.
Energy Credits:				
Peak Kwh	2.80*	3.69	4.40	5.55
Off-peak Kwh	2.07*	2.83	3.31	4.04
Capacity Credits:				
Peak Kwh--summer months	1.49	1.49	1.49	2.39**
Peak Kwh--nonsummer months	1.29	1.29	1.29	2.08**

*Annual rate energy credits will be updated every two years. In the interim, Fuel Cost Adjustment Factors will apply to the annual rate energy credits.

**Applies to contracts of fifteen* years or longer.

On-Peak Hours:
Billing Months of May-October:
The hours beginning 10:00 a.m. and ending 10:00 p.m. Monday-Friday.

Billing Months of November-April:
The hours beginning 6:00 a.m. and ending 1:00 p.m. and the hours beginning 4:00 p.m. and ending 9:00 p.m. Monday-Friday.

Off-Peak Hours:
All other hours.

Summer Months:
The summer months are the billing months of July-October; the nonsummer months are all other billing months.

Note: Capacity credits shall be constant at the initial level for the life of a long-term contract. Capacity credits for annual contracts shall be at the initial level but shall be updated once every five years.

Example Average Total Credits Under Different Operating Conditions (cents/Kwh)

Cogeneration	or	Hydroelectric	Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
35% on-peak	or	no storage	2.80	3.61	4.17	5.33
75% on-peak	or	some storage	3.64	4.49	5.15	6.81
90% on-peak	or	good storage	3.95	4.83	5.51	7.36
100% on-peak	or	maximum storage	4.16	5.05	5.76	7.73

Note: The CP&L average 1980 industrial rate was 3.03 cents/Kwh.

APPENDIX A
Sheet 2 of 4

DUKE POWER COMPANY

	Standard Cogeneration and Small Power Producer Rates (Cents/Kwh) Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
Energy Credits:				
Peak Kwh	2.12*	2.87	3.93	5.02
Off-peak Kwh	1.60*	2.15	2.96	3.78
Capacity Credits:				
Peak Kwh--peak months	1.11	1.11	1.11	1.17**
Peak Kwh--off-peak months	0.66	0.66	0.66	0.69**

*Annual rate energy credits will be updated every two years. In the interim, Fuel Cost Adjustment Factors will apply to the annual rate energy credits.

**Applies to contracts of fifteen* years or longer.

On-Peak Hours:
The hours beginning 7:00 a.m. and ending 11:00 p.m. Monday-Friday.

Off-Peak Hours:
All other hours.

Peak Months:
The peak months are the billing months of July-October and January-April. Off-peak months are the billing months of November, December, May and June.

Note: Capacity credits shall be constant at the initial level for the life of a long-term contract. Capacity credits for annual contracts shall be at the initial level but shall be updated once every five years.

Example Average Total Credits Under Different Operating Conditions (cents/Kwh)

Cogeneration	or	Hydroelectric	Variable Annual Rate	Fixed Long-Term Rates 5 yr.	10 yr.	15 yr.
48% on-peak	or	no storage	2.31	2.96	3.89	4.86
75% on-peak	or	some storage	2.71	3.41	4.41	5.47
90% on-peak	or	good storage	2.93	3.66	4.70	5.81
100% on-peak	or	maximum storage	3.08	3.83	4.89	6.03

Note: The Duke average 1980 industrial rate was 2.67 cents/Kwh.

APPENDIX A
Sheet 3 of 4

VIRGINIA ELECTRIC AND POWER COMPANY

	Standard Cogeneration and Small Power Producer Rates (Cents/Kwh) Variable Annual Rate
Energy Credits:	
Peak Kwh	5.203
Off-Peak Kwh	3.132

*Annual rate energy credits will be updated every year.

Capacity Credits:
Peak Kwh — 0.803 if contract for 5 years
1.253 if contract more than 5 years

On-Peak Hours:
The hours beginning 8:00 a.m. and ending 11:00 p.m. E.D.T. Monday-Friday.

Off-Peak Hours:
All other hours.

Note: The Vepco average 1980 industrial rate was 4.37 cents/Kwh.

* Corrected by Errata Order dated September 24, 1981.

The following Note shall be included within the tariff.

Tariff Note - Vepco Tariff

This tariff is published as an initial tariff pending compilation of sufficient data for long-term tariffs similar to those ordered for CP&L and Duke. This data is due to be filed on June 1982. In the hearings thereon to be held in the Fall of 1982, the Commission will consider appropriate long-term rates for small scale hydroelectric projects.

In the interim, any potential qualifying facility desiring such long-term contracts for hydroelectric projects under G.S. 62-156 may apply to the Company or to the Utilities Commission for such supplementary tariff provisions, and if they are not filed on the basis of an agreement between such facility and Vepco, the facility may apply to the Utilities Commission for a hearing on such request.

APPENDIX A
Sheet 4 of 4

NANTAHALA POWER AND LIGHT COMPANY

	Standard Cogeneration and Small Power Producer Annual Rate (Cents/Kwh)
Energy Credit:	
All Kwh	2.253
Capacity Credits:	
Peak Kwh	2.690

DOCKET NO. E-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Determination of Rates for Purchase and Sale of Electricity Between Electric Utilities and Qualifying Cogenerators or Small Power Producers and Rulemaking Concerning Conditions and Requirements for Such Services	) ORDER APPROVING) RATE SCHEDULES) AS MODIFIED)

BY THE COMMISSION: In its Orders of September 21 and 24, 1981, the Commission required the filing of tariffs and terms and conditons of service for cogeneration and small power production. In accordance therewith, CP&L, Duke and Vepco have filed rate schedules for Commission approval. Having reviewed the schedules, the Commission concludes that they should be approved as modified below:

IT IS, THEREFORE, ORDERED that

1. Vepco's Schedule 19 is approved as filed.

2. CP&L's Schedule CSP-2 filing is approved with the following modifications.

(a) The first sentence of the second paragraph of the AVAILABILITY section shall be as follows:

> "This Schedule is not available for electric service supplied by Company to Seller or for Seller who has negotiated rate credits or conditions which are different from those below."

(b) The RATE UPDATES section shall read as follows:

"The Variable Annual and Fixed Long-Term Energy Credits and Capacity Credits of this Schedule will be updated every two years. Customers who have contracted for the Long-term Rates will not be affected by these updates until their rate term expires."

(c) The APPROVED FUEL CHARGE section shall be as follows:

"The increase or decrease in the Approved Fuel Charge applicable to retail service and adjusted to time-of-day shall apply to all Energy Credits under the Variable Annual Rate provision of this Schedule."

3. Duke's Schedule PP filing is approved with the following modifications.

(a) The APPROVED FUEL CHARGE section shall be as follows:

"The increase or decrease in the Company's approved fuel charge applicable to retail service, if any, pursuant to North Carolina General Statute 62-134(e) and adjusted to time-of-day shall apply to all Variable Rate Energy Credits for service supplied under this Schedule.

(b) The DEFINITION OF "MONTH" section shall be amended to insert the words "the Billing Months of" immediately before the word "April" and the word "June".

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of December 1981.

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

DOCKET NO. G-3, SUB 91
DOCKET NO. G-5, SUB 149
DOCKET NO. G-9, SUB 190
DOCKET NO. G-100, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application for Extension of Time for Sales of Natural Gas to Duke Power Company	) ORDER ALLOWING EXTENSION OF TIME FOR) SALES OF NATURAL GAS TO DUKE POWER) COMPANY

BY THE COMMISSION: By Order dated December 5, 1973, in Docket No. G-100, Sub 18, the Commission approved sales of natural gas to electric utilities for generating purposes.

On June 1, 1979, the North Carolina Utilities Commission issued an Order in the dockets as listed above allowing Piedmont Natural Gas Company, Public Service Company of North Carolina, Inc., and North Carolina Gas Service, Division of Pennsylvania and Southern Gas Company, to sell gas to Duke Power Company for use in their gas turbine generating units. The Order issued on June 1, 1979, allowed these natural gas sales for the specific purpose for a period of up to two years. Effective May 31, 1981, authorization of these sales expired. Public Service, Piedmont, and N.C. Gas Service anticipate or are making sales to Duke Power for use in its turbine generating units.

On June 22, 1981, Public Service filed a letter application requesting an extension of time with which to make these sales to Duke Power Company. The Commission, upon recommendation of the Public Staff, concludes that these sales should be allowed for another two-year period extending through June 1983 for all three natural gas utilities.

IT IS, THEREFORE, ORDERED:

1. That Public Service Company of North Carolina, Piedmont Natural Gas Company, and North Carolina Gas Service be, and hereby are, authorized to make sales to Duke Power Company at the plants designated Riverbend, Dan River, and Buck for use in their combustion turbine generator units for an additional two years through June 1983.

2. That the sales to Duke Power shall be made on the rate schedules applicable to North Carolina Utilities Commission Priority 9 customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of June 1981.

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

GENERAL ORDERS - GAS

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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rule-making Proceedings for Curtailment of) ORDER CONSOLIDATING AND
Gas Service Due To Gas Supply Shortage) TERMINATING REPORTING REQUIREMENTS

BY THE COMMISSION: On January 3, 1975, the North Carolina Utilities Commission issued an Order in Docket G-100, Sub 21, amending the natural gas utilities' load growth policy such that customers could be added to the extent there was attrition on the utilities' systems. In order to moniter this load growth policy, the Commission ordered the natural gas utilities to furnish 12-month normalized volumes for Priorities 1.1, 1.2, and 2.1. The Commission issued another Order in this docket on January 25, 1979, lifting the moratorium on new connections and requiring a quarterly report of customer attachment.

Due to substantial increases in the natural gas supply from Transcontinental Gas Pipeline Company to the North Carolina distribution companies, the Commission concludes upon recommendation of the Public Staff that the reports noted above are no longer required.

Reclassifications have taken place in the priority system by which customers are curtailed, making it necessary to revise the forms which the gas utilities use as a guide in reporting customers and sales by priority by month. Such changes in priority classification should be reflected in the monthly reports filed by the gas utilities. Also customer owned gas ("533") which is transported by the gas utility for the customer has decreased to essentially zero. Due to the minimal amount of "533" gas deliveries, the Commission concludes that a report is no longer necessary to provide the "533" sales by customer.

IT IS, THEREFORE, ORDERED as follows:

(1) That the reporting requirements of Docket No. G-100, Sub 21, are hereby terminated upon issuance of this Order.

(2) That the reporting requirement of Docket No. G-100, Sub 24, whereby the utility furnish the Commission information on gas deliveries to "533" customers, is hereby terminated.

(3) That the filing of the annual report showing customer name, address, alternate fuel, priority, and monthly consumption as required by Commission Order dated December 28, 1977, in Docket G-100, Sub 24, is hereby terminated.

(4) That the monthly reports presently required by G-100, Sub 24, be revised as shown in Exhibits A, B, and C attached hereto and be filed by the gas utilities in North Carolina within 45 days after the last day of the month for the reporting period.

(5) That any changes in Commission Rule R6-19.2 - Priorities for curtailment of Service should immediately be reflected in the monthly reports as filed in (4) above by each natural gas utility.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February 1981.

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

NOTE: For Exhibits A, B, and C, see the official Order in the Chief Clerk's office.

DOCKET NO. G-100, SUB 25

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Prohibition of Installation of Outdoor Lights Using Natural Gas and Use of Natural Gas in Outdoor Lights) ORDER GRANTING EXEMPTION

BY THE COMMISSION: On November 9, 1978, the President of the United States signed into law the Powerplant and Industrial Fuel Use Act of 1978 (FUA). This Act, which was a portion of the National Energy Act of 1978, directed the Department of Energy to prohibit, by rule the connection of new outdoor gas lights and the continuation of natural gas service using to customers using such gas for outdoor lights. There were certain exceptions to the disconnection of existing customers.

The Department of Energy (DOE) was authorized, in the Act, to delegate its implementation and enforcement powers under FUA to appropriate State regulatory agencies, such as this Commission. Pursuant to 10 CFR Part 516, Subpart C, as published in the Federal Register, DOE did, in fact, delegate its FUA implementation and enforcement powers in the State of North Carolina to this Commission and the Commission has heretofore entered into the exercise of such powers.

By Order issued on June 3, 1975, this Commission prohibited the North Carolina gas distribution utilities from attaching any new outdoor gas lighting customers and terminated existing service to outdoor torches. On July 12, 1979, the Commission issued an Order which implemented 10 CFR Part 516, temporarily exempted all existing outdoor gas lighting customers from termination, and required the North Carolina natural gas distribution companies to comment on the implementation of such order and to file reports concerning which of their customers could be exempt from termination using one or more of the exemption standards contained in FUA.

The Commission now has in hand the comments of all five of the natural gas companies concerning the temporary Order previously issued herein. The Commission also has the reports on customer exemption qualifications. Finally, the Commission has in hand a study and report previously prepared by the Public Staff and the Staff's recommendation, as the State agency charged with

representing the consumer interests of the using and consuming public, that the Commission July 12, 1979, Order now be made permanent. Based upon the foregoing and the Commission's entire files and records in this docket, the Commission now reaches the following

FINDINGS OF FACT

1. That Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., North Carolina Natural Gas Corporation, North Carolina Gas Service Division of Pennsylvania and Southern Gas Company, and United Cities Gas Company are public utilities as defined by Chapter 62 of the General Statutes of North Carolina, providing natural gas utility service to retail customers within this State and, as such, are subject to the jurisdiction of and regulation of this Commission.

2. That the Powerplant and Industrial Fuel Use Act of 1978 (FUA) required the Department of Energy to issue rules prohibiting the use of natural gas in new outdoor lighting equipment and terminating existing outdoor gas light uses on or before January 1, 1982.

3. That by rules issued on 10 CFR Part 516 and published in the Federal Register on May 10, 1979, and May 23, 1980, the Department of Energy delegated the implementation and enforcement authority conferred under FUA over outdoor gas lighting equipment in North Carolina to this Commission.

4. That this Commission has previously issued an Order on June 3, 1975, which terminated the use of natural gas in outdoor torches and prohibited the natural gas distribution utility companies from attaching to their systems any new outdoor gas lights or from serving any new outdoor gas lighting customers. Such Order is still in full force and effect.

5. That the following table illustrates the decrease in number of customers and annual consumption by consumers of natural gas used in outdoor lights in North Carolina from 1975-1979 and from 1975-1980.

Year	Number of Lights	Decrease Since 1975	Annual Usage	Decrease Since 1975
1975	10,742	-	230,083 DT	-
1979	5,988	44.26%	103,221 DT	55.14%
1980	5,441	49.35%	94,926 DT	58.74%

6. That, so long as the Commission Order of June 3, 1975, remains in effect, the number of customers and annual consumption can be expected to continue to decline through normal attrition.

7. The annual consumption of natural gas in outdoor gas lights in North Carolina during 1980 represents only about 0.07% of the total consumption of natural gas in North Carolina during 1980.

8. The initial cost of replacing a single outdoor gas lighting mantle with another light powered by a different source is approximately $200. Thus, in order to replace the existing 5,441 outdoor lights, the initial cost would be

$1,088,200. The annual savings resulting from such replacement would be approximately $200,000 according to the Public Staff's study. This results in a payback period of almost five and one-half years.

9. That, if each of the 5,441 present customers should individually petition this Commission for an exemption as contemplated by FUA prior to termination, the administrative cost to the State of North Carolina would average approximately $300 per petition or a total cost of over $1,600,000. This cost would have to be borne by the taxpayers of the State of North Carolina.

10. According to the study of the Public Staff and surveys prepared by the gas distribution utilities, each of the remaining outdoor gas lights would be subject to an exemption under FUA and 10 CFR Part 516, Subpart D, based on one or more of the following grounds:

(a) Such lighting fixtures are used for commercial purposes which are of a traditional nature and which conform with the cultural or architectural style of the area in which the light is located;

(b) Such light is necessary to protect the safety of persons and property, in that such fixture is necessary (1) to prevent an increase in the likelihood of bodily injury or damage to property; (2) to prevent an increase in the likelihood of the occurrence of crime in the location served by the light; or (3) because other existing lighting in the location does not provide lighting adequate to ensure conformance with Standard No. D12.1 of the American National Standards Institute;

(c) The replacement of such lighting would entail substantial expense to the owner or user of such lighting and such expense would outweigh the benefits to be derived from compliance.

11. If all existing outdoor lights were converted to use electricity, the decrease in natural gas use would be, as noted above in Finding of Fact No. 7, infinitesimal. In addition, there would be virtually no encouragement for the greater use of coal or other alternate fuels, since such conversion would increase the use of coal by less than 500 tons annually and would increase the use of uranium by less than one pound annually.

CONCLUSIONS

From the foregoing findings of fact, it is plainly apparent that the Commission has ample jurisdiction and power, pursuant to the delegation of authority from the Department of Energy, to exempt any or all of the remaining outdoor natural gas lights in North Carolina from termination pursuant to the Fuel Use Act of 1978. The issue is whether or not the Commission should do so.

We believe that the present program of prohibiting new outdoor gas light attachments is working well. Due to attrition from 1975 to 1980, the number of lights decreased by almost 50% and the annual consumption from these lights decreased by almost 60%. Further attrition can be expected in the future.

The cost of converting the remaining outdoor gas lights would be subject to a payback period which the Commission believes to be excessively long under any reasonable or objective standard. In addition, all of the existing lights would qualify for exemption as commercial lighting of a traditional nature or as lighting necessary to protect public health and safety. Also, the administrative cost of conducting separate hearings on exemptions for each of the remaining customers would impose an unreasonable and unjustified cost burden on North Carolina taxpayers. Finally, the amount of gas which could be saved, even if all the remaining lights were removed or converted to another energy source would be less than 7/100 of one percent of all gas sold by the distribution utilities in North Carolina during 1980. As attrition continues, this amount will grow progressively less.

For the foregoing reasons, the Commission is of the opinion, and thus concludes, that it should issue this Order to permanently exempt from forced termination those outdoor gas lighting customers protected by the Commission prior temporary Order of July 12, 1979.

IT IS, THEREFORE, ORDERED as follows:

1. That all outdoor natural gas lighting fixtures and the customers served thereby, which were in existence and were being served by one of the North Carolina natural gas distribution utility companies as of July 12, 1979, and which are still in use as of the effective date of this Order, be and the same are hereby, exempted from the operation of 10 CFR 516, Subpart B, pursuant to the powers and authorities delegated to this Commission under 10 CFR 516, Subpart C, and consistent with the exemption standards as contained in 10 CFR 516, Subpart D.

2. That this Order shall become effective on July 1, 1981, unless altered, modified, or rescinded as provide hereafter. Pending the effective date of this Order, the Commission Order in this docket of July 12, 1979, shall remain in full force and effect.

3. That a copy of this Order shall be furnished to each of the natural gas distribution utility companies operating in North Carolina under the jurisdiction of this Commission and to the Public Staff. The parties hereto and other interested persons shall have until June 1, 1981, within which to petition the Commission to modify or rescind this Order, to request the Commission to hold evidentiary hearings with respect thereto, or to file comments regarding this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of March 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

GENERAL ORDERS - GAS

DOCKET NO. G-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of Disposition of Refunds from Transco Received by North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company	) ORDER DIRECTING NORTH) CAROLINA NATURAL GAS) CORPORATION TO MAKE) REFUNDS)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, June 3rd, 4th, and 5th, 1980

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

APPEARANCES:

For the Respondents:

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

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For: Public Service Company of North Carolina, Inc.

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.

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

For the Intervenors:

Charles Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P. O. Box 389, Raleigh, North Carolina
For: Farmers Chemical Association, Inc., and CF Industries, Inc.

Thomas R. Eller, Jr. (Attorney of Record), Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

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: In January 1979, the North Carolina Utilities Commission received notice from the Federal Energy Regulatory Commission (FERC) that Transcontinental Gas Pipe Line Corporation (Transco) had made certain producer refunds to its customers during 1978 pursuant to Orders issued by the FERC in Docket Nos. AR61-2, AR69-1, et al. The refunds which Transco made to its customers resulted from refunds which had been made earlier to Transco by its producer-suppliers, which producer-supplier refunds the FERC ordered Transco to flow through to Transco's customers. The producer-supplier refunds made to Transco relate to monies collected from Transco by its producer-suppliers during the period 1958 to 1971. The information received by the Commission from the FERC indicated that each of the five gas distribution companies regulated by this Commission had received refunds from Transco. Those gas distribution companies are 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), and United Cities Gas Company (United Cities).

Based upon the foregoing information, the Commission, on its own motion, issued its Order of April 25, 1979, thereby instituting an investigation to determine the appropriate disposition of the producer-supplier refunds which had been received from Transco by each of the five gas distribution companies regulated by this Commission. That Order made each of those five natural gas companies and the Public Staff parties to the investigation, scheduled a public hearing in the matter for September 11, 1979, and required public notice of said hearing to be given by the gas companies involved.

On May 1, 1979, the Attorney General of the State of North Carolina filed with the Commission a Notice of Intervention in these proceedings.

On July 6, 1979, Piedmont Natural Gas Company, Inc., filed certain motions with the Commission seeking a separate hearing with respect to said Company, the establishment of a prehearing conference, seeking a continuation of the September 11, 1979, hearing date, and also an extension of the date to file testimony and memoranda.

On July 23, 1979, the Commission issued an Order in this docket entitled "Order On Motions And Setting Oral Argument." That Order continued the filing dates which had previously been specified in the Commission Order of April 25, 1979, pending further Order of the Commission. The Order also denied Piedmont's motion for a prehearing conference and scheduled oral argument upon certain legal questions for the time, date, and place of the hearing which had been originally established by the Commission in its Order of April 25, 1979. The issues upon which oral argument was invited generally included the matters which Piedmont's motion had identified as being the appropriate subject matter of the prehearing conference which it had sought. Those issues were as follows:

1. Whether the disposition of the producer refunds at issue herein should be controlled by G.S. 62-136(c) or G.S. 62-133(f)?

2. Who has the burden of proof under the controlling statute?

3. What type of testimony and exhibits should be filed under G.S. 62-136(c) and G.S. 62-133(f)?

The Commission deferred ruling upon Piedmont's motion for a separate hearing.

On August 20, 1979, the Public Staff of the North Carolina Utilities Commission filed its Notice of Intervention in these proceedings.

On August 31, 1979, there was filed with the Commission the Petition of CF Industries, Inc., and Farmers Chemical Association, Inc. (Farmers Chemical), for leave to intervene. Those parties were allowed to intervene by Order of the Commission issued September 10, 1979.

On September 10, 1979, the North Carolina Textile Manufacturers Association, Inc., filed with the Commission a pleading seeking permission to intervene in this docket.

On September 11, 1979, a hearing was held as previously scheduled by the Commission, at which time oral argument was heard upon the matters specified in the Commission Order of July 23, 1979.

On November 30, 1979, the Commission issued an Order in this docket entitled "Order Setting Further Investigation And Requiring Testimony." That Order recited that after hearing oral argument, the Commission had concluded that it would be inappropriate for it to make declarations or conclusions regarding which statute or legal principles governed the disposition of the refunds in question prior to a full evidentiary hearing. The Order further recited that the gas distribution companies had the burden of proof in the proceeding, identified specific information and data which each of the five gas companies were directed to file in the form of testimony and exhibits, and indicated that further public hearings would be scheduled by the Commission in the future.

On December 21, 1979, a motion was filed with the Commission by Pennsylvania & Southern Gas Company and United Cities Gas Company. That motion generally sought a separate hearing for those two companies to be held subsequent to the hearings to be held with respect to the other three natural gas companies and also an extension of the date by which United Cities and P&S were required to file testimony and data in this docket.

On January 2, 1980, Public Service Company of North Carolina, Inc., filed a motion with the Commission seeking an extension of time within which to file testimony and data and on January 4, 1980, Piedmont Natural Gas Company, Inc., filed a similar motion seeking a 30-day extension of time to file testimony and exhibits. On January 4, 1980, the Public Staff filed a response to these two motions indicating that it did not oppose the requested extensions of time but requesting that all gas company parties be granted similar extensions and that the Public Staff and other intervenors be allowed to file their testimony and exhibits 30 days subsequent to the gas company extended filing date. On

January 7, 1980, North Carolina Natural Gas Corporation also filed a motion seeking a 30-day extension of time to file testimony and exhibits. The Commission issued its Order on January 8, 1980, allowing the gas company parties an additional 30 days within which to file testimony and exhibits and also allowing the Public Staff and other intervenors a period of 30 days after the new gas company filing date within which to file testimony and exhibits.

On February 14, 1980, Pennsylvania & Southern Gas Company and United Cities Gas Company filed a motion with the Commission requesting the Commission to allow each of said companies to file somewhat less extensive data and information than that which was specified in the Commission Order of November 30, 1979, and further requesting an extension of time within which to file testimony.

As of April 24, 1980, each of the five gas distribution company parties had filed with the Commission data or testimony, or both, responsive in whole or in part to the Commission Order of November 30, 1979. By that date the Public Staff had also filed testimony and exhibits in this docket. Additionally, prefiled testimony had also been filed with the Commission on behalf of CF Industries, Inc. This testimony was offered for informational purposes only.

On April 24, 1980, the Commission issued an Order in this docket scheduling a public hearing to begin on Tuesday, June 3, 1980, at 9:30 a.m., in the Commission Hearing Room, directing that public notice of such hearing be given by each of the gas distribution company parties, and further directing each party to the proceeding which had filed testimony, exhibits or data pursuant to the Commission Order of November 30, 1979, to have an officer or representative present to testify at such public hearing. That Order also denied the motion by Piedmont Natural Gas Company, Inc., for a separate hearing, which motion had been filed in this docket on July 6, 1979, and further denied the motion of Pennsylvania & Southern Gas Company and United Cities Gas Company for a separate hearing, which motion had been filed in this docket on December 21, 1979.

On May 30, 1980, the Public Staff filed a motion with the Commission requesting the Commission to take judicial notice of certain specified documents, statutes, rules, and facts described in an attachment to that motion. Piedmont Natural Gas Company, Inc., filed its response to that Public Staff motion on June 2, 1980.

This matter came on for hearing before the Commission as scheduled on June 3, 1980. Affidavits of publication submitted by each of the gas companies indicate that notice of the hearing as required by the Commission was duly given. At the hearing, each of the five natural gas distribution company parties was present and represented by counsel.

John T. Garrison, Jr., an Engineer with the Public Staff of the North Carolina Utilities Commission, presented testimony and exhibits. His testimony and exhibits related specifically to each of the natural gas distribution companies here involved, as well as generally to the issues presented by the refunds here in question.

Raymond J. Nery, Director of the Public Staff Gas Division, also testified briefly on behalf of the Public Staff.

Donald E. Daniel, Supervisor of the Public Staff Accounting Division, Gas and Water Section, also presented testimony and exhibits. Mr. Daniel's testimony and exhibits related generally to the rates of return which had been experienced by each of the gas companies here involved during periods contemporaneous with the receipt of the refunds here in question.

Allen J. Schock, Vice President - Rates with Public Service Company of North Carolina, Inc., presented testimony and exhibits on behalf of that Company.

Glenn Rogers, Group Vice President of United Cities Gas Company, presented testimony and exhibits on behalf of that Company.

Marshall Campbell, Jr., Office Manager and Corporate Officer with the North Carolina Gas Service Division of Pennsylvania & Southern Gas Company, presented testimony and data on behalf of that Company.

Paul C. Gibson, Rate Manager of Piedmont Natural Gas Company, Inc., presented testimony and exhibits on behalf of that Company.

Gerald A. Teele, Assistant Vice President of North Carolina Natural Gas Corporation, presented testimony and exhibits on behalf of that Company.

During the hearings held in this matter, the Commission took judicial notice of numerous prior Commission Orders and Decisions in other dockets at the request of the Public Staff. Specifically, the Orders and Decisions of the Commission which were thus judicially noticed were each of the Decisions or Orders identified in Exhibit A to the motion of the Public Staff which was filed in this docket on May 30, 1980.

At the inception of the hearing, in disposing of various oral motions made at that time by the attorneys for Piedmont Natural Gas Company and North Carolina Natural Gas Corporation, the Commission ruled that all of the evidence in these consolidated proceedings would be considered in arriving at a decision, although it was further specified that a separate Order would be issued with respect to what disposition of the Transco refunds in question should be made by each of the five gas distribution company parties.

Based upon a careful consideration of the testimony and evidence adduced at the hearings held in this matter and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Each of the five natural gas distribution companies which were made parties to this proceeding (that is, North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company) is engaged in the retail distribution and sale of natural gas within this State and, consequently, each is a public utility subject to the jurisdiction of this Commission.

2. During 1978, Transcontinental Gas Pipe Line Corporation made two refunds to its wholesale customers, including each of the five North Carolina natural gas distribution companies which are parties to this proceeding, pursuant to the provisions of various settlement agreements which were adopted and approved by the Federal Power Commission (now the Federal Energy Regulatory Commission). These two Transco refunds, to which this proceeding relates, were the result of refunds which Transco's producer-suppliers of natural gas had earlier been ordered to make to Transco by the Federal Power Commission, in its Docket Nos. AR61-2, AR69-1, et al., and which Transco in turn flowed through to its customers.

3. The two refunds which Transco made during 1978 to North Carolina Natural Gas Corporation, which refunds are the subject of this proceeding, were as follows:

(a) A refund in the total amount of $333,578.73, a check for which was mailed to NCNG by Transco on or about June 30, 1978; and

(b) A refund in the total amount of $22,108.56, a check for which was mailed to NCNG by Transco on or about December 29, 1978.

4. NCNG, upon receipt of the two Transco refunds here in question, credited said refunds to Restricted Account No. 253, where said funds have since been held pending a determination by this Commission with respect to what disposition should be made of those refunds. NCNG's decision to credit the Transco refunds at issue herein to Restricted Account No. 253 was made pursuant to the Order of this Commission entered in Docket No. G-100, Sub 4, on December 11, 1962.

5. The amount of $18,613.92 of the two Transco refunds here in question is attributable to natural gas which was sold by NCNG to Farmers Chemical Association, Inc. (now CF Industries, Inc.), a customer served under NCNG's Rate Schedule No. 7, pursuant to a contract between NCNG and Farmers Chemical. The provisions of this contract require NCNG to directly refund or flow through to Farmers Chemical any credits or refunds received from Transco, to the extent such refunds or credits were attributable to natural gas delivered by NCNG to Farmers Chemical pursuant to their contract.

6. This Commission, in its Order issued December 11, 1962, in Docket No. G-100, Sub 4, promulgated rules and procedures which required that any Transco refund which was thereafter made to any natural gas utility operating in this State was to be reported to this Commission by such utility and placed by such utility, in a restricted account subject to such disposition, including refund to the customers of such utility, as might be ordered by this Commission. The provisions of that Order are applicable to the Transco refunds here in question.

7. During the period to which the Transco refunds here in question relate, that is December 4, 1958, through July 31, 1971, this Commission, in the course of allowing rate relief to the North Carolina gas companies here involved, which rate relief was based at least in part upon Transco's rate increases, recognized the possibility that such Transco rate increases were subject to retroactive reduction by the Federal Power Commission. Therefore, the Commission

specifically directed in its Orders that any refund resulting from any such retroactive reduction was to be refunded by the North Carolina gas distribution companies to their customers.

8. G.S. 62-136(c) was enacted by the North Carolina General Assembly in 1963, to become effective on January 1, 1964. Refunds ordered by the Commission in this docket with respect to the producer charges at issue herein which were paid by NCNG to Transco during NCNG's fiscal years 1967 through 1971 should be made pursuant to the criteria set forth in G.S. 62-136(c). This statutory provision provides as follows:

> "If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, if practicable, in cases where the charges have been included in rates paid by the customers of the distributing company, and where the company had a reasonable return exclusive of the refund, require said distributing company to distribute said refund among said customers in proportion to their payment of the charges refunded."

9. G.S. 62-133(f) was enacted by the North Carolina General Assembly in 1971, to become effective in July 1971. This statute, which was not in effect during the period of time to which the instant refunds relate, may not be applied retroactively and is, therefore, not applicable to said refunds.

10. Commission Rule R1-17(g), which was not in effect during the period of time to which the instant refunds relate, is not applicable to the refunds here in question.

11. NCNG paid the producer charges at issue herein as a part of Transco's cost of service during the refund period involved in this proceeding. Said producer charges were included in the rates paid by NCNG's customers during the period of time to which such charges relate.

12. The rates of return actually earned by NCNG on its North Carolina operations between fiscal years 1960 (NCNG's first year of commercial operation) and 1971 were as follows:

Fiscal Year Ended September 30	Average Rate Base	Average Common Equity
1960	(1.77)%	(48.65)%
1961	0.76%	(59.28)%
1962	3.55%	(54.13)%
1963	6.04%	12.41%
1964	7.05%	26.19%
1965	6.36%	9.06%
1966	7.02%	11.00%
1967	7.53%	12.02%
1968	7.97%[1]	12.59%[2]
1969	8.99%[1]	16.06%[2]
1970	10.07%[1]	18.58%[2]
1971	10.49%[1]	18.89%[2]

[1]Rate of return with average deferred income taxes included in the capital structure at zero cost:

Fiscal Year	Average Rate Base
1969	8.27%
1970	9.66%
1971	9.93%

[2]Rate of return with average deferred income taxes included in the capital structure at zero cost:

Fiscal Year	Average Common Equity
1969	13.85%
1970	18.22%
1971	18.71%

13. The actual rates of return achieved by NCNG during its fiscal years 1967 through 1971, which rates of return have been set forth in Finding of Fact No. 12 above, were fair and reasonable and indicate that NCNG had a reasonable return throughout said fiscal years exclusive of the refunds herein under consideration. The actual rates of return achieved by NCNG during its fiscal years 1960 through 1966 indicate that the Company did not have a reasonable return during said fiscal years exclusive of the refunds applicable thereto.

14. NCNG is able to distribute that portion of the Transco refunds at issue herein which is applicable to its fiscal years 1967 through 1971 among its current customers on the basis of, and in proportion to, the prior payment of such charges by its customers determined by customer class.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

FURTHER CONCLUSIONS

For all of the reasons set forth hereinabove, the Commission is of the opinion, finds, and concludes that NCNG should be required to refund to its current customers in North Carolina, other than CF Industries, Inc., that portion of the Transco refunds at issue herein which is applicable to the Company's operations during fiscal years 1967 through 1971. This refund is being ordered pursuant to G.S. 62-136(c), which statutory provision is applicable to those producer charges paid by NCNG's customers during the Company's fiscal years 1967 through 1971. Accordingly, for all of the reasons stated hereinabove, the Commission strongly believes, and therefore concludes, that a refund of the producer charges applicable to NCNG's fiscal years 1967 through 1971 is practicable and clearly mandated under the facts of this case.

IT IS, THEREFORE, ORDERED:

1. That North Carolina Natural Gas Corporation shall refund the amount of $18,613.92 to CF Industries, Inc. (formerly Farmers Chemical Association, Inc.), together with interest thereon from the date of receipt by NCNG of the refunds from Transco (of which said $18,613.92 was a part) until the date paid out by NCNG at the legal rate of 8% specified in G.S. 24-1 plus applicable North Carolina gross receipts tax.

2. That NCNG shall refund to its North Carolina customers, other than CF Industries, Inc., that portion of the Transco refunds at issue herein which is applicable to the Company's operations during fiscal years 1967 through 1971, together with interest thereon for the period from the date of receipt by NCNG of said refunds from Transco until the date paid out by NCNG at the legal rate of 8% specified in G.S. 24-1 plus applicable North Carolina gross receipts tax.

3. That NCNG is hereby authorized to retain for its general corporate purposes that portion of the Transco refunds at issue herein which is applicable to the Company's operations during fiscal years 1960 through 1966 (except for any amount which must be refunded to CF Industries, Inc., pursuant to Ordering Paragraph No. 1 above). The amount to be retained by NCNG shall be credited to the Company's cost of purchased gas during the month of issuance of this Order, and said amount shall be considered as a nonrecurring item in any future rate filings made with this Commission by NCNG.

4. That NCNG shall, within 30 days from the date of issuance of this Order, file for Commission approval a plan for making the refunds which it has been directed herein to make. This plan shall be consistent with the directions set out hereinabove.

5. That NCNG shall issue a notice as a bill insert explaining the refunds ordered herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1981.

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

DOCKET NO. G-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Disposition of Refunds from Transco Received by North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company) ORDER AUTHORIZING RETENTION OF TRANSCO REFUNDS HELD BY PENNSYLVANIA & SOUTHERN GAS COMPANY IN RESTRICTED ACCOUNT NO. 253

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, June 3rd, 4th, and 5th, 1980

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

APPEARANCES:

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For the Intervenors:

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For: Farmers Chemical Association, Inc., and CF Industries, Inc.

Thomas R. Eller, Jr. (Attorney of Record), Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

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: In January 1979, the North Carolina Utilities Commission received notice from the Federal Energy Regulatory Commission (FERC) that Transcontinental Gas Pipe Line Corporation (Transco) had made certain producer refunds to its customers during 1978 pursuant to Orders issued by the FERC in Docket Nos. AR61-2, AR69-1, et al. The refunds which Transco made to its customers resulted from refunds which had been made earlier to Transco by its producer-suppliers, which producer-supplier refunds the FERC ordered Transco to flow through to Transco's customers. The producer-supplier refunds made to Transco relate to monies collected from Transco by its producer-suppliers during the period 1958 to 1971. The information received by the Commission from the FERC indicated that each of the five gas distribution companies regulated by this Commission had received refunds from Transco. Those gas distribution companies are 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), and United Cities Gas Company (United Cities).

Based upon the foregoing information, the Commission, on its own motion, issued its Order of April 25, 1979, thereby instituting an investigation to determine the appropriate disposition of the producer-supplier refunds which had been received from Transco by each of the five gas distribution companies regulated by this Commission. That Order made each of those five natural gas companies and the Public Staff parties to the investigation, scheduled a public hearing in the matter for September 11, 1979, and required public notice of said hearing to be given by the gas companies involved.

On May 1, 1979, the Attorney General of the State of North Carolina filed with the Commission a Notice of Intervention in these proceedings.

On July 6, 1979, Piedmont Natural Gas Company, Inc., filed certain motions with the Commission seeking a separate hearing with respect to said Company, the establishment of a prehearing conference, seeking a continuation of the September 11, 1979, hearing date, and also an extension of the date to file testimony and memoranda.

On July 23, 1979, the Commission issued an Order in this docket entitled "Order On Motions And Setting Oral Argument." That Order continued the filing dates which had previously been specified in the Commission Order of April 25, 1979, pending further Order of the Commission. The Order also denied Piedmont's motion for a prehearing conference and scheduled oral argument upon certain legal questions for the time, date, and place of the hearing which had been originally established by the Commission in its Order of April 25, 1979. The issues upon which oral argument was invited generally included the matters which Piedmont's motion had identified as being the appropriate subject matter of the prehearing conference which it had sought. Those issues were as follows:

1. Whether the disposition of the producer refunds at issue herein should be controlled by G.S. 62-136(c) or G.S. 62-133(f)?

2. Who has the burden of proof under the controlling statute?

3. What type of testimony and exhibits should be filed under G.S. 62-136(c) and G.S. 62-133(f)?

The Commission deferred ruling upon Piedmont's motion for a separate hearing.

On August 20, 1979, the Public Staff of the North Carolina Utilities Commission filed its Notice of Intervention in these proceedings.

On August 31, 1979, there was filed with the Commission the Petition of CF Industries, Inc., and Farmers Chemical Association, Inc., for leave to intervene. Those parties were allowed to intervene by Order of the Commission issued September 10, 1979.

On September 10, 1979, the North Carolina Textile Manufacturers Association, Inc., filed with the Commission a pleading seeking permission to intervene in this docket.

On September 11, 1979, a hearing was held as previously scheduled by the Commission, at which time oral argument was heard upon the matters specified in the Commission Order of July 23, 1979.

On November 30, 1979, the Commission issued an Order in this docket entitled "Order Setting Further Investigation And Requiring Testimony." That Order recited that after hearing oral argument, the Commission had concluded that it would be inappropriate for it to make declarations or conclusions regarding which statute or legal principles governed the disposition of the refunds in question prior to a full evidentiary hearing. The Order further recited that the gas distribution companies had the burden of proof in the proceeding, identified specific information and data which each of the five gas companies were directed to file in the form of testimony and exhibits, and indicated that further public hearings would be scheduled by the Commission in the future.

On December 21, 1979, a motion was filed with the Commission by Pennsylvania & Southern Gas Company and United Cities Gas Company. That motion generally sought a separate hearing for those two companies to be held subsequent to the hearings to be held with respect to the other three natural gas companies and also an extension of the date by which United Cities and P&S were required to file testimony and data in this docket.

On January 2, 1980, Public Service Company of North Carolina, Inc., filed a motion with the Commission seeking an extension of time within which to file testimony and data and on January 4, 1980, Piedmont Natural Gas Company, Inc., filed a similar motion seeking a 30-day extension of time to file testimony and exhibits. On January 4, 1980, the Public Staff filed a response to these two motions indicating that it did not oppose the requested extensions of time but requesting that all gas company parties be granted similar extensions and that the Public Staff and other intervenors be allowed to file their testimony and exhibits 30 days subsequent to the gas company extended filing date. On January 7, 1980, North Carolina Natural Gas Corporation also filed a motion seeking a 30-day extension of time to file testimony and exhibits. The Commission issued its Order on January 8, 1980, allowing the gas company parties an additional 30 days within which to file testimony and exhibits and also allowing the Public Staff and other intervenors a period of 30 days after the new gas company filing date within which to file testimony and exhibits.

On February 14, 1980, Pennsylvania & Southern Gas Company and United Cities Gas Company filed a motion with the Commission requesting the Commission to allow each of said companies to file somewhat less extensive data and information than that which was specified in the Commission Order of November 30, 1979, and further requesting an extension of time within which to file testimony.

As of April 24, 1980, each of the five gas distribution company parties had filed with the Commission data or testimony, or both, responsive in whole or in part to the Commission Order of November 30, 1979. By that date the Public Staff had also filed testimony and exhibits in this docket. Additionally, prefiled testimony had also been filed with the Commission on behalf of CF Industries, Inc. This testimony was offered for informational purposes only.

On April 24, 1980, the Commission issued an Order in this docket scheduling a public hearing to begin on Tuesday, June 3, 1980, at 9:30 a.m., in the Commission Hearing Room, directing that public notice of such hearing be given by each of the gas distribution company parties, and further directing each party to the proceeding which had filed testimony, exhibits, or data pursuant to

the Commission Order of November 30, 1979, to have an officer or representative present to testify at such public hearing. That Order also denied the motion by Piedmont Natural Gas Company, Inc., for a separate hearing, which motion had been filed in this docket on July 6, 1979, and further denied the motion of Pennsylvania & Southern Gas Company and United Cities Gas Company for a separate hearing, which motion had been filed in this docket on December 21, 1979.

On May 30, 1980, the Public Staff filed a motion with the Commission requesting the Commission to take judicial notice of certain specified documents, statutes, rules, and facts described in an attachment to that motion. Piedmont Natural Gas Company, Inc., filed its response to that Public Staff motion on June 2, 1980.

This matter came on for hearing before the Commission as scheduled on June 3, 1980. Affidavits of publication submitted by each of the gas companies indicate that notice of the hearing as required by the Commission was duly given. At the hearing, each of the five natural gas distribution company parties was present and represented by counsel.

John T. Garrison, Jr., an Engineer with the Public Staff of the North Carolina Utilities Commission, presented testimony and exhibits. His testimony and exhibits related specifically to each of the natural gas distribution companies here involved, as well as generally to the issues presented by the refunds here in question.

Raymond J. Nery, Director of the Public Staff Gas Division, also testified briefly on behalf of the Public Staff.

Donald E. Daniel, Supervisor of the Public Staff Accounting Division, Gas and Water Section, also presented testimony and exhibits. Mr. Daniel's testimony and exhibits related generally to the rates of return which had been experienced by each of the gas companies here involved during periods contemporaneous with the receipt of the refunds here in question.

Allen J. Schock, Vice President - Rates with Public Service Company of North Carolina, Inc., presented testimony and exhibits on behalf of that Company.

Glenn Rogers, Group Vice President of United Cities Gas Company, presented testimony and exhibits on behalf of that Company.

Marshall Campbell, Jr., Office Manager and Corporate Officer with the North Carolina Gas Service Division of Pennsylvania & Southern Gas Company, presented testimony and data on behalf of that Company.

Paul C. Gibson, Rate Manager of Piedmont Natural Gas Company, Inc., presented testimony and exhibits on behalf of that Company.

Gerald A. Teele, Assistant Vice President of North Carolina Natural Gas Corporation, presented testimony and exhibits on behalf of that Company.

During the hearings held in this matter, the Commission took judicial notice of numerous prior Commission Orders and Decisions in other dockets at the request of the Public Staff. Specifically, the Orders and Decisions of the

Commission which were thus judicially noticed were each of the Decisions or Orders identified in Exhibit A to the motion of the Public Staff which was filed in this docket on May 30, 1980.

At the inception of the hearing, in disposing of various oral motions made at that time by the attorneys for Piedmont Natural Gas Company and North Carolina Natural Gas Corporation, the Commission ruled that all of the evidence in these consolidated proceedings would be considered in arriving at a decision, although it was further specified that a separate Order would be issued with respect to what disposition of the Transco refunds in question should be made by each of the five gas distribution company parties.

Based upon a careful consideration of the testimony and evidence adduced at the hearings held in this matter and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Each of the five natural gas distribution companies which were made parties to this proceeding (that is, North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company) is engaged in the retail distribution and sale of natural gas within this State and, consequently, each is a public utility subject to the jurisdiction of this Commission.

2. During 1978, Transcontinental Gas Pipe Line Corporation made two refunds to its wholesale customers, including each of the five North Carolina natural gas distribution companies which are parties to this proceeding, pursuant to the provisions of various settlement agreements which were adopted and approved by the Federal Power Commisssion (now the Federal Energy Regulatory Commission). These two Transco refunds, to which this proceeding relates, were the result of refunds which Transco's producer-suppliers of natural gas had earlier been ordered to make to Transco by the Federal Power Commission, in its Docket Nos. AR61-2, AR69-1, et al., and which Transco in turn flowed through to its customers.

3. The two refunds which Transco made during 1978 to P&S, which refunds are the subject of this proceeding, were as follows:

(a) A refund in the total amount of $37,693.04, a check for which was mailed to P&S by Transco on or about June 30, 1978; and

(b) A refund in the total amount of $2,337.93, a check for which was mailed to P&S by Transco on or about December 29, 1978.

4. P&S, upon receipt of the two Transco refunds here in question, credited said refunds to Restricted Account No. 253, where said funds have since been held pending a determination by this Commission with respect to what disposition should be made of those refunds. The decision of P&S to credit the Transco refunds at issue herein to Restricted Account No. 253 was made pursuant to the Order of this Commission entered in Docket No. G-100, Sub 4, on December 11, 1962.

5. This Commission, in its Order issued December 11, 1962, in Docket No. G-100, Sub 4, promulgated rules and procedures which required that any Transco refund which was thereafter made to any natural gas utility operating in this State was to be reported to this Commission by such utility and placed by such utility in a restricted account subject to such disposition, including refund to the customers of such utility, as might be ordered by this Commission. The provisions of that Order are applicable to the Transco refunds here in question.

6. G.S. 62-136(c) was enacted by the North Carolina General Assembly in 1963, to become effective on January 1, 1964. This statutory provision provides as follows:

> "If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, if practicable, in cases where the charges have been included in rates paid by the customers of the distributing company, and where the company had a reasonable return exclusive of the refund, require said distributing company to distribute said refund among said customers in proportion to their payment of the charges refunded."

7. G.S. 62-133(f) was enacted by the North Carolina General Assembly in 1971, to become effective in July 1971. This statute, which was not in effect during the period of time to which the instant Transco refunds relate, may not be applied retroactively and is, therefore, not applicable to said refunds.

8. Commission Rule R1-17(g), which was not in effect during the period of time to which the instant refunds relate, is not applicable to the refunds here in question.

9. P&S paid the producer charges at issue herein as a part of Transco's cost of service during the refund period involved in this proceeding (December 4, 1958, through July 31, 1971). These producer charges were included in the rates paid by the customers of P&S during the period of time to which such charges relate.

10. The approximate rates of return earned by P&S on its North Carolina operations between 1960 and 1971 were as follows: (See NOTE below.)

Calendar Year	Rate Base
1960	3.44%
1961	3.28%
1962	2.99%
1963	4.31%
1964	4.70%
1965	2.73%
1966	4.45%
1967	2.33%
1968	6.15%
1969	7.83%
1970	7.40%
1971	5.60%

NOTE: Although P&S did not calculate rates of return resulting from its operations during the years 1958 and 1959, the Company did operate profitably during those years, realizing net operating income of $32,332 in 1958 and $52,934 in 1959. (Pennsylvania & Southern Gas Company Exhibit No. 1).

11. The approximate rates of return set forth in Finding of Fact No. 10 above indicate that P&S did not achieve a reasonable return from its operations at any time during the applicable period of time exclusive of the refunds herein under consideration.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

FURTHER CONCLUSIONS

For all of the reasons set forth hereinabove, the Commission is of the opinion, finds, and concludes that P&S should be authorized to retain for its general corporate purposes from Restricted Account No. 253 the amount of $40,030.97 at issue herein. This action is clearly warranted upon consideration of the rates of return actually achieved by P&S throughout the period of time in question. Retention of the refunds at issue herein by P&S is mandated under the provisions and procedures which this Commission initially established in Docket No. G-100, Sub 4, by Order issued on December 11, 1962, and under the provisions of G.S. 62-136(c), which became effective on January 1, 1964.

IT IS, THEREFORE, ORDERED that Pennsylvania & Southern Gas Company be, and the same is hereby, authorized to retain for its general corporate purposes from Restricted Account No. 253 the amount of $40,030.97, which amount shall be credited to the Company's cost of purchased gas during the month of issuance of this Order, and which amount shall be considered as a nonrecurring item in any future rate filings made with this Commission by P&S.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sharon C. Credle, Deputy Clerk

(SEAL)

GENERAL ORDERS - GAS

DOCKET NO. G-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of	
Disposition of Refunds from Transco Received by North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Company	) ORDER DIRECTING) PIEDMONT NATURAL) GAS COMPANY, INC.,) TO MAKE REFUNDS)

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, June 3rd, 4th, and 5th, 1980

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

APPEARANCES:

For the Respondents:

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

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

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

For the Intervenors:

Charles Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P. O. Box 389, Raleigh, North Carolina
For: Farmers Chemical Association, Inc., and CF Industries, Inc.

Thomas R. Eller, Jr. (Attorney of Record), Attorney at Law, P. O. Box 27866, Raleigh, North Carolina 27611
For: North Carolina Manufacturers Association, Inc.

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: In January 1979, the North Carolina Utilities Commission received notice from the Federal Energy Regulatory Commission (FERC) that Transcontinental Gas Pipe Line Corporation (Transco) had made certain producer refunds to its customers during 1978 pursuant to Orders issued by the FERC in Docket Nos. AR61-2, AR69-1, et al. The refunds which Transco made to its customers resulted from refunds which had been made earlier to Transco by its producer-suppliers, which producer-supplier refunds the FERC ordered Transco to flow through to Transco's customers. The producer-supplier refunds made to Transco relate to monies collected from Transco by its producer-suppliers during the period 1958 to 1971. The information received by the Commission from the FERC indicated that each of the five gas distribution companies regulated by this Commission had received refunds from Transco. Those gas distribution companies are 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), and United Cities Gas Company (United Cities).

Based upon the foregoing information, the Commission, on its own motion, issued its Order of April 25, 1979, thereby instituting an investigation to determine the appropriate disposition of the producer-supplier refunds which had been received from Transco by each of the five gas distribution companies regulated by this Commission. That Order made each of those five natural gas companies and the Public Staff parties to the investigation, scheduled a public hearing in the matter for September 11, 1979, and required public notice of said hearing to be given by the gas companies involved.

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1. Whether the disposition of the producer refunds at issue herein should be controlled by G.S. 62-136(c) or G.S. 62-133(f)?

2. Who has the burden of proof under the controlling statute?

3. What type of testimony and exhibits should be filed under G.S. 62-136(c) and G.S. 62-133(f)?

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On August 31, 1979, there was filed with the Commission the Petition of CF Industries, Inc., and Farmers Chemical Association, Inc. (Farmers Chemical), for leave to intervene. Those parties were allowed to intervene by Order of the Commission issued September 10, 1979.

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January 7, 1980, North Carolina Natural Gas Corporation also filed a motion seeking a 30-day extension of time to file testimony and exhibits. The Commission issued its Order on January 8, 1980, allowing the gas company parties an additional 30 days within which to file testimony and exhibits and also allowing the Public Staff and other intervenors a period of 30 days after the new gas company filing date within which to file testimony and exhibits.

On February 14, 1980, Pennsylvania & Southern Gas Company and United Cities Gas Company filed a motion with the Commission requesting the Commission to allow each of said companies to file somewhat less extensive data and information than that which was specified in the Commission Order of November 30, 1979, and further requesting an extension of time within which to file testimony.

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On April 24, 1980, the Commission issued an Order in this docket scheduling a public hearing to begin on Tuesday, June 3, 1980, at 9:30 a.m., in the Commission Hearing Room, directing that public notice of such hearing be given by each of the gas distribution company parties, and further directing each party to the proceeding which had filed testimony, exhibits or data pursuant to the Commission Order of November 30, 1979, to have an officer or representative present to testify at such public hearing. That Order also denied the motion by Piedmont Natural Gas Company, Inc., for a separate hearing, which motion had been filed in this docket on July 6, 1979, and further denied the motion of Pennsylvania & Southern Gas Company and United Cities Gas Company for a separate hearing, which motion had been filed in this docket on December 21, 1979.

On May 30, 1980, the Public Staff filed a motion with the Commission requesting the Commission to take judicial notice of certain specified documents, statutes, rules, and facts described in an attachment to that motion. Piedmont Natural Gas Company, Inc., filed its response to that Public Staff motion on June 2, 1980.

This matter came on for hearing before the Commission as scheduled on June 3, 1980. Affidavits of publication submitted by each of the gas companies indicate that notice of the hearing as required by the Commission was duly given. At the hearing, each of the five natural gas distribution company parties was present and represented by counsel.

John T. Garrison, Jr., an Engineer with the Public Staff of the North Carolina Utilities Commission, presented testimony and exhibits. His testimony and exhibits related specifically to each of the natural gas distribution companies here involved, as well as generally to the issues presented by the refunds here in question.

Raymond J. Nery, Director of the Public Staff Gas Division, also testified briefly on behalf of the Public Staff.

Donald E. Daniel, Supervisor of the Public Staff Accounting Division, Gas and Water Section, also presented testimony and exhibits. Mr. Daniel's testimony and exhibits related generally to the rates of return which had been experienced by each of the gas companies here involved during periods contemporaneous with the receipt of the refunds here in question.

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Glenn Rogers, Group Vice President of United Cities Gas Company, presented testimony and exhibits on behalf of that Company.

Marshall Campbell, Jr., Office Manager and Corporate Officer with the North Carolina Gas Service Division of Pennsylvania & Southern Gas Company, presented testimony and data on behalf of that Company.

Paul C. Gibson, Rate Manager of Piedmont Natural Gas Company, Inc., presented testimony and exhibits on behalf of that Company.

Gerald A. Teele, Assistant Vice President of North Carolina Natural Gas Corporation, presented testimony and exhibits on behalf of that Company.

During the hearings held in this matter, the Commission took judicial notice of numerous prior Commission Orders and Decisions in other dockets at the request of the Public Staff. Specifically, the Orders and Decisions of the Commission which were thus judicially noticed were each of the Decisions or Orders identified in Exhibit A to the motion of the Public Staff which was filed in this docket on May 30, 1980.

At the inception of the hearing, in disposing of various oral motions made at that time by the attorneys for Piedmont Natural Gas Company and North Carolina Natural Gas Corporation, the Commission ruled that all of the evidence in these consolidated proceedings would be considered in arriving at a decision, although it was further specified that a separate Order would be issued with respect to what disposition of the Transco refunds in question should be made by each of the five gas distribution company parties.

Based upon a careful consideration of the testimony and evidence adduced at the hearings held in this matter and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Each of the five natural gas distribution companies which were made parties to this proceeding (that is, North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company) is engaged in the retail distribution and sale of natural gas within this State and, consequently, each is a public utility subject to the jurisdiction of this Commission.

2. During 1978, Transcontinental Gas Pipe Line Corporation made two refunds to its wholesale customers, including each of the five North Carolina natural gas distribution companies which are parties to this proceeding, pursuant to the provisions of various settlement agreements which were adopted and approved by the Federal Power Commisssion (now the Federal Energy Regulatory Commission). These two Transco refunds, to which this proceeding relates, were the result of refunds which Transco's producer-suppliers of natural gas had earlier been ordered to make to Transco by the Federal Power Commission, in its Docket Nos. AR61-2, AR69-1, et al., and which Transco in turn flowed through to its customers.

3. The two refunds which Transco made during 1978 to Piedmont Natural Gas Company, Inc., which refunds are the subject of this proceeding, were as follows:

(a) A refund in the total amount of $730,594.18, a check for which was mailed to Piedmont by Transco on or about June 30, 1978, of which total amount $531,527.86 was attributable to Piedmont's North Carolina gas customers; and

(b) A refund in the total amount of $46,591.99, a check for which was mailed to Piedmont by Transco on or about December 29, 1978, of which total amount $34,071.33 was attributable to Piedmont's North Carolina gas customers.

4. Piedmont, upon receipt of the two Transco refunds here in question, initially credited the portion of each which was attributable to its North Carolina customers to Restricted Account No. 253, which restricted account had been established by Piedmont pursuant to the Order of this Commission issued on December 11, 1962, in Docket No. G-100, Sub 4. However, Piedmont subsequently revised that initial accounting treatment so as to leave only $9,399.32 of the refunds here in question in Restricted Account No. 253, with the balance of those refunds attributable to North Carolina customers, in the total amount of $556,199.87, being treated by Piedmont as a reduction in its cost of natural gas in the fourth quarter of 1978. This latter accounting treatment was not approved by this Commission Order issued on December 11, 1962, in Docket No. G-100, Sub 4. Piedmont has already refunded to current customers the $9,399.32 which it left in Restricted Account No. 253.

5. This Commission, in its Order issued December 11, 1962, in Docket No. G-100, Sub 4, promulgated rules and procedures which required that any Transco refund which was thereafter made to any natural gas utility operating in this State was to be reported to this Commission by such utility and placed by such utility in a restricted account subject to such disposition, including refund to the customers of such utility, as might be ordered by this Commission. The provisions of that Order are applicable to the Transco refunds here in question. Refunds ordered by the Commission prior to January 1, 1964, were made pursuant to said provisions and procedures. Refunds ordered by the Commission in this docket with respect to the producer charges at issue herein which were paid by Piedmont to Transco prior to January 1, 1964, should also be made pursuant to the above-referenced provisions and procedures.

6. During the period to which the Transco refunds here in question relate, that is December 4, 1958, through July 31, 1971, this Commission, in the course of allowing rate relief to the North Carolina gas companies here involved, which rate relief was based at least in part upon Transco's rate increases, recognized the possibility that such Transco rate increases were subject to retroactive reduction by the Federal Power Commission. Therefore, the Commission specifically directed in its Orders that any refund resulting from any such retroactive reduction was to be refunded by the North Carolina gas distribution companies to their customers.

7. G.S. 62-136(c) was enacted by the North Carolina General Assembly in 1963, to become effective on January 1, 1964. Refunds ordered by the Commission in this docket with respect to the producer charges at issue herein which were paid by Piedmont to Transco between January 1, 1964, and July 1971, when G.S. 62-133(f) became effective, should be made pursuant to the criteria set forth in G.S. 62-136(c). This statutory provision provides as follows:

> "If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, if practicable, in cases where the charges have been included in rates paid by the customers of the distributing company, and where the company had a reasonable return exclusive of the refund, require said distributing company to distribute said refund among said customers in proportion to their payment of the charges refunded."

8. G.S. 62-133(f) was enacted by the North Carolina General Assembly in 1971, to become effective in July 1971. This statute, which was not in effect during the period of time to which the instant refunds relate, may not be applied retroactively and is, therefore, not applicable to said refunds.

9. Commission Rule R1-17(g), which was not in effect during the period of time to which the instant refunds relate, is not applicable to the refunds here in question.

10. Piedmont paid the producer charges at issue herein as a part of Transco's cost of service during the refund period involved in this proceeding (December 4, 1958, through July 31, 1971). These producer charges were included in the rates paid by Piedmont's customers during the period of time to which such charges relate.

11. The rates of return actually earned by Piedmont on its North Carolina operations during 1958 through 1971 were as follows:

Calendar Year	Average Rate Base	Average Common Equity
1958	8.72%	8.81%
1959	7.16%	15.34%
1960	7.34%	13.75%
1961	7.04%	12.69%
1962	7.38%	12.41%
1963	7.25%	12.54%
1964	7.46%	13.43%
1965	7.36%	13.05%
1966	7.68%	14.83%
1967	7.92%	16.09%
1968	8.65%	17.58%
1969	8.49%	15.22%
1970	8.02%	12.26%
1971	8.26%	11.97%

12. The actual rates of return set forth in Finding of Fact No. 11 above, being fair and reasonable, indicate that Piedmont had a reasonable return throughout the applicable period of time exclusive of the refunds herein under consideration.

13. Piedmont is able to distribute the Transco refunds at issue herein among its current customers on the basis of, and in proportion to, the prior payment of such charges by its customers determined by customer class.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

FURTHER CONCLUSIONS

For all of the reasons set forth hereinabove, the Commission is of the opinion, finds, and concludes that Piedmont should be required to refund the amount of $556,199.87 to its current customers, said amount being the as yet unrefunded portion of the total Transco refund attributable to Piedmont's natural gas customers in North Carolina. The portion of the refund ordered herein, which is attributable to producer charges paid by Piedmont's customers between 1958 and 1963, is being refunded pursuant to the provisions and procedures which this Commission initially established in Docket No. G-100, Sub 4, by Order issued December 11, 1972. Such procedures are applicable because G.S. 62-136(c), which did not become effective until January 1, 1964, may be applied retroactively.

Furthermore, G.S. 62-136(c) is applicable to the refund of those producer charges paid by Piedmont's customers on and after January 1, 1964. The Commission strongly believes that a refund of the total producer charges at issue herein is practicable and clearly mandated under the facts of this case. Further, the Commission, based upon current financial data contained in its official files of which it takes judicial notice, concludes that Piedmont's current financial position is such that the refund of the overcollection of costs as required herein will not materially affect said Company's financial position.

1. That Piedmont Natural Gas Company, Inc., shall refund to its North Carolina customers the amount of $556,199.87, said amount being the as yet unrefunded portion of the total Transco refunds attributable to Piedmont's North Carolina gas customers, together with interest thereon for the period from the date of receipt by Piedmont of said refunds from Transco until the date paid out by Piedmont at the legal rate of 8% specified in G.S. 24-1 plus applicable North Carolina gross receipts tax.

2. That Piedmont Natural Gas Company, Inc., shall, within 30 days from the date of issuance of this Order, file for Commission approval a plan for making the refunds which it has been directed herein to make. This plan shall be consistent with the directions set out hereinabove.

3. That Piedmont shall issue a notice as a bill insert explaining the refunds ordered herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1981.

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

DOCKET NO. G-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Disposition of Refunds from Transco Received by North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company	)	ORDER DIRECTING PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC., TO MAKE REFUNDS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, June 3rd, 4th, and 5th, 1980

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

APPEARANCES:

For the Respondents:

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

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

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.

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

For the Intervenors:

Charles Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina
For: Farmers Chemical Association, Inc., and CF Industries, Inc.

Thomas R. Eller, Jr. (Attorney of Record), Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

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: In January 1979, the North Carolina Utilities Commission received notice from the Federal Energy Regulatory Commission (FERC) that Transcontinental Gas Pipe Line Corporation (Transco) had made certain producer refunds to its customers during 1978 pursuant to Orders issued by the FERC in Docket Nos. AR61-2, AR69-1, et al. The refunds which Transco made to its customers resulted from refunds which had been made earlier to Transco by its producer-suppliers, which producer-supplier refunds the FERC ordered Transco to flow through to Transco's customers. The producer-supplier refunds made to Transco relate to monies collected from Transco by its producer-suppliers during the period 1958 to 1971. The information received by the Commission from the FERC indicated that each of the five gas distribution companies regulated by this Commission had received refunds from Transco. Those gas distribution companies are 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), and United Cities Gas Company (United Cities).

Based upon the foregoing information, the Commission, on its own motion, issued its Order of April 25, 1979, thereby instituting an investigation to determine the appropriate disposition of the producer-supplier refunds which had been received from Transco by each of the five gas distribution companies regulated by this Commission. That Order made each of those five natural gas companies and the Public Staff parties to the investigation, scheduled a public hearing in the matter for September 11, 1979, and required public notice of said hearing to be given by the gas companies involved.

On May 1, 1979, the Attorney General of the State of North Carolina filed with the Commission a Notice of Intervention in these proceedings.

On July 6, 1979, Public Service Gas Company, Inc., filed certain motions with the Commission seeking a separate hearing with respect to said Company, the establishment of a prehearing conference, seeking a continuation of the September 11, 1979, hearing date, and also an extension of the date to file testimony and memoranda.

On July 23, 1979, the Commission issued an Order in this docket entitled "Order On Motions And Setting Oral Argument." That Order continued the filing dates which had previously been specified in the Commission Order of April 25, 1979, pending further Order of the Commission. The Order also denied Piedmont's motion for a prehearing conference and scheduled oral argument upon certain legal questions for the time, date, and place of the hearing which had been originally established by the Commission in its Order of April 25, 1979. The issues upon which oral argument was invited generally included the matters which Piedmont's motion had identified as being the appropriate subject matter of the prehearing conference which it had sought. Those issues were as follows:

1. Whether the disposition of the producer refunds at issue herein should be controlled by G.S. 62-136(c) or G.S. 62-133(f)?

2. Who has the burden of proof under the controlling statute?

3. What type of testimony and exhibits should be filed under G.S. 62-136(c) and G.S. 62-133(f)?

The Commission deferred ruling upon Public Service's motion for a separate hearing.

On August 20, 1979, the Public Staff of the North Carolina Utilities Commission filed its Notice of Intervention in these proceedings.

On August 31, 1979, there was filed with the Commission the Petition of CF Industries, Inc., and Farmers Chemical Association, Inc. (Farmers Chemical), for leave to intervene. Those parties were allowed to intervene by Order of the Commission issued September 10, 1979.

On September 10, 1979, the North Carolina Textile Manufacturers Association, Inc., filed with the Commission a pleading seeking permission to intervene in this docket.

On September 11, 1979, a hearing was held as previously scheduled by the Commission, at which time oral argument was heard upon the matters specified in the Commission Order of July 23, 1979.

On November 30, 1979, the Commission issued an Order in this docket entitled "Order Setting Further Investigation And Requiring Testimony." That Order recited that after hearing oral argument, the Commission had concluded that it would be inappropriate for it to make declarations or conclusions regarding which statute or legal principles governed the disposition of the refunds in question prior to a full evidentiary hearing. The Order further recited that

the gas distribution companies had the burden of proof in the proceeding, identified specific information and data which each of the five gas companies were directed to file in the form of testimony and exhibits, and indicated that further public hearings would be scheduled by the Commission in the future.

On December 21, 1979, a motion was filed with the Commission by Pennsylvania & Southern Gas Company and United Cities Gas Company. That motion generally sought a separate hearing for those two companies to be held subsequent to the hearings to be held with respect to the other three natural gas companies and also an extension of the date by which United Cities and P&S were required to file testimony and data in this docket.

On January 2, 1980, Public Service Company of North Carolina, Inc., filed a motion with the Commission seeking an extension of time within which to file testimony and data and on January 4, 1980, Public Service Natural Gas Company, Inc., filed a similar motion seeking a 30-day extension of time to file testimony and exhibits. On January 4, 1980, the Public Staff filed a response to these two motions indicating that it did not oppose the requested extensions of time but requesting that all gas company parties be granted similar extensions and that the Public Staff and other intervenors be allowed to file their testimony and exhibits 30 days subsequent to the gas company extended filing date. On January 7, 1980, North Carolina Natural Gas Corporation also filed a motion seeking a 30-day extension of time to file testimony and exhibits. The Commission issued its Order on January 8, 1980, allowing the gas company parties an additional 30 days within which to file testimony and exhibits and also allowing the Public Staff and other intervenors a period of 30 days after the new gas company filing date within which to file testimony and exhibits.

On February 14, 1980, Pennsylvania & Southern Gas Company and United Cities Gas Company filed a motion with the Commission requesting the Commission to allow each of said companies to file somewhat less extensive data and information than that which was specified in the Commission Order of November 30, 1979, and further requesting an extension of time within which to file testimony.

As of April 24, 1980, each of the five gas distribution company parties had filed with the Commission data or testimony, or both, responsive in whole or in part to the Commission Order of November 30, 1979. By that date the Public Staff had also filed testimony and exhibits in this docket. Additionally, prefiled testimony had also been filed with the Commission on behalf of CF Industries, Inc. This testimony was offered for informational purposes only.

On April 24, 1980, the Commission issued an Order in this docket scheduling a public hearing to begin on Tuesday, June 3, 1980, at 9:30 a.m., in the Commission Hearing Room, directing that public notice of such hearing be given by each of the gas distribution company parties, and further directing each party to the proceeding which had filed testimony, exhibits or data pursuant to the Commission Order of November 30, 1979, to have an officer or representative present to testify at such public hearing. That Order also denied the motion by Public Service Natural Gas Company, Inc., for a separate hearing, which motion had been filed in this docket on July 6, 1979, and further denied the motion of

Pennsylvania & Southern Gas Company and United Cities Gas Company for a separate hearing, which motion had been filed in this docket on December 21, 1979.

On May 30, 1980, the Public Staff filed a motion with the Commission requesting the Commission to take judicial notice of certain specified documents, statutes, rules, and facts described in an attachment to that motion. Public Service Natural Gas Company, Inc., filed its response to that Public Staff motion on June 2, 1980.

This matter came on for hearing before the Commission as scheduled on June 3, 1980. Affidavits of publication submitted by each of the gas companies indicate that notice of the hearing as required by the Commission was duly given. At the hearing, each of the five natural gas distribution company parties was present and represented by counsel.

John T. Garrison, Jr., an Engineer with the Public Staff of the North Carolina Utilities Commission, presented testimony and exhibits. His testimony and exhibits related specifically to each of the natural gas distribution companies here involved, as well as generally to the issues presented by the refunds here in question.

Raymond J. Nery, Director of the Public Staff Gas Division, also testified briefly on behalf of the Public Staff.

Donald E. Daniel, Supervisor of the Public Staff Accounting Division, Gas and Water Section, also presented testimony and exhibits. Mr. Daniel's testimony and exhibits related generally to the rates of return which had been experienced by each of the gas companies here involved during periods contemporaneous with the receipt of the refunds here in question.

Allen J. Schock, Vice President - Rates with Public Service Company of North Carolina, Inc., presented testimony and exhibits on behalf of that Company.

Glenn Rogers, Group Vice President of United Cities Gas Company, presented testimony and exhibits on behalf of that Company.

Marshall Campbell, Jr., Office Manager and Corporate Officer with the North Carolina Gas Service Division of Pennsylvania & Southern Gas Company, presented testimony and data on behalf of that Company.

Paul C. Gibson, Rate Manager of Public Service Natural Gas Company, Inc., presented testimony and exhibits on behalf of that Company.

Gerald A. Teele, Assistant Vice President of North Carolina Natural Gas Corporation, presented testimony and exhibits on behalf of that Company.

During the hearings held in this matter, the Commission took judicial notice of numerous prior Commission Orders and Decisions in other dockets at the request of the Public Staff. Specifically, the Orders and Decisions of the Commission which were thus judicially noticed were each of the Decisions or Orders identified in Exhibit A to the motion of the Public Staff which was filed in this docket on May 30, 1980.

At the inception of the hearing, in disposing of various oral motions made at that time by the attorneys for Public Service Natural Gas Company and North Carolina Natural Gas Corporation, the Commission ruled that all of the evidence in these consolidated proceedings would be considered in arriving at a decision, although it was further specified that a separate Order would be issued with respect to what disposition of the Transco refunds in question should be made by each of the five gas distribution company parties.

Based upon a careful consideration of the testimony and evidence adduced at the hearings held in this matter and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Each of the five natural gas distribution companies which were made parties to this proceeding (that is, North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Public Service Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company) is engaged in the retail distribution and sale of natural gas within this State and, consequently, each is a public utility subject to the jurisdiction of this Commission.

2. During 1978, Transcontinental Gas Pipe Line Corporation made two refunds to its wholesale customers, including each of the five North Carolina natural gas distribution companies which are parties to this proceeding, pursuant to the provisions of various settlement agreements which were adopted and approved by the Federal Power Commisssion (now the Federal Energy Regulatory Commission). These two Transco refunds, to which this proceeding relates, were the result of refunds which Transco's producer-suppliers of natural gas had earlier been ordered to make to Transco by the Federal Power Commission, in its Docket Nos. AR61-2, AR69-1, et al., and which Transco in turn flowed through to its customers.

3. The two refunds which Transco made during 1978 to Public Service Natural Gas Company, Inc., which refunds are the subject of this proceeding, were as follows:

(a) A refund in the total amount of $495,713.55, a check for which was mailed to Public Service by Transco on or about June 30, 1978; and

(b) A refund in the total amount of $31,586.67, a check for which was mailed to Public Service by Transco on or about December 29, 1978.

4. Upon receipt of the two Transco refunds here in question, Public Service recorded the amounts of those refunds as a current period reduction in the cost of its purchased gas in the fourth quarter of 1978. The acounting treatment which Public Service accorded to these Transco refunds was not approved by this Commission and was contrary to the directives set forth in the Commission Order issued on December 11, 1962, in Docket No. G-100, Sub 4.

5. This Commission, in its Order issued December 11, 1962, in Docket No. G-100, Sub 4, promulgated rules and procedures which required that any Transco refund which was thereafter made to any natural gas utility operating in this State was to be reported to this Commission by such utility and placed by such utility in a restricted account subject to such disposition, including refund to the customers of such utility, as might be ordered by this Commission. The provisions of that Order are applicable by the Commission prior to January 1, 1964, were made pursuant to said provisions and procedures. Refunds ordered by the Commission in this docket with respect to the producer charges at issue herein which were paid by Public Service to Transco prior to January 1, 1964, should also be made pursuant to the above-referenced provisions and procedures.

6. During the period to which the Transco refunds here in question relate, that is December 4, 1958, through July 31, 1971, this Commission, in the course of allowing rate relief to the North Carolina gas companies here involved, which rate relief was based at least in part upon Transco's rate increases, recognized the possibility that such Transco rate increases were subject to retroactive reduction by the Federal Power Commission. Therefore, the Commission specifically directed in its Orders that any refund resulting from any such retroactive reduction was to be refunded by the North Carolina gas distribution companies to their customers.

7. G.S. 62-136(c) was enacted by the North Carolina General Assembly in 1963, to become effective on January 1, 1964. Refunds ordered by the Commission in this docket with respect to the producer charges at issue herein which were paid by Public Service to Transco between January 1, 1964, and July 1971, when G.S. 62-133(f) became effective, should be made pursuant to the criteria set forth in G.S. 62-136(c). This statutory provision provides as follows:

> "If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, if practicable, in cases where the charges have been included in rates paid by the customers of the distributing company, and where the company had a reasonable return exclusive of the refund, require said distributing company to distribute said refund among said customers in proportion to their payment of the charges refunded."

8. G.S. 62-133(f) was enacted by the North Carolina General Assembly in 1971, to become effective in July 1971. This statute, which was not in effect during the period of time to which the instant refunds relate, may not be applied retroactively and is, therefore, not applicable to said refunds.

9. Commission Rule R1-17(g), which was not in effect during the period of time to which the instant refunds relate, is not applicable to the refunds here in question.

10. Public Service paid the producer charges at issue herein as a part of Transco's cost of service during the refund period involved in this proceeding (December 4, 1958 through July 31, 1971). These producer charges were included in the rates paid by the customers served by Public Service during the period of time to which such charges relate.

11. The rates of return actually earned by Public Service on its North Carolina operations during 1958 through 1971 were as follows:

Calendar Year	Average Rate Base	Average Common Equity
1958	6.44%	12.46%
1959	7.38%	13.71%
1960	8.17%	14.67%
1961	7.13%	11.80%
1962	6.99%	13.76%
1963	6.76%	14.61%
1964	7.15%	17.09%
1965	6.61%	16.26%
1966	6.88%	17.82%
1967	6.81%	17.20%
1968	6.66%	15.17%
1969	7.52%	16.44%
1970	7.30%	13.62%
1971	8.30%	16.30%

12. The actual rates of return set forth in Finding of Fact No. 11 above, being fair and reasonable, indicate that Public Service had a reasonable return throughout the applicable period of time exclusive of the refunds herein under consideration.

13. Public Service is able to distribute the Transco refunds at issue herein among its current customers on the basis of, and in proportion to, the prior payment of such charges by its customers determined by customer class.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

FURTHER CONCLUSIONS

For all of the reasons set forth hereinabove, the Commission is of the opinion, finds, and concludes that Public Service should be required to refund the amount of $527,300.22 to its current customers, said amount being the as yet unrefunded portion of the total Transco refund attributable to the Company's natural gas customers in North Carolina. The portion of the refund ordered herein, which is attributable to producer charges paid by customers served by Public Service between 1958 and 1963, is being refunded pursuant to the provisions and procedures which this Commission initially established in Docket No. G-100, Sub 4, by Order issued December 11, 1972. Such procedures are applicable because G.S. 62-136(c), which did not become effective until January 1, 1964, may not be applied retroactively. Furthermore, G.S. 62-136(c) is aplicable to the refund of those producer charges paid by the Company's customers on and after January 1, 1964. The Commission strongly believes that a refund of the total producer charges at issue herein is practicable and clearly mandated under the facts of this case. Further, the Commission, based upon current financial data contained in its official files of which it takes judicial notice, concludes that the current financial position of Public Service is such that the refund of the overcollection of costs as required herein will not materially affect said Company's financial position.

IT IS, THEREFORE, ORDERED:

1. That Public Service Company of North Carolina, Inc., shall refund to its North Carolina customers the amount of $527,300.22, said amount being total amount of the Transco refunds attributable to the Company's North Carolina gas customers, together with interest thereon for the period from the date of receipt by Public Service of said refunds from Transco until the date paid out by the Company at the legal rate of 8% specified in G.S. 24-1 plus applicable North Carolina gross receipts tax.

2. That Public Service Company of North Carolina, Inc., shall, within 30 days from the date of issuance of this Order, file for Commission approval a plan for making the refunds which it has been directed herein to make. This plan shall be consistent with the directions set out hereinabove.

3. That Public Service shall issue a notice as a bill insert explaining the refunds ordered herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1981.

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

DOCKET NO. G-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Disposition of Refunds from Transco Received by North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company	) ORDER AUTHORIZING RETENTION OF TRANSCO REFUNDS HELD BY UNITED CITIES GAS COMPANY IN RESTRICTED ACCOUNT NO. 253

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, June 3rd, 4th, and 5th, 1980

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

APPEARANCES:

For the Respondents:

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

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

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.

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

For the Intervenors:

Charles Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P. O. Box 389, Raleigh, North Carolina
For: Farmers Chemical Association, Inc., and CF Industries, Inc.

Thomas R. Eller, Jr. (Attorney of Record), Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

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: In January 1979, the North Carolina Utilities Commission received notice from the Federal Energy Regulatory Commission (FERC) that Transcontinental Gas Pipe Line Corporation (Transco) had made certain producer refunds to its customers during 1978 pursuant to Orders issued by the FERC in Docket Nos. AR61-2, AR69-1, et al. The refunds which Transco made to its customers resulted from refunds which had been made earlier to Transco by its producer-suppliers, which producer-supplier refunds the FERC ordered Transco to flow through to Transco's customers. The producer-supplier refunds made to Transco relate to monies collected from Transco by its producer-suppliers during the period 1958 to 1971. The information received by the Commission from the FERC indicated that each of the five gas distribution companies regulated by this Commission had received refunds from Transco. Those gas distribution companies are North Carolina Natural Gas Corportation (NCNG), Pennsylvania & Southern Gas Company (P&S), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), and United Cities Gas Company (United Cities).

Based upon the foregoing information, the Commission, on its own motion, issued its Order of April 25, 1979, thereby instituting an investigation to determine the appropriate disposition of the producer-supplier refunds which had been received from Transco by each of the five gas distribution companies regulated by this Commission. That Order made each of those five natural gas companies and the Public Staff parties to the investigation, scheduled a public hearing in the matter for September 11, 1979, and required public notice of said hearing to be given by the gas companies involved.

On May 1, 1979, the Attorney General of the State of North Carolina filed with the Commission a Notice of Intervention in these Proceedings.

On July 6, 1979, Piedmont Natural Gas Company, Inc., filed certain motions with the Commission seeking a separate hearing with respect to said Company, the establishment of a prehearing conference, seeking a continuation of the September 11, 1979, hearing date, and also an extension of the date to file testimony and memoranda.

On July 23, 1979, the Commission issued an Order in this docket entitled "Order On Motions And Setting Oral Argument." That Order continued the filing dates which had previously been specified in the Commission Order of April 25, 1979, pending further Order of the Commission. The Order also denied Piedmont's motion for a prehearing conference and scheduled oral argument upon certain legal questions for the time, date, and place of the hearing which had been originally established by the Commission in its Order of April 25, 1979. The issues upon which oral argument was invited generally included the matters which Piedmont's motion had identified as being the appropriate subject matter of the prehearing conference which it had sought. Those issues were as follows:

1. Whether the disposition of the producer refunds at issue herein should be controlled by G.S. 62-136(c) or G.S. 62-133(f)?

2. Who has the burden of proof under the controlling statute?

3. What type of testimony and exhibits should be filed under G.S. 62-136(c) and G.S. 62-133(f)?

The Commission deferred ruling upon Piedmont's motion for a separate hearing.

On August 20, 1979, the Public Staff of the North Carolina Utilities Commission filed its Notice of Intervention in these proceedings.

On August 31, 1979, there was filed with the Commission the Petition of CF Industries, Inc., and Farmers Chemical Association, Inc. (Farmers Chemical), for leave to intervene. Those parties were allowed to intervene by Order of the Commission issued September 10, 1979.

On September 10, 1979, the North Carolina Textile Manufacturers Association, Inc., filed with the Commission a pleading seeking permission to intervene in this docket.

On September 11, 1979, a hearing was held as previously scheduled by the Commission, at which time oral argument was heard upon the matters specified in the Commission Order of July 23, 1979.

On November 30, 1979, the Commission issued an Order in this docket entitled "Order Setting Further Investigation And Requiring Testimony." That Order recited that after hearing oral argument, the Commission had concluded that it would be inappropriate for it to make declarations or conclusions regarding which statute or legal principles governed the disposition of the refunds in question prior to a full evidentiary hearing. The Order further recited that the gas distribution companies had the burden of proof in the proceeding,

identified specific information and data which each of the five gas companies were directed to file in the form of testimony and exhibits, and indicated that further public hearings would be scheduled by the Commission in the future.

On December 21, 1979, a motion was filed with the Commission by Pennsylvania & Southern Gas Company and United Cities Gas Company. That motion generally sought a separate hearing for those two companies to be held subsequent to the hearings to be held with respect to the other three natural gas companies and also an extension of the date by which United Cities and P&S were required to file testimony and data in this docket.

On January 2, 1980, Public Service Company of North Carolina, Inc., filed a motion with the Commission seeking an extension of time within which to file testimony and data and on January 4, 1980, Piedmont Natural Gas Company, Inc., filed a similar motion seeking a 30-day extension of time to file testimony and exhibits. On January 4, 1980, the Public Staff filed a response to these two motions indicating that it did not oppose the requested extensions of time but requesting that all gas company parties be granted similar extensions and that the Public Staff and other intervenors be allowed to file their testimony and exhibits 30 days subsequent to the gas company extended filing date. On January 7, 1980, North Carolina Natural Gas Corporation also filed a motion seeking a 30-day extension of time to file testimony and exhibits. The Commission issued its Order on January 8, 1980, allowing the gas company parties an additional 30 days within which to file testimony and exhibits and also allowing the Public Staff and other intervenors a period of 30 days after the new gas company filing date within which to file testimony and exhibits.

On February 14, 1980, Pennsylvania & Southern Gas Company and United Cities Gas Company filed a motion with the Commission requesting the Commission to allow each of said companies to file somewhat less extensive data and information than that which was specified in the Commission Order of November 30, 1979, and further requesting an extension of time within which to file testimony.

As of April 24, 1980, each of the five gas distribution company parties had filed with the Commission data or testimony, or both, responsive in whole or in part to the Commission Order of November 30, 1979. By that date the Public Staff had also filed testimony and exhibits in this docket. Additionally, prefiled testimony had also been filed with the Commission on behalf of CF Industries, Inc. This testimony was offered for informational purposes only.

On April 24, 1980, the Commission issued an Order in this docket scheduling a public hearing to begin on Tuesday, June 3, 1980, at 9:30 a.m., in the Commission Hearing Room, directing that public notice of such hearing be given by each of the gas distribution company parties, and further directing each party to the proceeding which had filed testimony, exhibits or data pursuant to the Commission Order of November 30, 1979, to have an officer or representative present to testify at such public hearing. That Order also denied the motion by Piedmont Natural Gas Company, Inc., for a separate hearing, which motion had been filed in this docket on July 6, 1979, and further denied the motion of Pennsylvania & Southern Gas Company and United Cities Gas Company for a separate hearing, which motion had been filed in this docket on December 21, 1979.

On May 30, 1980, the Public Staff filed a motion with the Commission requesting the Commission to take judicial notice of certain specified documents, statutes, rules, and facts described in an attachment to that motion. Piedmont Natural Gas Company, Inc., filed its response to that Public Staff motion on June 2, 1980.

This matter came on for hearing before the Commission as scheduled on June 3, 1980. Affidavits of publication submitted by each of the gas companies indicate that notice of the hearing as required by the Commission was duly given. At the hearing, each of the five natural gas distribution company parties was present and represented by counsel.

John T. Garrison, Jr., an Engineer with the Public Staff of the North Carolina Utilities Commission, presented testimony and exhibits. His testimony and exhibits related specifically to each of the natural gas distribution companies here involved, as well as generally to the issues presented by the refunds here in question.

Raymond J. Nery, Director of the Public Staff Gas Division, also testified briefly on behalf of the Public Staff.

Donald E. Daniel, Supervisor of the Public Staff Accounting Division, Gas and Water Section, also presented testimony and exhibits. Mr. Daniel's testimony and exhibits related generally to the rates of return which had been experienced by each of the gas companies here involved during periods contemporaneous with the receipt of the refunds here in question.

Allen J. Schock, Vice President - Rates with Public Service Company of North Carolina, Inc., presented testimony and exhibits on behalf of that Company.

Glenn Rogers, Group Vice President of United Cities Gas Company, presented testimony and exhibits on behalf of that Company.

Marshall Campbell, Jr., Office Manager and Corporate Officer with the North Carolina Gas Service Division of Pennsylvania & Southern Gas Company, presented testimony and data on behalf of that Company.

Paul C. Gibson, Rate Manager of Piedmont Natural Gas Company, Inc., presented testimony and exhibits on behalf of that Company.

Gerald A. Teele, Assistant Vice President of North Carolina Natural Gas Corporation, presented testimony and exhibits on behalf of that Company.

During the hearings held in this matter, the Commission took judicial notice of numerous prior Commission Orders and Decisions in other dockets at the request of the Public Staff. Specifically, the Orders and Decisions of the Commission which were thus judicially noticed were each of the Decisions or Orders identified in Exhibit A to the motion of the Public Staff which was filed in this docket on May 30, 1980.

At the inception of the hearing, in disposing of various oral motions made at that time by the attorneys for Piedmont Natural Gas Company and North Carolina Natural Gas Corporation, the Commission ruled that all of the evidence in these

consolidated proceedings would be considered in arriving at a decision, although it was further specified that a separate Order would be issued with respect to what disposition of the Transco refunds in question should be made by each of the five gas distribution company parties.

Based upon a careful consideration of the testimony and evidence adduced at the hearings held in this matter and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Each of the five natural gas distribution companies which were made parties to this proceeding (that is, North Carolina Natural Gas Corporation, Pennsylvania & Southern Gas Company, Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., and United Cities Gas Company) is engaged in the retail distribution and sale of natural gas within this State and, consequently, each is a public utility subject to the jurisdiction of this Commission.

2. During 1978, Transcontinental Gas Pipe Line Corporation made two refunds to its wholesale customers, including each of the five North Carolina natural gas distribution companies which are parties to this proceeding, pursuant to the provisions of various settlement agreements which were adopted and approved by the Federal Power Commission (now the Federal Energy Regulatory Commission). These two Transco refunds, to which this proceeding relates, were the result of refunds which Transco's producer-suppliers of natural gas had earlier been ordered to make to Transco by the Federal Power Commission, in its Docket Nos. AR61-2, AR69-1, et al., and which Transco in turn flowed through to its customers.

3. The two refunds which Transco made during 1978 to United Cities Gas Company, which refunds are the subject of this proceeding, were as follows:

(a) A refund in the total amount of $25,616.06 attributable to the North and South Carolina Divisions of United Cities, a check for which was mailed to United Cities by Transco on or about June 30, 1978, of which total amount $7,630.68 was attributable to United Cities' North Carolina gas customers; and

(b) A refund in the total amount of $1,487.81 attributable to the North and South Carolina Divisions of United Cities, a check for which was mailed to United Cities by Transco on or about December 29, 1978, of which total amount $459.10 was attributable to United Cities' North Carolina gas customers.

4. United Cities, upon receipt of the two Transco refunds here in question, credited the portion of each refund which was attributable to the Company's customers in North Carolina to Restricted Account No. 253, where said funds have since been held pending a determination by this Commission with respect to what disposition should be made of those refunds. United Cities' decision to credit the Transco refunds at issue herein to Restricted Account No. 253 was made pursuant to the Order of this Commission entered in Docket No. G-100, Sub 4, on December 11, 1962.

5. This Commission, in its Order issued December 11, 1962, in Docket No. G-100, Sub 4, promulgated rules and procedures which required that any Transco refund which was thereafter made to any natural gas utility operating in this State was to be reported to this Commission by such utility and placed by such utility, in a restriced account subject to such disposition, including refund to the customers of such utility, as might be ordered by this Commission. The provisions of that Order are applicable to the Transco refunds here in question.

6. G.S. 62-136(c) was enacted by the North Carolina General Assembly in 1963, to become effective on January 1, 1964. This statutory provision provides as follows:

> "If any refund is made to a distributing company operating as a public utility in North Carolina of charges paid to the company from which the distributing company obtains the energy, service or commodity distributed, the Commission may, if practicable, in cases where the charges have been included in rates paid by the customers of the distributing company, and where the company had a reasonable return exclusive of the refund, require said distributing company to distribute said refund among said customers in proportion to their payment of the charges refunded."

7. G.S. 62-133(f) was enacted by the North Carolina General Assembly in 1971, to become effective in July 1971. This statute, which was not in effect during the period of time to which the instant refunds relate, may not be applied retroactively and is, therefore, not applicable to said refunds.

8. Commission Rule R1-17(g), which was not in effect during the period of time to which the instant refunds relate, is not applicable to the refunds here in question.

9. United Cities paid the producer charges at issue herein as a part of Transco's cost of service during the refund period involved in this proceeding. Said producer charges were included in the rates paid by United Cities' customers during the period of time to which such charges relate.

10. The approximate rates of return earned by United Cities on its North Carolina operations between 1960 and 1970 were as follows:

Calendar Year	Rate Base
1960	6.38%
1961	6.72%
1962	5.47%
1963	1.89%
1964	0.71%
1965	4.32%
1966	3.70%
1967	4.26%
1968	4.57%
1969	4.09%
1970	1.81%

[1] No portion of the refunds at issue herein was applicable to United Cities' operations during 1971. United Cities experienced net operating losses from its utility operations during the years 1958 and 1959 in the approximate amounts of ($12,021.51) and ($2,777.58), respectively. (United Cities Exhibit No. 8, paragraphs 4 and 6).

11. The approximate rates of return set forth in Finding of Fact No. 10 above indicate that United Cities did not achieve a reasonable return from its operations at any time during the applicable period of time exclusive of the refunds herein under consideration.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

FURTHER CONCLUSIONS

For all of the reasons set forth hereinabove, the Commission is of the opinion, finds, and concludes that United Cities should be authorized to retain for its general corporate purposes from Restricted Account No. 253 the amount of $8,089.78 at issue herein. This action is clearly warranted upon consideration of the rates of return actually achieved by United Cities throughout the period of time in question. Retention of the refunds at issue herein is mandated under the provisions and procedures which this Commission initially established in Docket No. G-100, Sub 4, by Order issued on December 11, 1962, and under the provisions of G.S. 62-136(c), which became effective on January 1, 1964.

IT IS, THEREFORE, ORDERED that United Cities Gas Company be, and the same is hereby, authorized to retain for its general corporate purposes from Restricted Account No. 253 the amount of $8,089.78, which amount shall be credited to the Company's cost of purchased gas during the month of issuance of this Order, and which amount shall be considered as a nonrecurring item in any future rate filings made with this Commission by United Cities.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sharon C. Credle, Deputy Clerk

(SEAL)

GENERAL ORDERS - TELEPHONE

DOCKET NO. P-100, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation of Intrastate Long Distance WATS and Interexchange Private Line Rates of all Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission	))))	ORDER ALLOWING INCREASE AND REQUIRING THE FILING OF RATES FOR INTRASTATE TOLL SERVICE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 9, 10, and 11, 1980

BEFORE: Commissioners Edward B. Hipp, Presiding; A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Hunton & Williams, P. O. Box 109, Raleigh, North Carolina 27602
For: Southern Bell Telephone and Telegraph Company

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

Gene V. Coker, Southern Bell Telephone and Telegraph Company, 1245 Hurt Building, Atlanta, Georgia 30303
For: Southern Bell Telephone and Telegraph Company

For the Respondents:

Dwight W. Allen, General Counsel, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company

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

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

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P. O. Box 2479, Raleigh, North Carolina 27602
For: Western Carolina Telephone Company, Westco Telephone Company, Mid-Carolina Telephone Company, and Heins Telephone Company

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

James M. Kimzey, Kimzey, Smith & McMillan, 806 Wachovia Bank Building, Box 150, Raleigh, North Carolina 27602
For: Central Telephone Company

For the Intervenors:

Jerry B. Fruitt, Chief Counsel, and Thomas K. Austin, 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 September 4, 1980, Southern Bell Telephone and Telegraph Company (Southern Bell or Applicant) filed an application with the Commission for authority to increase intrastate rates and charges to produce increases in total annual revenues of $68.2 million. The Commission, being of the opinion that the matter constituted a general rate case under G. S. 62-137, issued an Order on September 26, 1980, declaring it to be a general rate proceeding, suspending the proposed rates for 270 days from the date the rates were to become effective, and establishing the test period as the 12 months ended July 31, 1980.

In said Order, the Commission found that the public interest required intrastate message toll, wide area telecommunication service (WATS), and interexchange private line service rates and charges to be uniform among all telephone companies operating in North Carolina. Accordingly, Southern Bell's request for authority to adjust its intrastate toll, WATS, and interexchange private line rates and charges was separated from Docket No. P-55, Sub 784, and placed in Docket No. P-100, Sub 53, for investigation and hearing, with all other telephone companies under the jurisdiction of the Commission being made parties thereto.

Notice of Intervention in the proceeding was filed by the Public Staff - North Carolina Utilities Commission on October 9, 1980.

On November 24, 1980, the North Carolina Textile Manufacturers Association, Inc., filed a petition for leave to intervene in this docket.

The matter came on for hearing at the time and place shown above.

Southern Bell offered the testimony of the following witnesses: B. A. Rudisill, District Manager - Bell Independent Relations, with respect to the change in toll settlements which will result if the proposed changes in toll rates applied for by Southern Bell are approved, and Robert L. Savage, Division Staff Manager of Rates for Southern Bell, Atlanta, Georgia, describing the proposed changes for long distance telecommunications services, WATS, interexchange private line channels, and the proposed expansion of the daytime savings plan.

Numerous witnesses appeared and offered testimony on behalf of the various independent telephone companies operating in North Carolina. Those witnesses and the companies they represent include: T. P. Williamson, Carolina Telephone and Telegraph Company (Carolina); C. V. Fleming, General Telephone Company of the Southeast (General); H. S. Pertler, General Telephone Company of the Southeast; Phil W. Widenhouse, Concord Telephone Company (Concord); Jerry W. Braxton for Western Carolina Telephone Company and Westco Telephone Company (Westco); and Lyle C. Roberts for Central Telephone Company (Central).

The Public Staff presented the testimony of three witnesses: Millard N. Carpenter, III, Communications Engineer, regarding the Public Staff's analysis of the proposed rates for interexchange private line services and channels; Hugh L. Gerringer, Communications Engineer, regarding the Public Staff's recommendation on the changes in intrastate long distance message telecommunications service (MTS) rate schedules, and the intrastate wide area telecommunications service (WATS) rate schedules applied for by Southern Bell; and Benjamin R. Turner, Communications Engineer, testifying on the proposed expansion of the Daytime Savings Plan (DSP) proposed by Southern Bell.

John R. Ward, Jr., testified as a public witness in Raleigh concerning Southern Bell's proposed changes in this docket and his opposition thereto.

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

FINDINGS OF FACT

1. That Southern Bell and the Independent Telephone Companies (Independents) made parties to this docket are duly franchised public utilities subject to the jurisdiction of this Commission.

2. That the public interest requires that intrastate message toll, WATS, and interexchange private line service rates and charges be uniform for all telephone companies operating in North Carolina.

3. That any changes in intrastate toll revenues resulting from this proceeding shall be distributed among Southern Bell and the Independents on a gross intrastate toll revenues (toll settlements) basis.

4. That the present Daytime Savings Plan which discounts by 25% calls made during the noon to 1:00 p.m. hour should not be expanded to include the hours of 8:00 a.m. to 9:00 a.m. and 1:00 p.m. to 2:00 p.m.

5. That, except for its proposals with respect to operator assisted calls, Southern Bell has failed to provide persuasive justification for the proposed changes in the rates and charges for intrastate long distance MTS and for intrastate WATS and for the estimated total net reduction in the intrastate toll revenues for Southern Bell and the Independent Telephone Companies combined, resulting from these proposed changes.

6. That certain increases proposed by Southern Bell in interexchange private line service and foreign exchange service are excessive and unreasonable.

7. That the jurisdictional telephone companies, which at present do not have general rate increase requests pending before this Commission, should not be required to "flow-through" revenues realized from the increase in rates approved herein in that said increase is deemed de minimus.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially procedural in nature, was not contested by the parties, and warrants no additional discussion in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The need for uniform toll rates in North Carolina was not an issue in this docket. This finding is consistent with previous Commission practice and policy.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Southern Bell witness Rudisill and Public Staff witness Carpenter presented testimony and exhibits regarding the distribution among Southern Bell and the Independents of the estimated change in gross intrastate toll revenues (toll settlements) that would be produced by Southern Bell's proposed changes in the intrastate toll rates. Public Staff witness Carpenter as set out in Evidence and Conclusions for Finding of Fact No. 7 testified specifically regarding the distribution of any toll revenue changes resulting from proposed changes in the interexchange private line rates.

Witness Rudisill and Public Staff witness Gerringer testified to the estimated intrastate toll settlement ratios proformed to the end of the test period, July 31, 1980, first under present toll rates and then under the proposed toll rates. Witnesses appearing for the Independents testified to the estimated reduction in intrastate toll settlements occurring for them resulting first from a reduction in the intrastate toll settlement ratio in going to a proformed end-of-period level under present toll rates and second from a further reduction in this proformed ratio taking into account the impact of the proposed toll rate changes.

Southern Bell witness Rudisill testified that in determining the net reduction in toll settlements which would result from the changes requested in the toll rates by Southern Bell, it was necessary to first estimate the effect on the Standard Schedule Companies. This involved recalculating the July 1980 settlement statement for each such company as if the proposed changes in the MTS rates had been in effect. The toll settlement difference between the recalculated amount and the actual amount for July was then annualized. Regarding settlement effects resulting from the proposed WATS rate changes, Mr. Rudisill first determined the change in July 1980 WATS settlements for the six Standard Schedule Companies that had intrastate outward WATS customers in July 1980, consistent with the method used to estimate the change in the MTS settlements. This change was then annualized by multiplying by 12. Mr. Rudisill indicated that changes in the rates for interexchange private line services would not affect the settlements for the Standard Schedule Companies since private line settlements for them are related to facility units rather than to billed revenues. Based on Southern Bell's proposals, the total annual settlement reduction for all Standard Schedule Companies was $23,022.

Regarding the settlement effect of the proposed toll rate changes for Cost Settlement Companies, including Southern Bell, Mr. Rudisill testified that he estimated that effect by spreading the balance of the estimated total revenue reduction, after settlement effects for the Standard Schedule Companies had been removed, among the Cost Settlement Companies based on the percent of total net intrastate toll investment each company had as of July 31, 1980. Mr. Rudisill made adjustments to bring each Cost Settlement Company's net intrastate toll investment to an end-of-period level as of July 31, 1980. Based on Southern Bell's proposals, the annual settlement reduction for all Cost Settlement Companies was $5,118,830, of which $2,771,181 was Southern Bell's portion.

Regarding the estimated impact of the proposed toll rate changes on the intrastate toll settlement ratio, Mr. Rudisill first testified that the actual achieved ratio for the test period ended July 31, 1980, was 12.54%. He next proformed that ratio to an end-of-period level based on present toll rates by proforming the effects of expense and toll rate base adjustments that occurred during the test period or were expected to occur after the test period for Southern Bell and for the Independents that were able to provide such adjustments. The resulting proformed intrastate toll settlement ratio was 10.35%. Finally, Mr. Rudisill projected that the ratio would go from the 10.35% to 9.90%, reflecting the impact of Southern Bell's total proposed changes to intrastate toll rates, if approved by the Commission.

Under cross-examination, Mr. Rudisill described the history of the intrastate toll settlement ratio since the last toll case in Docket No. P-100, Sub 45. In that case, Southern Bell estimated the settlement ratio to be 6.32% proformed to the end of the test period (May 31, 1977) using a similar approach used to arrive at the 10.35% proformed settlement ratio in this case. The estimated impact by Southern Bell of the proposed toll rate changes on the ratio in that case was to increase the annual ratio to 9.12%. The toll rates proposed in that case with some modification (only one out of the three hours proposed for a Daytime Savings Plan was allowed) were approved by the Commission to become effective in April and May 1978. Since that time, the settlement ratio on an annual calendar basis has been 12.23% for 1979, and 13.21% for 1980. Mr. Rudisill had no substantive reply when questioned about the accuracy of the estimated 10.35% and 9.90% proformed settlement ratios in this case in light of how badly the estimated proformed settlement ratios in Docket No. P-100, Sub 45, had been missed.

Public Staff witness Gerringer under cross-examination testified that he had not addressed the settlement ratio question in his direct testimony since under the Public Staff's recommendation to disapprove Southern Bell's proposed MTS and WATS rate changes, no impact on the settlement ratio was anticipated. Further, under cross-examination, Mr. Gerringer expressed reservation concerning the accuracy of the estimated 10.35% proformed settlement ratio and was not satisfied that the estimate was reasonable.

Based on the testimony and evidence presented in this case, the Commission concludes that any change in gross intrastate toll revenues (toll settlements) resulting from this proceeding should be distributed, if a distribution is deemed necessary, based on the methodology presented by Southern Bell witness Rudisill.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Evidence for this finding of fact was presented by Southern Bell witness Robert L. Savage, Carolina witness T. P. Williamson, and Public Staff witness Benjamin R. Turner.

Mr. Savage proposed that the DSP which currently applies only to the noon hours be expanded to include the 8:00 a.m. to 9:00 a.m. and 1:00 p.m. to 2:00 p.m. hours bringing the total number of hours in the plan to three. He stated that based on studies made since the DSP went into effect, customers had shifted a portion of their weekly calling into the noon to 1:00 p.m. hour.

Mr. Williamson testified that if better statewide network management will result from Southern Bell's proposal to expand the DSP, his company would endorse the plan.

Mr. Turner's testimony discussed two aspects of the DSP: the company's study of the effect the DSP has had on network utilization and the associated costs of the DSP. The company's study is called, "Analysis of the North Carolina Daytime Savings Plan." This study attempts to evaluate the impact of the one-hour noon discount period. It compares toll message distribution 24 months before the discount with 12 months after the discount. Mr. Turner observed that while the percent of messages during the noon hour increased by 0.07% after the discount became effective, other hours both discounted and nondiscounted increased by amounts at least equal to the increase Southern Bell attributed to the DSP. The nondiscounted 4:00 p.m. to 5:00 p.m. hour increased by 0.08% and the discounted periods of 7:00 a.m. to 8:00 a.m., 9:00 p.m. to 10:00 p.m., and 11:00 p.m. to midnight increased by 0.10%, 0.08%, and 0.07%, respectively. When asked about the relationship of these changes with respect to the DSP, Mr. Savage stated that he had trouble explaining the differences occurring in other than the daytime discount period. Based on Southern Bell's study results, Mr. Turner concluded that it was not possible to attribute the noon to 1:00 p.m. change of 0.07% to the discount. Mr. Turner further discussed the costs associated with DSP, the loss in revenue caused by the discount, and the costs which may or may not be associated with shifting the messages from one period to another. He calculated the revenue loss to be $3.0 million for the two additional DSP hours. Mr. Savage for Southern Bell testified that the revenue loss was approximately $4.5 million. In connection with the costs of shifting messages from one period to another, Mr. Turner stated that the company's study made no attempt to quantify the impact DSP has had on costs for Southern Bell. In effect, the Applicant has not shown any cost savings, but does show a $4.5 million revenue loss.

Mr. Turner concluded by stating that the plan does not offer any clear advantages or real savings to the consumer and it has not resulted in either a significant change in message distribution, a reduction in costs, or in capital deferrals for additions. The plan is further disadvantaged by a revenue shift of $3.0 million to local revenue requirements. The Public Staff witness recommended that the Commission disallow the expansion of DSP.

The Commission concludes that the DSP was presented to the Commission in the last general toll rate proceeding, Docket No. P-100, Sub 45. The Commission concluded in that case that "...it should move with caution in extending the

evening discounts to the daytime hours until such time as it acquires the necessary historical experience to show that such a rate is advantageous to both the Company and its subscribers."

The evidence in the record of this case fails to support the company's argument that the DSP is advantageous either to the company or its subscribers. If it is assumed for argument's sake that a shift in usage patterns will produce a more efficient network, the study performed by the company and analyzed by the Public Staff does not show the current noon-to-1:00 p.m. discount has a quantifiable effect on usage distribution. There is also the attendant revenue requirement, between $3.0 million and $4.5 million, which must be weighed. Without convincing evidence that the revenue loss will at least be offset by cost reductions, the expansion of the plan cannot be justified as beneficial to either the company or its consumers. For these reasons the Commission concludes that the DSP should not be expanded.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Southern Bell witness Savage and Public Staff witnesses Gerringer, Turner, and Carpenter presented testimony and exhibits regarding Southern Bell's proposed changes to the rates and charges for MTS, WATS, and interexchange private line services and the resulting estimated total net reduction in the intrastate toll revenues for Southern Bell and the Independents combined. In addition, witnesses appearing for the Independents presented testimony regarding these proposed rate changes with each witness expressing some reservation and concern with the resulting estimated net reduction in the intrastate toll revenues since such toll revenue reductions cause potential upward pressure on basic local rates. Public Staff witness Carpenter testified specifically regarding the proposed changes in the interexchange private line rates and charges as set out in Finding of Fact No. 6. Public Staff witness Turner, as set out in Finding of Fact No. 4, testified specifically regarding the Public Staff's opposition to Southern Bell's proposal to expand the DSP to include a 25% discount from the full daytime MTS rate schedules for the hours of 8:00 a.m. to 9:00 a.m. and 1:00 p.m. to 2:00 p.m.

Southern Bell witness Savage described the proposed changes in the MTS rates and charges and explained the reasons for the changes. Regarding the proposed changes in the Direct Distance Dialed (DDD) rates, Mr. Savage stated two reasons underlying the proposed changes: (1) to bring the rates for intrastate toll calls more in line with the rates for like interstate toll calls which he indicated would promote better understanding by Southern Bell customers who see no reason for the difference between the intrastate and interstate rates for similar calls and (2) to anticipate and confront the effects of potential competition at the intrastate level in order to lessen any future impact on basic local rates.

Mr. Savage indicated that long distance calling in North Carolina has been, and is today, a primary source of additional revenues which provide support for maintaining exchange services at lower levels than they would otherwise have to be. However, in light of events associated with recent Federal Communications Commission (FCC) decisions and legislation before the U. S. Congress, the continuance of the present level of contribution is uncertain. He indicated that direct competition with traditional interstate long distance service now

exists in North Carolina, among the cities of Charlotte, Greensboro, Raleigh, and Winston-Salem, in both the business and residence markets and that network facilities of the competitors are now in place which would allow those services on an intrastate basis as well. He admitted that he does not know when competition at the intrastate level will occur, what the magnitude will be, or whether he would make the same rate change proposals as made in this proceeding if intrastate competition was actually occurring. However, he felt that the proposals made by Southern Bell were forward-looking to anticipate competition in order to lessen any future impact on local rates by a reduction in the toll contribution. He felt it was necessary to make these proposals now since it takes many months to effect rate changes through the regulatory process.

Mr. Savage testified that he used the most recent approved interstate rate schedule which became effective June 5, 1980, as a basis for making his proposed changes in the intrastate DDD rates in order to achieve parity between the two rate schedules. A review of his proposed initial minute DDD rate schedule shows some rate increases, some rate decreases, and other rates in which no changes were proposed. No changes were proposed in the rates for the mileage bands covering 0-30 miles, thereby leaving these rates below the comparable interstate rates. He indicated that these rates were not increased, thereby not achieving parity with the interstate rates, in order not to stimulate EAS requests. He classified the 0-30 mile range as short-haul in which approximately 52% of intrastate DDD calls fall. The rates for the mileage bands covering 31-124 miles were increased in order to achieve parity with the comparable interstate rates. This range he classified as medium-haul in which approximately 40% of intrastate DDD calls fall. The rates for the rest of the mileage bands covering 125-544 miles were decreased in order to achieve parity with the comparable interstate rates. He classified this range as long-haul in which approximately 8% of intrastate DDD calls fall. For the additional minute rate schedule for all intrastate toll calls, he proposed no changes for the mileage band rates in the 0-30 and the 41-55 mile ranges and proposed decreases for all other mileage band rates resulting in parity with the comparable interstate rates except for the rates in the 0-30 mileage range which remain above the interstate rates.

Regarding operator assisted calls, Mr. Savage testified that the proposed changes were to simplify the schedules for those type calls and more clearly align their rates with the costs of providing them. This was accomplished by first reducing the present three-minute initial period to one minute and then applying the same initial period and additional minute rates as would apply to DDD calls. Then an additional fixed add-on charge was established to apply to each call to cover the cost of the operator's involvement in setting up the call and to include a contribution to further assist in keeping basic local exchange rates at levels which are lower than would otherwise be possible. Finally, a new class of operator assisted station-to-station call has been added to the schedule called "Customer Dialed Credit Card."

Existing discounts would apply to the initial and additional minute charges for all calls including the first three minutes of each operator assisted call where the discounts do not now apply. No discount would apply to the add-on charges for the operator assisted calls.

Regarding the revenue impact of all the proposed changes to the MTS rate schedules including the impact of the proposed two additional DSP periods, Mr.

Savage stated that an annual intrastate toll revenue reduction of $7,071,510 would result for Southern Bell and the Independents combined, with $3,815,911 of that reduction incurred by Southern Bell. He further indicated that the revenue impact resulting from the proposed structural changes for the operator assisted calls, that is, changing to a one-minute initial period and using the present initial minute and additional minute tariff rates plus the proposed add-on charges, would be an annual increase of $1,002,261 for Southern Bell and the Independents combined, with $541,221 being Southern Bell's portion of that increase.

On cross-examination, Mr. Savage testified that the revenue impact resulting from the proposed changes in the MTS rate schedules was determined by the same methodology used by Southern Bell for its last proposed toll rate changes in Docket No. P-100, Sub 45. This methodology makes use of an intrastate toll message sample (including Southern Bell and Independents messages) in order to determine the aggregate percentage change in intrastate toll revenues due to the proposed changes in the toll rates. This change was determined by comparing the revenues produced by the message sample when priced at the current rates and when priced at the proposed rates. The resulting percentage change was a reduction of 3.51%. After allowing for the combined effects of repression and stimulation, the resulting percentage change was a reduction of 2.54%. Southern Bell used the same type econometric model for determining the effects of repression/stimulation that was used in Docket No. P-100, Sub 45, which yields aggregate elasticities instead of individual elasticities. The Commission in Docket No. P-100, Sub 45, found that this type model was deficient and did not allow the repression results Southern Bell claimed in Docket No. P-100, Sub 45. To arrive at the annual revenue impact, the 2.54% reduction obtained from the sample was applied to the actual gross intrastate toll revenues of $278,405,925 billed during the test period for Southern Bell and the Independents combined. This calculation, therefore, did not result in an end-of-period level change in the intrastate toll revenues. Mr. Savage stated that the Commission in Docket No. P-100, Sub 45, did not adopt this method of determining the annual impact of the MTS rate changes in that the impact should have properly been determined at an end-of-period level. If the revenue impact had been brought to end-of-period, the reduction in intrastate toll revenues resulting from Southern Bell's proposal in this case would have been greater.

Regarding WATS rates, Mr. Savage testified that the proposed changes were designed to keep the outward WATS offerings priced at the same relationship that now exists with MTS rates. Thus, since MTS rates were proposed generally at reduced levels, outward WATS rates were established at the same level of reduction. No changes were proposed to the inward WATS or "800" service rates which continue the approved pricing of these offerings at a level above outward WATS rates. This reflects the fact that just as outward WATS is an alternative for DDD, "800" service is an alternative for collect calls. Since collect calls are priced higher than DDD calls, "800" service should be priced higher than outward WATS to establish consistent relationships.

Public Staff witness Gerringer testified to the basis for the Public Staff's recommendation that the changes in the MTS and WATS rate schedules applied for by Southern Bell in its general rate case in Docket No. P-55, Sub 784, be disapproved. The basis for the Public Staff's recommendation was formed by the following considerations:

1. Southern Bell estimated that the net revenue impact of the proposed changes in the MTS and WATS rate schedules for the test period ending July 31, 1980, would be an annual reduction of $4,047,492 ($3,815,911 for MTS and $231,581 for WATS) in Southern Bell's gross intrastate toll revenues, thereby causing direct upward pressure on Southern Bell's local rates proposed in its general rate case.

2. Southern Bell indicated that a major reason for proposing changes in the intrastate MTS rate schedules was to bring them more nearly in line with the existing interstate MTS rate schedules in order to reduce the disparity between the two schedules and for competitive purposes. In actuality, several of the changes proposed in the intrastate MTS rate schedules would create additional differences between the intrastate and interstate schedules making it unclear whether the total effect of the proposed changes does or does not bring the intrastate MTS rate schedules more in line with the interstate MTS rate schedules.

3. Southern Bell estimated that the net revenue impact of the proposed changes in the MTS and WATS rate schedules would be an annual reduction of $3,451,918 ($3,255,599 for MTS and $196,319 for WATS) in the aggregate gross intrastate toll revenues for all the Independents in North Carolina, thereby potentially causing future upward pressure on the Independents' local rates.

Regarding Southern Bell's stated justification of its proposed MTS rate changes to move in a direction to reduce the toll rate disparity between the interstate and intrastate MTS rate schedules, Mr. Gerringer testified that several of the proposed changes were in a direction that would create additional differences between the two MTS rate schedules, such as the proposed restructuring of the rates for the operator assisted calls and such as the proposed addition of two hours to the DSP. He also pointed out that one possible change that was not proposed that would have moved the two rate schedules toward parity would have been to make the discount rates the same. Where 25% and 50% discounts apply for the intrastate schedules, 35% and 60%, respectively, apply for the interstate schedules. Finally, he testified that toll rate disparity has existed for many years and there appears to be no urgency to eliminate it in this proceeding. Furthermore, Southern Bell has failed to demonstrate that toll rate disparity, in fact, causes any significant problems.

Regarding Southern Bell's stated justification of its proposed MTS rate changes to move in a direction favorable to confronting direct competition to traditional intrastate MTS offerings, Mr. Gerringer testified that it was unclear at this time what MTS rate schedules may be best under competitive conditions, particularly since MTS competition at the intrastate level in North Carolina is not clearly evident at this time. Therefore, it did not appear logical to adjust the intrastate MTS rate schedules until the full nature and direction of competition is known. Improperly adjusted schedules could be more harmful than unadjusted schedules. He further pointed out that it may be self-defeating to try to maintain parity with the interstate MTS rate schedules as a basis for changing the MTS rates for competitive purposes since the interstate MTS rate schedules were also changing. In fact, the last interstate MTS rate schedules became effective June 5, 1980, replacing schedules that had been in effect since September 13, 1977. A comparison of the rates for these two

interstate schedules shows that the currently approved rates were greater for all categories of rates except for one - no difference was noted for the additional minute rate for the 1-10 mileage band. It was further noted that the greater differences between the two rate schedules occurred in the long-haul rates, which are the rates Southern Bell has proposed to decrease for the intrastate MTS rate schedules. Finally, Mr. Gerringer pointed out that Southern Bell has proposed to increase the initial minute DDD rate for the mileage bands within the 31-124 mile range. Within this range would fall the distance between any of the four cities of Raleigh, Greensboro, Charlotte, and Winston-Salem, where potential intrastate competition is expected to occur, except the distance between Charlotte and Raleigh.

Regarding the effect of the proposed MTS and WATS rate changes on the Independents, Mr. Gerringer testified that a reduction in intrastate toll revenues would cause a reduction in the intrastate toll settlement ratio at a time that the ratio is showing a slight decline absent any rate changes. Therefore, a further decline in the settlement ratio caused by the proposed rate changes with a resulting reduction in the intrastate toll settlements for the Independents had the potential of causing future upward pressure on the Independents' local rates.

Mr. Gerringer testified that the Public Staff was opposed to Southern Bell's proposed WATS rate changes on the basis that the Public Staff was opposed to the proposed changes in the MTS rates. The Public Staff agreed that WATS rates should bear a consistent relationship with the MTS rates.

In summary, Mr. Gerringer testified that the Public Staff was opposed to Southern Bell's proposed changes to the MTS and WATS rate schedules and recommended that the Commission disapprove the proposed changes primarily because of the reduction in intrastate toll revenues resulting from the proposed changes and the attendant upward pressure being put on local rates for both Southern Bell and the Independents. Mr. Gerringer added that the Public Staff would not be opposed to any structural changes as proposed for the rates for the operator assisted calls as long as no reduction in intrastate toll revenues would result.

Based on the evidence and testimony presented in this proceeding and on the Commission's conclusions set forth in Finding of Fact No. 4 regarding the disallowance of the proposed extension of the DSP, the Commission concludes that, except for its proposal with respect to operator assisted calls, and certain mileage band rate blocks, Southern Bell has failed to provide persuasive justification for the changes proposed in the rates and charges for intrastate MTS and WATS offerings and for the resulting net reduction in the intrastate toll revenues for Southern Bell and the Independents combined. The Commission bases its conclusion on the following:

1. Southern Bell did not present sufficient evidence to show that toll rate disparity is a significant problem.

2. Since the magnitude and direction of competition to intrastate MTS offerings is clearly uncertain at this time, the proposed changes, if approved, could produce the opposite of the desired effects to lessen the impact of the loss of a portion of the contribution now provided by toll services to maintain local rates at the lowest levels possible.

3. Southern Bell's estimated impact of the intrastate toll revenue reduction resulting from the proposed changes to the MTS rates is in question since Southern Bell's estimate was not brought to end of period and was based on the same methodology used by Southern Bell in the last toll case in Docket No. P-100, Sub 45, in which the Commission found such methodology to be deficient.

4. A reduction in intrastate toll revenues for Southern Bell and the Independents combined would cause an undesirable reduction in the intrastate toll settlement ratio at a time when the ratio is showing a slight decline absent any rate changes.

5. A reduction in intrastate toll revenues causes an undesirable upward pressure on the local rates not only for Southern Bell's subscribers but for the Independents' subscribers as well.

6. Southern Bell's proposed changes with respect to operator assisted calls will simplify the schedules and more closely match the charges with the cost. Additionally, such changes will ultimately result in keeping local exchange rates at levels lower than would otherwise be possible.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The Commission's finding on the reasonableness of the proposed rates for interexchange private line service is based on the testimonies of Southern Bell witness Savage and Public Staff witness Carpenter.

Southern Bell witness Savage presented the Company's proposals on interexchange private line services. He stated that the proposed rates and charges were based on current costs and that current cost is the appropriate basis for setting rates for these services.

Public Staff witness Carpenter presented testimony regarding his review of the Applicant's proposals for interexchange private line service and foreign exchange service. He concluded that in a number of categories of service Southern Bell's proposed percentage increases were excessive and that the increases in those categories should be limited to a reasonable level. He recommended limitations of 30% on recurring revenues and 50% on nonrecurring revenues. These limitations were to be applied to each category of service which he identified.

Mr. Carpenter stated that with minor exceptions he did not consider Southern Bell to have competition on intrastate private line services today. He also stated that generally he considered embedded costs to be the proper basis for setting rates on noncompetitive service but that embedded costs for private line services were not available.

The Commission concludes that some of the proposed increases in private line rates and charges are excessive and may cause unreasonable burdens on subscribers to these services. The Commission concludes that the limitations recommended by Mr. Carpenter, a maximum increase in revenues from each category of 30% on recurring charges and 50% on nonrecurring charges, are reasonable and proper.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Southern Bell witness Rudisill, Central Telephone Company witness Roberts, and Public Staff witness Carpenter presented testimony and exhibits regarding the amount of additional annual revenue which would result from proposed changes in rates and charges for interexchange private line services.

Southern Bell witness Rudisill testified regarding the amount of settlement revenue which each company would receive due to Southern Bell's proposed changes in interexchange private line rates and charges. The additional settlement revenue for each company was presented by Mr. Rudisill in Rudisill Exhibit 6. He pointed out that settlements to the Standard Schedule companies would not be affected by the increases in private line revenues. He also stated that the figures on his Exhibit 6 did not reflect I-I billed revenues which were not included in settlements.

Public Staff witness Carpenter presented testimony on the amount of revenue which each company would receive under the limited increase in interexchange rates and charges which he proposed. (See Evidence and Conclusions for Finding of Fact No. 6.) He used the same procedure as Mr. Rudisill, which the Commission has previously found to be appropriate in this case. (See Evidence and Conclusions for Finding of Fact No. 3.) He stated that the proposed increases under his limitations would produce $894,281 in additional annual revenue for Southern Bell or approximately 70% of the $1,276,311 which was requested. He also stated that under his proposed limitations Carolina Telephone and Telegraph Company would receive $443,746 in additional annual revenue instead of $633,311 under Southern Bell's proposal. He stated that the other independent companies would receive a total of $313,858 as a result of the limited increases which he recommended instead of $447,936 which would be received under Southern Bell's proposal. He did not present the amounts which each independent company would receive under his proposal.

Mr. Carpenter pointed out that all Independents other than Carolina and General who furnish I-I private lines or I-I foreign exchange service will bill and retain additional revenues due to the proposed increases and that Southern Bell had failed to include those increased revenues in its revenue figures. He estimated that those additional revenues would amount to approximately $66,000 under Southern Bell's proposal and $46,000 under his proposed limitations. Central Telephone Company witness Roberts stated that Central would bill increased annual revenue of approximately $13,300 if the Commission granted the increase in private line rates proposed by Southern Bell.

The Commission has very carefully considered the evidence with regard to the issue of flow-through of the additional revenues approved herein and concludes that said increase is de minimus. Therefore, the Commission concludes that the additional revenues should not be flowed-through by reduction of existing local service rates. However, for the companies with pending rate cases before this Commission, the additional toll revenue will be utilized to meet the revenue requirements found in said cases so as to reduce the burden on local service rate increases that would otherwise be required.

The additional intrastate toll revenues which the intrastate toll system in North Carolina can be expected to experience based upon the increase approved herein is set forth in Appendix A attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell Telephone and Telegraph Company and the other telephone companies in North Carolina under the Commission's jurisdiction are hereby authorized to implement the rates and charges for operator assisted Intrastate Long Distance Message Telecommunications Service (MTS) as proposed; provided, however, that the initial minute and additional minute charges shall be the same as the charges for the DDD rate schedule. Any exchanges that use an operator to identify the calling number for Direct Distance Dialing (DDD) in lieu of Automatic Number Identification (ANI) shall charge such calls on the basis of DDD-ANI rates only. Further, said companies are hereby authorized to increase the North Carolina interexchange private line service rates and foreign exchange service rates; provided, however, that such increases shall be limited to a 30% increase for recurring charges and a 50% increase for nonrecurring charges in the manner recommended by the Public Staff. The Companies are further authorized to increase the mileage band rate blocks from 31-124 miles as required so as to produce the additional revenues as approved herein; provided, however, that such increase shall not exceed the increases proposed by the Company nor shall any increase result in a higher rate for said mileage band(s) than is presently authorized by the Federal Communications Commission for interstate service. Provided further, that the total revenue effect of all rate changes under this ordering paragraph shall not produce net revenue increases greater than $2,700,000 annually.

2. That all other proposed changes in rates, rate structure, and revenues as proposed by Southern Bell are hereby denied.

3. That within 10 days from the date of this Order Southern Bell shall file the tariffs necessary to reflect the revisions in rates and charges in accordance with the conclusions reached by the Commission herein. Work papers supporting such proposals should be provided to all parties of record (formats such as Item 30 of the minimum filing requirements, NCUC Form P-1 are suggested).

4. That the Public Staff and any other intervenor may file written comments concerning the Company's tariffs within five days of the date upon which the tariffs are filed with the Commission.

5. That the rates, charges, and regulations necessary to reflect the changes authorized herein be effective upon the issuance of a further Order approving the tariffs filed pursuant to Paragraph 3 above.

6. That Southern Bell and the other telephone companies in North Carolina under the Commission's jurisdiction shall give notice of the rate increase approved herein by bill insert during the next billing cycle following the filing and acceptance of the tariffs described in ordering paragraph 3 above. Such notice shall present rate comparisons under present and approved rates which clearly show the impact of the Commission's decision in this regard.

ISSUED BY ORDER OF THE COMMISSION.

This the 3rd day of April 1981.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A

DOCKET NO. P-100, SUB 53

ESTIMATED INCREASE IN ANNUAL SETTLEMENT REVENUE DUE TO CHANGES IN INTRASTATE TOLL RATES

Carolina Telephone and Telegraph Company	$ 712,112
Central Telephone Company	163,534
Citizens Telephone Company	8,589
Concord Telephone Company	37,006
General Telephone Company of the Southeast	114,652
Heins Telephone Company	19,299
Mid-Carolina Telephone Company	56,517
Southern Bell Telephone and Telegraph Company	1,435,119
*Star Telephone Membership Corporation	15,004
Western Carolina Telephone Company	84,697
*Wilkes Telephone Membership Corporation	4,373
Average Schedule Companies	3,244
Total	$2,654,146

*Telephone Membership Corporations that are not regulated by the North Carolina Utilities Commission.

DOCKET NO. P-100, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Investigation of Intrastate Long Distance WATS and Interexchange) ORDER
Private Line Rates of all Telephone Companies Under the) SETTING
Jurisdiction of the North Carolina Utilities Commission) RATES

BY THE COMMISSION: On April 3, 1981, the Commission issued its Order Allowing Increase and Requiring the Filing of Rates for Intrastate Toll Service in Docket No. P-100, Sub 53. Said Order required Southern Bell to file tariffs necessary to reflect revisions in intrastate toll rates and charges in accordance with the conclusions reached by the Commission in its Order of April 3, 1981. On April 6, 1981, Southern Bell filed rates and charges in response to the Commission Order of April 3, 1981. On April 10, 1981, the Public Staff filed its Motion to Reflect Appropriate Intrastate Long Distance Rates. In said Motion, the Public Staff requested that the Commission base its determination of the revenues to be realized from the intrastate toll operations in North Carolina on an end-of-period basis excluding the effect of repression, and that rates be designed in accordance therewith.

The Commission after having very carefully considered the aforementioned Motion of the Public Staff and all other evidence of record concludes that the level of intrastate toll revenues to be realized by Southern Bell and the other telephone companies in North Carolina under the Commission's jurisdiction should be based upon an end-of-period level of operations excluding the effect of repression.

IT IS, THEREFORE, ORDERED as follows:

1. That the Intrastate Toll Rates and Charges filed by Southern Bell on April 6, 1981, should be and hereby are approved; provided however, that the initial minute of use charge in mileage bands 31-40 miles and 41-55 miles shall be limited to $.34 and $.38 respectively.

2. That the increases in rates and charges as approved herein shall become effective on one day's notice on service rendered after the date of this Order. All other rates, charges, and regulations not herein adjusted remain in full force and effect.

3. That the proposed Customer Notice filed with the Commission by Southern Bell on April 14, 1981, with respect to the approved increase in intrastate toll rates is hereby approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of April 1981.

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

DOCKET NO. EC-46, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of French Broad Electric Membership Corporation for a Certificate of Public Convenience and Necessity Pursuant to G.S 62-110.1, Authorizing Renovation and Construction of a Low-Head Hydro-electric Generating Facility at the Capitola Dam in Marshall, Madison County, North Carolina	) RECOMMENDED ORDER) GRANTING CERTIFICATE) OF PUBLIC CONVENIENCE) AND NECESSITY PURSUANT) TO G.S. 62-110.1

HEARD IN: The Madison County Courthouse, Main Street, Marshall, North Carolina, on Wednesday, August 19, 1981, at 9:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

Lee A. Spinks, Biggs, Meadows, Etheridge & Johnson, Attorneys at Law, P.O. Drawer 153, Rocky Mount, North Carolina 27801
For: French Broad Membership Corporation

For the Public Staff:

Karen E. Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 991, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BENNINK, HEARING EXAMINER: This proceeding was instituted on June 29, 1981, by the filing of an application by the French Broad Electric Membership Corporation (hereinafter Applicant or French Broad) for a certificate of public convenience and necessity pursuant to G.S. 62-110.1 to renovate and construct a low-head hydroelectric generating facility at the Capitola Dam in Marshall, Madison County, North Carolina. By Order of the Commission dated July 20, 1981, the matter was set for public hearing on August 19, 1981, at 9:00 a.m., in the Madison County Courthouse located in Marshall, North Carolina. By this same Order, French Broad was required to give public notice of this hearing, said public notice to be published once a week for four successive weeks in a newspaper(s) having general circulation in the affected area in the vicinity of the proposed project.

On August 7, 1981, the Public Staff of the North Carolina Utilities Commission intervened in this proceeding on behalf of the using and consuming public and filed the Affidavit of Timothy J. Carrere, Engineer for the Public Staff, pursuant to G.S. 62-68. This Affidavit concluded with the recommendation of the Public Staff that a certificate of public convenience and necessity pursuant to G.S. 62-110.1 be issued as requested by the Applicant.

On August 19, 1981, at 9:00 a.m., the public hearing was convened in the second floor jury room of the Madison County Courthouse. Making appearances were Lee A. Spinks, Attorney for the Applicant, and Karen E. Long, Staff Attorney for the Public Staff. The Applicant offered the testimony and exhibits of Charles R. Tolley, its General Manager, and Richard M. Thomason, Applicant's Energy Conservation Advisor. The Applicant offered an affidavit of publication of the notice of hearing for both the Marshall News-Record and the Asheville daily newspaper, both being newspapers of general circulation in Madison County. The Public Staff offered the affidavit of Timothy J. Carrere into evidence pursuant to G.S. 62-68.

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

FINDINGS OF FACT

1. The Applicant, French Broad Electric Membership Corporation, is an electric membership corporation organized and existing under the laws of the State of North Carolina, with its principal office in Marshall, North Carolina, and, for purposes of this application, is a public utility currently engaged in the business of transmitting, distributing, and selling electric power and energy to the public in Madison, Yancey, and Mitchell Counties, North Carolina, and to portions of Buncombe County, North Carolina, and Unicoi and Cocke Counties, Tennessee.

2. The Applicant at the present time has no generating capabilities and has been purchasing its wholesale power requirements as an all-requirements wholesale power customer of Carolina Power & Light Company since 1959.

3. From 1944 until 1959, the Applicant operated a hydroelectric generating facility at the site in question with a capacity of 440 kW, but due to operating and maintenance expenses and damages to the turbine at this facility in 1959, Applicant abandoned the facility to become an all-requirements wholesale purchaser of power.

4. In 1979, Applicant experienced peak demands of 46,100 kW and energy requirements of 209,134,000 kWh.

5. Projections of peak demand and energy requirements under Applicant's 1980 Power Requirement Study indicate that in 1985 peak demands will have increased to 49,400 kW, and energy requirements will have increased to 238,400 kWh. By 1995, peak demands will have increased to 53,400 kW, and energy requirements will have increased to 286,000,000 kWh.

6. Under the current arrangement of the Applicant, all of the projected power requirements would have to be met through the wholesale purchase of power from Carolina Power & Light Company (CP&L). Since August 17, 1980, the Applicant has been purchasing its wholesale power requirements from CP&L under Re-Sale Service Schedule RS-13, whereby Applicant is charged at the monthly rate of $6.809 per kW of demand and 1.60 cents per kW-hour of energy.

7. Applicant, by its reliance upon CP&L for all of its power requirements, is subject to rate increases in the future of a potentially substantial nature.

8. Applicant needs and proposes to install at its Capitola Dam site a low-head hydroelectric generating facility, with two turbines of a 1.5 mW capacity each, to reduce its reliance upon outside sources of power, and thereby partially protect its customers from the increasing costs of fuel, maintenance and operating expenses, and capital costs associated with the outside sources of power.

9. The generating facility which Applicant proposes to install promptly at its Capitola Dam site in Marshall, North Carolina, is the most economical and dependable type of generating capacity that the Applicant can provide by June 1984, or as soon thereafter as possible.

10. The generating facility which the Applicant proposes to install consists of the following:

One low-head hydroelectric generating facility to be contained in a new powerhouse which will be built over the end of a 575-foot existing intake canal on the south end of the now-existing Capitola Dam, said dam being a "run of the river" dam on the French Broad River, not designed to impound water, but rather to divert water to the canal for power purposes. This powerhouse will contain two horizontal tube-type turbines with variable pitch propeller blades and a rates capacity of 1.5 mW each, together with a two 1500 kW 90% power factor, induction type generators, with a speed increaser located between each turbine and generator. This generating facility will be interconnected with the existing French Broad E.M.C. transmission system through a three-phase 7200/12470 volt distribution line, which now runs approximately two miles between Applicant's Marshall Substation and the plant site, with number 2A copperweld-copper conductors. The generators in the generating facility will be connected to a 4160 volt bus through full voltage, non-reversing motor starters. A 4.16 kv vacuum circuit breaker is proposed for outgoing feeder protection. Three 833 kva single phase power transformers will be installed approximately 300 yards from the plant for stepping up the generated voltage of 4160 volts to the distribution level of 12470 volts. Fans will be added to increase the rating, and a 13.8 kv vacuum circuit breaker is proposed for primary feeder protection. Additional electrical equipment will consist of control switches, indicators, protective relays, and metering equipment. In addition, some repairs will be made to the dam, in order to correct problems existing due to the hydraulics of the river flow, and erosion forces. Finally, flash boards will be installed on top of the existing concrete dam, which runs approximately 500 feet in length and stands eight feet high, and the existing 116-foot sluiceway with 10 gate openings will be updated with new gates operating by screw hoists (ARNG type or similar).

11. The proposed facility will conform to all applicable environmental laws and regulations of local, State, and the Federal Government and their respective agencies.

12. All power generated by the proposed facility will be utilized by the Applicant, and none of this power will be sold to CP&L or any other utility. The Applicant will continue to receive all of its additional power requirements as a wholesale purchaser of power from CP&L, pursuant to agreements with CP&L to backstand the plant and to supply supplemental power requirements.

13. Total direct costs for the proposed facility are estimated to be $4,230,400.00, plus an additional estimated $1,944,700.00 for engineering, escalation, interest during construction, and a contingency reserve, bringing the total estimated construction costs to $6,175,100.00.

14. The Applicant has the financial ability to pay for the construction and installation of the additional generating unit, through funding from the Appalachian Regional Council, French Broad general funds, the Rural Electrification Administration loan program, the National Rural Utilities Cooperative Finance Corporation, and the Columbia Bank for Cooperatives. The incremental net costs of the power requirements of Applicant's system with the addition of the proposed hydroelectric generation facility will be less than the incremental costs of its power requirements without the proposed facility within seven years of the date the proposed facility is placed into operation, thereby providing the customers of Applicant with a savings in the cost of power.

15. The proposed facility will not detrimentally affect the environment in the area of the facility, and the applicable State and Federal agencies have been notified and proper permits have been issued or applied for.

16. The proposed facility will not affect the Commission's load forecast due to the small size increment established therein.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

The public convenience and necessity require construction by French Broad of the hydroelectric generating facility hereinafter described, in that -

(a) Such facility will provide a generating capacity to help meet the company's projected power requirement increases over the next 15 years;

(b) Such facility is the most economical and dependable type of generating capacity which the French Broad can provide at this time to meet the needs of its customers;

(c) Such a hydroelectric facility as is proposed by French Broad is best suited to help maintain adequate and dependable electric service to the French Broad's customers, while helping reduce the impact of cost increases in outside sources of power due to increased costs of fuel, maintenance and operating expenses, and capital costs;

(d) The hydroelectric facility proposed by French Broad is best suited to conform to the energy policy of this State, and the United States, and is best suited to provide the customers of French Broad with a more economical source of electric service than would otherwise be possible; and

(e) The facility will meet all applicable environmental laws and regulations, and will not adversely affect the environment of the surrounding area.

IT IS, THEREFORE, ORDERED that the French Broad Electric Membership Corporation be, and is hereby, authorized to renovate, construct, and operate at

its Capitola Dam site in Madison County, North Carolina, the following described hydroelectric generating facility:

One low-head hydroelectric generating facility to be contained in a new powerhouse which will be built over the existing intake canal on the south end of the Capitola Dam. This powerhouse will contain two horizontal tube-type turbines with variable pitch propeller blades and a rated capacity of 1.5 mW each, together with two 1500 kW 90% power factor, induction-type generators, with a speed increaser located between each turbine and generator. This generating facility will be interconnected with the existing French Broad Electric Membership Corporation transmission system through a three-phase 7200/12470 volt distribution line, which now runs approximately two miles between Applicant's Marshall Substation and the plant site. Circuit breakers, single phase power transformers, fans, control switches, indicators, protective relays, and metering equipment will also be installed at the facility. Renovation and construction to the facility will include repairs to the existing dam, installation of flash boards on top of the dam, and repairs to the existing intake canal and sluiceway with the addition of new sluiceway gates operated by screw hoists.

IT IS FURTHER ORDERED that this Order shall itself constitute a Certificate of Public Convenience and Necessity for the construction and operation of this facility.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of October 1981.

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

DOCKET NO. E-2, SUB 421

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Mr. and Mrs. James Garland Barefoot, Complainants	) RECOMMENDED ORDER
vs.	) DENYING COMPLAINT
Carolina Power & Light Company, Respondent	)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, November 6, 1981, at 9:30 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Respondent:

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

For the Complainants:

Gisele L. Rankin, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BENNINK, HEARING EXAMINER: On May 14, 1981, Mr. and Mrs. James Garland Barefoot (Barefoots), Route 2, Benson, North Carolina, filed a Complaint against Carolina Power & Light Company (CP&L), with respect to the Barefoots' claim that three accounts for electricity had been established in their name without their authorization.

The Complaint was served on CP&L by Order dated May 18, 1981, and CP&L filed its Answer on June 8, 1981. Pursuant to Order dated June 29, 1981, the Notice to Complainants of Answer filed by Respondent was served on Complainants by certified mail on July 2, 1981. The Complainants did not file a response to the Notice of Answer, on the form submitted, by July 14, 1981, and the Commission issued an Order dismissing the Complaint and closing the docket on August 20, 1981.

Thereafter, the Public Staff notified the Commission that a letter dated June 1, 1981, from Mrs. Barefoot to the Commission received on July 10, 1981, had been misdated June 1, 1981, instead of July 1, 1981, and had been intended by Mrs. Barefoot as a response to the Answer of CP&L. The docket was reopened and set for hearing by Order dated October 2, 1981.

The matter came on for hearing on November 6, 1981. Mrs. James Garland Barefoot was present and represented by the Public Staff. CP&L was present and represented by its counsel. Mrs. Barefoot and Bessie Lee Surles, Route 2, Benson, North Carolina, testified for the Complainants. CP&L offered the testimony of Karen Barbour, daughter of Mrs. Barefoot, Barbara Hicks and Mary Alice Judd, clerks in CP&L's Dunn, North Carolina office, and David Turlington, its Area Accounting Manager.

Upon consideration of the entire record in this proceeding, including the testimony and exhibits presented at the hearing, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Barefoots own numerous buildings and trailers located on their property in Johnston County, North Carolina, which are used by others. Many of the residents of these dwellings are migrant workers or others employed from time to time by the Barefoots in their farming operations. Since 1967, from six to 12 of these buildings and dwellings each year have received electric service from CP&L at the request of the Barefoots. The Barefoots currently have from six to eight active accounts with CP&L. The standard practice of the Barefoots

has been to telephone the CP&L area office in Dunn, North Carolina, and request that electric service be connected to the designated dwelling in the name of the Barefoots for the named resident. Pursuant to these telephoned requests, the accounts were set up in the name of the Barefoots with a carryover designation (e.g., James Garland Barefoot for _____). Disconnects for any of these accounts have been handled over the years in the same manner, by telephone requests from the Barefoots.

2. The three accounts in controversy are identified as Account No. 17-134-06-014-66, "James Garland Barefoot for Joe Washington" (Washington Account), Account No. 16-134-06-186-69, "James Garland Barefoot for Mexicans" (First Account for Mexicans), and Account No. 16-134-06-176-61, "James Garland Barefoot for Mexicans" (Second Account for Mexicans). The total amount in controversy, excluding any late payment fees or reconnection charges, is $601.50, representing billings of $318.33 for the Washington account, $46.06 for the first account for Mexicans, and $237.11 for the second account for Mexicans.

3. The Washington account was established pursuant to a telephone call on April 23, 1980. The call was taken by CP&L clerk, Barbara Hicks, who testified in this matter that the caller identified herself as Mrs. James Garland Barefoot and that she recognized the caller's voice as that of Mrs. James Garland Barefoot from numerous telephone calls in the past requesting similar accounts, since she generally talked with Mrs. Barefoot four to five times per year over the telephone regarding the establishment or disconnection of accounts. Mrs. Barefoot testified that she did not call requesting service for the Washington account. Mrs. Hicks testified that following CP&L's standard procedure, and as she had done with respect to other requests by Mrs. Barefoot, immediately after determining the identity of the caller and other necessary information, she entered the data (i.e., date, time, location of dwelling, caller, and that the request was made by telephone) into the computer which printed the information on CP&L meter order No. D1141359, dated April 23, 1980 (CP&L Exhibit No. 3).

Pursuant to the establishment of the Washington account, bills for electric service rendered were mailed each month from May 1980 through November 1980, to "James Garland Barefoot for Joe Washington" at the Barefoots' address (CP&L Exhibit No. 8). Payment on the account was made by Mrs. Barefoot or her daughter, Karen Barbour, in June, July, August, and October 1980 (CP&L Exhibit No. 9). Karen Barbour, Mrs. Barefoot's daughter, testified that during this time she handled payment of the electric bills up to fifty percent of the time due to her mother's illness. On November 13, 1980, Mrs. James Garland Barefoot telephoned the Dunn CP&L office and requested that the Washington account be terminated. Mrs. Hicks immediately entered the data into the computer which printed disconnect meter order E3180856 dated November 13, 1980 (CP&L Exhibit No. 4). The total paid on the Washington account during this period was $173.46. The October and November bills totaling $144.87 were never paid and this amount was transferred to the Barefoot's residential account.

4. The first account for Mexicans and the second account for Mexicans were established pursuant to telephone calls on August 11, 1980. The calls were taken by CP&L clerk, Mary Alice Judd, who testified in this matter that the caller identified herself as Mrs. James Garland Barefoot and that she recognized the caller's voice as that of Mrs. James Garland Barefoot from numerous telephone calls in the past requesting similar accounts, since she generally

talked with Mrs. Barefoot four to five times per year over the telephone regarding the establishment or disconnection of accounts. Mrs. Barefoot testified that she did not call requesting electric service for the two accounts for Mexicans. Mrs. Judd testified that in each case, immediately after determining the identity of the caller and other necessary information, she entered the data (i.e., date, time, location of dwelling, caller and that the request was made by telephone) into the computer which printed the information on CP&L meter orders A2241221 (CP&L Exhibit No. 6), and A2241509 (CP&L Exhibit No. 7).

Pursuant to the establishment of the accounts, bills for electric service rendered were mailed each month from August 1980 through February 1981 to "James Garland Barefoot for Mexicans" at the Barefoots' address in Benson (CP&L Exhibit Nos. 10 and 11). Payments on the accounts were made by Mrs. Barefoot or her daughter, Karen Barbour, in October and December 1980 (CP&L Exhibit No. 9). Karen Barbour, Mrs. Barefoot's daughter, testified that during this time she handled payment of the electric bills up to fifty percent of the time due to her mother's illness. CP&L's records show that the two accounts were terminated as a result of telephone requests from Mrs. Barefoot on February 6, 1981 (CP&L Exhibit Nos. 12 and 13). The total paid on the first account for Mexicans during this period was $30.49 (CP&L Exhibit No. 9). The December 1980 January and February 1981 bills totaling $15.57 were never paid. The total paid on the second account for Mexicans during this period was $70.56 (CP&L Exhibit No. 9). The December 1980 and January and February 1981 bills totaling $166.55 were never paid.

5. At the request of the Public Staff, the disputed amount paid on these three accounts ($274.51) was credited to the Barefoot's residential account until final determination of this dispute is made by the Commission. However, since the Barefoots were not told prior to the disconnection of the electricity to their residence in May 1981 that their outstanding balance did not include the disputed amounts, they cannot be charged the $4.64 late fee and the $7.50 reconnection charge assessed by CP&L.

6. The Barefoots own the premises where the electric service was provided for the amounts in dispute.

7. Section 1(a) Service Agreement of CP&L's approved Service Regulations provides for verbal application for electric service as follows:

> "Such a verbal Service Agreement shall be conclusively presumed, when there is no written application by Customer accepted in writing by Company, if electricity supplied by Company is used by Customer or is used on Customer's premises."

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

A careful consideration of the entire record in this proceeding leads the Hearing Examiner to conclude that the Complaint of Mr. and Mrs. James Garland Barefoot should be denied. In so deciding, the Hearing Examiner notes, among other things, the following:

1. The common practice between Mrs. Barefoot and the Dunn office of CP&L had for many years been to handle service connections and disconnections of accounts by telephone. Several times each year Mrs. Barefoot would telephone CP&L requesting that service be provided in the Barefoots' name for various structures on the Barefoots' land.

2. The electric service supplied for the disputed accounts was in fact used on the Barefoots' premises.

3. The Barefoots received monthly bills from CP&L for the disputed accounts and made payments over several months on each of the accounts with the last payment being made on the two accounts, "James Garland Barefoot for Mexicans," on December 19, 1980.

4. It appears from the evidence in this proceeding that CP&L acted in accordance with its service regulations as approved by the North Carolina Utilities Commission and in reliance on the long history of dealing with the Barefoots in such matters by telephone at the request of the Barefoots.

5. The Complaint filed herein by the Barefoots should be denied and the amount in dispute of $601.50 on the three accounts in question is now due and payable to CP&L. CP&L should, however, refund or credit to the Barefoots' residence account the amount of $12.14 representing the reconnection and late charges assessed as a result of the disconnection of electricity to the Barefoots' residence in May 1981.

IT IS, THEREFORE, ORDERED as follows:

1. That the Complaint of Mr. and Mrs. James Garland Barefoot against Carolina Power & Light Company be, and the same is hereby, denied.

2. That the total amount for the three accounts in dispute in the amount of $601.50 be, and the same is hereby, due and payable to Carolina Power & Light Company.

3. That CP&L shall refund or credit to the Barefoots' residence account the amount of $12.14 representing the reconnection and late charges assessed as a result of the disconnection of electricity to the Barefoots' residence in May 1981.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of December 1981.

NORTH CAROLINA UTILITIES COMMISSION
SEAL) Sharon Credle Miller, Deputy Clerk

ELECTRICITY

DOCKET NO. E-7, SUB 297

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Walter R. Skipper, Complainant	)	RECOMMENDED ORDER REQUIRING EXAMINATION
vs.	)	AND REPORT BY DUKE POWER AND DENYING
Duke Power Company, Respondent	)	SERVICE TO COMPLAINANT ON SCHEDULE RC

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 3, 1980, at 9:30 a.m.

BEFORE: Allen L. Clapp, P. E., Hearing Examiner

APPEARANCES:

For the Complainant:

Karen E. Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602
For: Walter R. Skipper, Complainant

For the Respondent:

W. Edward Poe, Jr., Legal Department, Duke Power Company, P. O. Box 33189, Charlotte, North Carolina 28242

CLAPP, HEARING EXAMINER: On June 23, 1980, Walter R. Skipper filed a formal complaint with the Commission against Duke Power Company (Duke or the Company) alleging in substance that Duke employees had told him in June 1979 that his house qualified for the residential conservation (RC) electrical rate but Duke failed to put his billing on the RC rate, that the Company had not replied to his written queries about this discrepancy for several months until he contacted the Consumer Complaint Division of the Public Staff, and that Duke's replies to his queries after he had contacted the Public Staff were unsatisfactory.

Pursuant to Rule R1-9(c), of the Commission Rules and Regulations the complaint was served upon Duke on July 9, 1980. On July 21, 1980, Duke timely filed its answer, of which answer Complainant was notified by this Commission August 12, 1980.

In its answer Duke moved to dismiss the complaint for failure to state a claim upon which relief can be granted and for failure to comply with Rule R1-5(b) of the North Carolina Utilities Commission Rules and Regulations. Duke further asserted as a defense that Complainant's house did not meet the qualifications for an RC rate and denied that its employees had ever told Complainant otherwise. In a form letter filed with this Commission on August 28, 1980, Complainant indicated Respondent's answer was not satisfactory to him and requested a public hearing.

By Order dated September 3, 1980, the Commission ordered a hearing to be held on Friday, October 3, 1980, at 9:30 a.m. On September 11, 1980, the Public Staff filed Notice of Intervention. On the same date the Public Staff also

filed a motion requesting that a panel of three Commissioners hear the proceeding. This motion was denied by Order of the Chairman. Also on the same date, Duke offered to remeasure Mr. Skipper's house ventilation and Mr. Skipper refused the offer.

Prior to the hearing, Duke filed notice and affidavit of Charles Richard Seamon, Production Manager of William Trotter Construction Company, the company which had built Complainant's house. Mr. Seamon's affidavit, in pertinent part, stated that the attic ventilation system present in Complainant's house as constructed consisted of 21 soffit vents measuring 4" x 16", two round ventilators 8" in diameter and a rectangular wood vent measuring 16" x 30".

At the time appointed for hearing, both the Complainant and the Respondent were present and represented by counsel. Duke renewed its motion to dismiss. This motion was not granted.

Complainant Walter R. Skipper testified on behalf of himself and introduced several exhibits in support of his testimony. He testified that Duke's business practices fell short of the standard to which the Company should be held by the Commission and testified about the circumstances giving rise to his claim that his residence should be placed on Duke's RC rate schedule.

Duke presented the evidence of John D. Clark, Manager of Rate Administration; James M. Foreman, Jr., General Manager of Energy Services; Ellison Lee Bowman, one of the Company's Residential Representatives in the Charlotte District; and Tommy L. Burleson, Supervisor of Residential Sales for the Charlotte District. The Company also introduced the affidavit of Mr. Seamon which had previously been filed with the Commission. Mr. Clark and Mr. Foreman introduced exhibits in support of their testimony.

In general terms, the testimony of Duke's witnesses can be summarized as follows: an explanation of the Schedule RC criteria; a discussion of the reason the Complainant's residence failed to qualify for Schedule RC; and an explanation of Duke's business practices in handling Mr. Skipper's contacts with the Company.

At the hearing, the Complainant offered nine exhibits. Duke offered seven exhibits. All were admitted into evidence without objection. In addition, at the close of the October 3, 1980, hearing, the Hearing Examiner directed that Duke file certain late exhibits, including the results of a field inspection and measurement of the attic ventilation and the dormer louver vent at Mr. Skipper's residence. This field inspection was to be conducted as soon after the adjournment of the October 3, 1980, hearing as practical. Duke filed these exhibits with the Hearing Examiner on October 17, 1980. In addition, Duke filed with the Commission on October 17, 1980, four additional exhibits demonstrating the Skipper residence's attic ventilation locations, dormer louver detail, standard dormer detail, and attic ventilation requirements. In a letter to the Hearing Examiner and counsel from the Public Staff, Duke stated it had been unable to find Mr. Bowman's original calculation of Complainant's attic ventilation. On February 5, 1981, Complainant filed a motion to submit a late exhibit consisting of three (3) documents and his affidavit, all of which tended to corroborate part of his testimony at hearing regarding soffit vent measurements. On February 6, 1981, Duke filed its response to that motion.

Based upon a careful analysis of the complaint and answer on file, the testimony and exhibits introduced at hearing and as late-filed exhibits, standard engineering and architecture texts, and the record as a whole, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Respondent, Duke Power Company, is a public utility providing electrical service to customers in North Carolina pursuant to G.S. 62-3 (23)(a)(1) and so is subject to the jurisdiction of this Commission.

2. Duke is engaged in the business of generating, transmitting, distributing, and selling electric power and energy to the general public within the Piedmont section of North Carolina. Complainant Walter R. Skipper is a customer of Duke Power Company residing at 1340 Rock Point Road in Matthews, North Carolina, who applied for and was issued electrical service at that address on or before May 3, 1979.

3. Duke has its principal office and place of business in Charlotte, North Carolina.

4. This proceeding involves a complaint pursuant to G. S. 62-73 filed by Mr. Skipper against Duke alleging that Duke used inconsistent and inadequate procedures in processing his application for the residential service energy conservation rate (RC).

5. Duke's residential service energy conservation rate (RC) is a special tariff available to residences which conserve electricity by meeting or exceeding certain standards of insulation and ventilation. Specifically, such residence must have the insulation of heat resistance factors R-30 in ceilings, R-12 or above in outside walls, and R-19 in floors over crawl spaces; attic ventilation consisting of one square foot of free area for each 150 square feet of attic area; storm windows and doors or the equivalent; and certain other criteria for insulation, space heating, and water heating systems. At the time of approval of the RC rate schedule, the Commission limited further expansion of service under the then existing RA rate schedule after certain dates.

6. Construction on Mr. Skipper's residence, built by the William Trotter Construction Company and located at 1340 Rock Point Road, Matthews, North Carolina, was begun before February 15, 1979, and a building permit was issued therefor prior to January 1, 1979, the two cut-off dates specified by the Commission for admission to the RA rate schedule. Thus, Duke's Schedule RA was available for service to Mr. Skipper's house under the provisions of the Commission Order if the residence otherwise qualified for said rate schedule.

7. Duke's residential representative, Ellison Bowman, first visited the site of Mr. Skipper's resident before construction thereon began. He visited it again during the latter part of November 1978, at which time he inspected the ceiling insulation which measured R-30. He returned to the premises in April 1979 to inspect the heating system and water heater. As a result of these inspections and his knowledge based on his training, experience inspecting many homes, and his particular knowledge concerning the William Trotter Construction Company built homes such as the Complainant's, Mr. Bowman qualified the Complainant's home for Schedule RA.

8. When Mr. Skipper received his first bill from Duke in June 1979, he noticed the "RA" code on the bill and called Duke's Matthews office to inquire about the meaning of the code. As a result of that conversation, he called Duke's marketing department and spoke with Mr. Bowman. Within a few days, Mr. Bowman inspected the house to see if it met the Schedule RC requirements. He used his original data on the insulation characteristics of the home and inspected for attic ventilation and the remaining requirements. Mr. Bowman determined that the Skipper residence needed storm doors and more attic ventilation in order to qualify for the RC rate. Mr. Bowman left his business card sticking out between the back door and its frame.

9. Mr. Skipper apparently did not see Mr. Bowman's card in the back door and apparently assumed that he would have been called had his house not met the RC requirements. It is not clear whether he was called by Mr. Bowman at that time. (See Finding of Fact No. 11). He expected to see his rate code changed to RC from RA and, when that did not occur by August, he called Mr. Bowman to remind him to change the rate code. Mr. Bowman apparently said that he would check the paperwork.

10. When the rate code was still not changed on the October bill, Mr. Skipper wrote to Mr. Bowman inquiring about the change.

11. Either (1) after the June inspection or (2) in the August telephone conversation or (3) after the October letter, Mr. Bowman verbally informed Mr. Skipper that "his insulation standards met our EES requirements" but that he would need to add attic ventilation and storm doors before his house would qualify for Schedule RC. Because neither man has adequate records, it is not clear when that conversation took place. It is clear, however, that the conversation did occur and that Mr. Skipper did not adequately absorb the information that Mr. Bowman was trying to impart. Mr. Skipper's insulation met the portion of Duke's Energy Efficient Structure requirements dealing with insulation. However, the house did not meet the complete set of requirements for EES designation nor did it meet the slightly less stringent requirements of the RC rate. This lack of understanding of the Complainant is the root cause of this case.

12. Mr. Bowman did not respond in writing (or at all if the above detailed conversation occurred earlier) to Mr. Skipper's October letter. In January 1980 Mr. Skipper wrote Mr. Bowman again and requested a written response to the October letter.

13. Receiving no response, Mr. Skipper called the Public Staff on February 27, 1980. As a result, Tom Burleson, Duke's Supervisor of Residential Sales for the Charlotte District, called Mr. Skipper that day. On March 21, 1980, Mr. Bowman and Mr. Burleson met Mr. Skipper at his house and inspected it for qualification under Schedule RC. Mr. Burleson and Mr. Bowman, without physically measuring all the ventilation equipment installed in the house but by observing the type and approximate size, were able to determine that the house lacked sufficient attic ventilation to qualify for Schedule RC and so informed Mr. Skipper at that time. Within several days, Mr. Bowman prepared and mailed to Mr. Skipper a letter detailing the amount of additional attic ventilation needed for the Skipper residence to qualify for Schedule RC.

14. At the hearing, Mr. Skipper placed into evidence a set of plans and elevation drawings of his home and his calculations of attic ventilation. Duke entered its own set of calculations and the basis therefor. At the Hearing Examiners's request, Duke returned to the Skipper residence after the hearing, measured the disputed dimensions of the dormer vent, verified the dimensions of the other vents, and filed a report thereon. Duke's revised calculations still indicated that the attic ventilation was insufficient to meet the RC rate requirements. Complainant objects to the calculations and Duke's manner in preparing them.

15. In calculating the square feet of ventilation area necessary to meet the RC rate requirements, Duke used an area of 1034 square feet for the net area of the attic and divided by 150 to obtain a required net free ventilation area of 6.893 square feet. Duke then subtracted 2.672 square feet, the net free area of the 19 soffit vents, subtracted 0.698 square feet for the total of the two 8" round roof vents, and subtracted 3.125 square feet for the dormer vent. The result was that Duke indicated that 0.398 more square feet of net free ventilation area was needed for the Skipper residence to qualify for the RC rate.

16. Duke did not correctly examine the Skipper house with respect to the ventilation requirements of the RC rate. There are two roofs on the house; Duke incorrectly lumped the net attic area of both together and calculated only one ventilation requirement. Since the two attic spaces are not interconnected, each must be examined separately. Also, the net attic area used by Duke, the source of which is not in evidence, is less than that which the house plans indicate exists; this will result in a lower ventilation requirement.

17. The ground floor attic has a net ceiling area over conditioned space of approximately 375 square feet. Dividing by 150 yields a requirement of 2.50 square feet of net free ventilation openings. This attic has six soffit vents (0.84 sq. ft.) and one dormer vent (3.13 sq. ft.) for a total of 3.97 square feet of net free ventilation area. The ground floor attic ventilation appears to meet the RC requirements.

18. The second floor attic has a net ceiling area over conditioned space of approximately 720 square feet. Dividing by 150 yields a requirement of 4.80 square feet of net free ventilation openings. This attic has two 8" round roof vents (0.70 sq. ft.) and 13 soffit vents (1.83 sq. ft.) for a total of 2.53 square feet of installed net free ventilation area. To qualify for the RC rate, this attic must have at least 2.27 square feet of additional suitable ventilation.

19. For maximum ventilation air flow in hip roof construction, as in the Skipper house, approximately two-thirds of the required ventilation area should be soffit vents equally spaced around the perimeter of the attic space. The remainder should be in ridge vents. The addition of three 8" round ridge vents and nine 16" x 4" soffit vents to the second floor attic would meet the required additional ventilation area in an acceptable manner. Ventilation of the ground floor attic could be improved with the addition of the soffit vents along the rear wall.

20. The purpose of the lower RC rate is to pass appropriate savings on to those consumers whose houses are sufficiently energy efficient as to effect a positive change in the timing and levels of electricity demanded from the utility. Placing an unqualified consumer on the rate discriminates against the remainder of the customers; conversely, an incorrect calculation of the requirements to be met can cause discrimination against the Applicant consumer.

21. Utility personnel dealing with the public must be adequately informed about rate calculations and must be responsive to the needs of the public if the public policy of the State of North Carolina as delineated in G. S. 62-2(3), (4), and (5) is to be effectively carried out.

EVIDENCE AND CONCLUSIONS

The evidence supporting the above findings of fact is contained in the Complaint and Answer filed in this proceeding, in the testimony and exhibits of the Complainant and the Duke witnesses, in the North Carolina Building Code, and standard engineering and construction detail texts.

The matters at issue in this case are not merely those of whether a particular house meets the criteria required for application of Schedule RC rates. They include the standards of training of Duke personnel who deal with the public and the procedures to be followed by those personnel in their interaction with the public.

The Commission has consistently found that the overall service of Duke Power Company is good. It is indeed rare that a legitimate complaint is brought against Duke for the actions of its personnel. Duke is to be and has been commended for the care that it has taken in training its employees and in supervising their contact with the public. However, in this case it is evident that Duke needs to improve its operations which affect the application of residential rate schedules to houses.

This record is clear as to the major points of contact between the Complainant and Duke representatives, albeit somewhat unclear as to the timing of some of that contact due to the span of time covered by the events.

It is clear that Duke has the responsibility in its dealings with the public to maintain awareness of the limited understanding by the public of electrical and mechanical terms. Most lay people do not understand matters dealing with the effects of and relationships between vapor barriers, ventilation, moisture insulation, BTU loss or gain, and other factors affecting the size and operating characteristics of space conditioning equipment. It is incumbent upon Duke personnel to be clear and consistent in their explanations of these matters to the public. There is an old adage, frequently used in seminars and texts on information transmittal and variously stated as "I know you think you understand what I said, but do you realize that what you heard is not what I meant?", which strikes at the heart of this problem. To a large extent, this case results from the failure of the Complainant to absorb and retain the information intended to be transferred by Duke personnel. It is apparent that the blame for that should be shared by both the Complainant and Duke personnel, but is also apparent that Duke personnel were not effective in their presentation of information to the Complainant and, in fact, gave incorrect information to the Complainant.

It is obvious that Mr. Bowman intended to tell Mr. Skipper that, while the wall, ceiling, and floor insulation levels in the Skipper house met the EES standards, some features of the house - notably doors lacking storm doors and attics lacking sufficient ventilation - did not meet the EES standards. If the words used by Mr. Bowman in his testimony were originally used by him in his discussions with Mr. Skipper, it is understandable that, if Mr. Skipper were unfamiliar with the jargon used and did not pay attention to the exact words used, he would go away from the conversation with the mistaken impression that his house met the EES standards. Since the EES standards are equal to or more strict than the RC rate standards, the impression could be retained that the house passed the RC standards, especially if that was what the listener preferred to hear.

It is clear that the misunderstandings between Mr. Skipper and Mr. Bowman caused great frustration to both individuals. The appropriate shares of responsibility for this occurrence are not clear, however. The situation was not helped by the failure of Mr. Bowman to respond in writing to Mr. Skipper's written inquiries. Not only did this make it difficult for Mr. Bowman to verify his information transmittal but it exacerbated the problem to an intolerable level for Mr. Skipper.

While the circumstances which promoted the misunderstandings are cause for concern by the Commission, they are not the major concern. Certainly disputes will arise from time-to-time; a few will become acrimonious whenever one party exhibits an unwillingness to accept what he or she is being told by the other. Duke has an admirable record of satisfying the questions of its customers and, accepting the statistical probability that, with over one million customers to serve, Duke will occasionally experience a customer-related difficulty that it cannot resolve without Commission action, the Commission should not become unduly alarmed over the existence of this complaint. There is, however, cause for concern relating to the manner in which Duke employees rate houses with respect to the requirements of either Schedule RC or its EES program. In this particular case, Duke incorrectly calculated the free area of ventilation required to meet the RC rate by failing to calculate each attic requirement separately. The result could have been the admittance of an unqualified house on the RC rate schedule. This brings rise to the question of how many other similar installations might incorrectly be on the RC rate schedule.

The relationship of insulation and attic ventilation is a complex one. Insulation serves to limit the radiant and convective transfer of heat from one area to another. Depending upon its material and construction, insulation will slightly increase the conductive transfer of heat but this increase will be more than offset by the large reductions in radiant and convective transfer.

In an uninsulated wall, air is heated by the warm wall surface and rises to the top of the wall cavity where it contacts the cool side of the wall, is cooled, and falls. Thus a convective air current is set up which transfers heat from the warm wall membrane to the cold one. Similarly, air is warmed (in the winter) by an uninsulated ceiling and rises in the attic space to be replaced by fresh, cold air which continues the heat dissipation process. The warm surfaces also radiate heat toward cooler bodies of mass.

Insulation inhibits the convection of heat by creating pockets of low density material (air) and, at the same time, effective insulators are those which have the most uniform small air pockets created by the least dense material. The lower the mass of the insulation, the less will be the transfer of heat by conduction through the material itself. For these reasons, the cellular structure of expanded urethane foams and expanded polystyrene extrusions generally have the best resistance to heat transfer (highest R-Factor). Next in line is mineral wool or fiberglass batting, followed by similar materials in loose form. Each of these materials presents a different problem with moisture transfer.

Moisture causes two problems if it is allowed to enter and remain in insulation materials. In the short run, it will increase heating costs by significantly increasing the thermal conductivity of the insulative material. Not only does it significantly increase the thermal mass of the insulation but its own coefficient of thermal conductivity is greater than that of the insulation materials. In the long run, condensation will cause mildew and rot to occur on and in structural members and wall and ceiling membranes. The first problem has a significant effect on the operating characteristics of the space conditioning system; both problems affect the homeowner's pocketbook.

The particular problem that we address in this proceeding is that of assessing the requirements of ventilation for attic spaces. Because of continual winter moisture production in buildings from cooking, bathing, and human perspiration and breathing, the air inside the home is generally more moist than outside air. Moisture flows from the point of greatest vapor pressure (inside) to the lowest (outside).

In the past, the condensation problem has not been a significant one. With low levels of attic insulation, enough heat transferred itself to the attic airspace to warm the air enough to accept the moisture which permeated the ceiling membrane and migrated through the insulation. The increased air temperature raised the effective dew point of the attic air sufficiently for the water vapor pressure to evaporate the moisture from the insulation into the air and the moisture did not condense.

However, the use of insulation thickness of several times that of old construction methods will cause significant problems where steps are not taken to prevent condensation of moisture. With the "superinsulation" levels required by Schedule RC, the heat transfer will be reduced to the point that the attic temperature is very close to the cold outside temperature. Consequently, the dew point of the attic air is reduced drastically and, unless special moisture barriers are placed between the ceiling and the insulation to lessen moisture transmittal, or unless ventilation of the attic space is significantly increased to bring fresh, dry air into the space to accept the moisture and carry it away, moisture will condense in the insulation and significantly reduce its effectiveness.

In recent years, more houses have been built with or remodeled to add humidifiers to the heating systems. Increasing the moisture levels in homes has several advantages, one of which is to reduce perspiration from the human body and thereby to reduce the natural evaporative cooling effect and increase the relative warmth of the human occupants of the structure. In effect, it is

possible and usual to increase the humidity level and reduce the air temperature while keeping the same comfort level and saving money on the heating bill. Unfortunately, some lay individuals tend to overuse this phenomenon and run the risk of causing structural damage to the house by over humidifying the structure. For this reason, concern about ventilation levels is increasing.

Attic ventilation requirements are especially critical when a house is two or more stories high (moisture from the entire house tends to follow the warmer air to the top floor ceiling) or where inlet ventilation cannot exist on one or more sides of an attic space (such as in the lower attic of the Skipper residence).

The RC rate is a special rate which passes on to a consumer the savings to Duke which result from that consumer's changing the demand characteristics of his electricity service by limiting heat transfer from and to his residence. If insulation effectiveness is reduced by excessive moisture, the changes in demand characteristics will not occur and the savings to Duke will be nonexistent. In that case, the rest of the consumers will be subsidizing that consumer.

Here we have a case where, for whatever reason, Duke incorrectly calculated the ventilation requirements and, if the Skipper residence had some small additional ventilation area at some location, Duke would have, using its calculation methods, incorrectly allowed the Skipper house on the RC rate. The findings of fact above give the correct method of calculating the ventilation requirements in accordance with the North Carolina Building Code, the ASHRAE Handbook of Fundamentals, Manual J (by the Air Conditioning Contractors of America), Time-Savers (by Callender), Architectural Graphic Standards (by Ramsey & Sleeper), and good engineering practice.

Although the calculations show that the lower attic meets the RC requirements, there is a possibility that such is not the case as a practical matter. The record does not clearly show the location of the soffit vents around the perimeter of that space. The Complainant was unsure of the location of the soffit vents around the ground floor attic space. The late-filed exhibit of Duke, upon which there has been no cross-examination, would appear to indicate that five of the six soffit vents are located on the front of the house along the porch overhang, an unconditioned space. Only one of the vents appears to be placed along the conditioned space soffit area on the front side of the end wall. This combination should be expected to give excellent ventilation along the front side of the attic. However, since there appear to be no soffit vents along the rear of the space, and since the outlet vent is a dormer which is located approximately halfway up the roof rather than along the ridge area, the rear of the attic could be left with an unventilated dead air space as a practical matter. For purposes of this case, because of the oversizing of the outlet ventilation, it is assumed that the ventilation of the ground floor attic will meet the requirements of the RC rate.

It is important to note that the level of ventilation required by Schedule RC is appropriately greater than the minimum required by the North Carolina Building Code. However, the latter ventilation levels are <u>minimum</u> and are only appropriate for use with the lower levels of insulation required as minimum by the Code. When insulation levels are increased, the ventilation levels should also be increased appropriately. The North Carolina Building Code Council is reviewing the present Chapter 32 insulation standards with a view

toward upgrading them. They were originally effective in 1975 and were based upon the original proposals for ASHRAE Standard 90, which proposals were formulated in the 1968-70 era, based upon then existing and expected fuel prices, and were not significantly changed before codification.

The motion of the Public Staff to file a late exhibit should be denied. There is no evidence as to the questions which solicited the responses in the exhibit, and the exhibit is of no material value to the matters at issue in this docket.

It would be appropriate for Duke to consider establishing some kind of appeal or ombuds procedure within the Company to consider such cases as the present one. This particular case has been inordinately expensive for the Complainant, the Company, and the State. It is necessary and appropriate that each customer of a regulated utility have free access to the Commission when problems cannot be solved in a less formal manner, but an effective, in-house appellate might prove beneficial to customers and company alike in the future. Reports from such an ombudsman might also facilitate more swift review by the Commission, perhaps eliminating some travel and hearings.

It is concluded that Duke should review its procedures for review of customer complaints and for inspection of homes for qualification for Schedule RC or designation as an Energy Efficient Structure. It is recognized that it will not be efficient or appropriate for Duke personnel to measure and examine each ventilation opening or apparatus separately and that guideline numbers may appropriately be used in many cases. However, personnel who make such inspections or otherwise interact with and answer the questions and complaints of the public should be aware of the underlying factors behind the various methods of calculating and meeting requirements and should be conversant enough therewith to be able to impart the appropriate information to lay consumers. It is concluded that Duke should be given sufficient time to review its operating and training procedures and should file a report of its review with the Commission. The review should specifically include examination of forms, letters, or other standardized methods of transmitting information to consumers concerning their qualifications, or lack thereof, for specific rates.

IT IS, THEREFORE, ORDERED THAT:

(1) Duke shall report within 90 days on its review of its training and operations procedures with respect to the review of residences for qualification for Schedule RC or designation as an Energy Efficient Structure and with respect to the answer of questions and complaints from the lay public.

(2) The Skipper residence shall not be served under Schedule RC until it complies with the additional requirements as set forth herein.

(3) Except to the extent allowed herein, all outstanding Motions are denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February 1981.

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

ELECTRICITY

DOCKET NO. E-7, SUB 297

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Walter R. Skipper,	)	
Complainant	)	FINAL ORDER OVERRULING
vs.	)	EXCEPTIONS AND AFFIRMING
Duke Power Company,	)	RECOMMENDED ORDER
Respondent	)	

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, September 8, 1981, 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 the Complainant:

Karen E. Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: Walter R. Skipper

For the Respondent:

W. Edward Poe, Jr., Legal Department, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242

BY THE COMMISSION: On February 23, 1981, Hearing Examiner Allen L. Clapp entered a Recommended Order in this docket entitled "Recommended Order Requiring Examination and Report by Duke and Denying Service to Complainant on Schedule RC."

On March 10, 1981, the Public Staff filed a motion on behalf of Walter R. Skipper, the Complainant herein, entitled "Motion to Extend Time for Filing Exceptions and Notice of Appeal," which motion was granted by Commission Order dated March 13, 1981.

On June 3, 1981, Duke Power Company, the Respondent herein, filed its Report in response to decretal paragraph number 1 of the above-referenced Recommended Order.

On June 18, 1981, the Public Staff filed a "Motion for Extension of Time to File Exceptions" on behalf of the Complainant. Said motion was granted by Commission Order dated June 19, 1981.

On July 20, 1981, the Public Staff filed certain Exceptions to the Recommended Order on behalf of and at the direction of the Complainant and requested oral argument thereon before the full Commission.

Oral argument on the Exceptions filed herein by and on behalf of the Complainant was subsequently heard by the Commission on September 8, 1981.

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 February 23, 1981, 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 20, 1981, by the Public Staff on behalf of and at the direction of the Complainant be, and each is hereby, overruled and denied.

2. That the Recommended Order in this docket dated February 23, 1981, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of November 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Hammond did not participate.

DOCKET NO. E-2, SUB 391

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Carolina Power & Light) ORDER GRANTING
Company for Authority to Adjust and) PARTIAL INCREASE IN
Increase Its Electric Rates and Charges) RATES AND CHARGES

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, October 13, and October 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 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, 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 No. 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. (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.

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 incorported 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. However, 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.

On December 8, 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 10.80% 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 $71,811,000 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 December 10, 1980, CP&L filed its proposed rates and charges as required by the Commission. On December 11, 1980, the Commission issued an Order Approving Rates and Charges.

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%
	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.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS TO THE FINDINGS OF FACT WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

IT IS, THEREFORE, ORDERED THAT

1. The Applicant Carolina Power & Light Company 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. The Order Approving Rates and Charges issued December 11, 1980, and the Notice of Decision and Order of December 8, 1980, are affirmed.

3. CP&L shall continue 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. CP&L shall file with the Commission annually, until ordered otherwise, cost-of-service studies based on the annual winter coincident peak, annual summer coincident peak, average of annual and winter peaks, average and excess, peak and average, peak and base (as proposed by the Public Staff in Docket No. E-2, Sub 391), and modified average and excess methodologies (as proposed by Dr. Spann in Docket No. 79-300-E before the South Carolina Public Service Commission), and shall continue to collect data which will enable it to produce cost-of-service studies based on a single peak and/or on the average of multiple coincident peaks. CP&L shall file with all future applications for rate increases the summary sheets for the above-named cost-of-service studies on present and proposed rates.

4. CP&L shall present in its next rate case a thorough discussion of appropriate rate differentials, both within schedules and between schedules. In addition to whatever rate design proposals the Company wishes to recommend, CP&L shall also present specific proposals concerning the following matters for consideration by the Commission:

a. Reducing the number of rate schedules,
b. Simplifying individual rate designs,
c. Improving cost relativity of rate designs,
d. Improving revenue stability of rate designs,
e. Appropriately recognizing the relative impacts of older house construction, construction which meets the new building code insulation requirements, and construction which meets the residential conservation rate insulation requirements on the costs of providing the electricity used in buildings of such constructions, and
f. Appropriately recognizing demand impacts on system costs with (and without, if applicable) demand ratchets.

Further, in the context of future planning, CP&L shall present for consideration a detailed plan for future rate design changes including a suggested timetable for such changes.

5. For applicable residential customers, CP&L shall separately itemize the dollar amount of the conservation discount on the bill statement under the heading "Conservation Discount."

6. 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.

7. CP&L shall file with the Chief Clerk of the Commission no later than six months from the issuance date hereof the data set forth under Evidence and Conclusions for Finding of Fact No. 6 relating to deferred income taxes associated with the cost of removal.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of January 1981.

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

COMMISSIONER LEARY, CONCURRING: I concur in the Decision and Order entered by the Commission Panel in this docket, but wish to address one particular issue which is of personal concern to me. Although I do have some reservations about the choice of the peak and average demand allocation methodology for use in this case, I am primarily concerned with the potential precedential impact such choice may have on the Commission in future CP&L general rate cases. It should be stated, however, that I do believe that the evidence offered in this docket does support a change from use of the summer coincident peak responsibility demand allocation methodology which has heretofore been approved by the Commission in CP&L general rate cases. Nevertheless, I am genuinely concerned that the record in this case does not, in my opinion, contain and reflect the type of evidence and data necessary to fully assure the Commission that use of the peak and average methodology is in fact more correct than the peak and base demand allocation method advocated herein by the Public Staff. Therefore, I wish to clearly indicate my personal belief that this Commission should not in any way feel bound as a matter of precedent to follow and adopt the peak and averge methodology in future CP&L general rate cases, unless use of such demand allocation methodology is clearly supported by competent evidence.

I further believe that it is imperative for CP&L to strive to complete the demand cost of service studies which it currently has in process as soon as possible so that the Commission will, hopefully as early as CP&L's next general rate case, have all of the data necessary to fully and properly consider and address the issue discused hereinabove. In this regard, I strongly believe that the Commission should and must be able to assure itself, insofar as it is reasonably possible to do so, that the demand allocation methodology chosen (a) fairly reflects the costs which should be contributed by all customer groups with respect to peak and off-peak demand, (b) provides reasonably accurate price signals to all consumers designed to encourage efficient and responsible use of electric power, and (c) is supported by valid demand cost of service studies.

Douglas P. Leary, Commissioner

DOCKET NO. E-2, SUB 411

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Carolina Power & Light Company	) ORDER APPROVING ADJUSTMENT
for Authority to Adjust Its Electric Rates	) OF RATES AND CHARGES
and Charges Pursuant to G.S. 62-134(e)	) PURSUANT TO G.S. 62-134(e)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 16 and 17, 1981

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

John T. Bode, Bode, Bode & Call, P. A., Attorneys at Law, P. O. Box 391, Raleigh, North Carolina 27602

Robert T. Bockman, Associate General Council, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Robert F. Page, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602

For North Carolina Textile Manufacturers Association, Inc.:

Thomas R. Eller, Jr., Attorney at Law, P. O. Drawer 27866, Raleigh, North Carolina 27611

BY THE COMMISSION: On January 26, 1981, Carolina Power & Light Company (CP&L) filed an application with the North Carolina Utilities Commission pursuant to G.S. 62-134(e) and Commission 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 December 31, 1980, by increasing the amount included for fuel expenses in the base retail schedules by 0.196 cents per kilowatt-hour for bills rendered on and after April 1, 1981. These adjusted rates would be effective for the billing months of April, May, June, and July 1981.

On January 29, 1981, the Commission issued an Order which suspended the tariff, set the matter for hearing beginning at 2:00 p.m., on February 16, 1981, and required public notice. By Order dated February 10, 1981, an evening hearing was scheduled for February 16, 1981, at 7:00 p.m. On February 11, 1981, the Public Staff filed a "Notice of Intervention" in this proceeding.

The matter came on for hearing as scheduled on February 16, 1981. CP&L, North Carolina Textile Manufacturers Association, Inc., and the Public Staff were present and represented by counsel. CP&L presented the testimony of the following witnesses: Joe A. Chapman, Supervisor - Rate Support; R. A. Watson, Vice President - Fuels; and Ben J. Furr, Vice President - Nuclear Operations.

The Public Staff presented the testimony of Daniel M. Sullivan, Utilities Engineer with the Public Staff Electric Division.

Witness Sullivan testified that, upon being advised by the Public Staff Legal Division that purchased power expenses should be excluded from consideration in fuel clause proceedings, he had recalculated the base fuel component sought by CP&L in its application so as to eliminate the cost of any electric power purchased by it. He testified that CP&L had applied for a decrease in its basic

rates from 1.498 cents per kilowatt-hour to 1.249 cents per kilowatt-hour, and had added a delayed billing factor of 0.434 cents per kilowatt-hour to that new base fuel cost for a net 0.196 cents per kilowatt-hour increase including associated gross receipts taxes. Witness Sullivan further testified that, by eliminating purchased power, CP&L's base fuel cost would decrease from 1.498 cents per kilowatt-hour for the test period to 1.190 cents per kilowatt-hour and that after adding the delayed billing factor of 0.434 cents per kilowatt-hour, the net result would be a base fuel cost component of 1.624 cents per kilowatt-hour including associated gross receipts taxes.

Counsel for both the Public Staff and the North Carolina Textile Manufacturers Association, Inc., argued that, as a matter of law, CP&L should not be permitted to recover its purchased power expenses in this proceeding, and that an increase in the base fuel cost of only 0.134 cents per kilowatt-hour including associated gross receipts taxes should be approved. CP&L argued that purchased power is a properly includable expense in a G.S. 62-134(e) proceeding and that the full base fuel cost adjustment it had applied for, 0.196 cents per kilowatt-hour, should be approved.

At the evening public hearing, testimony in opposition to the proposed increase was presented by 21 public witnesses, who were representatives of either Carolina Action, Kudzu Alliance, or the Conservation Council of North Carolina.

On February 13, 1981, counsel for and on behalf of the North Carolina Textile Manufacturers Association, Inc., filed a "Petition For Leave To Intervene" in this docket. On February 16, 1981, counsel for and on behalf of Kudzu Alliance filed a "Petition For Leave To Intervene." Both petitions were granted by the Commission upon commencement of the hearing on February 16, 1981, at 2:00 p.m.

Based upon a careful consideration of the verified application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company 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 an application for adjustment in its rates and charges pursuant to G.S. 62-134(e).

2. During the four-month period ended December 31, 1980, CP&L's systemwide nuclear capacity factor, computed in accordance with the Commission's requirement for Base Load Power Plant Performance and including nuclear capacity lost due to economic dispatch, was 55.6 percent; for the 12-month period ended December 31, 1980, CP&L's nuclear capacity factor was 45.8 percent. While CP&L's nuclear capacity factors for the respective periods were below the 60% level established in NCUC Rule R8-46, the Commission finds, based upon the uncontroverted evidence of CP&L witness Furr, that the management decisions and practices relating to the performance of CP&L's nuclear units were reasonable and prudent.

3. During the four-month period ended December 31, 1980, CP&L's fuel generating costs were $0.01249 per kilowatt-hour. The delayed billing factor ordered collected by CP&L in Docket No. E-2, Sub 402, during the period April 1981 through July 1981 to be added to the normal application of the fuel clause formula for the four-month period ended December 31, 1980, is $0.00461 per kilowatt-hour. In accordance with NCUC Rule R1-36 and the formula adopted pursuant thereto, the proposed increase in rates due solely to the cost of fuel and associated gross receipts taxes and including the effect of the Commission's decision entered in Docket No. E-2, Sub 402, would be $0.00196 per kilowatt-hour for the four billing months of April through July 1981.

4. All jurisdictional electric utilities are interconnected to an interlocking power grid which facilitates regional reliability of electric generation and the purchase and sale of electric energy among neighboring utilities. The purchase and sale of electric energy among neighboring utilities is beneficial to both the utilities and their customers since it enhances the economies of scale inherent in the interlocking power grid and permits each electric utility to purchase power from the other utilities in emergencies and whenever the other utilities have power available to sell at cheaper cost than a utility's own incremental power generation.

5. In addition to North Carolina, 22 of the other 24 states east of the Mississippi River permit purchased power to be included in their fuel clauses. The Federal Energy Regulatory Commission (FERC) also includes purchased power in wholesale fuel clauses. The Public Utility Regulatory Policies Act (PURPA) of 1978, requires states with automatic fuel adjustment clauses "to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) . . ." and authorizes the FERC to exempt electric utilities from any provision of state law, or from any state rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities if the FERC determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources.

6. The energy portion of purchased and interchange power fuel costs has been allowed to be included in fuel clause proceedings for Carolina Power & Light Company since 1976; the capacity portion of such costs are not permitted to be recovered in the Commission's fuel cost adjustment formula. In 1980, the purchased power and interchange transactions of Carolina Power & Light Company reduced its power production costs by approximately $4.5 million on a total company basis. In the four-month period ending December 31, 1980, such transactions reduced CP&L's total company power production costs by approximately $1 million. Substantially all of the power purchased in the four-month test period by CP&L was economy power which is inherently cheaper than power generated at that point in time from CP&L's own generating plants. It is the declared policy of the State of North Carolina to encourage the coordination of the operation of utility systems to increase the economy and reliability of utility service.

7. The recovery by CP&L of the allowed portions of purchased and interchange power fuel costs on a timely basis through the fuel cost adjustment formula adopted by this Commission encourages CP&L to substitute purchased and interchange power whenever such power is less expensive than power from CP&L's own generating plants. This results in the most efficient utilization of plant

and of the nation's fuel resources and in lower costs to the using and consuming public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in CP&L's verified application, in prior Commission Orders entered in fuel cost adjustment proceedings of which the Commission takes notice, and G.S. 62-134(e). This finding of fact is essentially informational, procedural, and jurisdictional in nature and the matters it involves are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding of fact is contained in CP&L's verified application and in the testimony and exhibits of CP&L witness Furr.

Based upon the uncontroverted testimony of Mr. Furr, the Commission concludes that CP&L's management decisions and practices relating to the performance of CP&L's nuclear generating units during the period of time pertinent hereto were reasonable and prudent.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact is contained in CP&L's verified application, the testimony and exhibits of CP&L witness Chapman, and the testimony of Public Staff witness Sullivan.

According to CP&L witness Chapman, the computations of the costs of fuel and revenues billed and the revised base fuel cost to be effective beginning with the billing month of April 1981, were derived in accordance with the Commission's previously adopted fuel cost formula and previous Commission Orders. Public Staff witness Sullivan verified the fact that the calculations submitted by CP&L were mathematically accurate and that, had the Public Staff included the allowed fuel cost of purchased power and interchange power, its computation of the base fuel cost component would have been identical to that filed by CP&L.

The computations of the base fuel cost component by CP&L witness Chapman and Public Staff witness Sullivan included the factor for gross receipts taxes in accordance with the approved fuel cost formula. Even prior to the adoption of the current fuel costs formula in 1976, the Commission allowed the recovery in the fuel clause of the gross receipts tax associated with fuel cost revenue. For example, the previous fossil fuel adjustment clause, upheld by the North Carolina Supreme Court in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976), included the factor for gross receipts taxes associated with fuel cost revenues. The gross receipts taxes so recovered are related to revenue collected through the fuel clause, not the revenue collected through CP&L's basic rates. If the base cost of fuel calculated by the fuel cost formula did not include the factor for gross receipts taxes, the application of the formula would ensure that CP&L would not recover the full cost of fuel and the resulting rates and charges would not be considered just and reasonable. Consequently, the Commission has consistently provided for the recovery of such expense in the fuel adjustment clause.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commisssion participates in the activities of the Southeastern Electric Reliability Council through its representation on the State-Federal Executive Committee and other activities. Pursuant to G.S. 62-2, the Commission has promoted the coordination of interstate and intrastate inter-ties and operations of adjacent utilities for the purposes of increasing the adequacy, the reliability, and the economy of electric utility service by the utilities which serve North Carolina consumers.

The Commission also supports the voluntary interlocking arrangements whereby CP&L, Duke, Vepco, SCE&G, TVA, Appalachian Power Company, and other neighboring utilities are interconnected in order to increase regional reliability and efficient exchange of power for economy reasons. This arrangement includes telecommunication whereby CP&L (and the other utilities) constantly exchange information regarding the marginal cost of electric power on its system and compares those costs with the costs of its neighbors. When the neighboring utilities can provide cheaper power, CP&L purchases that power in lieu of generating more expensive power. When CP&L has cheaper power available which is not needed for its customers, CP&L sells that power to its neighbors. In either event, only the allowed fuel cost of that generation is permitted to be recovered in the fuel cost adjustment formula. The formula also flows to the ratepayers any profits which may be made by the utility on economy sales. The Commission concludes that the foregoing practices are beneficial to the using and consuming public and should be continued.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Company witness Chapman's uncontroverted testimony was that in addition to North Carolina, twenty-two of the twenty-four states east of the Mississippi River permit the inclusion of purchased and interchange power in fuel clauses. Witness Chapman testified that from a rate standpoint it is considered desirable to encourage electric utilities to purchase power whenever the utility could not produce power from its own plants at lesser cost. Witness Chapman also testified with respect to, and the Commisssion took judicial notice of, the provisions of the Public Utility Regulatory Policies Act of 1978, whereby states with automatic fuel adjustment clauses are required to provide incentives . . . for economical purchase . . . of electric energy and the FERC is authorized to exempt electric utilities from state laws or regulations which prohibit utilities from operating their systems to obtain economical utilization of available facilities and resources.

The Commission concludes that the policy of the federal government and that of the vast majority of the states east of the Mississippi River is to encourage electric utilities in the efficient use of their plants and resources by permitting the timely recovery of the fuel portion of purchased and interchange power.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The use of a formula for the recovery of fuel costs by an electric utility has been a long-standing regulatory practice of this Commission, which has been approved as a ratemaking device by the North Carolina Supreme Court. State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976).

By the enactment of G.S. 62-134(e), the North Carolina General Assembly terminated the previous automatic fuel adjustment clause and in its place established a special, expedited procedure whereby the public utility could continue to "increase its rates and charges based solely upon the increased cost of fuel used in the generation and production of electric power." State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1977).

Thereafter, on February 20, 1976, the Commission issued its Order in Docket No. E-2, Sub 264, whereby, inter alia, the Commission directed CP&L to file a monthly fuel cost formula which was designed to constitute the basis of rate applications pursuant to G.S. 62-134(e). The formula therein adopted by the Commission expanded the formula approved by the Supreme Court in Commission v. Edmisten, 291 N.C. 327, supra to include nuclear fuel costs and the energy portion of purchased power and interchange power. The capacity costs of purchased and interchange power were and are not included in said formula. The fuel cost adjustment formula was adopted to enable the Commission and Staff to review more effectively the fuel cost filings made in accordance with G.S. 62-134(e) in the expedited proceedings provided for by that statute.

The inclusion of the allowed fuel costs of purchased power and interchange power has not been modified or altered since the adoption of the formula in 1976. In nearly forty individual proceedings and two generic proceedings concerning the formula and the recovery of fuel costs, this Commission has consistently allowed the recovery of CP&L's allowed fuel costs for purchased power and interchange power. As acknowledged in our Order dated May 18, 1978, in Docket No. E-2, Sub 316, the Public Staff has also heretofore recognized that "(p)roperly monitored, the formula accurately tracks changes in the cost of all fuel, nuclear as well as fossil, and the energy portion of purchased and interchange power."

A review of our application of the language and procedures of G.S. 62-134(e) clearly indicates our uniform and undisturbed interpretation that the cost of a utility's fuel to be recovered in a fuel proceeding includes allowed fuel costs for purchased and interchange power which are described in the fuel cost adjustment formula. The formula's computation includes only the costs of fuel used to generate or produce power or the cost of equivalent energy purchased. For example, the cost of a ton of coal burned by Duke Power Company included in the price of power purchased by CP&L is just as much a cost of fuel to CP&L as if CP&L had actually burned the coal itself. Consequently, the cost of fuel burned by a selling utility should be considered a component of the fuel cost of the purchasing utility which may be recovered in a proceeding pursuant to G.S. 62-134(e). See, State ex rel. Utilities Commission v. Virginia Electric and Power Company, 48 N.C. App. 452, 269 S.E. 2d 657 (1980). Any other conclusion is simply at odds with the language of G.S. 62-134(e) and our consistent construction of such language.

The Public Staff has urged the Commission to abandon that consistent construction of the provisions of G.S. 62-134(e) based on the Public Staff's interpretation of the recent decision of the Court of Appeals of North Carolina in Virginia Electric and Power Company, 48 N.C. App. 452, supra (Vepco). While the Public Staff acknowledges that our previously adopted treatment of the costs of purchased and interchange power in fuel cost adjustment proceedings was

the appropriate application of G.S. 62-134(e), the Public Staff now argues that as a consequence of the Vepco decision, the consideration of such costs must be reserved for a general ratemaking proceeding pursuant to G.S. 62-133.

The Commission's review of the decision of the Court of Appeals does not lead us to the conclusion that Vepco limits our consideration of the costs of fuel in a G.S. 62-134(e) proceeding as narrowly as the Public Staff recommends. There is neither expressed nor implied language in that decision which suggests that the Court of Appeals intended to eliminate the allowance of purchased power and interchange power fuel costs from recovery in a fuel cost adjustment proceeding. Had the Court of Appeals intended to overturn our long established regulatory practice as now urged by the Public Staff, the Court would have decided the issue directly. It is clear, moreover, that the Vepco decision did not concern the issue of purchased and interchange power at all.

The Court of Appeals held "only that plant efficiency as it bears upon fuel cost is not a factor to be considered in the limited and expedited proceeding provided for by G.S. 62-134(e)." 48 N.C. App. at 462, 269 S.E. 2d at 662. The elements of plant efficiency at issue in Vepco depended "upon long range maintenance decisions and practices carried out over a long period of time." 48 N.C. App. at 462, 269 S.E. 2d at 662. The Vepco decision holds only that our review of long range mangement decisions and their consequences for overall system efficiency is appropriate and necessary for a general ratemaking proceeding under G.S 62-133. In that context, adjustments to rate base or rate of return may be made for plant inefficiency if the evidence justifies such action.

In the final analysis, the Public Staff's interpretation of the Vepco decision would serve not only to deprive a utility's ratepayers of the benefits of the economies of purchased and interchange power, but would also operate to impede the most efficient mechanism for the timely recovery of fuel costs. The cost of fuel burned by a utility selling power is no less volatile nor substantial than the cost of fuel burned by a utility purchasing the power. See, 291 N.C. at 346-348, 230 S.E. 2d at 662-664. Furthermore, G.S. 62-2 declares the public policy of the State of North Carolina to be, in pertinent part, to "provide fair regulation of public utilities in the interest of the public," to "promote adequate, reliable and economical utility service," to "provide just and reasonable rates . . . consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy," to "foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed," and to promote and coordinate "interstate and intrastate public utility service and reliability of public utility energy supply." It is certainly consistent with these policies for utilities to supply power to each other from available capacity in order to increase the reliability and economy of the operations of each other and to improve the quality and economy of the service provided to their consumers. Further, it is consistent with these policies to allow the flow-through of the costs and benefits of such purchased power and interchanges.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witness Chapman testified that, on a total company basis, CP&L had saved $4.5 million in 1980 and approximately $1 million in the test period in fuel expenses by substituting purchased power for its own generation. Witness Chapman testified that CP&L would require very substantial additions to working capital if the allowed fuel costs of purchased and interchange power were removed from the fuel cost adjustment formula. Witness Chapman also testified that the removal from the fuel formula of the allowed fuel costs of purchased and interchange power would severely hamper the Company's ability to wheel power to neighboring utilities.

Public Staff witness Sullivan testified that from a rate design standpoint it was considered beneficial to include the allowed fuel costs of purchased and interchange power in fuel cost adjustment formulas and, absent the legal argument raised by the Public Staff attorneys, he would recommend its continuation in this jurisdiction.

Adoption of the adjustment proposed herein by the Public Staff would lead to the result that for the test period, CP&L would be denied the right to recover in its base fuel cost rates that portion of the approximately $6 million applicable to its North Carolina operations which it expended for allowed fuel costs of purchased and interchange power solely to save the using and consuming public approximately $1 million, since it would have cost CP&L approximately $7 million on a total company basis to generate the same power on its own system. CP&L had every right and expectation that it would recover such fuel-related costs since the Commisssion has permitted those types of recoveries since 1976 pursuant to the fuel cost adjustment formula adopted in general rate cases and generic hearings. Furthermore, the Public Staff has never raised any question of impropriety or alleged any improper use of purchased power by CP&L.

Therefore, the Commission concludes that adoption of the Public Staff proposal as advocated herein would discourage CP&L in its pursuit of energy efficiency in its system operations, would unfairly and unjustly penalize CP&L for proper operations in the test period, and would ultimately result in higher basic rates.

Accordingly, the Commission declines to accept the adjustment proposed herein by the Public Staff to remove the allowed fuel costs of purchased and interchange power from the fuel cost adjustment formula.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for bills rendered *beginning with the billing month of April 1, 1981, and for service rendered on and after the effective date of this Order, CP&L shall adjust its base retail rates by the addition of an amount equal to $.00196 per kilowatt-hour and shall roll this amount into each kilowatt-hour block of each rate schedule.

2. That CP&L shall file appropriate rate schedules with the Commission in conformity with this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of February 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sharon C. Credle, Deputy Clerk

(SEAL)

*Corrected by Errata Order dated 3-6-81.

DOCKET NO. E-2, SUB 416

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Carolina Power & Light Company for Authority) NOTICE OF DECISION
to Adjust and 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 October 12, 1981

The Assembly Room, County Administration Building, 320 Chestnut Street, Wilmington, North Carolina, on October 19, 1981

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 14-16, October 20-23, October 27-30, and November 3-5, 1981

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Leigh H. Hammond and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Richard E. Jones, Fred D. Poisson, and Robert W. Kaylor, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

Robert C. Howison, Jr., and Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

For the Intervenors:

Jerry B. Fruitt, Eller & Fruitt, Attorneys at Law, P.O. Drawer 27866, Raleigh, North Carolina 27612
For: The North Carolina Textile Manufacturers Association, Inc.

Daniel V. Besse, Attorney at Law, 401-C Holt Avenue, Greensboro, North Carolina 27405
For: The Conservation Council of North Carolina

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Union Carbide Corporation, Federal Paper Board Company, Ideal Basic Industries, Monsanto of North Carolina, Inc., and Weyerhaeuser Company

David A. McCormick, Attorney, Regulatory Law Office, U.S. Army Legal Services Agency, 5611 Columbia Pike, Falls Church, Virginia 22041
For: Consumer Interest of U.S. Department of Defense

For the Public Staff:

Theodore C. Brown, Jr., Thomas K. Austin, and Karen E. Long, 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 15, 1981, 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 $151,432,000 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, 1980, or approximately a 16.37% 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 14, 1981. The Company's Application alleged that the $151,432,000 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 programs. Included among the reasons set forth in the Application as necessitating the rate relief requested were: the effects of inflation, the addition of new plant and equipment, and demand for a higher return by the investment community attributable to the impact of inflation.

The Commission, being of the opinion that the increase in rates and charges proposed by CP&L were matters affecting the public interest, by Order issued on June 12, 1981, 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 October 12, 1981, 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 Public Staff on behalf of the Using and Consuming Public on May 18, 1981. The Intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations.

On May 13, 1981, the Kudzu Alliance filed a Petition to Intervene and on June 4, 1981, the Commission issued an Order allowing the intervention.

By petition filed on July 8, 1981, the United States of America, the Department of Defense, petitioned to intervene and on July 10, 1981, the Commission allowed the intervention.

The North Carolina Textile Manufacturers Association, Inc. (NCTMA), filed a Petition to Intervene on July 23, 1981, and on July 27, 1981, the Commission allowed the intervention.

On September 17, 1981, the Conservation Council of North Carolina, Inc. (CCNC), petitioned to intervene, and on September 23, 1981, the Commission allowed the intervention.

On August 21, 1981, CP&L filed supplemental or updating testimony to reflect known changes in the Company's operations through the period ended May 31, 1981. On August 31, 1981, the Public Staff filed a motion moving that data which CP&L filed on August 21, 1981, be dismissed and stricken from the Record or in the subordinate alternative that the hearing be deferred. On September 4, 1981, CP&L filed its Reply and the matter was heard on Oral Argument on September 8, 1981. An Order was issued by the Commission on September 10, 1981, denying the motion of the Public Staff. In the Order, the Commission stated that the test period consisting of the 12 months ended December 31, 1980, which was originally stated in the June 12, 1981, Order of the Commission setting the matter for hearing as a general rate case, remained in full force and effect.

NCTMA filed a motion on September 29, 1981, moving that the Commission consolidate CP&L's fuel clause (Docket No. E-2, Sub 434) with this docket. On October 1, 1981, CP&L filed its Reply to the motion and on October 2, 1981, the Public Staff filed a motion joining with NCTMA in its Motion for Consolidation. In a ruling from the bench after oral argument on October 9 and in a written Order issued on October 13, 1981, the Commission directed that the record in Docket No. E-2, Sub 434, be incorporated into the record in this proceeding, without prejudice to the right of any party not a party in Docket No. E-2, Sub 434, to be heard on the record and to cross-examine any witness in that docket. In all other respects the motions of NCTMA and the Public Staff were denied.

Federal Paper Board Company, Inc., Ideal Basic Industries, Monsanto of North Carolina, Inc., Union Carbide Corporation, and Weyerhaeuser Company filed petition to intervene on October 2, 1981, and, by Order of October 8, 1981, the Commission allowed the Petition.

On October 12, 1981, NCTMA filed "Motion for Request for Expedited Ruling on Panel's Denial to Consolidate Dockets," and on October 16, 1981, the Public Staff and the Conservation Council filed a motion to "Reconsider or in the Alternative to Require Applicant to Produce Direct Testimony in Docket No. E-2, Sub 416." Both motions were denied by the Commission on October 20, 1981.

The proceeding came on for public hearings in the territory served by CP&L as noted herewith. Public night hearings were scheduled and held by the Commission for the specific purpose of receiving testimony from public witnesses in

Asheville, on Monday, October 12, 1981; in Raleigh, on Wednesday, October 14, 1981; and in Wilmington, on Monday, October 19, 1981. The following persons appeared and testified at these hearings:

Asheville - Fred Sealey, Helen T. Reed, Charles Brookshire, Reginald Teague, Bruce Taggart, Bob Warren, Robert Hanafin, Keith Thompson, and Bruce Hart.

Wilmington - Jesse L. Batson, Coley Goodwin, L.H. Waters, George E. Hughes, Sr., Lilly English, Dale Harmon, Issac B. Lang, W.B. Brown, Niel Bender, Linda Bedo, Rick Shiver, Ed Pickett, W.W. Ward, Ronald Shachelford, Robert Hendrick, W.N. Jordan, Len Anderson, Alma Peterson, Anne Branch, Harold Eugene Thompson, Tom Haughton, Bill Haughton, Mary Lee Lock, Marvin Congleton, and Jane Warren.

Raleigh - Robert Eidus, Mary Odom, Charles Green, James Garrett, Daisy Brown, Marceline Hinton, Augustus S. Anderson, Jr., Slater E. Newman, Diana Koenning, John Fitts, W.B. Lewis, Stuart Hutchson, F.K. Yarborough, Lizzie Strickland, Betsy Pace, Stephen M. Buffkin, Lavon Page, and Joe Whitfield.

The case in chief came on for hearing as ordered on October 14, 1981, 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. Dr. Willard T. Carleton, Professor School of Business Administration, UNC, Chapel Hill, North Carolina (direct and supplemental testimony);

3. Thomas S. Laguardia, Engineer, General Manager of Waste Management Services of Nuclear Energy Services, Inc., Shelter Rock Road, Danbury, Connecticut;

4. John S. Ferguson, Manager, Deloitte, Haskins & Sells, Dallas, Texas;

5. Edward G. Lilly, Jr., Senior Vice President and Chief Financial Officer of CP&L (direct and supplemental testimony);

6. Paul S. Bradshaw, Vice President and Controller of CP&L (direct, supplemental, and rebuttal testimony);

7. David R. Nevil, Manager-Rate Development and Administration in the Rates and Service Practices Department of CP&L (direct and supplemental testimony);

8. Joe A. Chapman, Supervisor of Rate Support, CP&L;

9. Norris L. Edge, Vice President - Rates and Service Practices, CP&L;

10. Archie W. Futrell, Jr., Director of Energy & Economic Forecasting and Special Studies for CP&L (direct and rebuttal testimony);

11. R.A. Watson, Vice President of Fuel in the Fuel and Material Management Group of CP&L;

12. Lynn W. Eury, Senior Vice President of Power Supply for CP&L; and

13. Benny J. Furr, Vice President of Nuclear Operations, CP&L.

The Public Staff offered the testimony and exhibits of the following witnesses:

1. Thomas S. Lam, Utilities Engineer with the Electric Division of the Public Staff;

2. Timothy Carrere, Utilities Engineer with the Electric Division of the Public Staff;

3. David F. Creasy, Utilities Engineer with the Electric Division of the Public Staff;

4. George E. Dennis, Staff Accountant with the Accounting Division of the Public Staff;

5. William E. Carter, Jr., Assistant Director of Accounting of the Public Staff (direct and supplemental testimony);

6. Dr. Richard G. Stevie, Economist with the Economic Research Division of the Public Staff (direct and supplemental testimony);

7. William W. Winters, Supervisor of the Electric Section of the Public Staff Accounting Division (direct and supplemental testimony); and

8. James G. Hoard, Jr., Staff Accountant with the Public Staff Accounting Division (direct and supplemental testimony).

The Intervenor Kudzu Alliance offered the testimony and exhibits of Wells Eddleman. The Intervenor United States of America, Department of Defense, offered the testimony and exhibits of John William McCabe, III, of the consulting firm McCabe Stevens, Reston, Virginia.

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. Also, NCTMA offered the testimony and exhibits of John A. Floyd, II, Harriet and Henderson Yarns, Incorporated; Robert A. Harden, Jr., Fieldcrest Mills, Inc.; James M. Middleton, Jr., Allied Corporation; and John A. Hoyle, Burlington Industries.

On April 3, 1981, Theodore T. Prichard, President, Bladen Farmers Exchange, Inc., filed a complaint against CP&L, alleging generally that CP&L's Small General Service Schedule SGS-25B was unconstitutional, arbitrary, and unjust and unreasonable. On April 24, 1981, CP&L filed its Answer to the complaint. In its Answer the Company alleged that it had properly applied the provisions of the rate schedule as approved by the Commission. The complaint proceeding was designated as Docket No. E-2, Sub 417. After a hearing on the complaint, the

Commission issued an Order on May 29, 1981, directing that the complaint be heard and considered in this rate proceeding. Mr. Prichard appeared as a witness and offered testimony in this proceeding, and the Public Staff offered the testimony of David F. Creasy concerning Mr. Prichard's complaint.

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. 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. 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. The overall quality of electric service provided by CP&L to its North Carolina retail customers is satisfactory.

4. It is appropriate to continue to use the "summer peak and average" method for making cost-of-service allocations in this proceeding as adopted in Docket No. E-2, Sub 391. This continuation was proposed by the Company and concurred with by the Public Staff for use in this case. 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 "summer peak and average" allocation method. It is appropriate to continue to examine the use of the various methods of cost allocation.

5. CP&L by its application here is seeking an increase in its basic rates and charges to North Carolina retail customers of approximately $151,432,000.

6. The test period for purposes of this proceeding is the 12-month period ended December 31, 1980, adjusted for all changes in rate base, revenues, and expenses through May 31, 1981, and for certain other changes based on circumstances and events occurring up to the time of the close of the hearings in this docket.

7. The North Carolina retail jurisdictional allocations of operating revenues, operating revenue deductions, and rate base amounts should reflect the pro forma effect of the additional 95 MW load on CP&L's system related to the Power Agency Number 3 members served by Virginia Electric and Power Company prior to December 30, 1981.

8. CP&L's original cost of net investment in electric plant is $1,714,277,000, consisting of electric plant in service of $1,933,213,000, net

nuclear fuel of $43,762,000, and construction work in progress of $392,199,000, reduced by accumulated depreciation of $459,857,000; and accumulated deferred income taxes of $195,040,000.

9. The reasonable original cost of investment in plant under construction (construction work in progress) to be included in rate base is $392,199,000 comprised of $275,203,000 related to Harris #1, $34,544,000 to Harris #2, and $82,452,000 to Mayo #1.

10. The reasonable allowance for working capital and deferred debits and credits is $117,743,000.

11. CP&L's original cost rate base is $1,832,020,000. This consists of net original cost of electric plant of $1,714,277,000, plus a reasonable allowance for working capital and deferred debits and credits of $117,743,000.

12. CP&L's appropriate gross revenues for the test year, under present rates and after accounting and pro forma adjustments are $910,690,000.

13. Approximately 23% of the dwelling places in CP&L's service area are rental units, occupied by tenants who do not qualify for the benefits and incentives offered to homeowners in CP&L's conservation programs. This omission is a deterrent to the success of the programs, both for the tenants and CP&L - and, to a certain degree, also the landlord. Many of these tenants throughout CP&L's service area live in houses or apartments that have little or no insulation, are energy inefficient, and are generally unaffected by the Company's present conservation programs. It is appropriate for CP&L to undertake a limited experimental program using sample rental housing premises to develop a conservation program which specifically applies to customers in rental housing.

14. The National Regulatory Research Institute (NRRI) is performing valuable work for the state utilities commissions, including this Commission, and for the regulated utilities by providing research and technical assistance and educational programs. There is a need for the member states of National Association of Regulatory Utility Commissioners to establish regularized funding for the NRRI to ensure that the Institute can continue its work despite the certain loss of Federal funding. It is reasonable and appropriate for CP&L to contribute to the funding of the Institute.

15. CP&L's reasonable level of test year operating revenue deductions, after normalization and pro forma adjustments, is $744,914,000.

16. The fuel cost component which should be included in the rates approved in this proceeding is the base fuel cost approved in Docket No. E-2, Sub 434, the most recent proceeding under G.S. 62-134(e).

17. The performance of CP&L's nuclear generating units during the test year and until the close of the hearing was below average. The total nuclear capacity factors for the 12 months ended August 31, 1981, and the 12 months ended May 31, 1981, were 47.08% and 36.37%, respectively. Such low capacity factors have resulted in increased costs of providing electric service.

18. The reasonable capital structure to be employed as a basis for setting rates in this proceeding is composed as follows:

Debt	49.86%
Preferred	13.96%
Equity	36.18%
Total	100.00%

19. The Company's proper embedded costs of debt and preferred stock are 10.27% and 8.91%, respectively. The reasonable rate of return for CP&L to be allowed to earn on its common equity is 16.0%. The 16.0% return on common equity found fair by this Commission, while remaining within a range of reasonableness, is properly determined to be at the lower end of such a range due to the below average performance of CP&L's nuclear generating units during the test year and up until the close of the hearing. Using a weighted average for the Company's cost of debt, preferred stock, and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 12.15% 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.

20. CP&L should be allowed an increase in annual gross revenues of $119,197,000. Based on the foregoing, the annual revenue requirement approved herein is $1,029,887,000. This increase is required in order for the Company to have a reasonable opportunity to earn the 12.15% 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.

21. The rate designs proposed by CP&L are reasonable and appropriate as modified in the Notice of Decision and Order issued by the Commission on December 15, 1981.

22. Small General Service Schedule SGS-25B, as approved by the Commission in Docket No. E-2, Sub 391, is a legal and valid rate and was properly applied by the Company in its bills to The Bladen Farmers Exchange, Inc. The present design of the minimum bill calculation for that schedule only includes the customer charge and a minimum demand charge per KW of billing demand; no minimum charge is made for each kilowatt-hour of electricity consumed. It is appropriate to study methods of redesigning the minimum charge portion of all rates.

ELECTRICITY

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED DECEMBER 31, 1980
UPDATED THROUGH MAY 31, 1981

(000's Omitted)

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Net operating revenues	$910,690	$119,197	$1,029,887
Operating Revenue Deductions			
Operation and maintenance expenses	515,393		515,393
Depreciation	77,306		77,306
Taxes - other than income	73,878	7,152	81,030
Income taxes - State and Federal	55,427	55,171	110,598
Investment tax credit - net	1,202		1,202
Provision for deferred income taxes - net	21,324		21,324
Interest on customer deposits	384		384
Total operating revenue deductions	744,914	62,323	807,237
Net operating income	$165,776	$ 56,874	$ 222,650

ELECTRICITY

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED DECEMBER 31, 1980
UPDATED THROUGH MAY 31, 1981

(000's Omitted)

	Present Rates	After Approved Rates
Investment in Electric Plant		
Electric plant in service	$1,933,213	$1,933,213
Net nuclear fuel	43,762	43,762
Construction work in progress	392,199	392,199
Less: Accumulated provision for depreciation	(459,857)	(459,857)
Accumulated deferred income taxes	(195,040)	(195,040)
Net investment in electric plant	1,714,277	1,714,277
Allowance for Working Capital and Deferred Debits and Credits		
Cash	3,013	3,013
Materials and supplies	91,966	91,966
Prepayments	4,940	4,940
Investor funds advanced for operations	13,572	13,572
Other additions	14,438	14,438
Other deductions	(5,382)	(5,382)
Customer deposits	(4,804)	(4,804)
Total	117,743	117,743
Original cost rate base	$1,832,020	$1,832,020
Rate of Return	9.05%	12.15%

ELECTRICITY

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED DECEMBER 31, 1980
UPDATED THROUGH MAY 31, 1981

(000's Omitted)

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$ 913,445	49.86%	10.27%	$ 93,811
Preferred stock	255,750	13.96%	8.91%	22,787
Common equity	662,825	36.18%	7.42%	49,178
Total	$1,832,020	100.00%	-	$165,776
	Approved Rates - Original Cost Rate Base			
Long-term debt	$ 913,445	49.86%	10.27%	$ 93,811
Preferred stock	255,750	13.96%	8.91%	22,787
Common equity	662,825	36.18%	16.00%	106,052
Total	$1,832,020	100.00%	-	$222,650

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

IT IS, THEREFORE, ORDERED THAT:

1. 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 $119,197,000 on an annual basis.

2. The Applicant is herely 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 $1,029,887,000, based upon the adjusted test year level of operations updated through May 31, 1981, as adopted by this Commission. Such adjusted test year level of operations reflects total North Carolina Retail kWh sales of 18,465,869,788 (actual 19,099,842,800 kWh, less a growth adjustment of 81,581,562 kWh, less a weather adjustment of 55 2,391,450 kWh).

3. The Applicant shall, at the time of filing its proposed rates, file 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. The rate changes approved herein shall become effective for service rendered on and after the date of this Order.

5. CP&L is authorized to undertake an experimental program and to expend no more than $100,000 on the premises of sample rental housing for the purpose of determining how rental housing can participate in, and benefit from, the Company's various conservation programs. The Company shall report to the Commission every six months on the progress of the program, the first report to be due July 1, 1982.

6. Upon approval by the full Commission, CP&L shall be authorized to contribute no more than $25,000 annually to the National Regulatory Research Institute.

7. CP&L shall study the matter of the design of minimum charges for its nonresidential rate schedules and shall, at the time of filing its next general rate case, file proposals for redesign of such charges to appropriately reflect all three components of cost: customer, demand, and energy.

8. CP&L shall study the matter of ratcheted demand billings, including but not limited to the possibility of elimination of same or the possibility of ratcheting current peak month demand billings on past peak month demands and ratcheting current off-peak month demand billings on past off-peak month demands, with appropriate charging differentials, if any, and shall file a report on same at the time of its next general rate case filing.

9. CP&L shall calculate and accrue Allowance for Funds Used During Construction (AFUDC) contra or credit amount related to Construction Work in Progress included in the rate base, based upon the specific projects of CWIP as designated by the Company and included in the rate base by the Commission in prior general rate proceedings and as specified in Finding of Fact No. 9 herein. With regard to those amounts of CWIP included in rate base in prior proceedings such retroactive adjustments shall be limited to those projects still under construction.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of December 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

DOCKET NO. E-2, SUB 416
GUIDELINES FOR DESIGN OF RATE SCHEDULES

STEP 1: Determine the amount of the reductions in rate schedule revenues and in other revenues, respectively, which are necessary to reduce the overall revenue requirement proposed by the company to the level of the overall revenue requirement established by the Commission in this proceeding.

STEP 2: Remove the fuel charge revenues included in the original Companuy rate proposals from each schedule.

STEP 3: Reduce the nonfuel-charge portions of the individual prices in each time-of-day schedule such that the total revenues yielded from such portions equals the same revenues produced by the nonfuel-charge portions of the normal schedule to which each TOD schedule is an alternate.

STEP 4: Reduce the nonfuel-charge revenues remaining for each schedule by the same percentage to reflect the required reduction in rate schedule revenues determined in Step 1, except as follows:

(a) Hold the nonfuel-charge revenue tartgets for the closed rate schedules (RFS, CSG, CSE, AHS, & SGS) at the same level proposed by the Company.

(b) Delete closed rate schedule MPS.

STEP 5: Reduce the nonfuel-charge portion of the individual prices proposed by the Company within each given rate schedule by the same percentage, except as follows:

(a) Hold the basic customer charge for each rate schedule at the same level proposed by the company.

(b) Reduce the winter "tail block" energy charge in Schedule RES in such a manner that the summer/winter rate differential is 0.73¢ per kWh.

(c) Hold the extra charges for 3-phase service and for power factor adjustments in each applicable rate schedule at the same level proposed by the company.

(d) Modify Schedule SGS-TS to remove the thermal storage requirement and rename the rate schedule to Schedule SGS-TOD.

(e) Combine Schedule R-TOD and Schedule R-FEA-1.

(f) Include the energy conservation discount on Schedule R-TOD.

The nonfuel-charge revenues produced for each schedule by this method should be as close as practical to the individual schedule targets developed in Step 4. The individual prices within schedules may be rounded for administrative efficiency provided that such rounding does not produce total overall nonfuel-charge revenues from the rate schedules greater than the overall allowed revenues determnined in Steps 1 and 2 above.

STEP 6: Add the fuel charge approved in Docket No. E-2, Sub 434, to each kilowatt-hour charge of each rate schedule to complete the redesign of the rates.

DOCKET NO. E-7, SUB 293

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Duke Power Company - Proposed Rate Schedule PG(N.C.) - Parallel Generation, for Bills on and after April 1, 1980) ORDER ALLOWING RATES TO BECOME EFFECTIVE MAY 15, 1981

BY THE COMMISSION: On March 16, 1981, the Commission issued an Order approving rate form and requiring update of Duke Power Company's proposed Parallel Generation PG(N.C.) Schedule. Duke Power Company was advised that the original filing of March 1, 1980, was outdated and should be revised and refiled. Further, the Commission Order stated that the rate as approved should be effective at the same time as the cogeneration and small power producer rates that are pending in Docket No. E-100, Sub 41.

However, due to the requirements of several Duke Power Company customers, this rate is requested by the Company to be effective May 15, 1981. Good cause appearing,

IT IS, THEREFORE, ORDERED THAT:

Duke Power Company's Schedule PG(N.C.), Parallel Generation, go into effect May 15, 1981 as requested.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of May 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 310

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Duke Power Company for Authority to Adjust Its Electric Rates and Charges Pursuant to G.S. 62-134(e)	) ORDER APPROVING ADJUSTMENT OF RATES AND CHARGES) PURSUANT TO G.S. 62-134(e)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 16, 1981

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

Steve C. Griffith, Jr., Vice President and General Counsel, Duke Power Company, P. O. Box 33189, Charlotte, North Carolina 28242

Edward L. Flippen, Assistant General Counsel, Duke Power Company, P. O. Box 33189, Charlotte, North Carolina 28242

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

For North Carolina Textile Manufacturers Association, Inc.:

Thomas R. Eller, Jr., Attorney at Law, P. O. Drawer 27866, Raleigh, North Carolina 27611

BY THE COMMISSION: On January 21, 1981, Duke Power Company (Duke) filed an application with the North Carolina Utilities Commission pursuant to G.S. 62-134(e) and Commission 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 December 31, 1980, by decreasing the amount included for fuel expenses in the base retail schedules by 0.1781 cents per kilowatt-hour for bills rendered on and after April 1, 1981. These adjusted rates would be effective for the billing months of April, May, June, and July 1981.

On January 29, 1981, the Commission issued an Order which suspended the tariff, set the matter for hearing beginning at 2:00 p.m., on February 16, 1981, and required public notice. On February 11, 1981, the Public Staff filed a "Notice of Intervention" in this proceeding.

The matter came on for hearing as scheduled on February 16, 1981. Duke, North Carolina Textile Manufacturers Association, Inc., and the Public Staff

were present and represented by counsel. Duke presented testimony of the following witnesses: W. R. Stimart, Vice President - Regulatory Affairs, and R. H. Hall, Jr., Vice President - Fuel Purchases, Mill-Power Supply Company.

The Public Staff presented the testimony of Daniel M. Sullivan, Utilities Engineer with the Public Staff Electric Division.

Witness Sullivan testified that, upon being advised by the Public Staff Legal Division that purchased power expenses should be excluded from consideration in fuel clause proceedings, he had recalculated the base fuel component sought by Duke in its application so as to eliminate the cost of any electric power purchased or sold by it. He testified that Duke had applied for a decrease in the fuel cost component of its base rates by an amount equal to 0.1781 cents per kilowatt-hour to 1.1924 cents per kilowatt-hour. Witness Sullivan further testified that by eliminating purchased power, the decrease which should be approved for Duke with respect to its base cost would be only 0.1626 cents per kilowatt-hour rather than the decrease of 0.1781 cents per kilowatt-hour applied for herein by Duke. This would decrease Duke's base fuel cost from 1.3598 cents per kilowatt-hour during the prior four-month period to only 1.207 cents per kilowatt-hour during the four billing months of April through July 1981, rather than the 1.207 cents per kilowatt-hour set forth by Duke in its application. Duke's base fuel cost would decrease from 1.498 cents per kilowatt-hour for the test period to 1.190 cents per kilowatt-hour.

Counsel for both the Public Staff and the North Carolina Textile Manufacturers Association, Inc., argued that, as a matter of law, Duke should not be permitted to include purchased power in this proceeding, and that a decrease in the base fuel cost of only 0.1626 cents per kilowatt-hour including associated gross receipts taxes, rather than a decrease of 0.1781 cents per kilowatt-hour, should be approved. Duke argued that purchased power is a properly includable expense in a G.S. 62-134(e) proceeding and that the full base fuel cost adjustment it had applied for, 0.1781 cents per kilowatt-hour, should be approved.

On February 13, 1981, counsel for and on behalf of the North Carolina Textile Manufacturers Association, Inc., filed a "Petition For Leave To Intervene" in this docket, which petition was granted by the Commission upon commencement of the hearing on February 16, 1981, at 2:00 p.m.

Based upon a careful consideration of the verified application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Duke Power Company 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. Duke is lawfully before this Commission based upon an application for adjustment in its rates and charges pursuant to G.S. 62-134(e).

2. During the four-month period ending December 31, 1980, Duke's fuel generating costs were $0.011924 per kilowatt-hour. In accordance with NCUC Rule

R1-36 and the formula adopted pursuant thereto, the proposed decrease in rates due solely to the cost of fuel and associated gross receipts taxes would be $0.001781 per kilowatt-hour for the four billing months of April through July 1981.

3. All jurisdictional electric utilities are interconnected to an interlocking power grid which facilitates regional reliability of electric generation and the purchase and sale of electric energy among neighboring utilities. The purchase and sale of electric energy among neighboring utilities is beneficial to both the utilities and their customers since it enhances the economies of scale inherent in the interlocking power grid and permits each electric utility to purchase power from the other utilities in emergencies and whenever the other utilities have power available to sell at cheaper cost than a utility's own incremental power generation.

4. In addition to North Carolina, 22 of the other 24 states east of the Mississippi River permit purchased power to be included in their fuel clauses. The Federal Energy Regulatory Commission (FERC) also includes purchased power in wholesale fuel clauses. The Public Utility Regulatory Policies Act (PURPA) of 1978, requires states with automatic fuel adjustment clauses "to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) . . ." and authorizes the FERC to exempt electric utilities from any provision of state law, or from any state rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities if the FERC determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources.

5. The energy portion of purchased and interchange power fuel costs has been allowed to be included in fuel clause proceedings for Duke Power Company since late 1975; the capacity portion of such costs are not permitted to be recovered in the Commission's fuel cost adjustment formula. During the four-month period ending December 31, 1980, Duke was a net seller of purchased and interchange power in the amount of $2,526,869 based upon its total company operations, with said monies having been used by Duke to offset its total system production and fuel costs. Exclusion of purchased and interchange power from the fuel cost adjustment formula would have the effect of authorizing Duke to institute a fuel cost component in its base rates during the four billing months in question in the amount of $0.01207 per kilowatt-hour, which amount is greater than the base fuel cost of $0.011924 applied for herein by Duke. It is the declared policy of the State of North Carolina to encourage the coordination of the operation of utility systems to increase the economy and reliability of utility service.

6. The recovery by Duke of the allowed portions of purchased and interchange power fuel costs on a timely basis through the fuel cost adjustment formula adopted by this Commission encourages Duke to substitute purchased and interchange power whenever such power is less expensive than power from Duke's own generating plants. This results in the most efficient utilization of plant and of the nation's fuel resources and in lower costs to the using and consuming public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in Duke's verified application, in prior Commission Orders entered in fuel cost adjustment proceedings of which the Commission takes notice, and G.S. 62-134(e). This finding of fact is essentially informational, procedural, and jurisdictional in nature and the matters it involves are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding of fact is contained in Duke's verified application, the testimony and exhibits of Duke witness Stimart, and the testimony of Public Staff witness Sullivan.

According to Duke witness Stimart, the computations of the costs of fuel and revenues billed and the revised base fuel cost to be effective beginning with the billing month of April 1981 were derived in accordance with the Commission's previously adopted fuel cost formula and previous Commission Orders. Public Staff witness Sullivan verified the fact that the calculations submitted by Duke were mathematically accurate and that, had the Public Staff included the allowed fuel cost of purchased power and interchange power, its computation of the base fuel cost component would have been identical to that filed by Duke.

The computations of the base fuel cost component by Duke witness Stimart and Public Staff witness Sullivan included the factor for gross receipts taxes in accordance with the approved fuel cost formula. Even prior to the adoption of the current fuel cost formula in late 1975, in Docket No. E-7, Subs 161 and 173, the Commission allowed the recovery in the fuel clause of the gross receipts tax associated with fuel cost revenue. For example, the previous fossil fuel adjustment clause, upheld by the North Carolina Supreme Court in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976), included the factor for gross receipts taxes associated with fuel cost revenues. The gross receipts taxes so recovered are related to revenue collected through the fuel clause, not the revenue collected through Duke's basic rates. If the base cost of fuel calculated by the fuel cost formula did not include the factor for gross receipts taxes, the application of the formula would ensure that Duke would not recover the full cost of fuel and the resulting rates and charges would not be considered just and reasonable. Consequently, the Commission has consistently provided for the recovery of such expense in the fuel adjustment clause.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The Commission participates in the activities of the Southeastern Electric Reliability Council through its representation on the State-Federal Executive Committee and other activities. Pursuant to G.S. 62-2, the Commission has promoted the coordination of interstate and intrastate inter-ties and operations of adjacent utilities for the purposes of increasing the adequacy, the reliability, and the economy of electric utility service by the utilities which serve North Carolina consumers.

The Commission also supports the voluntary interlocking arrangements whereby Duke, CP&L, Vepco, SCE&G, TVA, Appalachian Power Company, and other neighboring

utilities are interconnected in order to increase regional reliability and efficient exchange of power for economy reasons. This arrangement includes telecommunications whereby Duke (and the other utilities) constantly exchange information regarding the marginal cost of electric power on its system and compares those costs with the costs of its neighbors. When the neighboring utilities can provide cheaper power, Duke purchases that power in lieu of generating more expensive power. When Duke has cheaper power available which is not needed for its customers, Duke sells that power to its neighbors. In either event, only the allowed fuel cost of that generation is permitted to be recovered in the fuel cost adjustment formula. The formula also flows to the ratepayers any profits which may be made by the utility on economy sales. In the case of Duke, which is generally a net seller of purchased power, this benefit to its ratepayers is substantial. Accordingly, the Commission concludes that the foregoing practices are beneficial to the using and consuming public and should be continued.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In addition to North Carolina, 22 of the 24 states east of the Mississippi River permit the inclusion of purchased and interchange power in fuel clauses. Furthermore, Duke witness Stimart offered testimony in this proceeding which would indicate that from a rate standpoint it is considered desirable to encourage electric utilities to purchase power whenever the utility could not produce power from its own plants at lesser cost. The Commission also takes judicial notice of the provisions of the Public Utility Regulatory Policies Act of 1978, whereby states with automatic fuel adjustment clauses are required to provide incentives . . . for economical purchase . . . of electric energy and the FERC is authorized to exempt electric utilities from state laws or regulations which prohibit utilities from operating their systems to obtain economical utilization of available facilities and resources.

The Commission concludes that the policy of the federal government and that of the vast majority of the states east of the Mississippi River is to encourage electric utilities in the efficient use of their plants and resources by permitting the timely recovery of the fuel portion of purchased and interchange power.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The use of a formula for the recovery of fuel costs by an electric utility has been a long-standing regulatory practice of this Commission, which has been approved as a rate-making device by the North Carolina Supreme Court. State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976).

By the enactment of G.S. 62-134(e), the North Carolina General Assembly terminated the previous automatic fuel adjustment clause and in its place established a special, expedited procedure whereby the public utility could continue to "increase its rates and charges based solely upon the increased cost of fuel used in the generation and production of electric power." State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1977).

Thereafter, on October 3, 1975, the Commission issued its Order in Docket No. E-7, Subs 161 and 173, whereby, inter alia, the Commission directed Duke

to file a monthly fuel cost formula which was designed to constitute the basis of rate applications pursuant to G.S. 62-134(e). The formula therein adopted by the Commission expanded the formula approved by the Supreme Court in Commission v. Edmisten, 291 N.C. 327, supra to include nuclear fuel costs and the energy portion of purchased power and interchange power. The capacity costs of purchased and interchange power were and are not included in said formula. The fuel cost adjustment formula was adopted to enable the Commission and Staff to review more effectively the fuel cost filings made in accordance with G.S. 62-134(e) in the expedited proceedings provided for by that statute.

The inclusion of the allowed fuel costs of purchased power and interchange power has not been modified or altered since the adoption of the formula with respect to Duke in late 1975. In nearly 40 individual proceedings and two generic proceedings concerning the formula and the recovery of fuel costs, this Commission has consistently allowed the recovery of Duke's allowed fuel costs for purchased power and interchange power. As acknowledged in the Commission Order dated May 18, 1978, in Docket No. E-22, Sub 231, the Public Staff has also heretofore recognized that "(p)roperly monitored, the formula accurately tracks changes in the cost of all fuel, nuclear as well as fossil, and the energy portion of purchased and interchange power."

A review of our application of the language and procedures of G.S. 62-134(e) clearly indicates our uniform and undisturbed interpretation that the cost of a utility's fuel to be recovered in a fuel proceeding includes allowed fuel costs for purchased and interchange power which are described in the fuel cost adjustment formula. The formula's computation includes only the costs of fuel used to generate or produce power or the cost of equivalent energy purchased. For example, the cost of a ton of coal burned by Carolina Power & Light Company included in the price of power purchased by Duke is just as much a cost of fuel to Duke as if Duke had actually burned the coal itself. Consequently, the cost of fuel burned by a selling utility should be considered a component of the fuel cost of the purchasing utility which may be recovered in a proceeding pursuant to G.S. 62-134(e). See, State ex rel. Utilities Commission v. Virginia Electric and Power Company, 48 N.C. App. 452, 269 S.E. 2d 657 (1980). Any other conclusion is simply at odds with the language of G.S. 62-134(e) and the Commission's consistent construction of such language.

The Public Staff has urged the Commission to abandon that consistent construction of the provisions of G.S. 62-134(e) based on the Public Staff's interpretation of the recent decision of the Court of Appeals of North Carolina in Virginia Electric and Power Company, 48 N.C. App. 452, supra (Vepco). While the Public Staff acknowledges that our previously adopted treatment of the costs of purchased and interchange power in fuel cost adjustment proceedings was the appropriate application of G.S. 62-134(e), the Public Staff now argues that as a consequence of the Vepco decision, the consideration of such costs must be reserved for a general rate-making proceeding pursuant to G.S. 62-133.

The Commission's review of the decision of the Court of Appeals does not lead to the conclusion that Vepco limits the Commission's consideration of the costs of fuel in a G.S. 62-134(e) proceeding as narrowly as the Public Staff recommends. There is neither expressed nor implied language in that decision which suggests that the Court of Appeals intended to eliminate the allowance of purchased power and interchange power fuel costs from recovery in a fuel cost

adjustment proceeding. Had the Court of Appeals intended to overturn the long established regulatory practice as now urged by the Public Staff, the Court would have decided the issue directly. It is clear, moreover, that the Vepco decision did not concern the issue of purchased and interchange power at all.

The Court of Appeals held "only that plant efficiency as it bears upon fuel cost is not a factor to be considered in the limited and expedited proceeding provided for by G.S. 62-134(e)." 48 N.C. App. at 462, 269 S.E. 2d at 662. The elements of plant efficiency at issue in Vepco depended "upon long range maintenance decisions and practices carried out over a long period of time." 48 N.C. App. at 462, 269 S.E. 2d at 662. The Vepco decision holds only that the Commission's review of long range mangement decisions and their consequences for overall system efficiency is appropriate and necessary for a general rate-making proceeding under G.S 62-133. In that context, adjustments to rate base or rate of return may be made for plant inefficiency if the evidence justifies such action.

In the final analysis, the Public Staff's interpretation of the Vepco decision would serve not only to deprive a utility's ratepayers of the benefits of the economies of purchased and interchange power, but would also operate to impede the most efficient mechanism for the timely recovery of fuel costs. The cost of fuel burned by a utility selling power is no less volatile nor substantial than the cost of fuel burned by a utility purchasing the power. See, 291 N.C. at 346-348, 230 S.E. 2d at 662-664.

Furthermore, G.S. 62-2 declares the public policy of the State of North Carolina to be, in pertinent part, to "provide fair regulation of public utilities in the interest of the public," to "promote adequate, reliable and economical utility service," to "provide just and reasonable rates . . . consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy," to "foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed," and to promote and coordinate "interstate and intrastate public utility service and reliability of public utility energy supply." It is certainly consistent with these policies for utilities to supply power to each other from available capacity in order to increase the reliability and economy of the operations of each other and to improve the quality and economy of the service provided to their consumers.

Further, it is consistent with these policies to allow the flow-through of the costs and benefits of such purchased power and interchanges. This statement is particularly true in the case of Duke Power Company, which is itself a net seller of purchased and interchange power. In this regard, the evidence in this case clearly indicates that during the four-month period ending December 31, 1980, Duke was a net seller of purchased and interchange power in the amount of $2,526,869 based upon its total company operations, with said monies having been used by Duke to offset its total system production and fuel costs. Exclusion of purchased and interchange power from the fuel cost adjustment formula as advocated herein by the Public Staff and North Carolina Textile Manufacturers Association, Inc., would have the effect of authorizing Duke to institute a fuel cost component in its base rates during the four billing months in question in the amount of $0.01207 per kilowatt-hour, which amount is greater than the base fuel cost of $0.011924 applied for herein by Duke. Such a result would

obviously be to the detriment of Duke's customers who comprise the using and consuming public, since exclusion of purchased and interchange power from the fuel cost adjustment formula would cause the fuel cost component of Duke's base rates to be significantly higher during the billing months of April through July 1981, than the rate set forth by Duke in its application. The Commission further notes that Duke is historically a net seller of purchased and interchange power, a circumstance which clearly serves to benefit Duke's customers through operation of the current fuel cost adjustment formula and G.S. 62-134(e).

Therefore, the Commission concludes that adoption of the Public Staff proposal as advocated herein would discourage Duke in its pursuit of energy efficiency in its system operations, would unfairly and unjustly penalize Duke for proper operations in the test period, and would ultimately result in higher basic rates.

Accordingly, for the reasons set forth hereinabove, the Commission declines to accept the adjustment proposed herein by the Public Staff to remove the allowed fuel costs of purchased and interchange power from the fuel cost adjustment formula.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for bills rendered on and after April 1, 1981, and for service rendered on and after the date of this Order, Duke shall adjust its base retail rates by the reduction of an amount equal to $0.001781 per kilowatt-hour and shall roll this amount into each kilowatt-hour block of each rate schedule.

2. That Duke shall file appropriate rate schedules with the Commission in conformity with this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sharon C. Credle, Deputy Clerk

(SEAL)

DOCKET NO. E-7, SUB 314

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Duke Power Company for an Adjustment of Its Retail Electric Rates and Charges in Its Service Area Within North Carolina	) NOTICE OF) DECISION) AND ORDER

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and the Cities of Greensboro, Winston-Salem, Hendersonville, Charlotte, and Durham on July 28-29, 1981, August 26 - September 10, 1981, and November 23, 1981

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Steve C. Griffith, Jr., Vice President and General Counsel; Duke Power Company; P.O. Box 33189, Charlotte, North Carolina 28242

William L. Porter, Assistant General Counsel; Duke Power Company; P.O. Box 33189, Charlotte, North Carolina 28242

John E. Lansche, Assistant General Counsel; Duke Power Company; 422 South Church Street, Charlotte, North Carolina 28242

W. Edward Poe, Staff Counsel; Duke Power Company; P.O. Box 33189, Charlotte, North Carolina 28242

Clarence W. Walker, Attorney at Law; Kennedy, Covington, Lobdell & Hickman; 3300 NCNB Plaza, Charlotte, North Carolina 28280

For the Intervenors:

Thomas R. Eller, Jr., Eller & Fruitt, Attorneys at Law; P.O. Drawer 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

Robert B. Byrd and Sam J. Ervin, IV; Byrd, Byrd, Ervin, Blanton & Whisnant, P.A., Attorneys at Law; One Northsquare, Drawer 1269, Morganton, North Carolina 28655
For: Great Lakes Carbon Corporation

M. Travis Payne, Attorney at Law; Route 1, Box 183, Durham, North Carolina 27705
For: Kudzu Alliance

Daniel V. Besse, Attorney at Law; P.O. Box 17691, Greensboro, North Carolina 27410
For: North Carolina Public Interest Research Group, Inc., and Conservation Council of North Carolina, Inc.

For the Using and Consuming Public:

Robert F. Page, Chief Counsel, and Paul L. Lassiter, Staff Attorney; Public Staff - North Carolina Utilities Commission; P.O. Box 991, Dobbs Building, Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding is before the Commission upon the application of Duke Power Company (Applicant, Company, or Duke) filed with the Commission on March 18, 1981, for authority to adjust and increase its electric rates and charges for retail customers in North Carolina. The proposed increase was designed to produce approximately $211,000,000 of additional revenues from

the Company's North Carolina retail operations, when applied to a test period consisting of the 12 months ended December 31, 1980, or approximately a 19.7% increase in electric operating revenues.

The Commission, being of the opinion that the increase in rates and charges proposed by Duke was a matter affecting the public interest, by Order issued on April 10, 1981, 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, set the matter for hearing beginning on July 28, 1981, required Duke to give notice of such hearing by newspaper publications and by appropriate bill inserts, established the test period to be used in the proceeding, and required protests or interventions to be filed in accordance with the Commission Rules and Regulations.

On May 21, 1981, the Public Staff, by and through its Executive Director, Dr. Robert Fischbach, filed Notice of Intervention on behalf of the Using and Consuming Public. The Intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations.

Kudzu Alliance filed a Petition to Intervene on April 8, 1981, and on April 17, 1981, the Commission allowed the Intervention.

By Petition filed April 27, 1981, Great Lakes Carbon Corporation petitioned to intervene. On May 1, 1981, the Commission by Order allowed Great Lakes Carbon to intervene.

North Carolina Public Interest Research Group, Inc., petitioned to intervene on May 14, 1981, and its Intervention was allowed by Order entered May 18, 1981.

The People's Alliance filed a Petition to Intervene on July 13, 1981, and the Intervention was allowed by Order of July 17, 1981.

The North Carolina Textile Manufacturers Association, Inc. (NCTMA), filed a Petition to Intervene on July 23, 1981, and on July 27, 1981, the Commission allowed the Intervention.

Conservation Council of North Carolina, Inc., petitioned to intervene on August 13, 1981, and its Intervention was allowed on August 21, 1981.

Out-of-town hearings were conducted by the Commission for the purpose of receiving testimony from members of the using and consuming public with regard to Duke's proposed rate increase. Such hearings were held in Greensboro, North Carolina, at 7:00 p.m., on July 28, 1981; in Hendersonville, North Carolina, at 2:00 p.m., on July 29, 1981; in Winston-Salem, North Carolina, at 2:00 p.m., on July 29, 1981; in Charlotte, North Carolina, at 7:00 p.m., on July 29, 1981; and in Durham, North Carolina, at 7:00 p.m., on August 31, 1981.

Public witnesses at these hearings included the following persons:

Greensboro- Doris Cruthis, Stella Calhoun, Eunice Terrell, Mildred Caldwell, Jim Harrison, Ann Nickerson, Eva Lewis, James Turner, Don Dixon, Don Gillespie, Randolph Hull, Michael Curtis, William F. Sherrill, and Bill Johnson.

Winston-Salem - J. Harmon Linville, Elizabeth Roberts, William H. Brown, Harley Graves, W. P. Steal, John D. Clark, Samuel M. Orr, Bill Crow, and Marshall Tyler.

Hendersonville - John Paden, Joe Orr, Frank L. Todd, G. Ray Cantrell, and Kenneth L. Tucker.

Charlotte - Ron Coleman, Katie Young, Sharon Duggan, Barbara Moore, Brenda Best, Mary Well, Robert Morgan, Sylvia Stinson, Richard Knie, William J. Veeder, James A. Story, Louise Kale, Wilma Argo, Florence White, John A. West, Toby Chapman, Harry Esterson, Shaw Brown, Virginia Stevens, Gwen Willis, Larry Weiner, Faison Fuester, Mike Fennell, Jesse Riley, and Bobby Lowery.

Durham - Sally Seay, Robert Booth, James Williams, Mary Gullage, H. L. Sherman, Allen Pollard, Lloyd Gurley, Sam Reed, Grace Beck, Jake Harris, Bob Giddings, Iris Jones, J. E. Irving, Beulah Miller, Al Norton, Sr., William N. Munn, Julia Brown, Linda Cline, Carver Peacock, Stuart Fisher, Bill Quick, Henry S. Cole, Frank Ward, Rob Balkin, Cynthia Hall, Dan Reed, Steve Schull, Elisa Wolper, and Gerald Mooneyham.

Raleigh - Frank L. Todd and Jim Overton.

In general terms, the testimony of these witnesses can be summarized as follows. Some of the customers were opposed to any further rate increase by Duke, in view of the rate increases approved by the Commission in 1979 (Docket No. E-7, Sub 262) and 1980 (Docket No. E-7, Sub 289). Some customers were opposed to further construction of nuclear power plants and encouraged the development of other methods to meet energy needs in Duke's service area, such as conservation and power generated from nonnuclear sources. Several customers were disturbed about the law which became effective on July 1, 1979, that allows construction work in progress (CWIP) to be included in rate base. Other customers testified that Duke should assist customers in installing insulation. Finally, some customers supported Duke's request for increased rates.

The matter came on for hearing in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on August 26, 1981. Duke Power Company offered the testimony and exhibits of the following witnesses: William S. Lee, Duke's President and Chief Operating Officer, and William H. Grigg, Senior Vice President - Legal and Finance, both of whom testified as to the Company's need for the proposed rate increase, its construction program, its financial condition, and overall general corporate policy; Dr. Arthur T. Dietz, Professor of Banking, Finance and Business Administration, Emory University Graduate School of Business Administration, and Charles A. Benore, First Vice President of Paine Webber Mitchell Hutchins, Inc., a specialist in the analysis of utility securities for that firm, both of whom testified to the fair rate of return required by Duke Power; W.R. Stimart, Duke's Vice President - Regulatory Affairs, who testified as to the Company's rate base and the results of its operations in the historical test year after pro forma adjustments; Paul H. Earl, Economist and Vice President of Data Resources, Inc., who testified to a specific index reflecting the escalation in unit costs of Duke Power's operation and maintenance expenses; M.T. Hatley, Jr., Duke's Vice President - Rates, who testified with respect to the jurisdictional allocation, the proposed rates and rate design; Dr. Willard T. Carleton, Professor of Business Administration at

the Graduate School of Business at the University of North Carolina at Chapel Hill, who presented an analysis of the real cost of electric power to Duke's North Carolina retail customers over the 25 years from 1955 through 1980; and Donald H. Denton, Jr., Duke's Vice President, Marketing, who testified concerning Duke's recently filed Residential Loan Assistance Program and generally concerning the Company's load management program.

The Public Staff offered the testimony and exhibits of the following witnesses: Thomas S. Lam, Utilities Engineer with the Electric Division of the Public Staff, who testified with respect to the Public Staff's review of the capital costs of McGuire Unit 1, the fuel saving from substituting nuclear for fossil generation when McGuire Unit 1 becomes operational, and a proposed adjustment to operation and maintenance expense related to purchased and interchanged power; Timothy J. Carrere, Utilities Engineer with the Electric Division of the Public Staff, who testified concerning the appropriate level of fuel investment for working capital purposes; Benjamin R. Turner, Jr., Utilities Engineer with the Public Staff, who testified with respect to Duke's probable future revenues and expenses applicable to electric plant in service at the end of the test period; David F. Creasy, Utilities Engineer with the Electric Division of the Public Staff, who testified as to the Company's proposed rate design and its cost-of-service and jurisdictional allocation studies; Mark D. Sherman, Staff Accountant with the Accounting Division of the Public Staff, who testified concerning the working capital allowance; William E. Carter, Jr., Assistant Director of Accounting of the Public Staff, who testified concerning the fuel cost adjustment procedure; George E. Dennis, Accounting Supervisor with the Accounting Division of the Public Staff, who testified as to the Public Staff's investigation and analyses of the Company's original cost net investment, revenues, expenses, and rate of return under present and proposed rates; Dr. Robert Weiss, Staff Economist with the Economic Research Division of the Public Staff, who testified with respect to fair rate of return; and Richard N. Smith, Jr., Utilities Engineer with the Electric Division of the Public Staff, who testified with respect to Duke's Residential Loan Assistance Program and generally concerning the Company's load management program.

The Intervenor Kudzu Alliance offered the testimony and exhibits of Wells Eddleman related to his analysis and opposition to Duke's proposed rate increase and the Intervenor NCTMA offered the testimony and exhibits of H. Randolph Currin, Jr., President of Currin & Associates, concerning the impact of the proposed rate increase on certain textile manufacturing customers.

In rebuttal to the testimony on certain rate base and accounting adjustments proposed by Public Staff witnesses, Duke offered the testimony and exhibits of W.R. Stimart and the testimony of John F. Utley, National Director - Public Utilities for the accounting firm of Deloitte, Haskins & Sells. Duke also offered the testimony and exhibits of Donald M. Jenkins, Manager of Rate Research and Development for Duke, in rebuttal to certain of the testimony of NCTMA witness Currin. Duke witness Denton offered further testimony concerning Duke's residential load management program.

On September 18, 1981, and October 6, 1981, the Commission issued its Orders requiring the filing of certain supplemental calculations and studies by Duke Power and the Public Staff, scheduling further hearings on November 23, 1981, for the limited purposes of receiving evidence as to the commercial operation

and in-service date of McGuire Unit 1 and to consider testimony concerning the additional calculations and studies to be filed, and requiring the filing of any briefs and proposed orders on or before December 7, 1981.

On October 5, 1981, Duke filed a notice with the Commission pursuant to G.S. 62-135 indicating that the Company proposed to increase the retail electric rates which it is presently charging in North Carolina by approximately nine percent (9%) for service rendered on and after October 18, 1981, along with a proposed customer notice entitled "Notice of Placing Partial 9% Rate Increase Into Effect Under Undertaking," a proposed undertaking and proposed revised rate schedules. By Order issued October 6, 1981, the Commission approved the customer notice and undertaking and approved as to form the rate schedules filed by Duke.

On November 13, 1981, Duke filed a notice with the Commission pursuant to G.S. 62-135 indicating that the Company proposed to place the remainder of the proposed 19.7% rate increase into effect, subject to refund, for bills rendered on and after December 1, 1981. This filing was accompanied by a proposed customer notice, the undertaking, and copies of the proposed revised rate schedules giving effect to said additional rate increase, subject to refund. By Order issued November 18, 1981, the Commission approved said notice and undertaking and approved as to form the rate schedules so filed by Duke.

As a result of the filings described in the previous two paragraphs, Duke has placed in effect, subject to refund, the entire amount of the rate increase applied for in this proceeding.

On November 23, 1981, the Commission heard additional testimony of Messers Lee and Stimart for the Company relating to the commercial operation and in-service date of McGuire Unit 1 and additional testimony of witness Jenkins for the Company relating to the schedules and studies which had been prepared pursuant to the Commission Orders of September 18 and October 6, 1981.

On November 23, 1981, the Public Staff filed a motion opposing Duke's proposal to place temporary rates into effect on December 1, 1981, and this motion was joined in by Kudzu Alliance, N.C. Public Interest Research Group, Inc., and Great Lakes Carbon Corporation. By Commission Order dated November 25, 1981, the Commission denied the motion of the Public Staff but assured all parties that the question of whether Duke should be permitted to collect all or any portion of the temporary rates pursuant to G.S. 62-135 applicable to McGuire Unit 1 for service rendered prior to December 1, 1981, would be thoroughly considered by the Commission in its final Order, and invited all parties to address that issue in their briefs and proposed orders.

Based on the foregoing, the verified Application, the testimony and exhibits received into evidence at the hearings, and the entire record with regard to this proceeding, the Commission, having duly reviewed the briefs and proposed orders filed herein by the parties, now makes the following

FINDINGS OF FACT

1. Duke is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public within

the Piedmont Crescent area of North Carolina, and Duke has its principal office and place of business in Charlotte, North Carolina.

2. Duke 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. Duke 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. The test period for purposes of this proceeding is the 12-month period ended December 31, 1980, adjusted for certain known changes based upon circumstances and events occurring up to the time of the close of the hearings in this docket. Duke by its application is seeking an increase in its basic rates and charges to North Carolina retail customers of approximately $211,000,000 based upon operations in said test period as adjusted.

4. The overall quality of electric service provided by Duke to its North Carolina retail customers is satisfactory.

5. The summer coincident peak method utilized by the Company and concurred with by the Public Staff in making jurisdictional cost-of-service allocations 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 said methodology.

6. Duke's McGuire Unit 1 nuclear generating unit is used and useful in providing electric utility service rendered to the public within this State, and was used and useful within a reasonable time after the end of the test period and prior to the time the hearings herein were closed. Since Duke shall cease to capitalize allowance for funds used during construction (AFUDC) on its McGuire Unit 1 effective December 1, 1981, the Company will be entitled to collect rates based upon the inclusion of McGuire in its rate base for service rendered on and after December 1, 1981.

7. The reasonable original cost of Duke'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) less cost-free capital is $2,138,009,000.

8. The reasonable allowance for working capital and deferred debits and credits is $146,046,000.

9. Duke's reasonable rate base is $2,284,055,000. This amount consists of net utility plant in service and construction work in progress of $2,383,181,000, plus a reasonable allowance for working capital and deferred debits and credits of $146,046,000 less cost-free capital of $245,172,000.

10. Duke's gross revenues for the test year, under present rates and after accounting and pro forma adjustments, are $1,110,023,000. After giving effect to Duke's proposed rates, such gross revenues are $1,321,023,000. Under the revenue requirements approved herein, such revenues are $1,276,426,000.

11. Duke's reasonable level of test year operating revenue deductions, after accounting and pro forma adjustments, is $917,272,000. This amount includes $107,258,000 for investment currently consumed through reasonable actual depreciation on an annual basis.

12. The capital structure of Duke which is reasonable and proper for use in this proceeding is as follows:

Item	Percent
Long-term debt	49
Preferred stock	13
Common equity	38
Total	100

13. Duke's proper embedded costs of long-term debt and preferred stock are 9.34% and 8.22%, respectively. The reasonable rate of return for Duke to be allowed an opportunity to earn on its jurisdictional common equity is 16.50%. Said cost rates, when weighted by the capitalization ratios hereinabove found fair, yield an overall fair rate of return of 11.92% to be applied to the Company's rate base. Such rate of return will enable Duke, 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.

14. Based upon the foregoing, Duke should be allowed to increase its rates and charges in an amount not to exceed $166,403,000, in addition to the annual gross revenues which would be realized under its present base rates. Thus, the annual revenue requirement approved herein is $1,276,426,000. This increase is required in order for the Company to have a reasonable opportunity to earn the 11.92% 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. Of the $166,403,000 increase in revenues found reasonable in this proceeding, $98,828,000 is due to the rate base and operating effects of McGuire Unit 1. The remaining increase of $67,575,000 is the amount to which Duke is entitled without considering McGuire Unit 1 in this rate proceeding.

15. Duke should be required to refund to its North Carolina retail customers all revenues collected under interim rates, pursuant to its undertakings to refund, to the extent that said rates produced revenue in excess of the level of rates prescribed herein, plus interest thereon calculated at the annual rate of ten percent (10%). In this regard, Duke was entitled to an increase of approximately 6.09% for service rendered during the period October 18 through

November 30, 1981, as Duke was continuing to capitalize AFUDC on its McGuire Unit 1 until December 1, 1981. Further, Duke is entitled to the full 14.99% increase approved herein with respect to service rendered on and after December 1, 1981. The Commission finds that the interim rates charged by Duke beginning October 18, 1981, and on December 1, 1981, are unjust and unreasonable in that they exceed the amounts approved herein.

16. The appropriate base fuel cost to be included in rates is 1.3093¢ per kilowatt-hour, excluding revenue related taxes, consisting of the 1.4660¢ per kilowatt-hour approved in Docket No. E-7, Sub 328, less a .1567¢ per kilowatt-hour reduction for fuel savings related to the operation of McGuire Unit 1.

17. The rate designs proposed by Duke are reasonable and appropriate as modified in Appendix A attached hereto. It is appropriate for Duke to study methods of improving the efficiency of its rate designs.

18. 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.

19. It is appropriate for Duke to accelerate the schedule at which it is offering load control of residential water heaters and air conditioners.

20. Duke should be required to show, as a part of its future general rate applications, the portion of each accounting adjustment which is allocated to North Carolina retail service. The Company should also be required to make its jurisdictional allocations on a per book basis prior to applying said accounting adjustments.

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 of fact set forth herein.

ELECTRICITY

SCHEDULE I

Duke Power Company
Docket No. E-7, Sub 314
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended December 31, 1980
(000's Omitted)

Line No.	Item (a)	Amount (b)
1.	Electric plant in service	$ 3,277,828
2.	Accumulated depreciation and amortization	(1,039,488)
3.	Net electric plant in service	2,238,340
4.	Construction work in progress	144,841
5.	Subtotal	2,383,181
6.	Allowance for working capital:	
7.	Cash	1,127
8.	Materials and supplies:	
9.	o Coal	75,292
10.	o Oil	4,643
11.	o O & M construction	41,091
12.	o Accounts payable applicable to O & M construction	(2,135)
13.	o Investor funds advanced for operations	29,911
14.	o Customer deposits	(3,883)
15.	Subtotal	146,046
16.	Deferred income taxes	(236,720)
17.	Operating reserves	(8,452)
18.	Subtotal	(245,172)
19.	Rate base	$ 2,284,055
20.	Rate of return:	
21.	o Present rates	8.44%
22.	o Approved rates	11.92%

ELECTRICITY

SCHEDULE II

Duke Power Company
Docket No. E-7, Sub 314
OPERATING INCOME FOR RETURN
For the Test Year Ended December 31, 1980
(000's Omitted)

Line No.	Item (a)	Present Rates (b)	Increase Approved (c)	After Approved Increase (d)
1.	Electric operating revenue	$1,110,023	$166,403	$1,276,426
2.	Electric operating revenue deductions:			
3.	Operation and maintenance:			
4.	o Fuel	374,720	-	374,720
5.	o Purchased power - net	(2,858)	-	(2,858)
6.	o Wages, benefits, materials, etc.	239,215	-	239,215
7.	Depreciation	107,258	-	107,258
8.	General taxes	97,731	9,984	107,715
9.	Interest on customer deposits	244	-	244
10.	Income taxes:			
11.	o Current liability	55,292	77,021	132,313
12.	o Deferred - net	24,137	-	24,137
13.	o Investment tax credit normalized	24,941	-	24,941
14.	o Investment tax credit amortized	(3,408)	-	(3,408)
15.	Total operating revenue deductions	917,272	87,005	1,004,277
16.	Operating income for return	$ 192,751	$ 79,398	$ 272,149

SCHEDULE III

Duke Power Company
Docket No. E-7, Sub 314
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended December 31, 1980
(000's Omitted)

Present Rates

Line No.	Item (a)	Capitalization Ratio% (b)	Rate Base (c)	Embedded Cost/ Return (%) (d)	Weighted Cost/ Return (%) (e)	Operating Income (f)
1.	Long-term debt	49	$1,119,187	9.34	4.58	$104,532
2.	Preferred stock	13	296,927	8.22	1.07	24,407
3.	Common equity	38	867,941	7.35	2.79	63,812
4.	Total	100	$2,284,055	-	8.44	$192,751

Approved Rates

Line No.	Item (a)	Capitalization Ratio% (b)	Rate Base (c)	Embedded Cost/ Return (%) (d)	Weighted Cost/ Return (%) (e)	Operating Income (f)
1.	Long-term debt	49	$1,119,187	9.34	4.58	$104,532
2.	Preferred stock	13	296,927	8.22	1.07	24,407
3.	Common equity	38	867,941	16.50	6.27	143,210
4.	Total	100	$2,284,055	-	11.92	$272,149

SCHEDULE IV
Page 1 of 2

DUKE POWER COMPANY
Docket No. E-7, Sub 314
RECONCILIATION OF COMMISSION APPROVED GROSS REVENUE INCREASE TO COMPANY'S REQUESTED INCREASE
For the Test Year Ended December 31, 1980
(000's Omitted)

Line No.	Item (a)	Gross Revenue Impact McGuire (b)	Other (c)	Total (d)
1.	ADDITIONAL GROSS REVENUE REQUESTED BY COMPANY	$110,933	$100,067	$211,000
2.	COMMISSION ADJUSTMENTS TO CAPITALIZATION AND CAPITAL COST RATES:			
3.	- Reduced return on equity from 17.50% to 16.50%	(3,928)	(14,436)	(18,364)
4.	COMMISSION ADJUSTMENTS TO RATE BASE:			
5.	- Increased accumulated depreciation and amortization to reflect corollary adjustments arising from pro forma adjustments to depreciation expense and nuclear fuel expense including disposal costs:			
	o Other than McGuire	-	(316)	(316)
	o McGuire	(8,672)	-	(8,672)
6.	- Deducted injuries and damages insurance reserve	-	(221)	(221)
7.	- Deducted accounts payable applicable to materials and supplies	-	(432)	(432)
8.	- Lead-lag study differences	-	(6,251)	(6,251)
9.	COMMISSION ADJUSTMENTS TO REVENUE AND EXPENSE:			
10.	- Based customer growth adjustment on regression analysis	-	(1,342)	(1,342)
11.	- Priced out weather normalization adjustment excluding basic facilities charges and rate schedules not weather sensitive	-	(1,845)	(1,845)

ELECTRICITY

SCHEDULE IV
Page 2 of 2

Line No.	Item (a)		Gross Revenue Impact McGuire (b)	Other (c)	Total (d)
12.	- Adjustments to revenue related to fuel costs:				
	o To remove fuel expense from operations	$382,916			
	o To restore fuel cost at 1.3511¢ base	420,087	-	(37,171)	(37,171)
	o To restore McGuire fuel savings	$ 49,216			
	o To remove McGuire fuel savings	48,721	495	-	495
13.	- Increased fuel expense to base level		-	37,171	37,171
14.	- Decreased O & M expense to reflect Company revised adjustment with respect to contributions to EPRI		-	(228)	(228)
15.	- Increased O & M expense to annualize wage expense based on the number of employees at the end of the test year including FICA tax effect		-	1,801	1,801
16.	- Decreased nonfuel O & M expense to reflect use of different methodology in calculating expense side of weather and growth adjustments				
	o Growth		-	(4,944)	(4,944)
	o Weather		-	811	811
17.	- Decreased O & M to reflect removal of residual of inflation adjustment		-	(5,085)	(5,085)
18.	- Rounding differences		-	(4)	(4)
19.	TOTAL GROSS REVENUE IMPACT OF COMMISSION ADJUSTMENTS		(12,105)	(32,492)	(44,597)
20.	ADDITONAL GROSS REVENUE APPROVED BY COMMISSION		$ 98,828	$ 67,575	$166,403

NOTE: (1) Assignment of gross revenue impact of Commission adjustments between McGuire and non-McGuire functions are estimates calculated from data currently available.

(2) ( ) denotes decrease

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 and exceptions in this proceeding to run from the issuance date of such Order.

IT IS, THEREFORE, ORDERED as follows:

1. Duke is hereby authorized to adjust its electric rates and charges to produce an increase in gross revenues of $166,403,000 on an annual basis.

2. Duke shall file within 10 days of the issuance date of this Order five copies of 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 $1,276,426,000 based upon the adjusted test year level of operations as adopted by this Commission.

3. Duke is hereby ordered to refund to its North Carolina retail customers all revenues collected under interim rates, pursuant to its undertakings to refund, to the extent that said rates produced revenue in excess of the rates prescribed herein, plus interest thereon calculated at the annual rate of ten percent (10%). Refund calculations shall be made consistent with the Commission's findings set forth herein.

4. Duke shall file for Commission approval concurrent with the filing of rates as required by Ordering Paragraph No. 2 hereinabove its plan for making the refunds as required herein. Further, Duke at such time shall file five copies of its calculation of the total amount of refund due, including five copies of all detailed workpapers associated therewith.

5. 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.

6. Duke shall file with the Commission, in addition to the annual cost-of-service studies specified in the Commission Order of October 7, 1980, in Docket No. E-7, Sub 289, two annual cost-of-service studies based on the Modified Peak and Base (MPB) method. The first shall utilize summer and winter peak information as proposed by the Public Staff in this docket and the second shall use summer peak information. Further, the Company shall file said cost-of-service studies as a part of its next general rate application. The previously required filings of cost-of-service studies using the "modified average and excess" method and the "winter coincident peak" method are no longer required but may be filed at the option of the Company.

7. Duke shall produce the information necessary to determine the energy related portion of production plant as described herein, and such information shall be made available for making cost-of-service allocations at the time the Company files its next general rate application. Such information shall include at least the following:

a. For each current nonpeaking unit (i.e., base load, intermediate load, etc.), determine the capital cost based on the year in which the current nonpeaking unit was placed into service.

b. For each current nonpeaking unit, determine the capital cost of a peaking unit(s) with the same total capacity as the current nonpeaking unit. Base said capital cost on the year in which the current nonpeaking unit was placed into service.

c. For each current nonpeaking unit, determine the difference between (1) the annual fuel cost which would be incurred using the current type of fuel, and (2) the annual fuel cost which would be incurred if #2 oil were used for fuel; and base both of said fuel costs on the design capacity factor of the unit. Translate the difference in annual fuel costs into an equivalent capital cost, based on the overall cost of capital during the year in which the unit was placed into service.

8. Duke shall include cost allocation studies with Item 37d of Form E-1 of the minimum filing requirements for general rate applications with its next general rate application. Said studies shall show the demand, energy, and customer components assigned to each rate schedule based on the Modified Peak and Base methods as described and referred to above. The resulting production plant (and production plant related expenses) to be allocated by Kwh energy shall be included with the energy related component of each rate schedule.

9. Duke shall, in addition to those Company sponsored proposals included as a part of its next general rate filing, file a set of proposed rate designs (including comments regarding whether such rates are appropriate or are cost justified) which accomplish the following:

a. Decrease the rate differential between energy rate blocks in all major rate schedules in such a manner that the rates will be flattened.

b. Decrease the summer/winter rate differential in the energy charges for each residential rate schedule in such a manner that the summer/winter rate differentials for all rate schedules will be closer to each other.

c. Design a rate schedule for the Commission's consideration which includes the following features:

(1) Applicable to nonresidential customers only.

(2) Restricted to customers having load factors in excess of 54.7% (400 hours use per month) for previous 12 months (or 24 months if preferred).

(3) Produces the same revenues as are currently produced by all eligible customers served under their current rate schedules.

(4) Contains a basic facilities charge, a flat Hopkinson type demand charge, and a flat energy charge.

d. Design a rate schedule for the Commission's consideration which includes the same features as subparagraph (c) above except:

(1) Restricted to customers having load factors in excess of 17.1% (125 hours' use per month) but not in excess of 54.7% (400 hours' use per month) for the previous 12 months (or 24 months if preferred).

As a part of the filings required by this ordering paragraph, Duke shall include analysis and comment on the relative efficiency in revenue collection and time stability of its rate design proposals and the rate design proposals required herein.

10. In addition to preparing and filing its accounting adjustments and allocations as it so chooses, Duke shall, as a part of its future general rate applications, make its jurisdictional allocations on a per books basis prior to applying its various accounting adjustments. The Company shall also apply the North Carolina retail portion of its various accounting adjustments to the North Carolina retail portion of the per books figures after making the jurisdictional allocations of the per book figures. Further, the Company shall provide backup for the allocation factors used to determine the North Carolina retail portion of its various accounting adjustments whenever such accounting adjustments are calculated on a systemwide basis.

11. Duke shall file within sixty (60) days of the date of this Order an accelerated schedule for introducing load control of residential water heaters and air conditioners on a systemwide basis to further assist in minimizing its projected low reserve margin in 1990.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of December 1981.

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

APPENDIX A
DOCKET NO. E-7, SUB 314
GUIDELINES FOR DESIGN OF RATE SCHEDULES

STEP 1: Determine the amount of reductions in rate schedule revenues and in other revenues, respectively, which are necessary to reduce the overall revenue requirement proposed by the Company to the level of the overall revenue requirement established by the Commission in this proceeding.

STEP 2: To determine revenue targets for each rate schedule, reduce the revenues produced by each proposed rate schedule by the same percentage to reflect the required reduction in rate schedule revenues determined in Step 1, except as follows:

(a) Delete Schedule GAX.

(b) Leave Street Lighting Schedules as proposed.

(c) Adjust the revenues of Schedule GB and related schedules appropriately in order to maintain the proposed relationships and customer groupings.

STEP 3: Reduce the individual prices within the schedules proposed by the Company by the same percentage except as follows:

(a) Hold the basic customer charge for each rate schedule at the same level proposed by the Company.

(b) Adjust the prices within Schedule GB so as to maintain the proposed relationship and customer groupings between Schedule GB and related schedules.

(c) Round off individual prices to the extent necessary for administrative efficiency, provided that said rounded prices do not produce total revenues

which exceed the overall rate schedule revenues determined in Step 1. Where practical in the rounding process within the above constraint, individual prices shall be rounded in the direction which will tend to flatten the rate designs.

(d) Total revenues produced by each schedule should be as close as practical to the targets developed in Step 2.

(e) All rate adjustments should be made such that no customer will receive a greater rate increase than was proposed by the Company.

STEP 4: Remove the fuel charge included in the proposed rates from each kilowatt-hour block of each rate and replace it with the current fuel charge as approved in Docket No. E-7, Sub 328, adjusted to reflect fuel savings related to the operation of McGuire Unit One.

DOCKET NO. E-13, SUB 29 [Remanded]

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Nantahala Power and Light Company for Authority to Adjust and Increase Its Electric Rates and Charges	) ORDER REDUCING) RATES AND) REQUIRING REFUND

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, March 31, 1981; April 1, 2, 3, 7, 8, and 9, 1981; and May 18, 19, 20, 21, and 22, 1981

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For Nantahala Power and Light Company:

Robert C. Howison, Jr., and James E. Tucker, Suite 400, Branch Banking and Trust Building, P.O. Box 109, Raleigh, North Carolina 27602

For Aluminum Company of America and Tapoco, Inc.:

Ronald D. Jones, David R. Poe, M. Reamy Ancarrow, LeBoeuf, Lamb, Leiby & MacRae, 140 Broadway, New York, New York 10005

For Cherokee, Graham, Jackson, and Swain Counties, North Carolina; the Towns of Andrews, Dillsboro, Robbinsville, and Sylva, North Carolina; Tribal Council of Eastern Band of Cherokee Indians; and Henry J. Truett:

William T. Crisp, Robert W. Schwentker, Crisp, Smith, Davis and Schwentker, P.O. Box 751, Raleigh, North Carolina 27602

For the Town of Bryson City:

Joseph A. Pachnowski, P.O. Box 849, Bryson City, North Carolina 28713

For the County of Swain:

Fred H. Moody, Jr., McKeever, Edwards, Davis & Hays, P.A., Box 670, Bryson City, North Carolina 28713

For Intervenor Muriel Maney:

Larry Nestler, Western North Carolina Legal Services, P.O. Box 546, Cherokee, North Carolina

For the Using and Consuming Public:

Richard L. Griffin, Attorney General, P.O. Box 629, Raleigh, North Carolina 27602

Robert F. Page and Thomas K. Austin, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE PANEL: This proceeding is before the Commission upon remand from the Supreme Court of North Carolina. Utilities Commission v. Edmisten, Attorney General, 299 N.C. 432 (1980).

In an Order of the Commission issued March 11, 1981, this proceeding was assigned to be heard by the panel.

This matter was originally commenced by the application of Nantahala Power and Light Company (hereinafter Nantahala, Applicant, or Company), filed November 3, 1976, for an increase in retail rates and for a revised Purchased Power Adjustment Clause. The Commission, on June 14, 1977, issued its Order approving the requested retail rate increase based upon a cost of service study using the 1975 test year data and approving the Purchased Power Adjustment Clause (hereinafter PPA). From the entry of that Order the Intervenors appealed to the North Carolina Court of Appeals, which vacated the Commission Order and remanded the matter to the Commission for further proceedings, including a direction by that Court that the Commission consider a "roll-in" of Tapoco, Inc., and Nantahala for the purpose of establishing Nantahala's retail rates. 40 N.C. App. 109 (1979). Nantahala appealed to the North Carolina Supreme Court.

On March 5, 1980, the Supreme Court handed down its decision in Utilities Commission v. Edmisten, Attorney General, 299 N.C. 432. In its opinion the Supreme Court affirmed the decision of the Court of Appeals, insofar as it directed this Commission to consider whether a rate schedule computed as if Nantahala Power and Light Company and Tapoco, Inc., were one utility (a "roll-in") would be in the best interests of the customers of Nantahala. The Court held as follows:

"The Commission erred in giving only minimal consideration to the evidence suggesting the propriety of the roll-in device. The case is remanded with directions to the Commission to obtain and consider information and data showing what Nantahala's cost of service to its customers would be if this method of rate making were used and whether Nantahala's customers would benefit thereby." 299 N.C., at 443.

The Supreme Court left to the discretion of the Commission the choice of procedure to obtain the necessary information for this computation. The Supreme Court reversed that part of the Court of Appeals' decision which vacated the rate increase, holding at page 444:

"The Commission's order of 14 June 1977 authorizing an increase in Nantahala's rates was vacated by the Court of Appeals. The effect of the Court of Appeals' decision was stayed, however, by this court's issuance of a writ of supersedeas pending the outcome of this appeal. Although that writ is hereby dissolved, we believe that essential fairness to all the parties is best served by allowing the increased rates to remain in effect, conditioned upon Nantahala's guarantee that it will in the future refund to its customers any overcharges should the new rates ultimately be determined excessive. Accordingly, we reverse the Court of Appeals' setting aside of the order of 14 June 1977 and direct the Commission to obtain adequate assurances of Nantahala's willingness and continued ability to refund such overcharges as may ultimately result from imposition of the 1977 rate schedule."

The Supreme Court remanded the cause to the "Court of Appeals for remand to the Utilities Commission for further proceedings consistent with this opinion."

Upon remand to the Commission, the following events took place:

On May 9, 1980, the Intervenors in this docket (the Attorney General, Henry J. Truett, Town of Bryson City, and Swain County) filed with the Commission a Motion for Rehearing before the full Commission. On May 19, 1980, Nantahala filed its Response to Motion for Rehearing before the full Commission.

On May 14, 1980, the Intervenors filed the following pleadings: Motion for Prehearing Conference; Motion for Hearing Respecting Applicant's Ability to Refund Possible Overcharges; Motion to Join Alcoa and Tapoco, Inc., as Parties.

In response to these Motions, Nantahala filed the following pleadings on June 4, 1980: Response to Motion for Prehearing Conference; Response to the Motion for Hearing Respecting Applicant's Ability to Refund Possible Overcharges; and Response to the Motion to Join Alcoa and Tapoco, Inc., as Parties.

On June 4, 1980, Aluminum Company of America (Alcoa) and Tapoco, Inc. (Tapoco), each filed a separate Response to Motion to Join Alcoa and Tapoco, Inc., as Parties. (On June 27, 1980, the Intervenors filed Intervenors' Reply to Applicant's Response to Motion for Rehearing Before the Full Commission and Intervenors' Reply to Applicant's Response to Motion for Refund of Possible Overcharges.)

On June 24, 1980, the Commission ordered that these motions and responses should be set for oral argument before the full Commission on July 11, 1980.

The matter came on for argument as scheduled, with Nantahala, Tapoco, Alcoa, and the Intervenors being present and represented by counsel.

On July 29, 1980, the Commission issued an Order Setting Hearing and Requiring Data and Testimony. This Order scheduled a hearing for August 28 (later rescheduled to August 29) to allow Tapoco and Alcoa to appear and contest the Commission's jurisdiction to join them as parties to this proceeding. This Order also provided that the increased rates approved in the Order of June 14, 1977, would remain in effect upon the filing of an Undertaking by Nantahala; that a hearing be scheduled beginning December 9, 1980, to consider information and data showing what Nantahala's cost of service to its customers would be if Nantahala and Tapoco were treated as a single system for rate-making purposes and to consider whether Nantahala's customers would benefit thereby; that Nantahala and Alcoa prefile certain information; and that Nantahala give Notice to the Public of the hearing.

The hearing de novo to determine whether Alcoa and Tapoco should be joined as parties to this proceeding was held on August 29, 1980.

On September 24, 1980, Motion was filed by Nantahala for an extension of time to answer data request and to prefile testimony and exhibits; an Order Granting Extensions of Time and Continuing Hearing of December 9, 1980, was issued on September 26, 1980.

On September 22, 1980, an Undertaking to Refund was filed by Nantahala.

Based upon the testimony and exhibits presented at the de novo hearing on August 29, 1980, the Commission issued an Order on October 3, 1980, declaring Alcoa to be a public utility in North Carolina pursuant to G.S. 62-3(23)c. and subject to the jurisdiction of this Commission, and further declaring Tapoco to be a public utility in North Carolina and subject to the jurisdiction of this Commission, and ordering that each be made a party respondent in this proceeding.

On October 13, 1980, the Commission issued an Order Requiring Parties Alcoa and Tapoco to Comply with Data and Testimony Filings, Rescheduling Hearing to March 31, 1981, and Requiring Public Notice.

On October 27, 1980, Joint Statement of Exceptions to the Commission Order of October 3, 1980, and Motion for Clarification was filed with the Commission by Alcoa and Tapoco. Response of Public Staff and Response of Intervenors to Alcoa and Tapoco's Motion for Clarification were filed on November 14, 1980.

On December 22, 1980, the Commission issued an Order Clarifying Procedures and Affirming Filing Schedules.

On January 16, 1980, Petition to Intervene was filed by Cherokee, Graham, and Jackson Counties, North Carolina; the Towns of Andrews, Dillsboro, Robbinsville, and Sylva, North Carolina; and the Tribal Council of the Eastern Band of Cherokee Indians. Nantahala filed response to this Petition on February 3, 1981.

On January 16, 1981, Motion to Expunge Data from the record was filed by all of the Intervenors in this matter, to which Responses by Nantahala and Tapoco and Alcoa were filed with the Commission on February 6, 1981. The data sought to be expunged related to the appreciation in value of the properties of all projects of Tapoco under license from the Federal Energy Regulatory Commission or its predecessor.

On February 5, 1981, all the Intervenors filed a Motion to Extend Filing of Prefiled Testimony and Exhibits to March 9, 1981, which was allowed by Commission Order of February 17, 1981.

On February 26, 1981, the Commission issued an Order Allowing Intervention of Cherokee, Graham, and Jackson Counties; the Towns of Andrews, Dillsboro, Robbinsville, and Sylva; and the Tribal Council of the Eastern Band of Cherokee Indians.

On March 11, 1981, the Commission issued an Order assigning the hearing to the panel, rather than the Commission, because of the heavy demands of the Commission's Calendar.

Motion to Intervene was filed with the Commission on March 13, 1981, by Muriel Maney, Route 1, Whittier, North Carolina, and allowed by appropriate Order.

On March 16, 1981, all of the Intervenors in this case filed Response to Respondents' Motion for Postponement of Date for Commencement of Hearings for Presentation and Cross-Examination of Witnesses.

Alcoa and Tapoco filed on March 18, 1981, their first set of data requests to the Public Staff and Intervenors.

On March 18, 1981, the Commission issued an Order Denying the Motion to Expunge Data.

On March 20, 1981, Motion to Reject for Filing Portions of Intervenors' Prefiled Testimony was filed by Respondents Alcoa and Tapoco.

On March 23, 1981, Respondents Alcoa and Tapoco filed answer to Intervenors' Motion to Strike the Testimony and Exhibits of Witnesses Little and Toof.

On March 23, 1981, there was filed with the Commission the Response of Alcoa and Tapoco to Intervenors' Motion to Require Alcoa and Tapoco to Join in the Execution of Nantahala's Undertaking to Refund or to Guarantee Nantahala's Continuing Financial Viability.

On March 24, 1981, the Commission issued an Order Denying the Motion of Alcoa and Tapoco for Postponement of Date for Commencement of Hearings and scheduled further hearings, if necessary, for May 18 through 20, 1981.

On March 27, 1981, Respondents' Second Set of Data Requests to the Public Staff and the Intervenors was filed with the Commission.

ELECTRICITY

The proceeding came on for hearing as scheduled on March 31, 1981. Three public witnesses testified in support of the Intervenors: Marie Leatherwood; Veronica Nicholas, a County Commissioner of Jackson County; and Walter David McCoy, Chairman of the Tribal Council of the Eastern Band of Cherokee Indians. The Commission then heard oral argument on the motion previously filed by the Intervenors to Require Alcoa and Tapoco to Join in the Execution of Nantahala's Undertaking to Refund or to Guarantee Nantahala's Continuing Financial Viability. Upon conclusion of the arguments, the Commission deferred ruling on the Motion until a later date. On the afternoon of March 31 and continuing through April 1-3, April 7-9, and May 18-21, the Commission held hearings, the witnesses and the subject of their testimony being summarized as follows:

For Nantahala and the Respondents Alcoa and Tapoco: (1) John D. Russell of John D. Russell Associates, Inc., a public utility consulting firm, testified as to procedures he had used and the results obtained in preparing depreciation rates and depreciation accrual reserves for Tapoco; he also testified on the fair value of the Tapoco properties; (2) Robert D. Buchanan, the Assistant Controller - Financial Accounting of Alcoa, testified as to the 1975 year-end balance sheets of Nantahala and Tapoco, methods of making allowances for depreciation, Tapoco's capital structure, the combined operating income and expenses for Nantahala and Tapoco for the year ended December 31, 1975, rate of return for the two entities, and certain adjustments related to the foregoing data; (3) Herbert J. Vander Veen, a Principal in the Washington Utility Group of Ernst & Whinney, testified as to his proposed method for a rolled-in cost of service for Nantahala-Tapoco and as to his reasons why he did not think any type of roll-in was appropriate; (4) B.D. Cockrell, Alcoa's Operating Manager - Power, testified on the development of the Alcoa Tennessee operations, and of Tapoco and Nantahala and on why in his opinion the roll-in was not warranted; (5) David I. Toof, a supervisor in the Washington Utility Group of Ernst & Whinney, testified as to the Supreme Court's concern that Nantahala's relationship with Alcoa has had an adverse impact on Nantahala's ratepayers; as to certain of the analytical techniques used by Respondents' witness Little in an analysis of the impact that Alcoa has had on the rates paid by Nantahala's customers during the period 1940-1978; and as to how a "revenue requirement model was defined and developed, together with specific sets of assumptions which were used to produce alternative scenarios involving Nantahala's operations; (6) John M. Little, a manager in the Washington group of Ernst & Whinney, also testified as to the Supreme Court's concern that Nantahala's relationship with Alcoa has had an adverse impact on Nantahala's ratepayers; he also explained the results of studies conducted by him and Mr. Toof in which they analyzed the impact that Alcoa has had on Nantahala and its ratepayers, 1940-1978; (7) William M. Jontz, President and Chief Executive Officer of Nantahala, testified as to whether a rolled-in cost of service for Nantahala and Tapoco is appropriate for setting retail rates, and as to the history of the development of Nantahala; (8) George Popovich, Alcoa's power management consultant, testified on some of the factual circumstances surrounding the negotiations of the New Fontana Agreement during the period 1960-1962, and on the questions raised by the Supreme Court in its order remanding the instant case for further hearings; and (9) William J. Leininger, codirector of Ernst & Whinney's Washington, D.C., Group, testified as to "certain concerns" of the Supreme Court in remanding the instant case.

Prior to completion of Mr. Popovich's cross-examination, Assistant Attorney General Richard L. Griffin testified on his own behalf and on behalf of the Intervenor Attorney General as to certain communications between himself and a securities analyst concerning a securities arrangement that Nantahala had with First Union National Bank.

For the Intervenors: (1) David A. Springs, head of the power supply planning and power system planning section of Southern Engineering Company of Georgia, testified as to his review and analysis of materials filed in this proceeding, including various contracts between or among Nantahala, Tapoco, Alcoa, and TVA; as to recommended appropriate capacity and energy allocation factors under a rolled-in allocation of cost responsibility of the Nantahala-Tapoco system; as to recommended separation of utility costs and revenues from nonutility costs and revenues. He also presented rebuttal to some of the testimony of the Nantahala, Alcoa, and Tapoco witnesses. (2) J. Bertram Solomon, electric rate consultant with Southern Engineering Company of Georgia, testified as to the revenues, expenses, and investments of Nantahala and Tapoco for the test year, as to whether a roll-in method of setting retail rates would benefit the retail customers, and as to an appropriate capital structure and rate of return for the Nantahala-Tapoco system.

In rebuttal to Intervenors' testimony, Nantahala and/or Alcoa and Tapoco sponsored testimony by the following witnesses: (1) N. Edward Tucker, Nantahala's Vice President for rates and regulation; (2) C.E. Pfeiffer, Alcoa's treasurer; (3) George Popovich; and (4) Herbert J. Vander Veen.

In addition to the testimony of the foregoing witnesses, virtually every one of them also sponsored one or more supporting exhibits.

Following the close of the hearings, the parties were requested to file briefs and proposed Findings of Fact and Conclusions of Law on July 27, 1981 (later extended to August 5, 1981). The parties filed briefs and proposed orders in apt time.

Upon consideration of the testimony and exhibits presented at the hearing and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. Nantahala is a duly organized public utility company under the laws of North Carolina, subject to the jurisdiction of this Commission, and is holding a franchise to furnish electric power in the western part of the State of North Carolina under rates and service regulated by this Commission as provided in Chapter 62 of the General Statutes.

2. Tapoco is a duly organized public utility and is domesticated as such under the laws of North Carolina. It is subject to the jurisdiction of this Commission with respect to its retail rates and electric service as provided in Chapter 62 of the General Statutes.

3. Both Nantahala and Tapoco are wholly owned subsidiaries of Alcoa. Alcoa is a public utility pursuant to G.S. 62-3(23)c and is subject to the jurisdiction of this Commission with respect to retail ratemaking.

4. The Nantahala and Tapoco electric facilities constitute a single, integrated electric system and are operated as such by, and as a coordinated part of, the Tennessee Valley Authority (TVA) system.

5. For purposes of setting the Applicant's rates in this proceeding the Nantahala and Tapoco systems should be treated as one entity with respect to all matters affecting the determination of the Applicant's reasonable cost of service applicable to its North Carolina retail operations.

6. The New Fontana Agreement (NFA), executed by TVA, Alcoa, Nantahala, and Tapoco, and the resultant 1971 Apportionment Agreement between Tapoco and Nantahala, have resulted in substantial benefits to Alcoa to the significant detriment of the customers of Nantahala.

7. The methodology employed by the Intervenors in making jurisdictional cost allocations and cost-of-service allocations is the most appropriate 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 said methodology.

8. The reasonable original cost of the Nantahala-Tapoco property used and useful in providing electric service to its retail customers in North Carolina is $36,951,000. The reasonable accumulated provision for depreciation is $18,202,000, and the reasonable original cost less depreciation is $18,749,000.

9. The reasonable replacement cost of Nantahala's property used and useful in providing retail electric service in North Carolina is $57,795,000.

10. The fair value of Nantahala-Tapoco's utility plant used and useful in providing electric service to its retail customers in North Carolina should be derived from giving 40% weighting to the original cost less depreciation of Nantahala-Tapoco's utility plant in service and 60% weighting to the trended original cost less depreciation of Nantahala-Tapoco's utility plant. By this method, using the depreciated original cost of $18,749,000 and the reasonable replacement cost of $57,795,000, this Commission finds that the fair value of said utility plant devoted to intrastate retail electric service in North Carolina is $42,177,000. This fair value includes a reasonable fair value increment of $23,428,000.

11. The reasonable allowance for working capital is $1,113,000.

12. The fair value of Nantahala-Tapoco's plant in service used and useful in providing electric service to its retail customers within the State of North Carolina of $42,177,000 plus the reasonable allowance for working capital of $1,113,000 less customer deposits of $188,000 yields a reasonable fair value of Nantahala-Tapoco's property in service to North Carolina retail customers of $43,102,000.

13. The approximate gross revenues for the test year, after accounting and pro forma adjustments, under rates approved by Commission Order of June 14, 1977, are $11,067,000.

14. The approximate level of test year operating expenses under rates approved by Commission Order of June 14, 1977, after accounting and pro forma adjustments, including taxes and interest on customer deposits, is $8,322,000 which includes an amount of $1,133,000 for actual investment currently consumed through reasonable actual depreciation after annualization to year-end levels.

15. The reasonable original cost capital structure for use herein is as follows:

Item	Percent
Debt	40.05
Common equity	37.00
Cost-free	22.95
Total	100.00

and when the fair value increment is added, the reasonable fair value capital structure becomes:

Item	Percent
Debt	18.28
Common equity	71.24
Cost-free	10.48
Total	100.00

16. The fair rate of return that Nantahala should have the opportunity to earn on the fair value of its investment devoted to its North Carolina retail operations is 4.20%.

17. The approximate annual level of revenues which Nantahala should be authorized to collect through rates charged for its sales of service, based upon the findings of fact set forth hereinabove, is $9,032,000.

18. The rates and charges of Nantahala, based upon the adjusted test year level of operations, under rates approved by Commission Order of June 14, 1977, are excessive to the extent that said rates produce a level of revenue which is $2,035,000 ($11,067,000 - $9,032,000) greater than the Applicant's revenue requirement (cost of service). Thus, Nantahala should be required to reduce said rates and charges in a manner so as to achieve an annual gross revenue reduction of approximately $2,035,000, based upon the adjusted test year level of operations.

19. Nantahala should be required to refund to its North Carolina retail customers all revenue collected under the rates approved by Commission Order issued June 14, 1977, to the extent that said rates produced revenue in excess of the rates approved herein. Said refund shall include revenues collected under the Company's base rate structure as well as through operation of the purchased power adjustment formula plus interest computed and compounded at the legal annual rate.

20. The purchased power adjustment clause is a just and reasonable rate and a reasonable method by which Nantahala can recover a part of its reasonable operating expense.

21. Alcoa has so dominated certain transactions and agreements affecting its wholly owned subsidiary Nantahala that Nantahala has been left but an empty shell, unable to act in its own self interest, let alone in the interest of its public utility customers in North Carolina. Therefore, this Commission is compelled to order that, to the extent Nantahala is financially unable to make the revenue refunds required in this Order, Alcoa shall refund all or any portion of the aforementioned revenue refunds that Nantahala is financially unable to make.

NOTE: SEE THE OFFICIAL FILE IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS TO THE FINDINGS OF FACT WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

IT IS, THEREFORE, ORDERED as follows:

1. That the approximate annual level of revenues which Nantahala is hereby authorized to collect through rates charged for its sales of service, based upon the adjusted test year level of operations, is $9,032,000.

2. That the rates and charges of Nantahala, based upon the adjusted test year level of operations, under rates approved by Commission Order of June 14, 1977, are excessive to the extent that said rates produce a level of revenue which is $2,035,000 ($11,067,000 - $9,032,000) greater than the Applicant's revenue requirement (cost of service). Thus, Nantahala is hereby ordered to reduce said rates and charges by a uniform percentage across all rate schedules and charges in a manner so as to achieve an annual gross revenue reduction of approximately $2,035,000, based upon the adjusted test year level of operations.

3. That Nantahala is hereby ordered to refund to its North Carolina retail customers all revenue collected under the rates approved by Commission Order issued June 14, 1977, to the extent that said rates produced revenue in excess of the level of rates approved herein. Said refund shall include excess revenues collected under the Company's base rate structure as well as through operation of the Purchased Power Adjustment Clause calculated in a manner consistent with the findings and conclusions set forth herein plus interest computed and compounded at the legal annual rate.

4. That Nantahala shall file for Commission approval within 10 working days of the issuance date of this Order rates designed in accordance with the foregoing Ordering Paragraphs. Such rates shall include a Purchased Power Adjustment Clause formulated in a manner consistent with the Commission's findings and conclusions as set forth under Evidence and Conclusions for Finding of Fact No. 20.

5. That Nantahala shall file for Commission approval within 30 days from the issuance date of this Order its plan for making the refunds as required herein. Further, Nantahala, at such time, shall file 10 copies of its calculation of the total amount of refund due including 10 copies of all detailed work papers associated therewith.

6. That, to the extent Nantahala is financially unable to make the revenue refunds required under Ordering Paragraph No. 3 above, Alcoa shall refund all

or any portion of the aforementioned revenue refunds that Nantahala is financially unable to make.

7. That, except to the extent the Commission Order of June 14, 1977, is inconsistent with the findings and conclusions as set forth herein, said Order is hereby reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of September 1981.

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

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

DOCKET NO. E-34, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by New River Light and Power Company for Authority to Adjust and Increase Its Electric Rates and Charges	)))	ORDER GRANTING INCREASE IN RATES AND CHARGES

HEARD IN: Watauga County Courthouse, West King Street, Boone, North Carolina, on November 18, 1980

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

John H. Bingham, Attorney at Law, P.O. Box 325, Boone, North Carolina 28607
For: New River Light and Power Company

For the Intervenor:

Robert F. Page and Thomas K. Austin, 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 June 10, 1980, New River Light and Power Company (New River, the Applicant, or the Company) filed an Application with the North Carolina Utilities Commission (the Commission) seeking authority to adjust and increase its rates and charges for electric service to retail customers in North Carolina.

By Order issued on July 1, 1980, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates for a period of up to 270 days pursuant to G.S. 62-134, set the matter for investigation and hearing, established the test period to be used by all parties to the proceeding as the 12-month period ended December 31, 1979, and required the Company to give notice to its customers of the proposed rate increase and the hearing. As a part of this Order, New River was allowed to place interim rates in effect, which rates were subject to refund if subsequently found to be unreasonable.

On July 23, 1980, New River filed a Motion to Amend its Application in order to seek additional annual revenues to offset an increase in purchased power costs from its electric supplier, Blue Ridge Electric Membership Corporation (Blue Ridge or BREMCO), which increase was scheduled to become effective on September 1, 1980. The Applicant sought authority to place these additional increased rates into effect, on an interim basis subject to refund, when the increase in purchased power from Blue Ridge became effective. By Order issued on July 30, 1980, the Commission allowed the Company's Motion and required the Company to notify its customers of the Commission's action.

The matter came on for hearing as ordered on November 18, 1980, at 9:00 a.m., for the purpose of presenting the Applicant's evidence. The intervention of the Public Staff was recognized pursuant to Commission Rule R1-19(e). There were no other Intervenors in the proceeding. No public witnesses appeared or offered testimony at the hearing.

The Company offered the testimony and exhibits of the following witnesses: (1) Ned R. Trivette, Vice-Chancellor for Business Affairs of Appalachian State University (ASU); (2) J. Carroll Brookshire, Director of Audits and Systems for Appalachian State University and its subsidiaries, including New River Light and Power Company; (3) Donald R. Austin, General Manager of New River Light and Power Company; and (4) Ray D. Cohn, Vice President of Southeastern Consulting Engineers, Inc.

The Public Staff offered the testimony and exhibits of the following witnesses: (1) James G. Hoard, Jr., a Public Staff Accountant; (2) David F. Creasy, an engineer in the Electric Division of the Public Staff; and (3) William F. Watson, Director of the Economic Research Division of the Public Staff. The Public Staff's testimony was extensively based on updating through August 31, 1980, and beyond August 31, 1980, as related to the capital structure. Following the completion of evidence presented by the Public Staff, the Company recalled Mr. Cohn as a rebuttal witness.

All parties to the proceeding were provided an opportunity to file Proposed Orders with the Commission. Initially, they were required to be filed on or before December 23, 1980. However, on January 5, 1981, in response to the Company's motion for an extension of time on filing Draft Orders, the Commission issued an Order granting an extension of time within which parties would be allowed to file Proposed Orders to and including January 15, 1981. As a condition to receiving the extension of time, New River, by and through its counsel, consented to extending the date upon which temporary rates under bond could first be placed into effect pursuant to G.S. 62-135 until February 9, 1981.

Based upon the verified Application, the testimony and exhibits received into evidence at the hearing, and the record as a whole of this proceeding, the Commission, having duly reviewed the Proposed Orders as were filed by the parties to this proceeding, now makes the following

FINDINGS OF FACT

1. New River Light and Power Company is the principal electric supplier for the Town of Boone, North Carolina, and for Appalachian State University. New River is wholly owned by the University and is, therefore, indirectly owned by the State of North Carolina.

2. New River has no generating facilities of its own, but instead purchases all of its power requirements from Blue Ridge Electric Membership Corporation under wholesale rates fixed or established by the Federal Energy Regulatory Commission (FERC).

3. The test period for purposes of this proceeding is the 12-month period ended December 31, 1979, adjusted for certain changes based upon circumstances and events occurring up to the time of the close of the hearing in this docket. New River is lawfully before the Commission seeking an increase in its basic rates and charges for retail electric service pursuant to G.S. 116-35 and Chapter 62 of the General Statutes of North Carolina.

4. The quality of retail electric service which the Company is furnishing to customers in it service area in and around Boone, North Carolina, is satisfactory.

5. The reasonable original cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service to the public, less that portion of the cost which has been consumed by previous use recovered by depreciation expense, plus the original cost of investment in plant under construction (construction work in progress or CWIP) is $3,414,206.

6. The proper amount to be included in the Company's rate base for power supply investment (or capital credits) is $1,268,630.

7. The reasonable allowance for working capital is $166,397.

8. The reasonable rate base is $4,849,233. This amount consists of net utility plant in service and construction work in progress (Finding of Fact No. 5) of $3,414,206, plus a power supply investment (Finding of Fact No. 6) of $1,268,630 and a reasonable working capital allowance (Finding of Fact No. 7) of $166,397.

9. The Company's appropriate total operating revenues for the test year, under present rates and after accounting and pro forma adjustments, are $4,478,998. After giving effect to New River's proposed rates, such total operating revenues are $4,754,909. Under the revenue requirement approved herein, such revenues are $4,695,810.

10. The reasonable level of test year operating revenue deductions, after appropriate pro forma adjustments, is $3,995,578. This amount includes $122,012 for investment currently consumed through reasonable depreciation on an annual basis.

11. The capital structure of New River which is appropriate for use in this proceeding is as follows:

Type of Capital	Percent
Long-term debt	1.86%
Common equity	98.14%
TOTAL	100.00%

12. The proper embedded cost of New River's long-term debt is 6.0%. The fair rate of return which New River should be given the opportunity to earn on the original cost value of its investment used and useful to the ratepayers of North Carolina (or rate base) is 14.44%, which implies a return of 14.6% on the common equity portion of such investment. The Commission finds that such level of returns is just and reasonable both to the Company and its customers.

13. In order for the Company to be afforded a reasonable opportunity to earn the level of returns which the Commission finds to be just and reasonable, New River should be allowed to increase its rates and charges so as to produce an additional $216,812 based on operations during the test year. Thus, the annual revenue requirement approved herein is $4,695,810. The Commission finds that, given efficient management, this amount of annual revenue dollars will afford the Company a fair opportunity to earn the level of returns on rate base and on equity which the Commission has previously found to be just and reasonable.

14. The Schedule of Rates and Charges attached hereto as Appendix A of this Order is hereby found to be just and reasonable and such Schedule should be used by the Company to generate approximately the amount of annual revenue of $4,695,810 found to be proper for New River.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence for these findings is contained in the verified Application, G.S. 116-35, Chapter 62 of the General Statutes of North Carolina, the Commission's files and records regarding this proceeding, the Commission Order Setting Hearing issued July 1, 1980, the testimony of Company witnesses Trivette and Austin, and the testimony and exhibits of Public Staff witnesses Hoard and Creasy. These findings are essentially informational, procedural, and jurisdictional in nature and are, for the most part, uncontested.

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 can be demonstrated with a high degree of certainty.

The Commission thus concludes that, for purposes of this case, the appropriate test year to be adopted and applied is the 12-month period ended December 31, 1979, as normalized to end-of-period levels and as adjusted for

certain known changes which occurred prior to the conclusion of the hearings in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding is to be found in the testimony of Company witness Austin and in consideration of a rebuttable presumption that service quality is at least adequate, absent competent evidence in the record to the contrary. In this proceeding, no public witnesses appeared at the hearing to contest the presumption. The Public Staff offered no evidence to the contrary and the Commission's files and records herein reflect no unusual level of complaint activity with regard to New River. Therefore, the Commission concludes that it has jurisdiction to fix and establish the appropriate level of rates and charges to be used hereafter by New River and that the Company is providing adequate service to retail electric customers in its service area in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact consists of the testimony and exhibits presented by Company witness Austin and by Public Staff witness Hoard.@

In their Proposed Order, New River acknowledged that they were in total agreement with the Public Staff's net electric plant in service amount which is $3,414,206. The Commission, therefore, concludes that the proper level of net electric plant in service for use herein is $3,414,206, which is calculated as follows:

Item	Amount
Electric plant in service (includes $60,178 of additions to plant through August 31, 1980)	$4,248,579
Construction work in progress (balance on August 31, 1980)	124,872
Less: Accumulated depreciation	(959,245)
Total investment in electric plant	$3,414,206

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witnesses Austin and Brookshire and Public Staff witness Hoard presented direct testimony and exhibits regarding the proper amount of the power supply investment (capital credits or patronage dividends) to be included in the Company's rate base. The Public Staff included $355,949, whereas the Company included $1,268,630 as capital credits in the rate base. The $912,681 difference between the Company's amount and the Public Staff's amount is made up of two items as shown below:

Item	Amount
Per Company (capital credits)	$1,268,630
Per Docket No. E-34, Sub 10, Final Order Capital Credits	(880,258)
Adjustment for 1980 (10 months) amortized portion of Duke Power Company refund	(32,423)
Per Public Staff (capital credits)	$ 355,949

Public Staff witness Hoard, in his prefiled direct testimony, contended that the Commission, in previous dockets, had intended to set the Company's rate of return on the basis of gross purchased power cost. To support his contention, witness Hoard presented the following chart in his prefiled testimony showing the rates of return on original cost net investment allowed by the Commission for four power companies for the years 1971 through 1975.

Date of Final Order	Company	Docket #, Sub #	Test Year Ended	% Rate of Return on Original Cost Net Investment
2/12/71	Duke	E-7, Sub 120	12/31/69	8.76%
2/26/71	CP&L	E-2, Sub 193	12/31/69	8.09
12/14/71	New River	E-34, Sub 2	6/30/71	N-9.69 G-6.04
1/31/72	Duke	E-7, Sub 128	5/31/71	7.82
2/17/72	CP&L	E-2, Sub 201	6/30/71	7.13
10/30/72	Nantahala	E-13, Sub 20	12/31/71	5.51
12/12/72	New River	E-34, Sub 4	6/30/72	N-13.70 G-8.71
6/21/73	Duke	E-7, Sub 145	6/30/72	7.78
11/14/73	New River	E-34, Sub 5	12/31/72	N-16.08 G-10.70
7/26/74	New River	E-34, Sub 7	12/31/72	N-16.41 G-11.43
10/10/74	Duke	E-7, Sub 159	12/31/73	8.21
1/6/75	CP&L	E-2, Sub 229	12/31/73	9.29
8/8/75	Nantahala	E-13, Sub 23	6/30/73	6.59
10/3/75	Duke	E-7, Subs 161 & 173	12/31/74	9.11

N - Percentage rate of return based on the net purchased power cost (i.e., capital credits are used to reduce the cost of purchased power).

G - Percentage rate of return based on the gross purchased power cost (i.e., purchased power expense is not reduced by the capital credit).

Witness Hoard contended that New River's gross rate of return on the original cost net investment is much more reasonable in comparison with other rates of return approved by the Commission. Therefore, witness Hoard concluded that the Commission intended to set the Company's rates on gross purchased power cost. If that were the Commission's intent, then the ratepayers would not have been getting the benefit of a reduction in rates due to capital credits and by including these same capital credits in the rate base, the ratepayers would be paying a return on funds they had supplied to the Company. Therefore, witness Hoard deducted all capital credits prior to Docket No. E-34, Sub 10, from the Company's proposed rate base, which deduction amounted to $880,258.

Witness Hoard's testimony implies that the listed rates of return are directly comparable and that the differences in percentages shown offer a rationale for deducting all capital credits prior to Docket No. E-34, Sub 10, from the rate base. The Commission believes that this comparison of the four power companies' rates of return is not conclusive in the absence of consideration of the following facts:

(1) Duke, CP&L, and Nantahala do not have capital credits;

(2) New River is not publicly owned;

(3) New River does not have any generating capacity of its own;

(4) New River is a much smaller electric utility than Duke, CP&L, or Nantahala;

(5) New River is almost exclusively equity financed;

(6) New River enjoys a tax exempt financial status; and

(7) New River could adopt, under the General Statutes of North Carolina, the retail rates of its wholesale supplier, BREMCO. Such rates, if adopted would result in a larger increase in New River's existing rates than the increase proposed by New River.

A review of Commission Orders issued in Docket Nos. E-34, Subs 2, 4, 5, and 7, as referenced in witness Hoard's prefiled testimony, shows the following: Docket Nos. E-34, Subs 2, 4, and 5, were not general rate cases but were applications for recovery of increased costs of purchased power. Docket No. E-34, Sub 7, was not a general rate case but was initiated by the Commission for a reduction of rates to reflect the disallowance by the Federal Power Commission of a part of the increase upon which Docket No. E-34, Sub 5, was originally based. In Docket Nos. E-34, Subs 2, 5, and 7, the Commission Orders report two rates of return - (1) includes capital credits in the cost of purchased power and (2) excludes capital credits from the cost of purchased power. Because of the appearance of two rates of return in these prior dockets, it is clear that in the past this Commission has considered the impact on rates of reductions in purchased power expense resulting from patronage dividends. In Docket No. E-34, Sub 4, the Order states that "The Commission is not herein establishing or approving a rate of return for New River."

In the Commission Order in Docket No. E-34, Sub 2, the Commission agreed with the recommendation of Staff witness Warren that "...certain accounting entries as set out below will afford a method to enable the Commission to have cognizance of the effect of patronage dividends for rate-making purposes and will provide a means for consumers, whose contributions or revenues make the existence of patronage dividends possible, to be assured of receiving just consideration for their contribution to capital credits."

In the same Order in Docket No. E-34, Sub 2, the Commission, using the full amount of accumulated capital credits at that time, ordered as follows:

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

Account 124, Other Investments $484,918.50

Account 216, Unappropriated Earned Surplus $484,918.50

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

Account 124, Other Investments XXXX

Account 555, Purchased Power XXXX"

The record also indicates that the Applicant was completely equity financed and had no debt until after the filing of Docket No. E-34, Sub 7. As indicated in the testimony of Public Staff witnesses Hoard and Watson, an increase in the debt ratio would reduce the revenue requirement. Conversely, an increase in the equity ratio would increase the revenue requirement. It was agreed by all witnesses that the Company's past and present equity ratios were above the average of 35% as quoted by Public Staff witness Watson.

The evidence is clear that the Commission, in past dockets, did, in fact, order New River to deduct all capital credits from its operating expenses. In Docket No. E-34, Sub 10, the Commission included the balance of accumulated capital credits in the determination of the fair value rate base and approved an overall rate of return of 10.20% based on the cost of purchased power reduced by the test-year capital credits.

Based upon the foregoing discussion, the Commission concludes that accumulated capital credits ($880,258) assigned prior to Docket No. E-34, Sub 10, should continue to be included in the rate base as previously ordered. The Commission, furthermore, finds that the Company should continue to set rates based on the normal level of net purchased power expense that the ratepayer is expected to be paying in the future (i.e., gross purchased power expense is to be reduced by the current year's regular capital credits) in order to ensure the proper matching of revenues and expenses with the test year rate base.

Public Staff witness Hoard also reduced the power supply investment by $32,423 of capital credits related to the $116,725 Duke Power Company refund that BREMCO, New River's electric supplier, passed on to New River in the form of capital credits. Witness Hoard recognized the nonrecurring nature of the $116,725 refund capital credit; amortized it to expense over a three-year period for rate-making purposes, to give the benefit of this refund to the ratepayer; and thus increased the investment in purchased power by $38,908 ($116,725 ÷ 3), the amortized portion of the refund for the first year.

Company witness Austin agreed with the Public Staff at the hearing that the refund should be amortized over a three-year period, but stipulated that 22 months of amortization should be allowed in rate base in recognition of a year's amortization taken in the test year and another 10 months of amortization resulting from updating through the time of the hearing (November 1980).

The Commission recognizes the nonrecurring nature of the $116,725 refund capital credit and agrees with both the Company and the Public Staff that said

amount should be amortized over some reasonable period. The Commission agrees with the parties that the refund should be amortized over a three-year period for rate-making purposes in order to give the benefit of this refund to the ratepayers. The Commission agrees with the Company that, if costs and rate bases are to be updated, all the effects of such updating should be considered. On this basis, the Commission concludes that the updated amortization as presented by the Company is proper.

The Commission concludes that the proper amount of capital credits to be included as the Company's power supply investment is $1,268,630 which is comprised of the following elements:

Item	Amount
Capital credits allocated to New River through 1979 (not including the Duke refund)	$1,197,299
1979 Amortized portion of Duke refund	38,908
1980 (10 months) Amortized portion of Duke refund	32,423
Power supply investment (capital credits)	$1,268,630

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witness Austin and Public Staff witness Hoard presented testimony concerning the proper amount of working capital to be included in the calculation of rate base. The Company, in its Proposed Order, agreed with the Public Staff that the appropriate amount of working capital allowance to be included is $166,397. The Commission, accordingly, concludes that such amount is proper.

The following chart summarizes the amounts which the Commission concludes are proper for each component of the allowance for working capital:

Item	Amount
Cash allowance (1/8 of O&M expenses)	$ 49,696
Materials and supplies	174,904
Prepaid expenses	1,860
Customer deposits	(57,363)
Undeliverable refunds	(2,700)
Allowance for working capital	$166,397

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The Commission, having previously determined the reasonable net original cost of the Company's investment in electric plant for use herein to be $3,414,206 (including $124,872 for construction work in progress), the reasonable amount of the Company's power supply investment to be $1,268,630, and the reasonable allowance for working capital to be $166,397, finally concludes that the proper original cost rate base for use herein is $4,849,233 ($3,414,206 + $1,268,630 + $166,397).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Austin and Public Staff witnesses Hoard and Creasy presented testimony and exhibits on the proper level of New River's test year revenues under the present rates.

Company witness Austin adjusted actual test year revenues by $458,881, the amount of the increase in purchased power cost since the end of the test year. The Public Staff accepted the Company's revenue adjustment pertaining to the purchased power increase. Therefore, the Commission concludes that such adjustment is reasonable and appropriate for use herein.

Likewise, Public Staff witness Creasy made a $147,279 adjustment to test year revenues to account for revenues associated with growth in the number of customers for each customer class, except industrial customers. The Company did not object to this customer growth adjustment. Thus, the Commission concludes that the customer growth adjustment to revenues is appropriate for matching test year revenues and expenses with the test year rate base, when considered in conjunction with the customer growth expense adjustment which is subsequently allowed herein.

The Commission concludes, based upon the foregoing, that the following calculation of operating revenues for the test year under present rates of $4,478,998 is appropriate for use herein:

Item	Amount
Actual test year revenues	$3,872,838
Adjustment for increased purchased power cost	458,881
Adjustment for customer growth	147,279
Total operating revenues	$4,478,998

Using the adjustments just approved in the Company's proposed level of rates and charges, the Commission concludes that the revenues which would have been produced by the Company's proposed rates, if such rates had been in effect during the test year as adjusted and updated, are the sum of $4,754,909.

The revenues which would have been produced by the rates subsequently approved herein (See Evidence and Conclusions for Finding of Fact Nos. 13 and 14), are $4,695,810.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this Finding of Fact consists of the Company's application and the exhibits attached thereto, the Company's tendering of Revised Hoard Exhibit I, the testimony of Company witnesses Brookshire and Austin and the testimony and exhibits of Public Staff witnesses Hoard and Creasy. The proposed Order presented by the Company acknowledges the acceptance by New River of all of the Public Staff adjustments made in the determination of a normal level of test year operating expenses. The Commission, therefore, agrees that the reasonable level of test year operating revenue deductions, after appropriate pro forma adjustments, which is appropriate for use herein is $3,995,578. The following chart displays the components of the proper level of operating revenue deductions.

Item	Amount
Purchased Power Expense	$3,470,010
Operation and Maintenance	397,567
Depreciation	122,012
Miscellaneous	5,989
Total operating revenue deductions	$3,995,578

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 AND 12

In its Application, New River requested a revenue increase sufficient to allow a rate of return on equity of 14.6%. The Company offered the testimony of witnesses Trivette, Brookshire, and Austin in general support of the requested rate of return.

In the presentation of its case, the Public Staff presented the testimony of William F. Watson, Director of the Economic Research Division. He stated that a rate of return on equity of 14.6%, as requested by the Company, was appropriate for New River. The issue of rate of return on common equity is therefore uncontroverted. The Commission finds that rates should be set in order to allow New River a reasonable opportunity to earn 14.6% on its common equity.

The matter of capital structure for New River was subject to conflicting interpretations between the Company and the Public Staff. The Company maintained that the actual capital structure at the end of the test year should be used in setting the overall rate of return. The equity ratio for the end of the updated test year was 989.14% and the corresponding debt ratio was 1.86%. On cross-examination, Donald R. Austin, General Manager of New River, stated that the Company's present policy was geared toward achieving an equity ratio of 75% in the future. Mr. Watson recommended that New River's overall capital structure contain 92.36% common equity and 7.64% debt. This was based on an issue of $300,000 in long-term debt which had not taken place at the end of the test year but had been originally projected by the Company to be in place before the hearing closed. The debt was not issued due to delays in materials and installation contracts. However, Mr. Austin testified that the project, which would have to be financed by this $300,000 debt, is still scheduled to be completed by April or May 1981.

The Commission concludes that the capital structure used in setting rates in this proceeding should be one which the Company can be expected to maintain on average within the life of the Order, insofar as is consistent with the Commission's authority. The Commission also recognizes New River's impending need to file an additional Application as a result of (1) further increases in the rates charged by Duke Power Company, as discussed by Company witness Cohn; (2) the end of the amortization of the refund capital credit as discussed by Public Staff witness Hoard; and/or (3) the expansion of the Winkler's Creek Substation, which will go from a four to a six circuit station, as discussed by Company witness Austin. Also, the present volatile nature of interest rates tends to increase the difficulty of accurately projecting the embedded cost of debt. On balance, and in view of the prospect of again reviewing the Company's actual capital structure in the near future, the Commission concludes that it would be more equitable to base its decision on known facts rather than upon

conjecture. The Commission, therefore, finds the following capital structure and cost rates to be reasonable for use in this proceeding:

Item	Capitalization Ratio	Cost Rate	Overall Cost
Long-term Debt	1.86%	6.0%	0.11%
Common Equity	98.14%	14.6%	14.33%
Total	100.00%	-	14.44%

The Commission concludes that the levels of return approved herein are adequate and afford the Company a fair opportunity to earn a reasonable profit for the Endowment Fund while providing satisfactory and economical service to the ratepayers. Such rates are fair both to the Company and its customers. The Commission requests New River to actively seek to further reduce its common equity ratio in order to capture the benefits of financial leverage for both the Company and the ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The Commission previously has discussed its conclusions regarding the fair rate of return which New River should be given the opportunity to earn.

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
NEW RIVER LIGHT AND POWER COMPANY
STATEMENT OF OPERATING INCOME
FOR THE TEST YEAR ENDED DECEMBER 31, 1979

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Net operating revenues	$4,478,998	$216,812	$4,695,810
Operating Revenue Deductions			
Purchased power - net	3,470,010	-	3,470,010
Operation and maintenance	397,567	-	397,567
Depreciation	122,012	-	122,012
Miscellaneous	5,989	-	5,989
Total operating revenue deductions	3,995,578	-	3,995,578
Operating income for return	$ 483,420	$216,812	$ 700,232

SCHEDULE II
NEW RIVER LIGHT AND POWER COMPANY
STATEMENT OF RATE BASE AND RATE OF RETURN
FOR THE TEST YEAR ENDED DECEMBER 31, 1979

Item	Present Rates	After Approved Rates
Investment in Electric Plant		
Electric plant in service	$4,248,579	$4,248,579
Construction work in progress	124,872	124,872
Accumulated depreciation	(959,245)	(959,245)
Net investment in electric plant	3,414,206	3,414,206
Power Supply Investment (Capital credits)	1,268,630	1,268,630
Allowance for Working Capital		
Cash Allowance	49,696	49,696
Materials and Supplies	174,904	174,904
Prepaid Expenses	1,860	1,860
Customer Deposits	(57,363)	(57,363)
Undeliverable Refunds	(2,700)	(2,700)
Total	166,397	166,397
Rate Base	$4,849,233	$4,849,233
Rate of Return	9.97%	14.44%

SCHEDULE III
NEW RIVER LIGHT AND POWER COMPANY
STATEMENT OF CAPITALIZATION AND RELATED COSTS
FOR THE TEST YEAR ENDED DECEMBER 31, 1979

	Rate Base	Ratio %	Embedded Cost %	Net Operating Income
		Present Rates		
Long-term debt	$ 90,000	1.86%	6.00%	$ 5,400
Common equity	4,759,233	98.14%	10.04%	478,020
Total	$4,849,233	100.00%	-	$483,420
		Approved Rates		
Long-term debt	$ 90,000	1.86%	6.00%	$ 5,400
Common equity	4,759,233	98.14%	14.60%	694,832
Total	$4,849,233	100.00%	-	$700,232

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence relating to cost of service allocations and rate design is contained in the testimony and exhibits of Company witness Cohn and Public Staff witness Creasy.

Witness Cohn testified that he had prepared rates to recover the Company's costs within the rate of return allowed by the Commission, to preserve the equity of cost within consumer classes, and to ensure adequate cost recovery at all levels of consumption. He stated that he calculated proposed revenues by selecting one month, closest to the average month, and by preparing a bill frequency distribution for that month. Each customer class was then run against the existing rates and an adjustment factor was calculated to correct the results to the monthly average during the test period. Each rate block was then increased to reflect the fuel cost fold-in and a percentage increase was then applied to each block, rounded to the nearest 1/100th cent, in order to produce the proposed increased revenues. This methodology was specifically used for the residential and general service rates and, with certain modifications, was also used for the industrial and Appalachian State University rates.

Witness Creasy testified that the Company had performed its cost of service allocations on a "cost plus" basis for return instead of return on rate base. "Cost plus" is simply a term for return on operating revenue deductions or expenses. The Company's cost of service study did not attempt to allocate the individual plant accounts in order to determine an allocated rate base, nor did the Company's study allocate the individual operating expense accounts based on how their associated plant accounts were allocated.

Witness Creasy presented a cost of service study which allocated individual plant accounts and individual operating expense accounts based on methods which are consistent with those utilized by the major electric utilities regulated by

this Commission. The cost of service study included the accounting adjustments and updated test year recommended by the Public Staff, and it indicated that the rates proposed by the Company would produce returns on rate base for each customer class which varied from the systemwide return on rate base by excessive margins.

Witness Creasy also presented a cost of service study which utilized the Public Staff's recommended rates of return instead of those proposed by the Company. The results indicated that the returns on rate base for each customer class would be closer to the systemwide return on rate base, in every single case, than returns produced by the Company's proposed rates. The Company did not pose any objections to the cost of service allocations proposed by the Public Staff.

The Commission is of the opinion that cost of service allocations should utilize returns on rate base in the manner proposed by the Public Staff for this proceeding. The Commission is further of the opinion that the relative rates of return proposed by the Public Staff for the individual customer classes in this proceeding are appropriate.

As shown in the testimony and exhibits of witness Cohn, the Company proposed to retain the same basic rate design for each customer class that it had used in the past. The Company's rate design included such features as multiple rate blocks, declining block rates, and no separate customer charge for certain customer classes.

Witness Creasy testified that the rates should accurately track costs, and that multiple block rates and declining block rates should no longer be applied unless it can be shown that such rate forms track costs more accurately than alternate rate forms. The Public Utility Regulatory Policies Act (PURPA) currently promotes simple and straightforward rate designs based on actual cost of service, which would in most instances require elimination of multiple rate blocks and/or flattening of declining block rates.

Witness Creasy also testifed that the rates should contain a separate component to recover all, or at least a major part, of the basic fixed costs per customer (i.e., customer related costs). The separate customer related charge would not vary with Kwh usage, and it would tend to stabilize the Company's revenue recovery by subjecting less of the revenues associated with fixed costs to the fluctuations of Kwh sales due to weather, conservation, economic conditions, etc. It would also result in rates which more accurately track customer related costs.

Witness Creasy testified that the rate design proposed by the Public Staff seeks to establish a monthly customer charge for residential customers of $3.00 per month, whereas the cost of service allocations indicate that the true, fixed customer related costs for residential customers is closer to $7.00 per month per customer. The $3.00 per month per customer charge is a considerable change from the recovery of customer costs contained in the previous rate design, while at the same time, it is not so high as to unnecessarily stimulate greater customer opposition to the charge due to misunderstanding of the nature of the charge.

The rate design proposed by the Public Staff was not objected to by the Company. On rebuttal, the Company simply offered an exhibit showing the rates that would be necessary, using the Public Staff's rate design principles, to produce the increase in revenues requested by the Company. The Commission is of the opinion that the rate design originally proposed by New River should be simplified by eliminating the multiple rate blocks and by flattening the declining block rates in accordance with the rate design proposed by the Public Staff. The Commission is further of the opinion that a separate customer charge should be established for each customer class in accordance with the rate design proposed by the Public Staff. It is anticipated that, after a period of time during which residential customers may become acclimated to and better informed concerning the nature of the customer charge, such charge can gradually be increased to levels which more nearly reflect the true customer related costs.

The rate design approved herein will not have an unreasonable impact on any customer, and it will produce the revenues found to be just and reasonable herein. It will also produce rates which track costs more closely and which are more consistent with the rate designs being promoted by PURPA.

Witness Creasy also testified that the Company currently bases its rate design for industrial customers on the use of demand meters, but that it does not have demand meters for commercial customers or for Appalachian State University. Therefore, the rate design proposed by the Public Staff does not require the use of demand meters for the commercial class or the ASU class.

There is not a great need to use demand meters for the ASU class since all of the individually metered services are paid for by the University. The rates for the ASU class are designed to recover the total revenue requirement found to be the fair share for that class. It is, therefore, immaterial how much of that revenue requirement is accounted for by each meter in the class, since the usage measured by all of the meters in the ASU class is paid for by the University. Therefore, there would be no particular advantage in dividing the revenue requirement for the class between demand charges and energy charges.

However, witness Creasy further testified that one would generally expect to find a wide variation in individual demands within the commercial class, and currently, there is no way to assess an individual customer in that class for the demands placed on the system by that customer. Therefore, witness Creasy recommended that demand meters be used for the commercial class wherever practical. The Company did not object to this recommendation.

The Commission concludes that a rate design incorporating separate demand charges and energy charges for commercial customers would track costs more accurately and would be more consistent with the rate designs being promoted by PURPA. The Public Staff's proposal that demand meters be used for commercial customers was not objected to by the Company, and the Commission concludes that the Company should be directed to make such studies as are necessary to design an appropriate rate for the commercial class which will be based on demand metering.

To summarize, the Commission has concluded the following with regard to cost of service allocations and rate design principles to be employed in this proceeding:

1. That the Company's cost of service allocations should be based on the return on rate base instead of the return on revenue deductions or cost plus basis.

2. That the Company's cost of service allocations should be based on allocation of individual plant accounts in order to determine an allocated rate base, and the individual operating expense accounts should be allocated based on their associated plant accounts wherever possible and appropriate.

3. That the Company's rate design should be modified by eliminating multiple rate blocks and by flattening the declining block rates.

4. That the Company's rate design should be modified by establishing a separate customer charge for each rate class.

5. That the Company should use demand meters for measuring service to the commercial class of customers.

The Commission finally concludes that the Schedule of Rates attached hereto as Appendix A incorporates these allocations and principles and should be adopted for use herein to generate the increased revenues in this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That New River Light and Power Company be, and is hereby, authorized to adjust and increase its rates and charges so as to produce annual revenues from operations, including miscellaneous or other revenues, of $4,695,810. This level of operating revenues includes an approved increase in annual rates and charges of $216,812.

2. That the rates proposed by New River, which were designed to produce annual operating revenues on a different basis from those approved herein, are in excess of those which are just and reasonable and the same are hereby disapproved and denied.

3. That the Company shall file, on or before 10 days from and after the date of this Order, revised rate schedules and tariffs which are consistent with Appendix A attached hereto and with the Evidence and Conclusions for Finding of Fact No. 14 previously described herein.

4. That, unless suspended by further Order of the Commission, such revised tariffs shall be effective for all bills rendered from and after the day next ensuing the date on which such tariffs are filed.

5. That New River shall notify its customers of the increased rates approved herein by appropriate bill insert in its next regular billing cycle which ensues after the effective date of the new tariffs as noted above in Ordering Paragraphs 3 and 4. Such bill insert shall resemble the one attached hereto as Appendix B.

6. That the Company shall, within 180 days after the date of this Order, furnish the Commission with a study showing:

(a) The approximate capital cost of installing demand meters for each customer in the commercial class, including the approximate number of meters to be installed.

(b) The approximate salvage value of each watt-hour meter which would be replaced by the demand meters, including the number of such watt-hour meters.

(c) The estimated additional expense which would be incurred as a result of using demand meters instead of watt-hour meters for the commercial class, including carrying charges on capital cost, depreciation, maintenance, etc. Itemize each type expense.

(d) The amount of time required to convert the commercial class from watt-hour metering to demand metering.

(e) The study should recognize that some commercial customers are relatively small users (less than 1000 Kwh per month) and place a relatively small demand on the system. Since it is more expensive to use demand meters than watt-hour meters, it may not be practical to use demand meters for small users whose demand is minimal. Therefore, the study should include consideration of a minimum usage level below which demand meters would not be installed.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of February 1981.

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

APPENDIX A
DOCKET NO. E-34, SUB 14
NEW RIVER LIGHT AND POWER COMPANY RETAIL RATES

	Residential	Commercial	Industrial*	ASU	Security Lights
Customer charge per bill:	$3.00	$7.00	$13.00	$13.00	-
Energy charge per Kwh:	4.218¢	3.652¢	-	4.023¢	-
First 125 Kwh per Kw:	-	-	3.812¢	-	-
Next 275 Kwh per Kw:	-	-	3.412¢	-	-
All over 400 Kwh per Kw	-	-	3.212¢	-	-
Flat charge per lamp per bill:	-	-	-	-	$5.95

* Subject to a minimum charge of $1.50 per Kw of billing demand.

Note: Rates shown above are base rates. They do not include purchased power adjustments. The base rates shown above shall be in addition to purchased power adjustments.

APPENDIX B
NOTICE TO CUSTOMERS
DOCKET NO. E-34, SUB 14

By Order issued on _____, 1981, the North Carolina Utilities Commission, in Docket No. E-34, Sub 14, allowed New River Light and Power Company to raise its rates in order to produce additional annual revenues of approximately $216,812. This increase was predicated upon the Company's Application to the Commission which was filed on June 10, 1980.

Public Hearings were conducted in Boone on November 18, 1980. The Company appeared and offered testimony and exhibits supporting an annual rate increase of approximately $275,911. The Company's Application was opposed by the Public Staff - North Carolina Utilities Commission, which also offered witnesses in support of its position.

The Commission, upon recommendation by the Public Staff, adopted a Basic Facilities Charge for use in the Company's major rate schedules. The purpose of this charge is to recover, on a monthly basis, a portion of the costs incurred by New River in serving a customer, regardless of whether or not that customer actually uses any electricity. Examples of such costs are the capital cost of the meter and service drop, meter reading and billing expenses and customer account costs. The Commission also adopted a rate structure which has been greatly simplified by eliminating multiple rate blocks and by flattening the remaining block rates.

A comparison of sample bills under the rates proposed by the Company and those approved by the Commission is as follows:

Rate Class	Consumption (Kwh/mo.)	Company Proposed Rates ($)	Commission Approved Rates ($)
RESIDENTIAL	500	25.53	24.09
	1,000	43.54	45.18
COMMERCIAL	500	27.80	25.26
	2,500	106.60	98.30

NOTE: Company proposed rates and Commission approved rates shown above are base rates. They do not include purchased power adjustments.

New River Light and Power Company

DOCKET NO. E-22, SUB 257

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Virginia Electric and Power Company for Authority to Adjust and Increase Its Electric Rates and Charges) ORDER ASSESSING RATE OF RETURN PENALTY AND GRANTING PARTIAL INCREASE IN RATES

HEARD IN: Ahoskie Recreation Center, Ahoskie, North Carolina, on Tuesday, June 16, 1981, at 2:00 p.m.

Knob Creek Recreation Center, Elizabeth City, North Carolina, on Wednesday, June 17, 1981, at 1:00 p.m.

Williamston City Hall, Williamston, North Carolina, on Thursday, June 18, 1981, at 11:00 a.m.

Roanoke Rapids Community Center, Roanoke Rapids, North Carolina, on Friday, June 19, 1981, at 9:30 a.m.

The Commission Hearing Room, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 22-26, June 29-July 3, July 6-10, July 13-15, and July 27-31, 1981

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners John W. Winters and Edward B. Hipp

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Edward S. Finley, Jr., and Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina

Guy T. Tripp, III, and Darla Tarletz, Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia

For the Using and Consuming Public:

G. Clark Crampton and Karen E. Long, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602

David Gordon, Office of the Attorney General, North Carolina Department of Justice, P.O. Box 629, Dobbs Building, Raleigh, North Carolina 27602

For North Carolina Textile Manufacturers Association, Inc.:

Thomas R. Eller, Jr. (Attorney of Record), Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611

For Kudzu Alliance:

M. Travis Payne (Attorney of Record), P.O. Box 183, Durham, North Carolina 27705

BY THE COMMISSION: On December 29, 1980, Virginia Electric and Power Company (Vepco or Company) filed an application with the North Carolina Utilities

Commission seeking authority to adjust and increase its rates and charges for electric service to its North Carolina retail customers, said proposed rates and charges to become effective on February 1, 1981. Vepco's application is based upon a test period consisting of the 12 months ended December 31, 1979.

By Order issued January 28, 1981, the Commission declared the application to be a general rate case under G.S. 62-137, and suspended the effective date of the proposed rates for a period of 270 days in order that an investigation and public hearings could be conducted. The Order of the Commission left the docket open for further orders regarding the scheduling of public hearings and the establishment of the test period to be used in this proceeding.

On February 3, 1981, the Public Staff filed Notice of Intervention on behalf of the Using and Consuming Public. On February 13, 1981, a Petition to Intervene was filed on behalf of the North Carolina Manufacturers Association, Inc. An Order allowing Intervention of North Carolina Textile Manufacturers Association, Inc., was entered on March 26, 1981, by the Commission. Kudzu Alliance filed Petition to Intervene on April 9, 1981. This petition was allowed on April 17, 1981. On June 11, 1981, the Attorney General filed Notice of Intervention on behalf of the Using and Consuming Public. Following a pretrial conference, the Commission, on June 19, 1981, filed a Pretrial Order setting forth the issues of the case, identifying witnesses, estimating required time for each witness, and judicially noticing documents.

Between the time of the Commission's setting this matter for hearing and the actual beginning of public hearings, several motions were filed by various parties concerning discovery, production of documents, extensions of time to file testimony, and other procedural matters. Such motions and the Commission Order entered in response thereto are reflected in the Chief Clerk's official files in this proceeding.

The matter came on for hearing June 16, 1981, in Ahoskie, North Carolina, and on succeeding days in Elizabeth City, Williamston, and Roanoke Rapids, and then for further hearings on June 22, 1981, in Raleigh.

Seven public witnesses appeared at the hearing in Ahoskie and Vepco presented the testimony of Howard M. Wilson, Jr., Manager of Rates at Vepco. Mr. Wilson sponsored testimony on rate design.

On June 17, 1981, six public witnesses appeared at the hearing in Elizabeth City. At the Elizabeth City hearing, Vepco presented the testimony of the following witnesses: Dr. James Nathan Kimball, Supervisor of Cost Allocation with Vepco; Henry H. Dunston, Jr., Manager of Cost Analysis; and Howard M. Wilson, Jr., Manager of Rates at Vepco. Dr. Kimball sponsored testimony on the economic theory which supports pricing electricity at marginal costs. Witness Dunston sponsored testimony on the cost-of-service studies and jurisdictional allocation. Witness Wilson, who had testified in Ahoskie, gave additional information concerning embedded costs compared to marginal costs.

At the Williamston hearing, on June 18, 1981, six public witnesses testified. Vepco presented the testimony of B.D. Johnson, Vice President and Controller of Vepco. He testified as to the accounting, revenue, and expense adjustments.

On June 19, 1981, in Roanoke Rapids, four public witnesses testified. Vepco presented the testimony of Robert L. Hahne, a Certified Public Accountant and a partner in the firm of Deloitte, Haskins & Sells, on the subject of cash working capital.

At the hearing in Raleigh beginning June 22, 1981, Vepco presented the testimony of the following witnesses: William W. Berry, President and Chief Operating Officer of Vepco; Jack H. Ferguson, Executive Vice President of Vepco; David R. Hostetler, Manager of Fuel Resources for Vepco; O. James Peterson III, Vice President and Treasurer and Chief Financial Officer of Vepco; Irene M. Moszer, Manager of Forecasting and Economic Analysis for Vepco; and B.D. Johnson, Vice President and Controller of Vepco.

The Public Staff offered testimony and exhibits of the following witnesses: Frank L. Wadsworth, Senior Consultant and Project Manager for International Energy Associates Limited (IEAL); Dennis J. Nightingale, Director of the Electric Division of the Public Staff; Dr. William F. Watson, Director of Economic Research Division of the Public Staff; Dr. Richard Stevie, Economist in the Economic Research Division of the Public Staff; David Creasy, Engineer with the Public Staff; James G. Hoard, Jr., Staff Accountant on the Public Staff; John C. Romano, Electrical Engineer with the Public Staff, Electric Division; Timothy J. Carrere, Utilities Engineer with the Public Staff; Thomas S. Lam, Utilities Engineer with the Public Staff; William W. Winters, Supervisor of the Electric Section of the Public Staff Accounting Division; Ralph E. Renkin, Partner with A.T. Kearney; Whitfield Russell and Luis C. Bernal, partners with Whitfield A. Russell & Associates; William E. Carter, Assistant Director of Accounting of the Public Staff; Theodore Rosiak, Jr., Station Manager of Vepco's Mt. Storm Power Station; James W. Braswell, Station Manager of Vepco's Chesterfield Power Station; T. Justin Moore, Jr., Chairman of the Board of Vepco; James E. Paul, Manager of Vepco's Internal Audit Division; Harold W. Bohannan, Jr., Project Engineer for Vepco's Yorktown Ash Disposal; Otto Herman Wegman, of the Security Department of Vepco; T. Clark Moody, Executive Manager, Internal Auditing with Vepco; Jerry Lawrence Strickland, Supervisor in the Security Department at Vepco; Sam C. Brown, Jr., Senior Vice President Power Station Engineering and Construction of Vepco; and W.M. Thomas, Vice President of Fuel Resources for Vepco.

Vepco presented the following rebuttal witnesses: Robert H. Koppe, Manager for Reliability and Safety Projects at the S.M. Stoller Corporation; Marie R. Corio, Economist with the National Economic Research Associates, Inc.; Sally Hunt Streiter, Economist, Vice President of National Economic Research Associates; Gary R. Keesecker, Manager of Power Supply for Vepco; F. Kenneth Moore, Project Manager at Vepco's Bath County Pumped Storage Project; and J.F. Utley, Certified Public Accountant with the firm of Deloitte, Haskins & Sells.

The Intervenor, Kudzu Alliance, offered the testimony and exhibits of Wells Eddleman.

On July 10, 1981, Vepco filed its Notice of Placing Rate Increase Into Effect Subject To Undertaking To Refund. On July 15, 1981, the Commission issued its Order Approving Amended Customer Notice and Amended Undertaking To Refund. On August 1, 1981, Vepco placed interim rates into effect subject to its undertaking to refund as approved by the Commission Order of July 15, 1981, and as permitted by G.S. 62-135.

Based upon the foregoing, the verified application, the testimony and exhibits received in evidence at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That Vepco is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public in northeastern North Carolina, and Vepco has its principal office and place of business in Richmond, Virginia.

2. That Vepco is duly organized as a public utility company under the laws of North Carolina and is subject to the jurisdiction of this Commission. Vepco 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 December 31, 1979, adjusted for certain changes based upon circumstances and events occurring up to the time of the close of the hearings in this docket. Vepco by its application here is seeking an increase in its basic rates and charges to North Carolina retail customers of approximately $16,646,000 based upon operations in said test year as thus adjusted.

4. That the overall quality of electric service provided by Vepco to its North Carolina retail customers is adequate.

5. That the summer coincident peak method for making cost-of-service allocations used by both the Company and the Public Staff 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 summer coincident peak allocation methodology.

6. That Vepco's decision to cancel its North Anna Nuclear Unit 4 was prudent and consequently the write-off of the cancellation costs of that plant should be allowed.

7. That the reasonable original cost of Vepco's property used and useful, or to be used and useful within a reasonable time after the test period, in providing service rendered to the public within the State of North Carolina, less that portion of the cost which has been consumed by previous use recovered by depreciation expense, plus the original cost of investment in plant under construction (CWIP), is $201,864,000.

8. That the reasonable allowance for working capital and deferred debits and credits is $14,561,000.

9. That Vepco's reasonable original cost rate base is $216,425,000. This amount consists of net utility plant in service and construction work in progress of $201,864,000, plus a reasonable allowance for working capital and deferred debits and credits of $14,561,000.

10. That Vepco's appropriate gross revenues for the test year under present rates and after accounting and pro forma adjustments are $82,539,000. After giving effect to Vepco's requested increase, such gross revenues would be $99,185,000.

11. That the reasonable level of test year operating revenue deductions is $68,410,000. This amount includes $7,468,000 for investment currently consumed through reasonable actual depreciation on an annual basis.

12. That Vepco's fuel expenses are excessive due to the unreasonably poor performance of its fossil generating units which poor performance has been and is due to the imprudence of Vepco management.

13. That there has been mismanagement by Vepco in and with respect to several different areas of its operations. Such mismanagement has included various failures to promulgate reasonable and adequate procedures and internal controls and has included various failures to take reasonable and timely actions to remedy or eliminate various problems of which management was aware. The matters which are enumerated and discussed in the Evidence and Conclusions section for this finding of fact reflect the existence of such mismanagement by Vepco.

14. That the capital structure for Vepco which is appropriate for use in this proceeding is as follows:

	Percent
Debt	54.42
Preferred	12.04
Equity	33.01
Subscriptions received on capital stock	.08
Other	.45
	100.00%

15. That the Company's embedded costs of debt, preferred stock, and subscriptions received on capital stock are 9.26%, 8.51%, and 8.00%, respectively. In view of Findings of Fact Nos. 12 and 13 above relating to excess fuel costs and imprudent management, the rate of return for Vepco to be allowed to earn on its common equity is 10.0%. Under sound and prudent management, Vepco would have been entitled to a 15.5% rate of return on common equity. The other capital portion of the capital structure is at zero cost. 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 9.37% to be applied to the Company's original cost rate base.

16. That, based upon the foregoing, Vepco should increase its annual level of gross revenues under present rates by $12,924,000. The annual revenue requirement approved herein is $95,463,000. This increase is required in order for the Company to have a reasonable opportunity to earn the 9.37% 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 the rate designs proposed herein by the Public Staff with the modifications thereto specified in the Evidence and Conclusions section for this finding of fact are appropriate and should be adopted.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS TO THE FINDINGS OF FACT WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

SCHEDULE I
VIRGINIA ELECTRIC AND POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF OPERATING INCOME
FOR THE TEST YEAR ENDED DECEMBER 31, 1979

(000's Omitted)

Item	Present Rates	Approved Increase	After Approved Increase
Operating Revenues			
Net operating revenues	$82,539	$12,924	$95,463
Operating Revenue Deductions:			
Total fuel expense included in fuel clause	33,726	-	33,726
Other fuel expenses	1,838	-	1,838
Total fuel expenses	35,564	-	35,564
Other operation and maintenance expenses	15,340	27	15,367
Depreciation	7,468	-	7,468
Amortization of property losses	845	-	845
Gain or loss on disposition of property	(3)	-	(3)
Taxes other than income	6,625	774	7,399
Current Federal income taxes	(2,508)	5,242	2,734
Deferred Federal income taxes	3,694	-	3,694
Current State income taxes	(61)	728	667
Deferred State income taxes	212	-	212
Investment tax credits	1,138	-	1,138
Commitment fees	66	-	66
Interest on customer deposits	30	-	30
Total operating revenue deductions	68,410	6,771	75,181
Net operating income for return	$14,129	$ 6,153	$20,282

ELECTRICITY

SCHEDULE II
VIRGINIA ELECTRIC AND POWER COMPANY
NORTH CAROLINA RETAIL OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
FOR THE TEST YEAR ENDED DECEMBER 31, 1979
(ADJUSTED FOR KNOWN CHANGES OCCURRING
SUBSEQUENT TO THE END OF THE TEST YEAR)

(000's Omitted)

Item	Present Rates	After Approved Rates
Investment in Electric Plant:		
Electric plant in service	$224,595	$224,595
Nuclear fuel	4,614	4,614
Electric portion of common utility plant	635	635
Construction work in progress	40,820	40,820
Total plant investment	270,664	270,664
Deduct: Accumulated provision for depreciation	51,189	51,189
Amortization of nuclear fuel assemblies	2,840	2,840
Plant investment less accumulated depreciation and amortization	216,635	216,635
Deduct: Cost-free capital:		
Accumulated deferred income taxes:		
Liberalized depreciation	5,773	5,773
Cost of removal	573	573
Capitalized taxes and employee benefits	734	734
Accelerated amortization	472	472
Leaseback land sale	(24)	(24)
Owned nuclear fuel	(134)	(134)
Pre-1971 investment tax credit	6	6
Levelized lease payments	797	797
Customer advances for construction	116	116
Westinghouse settlement	6,458	6,458
Total net investment in electric plant before working capital allowance	201,864	201,864
Working capital and deferred debits and credits	14,561	14,561
Original Cost Rate Base	$216,425	$216,425
Rate of Return	6.53%	9.37%

SCHEDULE III
VIRGINIA ELECTRIC AND POWER COMPANY
STATEMENT OF CAPITALIZATION AND RELATED COSTS
FOR THE TEST YEAR ENDED DECEMBER 31, 1979
(ADJUSTED FOR KNOWN CHANGES OCCURRING
SUBSEQUENT TO THE END OF THE TEST YEAR)

(000's Omitted)

Item	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income For Return
		Present Rates		
Long-term debt	$117,778	54.42	9.26	$10,906
Preferred stock	26,058	12.04	8.51	2,218
Common equity	71,442	33.01	1.39	991
Subscription received on capital stock	173	.08	8.00	14
Other paid-in capital	974	.45	-	-
Total	$216,425	100.00		$14,129
		Approved Rates		
Long-term debt	$117,778	54.42	9.26	$10,906
Preferred stock	26,058	12.04	8.51	2,218
Common equity	71,442	33.01	10.00	7,144
Subscription received on capital stock	173	.08	8.00	14
Other paid-in capital	974	.45	-	-
Total	$216,425	100.00		$20,282

IT IS, THEREFORE, ORDERED as follows:

1. That Virginia Electric and Power Company shall adjust its North Carolina retail electric rates and charges as hereinafter described in decretal paragraph 2 to produce an increase in gross revenues of $12,924,000 on an annual basis to be effective with respect to service rendered on and after the date of this Order.

2. That, within five (5) days from the date of this Order, Virginia Electric and Power Company shall file with this Commission rate schedules designed to produce the increase in revenues as ordered in decretal paragraph 1 above in accordance with the guidelines set forth in Appendix A attached hereto, to be effective with respect to service rendered on and after the date of this Order.

3. That the interim rates and charges which Virginia Electric and Power Company placed into effect pursuant to G.S. 62-135 on August 1, 1981, subject to an undertaking to refund are found to be unjust and unreasonable and are hereby disapproved to the extent that such rates and charges are in excess of those approved herein. Vepco shall refund all amounts which have been thus overcollected from its North Carolina retail ratepayers since August 1, 1981, together with interest thereon at the rate of 10.0% per annum as specified in the Commission Order heretofore entered in this docket on July 15, 1981. Such refunds shall be made as promptly as possible by appropriate credits to customer bills. Vepco shall submit a plan for making such refunds and showing the calculation thereof within five (5) days of the date of this Order.

4. That Virginia Electric and Power Company shall, at the time of its next general rate filing, file proposals and discussions thereof which accomplish the following:

(a) Restrict Schedule 5P to customers whose load factors are less than a given level (approximately 28% load factor unless otherwise justified);

(b) Restrict Schedule 6P to customers whose load factors are greater than a given level (approximately 28% load factor unless otherwise justified);

(c) Increase winter demand charges for Schedule 7 to same level as Schedule 5; and

(d) Decrease summer/winter rate differentials in energy charges for Schedules 1, 7, and 47 by an appropriate amount in order to move such summer/winter rate differentials closer to those of the other rate schedules.

5. That Virginia Electric and Power Company shall begin producing the information necessary to allocate demand related production expenses based on the coincident demand for each rate class at the time of the system winter peak; that the Company shall begin producing the information necessary to determine the energy related portion of production plant (and production plant related expenses) as described herein; and that the Company shall be prepared to utilize such information for making cost-of-service studies at the time it files its next general rate application.

6. That, for applicable residential customers, Vepco shall separately itemize the dollar amount of the conservation discount on the bill statement under the heading "Conservation Discount."

7. That Virginia Electric and Power Company shall amend its subsequent tariff sheets to add the information included in Appendix B.

8. That Virginia Electric and Power Company shall give appropriate public notice of the partial rate increase approved herein by mailing a copy of the notice attached hereto as Appendix C by first-class mail to each of its North Carolina retail customers during the next normal billing cycle following the filing and acceptance of the rate schedules described in decretal paragraph 2 above.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of October 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A
Docket No. E-22, Sub 257
Guidelines for Design of Rate Schedules

Step 1. Determine the percentage reduction in rate schedule revenues necessary to reduce the overall revenue requirement proposed by the Company to the level of the overall revenue requirement established by the Commission in this proceeding.

Step 2. For each rate schedule, reduce the revenue target proposed by the Company by the percentage determined in Step 1. The sum of the reduced rate schedule revenue targets should then be the rate schedule revenues necessary to produce the overall revenue requirement established by the Commission in this proceeding.

Step 3. For each rate schedule, reduce the individual prices proposed by the Public Staff in such a manner that:

(a) Each miscellaneous service charge, extra facilities charge, etc., remains at the same level proposed by the Company, except for the revisions to the facilities charges specifically described in this Order;

(b) The basic customer charges are as proposed by the Public Staff:

(c) The RKVA charge in Schedule 6 remains at the same level proposed by the Company;

(d) The winter demand charge in Schedule 7 remains at $2.00 per Kw;

(e) The energy charge in each time-of-day rate schedule retains the appropriate ratio between on-peak charges and off-peak charges; and

(f) Each of the remaining individual prices in a given rate schedule is reduced by the same percentage.

The adjusted individual prices in a given rate schedule should then produce the reduced revenue target determined for that given rate schedule in Step 2.

Step 4. Round off individual prices to the extent necessary for administrative efficiency, provided said rounded off prices do not produce

revenues which exceed the overall revenue requirement established by the Commission in this proceeding.

The individual prices determined in Steps 1 through 4 above should reflect the base fuel component approved by the Commission in Docket No. E-22, Sub 260, for bills rendered through the billing month of November 1981; thereafter, said individual prices should reflect the base fuel component approved by the Commission in Docket No. E-22, Sub 264, for bills rendered beginning with the billing month of December 1981.

APPENDIX B

EXAMPLE OF NEW PROCEDURE FOR SHOWING HISTORY OF CHANGES IN FUEL COSTS ON TARIFFS BETWEEN GENERAL RATE CASES

After the first fuel clause hearing under G.S. 62-134(e) each affected tariff would reflect the following:

Fuel charge per Kwh included in base rates in Docket No. E-22, Sub 257, effective for bills rendered during the billing months of August through November 1981	2.339 ¢
Fuel charge increment or (decrement) per Kwh established in Docket No. E-22, Sub 264, under G.S. 62-134(e)	(.069)¢
New base fuel charge per Kwh included in base rates effective for bills rendered during the billing months of December 1981 through March 1982	2.270 ¢

After the second fuel clause hearing under G.S. 62-134(e)

Fuel charge per Kwh included in base rates in Docket No. E-22, Sub 257, effective for bills rendered during the billing months of August through November 1981	2.339 ¢
Fuel charge increment or (decrement) per Kwh established in Docket No. E-22, Sub 264, under G.S. 62-134(e)	(.069)¢
Base fuel charge effective for bills rendered during the billing months of December 1981, through March 1982	2.270 ¢
Fuel charge increment or (decrement) per Kwh established in Docket No. E-22, Sub XXX under G.S. 62-134(e)	(.050)¢
New base fuel charge per Kwh included in base rates effective for bills rendered during the billing months of April through July 1982	2.220 ¢

Etc.

For Appendix C see the official file in the office of the Chief Clerk.

DOCKET NO. E-22, SUB 258

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Virginia Electric and Power) ORDER APPROVING ADJUSTMENT
Company for Authority to Adjust Its Electric) OF RATES AND CHARGES
Rates and Charges Pursuant to G.S. 62-134(e)) PURSUANT TO G.S. 62-134(e)

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 16 and 23, 1981

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicant:

Guy T. Tripp, III, and Stephani C. Wilson, Hunton & Williams, Attorneys at Law, P. O. Box 1535, Richmond, Virginia 23212

For the Using and Consuming Public:

G. Clark Crampton, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602

For North Carolina Textile Manufacturers Association, Inc.:

Thomas R. Eller, Jr., Attorney at Law, P. O. Drawer 27866, Raleigh, North Carolina 27611

BY THE COMMISSION: On January 30, 1981, Virginia Electric and Power Company (Vepco) filed an application with the North Carolina Utilities Commission pursuant to G.S. 62-134(e) and Commission 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 December 31, 1980, by decreasing the amount included for fuel expenses in the base retail schedules by 0.402 cents per kilowatt-hour for bills rendered on and after April 1, 1981. These adjusted rates would be effective for the billing months of April, May, June, and July 1981.

On February 3, 1981, the Commission issued an Order which suspended the tariff, set the matter for hearing beginning at 2:00 p.m., on February 16, 1981, and required public notice. On February 11, 1981, the Public Staff filed a "Notice of Intervention" in this proceeding.

The matter came on for hearing as scheduled on February 16, 1981. Vepco, North Carolina Textile Manufacturers Association, Inc., and the Public Staff were present and represented by counsel. Vepco presented direct and rebuttal testimony by the following witnesses: H. M. Wilson, Jr., Manager - Rates; C. L. Dozier, Jr., Manager of General Accounting Services; H. M. Hastings, Jr.,

Director of Oil and Coal Contracts; and Gary R. Keesecker, Manager - Power Supply Department.

The Public Staff presented the testimony of Daniel M. Sullivan, Utilities Engineer with the Public Staff Electric Division.

Witness Sullivan testified that upon being advised by the Public Staff Legal Division that purchased power expenses should be excluded from consideration in fuel clause proceedings, he had recalculated the base fuel component sought by Vepco in its application so as to eliminate the cost of any electric power purchased by it. He testified that Vepco had applied for a decrease in the fuel cost component of its base rates by an amount equal to 0.402 cents per kilowatt-hour to 1.959 cents per kilowatt-hour. Witness Sullivan further testified that by eliminating purchased power, Vepco's base fuel cost would decrease from 2.337 cents per kilowatt-hour for the test period to 1.427 cents per kilowatt-hour.

Counsel for both the Public Staff and the North Carolina Textile Manufacturers Association, Inc., argued that, as a matter of law, Vepco should not be permitted to recover its purchased power expenses in this proceeding, and that a decrease in the base fuel cost of 0.968 cents per kilowatt-hour including associated gross receipts taxes should be approved. Vepco argued that purchased power is a properly includable expense in a G.S. 62-134(e) proceeding and that the full base fuel cost adjustment it had applied for, 0.402 cents per kilowatt-hour, should be approved.

On February 13, 1981, counsel for and on behalf of the North Carolina Textile Manufacturers Association, Inc., filed a "Petition For Leave To Intervene" in this docket, which petition was granted by the Commission upon commencement of the hearing on February 16, 1981, at 2:00 p.m.

Based upon a careful consideration of the verified application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Virginia Electric and Power Company is a public utility corporation, organized and existing under the laws of the State of Virginia, which is subject to the jurisdiction of this Commission. Vepco is lawfully before this Commission based upon an application for adjustment in its rates and charges pursuant to G.S. 62-134(e).

2. During the four-month period ended December 31, 1980, Vepco's fuel generating costs were $0.01959 per kilowatt-hour. In accordance with NCUC Rule R1-36 and the formula adopted pursuant thereto, the proposed decrease in rates due solely to the cost of fuel and associated gross receipts taxes would be $0.00402 per kilowatt-hour for the four billing months of April through July 1981.

3. All jurisdictional electric utilities are interconnected to an interlocking power grid which facilitates regional reliability of electric generation and the purchase and sale of electric energy among neighboring utilities. The purchase and sale of electric energy among neighboring utilities

is beneficial to both the utilities and their customers since it enhances the economies of scale inherent in the interlocking power grid and permits each electric utility to purchase power from the other utilities in emergencies and whenever the other utilities have power available to sell at cheaper cost than a utility's own incremental power generation.

4. In addition to North Carolina, 22 of the other 24 states east of the Mississippi River permit purchased power to be included in their fuel clauses. The Federal Energy Regulatory Commission (FERC) also includes purchased power in wholesale fuel clauses. The Public Utility Regulatory Policies Act (PURPA) of 1978 requires states with automatic fuel adjustment clauses "to provide incentives for efficient use of resources (including incentives for economical purchase and use of fuel and electric energy) . . ." and authorizes the FERC to exempt electric utilities from any provision of state law, or from any state rule or regulation, which prohibits or prevents the voluntary coordination of electric utilities if the FERC determines that such voluntary coordination is designed to obtain economical utilization of facilities and resources.

5. The energy portion of purchased and interchange power fuel costs has been allowed to be included in fuel clause proceedings for Vepco since late 1975; the capacity portion of such costs are not permitted to be recovered in the Commission's fuel cost adjustment formula. During the four-month period ended December 31, 1980, Vepco's purchased power and interchange transactions reduced the Company's system power production and fuel costs, since the cost of such purchased power was less than the cost Vepco would have incurred by generating the same amount of power on its own system by use of oil-fired units which were available and could have been used instead of purchased power, but only with higher fuel costs. It is the declared policy of the State of North Carolina to encourage the coordination of the operation of utility systems to increase the economy and reliability of utility service.

6. The recovery by Vepco of the allowed portions of purchased and interchange power fuel costs on a timely basis through the fuel cost adjustment formula adopted by this Commission encourages Vepco to substitute purchased and interchange power whenever such power is less expensive than power from Vepco's own generating plants. This results in the most efficient utilization of plant and of the nation's fuel resources and in lower costs to the using and consuming public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in Vepco's verified application, in prior Commission Orders entered in fuel cost adjustment proceedings of which the Commission takes notice, and G.S. 62-134(e). This finding of fact is essentially informational, procedural, and jurisdictional in nature and the matters it involves are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding of fact is contained in Vepco's verified application, the testimony and exhibits of Vepco witness Wilson, and the testimony of Public Staff witness Sullivan.

According to Vepco witness Wilson, the computations of the costs of fuel and revenues billed and the revised base fuel cost to be effective beginning with the billing month of April 1981 were derived in accordance with the Commission's previously adopted fuel cost formula and previous Commission Orders. Public Staff witness Sullivan verified the fact that the calculations submitted by Vepco were mathematically accurate and that, had the Public Staff included the allowed fuel cost of purchased power and interchange power, its computation of the base fuel cost component would have been identical to that filed by Vepco.

The computations of the base fuel cost component by Vepco witness Wilson and Public Staff witness Sullivan included the factor for gross receipts taxes in accordance with the approved fuel cost formula. Even prior to the adoption of the current fuel cost formula in late 1975, in Docket No. E-22, Sub 161, the Commission allowed the recovery in the fuel clause of the gross receipts tax associated with fuel cost revenue. For example, the previous fossil fuel adjustment clause, upheld by the North Carolina Supreme Court in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976), included the factor for gross receipts taxes associated with fuel cost revenues. The gross receipts taxes so recovered are related to revenue collected through the fuel clause, not the revenue collected through Vepco's basic rates. If the base cost of fuel calculated by the fuel cost formula did not include the factor for gross receipts taxes, the application of the formula would ensure that Vepco would not recover the full cost of fuel and the resulting rates and charges would not be considered just and reasonable. Consequently, the Commission has consistently provided for the recovery of such expense in the fuel adjustment clause.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The Commission participates in the activities of the Southeastern Electric Reliability Council through its representation on the State-Federal Executive Committee and other activities. Pursuant to G.S. 62-2, the Commission has promoted the coordination of interstate and intrastate inter-ties and operations of adjacent utilities for the purposes of increasing the adequacy, the reliability, and the economy of electric utility service by the utilities which serve North Carolina consumers.

The Commission also supports the voluntary interlocking arrangements whereby Vepco, Duke, CP&L, SCE&G, TVA, Appalachian Power Company, and other neighboring utilities are interconnected in order to increase regional reliability and efficient exchange of power for economy reasons. This arrangement includes telecommunications whereby Vepco (and the other utilities) constantly exchange information regarding the marginal cost of electric power on its system and compares those costs with the costs of its neighbors. When the neighboring utilities can provide cheaper power, Vepco purchases that power in lieu of generating more expensive power. When Vepco has cheaper power available which is not needed for its customers, Vepco sells that power to its neighbors. In either event, only the allowed fuel cost of that generation is permitted to be recovered in the fuel cost adjustment formula. The formula also flows to the ratepayers any profits which may be made by the utility on economy sales. The Commission concludes that the foregoing practices are beneficial to the using and consuming public and should be continued.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In addition to North Carolina, 22 of the 24 states east of the Mississippi River permit the inclusion of purchased and interchange power in fuel clauses. Furthermore, Vepco witness Keesecker offered testimony which would indicate that from a rate standpoint it would generally be considered desirable to encourage electric utilities to purchase power whenever the utility could not produce power from its own plants at lesser cost. The Commission also takes judicial notice of the provisions of the Public Utility Regulatory Policies Act of 1978, whereby states with automatic fuel adjustment clauses are required to provide incentives . . . for economical purchase . . . of electric energy and the FERC is authorized to exempt electric utilities from state laws or regulations which prohibit utilities from operating their systems to obtain economical utilization of available facilities and resources.

The Commission concludes that the policy of the federal government and that of the vast majority of the states east of the Mississippi River is to encourage electric utilities in the efficient use of their plants and resources by permitting the timely recovery of the fuel portion of purchased and interchange power.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The use of a formula for the recovery of fuel costs by an electric utility has been a long-standing regulatory practice of this Commission, which has been approved as a rate-making device by the North Carolina Supreme Court. State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976).

By the enactment of G.S. 62-134(e), the North Carolina General Assembly terminated the previous automatic fuel adjustment clause and in its place established a special, expedited procedure whereby the public utility could continue to "increase its rates and charges based solely upon the increased cost of fuel used in the generation and production of electric power." State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1977).

Thereafter, on October 22, 1975, the Commission issued its Order in Docket No. E-22, Sub 161, whereby, inter alia, the Commission directed Vepco to file a monthly fuel cost formula which was designed to constitute the basis of rate applications pursuant to G.S. 62-134(e). The formula therein adopted by the Commission expanded the formula approved by the Supreme Court in Commission v. Edmisten, 291 N.C. 327, supra to include nuclear fuel costs and the energy portion of purchased power and interchange power. The capacity costs of purchased and interchange power were and are not included in said formula. The fuel cost adjustment formula was adopted to enable the Commission and Staff to review more effectively the fuel cost filings made in accordance with G.S. 62-134(e) in the expedited proceedings provided for by that statute.

The inclusion of the allowed fuel costs of purchased power and interchange power has not been modified or altered since the adoption of the formula with respect to Vepco in late 1975. In nearly 40 individual proceedings and two generic proceedings concerning the formula and the recovery of fuel costs, this Commission has consistently allowed the recovery of Vepco's allowed fuel costs for purchased power and interchange power. As acknowledged in our Order dated

May 18, 1978, in Docket No. E-22, Sub 216, the Public Staff has also heretofore recognized that "(p)roperly monitored, the formula accurately tracks changes in the cost of all fuel, nuclear as well as fossil, and the energy portion of purchased and interchange power."

A review of our application of the language and procedures of G.S. 62-134(e) clearly indicates our uniform and undisturbed interpretation that the cost of a utility's fuel to be recovered in a fuel proceeding includes allowed fuel costs for purchased and interchange power which are described in the fuel cost adjustment formula. The formula's computation includes only the costs of fuel used to generate or produce power or the cost of equivalent energy purchased. For example, the cost of a ton of coal burned by Duke Power Company included in the price of power purchased by Vepco is just as much a cost of fuel to Vepco as if Vepco had actually burned the coal itself. Consequently, the cost of fuel burned by a selling utility should be considered a component of the fuel cost of the purchasing utility which may be recovered in a proceeding pursuant to G.S. 62-134(e). See, State ex rel. Utilities Commission v. Virginia Electric and Power Company, 48 N.C. App. 452, 269 S.E. 2d 657 (1980). Any other conclusion is simply at odds with the language of G.S. 62-134(e) and our consistent construction of such language.

The Public Staff has urged the Commission to abandon that consistent construction of the provisions of G.S. 62-134(e) based on the Public Staff's interpretation of the recent decision of the Court of Appeals of North Carolina in Virginia Electric and Power Company, 48 N.C. App. 452, supra (Vepco). While the Public Staff acknowledges that our previously adopted treatment of the costs of purchased and interchange power in fuel cost adjustment proceedings was the appropriate application of G.S. 62-134(e), the Public Staff now argues that as a consequence of the Vepco decision, the consideration of such costs must be reserved for a general rate-making proceeding pursuant to G.S. 62-133.

The Commission's review of the decision of the Court of Appeals does not lead us to the conclusion that Vepco limits our consideration of the costs of fuel in a G.S. 62-134(e) proceeding as narrowly as the Public Staff recommends. There is neither expressed nor implied language in that decision which suggests that the Court of Appeals intended to eliminate the allowance of purchased power and interchange power fuel costs from recovery in a fuel cost adjustment proceeding. Had the Court of Appeals intended to overturn our long established regulatory practice as now urged by the Public Staff, the Court would have decided the issue directly. It is clear, moreover, that the Vepco decision did not concern the issue of purchased and interchange power at all.

The Court of Appeals held "only that plant efficiency as it bears upon fuel cost is not a factor to be considered in the limited and expedited proceeding provided for by G.S. 62-134(e)." 48 N.C. App. at 462, 269 S.E. 2d at 662. The elements of plant efficiency at issue in Vepco depended "upon long range maintenance decisions and practices carried out over a long period of time." 48 N.C. App. at 462, 269 S.E. 2d at 662. The Vepco decision holds only that our review of long range mangement decisions and their consequences for overall system efficiency is appropriate and necessary for a general rate-making proceeding under G.S 62-133. In that context, adjustments to rate base or rate of return may be made for plant inefficiency if the evidence justifies such action.

In the final analysis, the Public Staff's interpretation of the Vepco decision would serve not only to deprive a utility's ratepayers of the benefits of the economies of purchased and interchange power, but would also operate to impede the most efficient mechanism for the timely recovery of fuel costs. The cost of fuel burned by a utility selling power is no less volatile nor substantial than the cost of fuel burned by a utility purchasing the power. See, 291 N.C. at 346-348, 230 S.E. 2d at 662-664. Furthermore, G.S. 62-2 declares the public policy of the State of North Carolina to be, in pertinent part, to "provide fair regulation of public utilities in the interest of the public," to "promote adequate, reliable and economical utility service," to "provide just and reasonable rates . . . consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy," to "foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed," and to promote and coordinate "interstate and intrastate public utility service and reliability of public utility energy supply." It is certainly consistent with these policies for utilities to supply power to each other from available capacity in order to increase the reliability and economy of the operations of each other and to improve the quality and economy of the service provided to their consumers. Further, it is consistent with these policies to allow the flow-through of the costs and benefits of such purchased power and interchanges.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Keesecker testified that Vepco had reduced its system fuel costs during the test period by substituting cheaper purchased power for its own generation, since the cost of such purchased power was less than the cost Vepco would have incurred by generating the same amount of power on its own system by use of oil-fired generating units which were available and could have been used instead of purchased power, but only with higher system fuel costs. Vepco witness Keesecker further testified that during the four-month period ended December 31, 1980, approximately 12% of Vepco's energy supplies came from oil-fired units and that the Company's percentage of oil-fired energy supply would have increased to about 32% if power purchases had not been made. Witness Keesecker also testified that if Vepco were not permitted to recover the cost of purchased power in a G.S. 62-134(e) proceeding, the Company would have to give serious consideration to increasing substantially its reserve generating capacity.

Adoption of the adjustment proposed herein by the Public Staff would lead to the result that for the test period Vepco would be denied the right to recover in its base fuel cost rates the amount which the Company expended for allowed fuel costs of purchased and interchange power in an effort to reduce system fuel costs and thereby benefit the using and consuming public. In this regard, Vepco witness Keesecker testified that, on a total company basis, Vepco expended approximately $68 million for purchased and interchange power during the four-month period ending December 31, 1980, and that if Vepco had itself generated the same level of power which it purchased during said period by use of its own oil-fired generating units, the Company's fuel costs would have been increased by approximately $54 million. Vepco had every right and expectation that it would recover such fuel-related costs since the Commission has permitted those types of recoveries since late 1975 pursuant to the fuel cost adjustment formula adopted in general rate cases and generic hearings.

Therefore, the Commission concludes that adoption of the Public Staff proposal as advocated herein would discourage Vepco in its pursuit of energy efficiency in its system operations, would unfairly and unjustly penalize Vepco for proper operations in the test period, and would ultimately result in higher basic rates.

Accordingly, the Commission declines to accept the adjustment proposed herein by the Public Staff to remove the allowed fuel costs of purchased and interchange power from the fuel cost adjustment formula.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for bills rendered beginning *with the billing month of April 1, 1981, and for service rendered on and after the date of this Order, Vepco shall adjust its base retail rates by the reduction of an amount equal to $0.00402 per kilowatthour and shall roll this amount into each kilowatt-hour block of each rate schedule.

2. That Vepco shall file appropriate rate schedules with the Commission in conformity with this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February 1981.

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

* Corrected by Errata Order issued 3-4-81.

DOCKET NO. E-2, SUB 419

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Carolina Power & Light Company - Application for) ORDER APPROVING NUCLEAR
Authority to Enter into Nuclear Fuel Trust Financing) FUEL TRUST FINANCING

BY THE COMMISSION: This cause comes before the Commission upon an Application of Carolina Power & Light Company filed under date of May 1, 1981, wherein approval is sought to enter into a nuclear fuel trust financing in the amount of $50,000,000.

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, 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 January 31, 1981, consisted of Common Stock with a stated value of $925,062,000, Preferred Stock having a

stated value of $413,218,000, and Preference Stock having a stated value of $47,900,000. As of January 31, 1981, the retained earnings of the Company were $336,453,000.

3. The Company's existing long-term debt at January 31, 1981, amounted to principal amounts of $1,572,430,000 in First Mortgage Bonds and $228,152,000 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, and Frederick G. Herbst, as Individual Trustee, succeeded by D. W. May, who presently is acting as Individual Trustee, as supplemented by 29 Supplemental Indentures.

4. The net proceeds to be received from the proposed nuclear fuel trust financing will be used for general corporate purposes, principally for the repayment of approximately $40,000,000 owed to Prulease, Inc., pursuant to that financing arrangement for nuclear fuel and with the balance to be utilized for the repayment of short-term borrowings incurred primarily for the construction of new facilities. There were $99,730,000 of short-term borrowings at January 31, 1981, and short-term borrowings are expected to approximate $86,500,000 immediately prior to the closing of the Nuclear Fuel Trust Financing. The Company anticipates investing any net proceeds not immediately required for the above purposes in short-term instruments.

In the period from December 1, 1980, through January 31, 1981, the Company's construction expenditures for additional electric plant facilities totaled $78,565,000. Attached as Exhibit A to the Company's Application is a statement of such construction expenditures on which the source of funds for the payment thereof are shown as required by Rule R1-16(a)(5).

The Company's most recent long-term public financing was the issuance and sale of 400,000 shares of Serial Preferred Stock in April 1981. The Company's capital structure is such that it is appropriate and reasonable to sell and lease-back nuclear fuel.

5. Attached as Exhibit B to the Company's Application, and made a part thereof, are a Balance Sheet of the Company as of January 31, 1981, and an Income Statement of the Company for the 12 months ended January 31, 1981, with a pro forma statement in compliance with the Rule R1-16(a)(6). When the nuclear fuel lease documents, Exhibits C through I of the Company's Application, have been executed, copies of the final form thereof will be filed with this Commission as Supplemental Exhibits in this proceeding.

6. Subject to the approval of the North Carolina Utilities Commission and of The Public Service Commission of South Carolina, the Company proposes in the manner hereinafter described to enter into an additional Nuclear Fuel Trust Financing of not more than $50,000,000 for the purpose of providing financing for a portion of the Company's nuclear fuel requirements.

The arrangement contemplates the creation of Carolina Power Fuel Trust (the Trust) with First Union National Bank of North Carolina in Charlotte acting as Trustee (the Trustee). This trust arrangement is substantially similar in structure and concept to the Nuclear Fuel Trust Financing authorized by the Commission by Order dated February 21, 1979, in Docket No. E-2, Sub 353. The

Company will transfer title to up to $50,000,000 of nuclear fuel to the Trust pursuant to the terms of a Bill of Sale in consideration of payment by the Trustee for the nuclear fuel. The Trust will be established through the execution of a Trust Agreement (attached as Exhibit C to the Application) between the Company and the Trustee. A Fuel Lease (attached as Exhibit D to the Application) will also be executed between the Company and the Trustee, which describes the procedures for (1) the sale of nuclear fuel from the Company to the Trust, (2) the repurchase of the fuel by the Company as it is consumed (or earlier if so desired by the Company), and (3) the Company's rights and obligations with respect to the nuclear fuel under lease. It is anticipated that the Trust will obtain funds for acquisition of the nuclear fuel through the issuance of commercial paper.

The commercial paper notes are expected to carry the highest ratings, and will be marketed by Merrill Lynch Money Markets, Inc., for a fee of 0.10%. A Dealer Agreement (attached as Exhibit E to the Application) will be executed among the Company, Merrill Lynch Money Markets, Inc., and the Trustee which will contain the procedures pursuant to which the commercial paper will be sold.

Marine Midland Bank will act as the Depositary Bank for this transaction. The primary role of the Depositary Bank is to provide a New York bank account for the Trust to receive and disburse funds. The Depositary Agreement (attached as Exhibit F to the Application) will govern the obligations of the Depositary Bank and will be entered into by Marine Midland Bank, Manufacturers Hanover Trust Company, and the Trustee.

In order for the commercial paper of the Trust to obtain the highest credit ratings, and therefore the lowest interest costs for its commercial paper sales, it will be necessary for the Trust to obtain a stand-by source of funding. This stand-by source will be in the form of a Letter of Credit and Revolving Credit Loan Commitment in the amount of $50,000,000 which will be issued by Manufacturers Hanover Trust Company (the Bank). The Letter of Credit and Revolving Credit Loan Commitment will be irrevocable for four years initially. At the end of the first year, and each subsequent year thereafter, these arrangements will be extended for one additional year unless either party has elected to terminate the financing. In return for providing the Letter of Credit and the Revolving Credit Loan Commitment, the Bank will receive a letter of credit fee of 0.5% per year on the outstanding commercial paper and a security interest in the nuclear fuel owned by the Trust. If usage falls below 80% of the Commitment, a nonusage fee of 1/8% on the unused portion will be paid to the Bank. The relationship between the Trust and the Bank is defined by the Credit Agreement and the Security Agreement, both of which are to be executed by the Trustee and the Bank and which are attached as Exhibits G and H to the Company's Application.

Attached as Exhibit I to the Application is the Consent and Agreement whereby inter alia the Company agrees to require the Trust to perform all of the Trust's obligations pursuant to the financing agreements and guarantees to perform such obligations in the event that the Trust fails so to do. The Company has also agreed to guarantee the payment of the Commercial Paper Notes to be issued by the Trust.

The Company does not intend to borrow from the Bank unless it is otherwise impractical to sell commercial paper; however, the commitment does provide for such borrowings at an interest rate equal to 110% of the prime rate of Manufacturers Hanover Trust Company.

The Company believes that the Nuclear Fuel Trust Financing will permit the financing of a portion of its nuclear fuel requirements on a favorable basis since it provides, in effect, for long-term borrowing (committed for a term of four years or a minimum of three years after notice of termination) at an attractive overall cost. The effect will be available for a period that corresponds reasonably closely with the useful life of the asset and permits the amortization of the fuel as it is burned, since one feature of the plan provides for payment based on fuel consumption at an appropriate rate. The Nuclear Fuel Trust Financing is sufficiently flexible to allow additional fuel to be added to the Trust to maintain the available financing at approximately $50,000,000, thus offsetting payments for fuel consumed.

A major portion of the funds obtained by the Company from this financing arrangement will be used to prepay the Nuclear Fuel Lease Financing arrangement between the Company and Prulease, Inc., dated July 13, 1979. It is expected that the effective cost of money to the Company pursuant to this financing will be approximately 0.625% less than the cost of the Prulease Financing, resulting in an annual savings of approximately $275,000.

The Company is provided with a different source of funds by introducing the credit of the Trust supported by the Letter of Credit and Revolving Loan Commitment of the Bank to the commercial paper market. Since the Trust will not be directly utilizing the credit of the Company in selling its commercial paper, it will not interfere with the issuance of the Company's commercial paper necessary for financing its ongoing construction program. This additional access to the money markets could be particularly important in the event of adverse market conditions.

Subject to the rights and obligations of the Trust to the Bank, the Trust will be controlled by the Company. The nuclear fuel may be in any stage of milling, refining, enrichment, or fabrication, or it may be fuel in the reactor. The Trust would not, however, own spent nuclear fuel, nor would it have any responsibility, financial or otherwise, for ultimate disposal or permanent storage of spent fuel. The Company will retain all nuclear fuel management responsibilities. All financings of the Trust will be controlled by the Company.

7. The Company requested nuclear fuel financing proposals from a number of financial institutions and eight such proposals were received. The Manufacturers Hanover Trust Company proposal was chosen because it had the lowest overall cost of the eight proposals received.

8. The net proceeds from the Nuclear Fuel Trust Financing will be applied and used by the Company to finance the cost of nuclear fuel, the cost of which is generally included in the construction budget, principally through the repayment of the Prulease Nuclear Fuel Lease and of outstanding short-term obligations (commercial paper and bank loans) incurred for the Company's construction program.

9. No fee for services (other than attorneys, accountants, rating services, trustee services, and fees for similar technical services) in connection with the negotiation or consummation of the Nuclear Fuel Trust Financing will be paid in connection with the transaction.

10. The Company believes that the transaction herein proposed is desirable and in the public interest in that the Nuclear Fuel Trust would provide financing in an amount equal to 100% of the cost of the nuclear fuel and would enable the Company to tap sources of capital not otherwise available to it. The terms and conditions of this transaction compare favorably to the terms under which similar transactions are presently being negotiated and will result in a financial savings to the Company of approximately $275,000 annually when compared to the financing it is replacing.

11. The Company is subject to regulation by this Commission as to rates, service, and security issues. The Company respectfully submits that the proposed agreements and transactions including its assumption of obligations as guarantor of the Trust's obligations:

A. Are for a lawful objective and are within the corporate purposes of the Company;

B. Are compatible with public interest;

C. Are necessary and appropriate for and consistent with the proper performance by the Company of its service to the public;

D. Will not impair its ability to perform that service; and

E. Are reasonably necessary and appropriate for such purposes.

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

A. To enter into the Nuclear Fuel Trust Financing arrangements described in this Order and in the Application, and to execute such instruments, documents, and agreements as shall be necessary or appropriate in order to effectuate such transaction; and

B. To use the net proceeds from such transaction for the purposes set forth in the Application.

IT IS FURTHER ORDERED that the terms and conditions of the Nuclear Fuel Trust Financing documents substantially in the form attached to the Application as Exhibits C through I, including the Company's absolute guarantee of the obligations of the Trust as set forth in Exhibit I and the guarantee of the Commercial Paper Notes are hereby approved.

IT IS FURTHER ORDERED that Manufacturers Hanover Trust Company and First Union Bank of North Carolina shall not be subject to the jurisdiction of this Commission or be deemed a "public utility" within the meaning of the North Carolina Public Utilities Act of 1963, as amended, as a result of entering into

the transactions contemplated by the nuclear fuel trust financing documents described hereinabove.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of May 1981.

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

DOCKET NO. E-7, SUB 331

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 (Common Stock)	)) ORDER APPROVING) FINANCING PLAN)

BY THE COMMISSION: On November 4, 1981, Duke Power Company (the Company) filed an Application with this Commission for authority to issue a maximum of 3,750,000 additional shares of the Company's common stock without nominal 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 conducting and carrying on the businesses heretofore mentioned in that State. It is also a public utility under the laws of the State of South Carolina and in its operations in that State is subject to the jurisdiction of The Public Service Commission of South Carolina; and it is 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 now proposes to issue a maximum of 3,750,000 additional shares of the Stock during December of 1981 in exchange for certain of its First and Refunding Mortgage Bonds having an equivalent market value.

3. In order to strengthen its financial condition and provide greater financing flexibility so that it can raise needed construction capital more cheaply and thus provide lower rates to its customers than otherwise would be the case, the Company proposes to enter into the transaction with Salomon Brothers (Salomon), as described below. Salomon will purchase on the open market an amount not to exceed $125,000,000 principal amount of the Company's outstanding First and Refunding Mortgage Bonds (the Bonds) for which the Company will exchange shares of its common stock of equivalent market value. It is

anticipated that such Bonds will be purchased at a composite weighted average price of 55% to 70% of their face amount with the cost to the Company being calculated on such purchase price, plus accrued interest costs to the date of closing and an additional amount not to exceed $2.50 per $1,000 principal amount of such Bonds. The Stock to be issued in exchange for the Bonds will be priced at the last reported sale price per share for such common stock on the New York Stock Exchange immediately prior to negotiations on the day the price is negotiated or the closing price on the prior day if the negotiations commence prior to the opening of the Exchange. In addition, it is contemplated that a per share discount of 3-1/2% to 4% will be allowed.

4. The exchange was proposed pursuant to the Company's program to improve its financial posture in order to increase financing flexibility for its required construction projects and to have access to capital markets on the most favorable terms possible consistent with its obligation to serve its consumers at the most reasonable level of rates possible. The Company's program includes the objective of avoiding severe and anticipated deterioration in its interest coverage ratio. The level of this ratio determines to a large extent the quality gradings of its bonds and hence the cost to the Company and to its ratepayers of debt borrowings. Also, if the coverage falls below a certain ratio, the Company is prevented from issuing further debt which would essentially cause an end to any construction program for the Company. This latter circumstance is not expected, but in order to avoid it the Commission may be required to increase the allowed return on equity to much higher levels than otherwise would be necessary. This results from the current extraordinarily high interest rates which are causing embedded debt costs to rise. Consequently, as debt costs rise without an increase in the percentage of common equity in the capital structure, a higher return on equity is required to maintain the same interest coverage. Since the Company's embedded cost of debt, 9.26% at June 30, 1981, is below current market interest rates, it will necessarily rise when the Company resumes its active financing program in early 1982 unless interest rates are reduced substantially, which is unexpected. Such increases in embedded costs will result in a deterioration in the Company's credit worthiness, as measured by fixed charges coverage, unless there is a substantial increase in either the equity component of capitalization, the earned return on common equity, or both.

5. As indicated in the Application, the proposed exchange transaction, if consummated as projected, would increase the Company's common equity ratio from 38.3% to 40.8% based on June 30, 1981, date and fixed charges coverage would have been 3.03 times rather than 2.82 times had this higher common equity ratio prevailed. The Company asserts that earnings coverage of more than three times is necessary if the Company is to be able to finance its existing construction program on any reasonable basis. The higher level of fixed charges coverage along with a higher common equity ratio could be achieved either through the proposed exchange transaction or through the public sale of common stock. The Application indicates that such public sale would result in substantially the same common equity ratio, earnings coverage and revenue requirements as the proposed exchange, but would require a significantly greater number of shares resulting in an excessive dilution of common equity along with a reduction in earnings per share and a reduction in book value. Hence, the result would be higher costs of equity capital in the future and, in turn, would translate into higher rates for the Company's customers. The proposed exchange would provide a

more reasonable means of achieving and maintaining a satisfactory financial posture than would a public sale of common stock at the present time.

6. The Stock will be issued pursuant to the Company's Articles of Incorporation whereby the Company is authorized, from time to time, to sell any of its authorized and unissued shares of common stock for such consideration, upon such terms and in such manner as may, from time to time, be fixed and determined by its Board of Directors. Upon payment of the full consideration therefore and upon issue thereof, the Stock will be fully paid and nonassessable and will in all respects rank equally with the outstanding shares of the Company's common stock, having the same rights, privileges and limitations as set forth in the Company's Articles of Incorporation, as amended.

7. No fee for services (other than attorneys, accountants and fees for similar technical services) in connection with the negotiation or consummation of the exchange of the Stock or for services in securing underwriters or purchasers thereof (other than fees mentioned in the Application) will be paid in connection with this transaction.

8. 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. Although the rate of growth has recently been reduced, it is expected that substantial growth will be experienced and will continue into the future. The Company's 1980-1981 winter peak load of approximately 10,530,000 KW occurred on January 12, 1981, representing an increase of 6.4% over the 1979-1980 peak load of 9,892,000 KW and electric energy sales for 1980 reached 52,311,000,000 KWH exceeding the 1979 sales of 50,323,000,000 KWH by about 4%. Long-term financing of its current construction program is essential if the Company is to continue to be able to meet its obligations to the public to provide adequate and reliable electric service. Plant construction costs were $853,015,000 for 1980, and are estimated to be about $698,000,000 for 1981 excluding costs relating to Cherokee Nuclear Station, the construction of which has been indefinitely delayed.

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 utlity subject to the jurisdiction of this Commission with respect to its rates, services and securities issue and that the issuance and exchange of the Stock is:

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

(b) Compatible with the public interest;

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

(d) Reasonably necessary and appropriate for such purposes.

While the Order permits the Company to proceed with the financing plan, the Commission does not bind itself in any way to the resulting common equity ratio of the capital structure. Based on data presented in the Application and by Mr. William H. Grigg, the Company's Senior Vice President, Legal and Finance, at the Commission Monday morning conference hearing on November 9, 1981, the Company's common equity will increase from about 38% to 40% while the debt component decreases from about 48% to 46%. Predicated on utility cost of capital economics, the larger (and more conservative) the common equity portion of a utility's capital structure is the less risk for capital investors and therefore a lower rate of return to the common stockholder can be justified. If this were not the case or if no acknowledgement were to be made of this lower risk factor by the Commission in Duke's next general rate case, then the proposed plan might well result in higher overall costs to the ratepayers, at least in the short run time period following the Company's next general rate case. (There can be no immediate effect, in either direction, on rates resulting from this financing plan). However, in past general rate cases, the Commission has made numerous adjustments to lower the allowed rate of return on equity in instances where relatively high proportions of equity capital have been found in a utility's capital structure. Also, a review of the Commission's completed general rate case dockets over the past several years demonstrate that the Commission has made and will make pro forma adjustments in a utility's actual capital structure when the capital structure has been found to be out of line with that which would allow both the utility to continue its required construction program and to provide service at the most reasonable rates to its customers. We see no reason, and the Company so admits, that we could not take similar actions if appropriate in the Company's next general rate proceeding. The Public Staff has taken essentially the same position and advised the Commission that it would continue to monitor the impact, if any, that the Plan has on the cost of capital to the Company and the cost of services to its customers.

This financing plan involves a new twist as it relates to replacing long-term debt with equity capital and is only feasible under unusual economic conditions such as presently exist. While a number of industrial companies have made such switches in the last few months the number of utilities which have enacted such plans is still very small. We note that the Ohio Public Service Commission has recently permitted Toledo Edison to make a similar exchange and we will ask the Public Staff to monitor that situation for comparative purposes. Projected judgmental economic factors become the prime determinants in reaching a conclusion as to the costs and benefits of the plan, especially on a long-term basis. While it is simple to calculate the additional costs of more equity compared to debt while holding all other factors constant, these calculations would be incomplete because the other factors, such as the interest rates, will change. Benefits are more difficult to calculate. For example, how much lower can the rate of return allowed the Company be with its projected higher equity position to be achieved through this financing plan? How much can the cost of equity capital be reduced by the Company's avoiding the sale of additional common shares below book? In turn, how much of these savings can be translated into savings to the consumers? We cannot quantify these amounts, but based on the evidence presented, we conclude that the benefits of going ahead with this plan should outweigh its costs.

We further agree with the Public Staff that Duke's next general rate proceeding, with all interested parties and intervenors present in a public hearing, will be the apropriate proceeding in which to fully examine all aspects of this financing plan and make whatever adjustments are warranted on return on equity and/or establishing a pro forma capital structure.

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

1. To issue a maximum of 3,750,000 shares of the Company's common stock without nominal or par value during December of 1981 in exchange for certain of the Company's First and Refunding Mortgage Bonds not to exceed $125,000,000 principal amount to be purchased on the open market by Salomon Brothers at a composite weighted average price of 55% to 70% of the principal amount of such Bonds; and

2. To price the Stock for exchange purposes at the last reported sale price per share on the New York Stock Exchange immediately prior to negotiations on the day the price is negotiated or the closing price on the prior day if negotiations commence prior to the opening of the Exchange.

IS IS FURTHER ORDERED, that:

1. The accounting methods and entries as set forth in the Application reflecting the results of and recording of the transaction are hereby authorized, approved and directed as submitted, including specifically the inclusion of the Stock (at market value) and the nonoperating extraordinary gain in common equity on the books and records of the Company.

2. The Company report the issuance and exchange of the Stock to the Commission within thirty (30) days after such transaction is consummated (including the exchange price of the common stock, costs and principal amount of the Bonds for which the Stock was exchange, and the expenses incurred, and within such time it shall file with the commission a copy of the Exchange Agreement and Plan of Reorganization entered into by the Company and Salomon Brothers in the final form in which it is executed;

3. Should the Company issue and exchange less than 3,750,000 shares of the Stock, it shall file with the Commission, as a part of its report of issue and exchange, a balance sheet and statement of income of a reasonably current date and journal entries showing the effect of the issuance and exchange of such lesser amount; and

4. This proceeding is continued on the docket of the Commission for the purpose of receiving the report of issue and exchange of the Proposed Stock as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION
This the 21st day of December 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

Commissioners Koger and Campbell, Concurring

Commissioners Hammond, Winters and Hipp, Dissenting

DOCKET NO. E-7, SUB 331

KOGER, CHAIRMAN, Concurring:

A close reading of the Order and the attached dissenting and concurring opinions strongly reinforces in my mind the wisdom of the position the Public Staff has taken in this matter and the one which the majority has adopted. Both the dissenting and concurring Commissioners have engaged in conjectures and predictions on either the net costs or net benefits of this transaction. One dissenting Commissioner's conjecture of net costs over a 26-year period is $863 million or described as "fearfully close to $1 billion." A concurring opinion by Commissioner Campbell predicts that net benefits of the stock-bond swap to the customers could be $6.9 million per year or approximately $180 million over 26 years. Possibly Commissioner Campbell has not been speculative enough in his projections. For example, if one were to assume that the Company's capital structure grows over the next 20 years at the same rate that it has grown during the last ten years, then expanding Commissioner Campbell's figures would result in total net saving to consumers of $600 million. Given our rate of inflation, such a continuation in capital growth is not unlikely. Furthermore, Commissioner Campbell assumed only a 1% point reduction in allowed rate of return resulting from the higher equity position to be caused by the stock-bond swap. If one were to make a prediction using the Public Staff's estimate of a possible 2% point reduction in allowed return on equity, then savings to consumers would accumulate to $1.2 billion.

But the point of all this is that advocates on each side of the issue can make the "necessary" assumptions and possibly "overlook" other factors adverse to their positions sufficient to permit extreme conjectures to be made on future costs or benefits of the Company's proposed plan to its ratepayers. Each side can also cajole and argue that one should not be persuaded by the "shallow" reasoning of the other. The Public Staff, after lengthy independent study of this matter by its professional staff, has evidently perceived this fact. The Public Staff's position, as I understand it, is that the proposed transaction does not appear to be adverse to the public interest (and, in fact, could be beneficial), that in any case the matter can be addressed and redressed if necessary in Duke's next general rate proceeding, and that rates will not be affected either way, if at all, until after such a proceeding. I accept the Public Staff's position and, therefore, concur in the Majority's decision.

Robert K. Koger

DOCKET NO. E-7, SUB 331

CAMPBELL, COMMISSIONER, CONCURRING. Duke Power Company has requested that this Commission approve a request to exchange capital stock for debt in its capital structure with the contention that it will strengthen the financial structure of the utility, reduce the financial element of risk, and provide for greater flexibility in providing for financing future needs of the customers.

As noted in this Order, the exchange of debt into equity will improve the times-coverage of interest needs from the present 2.8 times to 3.03 times.

The primary consideration is what happens to the using and consuming public by raising the equity component to 40% of this utility? The Public Staff of the North Carolina Utilities Commission has examined the effect this exchange would have upon the public, and it made a determination that the public interest did not require intervention in this matter. It is not enough, however, to determine that the public interest would not be adversely affected. Would there be positive good accruing from this exchange? I believe so.

This utility will have to meet the future needs of a growing area of the nation. The construction needs of the future are going to demand expensive plants which will impose great financial burdens on the utility. Anything which strengthens the financial footings of this Company will give it greater financing flexibility to meet those needs. At the moment, the Applicant has had to place on hold the Cherokee Power Project. There is little doubt that the Cherokee Project will be needed within two decades if the utility is to continue to adequately serve the public intrest. The granting of this Application may well contribute to the ability of Duke to proceed with the Cherokee project in a more timely, orderly, and reasonable cost basis. Postponement could result in a much greater cost to the public. At the least, one must conclude that this exchange of debt into common equity is beneficial to the public if it reduces the potential costs of the power utility in the future.

When debt financing is increased beyond a proportion to common equity, it increases the cost of both debt and equity financing. Conversely, equity financing can lower the cost of both elements of financing. This is cited by Mr. William H. Grigg, Senior Vice President, Legal and Finance, in "Exhibit "K" of the Application as he ratios at various levels of return on common equity to changes in the embedded cost of debt. The chart shows that as debt costs rise without an increase in the percentage of common equity in the capital structure, a higher return on equity is required to maintain the same interest coverage." (EMPHASIS ADDED) Unsaid, but a corollary truth to this matter is that the higher times coverage of debt, then the lower percentage of return required for common equity. This could be a very important consideration in the interest of the using public. For purposes of illustration, let us take this hypothetical example. In the last general rate case, the Applicant required a return on common equity of 17 & 1/2%. To make the exchange of debt by common in this Application would require some $12.9 million in total revenue requirements for North Carolina consumers. But assuming that the return on common could be reduced by one percentage point to 16 & 1/2%, it would bring down the revenue requirement by some $6.9 million. You will note that the reduction of 1% would apply against the total amount of equity, not just to the $125 million that is proposed for exchange. In this situation, this exchange could actually produce a lower revenue requirement on the using and consuming public.

In any event, one must conclude that while this exchange will give greater flexibility to the Applicant, likewise it grants greater flexibility to this Commission in determining future overall costs of returns. When debt is added as an embedded cost to any capital structure, it becomes a fixed figure of expense which must be passed along to the consumers. This Commission cannot alter or change these requirements. On the contrary, the amount of allowed

return on common equity is and should be an appropriate matter of judgment on behalf of the Commission. As everyone knows, the costs of capital have been extreme on the high side in recent months, and it is devoutly hoped that these costs can be brought down. Therefore, it is in the public interest for this Commission to have the greatest flexibility possible in determining what is fair and reasonable. The increase in equity and the reduction of debt as a portion of capitalization grants this Commission this greater flexibility.

Attention should be directed at one further reason why this requested Application should be granted. The request came from the Board of Directors and Management of the Applicant in this course of fulfilling their obligations. In my opinion, this regulatory body should accept their judgment unless it is proven that it is not in the public interest. The obligation to financing rests on the utility, not the regulators. We should exert extreme caution in substituting our judgment for theirs. Fortunately, this Commission does not have to assume the heavy burden of financing utility needs, and it is my judgment that we should grant to the Board of Directors the maximum flexibility for financing possible, unless clearly inconsistent with public policy.

Some may express concern that existing shareholders will see the value per share of their stock increase by some 62 cents per share as a result of a paper gain in securing the bonds at from 55 to 70% of stated value. It is true that the value per share will increase in book value from $23.38 per share to $24.00 by reason of this exchange. This should be not cause of concern. All of Duke's last issues of common stock have sold below book value, thereby diluting the investment of the existing stockholders. G.S. 62-133(b)4 requires fairness both to customers and to a utility's existing investors.

In concluding my concurring opinion, it is my conviction that the interest of the using and consuming public will be adequately served by future judgments of this Commission in the exercise of judgment as to the allowed return on common equity. I believe that this exchange should be approved in the best interest of all.

A. Hartwell Campbell

DOCKET NO. E-7, SUB 331

HAMMOND, COMMISSIONER, Dissenting:

The Majority has, either knowingly or unknowingly, approved a financial sleight-of-hand that may ultimately cost the ratepayers almost $1 billion over the next 26 years.

In its simplest form, the Majority has assented to Duke's proposal to swap $125 million in bonds with a cost rate of 8-1/8% per year and a maturity date in the year 2007 for common stock that will cost anywhere from 14% to 17% percent per year. If we take the 14% figure for equity return, then this deal will cost the ratepayers an additional $24.6 million each year.

Even worse, when Duke goes to the financial markets in the near future to sell more bonds, those bonds will probably cost in the neighborhood of 15% per year. The differential between the 8-1/8% percent bonds swapped and the 15% new bonds will cost the ratepayers $8.6 million per year over the next 26 years.

This financial swap will give Duke a one-time gain of $53.4 million and supposedly strengthen its financial health and improve its financial flexibility. The central question is whether a $53.4 million gain for Duke is worth a cost of almost $1 billion to the ratepayers. The additional equity cost of $24.6 million per year plus the extra $8.6 million per year interest cost on new bonds adds up to $863 million over the next 26 years (the remaining life on the bonds which will be swapped for common stock), fearfully close to $1 billion.

Before examining the stated or implied reasons behind the Majority's decision, it is important first to place Duke's proposal more clearly in focus.

Duke Power Company through its Application, at this time, is not seeking permission of this Commission to raise new or additional capital, but rather, Duke is requesting that it be permitted to retire long-term debt in the amount of $125,000,000 by issuing up to 3,750,000 shares of common stock with a value, according to Duke's Application, of approximately $76,406,250 ($20.375 per share x 3,750,000 shares) before consideration of flotation costs. The stockholders will be the sole beneficiaries of this gain under Duke's proposal. This gain, as previously stated, is estimated by the Company to be approximately $53.4 million. This "extraordinary gain," as it is quite appropriately defined, increases the book value of each share of Duke's common stock outstanding by approximately $.59 [($53,394,000 gain ÷ (87,440,752 shares + 3,750,000 shares)]. The book value of Duke's common stock at June 30, 1981, was approximately $23.38 per share. The increase in earnings arising from this extraordinary gain is estimated to be approximately $.61 per share [$53,394,000 gain : (87,440,752 shares + (3,750,000 shares)(1/12))]. Duke's earnings per share from operations for the 12 months ended June 30, 1981, was $3.15.

With respect to the debt to be retired, Duke anticipates that the average maturity date will be the year 2007 (i.e., approximately 26 years from now) and that this debt's average coupon interest rate will be 8-1/8% (the effective interest rate is virtually the same). Therefore, by the Majority's action Duke is being permitted to give up the use of $125 million of debt capital which Duke otherwise would have had use of for the next 26 years. In its place Duke will substitute common equity capital composed of the $53.4 million gain derived from the approved transaction with the remainder coming from the issuance of common stock.

In terms of its impact on costs and ultimately public utility rates, the price tag to the Company's ratepayers, will be enormous. This substitution of equity for debt capital will increase Duke's annual revenue needs by approximately $24.6 million. This amount does not consider additional North Carolina gross receipts tax, which will serve to further magnify the increased cost and thus the need for increased rates. Unfortunately, the need for increased rates arising from the approved transaction does not stop here. The additional annual increased cost of $24.6 million is based on the assumption that the cost of the Company's common equity captial is 14.1%. If the cost of equity capital rises, and the Company and the Public Staff are contending in a general rate case presently pending before the Commission that it has, the cost to the ratepayer of the debt-equity swap will be increased and the additional increase if quantified and expressed will be in terms of millions of dollars. The Company presently contends that the cost of its common equity capital is

17.5%; whereas, the Public Staff considers Duke's cost of equity capital to be approximately 16.4%.

Again, unfortunately, and to my great dismay I am compelled to report that the additional cost to Duke's ratepayers will not be limited to the $24.6 million annually further increased to reflect the rising cost of equity capital, for there is another disconcerting aspect of the approved transaction which must be considered...the incremental cost of new debt capital.

The foregoing discussion has embraced the additional ratepayer cost arising from the debt-equity swap assuming that Duke has no need for raising new capital. It has not considered the increased cost to ratepayers which will soon arise from Duke's existing need to acquire additional capital in order to finance its multi-billion dollar construction program.

Duke unquestionably has a need to raise a minimum of $125 million of new capital in the very near future. Assuming for the sake of argument that Duke should seek and maintain a 40% common equity ratio, instead of retiring the $125 million of debt capital 26 years prematurely, Duke could have retained the debt capital and issued common stock with a market value of $125 million, thereby acquiring $125 million of additional capital in the form of common equity. The cost incurred by the ratepayer to service the additional equity capital would, in all material respects, be the same as under Duke's proposal. However, the Company would have avoided the necessity of issuing new debt capital which by Duke's assertion, at the present time, would require an interest rate far in excess of 15%. Assuming Duke had followed this course of action it would have avoided a minimum of approximately $8.6 million [($125,000,000) (.15 - .08125)] in annual interest cost over the next 26 years. This assumes that the cost of the new debt capital would be limited to 15% which is an extremely conservative estimate. However, as a result of the Majority's action, Duke will incur this increased level of interest cost and as a direct result thereof the Company's ratepayers will ultimately be required to pay in through increased rates approximately $223.6 million [($8,600,000 per year) (26 years)] excluding related gross receipts tax, over the next 26 years. The "rub" to Duke, of course, is that under such a scenario its common shareholders would not have realized the windfall profit of $53.4 million.

I do not believe that the Majority excepts to the foregoing facts. They do, however, contend that there are other trade-offs which tend to justify, dramatically diminish, or negate the negative impact on rates arising from their assentation as described hereinabove. These "trade-offs" are addressed below.

The assenting Majority Members of the Commission have seemingly constructed a foundation of justification from which they cast their votes in support of Duke Power Company's instant financial proposal. However, this illusion soon vanishes when one carefully considers the "cornerstones" upon which it rests. Based upon the Company's application, the Majority's Order and upon commentary offered by the Company, the Public Staff and the assenting Majority during public and private discussion and debate, one is inevitably led to the conclusion that the Majority's assentation is based upon one or a combination of the following beliefs:

(1) Approval of the Company's proposal will in and of itself have no impact on the level of rates.

(2) The Company should instantaneously attain a common equity capitalization ratio of 40.7% so as to hastily improve its fixed charge coverage ratio.

(3) Capital structures are transitory. Therefore, the increased cost to the Company's customers will be short-lived or soon vanish.

(4) The proposal is nothing more than a paper transaction - no cash is involved.

(5) Approval of the proposal will strengthen the capital structure and thereby provide additional financial flexibility.

(6) The Company in the past has been required to sell common stock below book value.

(7) The Commission should not question the management judgments of Duke. Duke is the best run utility in the country.

(8) The issue has been blown out of proportion.

(9) As a result of approval Duke may build its Cherokee nuclear plant.

(10) It is entirely consistent and proper to allow the Company's shareholders, at the expense of its ratepayers, a one-time windfall profit arising from the approved transaction irrespective of the ultimate cost to be borne by consumers. This profit is estimated by the Company to be in the neighborhood of $53.4 million.

Each of these contentions will be examined in detail and I maintain that when one looks beyond the surface appearances and strips away all the rhetoric the impoverished nature of the justification is clear for all to see and marvel at the decision.

(1) Approval of the Company's proposal will in and of itself have no impact on rates.

This line of "reasoning" is perhaps more appropriately captioned "the subterfuge."

The Company and the Public Staff contend that approval of the Company's request will have no immediate impact on rates. Further, they contend that before the Company's customers will be required to bear the additional cost of the approved transaction that the propriety of this matter will first and more appropriately be thoroughly investigated and reviewed in the context of a general rate case.

Perhaps the reasonableness of a 40% plus common equity capitalization ratio for Duke will be objectively reviewed by the Public Staff in Duke's next general rate case to be filed in the spring of 1982. I must, however, question the likelihood of such an eventuality in light of the fact that the Public Staff has

taken the position that Duke's proposal should be accepted. Additionally, one must wonder about the Company and the Public Staff's "instant conversion on the road to Damascus." Less than 3 months ago, both Duke and the Public Staff in sworn testimony before the Commission took the position that a 38% common equity ratio was reasonable and proper for Duke to maintain under existing circumstances. If anything these "circumstances" have improved. Moreover, in data filed concurrent with its pending application for a $211 million rate increase, the Company projected a capital structure for use in future periods composed of a 38% common equity ratio. The $211 million requested increase will be decided almost simultaneously with this decision.

In any event, the propriety of a 40% common equity capitalization ratio is not the real question before the Commission. It simply serves as a convenient smoke screen. The real question is: Should Duke's common shareholders be allowed a $53.4 million windfall profit irrespective of the fact that it will ultimately result in substantial additional costs to the Company's customers? Clearly, this is the substance of the proposal. If not, why, one might ask, has the Company or the Public Staff not proposed that the $53.4 milion gain be amortized as a reduction to interest expense over what would have been the remaining life of the bonds retired; and then, at the time of the next general rate case, make a determination as to what extent, if any, the gain should be assigned exclusively to the common shareholders of the Company. After all, that is the course of action followed when the Company has incurred a nonutility loss and is seeking to recover the loss from the Company's electric utility customers. For example, the multimillion dollar loss Duke's shareholders would have suffered upon Duke's abandonment of certain of its coal mining properties absent the Commission's willingness to permit Duke's shareholders to be reimbursed by its ratepayers. These losses are soon to be reflected in Duke's electric rates since no party to Duke's pending rate case, including the Public Staff, has taken exception to that move. In other words, the argument put forth by the Majority, the Company and the Public Staff that the swap will have no impact on rates is nothing more than a subterfuge undertaken to conceal the true substance of Duke's proposal.

(2) The Company should instantaneously attain a common equity ratio of 40.7% so as to hastily improve its fixed charge coverage ratio.

Again, we strike at the very heart of the charade--the "fixed charge coverage ratio." At this juncture, it is worthy of note to observe that it is through the Company's fixed charge coverage gimmickry, perpetuated by the Public Staff's simplistic and shallow emulation, that the Majority seeks, in large part, to employ in justifying its approval of the Company's request. Lest my remarks be misconstrued, I wish to make it clear that I do not question the applicability nor the significance of the fixed charge coverage ratio when employed in assessing the credit-worthiness of a firm. I do, however, strenuously object to the manner in which it has been and is being used by the Company, the Majority and the Public Staff in a transparent attempt to conceal the true nature of Duke's request and the unjustifiable financial burden that Duke's ratepayers will be required to bear.

As previously stated, the true nature of the request is to permit Duke, with the blessings of the Majority and the Public Staff, to reap a windfall profit of $53.4 million on behalf of Duke's shareholders to the significant detriment of

its ratepayers. Do not be mislead or beguiled by past, present and future rhetoric of the Company, the Majority and the Public Staff. Duke's proposal is not, cannot and never will be in the best interest of its public utility customers.

By its very essence, one must conclude that this proposal was conceived, nurtured and implemented with very little or no consideration given to the Company's ratepayers; that is, other than to contrive a plan through which Duke might gain, and unfortunately has gained, Commission approval. What is the real price tag to the consumer arising from the Majority's action? The answer is quite simple. As previously stated, at the very least, and as reflected in Duke's own application, the ultimate impact will be to require Duke's customers to pay in through increased rates additional annual revenues in excess of $24.6 million. Further, over the next 26 years Duke's customers will be required to unnecessarily pay additional interest cost in the amount of $223.6 million. If Duke's financial needs truly require a 40% common equity capitalization ratio, and I do not concede that it does, then it should seek and maintain that ratio through the issuance of new common stock and from the retention of earnings realized from operations and not from financial gimmickry.

The Majority, in this regard, contends that the higher equity ratio will lower the cost of equity capital and that higher fixed charge coverage ratios will lower the cost of future debt financings. This, of course, to a degree is true. However, the benefits of the approved transaction will never outweigh its cost. That is, unless one believes it makes good economic sense for an individual to pay-off a 26-year 8% mortgage on his or her home by use of a "master charge credit card" with an attendant interest rate of 18%. If the benefits of the Majority's assentation are as clear and profound as contended, why then have they not been quantified and clearly set out in terms of percentages and/or dollars and cents as opposed to rhetoric and/or intuitive supposition.

The answer is clear. There is an optimum capital structure. However, to date neither theory nor empirical analysis has been able to precisely identify the optimal capital structure for an actual firm or the precise cost of capital associated with the actual capital structure of an actual firm. Stated alternatively, there is no specific clearly identifiable capital structure which minimizes the cost of capital of a firm. Most agree, however, that there is an identifiable range of reasonableness over which a capital structure can and, undoubtedly, does vary. Therefore, any attempt to identify in even fairly precise terms the impact on capital cost of capital structure movement within that range of reasonableness is to indulge oneself in fantasy. Simply put, it cannot be done. With respect to Duke's capital structure neither a 38% nor a 40% common equity ratio lies very far from the midpoint of its range of reasonableness. Therefore, to even suggest that there are specific quantifiable effects on the Company's cost of equity capital arising solely from movement around the midpoint of the range of reasonableness requires first that one transcend into the world of the supernatural.

The foregoing is not to be confused with earlier quantification of the additional cost of debt capital ($223.6 million). This excess cost calculation requires no heroic assumption(s). It only requires a determination of the approximate cost of Duke's long-term debt in the market place today. Such cost

is empirically evident. Moreover, the foregoing is not to be confused with Duke's position, at least as reflected by its application, that the proposal will increase its cost of service (electric rates) by approximately $24.6 million annually. This excess cost calculation requires no heroic assumption. All parameters in Duke's excess cost calculation, other than the capital sturcture cha;nge, were held constant and properly so; that is, if one seeks to view the true effect of the debt-equity swap before consideration of additional excess cost arising from the incremental cost of $125 million of new debt capital.

(3) Capital structures are transitory. Therefore, the increased cost to the Company's customers will be short-lived or soon vanish.

As a result of the approved transaction Duke will be financing $125 million of investment (assets) with common equity capital which heretofore had been financed with debt capital. Unless Duke retires the common stock issued in exchange for the debt and pays out the $53.4 million extraordinary gain in the form of dividends to its shareholders, the $125 million of equity capital and its attendant cost will be reflected, respectively, on Duke's balance sheet and, absent future Commission action, in Duke's rates forever.

Moreover, the Majority should carefully consider undertaking an additional period of reflection with respect to its argument concerning the transitory nature of capital structures. This argument contradicts rather than supports the position which they seek to defend. If the Majority truly believes that the 40% plus common equity capitalization ratio will be short-lived (i.e., average approximately 38% or less over time as opposed to an average of approximately 40% plus over time) it (the Majority) should clearly have voted to deny the Company's request. If the Company does not on average maintain a higher equity ratio, virtually all of the Majority's alleged benefits to the Company's customers summarily disappear.

(4) The proposal is nothing more than a paper transaction - no cash is involved.

In the past Duke received $125 million in cash or its equivalent for its promise to repay said sum at some future date, plus interest accruing during the interim. Duke's stockholders can now satisfy the obligation to repay this $125 million liability by surrendering to the lendor(s) (bond holders) cash or its equivalent in the amount of $71.6 million, thereby being permitted to keep $53.4 million of cash or its equivalent that it would have otherwise been required to repay.

If an individual was permitted to pay-off a mortgage on his home with a 26-year remaining life by surrendering approximately 57% of the principal amount otherwise due, I do not believe that he or she would mundanely characterize such an event as a mere "paper transaction."

The cost arising from the above transaction ultimately to be borne by the Company's customers has been previously discussed and need not be repeated here.

(5) Approval of the proposal will strengthen the capital structure and thereby provide additional financial flexibility.

A gift of $53.4 million to any individual or entity would obviously improve his, hers, or its financial flexibility. The question in reality is, of course, do the benefits of the Company's proposal which flow to the Company's shareholders and to a far, far lesser degree its customers outweight the attendant costs that the customers and not its shareholders will ultimately be required to bear.

From a shareholder and Majority perspective the answer is a benevolent "yes," but from a rate-payer perspective, for reasons stated herein, the answer is clearly, a resounding "no."

(6) The Company in the past has been required to sell common stock below book value.

The price which rational investors are willing to pay for the common stock of electric utilities is determined in the very same way an investor determines the price he is willing to pay for any other financial asset. The stock's price is a function of the investors' preference with regard to perceived risk and expected return. There is no guarantee that the expected return will be realized or that the capital invested will be returned. Such is the nature of an investment in the common stock of virtually all firms. That is why common equity investors require, on an ex ante basis, returns greater than the expected returns required of less risky assets. It is a widely accepted economic fact among even fairly sophisticated financial analysts that the book value of a firm's common stock has virtually nothing to do with its current market price. The fact that the common stock of a firm is selling above or below book value has little financial significance other than to reflect the fact that the true value of a going concern is at times overvalued, (i.e., book greater than market) and at times undervalued (i.e. market greater than book) when book value is used as the valuation yardstick.

In recent years electric utilities have argued that market to book ratios (market price ÷ book value) of less than 100% are clear evidence that they have been allowed inadequate rates and/or that their allowed earnings were too low. However, in earlier years these same companies did not complain that a market to book ratio substantially in excess of 100% was clear evidence that they had been allowed excessive rates and/or that their earnings were too high; nor are they likely to do so in the future. In any event, there is no economic merit to either argument.

According to a recent report prepared by Kidder Peabody & Company, Incorporated, an investment banking firm, as of November 6, 1981, Duke's market to book ratio was approximately 89.82%. Duke's market to book ratio as of November 20, 1981, again according to Kidder Peabody was approximately 94.63%. I believe that even a casual observer of this phenomenon would conclude that changes in the market to book ratio of electric utilities are clearly more a function of interest rates and general economic conditions than a measure of the reasonableness of a firm's earnings and/or the level of a firm's electric utility rates.

Finally, the absurdity of the argument that the market to book ratio is a meaningful valuation yardstick is clearly exhibited by the following analysis. It is an uncontested fact that the market price of Duke's common stock will not,

in any material respects, be affected by or through implementation of the Company's instant financial proposal. It is also an equally uncontested fact that the book value of Duke's common stock will be increased by approximately $.59 per share as a result of implementation of Duke's proposal. Therefore, using the market price of $22.125 per share and the book value of $23.38 per share as reflected by Kidder Peabody in its November 20, 1981, report and utilized therein by Kidder Peabody to calculate Duke's market to book ratio of 94.63%, Duke's market to book ratio after giving effect to its proposal is easily determined to be 92.30% [$22.125 ÷ ($23.38 + $.59)]. Upon inspection of the market to book ratios before and after implementation of Duke's proposal it is easily seen that the market to book ratio has, in an absolute sense, decreased 2.33% (94.63% - 92.30%). This would imply, based upon a market to book ratio analysis, that the Company and its shareholders were worse off after implementation of the financial proposal. Obviously, such a conclusion is unrealistic and unmeaningful to the point of absurdity.

(7) The Commission should not question the management judgments of Duke. Duke is the best run utility in the country.

In many, if not most respects, Duke does appear to be a well managed and operated utility. However, it is not perfect. This fact is clearly evidenced by the recently acknowledged (September 1980) $50 million loss a wholly-owned Duke subsidiary would have incurred as a result of its management's decision to undertake its now defunct Peter White Coal mining venture. I hasten to add, however, that Duke's shareholder losses have been dramatically reduced in this regard by virtue of the fact that ratepayers are soon to be required to begin reimbursing the Company's shareholders for an exceedingly large portion of the loss that they would have otherwise suffered. This raises a very serious question about the propriety of allowing losses from a nonutility subsidiary to be shifted onto the backs of the utility ratepayers. Perhaps this issue should be reserved for another forum, but I fear the damage has already been done.

More appropriately, however, one must not lose sight of the fact that the General Statutes of North Carolina specifically require this Commission to make certain that specific actions proposed to be undertaken by utility management are in the public interest. The matter at issue herein is not an exception.

(8) The issue has been blown out of proportion.

In a recent article captioned "Its a super deal" published in the December 7, 1981, issue of Forbes magazine the authors characterized debt-equity swaps identical to the swap proposed by Duke as follows:

> "The swaps, invented by--you guessed it--Solomon Brothers, are all the rage on Wall Street lately. A swap lets companies dress up their balance sheets, puff up their earnings and most important--pay no tax in the process."

Further, the article presents Hugh McColl's (Mr. McColl is Vice Chairman of NCNB Corporation) quite appropriate description of the debt equity swap as follows:

> "`It's a super deal for us,'" says an enthusiastic McColl. `In effect, we sold stock for $21.75 a share in a market that said our stock was worth 13-5/8.'"

According to Duke's application, it anticipates that it will be able to put stock on its books at approximately $34.61 [(3,750,000 shares)($20.375 per share) + $53,394,000] ÷ 3,750,000 = $34.611 per share, before inclusion of flotation costs, in a market that says its stock is worth $20.375 per share.

It is a "super deal" for Duke's shareholders but certainly not for its ratepayers.

Commenting specifically with regard to the public utility industry the authors make the following observations:

> "Utility companies, delayed until now by regulatory processes, will soon appear in droves"...
>
> "Utility companies' balance sheets will improve if they do massive swaps, but their cash position won't. In fact, replacing tax-deductible interest payments with nondeductible common stock dividends might improve their coverage ratios but run down their cash."

I do not disagree with the contentions of the authors in any respect. However, with regard to the latter quote, I hasten to add that the cash flow of the utilities will be vastly enhanced once the effect of the debt-equity swap is included in rates; and, it will be. To do otherwise would be to completely negate the objectives, whatever one considers them to be, of the debt-equity swap.

Finally, the Forbes' article states:

> "As long as interest rates continue to stay high by historical standards and bond prices stay low, there is plenty of opportunity for companies to manage their earnings by doing the occasional swap."

I could not agree more. Other utilities will soon be getting in line and Duke in all probability will be back.

(9) As a result of approval Duke may build its Cherokee nuclear plant.

Duke is a natural monopoly endowed with the public trust. It has a legal and moral obligation to provide adequate and reliable electric utility service at the lowest reasonable cost.

(10) It is entirely consistent and proper to allow the Company's shareholders, at the expense of its ratepayers, a one-time windfall profit arising from the approved transaction irrespective of the ultimate cost to be borne by consumers.

....What more can one say?

At the risk of repeating myself it is beyond my understanding how the Majority can in good conscience say that this financial deal is in the best interest of the ratepayers. Therefore, I totally disassociate myself from the Majority's decision.

Upon reviewing the concurring opinions, I am compelled to speak to the issue raised regarding the possibility that savings to consumers might accumulate to $1.2 billion and to the assertion that my analysis might be shallow.

The analysis of any issue requires that certain key assumptions be made. The validity of the analysis rests upon how well the assumptions meet a test of reasonableness.

I am confident in the "reasonableness" of my assumptions and feel secure in stacking my analysis up against that of the majority as well as occurrences out in the "real world".

The old refrain that the issue can be addressed or redressed in future rate cases has a hollow ring. The same thing was said when Duke came in for clearance on the accounting treatment of the Peter White losses, yet the rate case has come and gone and the customers are being stuck with the bill. Not one word has been said by the Public Staff or the Commission during the hearings or in the Order. The Peter White issue was so neatly swept under the rug that it was virtually impossible for the intervenors other than the Public Staff to detect a glimmer of this impropriety. The "future rate case" consideration is nothing more than a ploy to attempt to defuse a decision with the clear understanding, and hope, that people's memory will be short and the issue will never be heard from again.

The end result of this decision will ultimately rest on the customer. Only time will tell whether the customer will have an additional financial burden cast upon his already tired shoulders or whether he will be swept up on a "magic carpet" of $1.2 billion in savings. I don't think one has to be exceptionally gifted in order to see which eventuality will most likely occur and to see whose reasoning meets the test of reasonableness and whose reasoning is no deeper than a heavy dew on the Sahara desert.

Commissioner Leigh H. Hammond

DOCKET NO. E-7, SUB 331

HIPP, COMMISSIONER, DISSENTING. I dissent from the majority Order approving this exchange of new stock for outstanding bonds because of the provisions of G.S. 62-161(b) authorizing the issuance of stock only if the Commission finds it ". . . (ii) is compatible with the public interest, . . . and (iv) is reasonably necessary and appropriate for such purpose."

From my review of the transaction, it has not been established that the proposed exchange is compatible with the public interest, and is reasonably necessary and appropriate for such purpose, in view of the offsetting costs to Duke's ratepayers, under the timing of this application.

Duke Power Company has demonstrated over the years the dedication which it has for providing good service to the public, and it has achieved such efficiencies of operation that its rates are below the average for the southeastern United States and among the lower rates in the nation. I can understand Duke's desire to use this exchange to reduce its debt ratio, to improve interest coverage, and increase the book value of its common stock from the resulting capital gain, but the Commission must also consider the public interest in the cost of the transaction to Duke's ratepayers. The available evidence is not sufficiently convincing to support approval on this requirement, at this time.

The benefits from the exchange revolve around the $53,394,000 of capital gain, to be derived on paper from exchanging $78,044,000 of new common stock for $125,000,000 of deeply discounted outstanding 8 1/8% bonds, and retirement of the bonds.

The costs of the transaction to the ratepayers comes from the $24,566,000 per year additional revenue required to service the new common stock over and above the cost of servicing the cancelled bonds. This $24,566,000 a year will increase to approximately $30,000,000 per year within a few days after the Order goes out, when the present 14.1% cost of equity is increased in the pending rate case, where even the evidence of the representatives of the consuming public placed the cost of equity at 16.4%.

The majority Order emphasizes the future needs of Duke for money to finance its ongoing construction program and emphasizes the benefits in future financing transactions from the increased equity in the capital structure and the increased interest coverage from the reduced long-term debt. The proposed exchange will issue the new common stock without receiving any cash or other consideration which can be applied to Duke's need for money to finance its construction. If the new common were issued for cash, when it is needed, it would, of course, cover $78,000,000 or possibly more of the new construction needs, depending upon when it will be needed, and the effect of the pending rate case on the market price of the stock.

The benefit to the ratepayer for this added $30,000,000 per year in revenue requirement consists of the possibility of some flow-through effect of lower costs of financing for future construction, and from a lower cost of equity from the higher equity ratio, but there is no way to know in any definitive or quantifiable way if this benefit will ever materialize.

This exchange of new common stock for deeply discounted bonds is a recent financial device achieving some popularity with banking and industrial corporations. Forbes, December 7, 1981, p. 39. The management of such corporations can utilize such exchanges at their discretion, and if the costs in their competitive markets are not acceptable to their customers, they can go to other banks or industrial corporations for service.

The Commission has to provide the equivalent protection to the customers of Duke, the State having given Duke a monopoly franchise for its service area and there being no recourse by the customers for the additional revenue requirement which will result from the exchange.

The majority explain their belief in benefits to the ratepayers in the following statement:

> "Projected judgmental economic factors become the prime determinants in reaching a conclusions as to the costs and benefits of the plan, especially on a long-term basis. While it is simple to calculate the additional costs of more equity compared to debt while holding all other factors constant, these calculations would be incomplete because the other factors, such as the interest rates, will change. Benefits are more difficult to calculate. For example, how much lower can the rate of return allowed the Company be with its projected higher equity position to be achieved through this financing plan? How much can the cost of equity capital be reduced by the Company's avoiding the sale of additional common shares below book? In turn, how much of these savings can be translated into savings to the consumers? We cannot quantify these amounts, but based on the evidence presented, we conclude that the benefits of going ahead with this plan should outweigh its costs."

It would also help to project judgmental economic factors to the external changes which will bear upon such calculations. The nation's economy is uniformly acknowledged to be in a recession, with interest rates in a major decline. Utility stock prices should perform better than most, due to the acknowledged stability of utility stocks in a recession, with a monopoly on an essential service. Investors will be able to rely more upon Duke's financial position after a final Order is entered in its pending rate case. The probabilities are that the present national policy to reduce interest rates and to reduce inflation will succeed to some degree, although at great immediate cost to the rate of unemployment and the economic welfare of many utility customers. Duke does not need any external financing at the present time, and the probability is that when it needs money in 1982 it can issue bonds at lower rates than it could when it filed this application, and it can sell stock on better terms resulting from the more favorable debt markets and the final determination of its rate case.

I conclude that it has not been shown that the cost of $30,000,000 in additional annual revenue requirements for the new stock is balanced by the benefits which may flow from the exchange for outstanding bonds, and that it has not been shown that the plan is compatible with the public interest, is necessary for the performance of Duke's service to the public, and is reasonably necessary and appropriate for such purpose.

Edward B. Hipp, Commissioner

DOCKET NO. ES-97

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Joint Application of Virginia Electric and Power Company and) ORDER
Edgecombe-Martin County Electric Membership Corporation for) GRANTING
Assignment of Service Areas in Pitt County) APPLICATION

HEARD IN: Municipal Building, Council Chambers, Greenville, North Carolina, on December 17, 1980, at 10:00 a.m.

BEFORE: Commissioners Sarah Lindsay Tate, Presiding, Leigh H. Hammond, and Douglas P. Leary

APPEARANCES:

For the Applicants:

Henry S. Manning, Jr., William M. Flynn, Hunton & Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602
For: Virginia Electric and Power Company

Marvin V. Horton, Bridgers & Horton, Attorneys at Law, P. O. Box 1175, Tarboro, North Carolina 27886
For: Edgecombe-Martin County Electric Membership Corporation

For the Intervenor:

G. Clark Crampton, Staff Attorney, Public Staff - North Carolina Utilities Commisson, P. O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On June 24, 1980, Virginia Electric and Power Company (Vepco) and Edgecombe-Martin County Electric Membership Corporation (Edgecombe-Martin EMC or EMC) filed a Joint Application with the Commission for the assignment of service areas in the Dawson Acres Subdivision, Pitt County, North Carolina.

On September 9, 1980, the Public Staff filed Notice of Intervention and on September 12, 1980, filed a Motion requesting that a public hearing be held in or close to the area sought to be assigned. Vepco and the EMC filed responses requesting that the Motion for hearing be denied.

On October 8, 1980, the Commission issued an Order setting the Joint Application for hearing in Greenville on December 17, 1980, and requiring the Joint Applications to give notice.

Thereafter the parties filed various interrogatories and requests for production of documents.

The Joint Application came on for hearing as scheduled in Greenville. The parties were present and represented by counsel. The Joint Applicants, Vepco and the EMC, presented the testimony and exhibits of the following witnesses: Hubert Douglas, a Senior Customer Representative of Vepco; James H. McBrayer, Jr., District Manager - Albemarle District of Vepco; Don B. King, an Engineer with Edgecombe-Martin EMC; Rudolph Sexton, General Manager, Edgecombe-Martin EMC. The Public Staff presented the testimony of Lee F. Ball, a partner in the Blount and Ball Real Estate Agency; Donnie Brewer, of Rivers and Associate; and John C. Romano, an Engineer with the Electric Division of the Public Staff.

Upon consideration of the testimony and exhibits presented at the hearing and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Vepco is a corporation duly organized and existing under the laws of the State of Virginia, and is authorized to do business in the State of North Carolina as a public utility.

2. Edgecombe-Martin County EMC is an electric membership corporation duly organized and existing under the laws of the State of North Carolina.

3. Both Applicants are "electric suppliers" as defined by G. S. 62-110.2 (a)(3), and both are authorized to operate and do operate in Pitt County, North Carolina.

4. Vepco is and for many years has been rendering electric service to both retail and wholesale customers in Pitt County, and owns, maintains and operates electric facilities of various kinds there.

5. Edgecombe-Martin EMC is and for many year has been rendering electric service to retail customers in Pitt County, and owns, maintains and operates electric facilities of various kinds there.

6. Acting pursuant to the authority of G. S. 62-110.2, the Commission on previous occasions has assigned certain service areas in Pitt County to each of the applicants (Docket Nos. ES-84, ES-85 and ES-86). An area of the county in which is located the "Dawson Acres" Subdivision was left unassigned. Dawson Acres lies east of S. R. 1400, which at that point is a border of a service area previously assigned by the Commission to Edgecombe-Martin County EMC.

7. Both Applicants have lines in or near Dawson Acres. In order to avoid duplication of service, Applicants have negotiated and have reached agreement concerning the designation of assigned service areas to each of them within the Subdivision, pursuant to G. S. 62-110.2. (See Appendix A attached to this Order showing the agreement of the Applicants on the service areas in the Dawson Acres Subdivision.)

8. Under the agreement reached by Vepco and the EMC, the Vepco transmission right-of-way bisecting the Subdivision will be the boundary line between the service areas of the two electric suppliers: Vepco will serve the upper, or northwestern, part of the Subdivision and Edgecombe-Martin EMC will serve the lower, or southeastern, part of the Subdivision. Under this agreement, Vepco will serve 42 lots in its service area and the EMC will serve 34 lots. To the north of Vepco's service area is a commercial area that will be served by the EMC.

9. Vepco's transmission right-of-way bisecting the Subdivision has a 12.5 KV distribution line, which was installed in 1974, and a 115/230 KV transmission line; the 115 KV line was in place on April 20, 1965. Vepco is presently providing temporary service to lots 2 and 3 of Block C from the 12.5 KV line, pursuant to a request from the developer.

10. Vepco's transmission right-of-way is a natural boundary between the service areas agreed upon. There are no lots within the right-of-way that will be suitable or available for residential development.

11. In the absence of any assignment or agreement of assignment between the two electric suppliers, the EMC would have the right to serve four lots (31, 32, 33, and 12) at the lower southwestern corner of the Subdivision from its adjacent 7.2 KV line. Vepco would have the right to serve the 32 lots which lie within 300 feet of Vepco's transmission or distribution lines. Either supplier would have the right to serve the remaining 42 lots that are not within 300 feet of the respective lines of each supplier. (See Appendix B attached to this Order in which the service area of each supplier under the 300-foot rule is shaded in.)

12. Vepco is capable of rendering and is willing to render adequate and dependable electric service in the area for which it requests assignment. Vepco will have a local supervisor in Bethel, which is three and one-half miles from the Subdivision. Vepco has further back-up facilities and crew located in Williamston.

13. Edgecombe-Martin EMC is capable of rendering and is willing to render adequate and dependable electric service in the areas for which it requests assignment. The EMC has two nearby facilities from which it can provide service to Dawson Acres within 10 or 15 minutes.

14. If the agreement under consideration herein is not approved, Vepco will exercise its right under G. S. 62-110.2 to serve those lots within 300 feet of the lines on its right-of-way. Lot owners who are not within 300 feet of Vepco's or the EMC's lines would be free to choose their electric supplier; spotted service and serious duplication of facilities could result from this situation.

15. The agreement of Vepco and the EMC under consideration herein will avoid unnecessary duplication of facilities and will not result in waste of resources.

16. The developers of the Dawson Acres Subdivision have expressed no preference as to which electric supplier should serve the Subdivision; the developers have been content to allow Vepco and the EMC to work out an agreement among themselves to serve the Subdivision.

CONCLUSIONS

The Commission concludes that the assignment of service areas to Vepco and the EMC in Dawson Acres Subdivision, as requested by them in their Joint Application, is in accordance with the public convenience and necessity. Consequently, the Joint Application should be granted and approved.

The purpose of the agreement between Vepco and the EMC was to avoid unnecessary duplication of electric facilities and service in the Dawson Acres Subdivision. The evidence clearly establishes that the agreement will avoid unnecessary duplication of electric facilities and service, and the Commission so finds and concludes. Dawson Acres has not been assigned to any electric supplier by the Commission. In the absence of any assignment, Vepco and the EMC

would have the right under G.S. 62-110.2 to serve all premises located within 300 feet of their respective lines. Those premises not located within 300 feet of either supplier's lines could choose their own supplier; spot or "checkered" service could result as to these remaining lots, thereby giving rise to unnecessary duplication of facilities.

The agreement approved by this Order avoids these problems. The service areas of the two suppliers are separated by a natural boundary line, the Vepco transmission right-of-way. Both suppliers have adequate facilities and personnel close to their service areas and can respond to service emergencies in a matter of minutes. Each supplier can service its area from existing lines. The developers of the Subdivision have been willing to allow Vepco and the EMC to agree upon their service areas. Consequently, the Commission is of the opinion that the Application should be approved.

IT IS, THEREFORE, ORDERED that the Application filed by the Joint Applicants on June 24, 1980, be, and the same is, hereby granted and approved, and that each Applicant is hereby assigned the service area designated to it as shown on Appendix A of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of February 1981.

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. E-2, SUB 412

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Carolina Power & Light Company's Request for Aproval) ORDER APPROVING
of Proposed Accounting for Costs Associated with the) PROPOSED ACCOUNTING
Cancellation of Its Brunswick Cooling Tower Project) METHODOLOGY

BY THE COMMISSION: By letter dated February 4, 1981, Carolina Power & Light Company requested approval of certain proposed accounting treatments of costs associated with the cancellation of its Brunswick Cooling Tower Project.

More specifically the Company requested that it be permitted to record its investment in the Brunswick Cooling Tower Project in Account GL 182, Extraordinary Property Losses, and amortize the costs over five years beginning in 1981, in accordance with the journal entries set forth herein below:

	Debit	Credit
1. GL 182, Extraordinary Property Losses	$15,000,000	
GL 107, Construction Work in Progress-Electric		$15,000,000
To record in Extraordinary Property Losses, the investment in the Brunswick Cooling Tower Project that has now been cancelled.		
2. GL 407, Amortization of Property Losses	$ 250,000	
GL 182, Extraordinary Property Losses		$ 250,000
To record the monthly provision for the write-off of the Brunswick Cooling Tower Project. To be written off over a 60-month period.		

This matter was presented to the Commission by representatives of the Company at the Commission's regular Monday morning conference of March 2, 1981. During discussion following the Company's presentation, The Public Staff indicated that it had no objection to the Company's proposal in this regard.

The Commission being of the opinion that good cause exists for the approval of CP&L's request as described hereinabove,

IT IS, THEREFORE, ORDERED as follows:

That Carolina Power & Light Company shall be, and hereby is, allowed to account for costs associated with the cancellation of its Brunswick Cooling Tower Project in accordance with the procedure requested and described hereinabove; provided, however, that nothing in the Commission's decision in this regard shall be construed to be determinative of the future treatment of this item of cost for rate-making purposes.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of March 1981

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. E-2, SUB 423
DOCKET NO. E-7, SUB 322
DOCKET NO. E-22, SUB 263

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Oil Refiner Refunds) ORDER PRESCRIBING ACCOUNTING TREATMENT

BY THE COMMISSION: By letter dated May 11, 1981, the United States Department of Energy advised the Commission that utilities throughout the country would be receiving payments from a number of oil refiners as a result of a consent order executed by the Office of Special Counsel of the Department of Energy. The payments to the utilities are contingent upon the pass-through of the payments to consumers by the utilities.

The amount of payment to be made to each utility varies depending upon the utilities' supplier and the level of volumes purchased during the period mid-1973 through 1980. The amount of total company payment to the affected utilities under this Commission's jurisdiction are as follows:

Line No.	Utility	Refiner	Amount
1.	CP&L	Amerada Hess Corp.	$ 98,523
2.	DUKE	Ashland Oil, Inc.	$ 3,000
3.	VEPCO	Amerada Hess Corp.	$1,051,920

DOE has requested that the pass-through be documented in the utilities reports to this Commission and that the Commission notify DOE when the pass-through has been completed.

The Commission being of the opinion that good cause exists for requiring the pass-through of the refiner refunds

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Power Company, Carolina Power & Light Company and Virginia Electric and Power Company shall upon receipt of the refiner payment described herein above flow through that portion of the total payment applicable to the companies' North Carolina retail operations by crediting one or more of the following expense accounts or the appropriate inventory account(s).

Account No. 501	Fuel - Steam Power Generation
Account No. 547	Fuel - Other Power Generation

2. That said companies shall clearly reflect said reduction in fuel cost in each of their respective Applications for Authority to Adjust Electric Rates and Charges Based Solely on Changes in the Cost of Fuel next following the receipt of subject payment from the refiner and subsequent Applications where required.

3. That said companies shall advise the Commission by letter when the pass-through of the payment has been completed.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of June 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-9, SUB 208

NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Edward R. McHenry, Jr., and Durane Gas Company, Complainants v. Piedmont Natural Gas Company, Inc., and all of Its Subsidiaries, Including Carolina Energy Company, Inc., Defendants	) ORDER DISMISSING COMPLAINT) AND REQUIRING PIEDMONT) NATURAL GAS COMPANY, INC.) TO UNDERTAKE COST) ALLOCATION STUDY AND) FILE REPORT

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 1, 1981, at 11:00 a.m.

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

APPEARANCES:

For the Defendants:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Drawer U, Greensboro, North Carolina 27602
For: Piedmont Natural Gas Company, Inc., and its Subsidiaries

For the Complainants:

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorneys at Law, 327 Hillsborough Street, P.O. Box 527, Raleigh, North Carolina 27602
For: Edward R. McHenry, Jr., and Durane Gas Company

BY THE COMMISSION: On February, 3, 1981, Complainants Edward R. McHenry, Jr. (McHenry), and Durane Gas Company, Inc. (Durane), filed a Complaint against Piedmont Natural Gas Company, Inc. (Piedmont), and/or its subsidiaries wherein the Complainants basically alleged that Piedmont, through one or more wholly owned subsidiaries, is engaged in the sale of propane to residential, commercial, and industrial customers in its service area at prices substantially below the prices which independent propane gas companies (such as the Complainant Durane) can offer their customers and reasonably recover their costs of doing business and that Piedmont is allegedly able to offer such unreasonably low propane prices because a substantial portion of Piedmont's expenses of selling propane are paid for from revenues derived from Piedmont's operations as a public utility, including the sale of natural gas to North Carolina ratepaypers such as Complainant McHenry.

On February 3, 1982, the Complainants also filed a motion entitled Motion to Intervene and Motion to Consolidate, thereby requesting this Commission to issue an Order granting the Complainants leave to intervene in Docket No G-9,

Sub 204, and also consolidating the instant docket with Docket No. G-9, Sub 204, for purposes of hearing and investigation.

By Commission Order dated February 5, 1981, the Complaint was served upon Piedmont and on February 17, 1981, Piedmont filed a responsive pleading in this docket entitled Motions to Dismiss, Answer, and Counterclaims.

On March 5, 1981, the Complainants filed three motions in this docket entitled as follows: Motion to Dismiss the Affirmative Answer and Counterclaims of the Defendants; Motion to Add Additional Parties; and Motion to Amend the Complaint.

By Order dated March 12, 1981, the Commission scheduled the above-described pleadings and motions for oral argument on April 24, 1981. By Commission Order dated April 21, 1981, said oral argument was rescheduled for May 1, 1981. Upon call of the matter for oral argument at the appointed time and place, oral argument was presented by counsel for and on behalf of the Defendants and the Complainants.

Upon careful consideration of the above-referenced motions and the oral argument offered by the parties with respect thereto, the Commission concludes that the Complaint filed herein on February 3, 1981, by Complainants McHenry and Durane should be dismisssed and that this docket should be closed for the reason that this Commission does not possess jurisdiction to hear and decide the matter in question in the context of a complaint case. Further, the issue of whether or not revenues derived from public utility operations are being used to subsidize a nonutility function is one which is more properly considered in the context of a general rate case, since the existence of subsidization would affect Piedmont's entire rate structure rather than a single rate or a small part of the Company's rate structure. To this end, the Commission will order Piedmont to undertake a detailed study of the cost allocation practices and procedures followed by the Company in allocating expenses between its regulated and nonregulated operations and to file the results of such study for review by the Commission, the Public Staff, and any other interested parties (such as the Complainants) not later than six months from the date of this Order; however, should Piedmont decide to file an application for a general rate increase sooner than six months from the date of this order, the studies and reports required hereby should be filed in conjunction therewith.

In view of all of the foregoing, the instant Complaint will be dismissed and this docket will be closed.

IT IS, THEREFORE, ORDERED as follows:

1. That the Complaint filed herein on February 3, 1981, by Edward R. McHenry, Jr., and Durane as Company, be, and the same is hereby, dismissed.

2. That this docket be, and the same is hereby, closed and all matters pending herein are hereby discontinued.

3. That Piedmont shall, either in conjunction with its next general rate case or not later than six months from the date of this Order, whichever event shall first occur, file a per books and pro forma jurisdictional cost allocation study

and a per books and pro forma fully distributed cost-of-service study based upon the most recent 12-month period of historical experience available for analysis. Further, Piedmont shall file at said time a complete and detailed narrative explanation and schedule of all costs properly allocable between the Company's utility and nonutility operations. Such detailed explanation and schedule of costs shall include a statement of the criteria, method, or procedure used in determining whether a cost should be apportioned between utility and nonutility operations; the date(s) at which time during the previous five year period that allocation procedures or methodologies have been implemented, terminated, or modified with respect to the apportionment of cost between utility and nonutility operations; a statement of each and every cost to be allocated, including the basis of allocation and a statement of the rationale for use of said basis; a calculation of each allocation factor; detailed and total amounts of cost to be allocated to utility operations; detailed and total amounts of cost allocated to nonutility operations. Fifteen copies of the aforementioned studies and narrative explanation and schedule of costs, and six copies of the detailed work papers in support thereof, shall be filed with the Commission's Chief Clerk. Detailed work papers shall include calculations supporting all accounting, pro forma, and end-of-period adjustments and an explanation of each adjustment, including the reason why each adjustment is required.

4. That the Motion to Intervene and Motion to Consolidate filed herein by the Complainants on February 3, 1981, be, and the same is hereby, denied without prejudice to the Complainants' right to renew their motion to intervene in Docket No. G-9, Sub 204, for ruling by the Hearing Examiner who has been appointed by the Commission to hear and decide the matters raised therein.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of May 1981.

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

DOCKET NO. G-3, SUB 95
DOCKET NO. G-3, SUB 76A
DOCKET NO. G-3, SUB 76B
DOCKET NO. G-3, SUB 76C

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Pennsylvania & Southern Gas Company	)	FINAL ORDER APPROVING
(North Carolina Gas Service Division) for a True-Up	)	ADJUSTMENTS TO ACCOUNT
of Its Curtailment Tracking Mechanism and Recovery	)	NO. 253 AND REQUIRING
of "533" Gas Benefits and Inventory Changes	)	REFUND PLAN

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, December 16, 1980, at 9:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners A. Hartwell Campbell and Douglas P. Leary

APPEARANCES:

For the Applicants:

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

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 September 12, 1980, North Carolina Gas Service, Division of Pennsylvania & Southern Gas Company (hereafter referred to as Pennsylvania & Southern, Applicant, or Company), filed an application with the Commission to:

1. True-up its Curtailment Tracking Adjustment (CTA) for the 12 months ending October 31, 1979;

2. True-up its CTA for the five months ending March 31, 1980;

3. Recover the inventory change not reflected in the CTA; and

4. Recover the benefit of "533" gas sales.

On October 9, 1980, the Public Staff met with the Applicant to consider a resolution of the issues in the application. No agreement could be reached between the parties so the Public Staff recommended the matter be set for hearing. By Order issued on November 19, 1980, the Commission set the matter for hearing on December 16, 1980, at 9:30 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

In support of the application, the Company presented the testimony of Marshall W. Campbell, Jr., Assistant Secretary of Pennsylvania & Southern Gas Company, and the testimony of James A. Ciavardini, a Rate Analyst with the Company.

The Public Staff presented the testimony of Eugene H. Curtis, Jr., an Engineer assigned to the Natural Gas Division of the Public Staff.

Based upon the foregoing, the testimony and exhibits received at the hearing, and the Commission's official files and records in this proceeding, the Commission now reaches the following

FINDINGS OF FACT

1. That Pennsylvania & Southern Gas Company is a public utility providing natural gas service to retail customers in North Carolina and, as such, is subject to the jurisdiction of and regulation by this Commission.

2. That the Curtailment Tracking Adjustment (CTA), which had been a portion of Pennsylvania & Southern's rates and charges for several years, was terminated by Commission Order in Docket No. G-3, Sub 95, effective on March 31, 1980.

3. In this proceeding Pennsylvania & Southern has applied to the Commission (a) for approval of its final CTA "True-ups" for the 12-month period ending October 31, 1979, and for the stub period November 1, 1979, through March 31, 1980; (b) for recovery of an alleged loss resulting from the treatment provided in the CTA of gas held in storage inventory for future sale; and (c) for recovery of alleged revenue losses associated with the sale of "533" gas, which were previously refunded to customers through operation of the CTA.

4. That Pennsylvania & Southern should be allowed to recover $5,609 of undercollections relating to the true-up of the CTA for the 12-month period ending October 31, 1979.

5. That the Company should be allowed to recover $38,997 of undercollections relating to the true-up of the CTA for the stub period November 1, 1979, through March 31, 1980.

6. That the Company should be allowed to recover $134,919 relating to the inventory loss created by the CTA.

7. That the Company is not entitled to recover from present customers $88,554 relating to the recovery of dollars associated with the benefit of "533" gas sales.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence for these findings is contained in the verified application, the Commission's official files and records in this docket, and the testimony of witnesses Campbell, Ciavardini, and Curtis. These findings are essentially jurisdictional and procedural in nature and were not contested.

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

The Company witnesses testified that a total of $268,079 should be allowed to be recovered by the Company and that these funds should be recovered by offsetting the monies against funds held in Account No. 253 (Deferred Gas Cost Account). As to the makeup of the total $268,079, the Company testified that there were four items which generated these dollars. The first item is the true up of the CTA for the 12 months ending October 31, 1979. Company witness Campbell testifed that undercollections amounted to $5,609 for this period. This true-up calculation was made in the manner which has previously been used for truing up curtailment tracking mechanisms for all gas utilities. The Public Staff did not oppose this calculation or the dollars associated with this true up.

The collection of this $5,609 is proper since the methodology utilized by the Company is consistent with that used by this Commission in prior true-ups of curtailment tracking mechanisms. Consequently, the Commission concludes that the Company is entitled to retain $5,609 relating to this true-up.

Witness Campbell further testified that a true-up of the CTA for the stub period from November 1, 1979, through March 31, 1980, would generate a net undercollection of $38,997. Witness Campbell used a percentage allocation of volumes and dollars in calculating the true-up. The Public Staff recognized that there are problems in calculating a true-up for any period other than a one-year period which coincides with Transcontinental Pipe Line Company's entitlement periods. Witness Curtis, testifying for the Public Staff, proposed a true-up based on the latest 12-month period and recommended that the Company should not be allowed to recover the dollars associated with any undercollection. Thus, the Public Staff recognized the problems associated with this stub period but also contended that the Company must be willing to give up these dollars in return for the right to eliminate the CTA. Witness Curtis stated that, if the Public Staff had known when the CTA was eliminated that this Company was not willing to accept his recommended true-up methodology for the stub period, it would have previously recommended leaving the CTA in effect until October 31, 1980. Thus, the Public Staff recommended that the Company should not be allowed to offset the $38,997 associated with the CTA true-up at March 31, 1980, against the customer funds held in Account No. 253.

The Commission concludes that the Company should be allowed to offset customer funds held in Account No. 253 by the undercollection related to the March 31, 1980, stub period. Equity and fairness dictate no other course of action in this matter. Contrary to the position of the Public Staff, implementation or termination of the CTA should not and is not intended to penalize either the Company or the ratepayer.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The third issue at hand deals with the inventory change not reflected in the CTA. The Company contends through the testimony of James A. Ciavardini that transfers made by the Company to inventory were considered as "sales" for purposes of the CTA calculation. The position of the Public Staff is that this $134,919 should not be retained by the Company because differing stored natural gas volumes from the beginning to the end of a CTA period have never been considered in a CTA calculation and the proper adjustment for stored natural gas would take place in a Purchase Gas Adjustment (PGA) mechanism reflected in each PGA filing.

Certainly, the Commission agrees with the Public Staff's position that the CTA mechanism was established to protect the Company and ratepayers against fluctuating supplies of natural gas. However, the Commission cannot agree with the Public Staff's treatment of the effects of changing inventory levels on the CTA true-up calculations. Though the Public Staff is probably correct in asserting that the CTA mechanism upon its inception did not consider storage of natural gas, due to the severe curtailment of supply present in the industry at that time, it is, nonetheless, a viable point of consideration given the present circumstances. Most notable of these circumstances is the fact that the CTA is calculated on volumes available, not sales, and that the Company's current

entitlement from Transco has drastically increased over the level in effect at the time of the establishment of the CTA mechanism. Hence, from these considerations the Commission concludes that the $134,919 unrecovered margin, associated with the effects of the increased level of natural gas in storage between March 1, 1978, and March 31, 1980, in the CTA calculations, should be offset against customers' funds held in Account No. 253.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The last issue at hand in this hearing was the recovery of the benefit of "533" gas sales. The Company, again through the testimony of James A. Ciavardini, stated that the transportation charge which is collected from the "533" customers should be retained by the Company and not flowed back to all remaining customers on the system. The Public Staff testified that these dollars, amounting to $88,554, should be flowed back to the customer since this has been Commission policy since "533" sales were begun and the Company has heretofore abided by this policy.

Testimony by the Public Staff relating to this issue showed that the Company has been refunding "533" transportation charges to all customers other than "533" customers since implementation of this methodology by the Commission. Witness Curtis exhibited a letter dated March 26, 1976, to the Company from Ray J. Nery, Director of the Natural Gas Division, stating how "533" transportation revenues should be refunded. No objection was filed by the Company seeking any other treatment of these revenues prior to the current proceeding. Therefore, the Commission concludes that recovery of the $88,554 relating to these "533" transportation revenues should be denied the Company.

IT IS, THEREFORE, ORDERED as follows:

1. That the $5,609 relating to the true-up of the Curtailment Tracking Adjustment for the 12 months ending October 31, 1979, be, and hereby is, allowed to Pennsylvania & Southern as an offset to cutomer funds in Account No. 253.

2. That the $38,997 relating to the true-up of the CTA for the stub period ending March 31, 1980, be, and hereby is, allowed to the Company as an offset to customer funds in Account No. 253.

3. That the $134,919 relating to unrecovered margin on inventory through application of the CTA between March 1, 1978, and March 31, 1980, be, and hereby is, allowed to the Company as an offset to customer funds in Account No. 253.

4. That the Company's requested recovery of the "533" transportation revenues be, and hereby is, denied.

5. That within 30 days of the date of this Order the Company shall file its plan for refunding to its customers the outstanding balance in Account No. 253.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of June 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

GAS

DOCKET NO. G-3, SUB 103

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Pennsylvania & Southern Gas Company - Application) ORDER GRANTING PARTIAL
for Adjustment to Its Rates and Charges) INCREASE IN RATES AND CHARGES

HEARD IN: Rockingham County Public Library System, Reidsville Branch, Reidsville, North Carolina, at 11:00 a.m., Thursday, July 23, 1981

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, at 9:30 a.m., Friday, July 24, 1981

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Sarah Lindsay Tate and Douglas P. Leary

APPEARANCES:

For the Applicant:

James T. Williams, Jr., Brooks, Pierce, McLendon, Humphrey & Leonard, P.O. Drawer U, Greensboro, North Carolina 27402

For the Using and Consuming Public:

Karen E. Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding is before the Commission upon the application of Pennsylvania & Southern Gas Company (Applicant, Company or P & S) filed with the Commission on April 2, 1981, for authority to increase its rates and charges for its retail customers in North Carolina. The proposed increase was designed to produce approximately $843,000 of additional revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12 months ended December 31, 1980, or approximately a 9.13% increase in operating revenues.

By Order issued April 29, 1981, the Commission declared the application to be a general rate case pursuant to G.S. 62-137, suspended the proposed rate increase for a period of 270 days, set the matter for hearing before the Commission on July 23, 1981, in Reidsville, North Carolina, and on July 24, 1981, in Raleigh, North Carolina, required P & S to give notice of such hearings by newspaper publication and by appropriate bill inserts and established the test period to be used in the proceeding.

Notice of intervention was given by the Public Staff in this docket on June 5, 1981. The Applicant filed affidavit of publication on July 13, 1981.

The proceeding timely came on for hearing in Reidsville, North Carolina, on July 23, 1981, and in Raleigh on July 24, 1981. Walter Palmer, a customer of P & S, testified in opposition to the rate case in Reidsville. He also detailed

his complaints against the Company for charges it billed him in connection with supplying gas to his greenhouse. Additionally, Mrs. Carrie M. Baker, Reidsville, North Carolina, Byron P. Hicks, Eden, North Carolina, and Joe Chandler, Eden, North Carolina, mailed letters of protest to the Commission strongly protesting any rate increase.

Applicant presented the testimony and exhibits of E. L. Lohmann, Marshall W. Campbell, and James A. Ciavardini. The Public Staff presented the testimony and exhibits of Hsi-Mei C. Hsu, John T. Garrison, and Elise Cox.

Subsequent to the hearing, the Applicant filed Supplemental Exhibits 1, 2, 3, and 4 and pursuant to bench order the Public Staff filed late-filed exhibits of witnesses Hsu and Cox.

Based on the foregoing, the verified application, the testimony and exhibits received into evidence, and the Commission's entire record with regard to this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Pennsylvania & Southern Gas Company is a duly licensed public utility company, is providing natural gas utility service in its North Carolina service area, is subject to the jurisdiction of this Commission, and is properly before the Commission for a determination of justness and reasonableness of its proposed rates and charges.

2. That the test year for purposes of this proceeding is the 12 months ended December 31, 1980.

3. That the total increase in rates and charges Pennsylvania & Southern is seeking in its application would produce $829,000 in additional gross revenues for the Company.

4. That the reasonable allowance for working capital is $1,307,162.

5. That the reasonable original cost rate base of North Carolina Gas Service Division, Pennsylvania & Southern Gas Company, is $4,719,098 consisting of plant in service of $6,263,252 plus construction work in progress of $96,586 plus an allowance for working capital of $1,307,162 reduced by: accumulated depreciation of $2,553,467, deferred income taxes of $369,216, and unamortized pre-1971 investment tax credits of $25,219.

6. That the reasonable level of annual sales volumes that Pennsylvania & Southern can be expected to make under normal weather conditions is 2,448,539 dekatherms (dt) and the supply of gas volumes required to achieve this level of sales is 2,571,767 dekatherms.

7. That Pennsylvania & Southern's gross revenues for the test year, under present rates, after accounting and pro forma adjustments are $12,401,142 based on sales volumes of 2,448,539 dt. After giving effect to Pennsylvania & Southern's revised proposed rates, such gross revenues are $13,230,142 ($12,401,142 + $829,000).

8. That the reasonable level of operating revenue deductions after accounting pro forma, end-of-period, and after period adjustments is $12,062,267.

9. That the Company should be allowed a rate of return on original cost rate base of 11.49% which will allow the Company a return on common equity of 14.80%.

10. That Pennsylvania & Southern Gas Company should be allowed an increase in gross revenues of $434,754. This increase is required in order for the Company to have a reasonable opportunity to earn the 11.49% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based on 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. Total annual revenues which will allow a return of 11.49% on original cost rate base are $12,835,896.

11. That the rate design guidelines approved herein will produce just and equitable rates for the various customer classes served by the Company.

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

The evidence supporting these findings of fact is found in the 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 are uncontested and uncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact consists of the original and revised testimony and exhibits of Company witness Ciavardini and Public Staff witness Cox. The chart below presents the differences in the working capital requirements as presented in the parties' respective proposed orders:

Item	Company Witness Ciavardini	Public Staff Witness Cox
Cash working capital and minimum bank balances	$ 191,723	$ 190,388
Propane inventory	126,809	-
Pipe and fittings	82,182	82,182
Gas in storage	1,408,077	924,295
Tax accruals	(142,756)	(142,756)
Customer deposits	(46,684)	(46,684)
Total	$1,619,351	$1,007,425

Both the Company and the Public Staff agreed on the level of inventory of pipe and fittings, tax accruals, and customer deposits, and, therefore, the Commission concludes that these amounts are proper.

The first difference involves cash working capital. Public Staff witness Cox testified that the appropriate level of cash working capital and minimum bank balance is $190,388, while Company witness Ciavardini contended that the

appropriate level is $191,723. Both witnesses agreed that the appropriate level for minimum bank balances is $64,181. The difference in cash working capital is due to the different levels of operating and maintenance expenses used by the witnesses. Having adopted, in Finding of Fact No. 8, the appropriate level of operating and maintenance expenses of $1,013,027, the Commission concludes that $190,809 is the proper level of cash working capital.

The second difference concerns propane inventory. Company witness Ciavardini allowed $126,809 for this item, which represents 45% of its total propane inventory (including nonutility inventory). The Public Staff excluded all propane inventory. Public Staff witness Garrison stated that the Company has not required any propane to meet the customers' demand since March 1978, even though during the past winter the weather was 32% colder than normal for the period December 16, 1980, through January 15, 1981. Company witness Campbell agreed that no propane has been required to supplement the Company's supply since March 1978.

In determining the proper level of gas in storage, the Commission must find the reasonable level of storage which is necessary for the Company to meet the needs of its customers. While the Company must have sufficient storage to meet demand under colder than normal conditions, it should not be allowed to maintain excessive amounts of stored gas at the expense of the ratepayer. The fact that the Company has been able to meet customer demand without the use of propane since March 1978 indicates that the propane inventory is surplus storage. This conclusion is supported by the fact that demand was met without propane in the past winter which included a month of 32% colder than normal weather. The Commission, therefore, concludes that no working capital should be allowed for propane inventory in this proceeding.

The third difference in inventory between the Company and the Public Staff is $483,782, which relates to the calculation of natural gas in storage. This difference results from the different methodologies used by the Company and Public Staff to determine an appropriate level of volumes of natural gas in storage. The position of the parties relative to natural gas in storage is shown in the chart below:

	Company	Public Staff
GSS	133,210 dt	102,212 dt
WSS	258,750	155,080
	391,960 dt	257,292 dt

The Company's figures are based on gas in storage at a particular point in time; in this case, June 30, 1981, whereas the Public Staff used the average level of 102,212 dekatherms for GSS as the representative level for the test year. The volume level of GSS in inventory fluctuates throughout the year; therefore, it is necessary to use the average volume level during the test year for valuing the gas in storage. Public Staff witness Cox used the Transco rate of $3.5924 to value the average volume of GSS at $367,186.

From the evidence presented, the Commission finds that the average volume level of GSS is the appropriate amount to use for valuing GSS. the Commission also concludes that the appropriate rate to be used is Transco's commodity rate of $3.6364 less the Louisiana First Use Tax which results in a rate of $3.5924.

Therefore, the Commission concludes that Public Staff witness Cox's valuation of $367,186 for GSS storage is the proper amount to be used in this proceeding.

The other difference in natural gas stored relates to WSS storage. The Company used the June 30, 1981, volume level of 258,750 dts while the Public Staff used 155,080 dts as the proper volume level. Public Staff witness Garrison stated that the 155,080 dts was equal to the maximum WSS volumes the Company could have used during the 1980-81 winter considering withdrawal restrictions by Transco which do not allow WSS withdrawals that cause daily take to exceed contract.

WSS storage presents a different problem from that associated with GSS storage, since it is not a peak demand service. The Commission recognizes the need for a reasonable level of WSS to provide for possible curtailment particularly in view of the historic record and the severe impact to the Company's customers in the event of curtailment. The Commission further recognizes that the appropriate level of WSS storage to include in this proceeding is the average balance, as this balance most closely reflects the working capital requirements for this item. Therefore, the Commission concludes that $856,425 (238,399 dts x $3.5924) is the proper valuation for WSS storage.

In summary, the Commission concludes that the proper level of gas inventory is $1,223,611 comprised of:

GSS	$ 367,186
WSS	856,425
	$1,223,611

Based on all of the above, the Commission concludes that the proper level of working capital for use in this proceeding is $1,307,162.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Ciavardini and Public Staff witness Cox. The following chart summarizes the amounts comprising the original cost net investment contained in the parties respective proposed orders:

	Company Witness Ciavardini	Public Staff Witness Cox	Difference
Gas utility plant in service	$6,263,252	$6,263,252	$ -
Accumulated depreciation	2,559,998	2,637,611	(77,613)
Net plant in service	3,703,254	3,625,641	(77,613)
Construction work in progress	256,676	96,586	(160,090)
Allowance for working capital	1,619,350	1,007,425	(611,925)
Deferred income taxes	(369,216)	(369,216)	-
Pre-1977 unamortized investment Tax credit	(25,219)	(25,219)	-
Original cost rate base	$5,184,845	$4,335,217	$(849,628)

Both Company witness Ciavardini and Public Staff witness Cox agree that the original cost of the gas utility plant in service is $6,263,252. Therefore, the Commission concludes that the fair and reasonable level of gas utility plant in service is $6,263,252.

The first item of difference of $77,613 relates to the depreciation reserve. Public Staff witness Cox contended that the reasonable level of reserve was $2,637,611, whereas Company witness Ciavardini determined the reasonable level to be $2,559,998. The difference is due to two adjustments made by Public Staff witness Cox dealing with the following:

	Amount
Actual changes after the test year	$84,144
Removal of depreciation on CWIP	(6,531)
Total	$77,613

The first adjustment to the depreciation reserve made by Public Staff witness Cox of $84,144 focuses on the depreciation expense on plant in service at December 31, 1980, paid by the Company's ratepayers after the end of the test year, that is December 31, 1980, through June 30, 1981. Witness Cox stated in her testimony that the ratepayers had already paid in depreciation during the months subsequent to the test year and, therefore, should receive the benefit of those funds provided to the Company. Witness Cox contended that if this adjustment is not made, the ratepayers will be paying in rates to provide a return on capital which has already been provided by them. Company witness Ciavardini opposed this adjustment and he stated that if the adjustment is made to the depreciation reserve, a corresponding adjustment should be made to depreciation expense.

The Commission concludes that Public Staff witness Cox's adjustment of $84,144 is improper. The Commission is constrained by statute to determine the appropriate pro forma end-of-period test year rate base. Hence, the addition of accumulated depreciation, accrued (capital recovered) during the interim of time between the point that plant in service is established and the close of the hearing, without updating all of the other items of costs entering into the total cost of service, violates the matching concept and is, therefore, inconsistent and improper.

The second difference in the depreciation reserve deals with the adjustment made by the Public Staff to eliminate the depreciation on construction work in progress. Company witness Ciavardini revised the amount of depreciation on CWIP to $6,531. Depreciation is the method of allocating the cost of plant used in the production of income. Therefore, it is improper to include depreciation on construction work in progress since that would involve depreciation on plant which was not in service at the end of the year.

Based on the evidence presented, the Commission concludes that the proper level for the depreciation reserve for the North Carolina Gas Service Division is $2,553,467 for the test year ending December 31, 1980.

The second item of difference of $160,090 relates to the construction work in progress. Company witness Ciavardini included CWIP at $256,767 consisting of

the total budgeted amount of $241,002 for CWIP for 1981, pro forma increases in operation and maintenance expenses of $2,002 that would be capitalized, and an amount of $13,674 for annualized salary increases allocated to CWIP. The Company testified that as of the end of June the balance in the CWIP account was $127,000.

Public Staff witness Cox used a 13-month average of $96,586 for CWIP. An average is representative of the ongoing level of investment for gas utility companies since their construction, by nature, is short-term.

Based on the evidence presented, the Commission concludes that due to the short-term nature of construction for natural gas utilities, the average amount is more representative of the CWIP which should be included in the rate base. Therefore, the Commission concludes that $96,586 is the proper amount of CWIP to be included in the rate base for determining fair and reasonable rates in this proceeding.

In their respective proposed orders, the Public Staff and the Company both agreed on the proper level of deferred income taxes of $369,216, and the proper level of pre-1971 unamortized investment tax credit of $25,519. Therefore, the Commission concludes that these amounts are proper.

Hence, the Commission concludes that the proper level of original cost rate base to be used in this proceeding is $4,719,098, which is calculated as follows:

Gas utility plant in service	$6,263,252
Accumulated depreciation	(2,553,467)
Construction work in progress	96,586
Working capital	1,307,162
Deferred income taxes	(369,216)
Pre-1971 unamortized investment tax credit	(25,219)
Total	$4,719,098

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is contained in the testimony of Public Staff witness Garrison and the testimony of Company witness Campbell. The Public Staff and Pennsylvania & Southern agreed on sales volumes except for Rate Schedule 101. In calculating the sales volumes for this rate schedule, Public Staff witness Garrison testified that he increased the normalized volumes to annualize the effect of customers added during the test year. The Company's argument that the adjustment is a "growth" factor is not persuasive. Public Staff witness Garrison's pro forma adjustment merely reflects volumes of gas sold on an end of test year basis. The Commission concludes that this is a proper adjustment in order to establish a proper level of end of test year sales volumes.

Likewise the Public Staff's supply volumes were greater than that of the Company's due to the supply necessary to meet the normalized level of customers under Rate Schedule 101. In addition, the Public Staff's supply volumes have

been reduced by loss and unaccounted for volumes associated with Thompson-Arthur Company. As explained under Evidence and Conclusions for Finding of Fact No. 8, the Commission concludes that it is improper to relate by allocation loss and unaccounted for volumes to Thompson-Arthur Company. Therefore, the Commission concludes that the proper level of supply volumes to be used in this proceeding is 2,571,767 dekatherms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Public Staff witness Garrison, Public Staff witness Cox, and Company witness Ciavardini presented testimony concerning the representative end-of-period level of operating revenues. The revised end-of-period level of natural gas revenues was determined by Public Staff witness Garrison, as has been discussed in Evidence and Conclusions for Finding of Fact No. 6. Public Staff witness Cox testified to the end-of-period level of miscellaneous revenues. Public Staff witness Cox incorporated the revenues determined by Public Staff witness Garrison into her testimony and exhibits. Witness Ciavardini testified that the decrease in revenues shown on Exhibit JTG-3 associated with the reduction of sales volumes to Rate Schedule 208 was $315,553. This amount was uncontested by the Public Staff. The following summary shows the amounts presented by each party:

Item	Company	Public Staff
Natural gas revenues	$12,307,132	$12,387,144
Miscellaneous revenues	13,919	13,998
Total	$12,321,051	$12,401,142

Both parties agree to the methodology used by Public Staff witness Cox for determining miscellaneous revenues. Since the Commission has concluded in Finding of Fact No. 6 that the end-of-period level of sales volume presented by Public Staff witness Garrison is proper, the Commission agrees that miscellaneous end-of-period revenues of $13,998, and natural gas revenues of $12,387,144 are correct. The Commission, therefore, concludes that the proper level of end-of-period operating revenues is $12,401,142.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Ciavardini and Public Staff witness Cox presented testimony and exhibits showing the level of operating deductions which they believed should be used by the Commission for the purpose of fixing Pennsylvania & Southern Gas Company's rates in this proceeding. The following tabular summary shows the revised amounts claimed by each witness:

	Company	Public Staff
Cost of gas	$ 9,993,901	$ 9,940,394
Operation & maintenance	1,020,336	1,009,657
Depreciation	175,221	168,690
Other operating taxes	807,992	812,776
State income taxes	9,714	18,316
Federal income taxes	112,928	105,366
Total	$12,120,092	$12,055,199

The first item of difference in the operating revenue deductions concerns the cost of gas. The net difference between the Company and the Public Staff on this item is ($53,507). This net difference is denoted in the chart below:

Item	Amount
Loss and unaccounted for associated by Public Staff with Thompson-Arthur	$(11,670)
Cost of gas associated with Public Staff annualization	55,827
L.P. air expense	(84,090)
Injection and withdrawal changes related to WSS	(13,574)
Total	$(53,507)

The first area of difference results from the Public Staff's allocation of loss and unaccounted for volumes of 3,209 dts to the decreased sales volumes associated with Thompson-Arthur Company. The Company did not make this allocation. The Commission concludes, given the operational nature of a natural gas transmission and distribution system, that a reduction in sales volumes demand of one customer cannot be directly related to a corresponding reduction in the loss and unaccounted for gas volumes, as the Public Staff has attempted to do. Therefore, the Commission concludes that the $11,670 reduction of the cost of gas for this item is inappropriate.

The second difference relates to the level of supply volumes needed to meet the Public Staff's end-of-period level of sales volumes. Since the Commission has determined under Evidence and Conclusions for Finding of Fact No. 6 that the Public Staff's end-of-period sales volumes is appropriate, it is concluded that this adjustment to the cost of gas is proper.

The next issue concerns the amount of LP Air expense. In order to determine the proper amount for this item the Commission must determine if the cost of LP Air is a reasonable expense with normal weather conditions. Consistent with the conclusions under Evidence and Conclusions for Finding of Fact No. 4, the Commission concludes that under normal weather conditions, the LP Air is not a reasonable expense. However, the Commission is concerned that in the event of extremely cold weather, LP Air may be required to meet customer demand. If that occurs, the Commission concludes that the Company should be allowed to place the excess cost of LP Air in the deferred account for future collection from its customers.

The fourth area deals with the cost of injection and withdrawal of WSS storage volumes. Consistent with Commission's conclusions under Evidence and Conclusions for Finding of Fact No. 4, the Commission concludes that the fair and reasonable level of cost of gas should incude injection and withdrawal costs associated with WSS storage volumes. Therefore, the Commission finds that the cost of gas for the Company is $9,965,638 (9,993,901 - 84,090 + 55,827).

The second item of difference in operating revenue deductions concerns the operation and maintenance expenses, which is comprised of two adjustments. First, the Company included salary increases amounting to $7,861 in its pro forma adjustments to reflect increases which were effective after the close of the hearing. Based upon the evidence presented by both parties, the Commission finds the adjustment to decrease wages by $7,861 to be proper.

The second adjustment involves salaries charged to amortized rate case expense related to the Company's previous rate case, which were already included in the Company's cost-of-service. The Company does not agree with this adjustment for salaries made by the Public Staff for Docket No. G-3, Sub 95, on the grounds that it would involve retroactive ratemaking.

The Commission has given much thought and consideration to this matter, and thus concludes that this adjustment is improper for this proceeding. The Commission determined the fair and reasonable level of rate case amortization expense for the Sub 95 proceeding in the Final Order issued in that proceeding and does not now find it appropriate to change that level in this proceeding.

Hence, based on the evidence presented, the Commission concludes that the proper level of operating and maintenance expenses for the test year is $1,013,027 (1,009,657 + 3,370).

The parties disagreed on the proper level of depreciation expense. The Company included depreciation of $6,531 related to construction work in progress. Public Staff witness Cox removed the depreciation expense related to construction work in progress. It is the opinion of this Commission that the proper level of depreciation expense is $168,690.

The fourth item of difference concerns operating taxes. Public Staff witness Cox calculated the increase in gross receipts taxes on the increase in revenues less the uncollectibles expense. The Company calculated the gross receipts tax on the total increase in revenues. The Commission finds Public Staff witness Cox's method to be proper, and since the Commission has accepted the Public Staff's level of end-of-period revenues, then it is concluded that the fair and reasonable level of taxes other than income is $812,776.

The fifth operating revenue deductions of concern is Federal and State income taxes. Since the parties' income taxes was based upon a different level of revenues, expenses, and interest than that used by the Commission, the Commission concludes that the proper level of State income taxes is $15,690 and the proper level of Federal income taxes is $86,446.

Therefore, the Commission concludes that the proper level of operating revenue deductions is $12,062,267, as shown in the chart below:

Item	Amount
Cost of gas	$ 9,965,638
Operation and maintenance	1,013,027
Depreciation	168,690
Taxes other than income	812,776
State income taxes	15,690
Federal income taxes	86,446
Total	$12,062,267

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact was presented in the testimony of Company witnesses Ciavardini and Lohmann and Public Staff witness Hsu.

Mr. Ciavardini's prefiled testimony showed that the full amount of the rate increase requested by the Company would produce a rate of return of 15.26% on common equity. However, the Company's Proposed Order adopts, at the minimum, the Public Staff's recommendation of an overall rate of return of 11.49%.

Public Staff witness Hsu testified that the embedded cost of debt to Pennsylvania & Southern is 8.05%. As to the cost of common equity, Ms. Hsu recommended that Pennsylvania & Southern be allowed to earn a rate of return of 14.8% on its common equity. Her opinion was based upon a comparison of Pennsylvania & Southern to 13 natural gas distribution companies whose shares are actively traded, using the Discounted Cash Flow (DCF) approach.

In order to determine the total cost of capital, Ms. Hsu examined the Company's ending test year capital structure and equity ratio, and found that the Company's equity ratio of 60.4% was substantially out of line with other firms in her comparable sample group. Those firms had an average equity ratio of 46.7% at the end of 1980. Therefore, Ms. Hsu adjusted her recommended capital structure for Pennsylvania & Southern by using the upper band of the 95% confidence intervals on estimates of the group mean equity ratio. This produced an overall weighted cost of capital of 11.49% as follows:

	Ratio	Cost Rate	Weighted Cost
Long-term debt	49%	8.05%	3.94%
Common equity	51%	14.80%	7.55%
Total	100%		11.49%

Based upon the foregoing, and the entire record in this docket, the Commission concludes that the reasonable capitalization ratios for use herein are as follows:

Item	Percent
Long-term debt	49.0
Common equity	51.0
Total	100.0

The Commission also concludes that Pennsylvania & Southern should have the opportunity to earn a fair return of 11.49% on the original cost of its North Carolina retail rate base. Such fair rate of return will yield a return on common equity of 14.8%. 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. 10

The Commission has previously discussed the finding and conclusions regarding the fair rate of return which Pennsylvania & Southern should be afforded an opportunity to earn.

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 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 GAS SERVICE DIVISION
STATE OF NORTH CAROLINA
STATEMENT OF OPERATING INCOME
For the Test Year Ended December 31, 1980

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Natural gas sales	$12,387,144	$434,754	$12,821,898
Miscellaneous revenues	13,998	-	13,998
Total	$12,401,142	$434,754	$12,835,896
Operating Revenue Deductions			
Cost of gas	$9,965,638	$ -	$ 9,965,638
Operation and maintenance	1,013,027	7,826	1,020,853
Depreciation	168,690	-	168,690
Taxes other than income	812,776	26,085	838,861
State income taxes	15,690	24,051	39,741
Federal income taxes	86,446	173,324	259,770
Total operating revenue deductions	$12,062,267	$231,286	12,293,553
Operating income for return	$ 338,875	$203,468	$ 542,343

SCHEDULE II
PENNSYLVANIA & SOUTHERN GAS COMPANY
NORTH CAROLINA GAS SERVICE DIVISION
STATE OF NORTH CAROLINA
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended December 31, 1980

Item	Amount
Investment in Gas Plant	
Gas plant in service	$6,263,252
Depreciation reserve	2,553,467
Construction work in progress	96,586
Working capital allowance	1,307,162
Preferred income taxes	(369,216)
Pre-1971 investment tax credits	(25,219)
Original cost rate base	$4,719,098
Rate of Return	
Present rates	7.18%
Approved rates	11.49%

SCHEDULE III
PENNSYLVANIA & SOUTHERN GAS COMPANY
NORTH CAROLINA GAS SERVICE DIVISION
STATE OF NORTH CAROLINA
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended December 31, 1980

Item	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$2,312,358	49.00	8.05	$186,145
Common equity	2,406,740	51.00	6.34	152,730
Total	$4,719,098	100.00		$338,875
	Approved Rates - Original Cost Rate Base			
Long-term debt	$2,312,358	49.00	8.05	$186,145
Common equity	2,406,740	51.00	14.80	356,198
Total	$4,719,098	100.00		$542,343

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact in contained in the testimony of Public Staff witness Garrison. Public Staff witness Garrison stated that his proposed rate design moves closer to the rate structures of the other gas utilities in the State. This point was uncontested by the Company. The Commission, in its determination of fair and equitable rates, must be able to adapt to changing conditions. This was the case in the Company's last general rate case (Docket No. G-3, Sub 95) when a substantial change in the rate structure was approved. The Commission now concludes that the difference in rates between Rate Schedule 205 and Rate Schedule 206 is excessive and that the rate design proposed by Public Staff witness Garrison is appropriate. The Commission also concurs with the Company and the Public Staff that a facilities charge should be added to Rate Schedule 208. Therefore, the Commission concludes that the rate design guidelines promulgated by the Public Staff is appropriate for this proceeding.

IT IS, THEREFORE, ORDERED:

1. That Pennsylvania & Southern be, and hereby is, allowed to increase its rates and charges based on the level of test year operations by $434,754.

2. That Pennsylvania & Southern be and hereby is ordered to file tariffs reflecting rates to generate the revenue requirement found reasonable herein within five working days from the date hereof.

3. That any interested party be, and hereby is, allowed to file comments on the tariffs filed pursuant to ordering paragraph 2 within two working days.

4. That the tariffs filed in accordance with ordering paragraph 2 be, and hereby are, effective upon issuance of further Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of November 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 157

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Service Company of North Carolina, Inc., for an Adjustment om Its Rates and Charges) ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Courtroom 906, Buncombe County Courthouse, Asheville, North Carolina, on October 21, 1980; Council Chambers, City Hall, Gastonia, North Carolina, on October 22, 1980; Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 23 - 24 and October 28 - 30, 1980

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

J. Mack Holland, Mullen, Holland & Cooper, P. A., Attorneys at Law, 316 S. Marietta Street, Box 488, Gastonia, North Carolina 28052

F. Kent Burns and James M. Day, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P. O. Box 1406, Raleigh, North Carolina 27602

For the Intervenors:

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

Thomas R. Eller, Jr., Attorney at Law, P. O. Drawer 27886, Raleigh, North Carolina 27611
For: The North Carolina Textile Manufacturers Association, Inc.

William I. Thornton, Jr., Attorney at Law, Office of the City Attorney, 101 City Hall Plaza, Durham, North Carolina 27701
For: City of Durham

BY THE COMMISSION: On June 10, 1980, Public Service Company of North Carolina, Inc. (Public Service, Applicant, or the Company), filed an Application with the Commission seeking permission to adjust and increase its annual rates and charges for retail natural gas service in North Carolina by $7,500,000. The rate increase was requested to become effective on July 10, 1980, and was based upon a test year consisting of the 12 months ended March 31, 1980.

By Order issued on July 12, 1980, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137, suspended the proposed rate increase for a period of 270 days from and after the proposed effective date of July 10, 1980, set the matter for investigation and hearing, declared the test period to be the 12 months ended March 31, 1980, required the Company to give notice to its customers of the proposed increase and the hearings, and required interested parties to give Notice of Invervention in accordance with the Commission Rules and Regulations.

On July 22, 1980, a Notice of Intervention was filed on behalf of the Public Staff. On August 4, 1980, Petitions for Leave to Intervene were filed on behalf of the City of Durham and the North Carolina Textile Manufacturers Association, Inc. (NCTMA). The Petitions were allowed by Commission Orders issued on August 6, 1980. On September 4, 1980, a Notice of Intervention was filed by the Attorney General of North Carolina.

On September 24, 1980, a Motion was filed by Public Service seeking permission to terminate the Volume Variation Adjustment Factor (VVAF) as a part of the Company's basic rates and charges, effective at the beginning of the winter heating season on November 1, 1980; to continue the present decrement of (33.43¢) per dekatherm until the final Order of the Commission in this docket; and to provide for a "true-up" of the VVAF for the year ended October 31, 1980, as prescribed in prior Commission Orders, but also to provide that there would be no "true-up" of the decrement of (33.43¢) per dekatherm for the period between November 1, 1980, and the date of the Commission's Final Order in this docket.

On September 29, 1980, a Response to the Company's Motion was filed by NCTMA. The Response supported the Motion to terminate the VVAF. The Public Staff reviewed the Motion and, generally, recommended that it be allowed. The Public Staff, however urged that the (33.43¢) per dekatherm decrement be charged to a decrement of (34.7¢) per dekatherm and that such decrement remain in effect until the effective date of the new rates to be ultimately approved by the Commission's Final Order in this docket.

By Order issued on October 22, 1980, the Commission allowed the Motion filed by Public Service with the modifications recommended by the Public Staff. Public Service was required to file new tariffs reducing rates for service rendered on and after November 1, 1980. The decrement of (34.7¢) per dekatherm was ordered to remain in the rates of Public Service until the effective date of the new rates to be set in this docket. The VVAF was, thereby, terminated effective November 1, 1980. The Company filed its revised tariff sheets in accordance with this Order on October 28, 1980.

The matter came on for hearing at the places and dates first above noted. The Company offered the testimony of the following witnesses: Charles E.

Zeigler, President and Chief Executive Officer of Public Service; C. Marshall Dickey, Vice-President - Gas Supply Services of Public Service; Joseph F. Noon, Senior Vice-President - Engineering and Operations Services of Public Service; Allen J. Schock, Vice-President - Rates of Public Service; John D. Russell, President of John D. Russell Associates, Inc., a firm of consulting engineers; Hugh A. Gower, a Partner in Arthur Andersen & Co., a firm of independent public accountants; Lincoln C. Young, a Senior Consultant in the Rates and Regulatory Services Division of Stone & Webster Management Consultants; E. L. Flanagan, Jr., Senior Vice-President and Treasurer of Public Service; Robert S. Jackson, Senior Vice-President and Director of Stone & Webster; and Franklin D. Sanders, an investment banker and a Managing Director of The First Boston Corporation.

The Public Staff offered the testimony of the following witnesses: R. J. Nery, Director of the Natural Gas Division of the Public Staff; Eugene H. Curtis, Jr., a Staff Engineer in the Natural Gas Division; Donald E. Daniel, Assistant Director of the Accounting Division of the Public Staff; William L. Dudley, Supervisor of the Natural Gas Section of the Accounting Division; Curtis Toms, Jr., a Staff Accountant in the Accounting Division; William F. Watson, Director of the Economic Research Division of the Public Staff; and the joint testimony of Mr. Curtis and John C. Romano, an engineer in the Electric Division of the Public Staff, with overall responsibility for conservation and load management proposals of the Public Staff.

The NCTMA offered the testimony of Randolph G. Brecheisen, Vice-President of the consulting firm of Currin and Associates, Inc. There were no public witnesses at any of the locations in which hearings were conducted. The City of Durham offered no witnesses. Following the completion of direct testimony and cross-examination by the parties, the Company offered rebuttal testimony by Mr. Schock and Robert T. Watkins, Vice-President - Marketing of Public Service.

Based on the foregoing, the verified Application, the prefiled testimony and exhibits, the testimony and exhibits offered during the hearings, and the entire files and records in this proceeding, the Commission now reaches the following

FINDINGS OF FACT

1. That Public Service Company of North Carolina, Inc., is a duly licensed public utility corporation as defined by G.S. 62-3(23) which is providing natural gas utility service in its franchise area in North Carolina cities and communities. Public Service is lawfully before the Commission in this proceeding for a determination of its rates and charges as regulated by the Commission under Chapter 62 of the General Statutes of North Carolina.

2. That Public Service has requested an annual increase in rates and charges of $7,500,000 based upon its proposed rates as filed in this proceeding, which proposal includes the elimination of the VVAF.

3. That the test period established by the Commission and utilized by all parties to this proceeding is the 12 months ended March 31, 1980.

4. That Public Service is providing adequate natural gas service to its retail customers in North Carolina.

5. That the reasonable original cost of Public Service's plant in service which was used and useful at the end of the test period, including adjustments for known changes prior to the end of the hearing, is $143,350,614. The portion of such reasonable original cost which has been consumed by previous use recovered by depreciation expense is $42,478,026. The reasonable original cost of investment in plant under construction is $3,076,112. The proper amount of accumulated deferred income taxes to be deducted from the rate base is $9,404,708. Therefore, the proper level of original cost of plant in service plus construction work in progress less accumulated depreciation and cost-free capital which is appropriate for use in this proceeding is $94,543,992 ($143,350,614 - $42,478,026 + $3,076,112 - $9,404,708).

6. That the proper level of allowance for working capital which is appropriate for use in this proceeding is $12,454,210.

7. That Public Service's reasonable original cost rate base, to which the approved rate of return on investment determined hereafter should be applied, is $106,998,202. This amount consists of net utility plant and construction work in progress (Finding of Fact No. 5) of $94,543,992 plus the reasonable allowance for working capital (Finding of Fact No. 6) of $12,454,210.

8. That the Company's end-of-period operating revenues under present rates is $183,805,069.

9. That the proper level of test year sales volumes, as adjusted to account for actual changes based on circumstances and events taking place after the end of the test period but before the close of the hearings in this docket, is 43,593,757 dekatherms, which level of volumes is appropriate for use in designing rates herein. The total gas supply necessary to generate these sales volumes is 44,819,503 dekatherms. The cost of gas applicable to this volume of gas is $138,880,645.

10. That the revised depreciation rates proposed by the Company are reasonable and proper, with the exception of the rates proposed for account number 376 - Mains and acount number 380 - Services. The appropriate annual depreciation rate for account number 376 - Mains is 2.21% and for account number 380 - Services is 3.43%.

11. That Public Service's reasonable level of end-of-period operating revenue deductions (or expenses) is $175,025,305. This amount includes $4,027,096 for investment currently consumed through reasonable actual depreciation on an annual basis.

12. That the capital structure which is appropriate for use in this proceeding is as follows:

Long-term debt	51.71%
Preferred stock	10.70%
Common equity	37.59%
Total	100.00%

13. That the fair rate of return which Public Service Company should have the opportunity to earn on the original cost value of its investment used and

useful to the ratepayers of North Carolina (or rate base) is 10.30% which implies a return of 14.95% on the stockholders' equity component of such investment. Such level of returns is just and reasonable.

14. That, in order to be afforded a reasonable opportunity to earn the level of returns which the Commission finds to be just and reasonable, Public Service should be allowed to increase its rates and charges so as to produce an additional $4,716,903 based on operations during the test year, or gross annual revenues from utility operations of approximately $188,521,972. The Commission finds that, given efficient management, this amount of annual gross revenue dollars will afford the Company a fair opportunity to earn the level of returns on rate base and on equity which the Commission has found to be fair, both to the Company and to its customers.

15. That the rate design found to be fair and reasonable by the Commission is similar to that offered by the Applicant and the Public Staff.

16. That a residential conservation rate should not be incorporated at this time.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence for these findings is contained in the verified Application, the Commission's files and records regarding this proceeding, the Commission Order Setting Hearing issued July 9, 1980, and the testimony of Company witnesses Zeigler and Schock and the testimony of Public Staff witness Dudley. Those findings are essentially informational, procedural, and jurisdictional in nature and are, for the most part, uncontested. A utility is ordinarily entitled to a rebuttable presumption that its service quality is adequate, absent competent evidence in the record to the contrary. In this proceeding, no public witnesses appeared at any of the hearings to contest the presumption. The Public Staff offered no evidence to the contrary and the Commission's files and records reflect no unusual level of complaint activity with regard to Public Service. Therefore, the Commission concludes that the Company is providing adequate service to retail customers in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact consists of the direct testimony and exhibits of Company witness Schock and Public Staff witnesses Dudley and Nery. In addition, both witnesses presented supplemental testimony on this subject. The following chart summarizes the amounts which the Company and the Public Staff contend are the proper levels of original cost of Public Service Company's investment in gas plant for use in this proceeding:

Item	Company	Public Staff
Gas plant in service	$143,350,614	$143,350,614
Construction work in progress	3,076,112	2,764,348
Less: Accumulated depreciation	41,612,216	42,478,026
Deferred income taxes	8,873,708	9,404,708
Total original cost of gas plant	$ 95,940,708	$ 94,232,228

Both the Company and the Public Staff agree on the amount of gas plant in service at August 31, 1980. The August level of gas plant is approximately $4.6 million higher than the March 31, 1980, end of test year plant. Both the Company and the Public Staff witnesses updated their original exhibits to incorporate this investment to August 31, 1980, a date prior to the close of the hearings in this proceeding, and the Commission concludes that this update is proper.

The witnesses disagree on the proper amount of each of the three remaining components of original cost of gas plant. The total difference between the Company and the Public Staff on the total original cost of gas plant is $1,708,574 ($95,940,802 - $94,232,228).

The first item of difference shown above pertains to construction work in progress (CWIP). Initially, the Company presented $372,722 as its CWIP balance at March 31, 1980. In his supplemental exhibits, witness Schock updated CWIP to $3,076,112 or to the October 20, 1980, amount prior to the close of the hearing. Public Staff witness Dudley accepted this level of CWIP as being proper, except for $311,764 of right-of-way acquisition costs applicable to the Asheville transmission pipeline project. Public Staff witness Dudley, in his supplemental testimony, stated as follows: "Company witness Noon's supplemental testimony (page 2) clearly states that this project has been delayed `past 1981.' Based on this delay, the accumulated costs for rights of way are properly considered property held for future use and not CWIP." In contrast to this, Company witness Schock testified that construction of the main had begun on this project, even though its completion date is presently delayed, and that acquisition of the necessary right-of-way was continuing. Based on the evidence of record, the Commission concludes that the proper level of construction work in progress to be included in rate base for the determination of fair and reasonable rates in this proceeding is $3,076,112.

The next item of difference between the Company and the Public Staff in the computation of investment in gas plant is the amount of accumulated depreciation. The supplemental testimony of Company witness Schock contains the amount of $41,612,216 and the supplemental testimony of Public Staff witness Dudley presents the amount of $42,478,026, for a difference of $865,810. The discrepancy is attributable to the Public Staff's utilization of the depreciation rates recommended by Public Staff witness Nery for account 376 - Mains and account 380 - Services in bringing depreciation expense to an end-of-period level and in Public Service's failure to adjust accumulated depreciation to the same point in time as plant investment.

Public Service Company has proposed in this proceeding a revision in depreciation rates, the overall impact of which would be to increase the Company's annual depreciation expense accrual. Public Staff witness Nery

examined the Company's proposed depreciation rates and concluded that the Company's depreciation rate proposals were excessive for accounts 376 and 380. The impact of Public Staff witness Dudley's using the Staff's recommended depreciation rates was to reduce end-of-period (March 31, 1980) depreciation expense and the corresponding entry to accumulated depreciation by $714,733. Otherwise, both parties' determination of accumulated depreciation at the March 31, 1980, test year end-of-period is identical.

Public Service, in its supplemental exhibits, updated plant investment to the August 31, 1980, level but calculated revised end-of-period depreciation expense and accumulated depreciation balances as of March 31, 1980. Witness Dudley accepted the level of updated plant but testified that the revised accumulated depreciation balance should be based on the Public Staff's recommended depreciation rates. Furthermore, witness Dudley testified that it was inconsistent for Public Service to update its plant investment to August 31, 1980, and to ignore the updating of accumulated depreciation. He further testified that Public Service's updating denied the ratepayers the benefit of their having paid in rates to recover depreciation expense for five months subsequent to the test year, or from March 31, 1980, to August 31, 1980. Consequently, Public Staff witness Dudley's supplemental accumulated depreciation adjustment incorporated the August 31, 1980, level of plant at the Public Staff's proposed depreciation rates and also reflected the increased accumulated depreciation paid by customers through existing rates subsequent to the end of the test period to August 31, 1980.

After a careful review of the record, the Commission concludes that the Applicant's proposed depreciation rates are fair except for those related to account 376 - Mains and account 380 - Services, in which case it is concluded that the Public Staff rates are fair and reasonable. Witness Dudley's utilization of those rates in computing end-of-period accumulated depreciation is consistent with this finding and is, therefore, proper. The Commission is of the opinion that Public Service's lack of updating accumulated depreciation to August 31, 1980, is inconsistent with its adoption of the August 31, 1980, level of plant investment and is, therefore, improper. The Commission thus concludes that the appropriate amount of accumulated depreciation to be used in this proceeding as a deduction to determine the original cost of utility plant is $42,478,026.

The last area of difference in the computation of original cost of utility plant between the Company and the Public Staff is in the amount of accumulated deferred income taxes or cost-free capital. In the original testimonies of both witness Schock and witness Dudley, accumulated deferred income taxes of $8,873,708 were utilized. Public Service, in its supplemental adjustments, where utility plant at the August 31, 1980, level was used, continued to present $8,873,708 as the proper balance for accumulated deferred income taxes. Public Staff witness Dudley testified that this, like accumulated depreciation, represented improper matching because plant at August 31, 1980, was coupled with accumulated deferred income taxes at March 31, 1980. Instead of this March 31, 1980, balance, witness Dudley, in his supplemental testimony, used the accumulated deferred income tax balance at August 31, 1980, of $9,404,708. The Commission concludes that witness Dudley's adjustment is proper, consistent with the responsibility of this Commission to establish plant and related deferred income taxes at the same reasonable point in time before the close of the

hearing, and clearly within the parameters of the matching principle of accounting.

The Commission has examined all of the differences between the Company and the Public Staff regarding the original cost of utility plant and now summarizes those individual findings as follows:

Gas plant in service	$143,350,614
Construction work in progress	3,076,112
Accumulated depreciation	(42,478,026)
Cost-free capital	(9,404,708)
Original cost of utility plant	$ 94,543,992

The Commission therefore concludes that $94,543,992 is the appropriate original cost of utility plant to be used in the computation of original cost net investment in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Gower and Public Staff witness Toms presented testimony and exhibits in regard to the proper allowance for working capital. Public Staff witness Toms' results were based in part upon the testimony and exhibit of Public Staff witness Daniel. The amount of working capital proposed by each of these witnesses is set forth in the following table:

(000's Omitted)

Item	Company	Public Staff
Minimum bank balances	$ 1,390,000	$ 1,390,000
Average materials and supplies	12,377,326	11,422,770
Investor (Customer) funds advanced for operations	596,176	(75,022)
Customer deposits	(1,238,094)	(1,238,094)
Total allowance for working capital	$13,125,408	$11,499,654

As reflected above, the total net difference between the witnesses in this regard is $1,625,754 ($13,125,408 - $11,499,654).

The first difference between the Company and the Public Staff is $954,556, which amount relates to the calculation of average materials and supplies on hand. This difference results from the separate methodologies used by the Company and Public Staff witnesses to determine an appropriate valuation of natural gas in storage.

Company witness Schock originally valued the average test year level of stored volumes of 3,472,482 dekatherms at $10,417,446, as follows:

Average cost of natural gas stored for the test year test year (Schock Schedule 5)	$ 5,771,629
Adjustment to September 1, 1980, Transco rates (Schock Schedule 8, page 6 of 7)	$ 4,645,817
Total	$10,417,446

Witness Schock subsequently adjusted this amount downward by $343,675 in his Supplemental Schedule 8, page 5 of 5, resulting in a final inventory valuation of $10,073,771 ($10,417,446 - $343,675). This adjustment was necessary to reflect actual Transco rates at September 1, 1980, and to remove the effect of Transco's 53.8¢ increase on 552,958 dekatherms of base storage.

Public Staff witness Daniel contended that base level storage volumes should be valued at only $360,643, requiring a reduction of $1,298,231 in working capital. Based on this reduction, witness Daniel assigned a value to the 3,472,482 average test year level of gas in storage of $9,119,215 ($10,417,446 - $1,298,231).

Witness Daniel further testified concerning the Commission's Order dated September 4, 1980, in Docket No. G-5, Sub 160. Such Order states that Public Service is constrained from removing approximately 552,958 dekatherms of gas from storage due to certain operational constraints. Because of such constraints, the 552,958 dekatherms were excluded for treatment in Docket No. G-5, Sub 160, as "inventory appreciation." Based on this exclusion, witness Daniel testified that "It would be unfair for customers of Public Service Company to pay a return on any portion of the rate base at a cost exceeding the reasonable cost incurred or to be incurred by the Company in maintaining that rate base."

Witness Daniel stated that the reasonable cost of base storage volumes was $360,643. This amount of $360,643 was calculated by using an average unit cost of gas in storage as of the dates that the base levels of storage were attained. In relation to this, witness Daniel agreed that WSS volumes at March 19, 1978, were 112,107 dekatherms (or 156,000 dekatherms less than the 268,799 dekatherm base level which he used). However, he maintained that the dates and costs which he used for all storage services produced a reasonable level of cost overall for base level volumes.

Traditionally, the Commission has valued all materials and supplies at their average cost during the test year for inclusion in working capital. In this case, that method would result in the stored natural gas being valued at $5,771,629 (Schock Schedule 5). However, in this case, both the Company and the Public Staff used an end-of-period valuation for volumes other than base level volumes established in Docket No. G-5, Sub 160.

Both parties recognize the necessity of valuing base level volumes at a lesser cost than end-of-period cost. The Company valued these volumes at the $2.4487 Transco rate which was in effect immediately prior to the $.538 Transco increase which became effective on September 1, 1980. The $.538 Transco increase coupled with the existing $2.4487 Transco rate produced the $2.9867 rate used by the Company in valuing stored volumes other than the base level volumes. In contrast, the Public Staff valued base level volumes at an average

historical cost designed to approximate the reasonable cost of the original acquisition of those volumes.

The Commission concludes that the valuation method applied to base storage by the Public Staff is inconsistent with the Commission's treatment of the valuation of these volumes in previous proceedings before this Commission. The Commission notes that a generic hearing will be held in the future to examine the full spectrum of the base storage matter.

The remainder of materials and supplies for Public Service consists of liquid propane, parts and supplies, pipes and fittings, meter repair parts, and motor fuel. These components were valued at $2,303,555 by Company witness Schock as shown on his Schedule 5. Public Staff witness Daniel agreed with this amount. The Commission, therefore, concludes that the value of materials and supplies other than natural gas stored is $2,303,555.

Finally, the Commission concludes that the total valuation of average materials and supplies which is appropriate for use in this proceeding is $12,377,326 ($10,073,771 + $2,303,555).

The next area of disagreement between the witnesses concerns investor or customer funds advanced for operations. Both the Company and the Public Staff utilized the lead-lag study method to make this determination. Company witness Gower determined that $596,176 of investor funds advanced should be included in the total allowance for working capital. Not only did Public Staff witness Toms determine that no amount for investor funds advanced should be included in the working capital allowance, he also determined that $75,022 of customer funds advanced should be excluded. Excluding $75,022 of customer funds advanced rather than including $596,176 of investor funds advanced results in a total decrease in the working capital allowance of $671,198 ($596,176 + $75,022). In other words, Public Staff witness Toms' analysis of the lead-lag study establishes the position that the Company has the use of $75,022 of customer funds to defray daily operating costs, while the Company contends that the stockholders must provide $596,176 to meet these costs.

There are four items that constitute this $671,198 difference in the results produced by the studies of the Company and the Public Staff. The items which resulted in this difference are as follows:

1. The Public Staff assigned a lag of 178.50 days to the ad valorem component of general taxes, whereas Company witness Gower assigned 2.50 lead days to this item.

2. The Public Staff assigned current State income taxes an expense lag of 209.1 days, whereas Company witness Gower assigned an expense lag of 201.9 days to this item.

3. The Public Staff used actual test-period operating results in determining the proper lag to be assigned the components of net income for return; i.e., preferred dividends, intereest on long-term debt, and rerturn for common equity, whereas Company witness Gower utilized computed amounts for these items.

4. The Public Staff applied its net interval percentage (net revenue and expense lead-lag days divided by 365) to the historic book cost of service in determining the amount of customer funds advanced, whereas Company witness Gower applied his net interval percentage to the end-of-period cost of service after the effect of the proposed rate increase.

With respect to the first area of difference, Public Staff witness Toms testified in his prefiled testimony as follows:

> "I have calculated a 178.50 day lag for ad valorem taxes using the calendar year as the service period and recognizing the Company's payment of this item 4 days before the end of the test period.
>
> "Justification for my proposed change to the ad valorem tax lag was derived from my determination of the Company's actual practice of accruing estimated taxes each month beginning in January, with a subsequent adjustment to the accrual to reflect the actual tax liability which is generally due on the last day of the calendar year."

Alternatively, Company witness Gower testified in his prefiled testimony as follows:

> "For real and personal property taxes, a 2.50 day prepayment was measured from the payment date of December 24 to the mid-point of the period, December 31, to which these taxes apply. The mid-point of December 31, is based on the July 1 to June 30 fiscal years for the taxing authorities."

In answer to witness Gower's assertion that the property taxes are a prepaid item, witness Toms testified that if these ad valorem taxes are a prepaid item, then to rectify the error the Company would have to reduce the property taxes that it now has on its books, not increase them as witness Gower's adjustment would do. Mr. Toms testified that his assignment of a lag rather than a lead to these ad valorem taxes was consistent with Public Staff witness Dudley's adjustment to property taxes to establish a fair and reasonable end-of-period level at August 31, 1980. Witness Toms further testified that the assignment of 178.50 lag days to ad valorem taxes reflected the fact that the Company actually paid this item in arrears, while collecting the cost from its ratepayers monthly.

The Commission has carefully reviewed the testimony and the data filed by the Company and the Public Staff with respect to property taxes. This review clearly shows that the Company accrues property taxes on its books monthly. Further, the evidence shows that the Company does not reflect prepaid taxes on its books at March 31, 1980, for either financial or rate-making purposes. Consequently, the Commission concludes that Public Staff witness Toms' assignment of 178.50 expense lag days to ad valorem taxes is proper.

With respect to the next area of difference, State income taxes, Company witness Gower testified in his prefiled testimony as follows:

> "The lead on current State income taxes of 201.9 days was calculated based on statutory requirement for payment of 25% of total taxes on

September 15 and December 15 of the current year and the remainder on March 15 of the following year. This calculation gives weight to the $100,000 exclusion from estimated payment requirements."

In contrast to this, Public Staff witness Toms assigned 209.1 expense lag days to current State income taxes and testified in his prefiled testimony as follows:

"Based on my review of payment requirements in North Carolina, I have concluded that to avoid penalty the Company is only required to pay 17.5% of the current tax liability on September 15, and December 15, of the current year, with the remaining 65% due on March 15 of the following year. Consequently, to avoid penalty, the current year's estimated tax liability on which the September 15, and December 15 payments of 25% are based, must meet one of the following tests:

1. Equal 70% of the tax shown on the annual tax return less $100,000.

2. Equal the prior year's tax less $100,000.

3. Equal last year's tax liability based on current year tax rates less $100,000.

4. Equal 70% of tax due on the basis of current year income up to a specified cutoff date, annualized for the year, less $100,000.

"Stated another way, the Company must pay 25% of 70% of its actual tax liability for the period in order to avoid the incurrence of interest."

Based on the fact that Public Staff witness Toms was not challenged on cross-examination concerning this adjustment and consistent with past Commission practice concerning the treatment of this item in a properly executed lead-lag study, the Commission concludes that current State income taxes should be assigned an expense lag of 209.1 days.

The third area of difference concerns the Public Staff's use of actual test-period booked amounts for preferred dividends, interest on long-term debt, and the common equity component of the operating income for return rather than the respective amounts computed by witness Gower. Company witness Gower did not explain the calculations necessary to compute these items. Witness Toms stated that the use of actual test-period cost of service is consistent with past Public Staff lead-lag presentations before this Commission, in establishing a fair and reasonable level of working capital.

The Commission concludes, based upon the evidence presented by the two witnesses, that on a per books basis, operating income for return should be allocated on the basis of actual amounts rather than computed amounts. Therefore, the Commission concludes that the amounts of $723,346, $3,582,924, and $4,668,779, as proposed by witness Toms for preferred dividends, interest on long-term debt, and common equity, respectively, are appropriate for use in this proceeding.

The final area of difference concerns the Public Staff's use of the per books cost of service to determine customer funds advanced rather than the end-of-period cost of service after the proposed rate increase.

Public Staff witness Toms testified that he utilized the test-period cost of service, rather than the end-of-period cost of service to compute customer funds advanced because it had been the Staff's usual experience that customer or investor funds advanced generally decrease or remain about the same after the impact oif the proposed revenue increase. He stated that this results "...because lag days assigned to general taxes, current State and Federal income taxes, and the preferred and interest components of the net operating income for return are greater than the lag days assigned to common equity."

Additionally, witness Toms testified that the Company's end-of-period computation was very time-consuming and difficult, and would require continual updating; whereas, by comparison, the Public Staff's methodology was less time-consuming, and would not require continual updating, yet resulted in a reasonable amount of customer funds. Witness Toms testified further under cross-examination that if the Commission assumed witness Gower's cost of service, and adopted the Public Staff's lead-lag days, customer funds would then increase by an additional $50,000 over the $75,022 amount that the Public Staff had originally proposed.

Company witness Gower testified under cross-examination that his computation was not time-consuming. As to the appropriateness of using historical cost, he testified in his prefiled testimony as follows:

> "The existence of inflation in any foreseeable rate will undoubtedly increase working capital requirements in the future. In addition to its direct effects, the need for additional working capital (as well as capital for all uses) is and will be compounded by the use of the historical original cost accounting method for ratemaking purposes which consistently understates costs, underprices service, increases business risks, overstates earnings and results in a shortfall in the recovery of the purchasing power represented by invested capital."

After careful consideration, the Commission concludes that a lead-lag study applied to the per books cost of service results in a fair and reasonable analysis of the subject company's cash working capital needs. Hence, based on the evidence presented, the Commission concludes that the level of investor funds advanced for operations which is proper for use herein is zero, and that the reasonable level of customer funds advanced for operations which is proper for use herein is $75,022.

Both Company witness Gower and Public Staff witness Toms agree that the appropriate level of minimum bank balances is $1,390,000 and that the appropriate level of customer deposits, which reduces working capital requirements, is $1,238,094. The Commission concludes that these amounts are just and reasonable and appropriate for use herein.

Based upon the foregoing, the following chart summarizes the amounts which the Commission hereby concludes are proper for purposes of calculating the allowance for working capital for use herein:

Allowance for Working Capital

Item	Amount
Minimum bank balances	$ 1,390,000
Average materials and supplies	12,377,326
Customer funds advanced for operations	(75,022)
Customer deposits	(1,238,094)
Total allowance for working capital	$12,454,210

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

By adding the net utility plant in service and construction work in progress of $94,543,992 as determined in Finding of Fact No. 5 and the reasonable allowance for working capital of $12,454,210 as determined in Finding of Fact. No. 6, the Commission hereby determines and concludes that the reasonable original cost rate base which is appropriate for use in this proceeding is $106,998,202.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 AND 9

The evidence for these findings of fact is contained in the original and revised testimony and exhibits of Company witnesses Dickey and Schock and Public Staff witnesses Curtis and Dudley. The witnesses use differenct figures in calculating revenues and cost of gas under present and Company proposed rates. Some of these differences include the inclusion or exclusion of the VVAF decrement, the level of annualized sales volumes, the inclusion or exclusion of the September 1, 1980, Transco rate increase and the calculation of other operating revenues.

Other operating revenues were discussed or included in the testimony and exhibits of Company witness Schock and Public Staff witness Dudley. Company witness Schock used $386,133 as the appropriate amount for this item. Public Staff witness Dudley testified tht he had adjusted this amount by $7,500 to reach a total other operating revenues level of $393,633. The additional $7,500 represents witness Dudley's calculation of the estimated amount of revenues to be derived from the energy audit program. Witness Dudley stated that it was inconsistent for Public Service to include energy audit expenses incurred while ignoring the revenues that were derived from energy audit fees. Witness Dudley's adjustment was not opposed by the Applicant. The Commission, therefore, concludes that $393,633 is the appropriate amount of other operating revenues to be included in this proceeding.

Due to the Applicant's increased gas supply and since the VVAF is no longer in effect on volumes sold subsequent to the effective date of this Order, it is critical that the sales volumes to be utilized in this proceeding should be those which match the most current end-of-period level. The Company utilized normalized sales at the end of the test year, although the Company did make some adjustments to update these figures to September 30, 1980. The Commission agrees that, in order to be consistent with other updating adjustments to plant in service, revenues and expenses, the Company must also use the most current data for gas sales revenues and cost of gas. The sales volume of 43,593,757 dekatherms utilized by witness Curtis, which is the actual level of sales for

the 12-month period ending on September 30, 1980, reflects the most current estimate of annual sales of gas by Public Service. In keeping with the accounting principle of matching and the statutory requirements upon this Commission, it is concluded that 43,593,757 dekatherms is the proper level of end-of-period sales volumes to be used in determining fair and reasonable rates in this proceeding. In accepting this level of end-of-period volumes the Commission notes that this level of sales is probably somewhat conservative since the Company has embarked on a massive construction program, as described by Company witnesses Zeigler and Noon, designed to secure up to 40,000 new customers in the next five years.

In order to normalize the 12 months' actual sales, Public Staff witness Curtis employed a 30-year "normal" temperature which has been utilized in past cases and which was based on readily available data. Company witness Dickey used a 45-year "normal" based on Company data not readily available to Mr. Curtis. Upon cross-examination, witness Curtis admitted that he would have used the "45-year data," had it been available to him. Consequently, the Commission concludes that the 45-year temperature "norm" employed by the Applicant should be used in determining a fair and reasonable level of end-of-period revenues.

The Applicant excluded from its end-of-period volume calculations approximately 1,000,000 dekatherms of "533" or customer-owned gas which was transported to ccustomers during the test period under contracts approved by the Federal Energy Regulatory Commission. The grounds for this exclusion were that these contracts had expired or would expire in the near future and that, at current supply levels, Transco would not have a sufficient pipeline capacity to transport "533" gas. However, the evidence in the case demonstrates that these "533" gas customers will become regular flowing gas purchasers from Public Service since the "533" gas will be unavailable. Therefore, the Commission concludes that it is improper to exclude these volumes from the calculation of normalized annual sales.

Consequently, the Commission concludes that the Applicant's end-of-period revenues under present rates is $183,805,069.

The supply of gas necessary to generate the end-of-period sales volumes of 43,593,757 dekatherms is greater than the sales volumes due to Company use and lost and unaccounted for volumes are added to sales volumes, the total gas supply is 44,819,503 dekatherms. Therefore, this volume must be used to calculate the cost of gas necessary to generate the aforementioned revenue levels. Using this volume and the Transco rate levels of September 1, 1980, the annual cost of gas which is appropriate for use in this proceeding is $138,880,645. This cost assumes that WSS is drawn down to one-half of its full capacity and is refilled during an annual period. Further, the demand charges are allowed or predicated on the basis of zero curtailment. Thus, any demand charge credits will have to be refunded to the ratepayers. The Commission concludes that the cost of gas amount of $138,880,645 is just and reasonable and should be utilized in the calculation of operating revenue deductions determined hereafter in Evidence and Conclusions for Finding of Fact No. 11.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding is contained in the testimony and exhibits of Company witness Russell and Public Staff witness Nery. Pursuant to Commission Rule R6-80, the Company filed a set of new proposed depreciation rates, which were based on the depreciation study prepared by witness Russell. As a result of this study, the Company included in its end-of-period expenses a level of depreciation expense which was greater than actually incurred. The Company proposed that the new rates become effective on January 1, 1981.

Company witness Russell and Public Staff witness Nery agreed on the proposed new depreciation rates for all accounts, with the exception of account number 376 - Mains and account number 380 - Services. With regard to these two accounts, both witnesses agreed on the proposed average service life for account 376 - Mains of 48 years, and for account number 380 - Services of 35 years. The difference between the conclusions reached by these witnesses comes about in the way net salvage is determined. Net salvage equals gross salvage minus cost of removal. Since neither witness Russell nor witness Nery made any adjustment to the Company's book figures for gross salvage on either account, the principle difference is the determination of a reasonable level for cost of removal.

Company witness Russell calculated the net salvage for both accounts by analyzing the data for the past five years and by comparing the original cost of the units returned with the cost of the removal in the year that the removal occurred. Witness Russell made this calculation for each year in the five-year period and then averaged the five-year experience.

Public Staff witness Nery reviewed the Company's net salvage experience for the past five years for account number 380 - Services. Although there has been a downward trend in the number of services retired over the last five years, witnesss Nery used the five-year average as a reasonable estimate of the annual number of services to be retired in the future. Witness Nery also reviewed the net salvage cost for account number 380 - Services and used the highest annual net salvage cost over the past five years. Multiplying these two factors, he derived an estimated annual cost of net salvage for this account. Witness Nery testified that he also trended net salvage based on the past five years' experience and that this trending resulted in a lower net salvage than he recommended. In making his final recommendation, witness Nery used the higher cost estimate as the reasonable estimated cost for future net salvage. Witness Nery determined that the proper depreciation rate for account number 380 - Services should be 3.43%.

Witness Nery similarly reviewed the past five years' experience for account number 376 - Mains. Witness Nery explained that there has been a downward trend in the amount of footage retired during the last several years. However, in making his determination of the proper level of estimated cost of removal, witness Nery used the average number of feet retired per year over the past five years. He also made a determination of the cost per foot for net salvage. To determine the estimated net salvage he multiplied the 1979 average cost per foot of 87¢, the highest during that period, times the average number of feet retired. This resulted in an estimated annual net salvage cost of $62,128.

A review of the record indicates that the net salvage percentage applicable to account 376 - Services will increase to .40% under the Company's proposal, and .13% under the Public Staff's proposal. Similarly, the net salvage percentage applicable to account 380 - Mains will increase to .75% under the Company's proposal, and .567% under the Public Staff's proposal. After careful consideration of the record, the characteristics of the plant involved, and the requirements of depreciation studies in general, the Commission concludes that the depreciation rates supported by the Public Staff for account 376 - Services and account 380 - Mains should be used in determining the fair and reasonable level of end-of-period depreciation to be used in setting rates in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Both the Company and the Public Staff presented different amounts for operating revenue deductions. The amounts claimed by the Company and the Public Staff and the differences are presented in tabular form as follows:

	Company	Public Staff	Difference
Purchased gas	$107,582,704	$138,880,645	$31,297,941
Operation and maintenance	14,756,486	14,338,705	(417,781)
Depreciation	4,775,712	4,027,096	(748,616)
Taxes other than income	11,595,767	13,802,189	2,206,422
State income tax	867,807	1,403,530	535,723
Federal income tax	5,923,533	10,095,524	4,171,991
Total	$145,502,009	$182,547,689	$37,045,680

Public Staff witness Curtis and Company witnesses Dickey and Schock provided the testimony in this proceeding regarding the reasonable level of natural gas volumes and the purchased gas cost associated therewith. The Commission has previously examined the issue of gas volumes and cost under Evidence and Conclusions for Findings of Fact Nos. 8 and 9. In that narrative the Commission found the fair and reasonable cost of purchased gas to be used in this proceeding to be $138,880,645.

The next category of difference in determining operating revenue deductions is operation and maintenance expense. This difference of $417,781 was supported by and was due to operating expense adjustments proposed by Public Staff witness Dudley in his original and revised testimony as follows:

Nonutility advertising expenditures	$ (72,642)
Uncollectibles expense	70,186
Country club and civic dues	(5,100)
Outside services expense	(3,330)
Hospitalization insurance expense	(21,818)
Other insurance expense	(2,748)
Postage expense	(62,728)
Wage expense	(242,317)
Pension expense associated with wage adjustment	(13,824)
American Gas Association contribution	(33,127)
Rate case amortization expense	(30,333)
Total difference	$(417,781)

The Company primarily contested the Public Staff's adjustments to postage expense, rate case amortization expense, wage expense, and related pension expenses.

Company witness Schock adjusted end-of-period postage expense by $62,728, which witness Dudley excluded. This adjustment was based on an assumed increase in first-class rates from $.15 to $.20, and an assumed increase from $.13 to $.17 for first-class presorted mail. Public Staff witness Dudley testified that he was unable to obtain any verification of the assumed increase in postage rates. On cross-examination, Company witness Schock stated that at some time in the future postal rates would probably increase, but he was unable to provide any evidence concerning the timing or amount of the assumed postage increase. The Commission, after examining this question, concludes that there is insufficient evidence to allow the Company's proposed adjustment. The Commission, therefore, agrees with the Public Staff's proposal to remove $62,728 from the pro forma expenses claimed by the Applicant.

The major operation and maintenance expense adjustment proposed by Public Staff witness Dudley was to wage expense ($242,317) and the pension expense ($13,824) associated with these increased wages. Witness Dudley stated that, although the $242,317 increase was determinable as to amount and timing, it was not scheduled to occur until after the close of the hearings in this proceeding and therefore he had excluded it from the Applicant's end-of-period operating expense.

With due consideration to the fact that the wage increase in question is of a known and fixed amount, which has been implemented before the effective date of this Order, the Commission concludes that the Public Staff adjustment to wage expenses, and the related pension expense adjustment, is unfair and unreasonable and, consequently, should not be allowed.

The Company contested the adjustment proposed by the Public Staff relating to the proper amortization period for rate case expenses. The Applicant, as in the previous proceeding (Docket No. G-5, Sub 136), presented the proper amortization period as two years, while the Public Staff recommended a three-year amortization period. To accomplish a three-year amortization period, Public Staff witness Dudley presented a $30,333 downward adjustment to the Company's pro forma rate case expense. In support of the use of a two-year amortization period, Company witness Schock testified that the Company would file for another

rate increase "in a much shorter period of time than the 2 1/2 years that's expired since the last rate case."

Witness Dudley responded that if the amortization period were set at two years, and if the next rate case were filed after more than two years, then the Company would in fact over-recover through its rates a cost which had already been fully recovered from Public Service Company ratepayers. When asked whether the Company had recovered all the costs of its previous rate case (Docket No. G-5, Sub 136), witness Dudley stated that, by the end of 1980, only some $16,000 would remain unrecovered. After review of the record, the Commission concludes that 2 1/2 years is a fair and reasonable period of time over which the Applicant should be allowed to recover rate case expenses and that the resulting end-of-period level of rate case amortized expenses is $72,800.

The Company did not contest any of the other adjustments proposed by witness Dudley, and, therefore, the Commission finds them to be proper, except for the adjustments to uncollectible expense and country club and civic dues. The Commission concludes that witness Dudley's uncontested methodology of achieving a fair and reasonable level of end-of-period uncollectible expense is proper, but its application to the Commission's approved end-of-period present revenues results in the appropriate amount of $594,268. As to the $426 adjustment to civic dues, the Commission concludes that this adjustment is improper.

Hence, the Commission, after examination of the evidence presented by both the Applicant and the Public Staff, regarding both the controverted and uncontroverted adjustments, concludes that the appropriate level of end-of-period operation and maintenance expense to be used in setting rates in this proceeding is $14,583,468.

The Company and the Public Staff presented different amounts for depreciation expense. The Company presented $4,775,712 and the Public Staff presented $4,027,096. Both parties calculated depreciation expense on the same level of depreciable plant investment and service lives. The $748,616 difference in depreciation expense is attributable to the differing depreciation rate recommendations of Company witness Russell and Public Staff witness Nery regarding accounts 376 - Mains and 380 - Services. The Commission has previously discussed and approved the propriety of witness Nery's recommendations and does not deem it necessary to repeat those findings here. Consistent with its previous findings regarding depreciation rates, the Commission concludes that the reasonable level of depreciation expense to be used in this proceeding is $4,027,096.

The next area of difference in the amount of operating revenue deductions as presented by the Company and the Public Staff is taxes other than income. The Company presented the amount of $11,595,767 while the Public Staff presented $13,802,189, for a difference of $2,206,422. This difference is comprised of the following adjustments proposed by the Public Staff:

Payroll taxes associated with wage adjustment	$ (14,854)
Property taxes on energy center	(85,534)
Property taxes on updated plant investment	41,400
Gross receipts taxes	2,265,400
Total other taxes adjustment	$2,206,422

The payroll tax adjustment proposed by Staff witness Dudley followed his adjustment to pro forma wages of $242,317. The Commission has previously discussed this wage adjustment and concluded that the adjustment was improper. Consistent with that decision, the Commission also concludes that the $14,854 reduction in payroll taxes is inappropriate.

The next item of difference concerns the Town of Cary property taxes applicable to Public Service Company's energy center. The adjustment proposed by the Applicant to increase property taxes by $85,524 was based on the assumption that the energy center would be annexed by the Town of Cary. The Public Staff, through the testimony of witness Dudley, rejected this adjustment. Witness Dudley testified that at the close of the hearing the energy center had not been annexed and, therefore, that Public Service was not incurring this expense.

Company witness Schock testified regarding a letter dated September 5, 1980, written by the Director of Planning and Development for the Town of Cary stating that annexation had been postponed but that they hoped for annexation to take place within two or three months. Subsequent to that testimony, the Applicant introduced another letter from the Director of Planning and Development stating that the Town intended to make the annexation by January 1, 1981. It is evident to the Commission from this testimony that annexation of this property by the Town of Cary had not occurred by the time of the close of the hearings in this proceeding; furthermore, it is unclear when in the future the property will or could be annexed. The Commission, therefore, concludes that it would be improper for ratepayers to pay a cost which it is uncertain that the Company will incur in the foreseeable future. Therefore, Public Staff witness Dudley's adjustment removing the $85,524 of Cary property taxes is proper.

As the amount of plant investment had been updated by the Company, witness Dudley adjusted end-of-period property taxes by $41,400. Since the updated plant was included in the determination of a fair and reasonable level of end-of-period original cost net investment, the related property tax adjustment should be used in establishing a fair and reasonable level of end-of-period taxes other than income.

The final difference in the amount of taxes other than income as presented by the Company and the Public Staff is gross receipts tax. The Commission observes that the method of calculation employed by witness Dudley is more accurate than that utilized by the Company since it removes uncollectibles in determining the gross receipts taxable base. However, the major difference in the gross receipts tax amounts presented by the witnesses is in the amount of revenue. Since the Commission's approved end-of-period level of revenues under present rates is different from that of the Company or the Public Staff, the appropriate level of gross receipts tax is different from that derived by witness Dudley. Using witness Dudley's methodology, the Commission concludes that the fair and reasonable level of gross receipts taxes is $10,968,530.

The Applicant included in its proposed order the amount of $43,000 related to the increase in payroll taxes by law effective January 1, 1981. Consistent with the Commission's treatment of this item for a major electric utility in this State, the Commission concludes that this amount should be included in the end-of-period level of taxes other than income.

The Commission considers its previous findings regarding taxes other than income and concludes that the proper end-of-period level of such taxes to be included in this proceeding is $12,984,002.

The final difference in operating revenue deductions as presented by witness Schock and witness Dudley is income taxes and this difference results from the use of different methodologies and differences in the revenues and expenses utilized by the Company and Public Staff in making their calculations. The Commission has examined the methodology of calculating these income taxes in witness Dudley's schedules and finds that methodology to be proper. However, since the Commission's end-of-period level of revenues and expenses differs from that of witness Dudley, the Commission concludes that the appropriate level of State income taxes is $556,784 and Federal income taxes is $3,993,310.

The Commission has now examined all operating revenue deductions and decided the appropriate levels of each item. The Commission hereby summarizes its individual findings as follows and concludes that the proper level of operating revenue deductions for the setting of rates in this proceeding is $175,025,305, composed of the following items:

Purchased gas	$138,880,645
Operation and maintenance	14,583,468
Depreciation	4,027,096
Taxes other than income	12,984,002
State income tax	556,784
Federal income tax	3,993,310
Total	$175,025,305

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 AND 13

The evidence for these findings is contained in the testimony and exhibits of Company witnesses Schock and Jackson and Public Staff witnesses Dudley and Watson.

Both Company witnesses initially presented the Company's capital structure as of the end of the test year, March 31, 1980. For rate-making purposes, both witnesses included in the common equity component of the capital structure the balance of preference stock in the amount of $483,550. This treatment was similar to that used in the Applicant's last rate case (Docket No. G-5, Sub 136) and was based on the assumption that the preference stockholders would convert their shares to common equity. The capital structure thus calculated was as follows:

Long-term debt	51.62%
Preferred stock	10.36%
Common equity	38.02%
Total	100.00%

On June 30, 1980, the Applicant called for redemption of the outstanding shares of preference stock. Not all preference stockholders converted their shares to common equity; some shareholders opted for cash payment at the call price. The fact that not all preference stock was converted into common equity was recognized by Public Staff witnesses Dudley and Watson in their original testimony and exhibits. By adding to common equity only the preference stock which had actually been converted, the capital structure was changed to:

Long-term debt	51.74%
Preferred stock	10.39%
Common equity	37.87%
Total	100.00%

Company witness Schock agreed that the capital structure presented by witnesses Dudley and Watson was correct in that it recognized the actual conversion to common equity rather than the assumed conversion.

Both the Company and the Public Staff filed supplemental exhibits containing revised capital structure percentages. Witness Schock's supplemental testimony adopted the capital structure percentages utilized by Public Staff witness Dudley; however, witness Schock's supplemental exhibits incorporated updated plant investment to the August 31, 1980, level.

Public Staff witness Dudley testified that he presented in his revised exhibit the capital structure as it existed at August 31, 1980, the same point in time as the updated plant investment presented by the Company. Although the August 31, 1980, capital structure represented only minor percentage changes over that at March 31, 1980, witness Dudley stated that it was necessary in order to be consistent with the Company's revised schedules. This revised capital structure is as follows:

Long-term debt	51.71%
Preferred stock	10.70%
Common equity	37.59%
Total	100.00%

The Commission observes that the various capital structures presented by witnesses Schock, Jackson, Watson, and Dudley do not differ materially. The initial capital structure proposed by the Company was based on the assumed conversion of the entire amount of preference stock into common equity. This assumption was incorrect and was recognized in the capital structure presented originally by Public Staff witnesses Dudley and Watson.

The Commission has elsewhere found the determination of end-of-period original cost net investment at August 31, 1980, to be appropriate. The

Commission finds that consistency requires that the capital structure also be updated to August 31, 1980. Therefore, the capital structure to be used in this proceeding is long-term debt 51.71%, preferred stock 10.70%, and common equity 37.59%.

The issues of cost rates for long-term debt and preferred equity are uncontroverted. The following cost rates were presented by both of the parties who offered testimony on this issue:

Long-term debt	7.58%
Preferred equity	7.13%

The Commission, therefore, concludes that these cost rates are the appropriate levels for use in determining the overall rate of return.

The issue of fair rate of return on common equity was addressed by both witness Jackson and witness Watson. Although their primary methodologies were similar, their final recommendations on the issue were different. Company witness Jackson recommended a 16.3% rate of return on common equity in order to cover the cost of equity capital to the Company, selling expense and market pressure, and to ensure a market-to-book value premium of 1.20 times. Public Staff witness Watson's recommendation on the fair rate of return on common equity was 14.4%, which he stated would cover the cost of common equity and selling expense of issuing additional equity.

Company witness Jackson's primary technique in arriving at his recommendation was a discounted cash flow (DCF) analysis of 22 gas companies. Witness Jackson also employed a comparable earnings analysis to demonstrate that the current earnings of his group of 22 comparison gas companies were below their actual cost of capital. The DCF method of determining a cost of equity capital has two components, dividend yield and the future growth rate of dividends.

From the 22 companies in Mr. Jackson's sample of the natural gas industry, he arrived at an average dividend yield of from 8.58% to 8.73% based on the years 1978 and 1979. The growth component which he applied to the DCF model is a weighted average of: (1) the average of six linear regression estimates, two each for the growth rate in book value per share, earnings per share, and dividends per share over two periods labeled long-term and short-term; (2) the compounded estimate of growth in dividends per share over the period 1977-1980; and (3) the compounded estimate of growth in dividends per share over the period 1978-1979. These figures were 3.54%, 5.49%, and 5.32%, respectively. When these figures were given 1/3 weight each, witness Jackson obtained a growth rate estimate of 4.78%.

Witness Jackson then made an adjustment to the dividend yield of the average of the 22 companies based on the following reasoning. The average market-to-book ratio of the 22 companies in 1979 was 0.91. Then witness Jackson determined that the appropriate level of market-to-book ratio for the natural gas utility industry is 1.20. Therefore, the appropriate dividend yields necessary to produce a market-to-book ratio of 1.20 for the comparison companies are 11.32% and 11.51% based on the above-mentioned actual averages. Combining these adjusted dividend yields with the growth rate estimate of 4.78% results in the DCF model showing a required rate of return of 16.10% to 16.29%.

Witness Jackson provided a risk premium analysis in support of his DCF estimate of fair rate of return. He did so by adding 300-350 basis points to the coupon rate of A rated gas and electric utility bonds. This method resulted in an estimated cost of common equity of 16.44% to 16.94%.

Public Staff witness Watson employed a DCF analysis on 26 natural gas distribution companies, many of which were the same as those employed by Company witness Jackson. The dividend yield used by witness Watson in his application of the DCF was 8.5% as representative of the current yield. His determination of the growth rate estimate was accomplished be deriving the average compounded growth rate for the 26 companies for each of 10 periods: 10 year, nine year, eight year, etc. This was done for both dividends per share and earnings per share. Having recognized that he had used a sample of the natural gas industry and that companies which have low growth rates almost always have high dividend yields and vice versa, Mr. Watson calculated the correlation coefficient between yield and growth for the sample of 26 for each of the 20 periods. The estimates which he derived were then weighted by their respective correlation coefficients, so long as they were significantly different from zero statistically. The result was a growth estimate of 5.67%.

By adding the two components of the DCF together, Mr. Watson's estimate of the cost of equity capital for the sample companies, and by extrapolation for the Applicant, was 14.2%. To this he added 20 basis points to cover the cost of selling additional securities and determined that the fair rate of return on common equity for Public Service was 14.4%.

On cross-examination by the Public Staff, Company witness Jackson stated that the bare bones cost of equity capital for Public Service could be obtained by adding his unadjusted estimates of dividend yields and his estimate of growth rate. This results in an estimate of 13.36% to 13.51%. The issue of fair rate of return, which the Commission must decide, thus becomes one of determining how much, in addition to the bare bones cost of equity capital, is Public Service entitled to earn. Mr. Jackson stated that the average market-to-book ratio for the sample of 22 companies for 1979 was 0.91. However, on cross-examination by the Public Staff, Mr. Jackson agreed that nine of the 22 companies have market-to-book ratios of greater than one. The average of the returns on common equity for these nine companies for 1979 was 13.5%. Furthermore, Public Service appears to be in relatively better shape than the average of these 22 companies in terms of having a market-to-book ratio in excess of one.

Based on this evidence, the Commission concludes that the cost of equity to the Applicant, after the consideration of selling costs, is 14.95%. This rate of return on equity equates to a 10.30% rate of return on original cost net investment, as depicted in the schedule below:

	Cost Rate	Capitalization Ratio	Weighted Cost Rate
Long-term debt	7.58%	51.71	3.92%
Preferred equity	7.13%	10.70	.76%
Common equity	14.95%	37.59	5.62%
Overall			10.30%

The Commission cannot guarantee that the Company will, in fact, achieve the level of returns herein found to be just and reasonable. Indeed, the Commission would not guarantee it if it could. Such a guarantee would remove necessary incentives for the Company to undertake to achieve the utmost in operational and managerial efficiency. The Commission believes, and thus concludes, that the level of returns approved herein will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to the ratepayers. The Commission can do no more.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The Commission previously has discussed its findings and conclusions regarding the fair rate of return which Public Service Company of North Carolina, Inc., should be given the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based on the rates approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein approved by the Commission.

The increase in rates and charges approved herein is consistent with the Voluntary Wage and Price Guidelines promulgated by the President's Council on Wage and Price Stability.

SCHEDULE I
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
STATEMENT OF OPERATING INCOME FOR RETURN
Twelve Months Ended March 31, 1980

	Present Rates	Approved Change	After Approved Change
Operating Revenues			
Total operating revenues	$183,805,069	$4,716,903	$188,521,972
Operating Revenue Deductions			
Purchased gas	138,880,645		$138,880,645
Operation and maintenance	14,583,468	15,094	14,598,562
Depreciation	4,027,096		4,027,096
Taxes other than income	12,984,002	282,109	13,266,111
State income taxes	556,784	265,182	821,966
Federal income taxes	3,993,310	1,911,078	5,904,388
Total operating revenue deductions	175,025,305	2,473,463	177,498,768
Net Operating income	$ 8,779,764	$2,243,440	$ 11,023,204

SCHEDULE II
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended March 31, 1980

	Amount
Investment in Gas Utility Plant	
Utility plant in service	$143,350,614
Construction work in progress	3,076,112
Accumulated depreciation	(42,478,026)
Cost-free capital	(9,404,708)
Net investment in gas utility plant	$ 94,543,992
Allowance for Working Capital	
Minimum bank balances	$ 1,390,000
Average materials and supplies	12,377,326
Customer funds advanced for operations	(75,022)
Customer deposits	(1,238,094)
Total	$ 12,454,210
Original cost rate base	$106,998,202
Rate of Return - Present Rates	8.21%
Rate of Return - Approved Rates	10.30%

SCHEDULE III
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended March 31, 1980

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$ 55,328,770	51.71	7.58	$4,193,921
Preferred stock	11,448,808	10.70	7.13	816,300
Common equity	40,220,624	37.59	9.37	3,769,543
Total	$106,998,202	100.00		$8,779,764
	Approved Rates - Original Cost Rate Base			
Long-term debt	$ 55,328,770	51.71	7.58	$ 4,193,921
Preferred stock	11,448,808	10.70	7.13	816,300
Common equity	40,220,624	37.59	14.95	6,012,983
Total	$106,998,202	100.00		$11,023,204

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15 AND 16

The evidence for these findings of fact is contained in the direct and revised testimony and exhibits of Company witnesses Ziegler, Dickey, Schock, and Young, the rebuttal testimony of Company witness Watkins, the direct and revised testimony and exhibits of Public Staff witnesses Curtis, Garrison, and Romano, and the testimony of witness Brecheisen for the Intervenor, North Carolina Textile Manufacturers Association, Inc.

Testimony was offered by witness Dickey on the renumbering of the present rate schedules for ease of administration. In its rate design, the Public Staff utilized the same numerical system of rates as that proposed by the Company. This renumbering system was not opposed by any of the other parties to the proceeding. Therefore, the Commission concludes that the basic rates should be renumbered and used as shown in the following schedule under Approved Rate Schedule.

Class of Customer	Present Rate Schedule	Approved Rate Schedule
Residential Service	21	50
Residential Conservation Service	N/A	52
Commercial and Small Industrial Service	22	55
Incrementally Priced Boiler Fuel in NCUC Priority 2.1	29	57
Industrial Process Service	23	60
Industrial and Large Commercial Service	34	65
Incrementally Priced Boiler Fuel in NCUC Priority 3.2	28	67
Boiler Fuel	24	70
Incrementally Priced Boiler Fuel in NCUC Priorities 6-9	27	72
Special Service (Negotiated Rate)	26	80
Outdoor Lighting Service	25	85
Transportation Service	20	90

The Company sought to increase the customer charge or basic facilities charge for residential customers and commercial and small industrial customers. This charge is designed to recover a portion of the costs allocable to a customer who is on line whether he uses any gas or not. The Public Staff opposed any increase in this cost. The charge is designed to recover a portion of the costs of the meter, regulator and service lateral, the meter reading and billing expense, and customer accounting costs. Even the Company's proposal would not recover 100% of these costs. The Public Staff's position on this matter is that since a customer charge, though cost justified, is generally resisted by the public and since an increased customer charge places a greater burden on the small gas consumer, then the proposed increase in customer charge should be denied. Instead of increasing this customer charge, the Public Staff proposes to generate the related revenues through a higher usage rate. The Company pointed out that the Public Staff's proposal, though generating the same dollars, burdens the ratepayer during the period of high consumption and correspondingly high cost. After careful consideration, the Commission

concludes that the customer or facility charge for residential customers should be increased to $4.00 per month, as opposed to the $4.50 per month proposed by the Applicant. The difference in revenues achieved by the proposed facility charge as opposed to the approved charge should be generated by the usage rate applied to the residential class. Finally, the Commission concludes that the proposed facility charge of $6.00 per month for the commercial and small industrial customers is fair and should be implemented.

The Company further proposed to initiate a customer charge on the Industrial and Large Commercial Service Rate Schedule, to move certain customers for whom ample supplies of gas are now available from the Boiler Fuel Rate Schedule to the Industrial and Large Commercial Service Rate Schedule and to institute a minimum bill provision in the Boiler Fuel Rate Schedule. These changes were not opposed by the Public Staff or the other Intervenors and the Commission concludes that these changes should be adopted in the rates to be approved herein.

Both the Company, through witness Young, and the Public Staff, through witness Garrison, presented the results of fully allocated cost-of-service studies which they had prepared. Generally, such studies showed a rather wide disparity in rates of return generated under present and proposed rates. The variation between classes from the system average rate of return is greater than the Commission has traditionally permitted in electric rate design. However, the Commission is cognizant of the facts that the test year was the first time period in many years that certain classes of customers were able to receive almost all of their demands for natural gas and that, in this case, the VVAF is being eliminated. These things will have some impact on the class rates of return generated under present or proposed rates. Further, the proposals of both the Company and the Public Staff would place the greatest amount of increase on those customer classes which are generating the lowest return on investment according to the cost-of-service studies. The Commission does not believe that the results of cost-of-service studies must be blindly or rigidly followed in every case. The Commission concludes that cost-of-service studies, while useful as a guide in setting rates, are not the ultimate goal of rate making. The Commission must also consider other factors, such as the judgmental nature of such studies, promoting conservation, the historical level of existing rates, the competitive cost of alternative fuels, and reasonable movement towards uniform class returns. However, it should be pointed out that the Commission is very much interested in the cost-of-service study results for the Applicant, and urges all parties of record to accord due consideration to such studies in the future.

Both the Applicant and the Public Staff supported a residential conservation rate. The Applicant's residential conservation rate would apply a 5% discount to the normal residential rate for gas usage above 25 therms, while the Public Staff's rate would not have a usage floor. In addition to this difference, the Public Staff and the Company differed as to various thermal requirements of the residential conservation rate. The Commission has given much consideration and study to the feasibility of implementing a residential conservation rate for the Applicant. The historic record concerning the viability and usefulness of residential conservation rates in this State is not clear, and indeed the jury is still out on this matter. In fact, the data surrounding this question seems to be too inconsistent and vague for a proper decision to be made at this time.

Accordingly, the Commission concludes that the proposal to establish a residential conservation rate for the Applicant should be denied, without prejudice, at this time.

The rate structure proposed by the Applicant and the Public Staff is principally the same, with the major difference resulting from differing levels of gross revenue requirements. Within the guidelines explained above, the Applicant should file rates with the Commission which meet the gross revenue requirements found to be fair and reasonable within this Order and which will become effective upon the issuance of a further Order of this Commission.

IT IS, THEREFORE, ORDERED:

1. That Public Service Company of North Carolina, Inc., be, and is hereby, authorized to adjust and increase its rates and charges so as to produce additional annual revenues from operations of $188,521,972. This level of operating revenues includes an approved increase of $4,716,903.

2. That the Company shall, within 10 days from the date of this Order, file tariffs which satisfy both the gross revenue requirements found to be fair and reasonable by the Commission within this Order and the rate design guidelines contained within.

3. That the tariffs filed in accordance with paragraph 2 above will become effective on service rendered on or after the issuance of a further Order in this docket.

4. That the Company shall notify its customers of the increased rates approved herein by appropriate bill insert in the next billing cycle following the effective date of the new tariffs.

5. That in the event Transco reimposes curtailment and credits the Company's account with demand adjustments, such reductions shall be placed in the deferred account pending further Order by the Commission.

6. That the depreciation rates proposed by Public Service herein be and hereby are approved with the exception of those for account 376 - Mains and 380 - Services. The approved rates for these two accounts are 2.21% and 3.43%, respectively. These depreciation rates are effective January 1, 1981.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of January 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 157

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company of North Carolina, Inc., for an Adjustment of Its Rates and Charges Applicable to Natural Gas Service in North Carolina	)))	ORDER REDUCING RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 27, 1981, at 1:30 p.m.

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Morgan, Mitchell, Burns & Smith, P.A., Attorneys at Law, P.O. Box 2479, Raleigh, North Carolina 27602

For the Intervenors:

Vickie L. Moir, Public 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 12, 1981, in Docket No. G-5, Sub 157, the Commission issued its Order Granting Partial Rate Increase. Said Order approved a gross revenue increase of $4,716,903 for Public Service Company of North Carolina, Inc. (Applicant) based upon an adjusted test year composed of the 12-months ended March 31, 1980.

Subsequently, it having come to the attention of the Commission that an arithmetical error existed in the Commission's calculation of the proper level of income tax expense included in the test-year cost of service; and, consequently in the level of revenue authorized by the Commission to be collected through rates, the Commission issued its Order of July 7, 1981 setting this matter for hearing pursuant to G. S. 62-80.

On July 10, 1981, the Applicant filed motions requesting: (1) that the Commission issue an Order clarifying its Order dated July 7, 1981, (2) that the Commission continue the hearing and time fixed for filing testimony and exhibits as required in the July 7, 1981, Order and (3) that the Commission vacate its Order of July 7, 1981. In its Order Ruling On Motions issued on July 13, 1981, the Commission clarified its Order of July 7, 1981, and denied the Applicant's remaining motions.

On July 17, 1981, the Applicant prefiled the testimony and exhibits of Allen J. Schock and the Public Staff prefiled the testimony of Donald E. Daniel. The hearing came on as scheduled. Company witness Schock and Public Staff witness Daniel testified at the hearing.

After a careful review of the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. That the Commission Order Granting Partial Increase issued January 12, 1981, in Docket No. G-5, Sub 157, approving a gross revenue increase of $4,716,903 was based on an improper level of income tax expense due to arithmetical error and/or oversight.

2. That the level of income tax expense set forth in the January 12, 1981, Order does not properly consider book depreciation on plant with no depreciable tax basis and amortization of the investment tax credit due to arithmetical error and/or oversight.

3. That the proper level of income tax expense to be recovered through rates established in this docket is $4,352,461 before giving effect to the increase approved in the Commission's January 12, 1981 Order.

4. That the Applicant's cost of service as established in the Commission's January 12, 1981, Order should be reduced by $415,530 in order to reflect the proper level of income tax expense.

5. That the Applicant's rates should be reduced by $.00095 per therm in order to give effect to the $415,530 reduction in the gross revenue requirement as described hereinabove.

CONCLUSIONS

The evidence supporting the above listed findings of fact are found throughout the entire record of this proceeding; but, in the main are found in the testimony of Public Staff witnesses Daniel and Dudley and Company witness Schock. Neither party included amortization of investment tax credit in developing the level of income tax expense included in their respective proposed orders. Likewise, neither party considered, in developing the level of income tax expense, depreciation attributable to utility plant which has no depreciable tax basis. There is no disagreement between the parties with respect to the proper treatment of depreciation on plant which has no depreciable tax basis. This matter and the amount thereof were uncontested by either party at the July 27, 1981, hearing.

There is no disagreement between the witnesses with respect to the propriety of the inclusion of the investment tax credit amortization in the determination of the proper level of income tax expense to be included in the test-year cost of service. However, there is a difference of opinion as to the proper amount. During the hearing held on July 27, 1981, both witness Daniel and witness Schock acknowledged that inclusion of investment tax credit amortization was proper. Witness Schock stated during cross-examination that he had, in fact, included such amortization in his pre-filed exhibits, in his revised exhibits and in his rebuttal exhibits; however, he also acknowledged that no such amortization was reflected in the Applicant's proposed order filed with the Commission's Chief Clerk.

It is quite clear from but a casual review of the exhibits of Company witness Schock filed in this docket that he did, in fact, reflect in his exhibits amortization of investment tax credit. It is, however, far more difficult to determine from the Applicant's proposed order that said amortization was omitted therefrom. Set forth in Table I below is a summary of the Applicant's proposals with respect to amortization of the investment tax credit.

TABLE I

AMORTIZATION OF INVESTMENT TAX CREDIT
PROPOSED BY COMPANY IN VARIOUS FILINGS

Date of Filing	Item	Amount
6/10/80	Direct testimony and exhibits (Schock)	$311,200
10/13/80	Supplemental direct testimony and exhibits (Schock)	$311,200
10/30/80*	Rebuttal exhibits (Schock):	
	12 months ended 3/31/80	$311,200
	12 months ended 9/30/80	$229,700
12/15/80	Applicant's proposed order	-0-
7/17/81	Direct testimony and exhibits (Schock)	
	12 months ended 3/31/80	$178,506
	12 months ended 9/30/80	$203,119

*Date presented at hearing

Public Staff witness Daniel stated at the July 27, 1981, hearing that investment tax credit amortization was proper and should have been reflected in the level of income tax expense included in the Public Staff's recommendation as to the Applicant's total test-year cost of service. Witness Daniel further stated that it was through arithmetical oversight that said amortization was omitted from the testimony and exhibits of Public Staff witness Dudley and consequently from the Public Staff's proposed order. The Commission does observe, however, that in presenting differences between the Company and the Public Staff with respect to operating revenue deductions, on Page 34 of its proposed order, filed on December 15, 1980, the Public Staff presents $5,923,533 as the level of Federal income tax expense proposed by the Company for use by the Commission. This amount ($5,923,533) is made up of the following components which may be found in the Supplemental Direct Testimony of Allen J. Schock, Schedule 8, Page 1 of 5, Column 5, Line 11 through Line 15, filed on October 13, 1980.

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error and, of course, assuming that rates are adjusted concurrently. It is worthy of note to make mention of the fact that the Company had knowledge of the tax expense error (See Transcript Page 49) apparently during the time it was evaluating its options with respect to the Commission's Order of January 12, 1981. Thus, not to appeal said Order was made with full knowledge of the tax expense error and presumably all ramifications related thereto. Further, at no time did the Company call this matter to the attention of the Commission. Although the Applicant, through both its witness and counsel, seeks to take refuge from its failure to timely or otherwise advise the Commission of the tax expense oversight by contending that numerous errors exist in the Commission Order of January 12, 1981, such refuge is ill-conceived and woefully inadequate. The alleged errors to which the Applicant refers, other than the arithmetical errors contained in the calculation of income tax expense as noted by the Commission, are more properly characterized as differences of opinion, which go to the merits of the Applicant's case as opposed to purely arithmetical error or oversight. The Applicant could point to no other purely mathmatical error, other than that existing in the Commission's calculation of income tax expense, contained in the Commission's cost of service or rate determinations as set forth in this docket.

A careful consideration of all of the foregoing leads the Commission to conclude that it should amend its Order of January 12, 1981, pursuant to G. S. 62-80, to correct the purely arithmetical error contained therein pertaining to the proper calculation of the level of income tax expense to be recovered by Public Service through its retail rates. The Commission has fully complied with the provisions of G. S. 62-80 in this proceeding, having given notice and an opportunity to be heard to Public Service and all of the other parties of record affected by correction of the arithmetical error embodied in the Commission's Order of January 12, 1981. Correction of said mathematical error does not constitute an arbitrary or capricious abuse of the discretionary power granted to this Commission by G. S. 62-80 to rescind, alter or amend a prior order or decision. State of North Carolina ex rel. Utilities Commission v. Carolina Coach Company, 260 N.C. 43, 132 S.E. 2d 249 (1963). State of North Carolina ex rel. Utilities Commission v. Edmisten, 291 N.C. 575, 232 S.E. 2d 177 (1977). To the contrary, correction of such mathematical error merely constitutes an exercise by this Commission of its statutorily mandated duty to fix just and reasonable rates in North Carolina. To let said mathematical error stand without correction would, in the opinion of this Commission, be completely unfair to the ratepayers served by Public Service and would also result in an unjustified windfall to said utility.

Furthermore, G. S. 62-80 specifically empowers this Commission to modify its prior orders at any time. This being true, said statute certainly empowers the Commission to correct ministerial or computational errors, involving nothing more than an arithmetical oversight, even after the time for appealing a Commission order has expired. State of North Carolina ex rel. Utilities Commission v. Edmisten, supra, as cited by Public Service in its "Motion To Dismiss Proceeding" which implies that a Commission order may not be modified after the time for appeal therefrom has expired, is clearly distinguishable from this case since the modified order in that case was issued before the time for appeal had expired, and because that case involved a modification based upon a substantial reassessment of evidence.

As previously stated Company witness Schock and Public Staff witness Daniel disagreed as to the proper amount of investment tax credit amortization properly includable in calculating income tax expense for use herein. This disagreement is embodied primarily in the fact that beginning in 1980, the Company adopted a new methodology with respect to investment tax credit amortization. The level of amortization proposed by the Company embraces both the old and new methodologies. Public Staff witness Daniel utilized actual investment tax credit amortization for the 12-month period ended December 31, 1980, which reflects only the new methodology. After careful consideration, the Commission concludes that the level of investment tax credit amortization proposed by the Public Staff of $215,425 is the most representive of the level the Company can be expected to experience on an on-going basis and, therefore, is proper for use herein.

With respect to the Company's argument that it is not now earning the rate of return found fair by the Commission in its January 12, 1981, Order, said argument is fraught with misconception and erroneous methodology. However, such errors will not be discussed here, since it is far beyond the limited scope of the Commission's reconsideration of its January 12, 1981, Order.

Based upon the evidence as described herein, revenue, revenue deductions, etc. as determined and set forth in the Commission Order of January 12, 1981, the Commission concludes that the proper level of income tax expense which should be included in the Company's test year cost of service under rates existing prior to the January 12, 1981, Order is $4,352,461. Such income tax expense is $197,633 less than that reflected in the Commission Order of January 12, 1981.

In order to give effect to the Commission's decisions in this regard, the Applicant's cost of service (revenue requirement) must be reduced by $415,530 ($197,633 ÷ .475617). Based on the Applicant's annual sales volumes, found reasonable in the Commission Order of January 12, 1981, of 435,937,570 therms, the Commission concludes that the Applicant's rates should be reduced on a prospective basis by $.00095 per therm ($415,530 ÷ 435,937,570).

The following schedule presents a calculation of the proper level of income tax expense under rates in effect prior to the Commission Order of January 12, 1981, and the corresponding decrease in revenues and present rates required to reflect said level of income tax expense.

GAS

Line No.	Item	Amount
1.	Operating Revenues	$183,805,069
2.	Purchased gas	138,880,645
3.	Operation and maintenance	14,583,468
4.	Depreciation	4,027,096
5.	Taxes other than income	12,984,002
6.	Interest expense	4,050,118
7.	Operating income before income taxes and after interest	9,279,740
8.	Add: Book depreciation on plant with no basis	36,133
9.	Taxable income - state income tax	9,315,873
10.	State income tax [LN9 x .06]	558,952
11.	Taxable income - federal income tax	8,756,921
12.	Federal income tax [LN11 x .46]	4,028,184
13.	Less: Surtax exemption	(19,250)
	Amortization of investment tax credit	(215,425)
14.	Federal income tax	3,793,509
15.	Total income taxes [LN10 + LN14]	4,352,461
16.	Total income taxes per January 12, 1981 Order	4,550,094
17.	Reduction in income tax [LN16 - LN15]	197,633
18.	Retention factor	.475617
19.	Reduction in revenue requirement	$ 415,530
20.	Sales volumes - therms	435,937,570
21.	Reduction in rates per therm	$ .00095

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve after giving effect to the rate adjustment as required herein.

GAS

SCHEDULE I
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
STATEMENT OF OPERATING INCOME FOR RETURN
TWELVE MONTHS ENDED MARCH 31, 1980

Item	Present Rates	Approved Increase	After Approved Increase
Operating Revenues			
Total Operating Revenues	$183,805,069	$4,301,373	$188,106,442
Operating Revenue Deductions			
Purchased gas	138,880,645	-	138,880,645
Operation and maintenance	14,583,468	13,764	14,597,232
Depreciation	4,027,096	-	4,027,096
Taxes - other than income	12,984,002	257,257	13,241,259
State income taxes	558,952	241,821	800,773
Federal income taxes	3,793,509	1,742,724	5,536,233
Total operating revenue deductions	174,827,672	2,255,566	177,083,238
Net operating income	$ 8,977,397	$2,045,807	$ 11,023,204

SCHEDULE II
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED MARCH 31, 1980

Item	Amount
Utility plant in service	$143,350,614
Construction work in progress	3,076,112
Accumulated depreciation	(42,478,026)
Cost-free capital	(9,404,708)
Net investment in gas utility plant	$ 94,543,992
Allowance for Working Capital	
Minimum bank balances	$ 1,390,000
Average materials and supplies	12,377,326
Customer funds advanced for operations	(75,022)
Customer deposits	(1,238,094)
Total	$ 12,454,210
Original cost rate base	$106,998,202
Rate of return - Present Rates	8.39%
Rate of return - Approved Rates	10.30%

SCHEDULE III
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED MARCH 31, 1980

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$ 55,328,770	51.71	7.58	$4,193,921
Preferred stock	11,448,808	10.70	7.13	816,300
Common equity	40,220,624	37.59	9.86	3,967,176
Total	$106,998,202	100.00	-	$8,977,397
	Approved Rates - Original Cost Rate Base			
Long-term debt	$ 55,328,770	51.71	7.58	$ 4,193,921
Preferred stock	11,448,808	10.70	7.13	816,300
Common equity	40,220,624	37.59	14.95	6,012,983
Total	$106,998,202	100.00	-	$11,023,204

IT IS, THEREFORE, ORDERED as follows:

1. That Public Service Company of North Carolina, Inc., be, and hereby is, ordered to reduce all rates by $.00095 per therm for service rendered on and after the date of this Order.

2. That Public Service Company of North Carolina, Inc., be, and hereby is, ordered to file appropriate tariffs within five working days of the date of this Order which reflect the rate reduction as required in paragraph 1 above.

3. That except as modified herein the Commission Order of January 12, 1981, issued in this Docket shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

GAS

DOCKET NO. G-1, SUB 85

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 GIVING NOTICE OF) DECISION AND SETTING) RATES

HEARD IN: City Hall Courtroom, 145 5th Avenue East, Hendersonville, North Carolina, at 9:30 a.m., on Tuesday, September 22, 1981

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, at 11:00 a.m., on Monday, September 28, 1981

BEFORE: Commissioner John W. Winters, Presiding; and Commissioners Leigh H. Hammond and Edward B. Hipp

APPEARANCES:

For the Applicant:

Jerry Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys and Counsellors at Law, P.O. Drawer U, Greensboro, North Carolina 27402

For the Using and Consuming Public:

Karen E. Long and Gisele L. Rankin, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding is before the Commission upon application of United Cities Gas Company (the Applicant, the Company, or United Cities) filed with the Commission on April 13, 1981, for authority to adjust and increase its rates and charges for retail customers in North Carolina. The originally proposed increase was designed to produce approximately $448,244 of additional revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12 months ended December 31, 1980.

By Order of April 29, 1981, the Commission declared the application a general rate increase pursuant to G.S. 62-137, suspended the proposed rate increase for a period of 270 days, set the matter for hearing before the Commission September 22, 1981, in Hendersonville and September 24 and 25, 1981, in Raleigh, required the Company to give notice of such hearings by newspaper publication and appropriate bill inserts, and established the test period to be used in the proceeding.

The Public Staff filed Notice of Intervention on June 5, 1981. Applicant filed affidavit of publication June 12, 1981.

On July 10, 1981, the Commission amended its Order of April 29, 1981, changing the time of hearing from September 24 and 25, 1981, in Raleigh to September 28, 1981, in Raleigh and required Applicant to give notice of rescheduled hearing times. Applicant filed affidavit of publication of the new hearing times on July 30, 1981.

On August 31, 1981, the Public Staff filed a motion for extension of time to prefile testimony until September 8, 1981, which the Commission allowed by Order issued September 3, 1981.

On September 8, 1981, the Applicant filed motion for leave to amend its application, changing its request for additional annual revenues of $448,244 to a request for total additional annual revenues of $561,479. Applicant cited a contract it proposed to enter into with Public Service Company of North Carolina subsequent to its application for a rate increase which increased its cost of doing service. This contract was negotiated in connection with the installation by Public Service of a gas compressor which would increase the Company's supply of gas.

On September 10, 1981, the Public Staff filed its reply in opposition to this motion for leave to amend, citing prejudice to consumers, itself and the Commission because of lack of adequate notice and hearing preparation time. On September 11, 1981, the Commission denied Applicant's motion for leave to amend its application.

The matter came on for hearing in Hendersonville, North Carolina, on September 22, 1981. There were no public witnesses. The Company offered the testimony and exhibits of the following persons: (a) 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; (b) 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; (c) Glenn B. Rogers, Group Vice President of United Cities, testified concerning the proposed rate structure of the Company; and (d) 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. The Public Staff offered the testimony of the following staff members: (a) Eugene H. Curtis, Jr., Utilities Engineer, testified concerning normalized volumes, revenues generated by these volumes, and rates to recover the increased revenue requirements recommended by the Public Staff; (b) David Kirby, Accountant, testified concerning the Public Staff's accounting exhibits, the Company's revenues and expenses, rates of return and rate base; and (c) Hsin-Mei C. Hsu, Economist, testified concerning the Company's cost of capital and fair rate of return.

The hearing was reconvened on September 28th in Raleigh for the purpose of submitting Public Staff witness Kirby's second revised exhibits and a copy of the Applicant's newly negotiated contract with Public Service Company of North Carolina. Applicant submitted this contract as a late-filed exhibit on October 5, 1981.

Based upon the foregoing, the verified application, the prefiled testimony and exhibits received into evidence at the hearings, the testimony given from the stand and the exhibits introduced during the course of the hearings, and the entire 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 Illinois and Virginia, 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 subject to the jurisdiction of this Commission, and is properly before this Commission for a determination, pursuant to G.S. 62-133, of the justness and reasonableness of its proposed rates and charges.

2. That the test period for purposes of this proceeding is the 12 months ended December 31, 1980.

3. That the total increase in rates and charges United Cities is seeking in its application would produce $448,244 in additional annual gross revenues for the Company.

4. That the allowance for working capital is $357,452.

*5. That United Cities' reasonable original cost rate base is $3,247,707 consisting of utility plant in service of $4,057,821, construction work in progress of $6,764, and allowance for working capital of $357,452 reduced by: accumulated depreciation of $847,437, deferred income taxes of $308,849, and unamortized pre-1971 investment tax credit of $18,044.

6. That the reasonable level of annual sales that United Cities can be expected to make is 918,611 dekatherms.

7. That United Cities' gross revenues for the test year, under present rates, after accounting and pro forma adjustments, are $4,674,221. After giving effect to United Cities' proposed rates, such gross revenues are $5,122,465.

*8. That the reasonable level of test year operating expenses after accounting and pro forma adjustments is $4,514,506, including depreciation and amortization expense of $143,424.

*9. That the fair rate of return which United Cities should have the opportunity to earn on its rate base in North Carolina is 11.50%.

10. That based on the foregoing, United Cities should be allowed an increase in revenues, in addition to the $4,674,221 which would be realized under present rates, not to exceed $448,244.

11. That the rate design approved herein will produce just and equitable rates for the various customer classes served by the Company.

* Corrected by Amended Notice of Decision and Order dated 11-9-81.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Evidence for this finding of fact is found in the Company's verified application, the testimony of Company witness Rogers, and the testimony and exhibits of Public Staff witness Curtis.

Public Staff witness Curtis presented testimony and submitted revised exhibits reflecting increased sales volumes of gas over the test year due to increased sales over the last year and projected increased volumes due to the installation of a compressor by the Applicant's gas supplier Public Service Company of North Carolina. This annual sales level of 918,611 dekatherms was unopposed by the Company, thus the Commission concludes that this sales volume is reasonable and proper.

Public Staff witness Curtis also testified to the supply necessary to generate sales of 918,611 dekatherms, as itemized below:

CD-2 Purchases	914,315	dekatherms
Unaccounted for Increase	4,575	
Company Use & Line Break	(940)	
CD-2 Available for Sale	917,950	dekatherms
Propane Air Sales	661	
Total North Carolina Sales	918,611	dekatherms

This testimony was not opposed by the Company, and the Commission concludes that these levels of supply volumes are reasonable and proper.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence supporting this finding of fact was presented in the testimony of Company witness Rodgers and Public Staff witness Curtis. In its application the Company proposed the following rate schedules: rate schedule 710 for residential (including the Public Housing Authority rate schedule 770), rate schedule 730 for all institution or commercial or industrial customers, and rate schedule 730A for industrial interruptible incrementally priced boiler fuel.

Rate schedule 710, as proposed by the Company was designed as a two-step block rate with a higher step block for all usage over 20 therms. Public Staff witness Curtis recommended eliminating the two steps and making the rate a flat rate for all usage. This structure is in line with all other rate schedules for this Company. Furthermore, witness Curtis proposed to include unmetered gas light usage in the 710 rate schedule such that the Company would not lose revenues on gas light sales. The Company did not object to the incorporation of these changes.

Rate schedules 730 and 730A are presently the same flat rates for all usage and no change in structure was recommended. The Company and the Public Staff agreed that the present facilities charges for rate schedules 710 and 730 are reasonable.

The Commission, therefore, concludes that the facilities charges should be left the same as prior to the filing of the application for a general rate

increase, that the rates approved in this proceeding should be flat rates for all dekatherms used, and that rate schedule 710 should include unmetered gas light usage. The Commission finds that the revised rate schedules attached hereto as Exhibit A are just and reasonable and should be adopted as the base rates for United Cities. These rates as approved by this Commission exclude any temporary surcharges which were in effect at the July 24, 1981, end-of-period calculation of the rates.

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
UNITED CITIES GAS COMPANY
NORTH CAROLINA OPERATIONS
STATEMENT OF OPERATING INCOME
For the Test Year Ended December 31, 1980

Item	Present Rates	Approved Increase	After Approved Increase
Operating Revenues	$4,674,221	$448,244	$5,122,465
Operating Revenue Deductions:			
Production	3,472,430	-	$3,472,430
Transmission	205,410	-	205,410
Distribution	122,789	-	122,789
Customer accounts	87,720	-	87,720
Sales	(9,900)	-	(9,900)
Administrative and general	226,436	-	226,436
Depreciation and amortization	143,424	-	143,424
Taxes other than income	314,190	26,895	341,085
Income taxes	(45,772)	207,472	161,700
Total operating revenue deductions	4,516,727	234,367	4,751,094
Operating income for return	$ 157,494	$213,877	$ 371,371

SCHEDULE II
UNITED CITIES GAS COMPANY
NORTH CAROLINA OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended December 31, 1980

Item	Amount
Investment in Gas Plant	
Plant in service	$4,057,821
Construction work in progress	6,764
Depreciation reserve	(918,021)
Deferred taxes	(308,849)
Pre-1971 investment tax credit	(18,044)
Net plant investment	2,819,671
Allowance for Working Capital and Deferred Debits	
Investor funds advanced for operations	108,060
Compensating balances	67,650
Working funds	3,344
Materials and supplies	185,582
Deferred debit	11,289
Less: Customer deposits	(18,473)
Total	357,452
Original Cost Rate Base	$3,177,123
Rate of Return:	
Present rates	4.96%
Approved rates	11.69%

SCHEDULE III
UNITED CITIES GAS COMPANY
NORTH CAROLINA OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended December 31, 1980

Item	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$1,976,488	62.21%	10.27%	$202,985
Preferred stock	208,737	6.57	7.92	16,532
Common equity	991,898	31.22	(6.25)	(62,023)
Total	$3,177,123	100.00%	-	$157,494
	Approved Rates - Original Cost Rate Base			
Long-term debt	$1,976,488	62.21%	10.27%	$202,985
Preferred stock	208,737	6.57	7.92	16,532
Common equity	991,898	31.22	15.31	151,854
Total	$3,177,123	100.00%	-	$371,371

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, THERFORE, ORDERED as follows:

1. That the base rates set forth in Exhibit A attached hereto are designed to produce total annual revenues of approximately $5,122,465 on a sales volume of 918,611 dekatherms, and are hereby approved.

2. That United Cities shall file revised tariffs reflecting the increases approved herein. Consistent with the rates and charges set forth in Exhibit A attached hereto.

3. That the rates and charges set forth in Exhibit A attached hereto shall become effective on service rendered on and after November 1, 1981.

4. That United Cities shall notify its customers of the rate increase granted herein by appropriate billing insert with the next bill sent to each customer after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of October 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

EXHIBIT A
DOCKET NO. G-1, SUB 85
APPROVED BASE RATES*

Rate Schedule	Rate Block	Rate ($/dt)
710	Facilities charge	$5.00/Bill
	All dekatherms	5.738
730	Facilities charge	$10.00/Bill
	All dekatherms	5.230

* Based on July 24, 1981, cost of gas

DOCKET NO. G-1, SUB 85

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of United Cities Gas Company for Authority) ORDER GRANTING INCREASE
to Adjust and Increase Its Rates and Charges) IN RATES AND CHARGES

HEARD IN: City Hall Courtroom, 145 5th Avenue East, Hendersonville, North Carolina, at 9:30 a.m., on Tuesday, September 22, 1981

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, at 11:00 a.m., on Monday, September 28, 1981

BEFORE: Commissioner John W. Winters, Presiding; and Commissioners Leigh H. Hammond and Edward B. Hipp

APPEARANCES:

For the Applicant:

Jerry Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys and Counsellors at Law, P.O. Drawer U, Greensboro, North Carolina 27402

For the Using and Consuming Public:

Karen E. Long and Gisele L. Rankin, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding is before the Commission upon application of United Cities Gas Company (the Applicant, the Company, or United Cities) filed with the Commission on April 13, 1981, for authority to adjust and increase its rates and charges for retail customers in North Carolina. The originally proposed increase was designed to produce approximately $448,244 of additional revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12 months ended December 31, 1980.

By Order of April 29, 1981, the Commission declared the application a general rate increase pursuant to G.S. 62-137, suspended the proposed rate increase for a period of 270 days, set the matter for hearing before the Commission September 22, 1981, in Hendersonville and September 24 and 25, 1981, in Raleigh, required the Company to give notice of such hearings by newspaper publication and appropriate bill inserts, and established the test period to be used in the proceeding.

The Public Staff filed Notice of Intervention on June 5, 1981. Applicant filed affidavit of publication June 12, 1981.

On July 10, 1981, the Commission amended its Order of April 29, 1981, changing the time of hearing from September 24 and 25, 1981, in Raleigh to September 28, 1981, in Raleigh and required Applicant to give notice of rescheduled hearing times. Applicant filed affidavit of publication of the new hearing times on July 30, 1981.

On August 31, 1981, the Public Staff filed a motion for extension of time to prefile testimony until September 8, 1981, which the Commission allowed by Order issued September 3, 1981.

On September 8, 1981, the Applicant filed motion for leave to amend its application, changing its request for additional annual revenues of $448,244 to a request for total additional annual revenues of $561,479. Applicant cited a contract it proposed to enter into with Public Service Company of North Carolina subsequent to its application for a rate increase which increased its cost of doing service. This contract was negotiated in connection with the installation by Public Service of a gas compressor which would increase the Company's supply of gas.

On September 10, 1981, the Public Staff filed its reply in opposition to this motion for leave to amend, citing prejudice to consumers, itself and the Commission because of lack of adequate notice and hearing preparation time. On September 11, 1981, the Commission denied Applicant's motion for leave to amend its application.

The matter came on for hearing in Hendersonville, North Carolina, on September 22, 1981. There were no public witnesses. The Company offered the testimony and exhibits of the following persons: (a) 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; (b) 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; (c) Glenn B. Rogers, Group Vice President of United Cities, testified concerning the proposed rate structure of the Company; and (d) 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. The Public Staff offered the testimony of the following staff members: (a) Eugene H. Curtis, Jr., Utilities Engineer, testified concerning normalized volumes, revenues generated

by these volumes, and rates to recover the increased revenue requirements recommended by the Public Staff; (b) David Kirby, Accountant, testified concerning the Public Staff's accounting exhibits, the Company's revenues and expenses, rates of return and rate base; and (c) Hsin-Mei C. Hsu, Economist, testified concerning the Company's cost of capital and fair rate of return.

The hearing was reconvened on September 28th in Raleigh for the purpose of submitting Public Staff witness Kirby's second revised exhibits and a copy of the Applicant's newly negotiated contract with Public Service Company of North Carolina. Applicant submitted this contract as a late-filed exhibit on October 5, 1981.

On October 30, 1981, the Commission issued an Order giving Notice of Decision and Setting Rates in this docket which stated that United Cities should be allowed an opportunity to earn a rate of return of 11.69% on its investment used and useful in providing gas utility service in North Carolina. In order to have the opportunity to earn a fair return, United Cities was authorized to adjust its gas rates and charges to produce an increase in gross revenues of $448,244 on an annual basis. United Cities was also required to file revised tariffs reflecting the approved increases.

On November 10, 1981, the Commission issued an Amended Notice of Decision and Order in this docket to correct for an error made in its October 30, 1981, Order. The changes made in this Amended Order, lowered the overall rate of return to 11.50%, but had no impact on the level of gross revenues approved by Commission Order of October 30, 1981, and consequently no impact on rates and charges approved therein.

Based upon the foregoing, the verified application, the prefiled testimony and exhibits received into evidence at the hearings, the testimony given from the stand and the exhibits introduced during the course of the hearings, and the entire 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 Illinois and Virginia, 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 subject to the jurisdiction of this Commission, and is properly before this Commission for a determination, pursuant to G.S. 62-133, of the justness and reasonableness of its proposed rates and charges.

2. That the test period for purposes of this proceeding is the 12 months ended December 31, 1980.

3. That the total increase in rates and charges United Cities is seeking in its application would produce $448,244 in additional annual gross revenues for the Company.

4. That the allowance for working capital is $357,452.

5. That United Cities' reasonable rate base is $3,247,707, consisting of utility plant in service of $4,057,821, construction work in progress of $6,764, and allowance for working capital of $357,452 reduced by: accumulated depreciation of $847,437, deferred income taxes of $308,849, and unamortized pre-1971 investment tax credit of $18,044.

6. That the reasonable level of annual sales that United Cities can be expected to make is 918,611 dekatherms.

7. That United Cities' gross revenues for the test year, under present rates, after accounting and pro forma adjustments, are $4,674,221. After giving effect to United Cities' proposed rates, such gross revenues are $5,122,465.

8. That the reasonable level of test year operating expenses after accounting and pro forma adjustments is $4,514,506, including depreciation and amortization expense of $143,424.

9. That the fair rate of return which United Cities should have the opportunity to earn on its rate base in North Carolina is 11.50%.

10. That based on the foregoing, United Cities should be allowed an increase in revenues, in addition to the $4,674,221 which would be realized under present rates, not to exceed $448,244.

11. That the rate design approved herein will produce just and equitable rates for the various customer classes served by the Company.

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

The evidence supporting these findings of fact is contained in the Company's verified application, the Commission Order Setting Hearing, in prior Commission Orders in this docket, and in the record as a whole. These findings are essentially informational, procedural, and jurisdictional in nature and were uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Evidence for this finding of fact is found in the testimony of Company witness Ford and Public Staff witness Kirby. The parties differ by $32,498 in their calculation of an allowance for working capital. The following schedule shows the allowance as computed by the Company and the Public Staff:

GAS

Item	Company	Public Staff	Difference
Investor funds advanced for operations	$108,060	$108,060	$ -
Compensating balances	67,650	67,650	-
Cash	23,506	-	(23,506)
Working funds	3,344	3,344	-
Materials and supplies	185,582	185,582	-
Deferred debit	11,289	2,297	(8,992)
Less: average customer deposits	(18,473)	(18,473)	-
Total working capital allowance	$380,958	$348,460	$(32,498)

The parties agree on the amounts allowed for: investor funds advanced for operations as determined by a lead-lag study, compensating bank balances, working funds, materials and supplies inventory, and average customer deposits. Since no evidence exists to the contrary, the Commission concludes that the amounts as indicated in the above table for these five items are reasonable.

The first item of disagreement between the parties is the amount of cash to be included in the working capital allowance. Company witness Ford testified that this $23,506 in additional cash in bank deposits is the reasonable minimum amount that the Company must have available to finance the Company's activities. The Company computed this amount by deducting its compensating bank balances of $67,650 from $91,156 which was the average cash balance in its bank accounts during the 1980 test year.

Public Staff witness Kirby testified that it is improper to include the Company's average cash account per books in the working capital allowance unless it can be shown that this cash working capital is necessary to conduct utility operations. Witness Kirby testified that the Company's cash account included a substantial amount of nonutility investments in interest-bearing instruments, and thus he did not include this $23,506 of additional cash in the working capital allowance. Furthermore, Company witness Ford offered no testimony to contradict witness Kirby's contention that a substantial portion of such cash represents nonutility interest-bearing cash investments.

After reviewing all the evidence relating to this issue, the Commission concludes that the Company's inclusion of nonutility interest-bearing investments in the working capital allowance in effect would require ratepayers to pay a return on capital which is not invested in utility operations and which already earns a return from nonutility sources. Therefore, the Commission finds that it is inappropriate to include this $23,506 of cash in the working capital allowance.

The second item of difference is in the amount of the deferred debit for computer system costs to be included in the working capital allowance. Company witness Ford calculated his deferred debit amount of $11,289 by amortizing over a five-year period the estimated computer study cost and the projected first-year implementation cost and recognizing the amortization which had occurred up to the time of the hearing. Furthermore, both witness Ford and Public Staff

witness Kirby included miscellaneous computer expenditures which are to be amortized over a five-year period to begin when the computer system has been fully implemented at some point in the future.

Witness Kirby testified that the amount actually spent on the computer system during the test year and up to the date of the hearing should be amortized over five years with the unamortized balance of $2,297 included in the working capital allowance. The Public Staff rejected witness Ford's $11,289 calculation on the basis that this Company position includes in working capital amounts which have not been expended.

After considering the positions of both parties, the Commission concludes that the implementation of the new computer system is in the best interest of the Company and its customers. Thus, the Commission finds that it is appropriate to include $11,289 of unamortized computer system costs in the working capital allowance, in order to allow for the normalization of these expenditures over the approximate useful life of this system.

In summary, the Commission concludes that the reasonable allowance for working capital for use herein is $357,452, which sum is calculated as follows:

Item	Amount
Investor funds advanced for operations	$108,060
Compensating balances	67,650
Working funds	3,344
Materials and supplies	185,582
Deferred debit	11,289
Less: Average customer deposits	(18,473)
Total working capital allowance	$357,452

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence pertaining to this finding of fact is found in the testimony and exhibits of Company witness Ford and Public Staff witness Kirby. The following table sets forth the rate base as proposed by these witnesses:

Item	Company	Public Staff	Difference
Gas plant in service	$4,275,936	$4,057,821	$(218,115)
Construction work in progress	6,764	6,764	-
Working capital allowance	380,958	348,460	(32,498)
Less: Accumulated depreciation	(890,281)	(943,013)	(52,732)
Unamortized investment tax credits - pre-1971	(18,044)	(18,044)	-
Accumulated deferred income taxes	(308,849)	(308,849)	-
Rate base	$3,446,484	$3,143,139	$(303,345)

The parties agree that $6,764 is the level of construction work in progress, that $18,044 is the proper amount of unamortized pre-1971 investment tax credits, and that the level of accumulated deferred income taxes is $308,849. There being no evidence to the contrary, the Commission concludes that these amounts are reasonable and proper. With respect to the working capital difference, as discussed in the Evidence and Conclusions for Finding of Fact No. 4, the Commission finds that an allowance of $357,452 is appropriate for use in this proceeding.

The remaining area of disagreement between the parties involves the proper level of plant in service and the related amount of accumulated depreciation. The Company updated its plant in service for net additions from the end of the test period to August 31, 1981. In accordance with the mandate of G.S. 62-133(c), the Company concluded that it is entitled to update its plant in service to reflect actual changes in its value occurring up to the time of the hearing. Furthermore, the Company concluded that it was also necessary to adjust accumulated depreciation through August 31, 1981, in order to avoid a mismatching of plant and depreciation. The Public Staff rejected the Company's adjustment to update plant in service for investments made subsequent to the test year on the basis that upon cross-examination Company witness Ford stated that this additional plant investment would yield additional sales, yet the Company failed to include them in their revenue calculation.

The Commission has considered the testimony of both parties in this regard and concludes that the appropriate level of gas plant in service is the end-of-period amount of $4,057,821. This conclusion properly matches gas plant in service with the revenues to which it relates. As discussed in Evidence and Conclusions for Finding of Fact No. 7 the parties and the Commission agree that the appropriate level of revenues is the level determined by using the normalized sales volume for the 12 months ending December 31, 1980, and the July 24, 1981, rates.

The $52,732 difference in the depreciation reserve calculations by the Company and the Public Staff results from differing theories on the plant basis to be used in making an adjustment to update accumulated depreciation to the time of the hearing and whether or not to make an end-of-period adjustment to depreciation. The Company made an adjustment to increase accumulated depreciation by $70,584 based on the plant in service at the end of the test period used in the Company's previous rate case. The Company contends that this adjustment recognizes the depreciation expense actually paid by ratepayers from the end of the 1980 test period through August 31, 1981, and is fair provided that rate base is also updated.

Public Staff witness Kirby testified that the end-of-period depreciation reserve should be increased by $123,316, which is the sum of $95,576 in depreciation expense paid in by customers subsequent to the test year (from January 1, 1981, through August 31, 1981) on the level of plant in service at the end of the current test year, and $27,740 in depreciation expense to bring depreciation to an end-of-period level (December 31, 1980). Witness Kirby explained that the $95,576 adjustment was made in order that ratepayers not be required to pay a return on capital which the Company has already recovered through rates paid in subsequent to the test year. With respect to these adjustments, Company witness Ford testified that these increases in the reserve

are inappropriate because they do not represent depreciation actually recovered by the Company.

The Commission concludes that the Company's and the Public Staff's adjustments to increase the balance of accumulated depreciation for depreciation expense paid in by ratepayers from January 1, 1981, up to the time of the hearing (August 31, 1981) are inappropriate. This conclusion is based on the controlling objective to achieve the best matching of the costs of producing revenues with the revenues to which they relate. The Commission is constrained by statute to determine the appropriate pro forma end-of-period test year rate base. Hence, the addition of accumulated depreciation, accrued (capital recovered) during the interim of time between the end of the test year and the close of the hearing, to the balance of accumulated depreciation as of the end of the test year, without updating all of the other items of costs entering into the total cost of service, violates the matching concept and is, therefore, inconsistent and improper.

The Commission further concludes that Public Staff witness Kirby's adjustment of $27,740 to bring the level of accumulated depreciation to an end-of-period balance at December 31, 1980, is appropriate. The Commission previously found that in this proceeding it is appropriate to use the balance of gas plant in service at December 31, 1980, and concludes in Finding of Fact No. 8 that it is appropriate to use the balance of depreciation expense based on the level of plant in service at December 31, 1980. Thus if the ratepayers are to pay rates based on a higher level of depreciation expense than actually occurred during the test year, then they should receive the benefit of increasing the depreciation reserve by the amount that would have been added had the end-of-period level of depreciation expense existed throughout the test year.

Based on the above conclusions, and on the working capital allowance determined in Finding of Fact No. 4, the Commission finds that $3,247,707 is the appropriate rate base for use in this proceeding, the sum of which is calculated as follows:

Item	Amount
Gas plant in service	$4,057,821
Construction work in progress	6,764
Accumulated depreciation	(847,437)
Deferred income taxes	(308,849)
Pre-1971 investment tax credit	(18,044)
Working capital allowance	357,452
Rate base	$3,247,707

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Evidence for this finding of fact is found in the Company's verified application, the testimony of Company witness Rogers, and the testimony and exhibits of Public Staff witness Curtis.

Public Staff witness Curtis presented testimony and submitted revised exhibits reflecting increased sales volumes of gas over the test year due to increased sales over the last year and projected increased volumes due to the

installation of a compressor by the Applicant's gas supplier Public Service Company of North Carolina. This annual sales level of 918,611 dekatherms was unopposed by the Company, thus the Commission concludes that this sales volume is reasonable and proper.

Public Staff witness Curtis also testified to the supply necessary to generate sales of 918,611 dekatherms, as itemized below:

CD-2 purchases	914,315	dekatherms
Unaccounted for increase	4,575	
Company use & line break	(940)	
CD-2 available for sale	917,950	dekatherms
Propane air sales	661	
Total North Carolina sales	918,611	dekatherms

This testimony was not opposed by the Company, and the Commission concludes that these levels of supply volumes are reasonable and proper.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

This finding is based on the testimony of Public Staff witnesses Kirby and Curtis, the Company's verified application, and the testimony of Company witness Ford. The parties agree that $4,674,221 is the appropriate level of revenues based on a normalized sales volume (918,611 dt) for the 12 months ending December 31, 1980, using July 24, 1981, rates and including miscellaneous service revenues. There being no evidence to the contrary, the Commission concludes that $4,674,221 is the proper level of gross revenues under present rates to be used in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact was presented by Public Staff witness Kirby in his second revised exhibits and by Company witness Ford in his Exhibit No. 16 offered into evidence during the hearing. The following table shows the operating revenue deductions for the test period as presented by the Company and the Public Staff:

Item	Company	Public Staff	Difference
Production	$3,472,430	$3,472,430	$ -
Transmission	205,410	205,410	-
Distribution	122,789	122,789	-
Customer accounts	87,720	87,720	-
Sales	(9,900)	(9,900)	-
Administrative and general	236,197	223,528	(12,669)
Depreciation and amortization	143,424	143,424	-
Taxes other than income	314,190	314,190	-
Income taxes	(52,406)	(47,091)	5,315
Total operating revenue deductions	$4,519,854	$4,512,500	$(7,354)

There being no evidence to the contrary, the Commission concludes, with exceptions for the amounts of administrative and general expenses and income taxes, that the amounts of all other operating expenses, as agreed on by the parties, are reasonable and proper.

The $12,669 difference in the calculation of administrative and general expenses by the parties is due to two adjustments. The first of these two adjustments is a $833 difference between the positions of the Company and the Public Staff in the amortization of rate case expense resulting from the fact that the Company amortized the current rate case expense ($21,000) over two years; whereas, the Public Staff amortized the sum of the unamortized last rate case expense ($8,000) and the current rate case expense ($21,000) over three years. Company witness Ford testified that since the period between this rate case and the last was one and one-half years, and since the Company projects that it will file the next rate case within the next two years, a two-year amortization period is reasonable.

Public Staff witness Kirby, however, recommended a three-year amortization period. He stated that the timing of the next rate case cannot be forecast with any precision, and that if it is more than two years until the next rate case, a two-year amortization period will result in ratepayers paying in more than the actual cost. Witness Kirby further explained that if the next rate case occurs before the end of the three-year period, the Company would be able to include the unamortized portion of current rate case expense in operating expenses for that case.

In view of the fact that it has only been two years since the Company's last general rate case and the likelihood that the Company will file another general rate case within two years, the Commission concludes that a two-year amortization period is appropriate for rate case costs in this proceeding. Based on a two-year amortization period, the proper level of rate case expense is, therefore, $10,500.

The remaining $11,836 difference in administrative and general expenses results from a disagreement of the parties on the level of expenses related to the Company's implementation of a new computer system. Company witness Ford testified that the test year level of operating expenses should be increased by $12,201 to expense the entire North Carolina allocated portions of estimated computer study costs ($1,666) and of projected first-year implementation costs ($10,535).

Public Staff witness Kirby testified that the Company's treatment of computer-related expenditures was improper for two reasons: first, that the projected first-year implementation costs were not actually incurred as of the hearing date; second, that the amounts actually expended should be amortized rather than expensed, with unamortized amounts included in the working capital allowance. Witness Kirby further stated that, for financial accounting purposes, the Company had recorded these expenditures as deferred debits amortized to expense over a five-year period beginning January 1, 1981, for computer study costs and at the time of hardware installation for other computer expenditures. Witness Kirby concluded that for rate-making purposes these expenditures should be amortized on the same basis as for financial accounting purposes, with the unamortized portion included in working capital. Witness

Kirby calculated an amount of $365 to be the proper computer-related expense using actual expenditures amortized over a five-year period.

In light of the Commission decision with regards to the proper amount of unamortized computer system costs to include in the working capital allowance as discussed in Evidence and Conclusions for Finding of Fact No. 4, the Commission concludes that $2,440 in computer system cost amortization is appropriate. The allowance of this amount of expense provides for the recovery of the projected first-year implementation costs and estimated computed study cost over the approximate useful life of this system (five years).

The third disagreement concerning operating expenses involves the amortization of pre-1971 revenue act investment tax credits. Witness Kirby testified that the North Carolina allocated amount of the amortization, $923, should be deducted from income tax expense. Company witness Ford disagreed, testifying that since the unamortized balance of such tax credits is already deducted from rate base, the annual amortization should not be considered in calculating income tax expense.

The Commission concludes that deducting the $923 amortization from income tax expense is appropriate. Deducting unamortized pre-1971 investment tax credits from rate base does account for cost-free capital provided by tax credits but does not constitute a reduction of the cost of service commensurate with the actual cost reductions effected by the credits. Thus, it is appropriate both to reduce rate base by the unamortized balance of pre-1971 credits and to reduce income tax expense for rate-making purposes by the annual amortization.

The remaining difference in income taxes relates to the income tax effect of the different rate base and expense adjustments; the Commission finds that the proper amount for income taxes is a negative $47,993. This amount includes deductions of: $2,644 for the amortization of post-1970 investment tax credits, $923 for the amortization of pre-1971 investment tax credits, and $1,087 for the surtax exemption which arises since the Federal taxable income of the revenue increase granted is in excess of $100,000. The interest expense deduction used in the Commission income tax calculation is $199,738, which is the amount determined when the hypothetical interest expense ($7,757) associated with plant financed by the Job Development Investment Tax Credit is eliminated from the interest expense ($207,495) associated with the capital structure, embedded cost of debt, and the original cost rate base which the Commission has found appropriate in this proceeding.

Based on the above conclusions, the Commission finds that operating expenses under present rates are $4,514,506 which sum is calculated as follows:

Item	Amount
Production	$3,472,430
Transmission	205,410
Distribution	122,789
Customer accounts	87,720
Sales	(9,900)
Administrative and general	226,436
Depreciation and amortization	143,424
Taxes other than income	314,190
Income taxes	(47,993)
Total operating revenue deductions	$4,514,506

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact was presented in the testimony of Company witnesses Ford and Sebastian and Public Staff witness Hsu.

Witness Sebastian testified that under the Company's current financing plan, which is highly leveraged, the rate of return was insufficient. Witness Sebastian presented a comparison of statistical information on rate of return taken from Value Line Investment Survey. Using the figures obtained from that service for 15 natural gas distribution companies in conjunction with the Discounted Cash Flow approach, witness Sebastian determined that a range of rate of return, from 16.9% to 18.5%, on common equity was reasonable for his sample group. As a comparison, witness Sebastian then testified that a return of 15.75% on common equity which would produce an overall cost of capital of 11.83% is the minimum return required for United Cities under the current and near term economic situation.

Public Staff witness Hsu presented her assessment of the Company's rate request and found the cost of equity to be 15.4%; based on a study of the cost of equity to a group of 13 natural gas distribution companies. However, witness Hsu testified that her comparable companies have higher equity ratios; therefore, she concluded that the Company's requested rate of return on common equity of 15.75% (an overall rate of return of 11.83%) is not unreasonable.

After reviewing all the evidence relating to this issue, the Commission concludes that the rate increase requested by the Company and approved herein will allow the Company the opprotunity to earn a return of 11.50% on the original cost of its North Carolina retail rate base. A rate of return of 11.50% on rate base will produce a rate of return on common equity of approximately 14.71%. Such rates of return on rate base and common equity are below the returns advocated by both the Company and Public Staff and are therefore neither unjust nor unreasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding of fact is found in the testimony of Company witness Ford, Public Staff witnesses Kirby and Curtis and the Applicant's verified application. 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. These schedules set forth the Company's gross revenue requirements and incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
UNITED CITIES GAS COMPANY
NORTH CAROLINA OPERATIONS
STATEMENT OF OPERATING INCOME
For the Test Year Ended December 31, 1980

Item	Present Rates	Approved Increase	After Approved Increase
Operating Revenues	$4,674,221	$448,244	$5,122,465
Operating Revenue Deductions:			
Production	3,472,430	-	$3,472,430
Transmission	205,410	-	205,410
Distribution	122,789	-	122,789
Customer accounts	87,720	-	87,720
Sales	(9,900)	-	(9,900)
Administrative and general	226,436	-	226,436
Depreciation and amortization	143,424	-	143,424
Taxes other than income	314,190	26,895	341,085
Income taxes	(47,993)	207,472	159,479
Total operating revenue deductions	4,514,506	234,367	4,748,873
Operating income for return	$ 159,715	$213,877	$ 373,592

GAS

SCHEDULE II
UNITED CITIES GAS COMPANY
NORTH CAROLINA OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended December 31, 1980

Item	Amount
Investment in Gas Plant	
Plant in service	$4,057,821
Construction work in progress	6,764
Depreciation reserve	(847,437)
Deferred taxes	(308,849)
Pre-1971 investment tax credit	(18,044)
Net plant investment	2,890,255
Allowance for Working Capital and Deferred Debits	
Investor funds advanced for operations	108,060
Compensating balances	67,650
Working funds	3,344
Materials and supplies	185,582
Deferred debit	11,289
Less: Customer deposits	(18,473)
Total	357,452
Rate Base	$3,247,707
Rate of Return:	
Present rates	4.92%
Approved rates	11.50%

SCHEDULE III
UNITED CITIES GAS COMPANY
NORTH CAROLINA OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended December 31, 1980

Item	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$2,020,399	62.21%	10.27%	$207,495
Preferred stock	213,374	6.57	7.92	16,899
Common equity	1,013,934	31.22	(6.38)	(64,679)
Total	$3,247,707	100.00%	-	$159,715
	Approved Rates - Original Cost Rate Base			
Long-term debt	$2,020,399	62.21%	10.27%	$207,495
Preferred stock	213,374	6.57	7.92	16,899
Common equity	1,013,934	31.22	14.71	149,198
Total	$3,247,707	100.00%	-	$373,592

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence supporting this finding of fact was presented in the testimony of Company witness Rodgers and Public Staff witness Curtis. In its application the Company proposed the following rate schedules: rate schedule 710 for residential (including the Public Housing Authority rate schedule 770), rate schedule 730 for all institution or commercial or industrial customers, and rate schedule 730A for industrial interruptible incrementally priced boiler fuel.

Rate schedule 710, as proposed by the Company was designed as a two-step block rate with a higher step block for all usage over 20 therms. Public Staff witness Curtis recommended eliminating the two steps and making the rate a flat rate for all usage. This structure is in line with all other rate schedules for this Company. Furthermore, witness Curtis proposed to include unmetered gas light usage in the 710 rate schedule such that the Company would not lose revenues on gas light sales. The Company did not object to the incorporation of these changes.

Rate schedules 730 and 730A are presently the same flat rates for all usage and no change in structure was recommended. The Company and the Public Staff agreed that the present facilities charges for rate schedules 710 and 730 are reasonable.

The Commission, therefore, concludes that the facilities charges should be left the same as prior to the filing of the application for a general rate increase, that the rates approved in this proceeding should be flat rates for all dekatherms used, and that rate schedule 710 should include unmetered gas

light usage. The Commission finds that the revised rate schedules attached hereto as Exhibit A are just and reasonable and should be adopted as the base rates for United Cities. These rates as approved by this Commission exclude any temporary surcharges which were in effect at the July 24, 1981, end-of-period calculation of the rates.

IT IS, THERFORE, ORDERED as follows:

1. That the base rates set forth in Exhibit A attached hereto are designed to produce total annual revenues of approximately $5,122,465 on an annual sales volume of 918,611 dekatherms.

2. That the Order Giving Notice of Decision and Setting Rates issued October 30, 1981, as revised per the Amended Notice of Decision and Order issued November 10, 1981, is hereby affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of November 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

(SEAL)

EXHIBIT A
DOCKET NO. G-1, SUB 85
APPROVED BASE RATES*

Rate Schedule	Rate Block	Rate ($/dt)
710	Facilities charge	$5.00/Bill
	All dekatherms	5.738
730	Facilities charge	$10.00/Bill
	All dekatherms	5.230

* Based on July 24, 1981, cost of gas

DOCKET NO. G-1, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application to Change Rules) ORDER APPROVING CHANGE IN
and Regulations) RULES AND REGULATIONS

BY THE COMMISSION: United Cities Gas Company (United Cities) filed a petition on April 24, 1981, to revise its rules and regulations to reflect changes as required by the Commission's Orders in various dockets. Subsequent to that petition, United Cities has filed three amendments to the original application.

In addition to the changes as required by previous Commission Orders, United Cities has proposed two additional changes. These are summarized below.

1. Change the reconnect fee from $15 to $20.

2. Change the main extension policy from up to 100 feet of main free to the free amount to be based upon the estimated annual sales volume in dekatherms.

The Commission, after review of the application as amended and upon the recommendation of the Public Staff, is of the opinion that the revised rules and regulations of United Cities should be approved.

IT IS, THEREFORE, ORDERED:

1. That the revised rules and regulations proposed by United Cities, and attached as Appendix A, be and hereby are approved and effective on the date of this Order.

2. That United Cities file within five working days the appropriate tariffs reflecting the revised service rules and regulations approved herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of August 1981.

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

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

HOUSING AUTHORITY

DOCKET NO. H-26, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of the Housing Authority of the City of Charlotte, North Carolina, for an Amended Certificate of Public Convenience and Necessity	) RECOMMENDED ORDER GRANTING) CERTIFICATE OF PUBLIC) CONVENIENCE AND NECESSITY

HEARD IN: The Education Center, Room 237-238, 701 East Second Street, Charlotte, North Carolina, on November 6, 1980, at 9:00 a.m.

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Applicant:

Robert C. Sink, Fleming, Robinson, Bradshaw & Hinson, P.A., Attorneys at Law, 2500 Jefferson First Union Plaza, Charlotte, North Carolina 28282

For the Protestants:

E. Lynwood Mallard, III, Farris, Mallard & Underwood, P.A., Attorneys at Law, 1700 Southern National Center, Charlotte, North Carolina 28202
For: William D. Bryon, William Stribling, Mr. and Mrs. H. B. Hrabanak, Mr. and Mrs. Donald C. Burk, and Mr. and Mrs. Bert T. Prendergast

Mr. Herbert M. Verbesey, 3600 Providence Road, Charlotte, North Carolina 28211
For: Himself

Mr. James R. Singleton, 3201 Rea Road, Matthews, North Carolina 28105
For: Himself

PARTIN, HEARING EXAMINER: On September 16, 1980, the Housing Authority of the City of Charlotte, North Carolina (hereinafter the Applicant or Housing Authority), filed with the Commission, pursuant to G.S. 157-51, an application for an Amended Certificate of Public Convenience and Necessity for the construction of an additional 165 units of housing for low-income persons and for authority to exercise the right of eminent domain in connection therewith. Exhibits in support of the application were attached.

On October 1, 1980, the Commission issued an Order setting the application for hearing and requiring the Housing Authority to publish notice of the application in a newspaper of general circulation in the Charlotte area. The Order further provided that if no substantial protests or petitions to intervene were filed in this docket on or before October 24, 1980, the matter would be decided on the verified application without a hearing.

HOUSING AUTHORITY

The Commission received a substantial number of letters from citizens and homeowners' associations in Charlotte protesting the application and requesting a hearing and the opportunity to make a statement. On October 28, 1980, the Commission issued an Order reaffirming the scheduled hearing in Charlotte on November 6, 1980.

The application came on for hearing as scheduled in Charlotte. The Applicant was present and represented by counsel. The following persons intervened as parties: William D. Byron, William Stribling, Mr. and Mrs. H. B. Hrabanak, Mr. and Mrs. Donald C. Burk, Mr. and Mrs. Bert T. Prendergast, all of whom were represented by counsel. The following parties represented themselves: Herbert M. Verbesey and James R. Singleton.

The Housing Authority offered the testimony of Larry A. Loyd, its Assistant Executive Director. James R. Singleton testified on his own behalf. Herbert M. Verbesey testified for himself and the Oxford Park Homeowners Association. The following public witnesses also offered testimony: Walter H. Shapiro, Frank P. Greenspan, Peter H. Gerns, and Daniel Seeman.

The Applicant filed an Affidavit of Publication showing the requisite publication of notice in the Charlotte Observer and also filed, as a late exhibit, the affidavit of John E. Chapman, Jr.

Upon consideration of the testimony and exhibits presented at the hearing, the late filed exhibit, the application, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Housing Authority of the City of Charlotte, North Carolina, is a public body and a body corporate and politic duly organized and existing under Chapter 157 of the General Statutes of North Carolina.

2. In accordance with its statutory purposes and powers, the Housing Authority has from time to time purchased land and constructed thereon decent, safe and sanitary dwellings that it rents to persons of low income at lower than market rents, pursuant to regulations under federal and state law.

3. To exercise its statutory powers of eminent domain, the Housing Authority is required, by Section 157-51 of the General Statutes of North Carolina, to obtain from the Commission a Certificate of Public Convenience and Necessity for contemplated projects.

4. The Housing Authority has previously made applications for, and has been granted by the Commission, Certificates of Public Convenience and Necessity on June 20, 1939 (two projects); March 30, 1950 (600 additional units); and September 18, 1963 (600 additional units).

5. The Housing Authority, by this application, requests that the Commission issue an Amended Certificate of Public Convenience and Necessity for the construction of an additional 165 dwelling units, with the authority to exercise the power of eminent domain in connection therewith. The projects covered by this application are funded by the United States Department of Housing and Urban

Development (HUD) and designated in Program Reservations issued to the Housing Authority, at its request, by HUD, as follows:

Project Designation	Number of Units	Date of Reservation Letter
NC-003-020	91	April 25, 1980
NC-003-021	49(of 165)	August 16,1978
NC-19-P003-023	25	June 13, 1980

With respect to Project NC-003-021, land has been acquired, without exercising the power of eminent domain, for all except 49 of the 165 units; the application includes these 49 units. The Housing Authority, on October 20, 1980, signed a contract of sale for property for these 49 units; however, the closing of the sale and the actual acquisition of the property have not taken place. (The owner of the property agreed to enter into the contract of sale with the Housing Authority only after the filing of the application in this docket.) If the voluntary sale of this property is consummated pursuant to the contract, the power of eminent domain with respect to the 49 units in Project NC-003-021 will not be exercised elsewhere.

6. The Housing Authority currently owns 3,591 public housing units and leases 121 units, for a total of 3,712 units. The number of vacancies in these units as of October 24, 1980, were 79. The vacancy rate for the Authority's housing units is approximately 2.1%.

7. As of September 1980 there were approximately 2,336 pending applications in the files of the Housing Authority from apparently qualified families for public housing; only 116 units are currently under construction by the Housing Authority.

8. The Housing Assistance Plan of the City of Charlotte, adopted by the City Council on February 26, 1979, established a goal of providing housing assistance to 3,685 households, or 23% of the households considered as requiring assistance. The goal included 540 newly constructed units of public housing by the Housing Authority during the period 1979-1982. The units covered by this application are part of the means by which that goal is to be reached.

9. In determining suitable sites for the development and construction of new housing projects, the Housing Authority operates under the following principal constraints: the Housing Assistance Plan referred to in Finding No. 8, above, which identifies specific areas of Charlotte that are eligible for public housing; HUD regulations regarding site selection criteria; local zoning ordinances; and the availability of willing sellers of property. The HUD regulations are imposed upon the Housing Authority as a condition of obtaining funds from HUD. Federal law requires the City to adopt a Housing Assistance Plan which will, among other things, avoid the concentration of public housing in a particular geographic area.

10. Under its scattered site housing program, the Housing Authority attempts to develop properties consisting of 50 family dwelling units or less. These properties are located in areas of Charlotte which are defined as eligible by the Housing Assistance Plan and which meet the locational criteria of HUD.

11. The Housing Authority is attempting, within the constraints set forth above, to locate and acquire on the open market a sufficient number of suitable sites to accomodate the projects covered by the existing program Reservations and this application. The Authority has examined in detail more than 100 sites during the past two years. Notwithstanding its extensive attempts, the Housing Authority has had, and will continue to have, great difficulty in finding suitable sites for its projects.

12. Although the Housing Authority intends to continue its attempts to locate and acquire on the open market a sufficient number of suitable sites for the projects in question, the Housing Authority has determined, by Resolution No. 556 adopted on August 19, 1980, that the issuance of the Certificate of Public Convenience and Necessity requested herein is necessary and appropriate for the projects covered by this application.

CONCLUSIONS

The Hearing Examiner concludes that the Housing Authority of the City of Charlotte has met the requirements of applicable law with respect to acquiring an Amended Certificate of Public Convenience and Necessity from this Commission pursuant to G.S. 157-51 and for authority to exercise the right of eminent domain in the acquisition of property required for the construction, maintenance, and operation of 165 units of low-rent public housing.

The Examiner further concludes that there exists a public need for the 165 units of public housing contemplated by the application herein and that the public convenience and necessity would be served by the approval of the application herein.

The evidence taken in this proceeding clearly indicates that the available supply of public housing in Charlotte is insufficient to meet the growing number of applications for such housing. The vacancy rate for public housing is 2.1%. The Housing Assistance Plan of the City of Charlotte, which was adopted by the City Council on February 26, 1979, established a goal of providing housing assistance to 3,685 households, which is only 23% of the households considered as requiring assistance. The 165 units in this application are part of the means whereby the city is to reach its goals.

The Intervenors raised a number of objections to the application, which included: the Housing Authority has failed to show a need for the power of eminent domain; the Housing Assistance Plan adopted by the City of Charlotte restricts the choice for public housing sites to one geographic area of the City. To these objections the Examiner calls attention to the scope of the Commission's jurisdiction with respect to an application filed pursuant to G.S. 157-51. The Supreme Court of North Carolina has had occasion to speak to the Commission's jurisdiction in such a proceeding. In In re Housing Authority, 233 N.C. 649(1951), the Court stated, at page 655:

> "We think the finding of public convenience and necessity, either in general or specific terms, as pointed out in G.S. 40-53, has reference to any finding made 'either in general or specific' terms by the Legislature and set forth in the Housing Authorities Law, which finding shall not be sufficient to warrant the exercise of eminent

domain in connection with any project authorized thereby. But a certificate of public convenience and necessity for such project must be obtained from the Utilities Commission - that is, the public need for such a project in a particular community must be made to appear and a certificate of public convenience and necessity must be obtained before the petitioner may proceed to condemn property for such a project." (emphasis added)

The court further stated, at page 567:

"In our opinion, the North Carolina Utilities Commission has only one question to consider and determine in connection with an application of a housing authority for a certificate of public convenience and necessity, and that is whether the area within the jurisdiction of the particular housing authority is eligible for the construction of the low-rent dwellings proposed, within the purview of the Housing Authorities Law. The statute only empowers the Utilities Commission to investigate and examine all projects set up or attempted to be set up under the provisions of the Housing Authorities Law to determine `the question of the public convenience and necessity for said project.' G.S. 40-53, 157-28, 157-45 and 157-51.

As pointed out earlier, the evidence in this proceeding amply supports the public need for the 165 units contemplated in the application, and the Examiner so found and concluded. There is also sufficient evidence, however, to support the determination by the Housing Authority of the need for the power of eminent domain to assist the Authority in Acquiring land pursuant to the discharge of its statutory duties. Mr. Loyd, Assistant Executive Director of the Housing Authority, testified in detail about the extensive efforts of the Authority to obtain suitable property through voluntary purchases on the open market. These efforts havenot been totally sucessful, nor is it expected that such efforts will be successful with respect to the projects covered by this application. The Authority has consequently filed its application for a Certificate of Public Convenience and Necessity with this Commission. Notwithstanding its request for the right of eminent domain in this proceeding, the Housing Authority has given its assurance that it will continue attempts to acquire property on the open market from willing sellers. Homeowners who object to the manner in which the Housing Authority might exercise the power of eminent domain granted by this Order have an appropriate remedy in the courts. As the Supreme Court pointed out in In re Housing Authority, supra:

"It is our opinion, however, and we so hold, that if a local housing authority should act in bad faith in the selection of a site for a housing project, that is, if it should act arbitrarily, capriciously or fraudulently in making such selection, such action may be challenged in the proceedings to condemn the property. G.S. 40-36. But in the absence of an allegation charging that the action of the local housing authority was arbitrary, capricious or fraudulent, the selection of a site for a housing project will not be disturbed." 233 N.C., at 656.

Accordingly, the Examiner concludes that the application should be allowed and that the Applicant should be given the authority to exercise the right of

eminent domain in the acquisition of the property which will be required for the 165 units of public housing covered by this application.

IT IS, THEREFORE, ORDERED as follows:

1. That the Housing Authority of the City of Charlotte, North Carolina, be, and hereby is, granted an Amended Certificate of Public Convenience and Necessity for the establishment, construction, maintenance, and operation of 165 units of public housing proposed in the application, and that this Order shall itself constitute such Amended Certificate of Public Convenience and Necessity.

2. That the Applicant be, and hereby is, granted authority to exercise the right of eminent domain in connection with the Amended Certificate granted herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of January 1981.

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

DOCKET NO. H-26, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of the Housing Authority of the City of Charlotte, North Carolina, for an Amended Certificate of Public Convenience and Necessity	) FINAL ORDER OVERRULING) EXCEPTIONS AND AFFIRMING) RECOMMENDED ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, March 6, 1981

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

APPEARANCES:

For the Applicant:

J. Dickson Phillips, III, Fleming, Robinson, Bradshaw & Hinson, P. A., Attorneys at Law, 2500 First Union Plaza, Charlotte, North Carolina 28282

For the Protestant:

James R. Singleton, 3201 Rea Road, Matthews, North Carolina 28105
For: Himself

BY THE COMMISSION: On January 7, 1981, Hearing Examiner Wilson B. Partin, Jr., entered a "Recommended Order Granting Certificate of Public Convenience and Necessity" in this docket. On January 22, 1981, Protestant James R. Singleton 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 March 6, 1981.

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 Commisison further finds and concludes 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 January 22, 1981, by the Protestant be, and each is hereby, overruled and denied.

2. That the Recommended Order in this docket dated January 7, 1981, be, and the same is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of March 1981.

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

Commissioner Campbell dissents.
Commissioner Winters did not participate.

MOTOR BUSES

DOCKET NO. B-5, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Young's Transportation, T.R.Y., Inc., d/b/a,	) RECOMMENDED ORDER
Asheville, North Carolina - Filing to Discontinue	) DENYING APPLICATION
Daily Bus Schedules Between Mars Hill, Asheville,	) TO AMEND TIME SCHEDULE
Hendersonville, and Brevard, North Carolina	) NCUC NO. 3

HEARD IN: Commissioners Board Room, Room 204, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on Tuesday, November 10, 1981, at 9:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

S. Jerome Crow, Adams, Hendon, Carson & Crow, P.A., Attorneys at Law, P.O. Box 7246, Asheville, North Carolina 28807 For: T.R.Y., Inc., d/b/a Young's Transportation

For the Public Staff:

Karen E. Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602 For: The Using and Consuming Public

BENNINK, HEARING EXAMINER: This proceeding arose on August 31, 1981, when T.R.Y., Inc., d/b/a Young's Transportation (Applicant or Company), filed amended Time Schedule NCUC No. 3 with the Commission, whereby the Applicant proposed to discontinue its present daily bus schedules between Mars Hill, Asheville, Hendersonville, and Brevard, North Carolina, except for one round trip per week on Wednesdays, effective October 1, 1981.

On September 24, 1981, the Commission issued its Order Requiring Publication of Notice of Discontinuance and Notice of Hearing, whereby the matter was scheduled for public hearing on November 10, 1981, in Asheville, North Carolina.

On October 27, 1981, the Public Staff of the North Carolina Utilities Commission 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 Applicant and the Public Staff were both represented by counsel. The following individuals testified in opposition to the application at issue herein: Liz Roberts, Hazel Penland, Hattie Clinkscale, Sadie McGinnis, Mary Virginia Brown, Doris P. Sorrells, Minnie Turner, Coy F. Rice, and Mrs. Charles Harrell. The Applicant presented the testimony of T. Ralph Young, its President.

Based upon a careful consideration of the entire record in this proceeding, including the testimony and exhibits offered at the hearing, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. T.R.Y., Inc., d/b/a Young's Transportation, is a "public utility" as defined in G.S. 62-3(23)a.3. and is, therefore, subject to the jurisdiction of this Commission. The Applicant presently holds Common Carrier Certificate No. B-5 which authorizes the transportation of passengers for compensation in North Carolina intrastate commerce over authorized routes.

2. By filing amended Time Schedule NCUC No. 3 with the Commission, Applicant seeks authority to discontinue its present daily bus schedules between Mars Hill, Asheville, Hendersonville, and Brevard, North Carolina, except for one round trip per week to be made on Wednesdays only.

3. The Applicant presently dedicates one bus and one driver to provide the passenger services which it is herein seeking to discontinue.

4. During a four-week period of time in October 1981, the Applicant conducted a ridership study which indicated that it transported 1,055 passengers for compensation during said period.

5. Applicant profitably operates an interstate and intrastate charter service in addition to providing the intracity passenger transportation services for compensation over the authorized intrastate routes at issue herein.

6. The intracity passenger transportation services presently being provided by the Applicant to those of its customers who appeared and offered testimony at the hearing in this matter are clearly required to meet the public convenience and necessity as reflected by the specific transportation needs of said customers, since many of those individuals cannot drive, do not even own cars, do not have alternative means of transportation, and use the Applicant's services for essential purposes, such as commuting to and from work or to go shopping or to visit the doctor.

7. The Applicant makes no effort, at least of any significant consequence, to publicize its intracity passenger transportation services.

8. The Applicant offered no evidence at the hearing in this matter indicating that the public convenience and necessity would, in any way, require the intracity transportation passenger service which it now proposes to offer on a Wednesdays only basis.

9. The Applicant wishes to retain the ability and authority to provide intrastate charter services in North Carolina granted to it by G.S. 62-262(h), which would not be possible if its common carrier certificate was to be cancelled in its entirety by the Commission based upon a finding of either abandonment or that the public convenience and necessity no longer requires the intrastate passenger transportation services evidenced by Certificate No. B-5.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Based upon a careful consideration of the entire record in this proceeding and the foregoing findings of fact, the Hearing Examiner is of the opinion, and therefore concludes, that the application at issue in this docket is not justified by the public convenience and necessity and that said application should, therefore, be denied for the reason that the Applicant has clearly failed to carry its burden of proof as required by and set forth in G.S. 62-262. In this regard, the Applicant offered no evidence in the instant proceeding indicating that the public convenience and necessity would, in any way, require the intracity passenger service which it now proposes to offer on a Wednesdays only basis. Further, the testimony offered by the nine public witnesses who appeared at the hearing, as well as even the Applicant's own testimony with respect to the results of its ridership study made during the month of October 1981, indicate a present and continuing public need for the intrastate transportation services in question.

In deciding the issues herein and in rendering this decision, the Hearing Examiner has also given careful consideration to the Applicant's basic contention that it should be permitted to discontinue the intracity passenger services in question solely because it is presently rendering said services at a financial loss while its profitable charter operations are being required to subsidize its operations as a certificated common carrier of passengers. On the basis of the facts and record at hand, the Hearing Examiner is unable to effectively evaluate the Applicant's claims with respect to the financial losses which it is allegedly experiencing from its operations as an intrastate common carrier of passengers or the degree of subsidization thereof which may well be resulting from the Applicant's intrastate charter operations. It is certainly within the Applicant's power to file a rate increase application with the Commission in an attempt to alleviate the losses which it is allegedly continuing to experience from its operations as an intrastate common carrier of passengers. Such a course of action would, in the opinion of this Hearing Examiner, provide a more proper forum within which to fully consider and evaluate the financial issues and matters raised herein by the Applicant, including the issue of whether or not the Applicant's intrastate charter operations may rightfully be required to subsidize its intracity common carrier passenger services.

IT IS, THEREFORE, ORDERED as follows:

1. That the application to amend Time Schedule NCUC No. 3 as filed herein by T.R.Y., Inc., d/b/a Young's Transportation, on August 31, 1981, be, and the same is hereby, denied.

2. That the Notice attached hereto as Appendix A shall be posted by the Applicant in its bus or buses serving the routes in question for two successive weeks after the date that this Recommended Order becomes effective and final.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of December 1981.

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

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

DOCKET NO. B-105, SUB 39

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Intercity Motor Passenger Carriers) ORDER GRANTING RATE
for Adjustments in Fares and Charges Applicable) INCREASE AND CHANGING
to Intrastate Passenger Service in North Carolina) CHARTER RULES AND REGULATIONS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 15, 1980

BEFORE: Commissioners Sarah Lindsay Tate, Presiding, John W. Winters, and Douglas P. Leary

APPEARANCES:

For the Applicants:

J. Ruffin Bailey, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P. O. Box 2246, Raleigh, North Carolina 27602
For: Greyhound Lines, Inc. (East)

Thomas W. Steed, Jr., and Joseph Eason, Allen, Steed & Allen, P.A., Attorneys at Law, P. O. Box 2058, Raleigh, North Carolina 27602
For: Carolina Coach Company

Odes L. Stroupe, Jr., Hunton & Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602
For: Trailways Southeastern Lines

David L. Ward, Jr., Ward and Smith, P. A., Attorneys at Law, 1001 College Court, New Bern, North Carolina 28760
For: Seashore Transportation Company

For the Public Staff:

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

BY THE COMMISSION: On June 2, 1980, the Commission received tariff filings by, for, and on behalf of the following intercity motor bus common carriers: American Coach Lines, Inc.; Appalachian Coach Company, Inc.; Blue Ridge Lines, Ltd.; Carolina Coach Company; Central Buslines of North Carolina, S. D. Small, d/b/a; D&M Bus Company; Gaston-Lincoln Transit, Inc.; Greyhound Lines, Inc. (East); Piedmont Coach Lines, Inc.; Safety Transit Lines, R.A. Gauldin, d/b/a; Seashore Transportation Company; Southern Coach Company; Trailways Southeastern Lines, Inc.; Virginia Dare Transportation Company, Inc.; Young's Transportation Company, T.R.Y., Inc. d/b/a; and National Bus Traffic Association, Inc., Agent.

The general increases were scheduled to become effective upon North Carolina intrastate traffic on July 15, 1980, varying according to the carriers participating in the various increases and the type of service provided.

An approximately 23.5% increase in passenger fares and charges is proposed for the following: Carolina Coach Company; Greyhound Lines, Inc. (East); Piedmont Coach Lines, Inc.; Seashore Transportation Company; Southern Coach Company; and Trailways Southeastern Lines, Inc.

An increase of approximately 23.5% in package express rates is proposed for the following: American Coach Lines, Inc.; Appalachian Coach Company, Inc.; Blue Ridge Lines, Ltd.; Carolina Coach Company; Central Buslines of North Carolina; D&M Bus Company; Gaston-Lincoln Transit, Inc.; Greyhound Lines, Inc. (East); Piedmont Coach Lines, Inc.; Safety Transit Lines; Seashore Transportation Company; Southern Coach Company; Trailways Southeastern Lines, Inc.; Virginia Dare Transportation Company, Inc.; and Young's Transportation Company.

The proposed tariffs also have various changes in bus passenger charter rules and regulations as well as adjustments and increases on charter rates and charges for the following: Carolina Coach Company; Greyhound Lines, Inc. (East); Piedmont Coach Lines, Inc.; Seashore Transportation Company; and Trailways Southeastern Lines, Inc.

On July 10, 1980, the Commission, being of the opinion that the proposed revisions in bus passenger, express, and charter tariff schedules were a matter affecting the public interest, issued its Order which, among other things, suspended the tariff schedules, instituted an investigation into and concerning the lawfulness of the tariff schedules, declared a general rate case, required notice to the public, and set a hearing for October 15, 1980, at 9:30 a.m., in the Commission Hearing Room, Raleigh, North Carolina.

The Public Staff, on August 22, 1980, filed notice of intervention in this docket and that intervention was allowed orally on October 15, 1980, the first day of the hearing.

At the hearing, the following public witnesses from Durham, North Carolina, testified: Karen Sindelar, Steve Schewel, Paul Luebke, and Virginia Englehart.

The bus companies presented evidence from the following witnesses: David V. Taylor, Vice President and Controller of Trailways, Inc., Dallas, Texas; Clint Polk, District Manager of North Carolina and South Carolina for Trailways Southeastern Lines, Inc., Charlotte, North Carolina; E. D. Christensen, Internal Auditor, Greyhound Lines, Inc., Cleveland, Ohio; A. R. Guthrie, Vice President

of Marketing, Carolina Coach Company, Raleigh, North Carolina; Robert E. Brown, Treasurer of Carolina Coach Company, Raleigh, North Carolina; John Elliott, Traffic Administrator, Carolina Coach Company, Raleigh, North Carolina; and R. C. O'Bryan, General Manager and Vice President of Seashore Transportation Company, New Bern, North Carolina.

The Public Staff presented Dennis E. Sovel, Rate Analyst, and Fred Fravel, Intercity Program Manager with the North Carolina Department of Transportation, Public Transportation Division.

At the hearing, the Respondents and the Public Staff, after the submission of evidence to support same, entered into a stipulation in which they agreed: (1) that the proposed deletions of the 38-passenger bus and charter service tariff items are just and reasonable and should be allowed; (2) that the proposed rule change embodied in Greyhound-Trailways Exhibit B offered at the hearing is just and reasonable if uniformly adopted and should be allowed as to all charter carriers; (3) that the proposed changes by Greyhound Lines, Inc. (East), and Trailways Southeastern, Inc., in their rules relating to their respective policies for charter coach cancellation charges embodied in Greyhound-Trailways Exhibit A offered at the hearing, are just and reasonable and should be allowed to said carriers; and (4) that the deletion of the two equipment points proposed by Trailways Southeastern Lines, Inc., is just and reasonable and should be allowed.

On November 3, 1980, the Public Staff filed a motion requesting that certain attached testimony be accepted as a late filed exhibit in rebuttal to Rebuttal Exhibit No. 1, sponsored at the hearing by witness Robert E. Brown of Carolina Coach Company. On November 14, 1980, Carolina Coach Company filed a verified response to the motion filed November 3, 1980.

Based upon the evidence produced at the hearing, the testimony and exhibits introduced at the hearing, and the entire record, the Commission makes the following

FINDINGS OF FACT

1. That the Respondents in this docket include American Coach Lines, Inc.; Appalachian Coach Company, Inc.; Blue Ridge Lines, Ltd.; Carolina Coach Company; S. D. Small, d/b/a Central Bus Lines of North Carolina; D&M Bus Company; Gaston-Lincoln Transit, Inc.; Greyhound Lines, Inc. (East); Piedmont Coach Lines, Inc.; Seashore Transportation Company; Southern Coach Company; Trailways Southeastern Lines, Inc.; Virginia Dare Transporation Company, Inc.; T.R.Y., Inc., d/b/a Young's Transportation Company; and the National Bus Traffic Association, Inc., Agent (hereinafter the NBTA).

2. That Respondents, except for the NBTA, are engaged in the intercity transportation of passengers for compensation in North Carolina intrastate commerc and are subject to the jurisdiction of this Commission under the Public Utilities Act.

3. That the tariffs submitted on June 2, 1980, in connection with the Application, were scheduled to become effective upon North Carolina intrastate traffic on July 15, 1980, and proposed increases therein which varied according

to the carriers participating in the respective increases and the type of service provided: through, local, and interline passenger fares and charges were proposed to be increased by 23.5% for account of Carolina Coach Company; Greyhound Lines, Inc. (East); Piedmont Coach Lines, Inc.; Seashore Transportation Company; Southern Coach Company; and Trailways Southeastern Lines, Inc. Package express rates were proposed to be increased by 23.5% for account of all Respondents by means of an amended rate chart, and various changes in bus traffic rules and regulations, as well as increases in charter rates and charges, were proposed on behalf of those Respondents previously indicated here-inabove.

4. That the four study carriers filing justification data (Carolina Coach Company, Greyhound Lines, Inc. (East), Seashore Transportation Company, and Trailways Southeastern Lines, Inc.) are representative of the operations of all the carriers participating in the uniform rate application before the Commission.

5. That the cost-separation methodology employed by the Public Staff in this proceeding is just and reasonable and consistent with procedures previously supported by the Commission.

6. That the present operating ratio experienced by the four cost study carriers was *113.6% for the updated base year.

7. That the four study carriers seek additional annual revenues of $2,184,294 from the proposed increases upon North Carolina intrastate fares and charges.

8. That the proposed rates result in a just and reasonable operating ratio of 93.2% for the study group.

9. That the Respondents should "roll-in" the entire fuel surcharge which was in effect at the date of the hearing in this docket.

10. That the following proposed changes in the rules and regulations governing the charter coach operations of Respondents, as stipulated and agreed to by Respondents and the Public Staff, are just and reasonable and should be allowed:

a. The deletions of the 38-passenger bus and charter service tariff items on account of Respondents proposing such deletions;

b. The rule change embodied in Greyhound-Trailways Exhibit B at the hearing, regarding the effectiveness of "Contract" rates for the account of all Respondents;

c. The changes on account of Greyhound Lines, Inc. (East), and Trailways Southeastern Lines, Inc., in their rules relating to their respective policies for charter coach cancellation charges embodied in Greyhound-Trailways Exhibit A at the hearing; and

d. The deletion of the High Point and Salisbury, North Carolina, equipment points on account of Trailways Southeastern Lines, Inc.

11. That a need for market studies and analyses for the purpose of determining ways by which the most economical service may be rendered is evident.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

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. 4

The Commission takes note of the Public Staff's Report filed on August 31, 1979, in Docket No. B-105, Sub 38. In that report, it was the recommendation of the Public Staff that the operating data of Carolina Coach Company, Greyhound Lines, Inc. (East), Seashore Transportation Company, and Trailways Southeastern Lines, Inc., be used in future rate proceedings as representative of the entire industry. The four companies are, by far, the significant carriers operating in North Carolina. Witness Sovel of the Public Staff testified that these four companies represent 95% of the passenger and express traffic handled in this State. The use of these four companies as cost study carriers is reasonable and the composite operating results of these carriers would be indicative of the motor passenger industry operating in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

At issue in this proceeding is the cost separation methodology to be used to allocate expenses to North Carolina intrastate passenger operations. One Respondent, Carolina Coach Company, has presented North Carolina intrastate operating data arrived at by using a divisional basis. The Public Staff has presented North Carolina intrastate operating data for Carolina Coach Company, which reflects a 4.6% lower operating ratio by application of a summary allocation procedure.

The previous general rate proceeding of Respondents (Docket No. B-105, Sub 38) was dominated by the cost allocation issue. Consistent with the Commission Order in Docket No. B-105, Sub 38, the involved parties arranged conferences to design an acceptable allocation procedure and the Public Staff filed a report containing recommended allocation procedures. The Public Staff's report filed on August 31, 1979, specifically called for the summary allocation basis. In addition, the report further stated that "nothing in this recommendation shall be deemed to preclude any party from offering evidence in addition to the above minimum data filing requirements in future rate proceedings..."

The Commission concludes that the summary allocation procedure advocated by the Public Staff in this proceeding should be used in future general rate cases by the Applicants. This procedure should be considered as a necessary and integral part of the minimum filing requirements supporting an application for general rate relief. This does not preclude Applicants from presenting other allocation methods for consideration by this Commission, provided the summary allocation procedure results are also presented.

*One adjustment to actual expenses was required. Witness Christensen, of Greyhound Lines, Inc., testified that a COLA labor increase given to Greyhound's employees would have increased its "present" intrastate expenses by $38,000. Incorporating this adjustment, the present level of revenues was $8,858,020 with expenses of $10,059,269, resulting in a present operating ratio for the study carriers of 113.6%.

In connection with this, the Commission concludes that in order to maintain the study carrier approach for setting rates in a general rate case for the Applicants, it is necessary for the Applicants to file composite operating results under both present and proposed rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Witness Sovel of the Public Staff testified that the study carriers earned $8,858,020 in revenues while incurring expenses of $10,021,269, on an intrastate basis. These amounts were based on end-of-period adjustments made by the Respondents to the test year ended December 31, 1979.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Witness Sovel of the Public Staff testified that the total additional dollars requested by the four study carriers is $2,290,583, annually. Since this figure is a composite of the revenue dollars projected by each of the study carriers, there is no controversy in this finding.

However, the figure requires two adjustments. Witness David Taylor, of Trailways, Inc., testified that the revenue projections for Trailways Southeastern Lines, Inc., were overstated. Because of compounding the effects of the fuel surcharge, Trailways Southeastern overstated its projected revenues by $104,335. The Public Staff concurred with this finding. The Commission concludes that this adjustment is reasonable.

Greyhound Lines, Inc. (East), made a similar error in projecting the impact of the proposed increase. Witness Sovel testified that Greyhound overstated the requested dollars by $1,954. Witness Christensen of Greyhound concurred that the projected revenues were overstated. The Commission concludes this adjustment is reasonable.

Upon incorporating the two above described adjustments into the original dollars requested, the Commission finds and concludes that the annual additional dollars requested are $2,184,294.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Based upon the Commission's findings and conclusions under Findings of Fact Nos. 6 and 7, the Commission concludes that the Applicants' end-of-period operating ratio under *proposed rates is 93.2%. The operating ratio is both fair and reasonable to the Applicants and their using and consuming public. The Commission notes here that the operating results supporting this 93.2% operating ratio is based, in part, on the inclusion in base rates of fuel surcharge in effect for the Applicants at the time of the filing of this application for general rate relief.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

A portion of the increase sought is the result of a roll-in of the fuel surcharge which was in effect at the time of the application was filed. On June 2, 1980, the fuel surcharge applicable for Respondents was 3.5%. Application No. 58 requests that the 3.5% fuel surcharge be included in and made a part of the general rate relief sought.

The Commission has concluded that the 23.5% increase proposed by the Applicants results in a fair and reasonable operating ratio of 93.2%. As referred to above, this 23.5% included the roll-in of a 3.5% fuel surcharge which was in effect at the time of the filing of the application for general rate relief. The Commission's files and records reflect that subsequent to the application filing date and prior to the close of the hearing of this docket, the Applicants justified and received from the Commission an increase in the fuel surcharge to 5%. The Commission files and records reflect no opposition to this fuel surcharge increase and, in fact, show that this increased fuel surcharge has not resulted in a material overrecovery of the related fuel surcharge expenses. These related fuel surcharge expenses reflect a level of fuel expense not represented in the end-of-period operating results supporting the fair and reasonable operating ratio of 93.2%. Based on this, the Commission concludes that the roll-in of the entire fuel surcharge of 5%, now rightfully in effect for the Applicant, should be implemented, and that this action will not result in a lower operating ratio than the 93.2% found to be fair and reasonable. Finally, future fuel surcharge adjustments should be based on the Applicants' "North Carolina Average Actual End of Month Cost Per Gallon" for September 1980, as requested by the Applicants.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding comes from the application and record in this proceeding. This finding is not contested and is not an issue in the immediate proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

In reviewing Respondents' efforts toward marketing its service, the record in this proceeding is muddled. Witness Elliott of Carolina Coach testified that "I think service between Raleigh and Durham is very adequate." His testimony followed the testimony of four public witnesses which expressed a need for improved service in the area. Witness Taylor of Trailways, Inc., stated that his firm offers no commuter discount fares; however, witness O'Bryan of Seashore testified that his firm gave a 35% discount. The Respondents have failed to express in this proceeding a definitive approach toward past improvements in the marketing of its services.

The Public Staff is the proponent of a marketing analysis. Respondents have offered testimony which detailed the efforts by various carriers to improve their market share. Witness O'Bryan testified that Seashore has recently joined the Trailways network in order to gain exposure to the national promotional efforts. He further testified that local promotional efforts and a route evaluation have been performed. Witness Elliott of Carolina Coach Company testified that similar route evaluations have been performed by Carolina Coach Company.

After a careful review of the record, it is clear to the Commission that an organized marketing study of the bus industry in this State is not only desirable, but quite possibly tantamount to the survival of the industry as it exists today.

This Commission has been informed that the four major intercity motor bus carriers operating in North Carolina and the North Carolina Department of Transportation have agreed in principle to a market study and analysis of North Carolina intrastate intercity passenger, charter, and express motor bus service upon the following basis:

a. An eight-man advisory committee shall be appointed for the purpose of selecting and advising an independent market analyst. Each of the four major intrastate North Carolina motor bus carriers: Trailways Southeastern Lines, Inc.; Greyhound Lines, Inc. (East); Carolina Coach Company; and Seashore Transportation Company, shall appoint a representative to said committee and the president of the North Carolina Bus Association shall appoint a representative to said committee on behalf of the smaller independent motor bus carriers operating in North Carolina. The North Carolina Utilities Commission shall appoint one representative to said committee, and the North Carolina Department of Transportation shall appoint two representatives to such committee. Said advisory committee shall be governed by majority vote on all matters and shall, with all due haste, select an independent market analyst to perform the aforesaid study and analysis, advise said analyst as to the purpose and parameters of said market study.

b. The cost of said study and analysis shall not exceed the sum of $40,000, and 50% of said cost shall be borne by the four major intrastate motor bus carriers operating in North Carolina, while the remaining 50% of said cost shall be borne by the North Carolina Department of Transportation. Said four motor bus carriers have agreed to apportion said cost among themselves on the basis of the ratio of each motor bus carrier's North Carolina intrastate motor bus revenue to the total North Carolina intrastate state motor bus revenue of said four carriers for the test year as utilized in this docket.

c. * The Commission requests and strongly encourages the said bus carriers, the Public Staff, and the Department of Transportation to make data and personnel available, without cost to the analyst. Any information or data, which any motor bus carrier shall designate as proprietary shall be kept confidential by all parties and shall not be released to any other motor bus carrier, nor shall it be provided to the public, unless such shall be in a form so as not to be attributable to or recognized as belonging to the particular motor bus carrier who furnished same.

d. The North Carolina Department of Transportation must obtain budget approval prior to authorizing the expenditure of departmental monies for a study and analysis such as this one; thus, all parties' interest will best be served by the setting of a timetable for the initiation and completion of said study and analysis as follows:

(1) Within 60 days from the date of this Order, the Department of Transportation must approve and appropriate its allocated share of the monies for this project. Failure to obtain such approval within said period releases all parties from their obligations hereunder.

(2) Within 30 days from the date of this Order, said parties shall appoint the aforesaid eight-member advisory and selection committee and each party shall serve notice of each appointment it makes upon the Clerk of the North Carolina Utilities Commission and all other parties. If any appointment is not so made, the committee shall function with the members who were duly appointed.

(3) Within 30 days of the appointment of the advisory and selection committee, said committee shall select and retain an independent market analyst for the purpose of conducting the aforesaid market study and analysis.

(4) Thereafter, said study and analysis shall be completed within six months from the date of the selection of said independent analyst.

e. Upon completion of said study and analysis, and upon the approval of same by the advisory and selection committee, the same shall be a matter of public information; however, any recommendations or conclusions advanced by said study or analysis shall not be binding in any way upon the motor bus carriers operating in North Carolina.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion of the Public Staff to file additional testimony should be, and the same hereby is, allowed.

2. That the Commission's Orders of Suspension and Investigation in this proceeding be, and the same hereby are, vacated and set aside.

3. That the suspension supplements to the Respondents' tariffs be cancelled by the filing of appropriate tariff schedule; that the suspended tariff schedule involved herein, scheduled to become effective on July 15, 1980, be and they are hereby, disallowed, and further, that appropriate tariff schedules shall be issued immediately to cancel said tariff schedules, publication to be in accordance with Rule R4-5(e) of the Commission Rules and Regulations governing the construction, posting, and filing of transportation tariff schedules, except as otherwise indicated herein.

4. That the Respondents involved herein seeking increased intrastate passenger fares be, and hereby are, authorized to publish appropriate tariff schedules providing for increases in local and interline intercity passenger fares, rates, and charges in the amount of *25% over those local and interline intercity passenger fares, rates, and charges in effect for the account of said Respondents prior to July 15, 1980, and subsequently, remaining in effect up to the present; provided, that such increased fares, rates, and charges be, and the same hereby are, authorized to be increased where necessary to end in the next "0" or "5," subject to publication in accordance with Rule R4-5(e) of the Commission Rules and Regulations governing the construction, posting, and filing of transportation tariff schedules, except as otherwise allowed herein.

5. That the Respondents involved herein seeking increased intrastate local and interline package express rates and charges be, and hereby are, authorized to publish appropriate tariff schedule providing for increases in their local and interline package express rates and charges in the amount of *25% over those local and interline package express rates and charges in effect for the account of said Respondents prior to July 15, 1980, and subsequently, remaining in effect up to the present; provided, that such increased fares, rates, and charges be, and the same hereby are, authorized to be increased where necessary to end in the next "0" or "5," subject to publication in accordance with Rule R4-5(e) of the Commission Rules and Regulations governing the construction, posting, and filing for transportation tariff schedules, except as otherwise allowed herein.

6. That the Respondents involved herein seeking increased charter rates and charges according to the respective tariffs be, and hereby are, authorized to publish appropriate tariff schedules providing for increases in intrastate charter coach charges to those proposed charter rates and charges reflected in the Application to be increased where necessary to reflect the roll-in of the entire 5% fuel surcharge. Such increased fares, rates, and charges be, and the same hereby are, authorized to be increased where necessary to end in the next "0" or "5," subject to publication in accordance with Rule R4-5(e) of the Commission Rules and Regulations governing the construction, posting, and filing of transportation tariff schedules, except as otherwise herein indicated.

7. That, upon appropriate tariff publication as described in Paragraph 3 hereinabove, and subject to the authorization granted hereinbelow regarding publications made effective on less than one day's notice to the Commission and the public, the following proposed changes in regulations are, and should be, allowed:

a. The deletions of the 38-passenger bus and charter service tariff items;

b. The rule change embodied in Greyhound-Trailways Exhibit B at the hearing;

c. The changes by Greyhound Lines, Inc. (East), and Trailways Southeastern Lines, Inc., in their rules relating to their respective policies for charter coach cancellation charges embodied in Greyhound-Trailways Exhibit A at the hearing; and

d. The deletions of the High Point and Salisbury, North Carolina, equipment points proposed by Trailways Southeastern, Inc.

8. That in all other respects all other proposed increases in fares, rates, and charges and adjustments of rules involved in this proceeding be, and the same hereby are, denied.

9. That the publications herein authorized or required herein may be made effective on one day's notice to the Commission and the public.

10. That, upon the publications herein authorized or required having been made, the investigations in this matter be discontinued and the docket closed, except as indicated in the paragraph following below.

11. That for purposes of computing the appropriate fuel surcharge allowance under Rule R2-16.1 for all full months subsequent to the effective date of this Order, the new "Base Period Cost Per Gallon" for each study group carrier should be the "N.C. Average Actual End of Month Cost Per Gallon" figures reflected on the respective individual fuel surcharge reports of the cost study motor carriers of passengers for September 1980.

12. That a market study and analysis of North Carolina intrastate intercity passenger, charter, and express motor bus service upon the following bases shall be conducted:

a. An eight-man advisory committed shall be appointed for the purpose of selecting and advising an independent market analyst. Each of the four major intrastate North Carolina motor bus carriers: Trailways Southeastern Lines, Inc., Greyhound Lines, Inc. (East), Carolina Coach Company, and Seashore Transportation Company, shall appoint a representative to said committee and the president of the North Carolina Bus Association shall appoint a representative to said committee on behalf of the smaller independent motor bus carriers operating in North Carolina. The North Carolina Utilities Commission shall appoint one representative to said committee, and the North Carolina Department of Transportation shall appoint two representatives to such committee. Said advisory committee shall be governed by majority vote on all matters and shall, with all due haste, select an independent market analyst to perform the aforesaid study and analysis, and shall, after consultation with said analyst, advise said analyst as to the purpose and parameters of said market study and analysis within the scope and purpose set forth in this Order.

b. The cost of said study and analysis shall not exceed the sum of $40,000, and 50% of said cost shall be borne by the four major intrastate motor bus carriers operating in North Carolina, while the remaining 50% of said cost shall be borne by the North Carolina Department of Transportation. Said four motor bus carriers have agreed to apportion said cost among themselves on the basis of the ratio of each motor bus carrier's North Carolina intrastate motor bus revenue of said four carriers in the test year as utilized in this docket.

c. * The Commission requests and strongly encourages the said bus carriers, the Public Staff, and the Department of Transportation to make data and personnel available, without cost to the analyst. Any information or data, which any motor bus carrier shall designate as proprietary shall be kept confidential by all parties and shall not be released to any other motor bus carrier, nor shall it be provided to the public, unless such shall be in a form so as not to be attributable to or recognized as belonging to the particular motor bus carrier who furnished same.

d. The North Carolina Department of Transportation must obtain budget approval prior to authorizing the expenditure of departmental monies for a study and analysis such as this one; thus, all parties' interest will best be served by the setting of a timetable for the initiation and completion of said study and analysis as follows:

(1) Within 60 days from the date of this Order, the Department of Transportation must approve and appropriate its allocated share of the monies for this project. Failure to obtain such approval within said period releases all parties from their obligations hereunder.

(2) Within 30 days from the date of this Order, said parties shall appoint the aforesaid eight-member advisory and selection committee and each party shall serve notice of each appointment it makes upon the Clerk of the North Carolina Utilities Commission and all other parties. If any appointment is not so made, the committee shall function with the members who were duly appointed.

(3) Within 30 days of the appointment of the advisory and selection committee, said committee shall select and retain an independent market analyst for the purpose of conducting the aforesaid market study and analysis.

(4) Thereafter, said study and analysis shall be completed within six months from the date of the selection of said independent analyst.

e. Upon completion of said study and analysis, and upon the approval of same by the advisory and selection committee, the same shall be a matter of public information; however, any recommendations or conclusions advanced by said study or analysis shall not be binding in any way upon the motor bus carriers operating in North Carolina.

13. That due to the roll-in of the fuel surcharge in this proceeding, the Applicant's effective fuel surcharge be, and hereby is, zeroed.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of January 1981.

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

* Corrected by Order dated 1-26-81.

DOCKET NO. B-209, SUB 20

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Duke Power Company for Authority to Adjust Its Motor Bus Passenger Fares in the City of Greensboro and Vicinity) ORDER GRANTING INCREASE IN RATES AND CHARGES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, March 11, 1981, at 10:00 a.m. and in the Auditorium Basement, Guilford County Social Services Building, 301 North Eugene Street, Greensboro, North Carolina, at 2:00 p.m., on Thursday, March 12, 1981

BEFORE: Commissioner Sarah Lindsay Tate, Presiding, Commissioner Edward B. Hipp and Commissioner Douglas P. Leary

APPEARANCES:

For the Applicant:

Shannon D. Freeman, Edward L. Flippen, Duke Power Company, 222 Church Street, Charlotte, North Carolina 28242
For: Duke Power Company

For the Intervenor:

Daniel V. Besse, North Carolina Public Interest Research, P. O. Box 17691, Greensboro, North Carolina 27410
For: North Carolina Public Interest Research Group

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Karen E. Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This matter arose upon the filing with the Commission, on October 10, 1980, of an application by Duke Power Company (Applicant, the Company, or Duke), P. O. Box 2178, Charlotte, North Carolina 28211, seeking authority to increase its motor bus passenger fare charges and to make tariff adjustments applicable on the transportation of passengers in the City of Greensboro, North Carolina, and vicinity, effective November 15, 1980. The following increased fares were proposed in the application:

Adult Cash*	$ .50
Student Cash	.35
Senior Citizen Cash	.35
Adult 11-Ride Card*	5.00
Senior Citizen 10-Ride Card	3.00
Student 10-Ride Card	3.00
Adult Transfer	.10
School & Senior Citizen Transfer	No Charge

*Transfer Fare Not Included

The Commission being of the opinion that the proposed increase in bus passenger fares, charges and tariff adjustments, as herein set out, were matters affecting the public interest and that the matter constituted a general rate case under G. S. 62-137, issued an Order on November 12, 1980, suspending the proposed tariff schedule, instituted an investigation, and assigned the matter for hearing to determine whether said publication was just, reasonable and otherwise lawful.

On October 22, 1980, Mr. Steve Schewel for the People's Alliance, Durham, North Carolina, filed a protest requesting that the proposed tariff be suspended

and the matter be assigned for hearing at night time to allow the public, especially those who work during the day, an opportunity to appear at the hearing.

On November 26, 1980, the Commission issued its Order scheduling hearings to begin on March 11, 1981, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and in the Auditorium Basement, Guilford County Social Services Building, 301 North Eugene Street, Greensboro, North Carolina, at 2:00 p.m., on Thursday, March 12, 1981, and at 7:00 p.m. on March 12, 1981.

The November 26, 1980 Order also required Respondent to give sufficient notice to the public of the time, place and purpose of the hearing by publication in newspapers having general circulation in the Greensboro area and in each of its buses involved in the Greensboro operation and further, by public service announcements on radio and television in the affected area.

Petitions to intervene in this docket have been filed by the North Carolina Public Interest Research Group and the Public Staff of the North Carolina Utilities Commission. These interventions were allowed by appropriate Commission orders.

The matter came on for hearing as scheduled on March 11, 1981, in the Commission Hearing Room, Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

In support of the proposed tariff increase, the Company offered testimony and exhibits from the following witnesses: William H. Linn, Jr. Manager of Transportation, Duke Power, Greensboro District; Don T. Stratten, Manager of the Revenue Studies; and Janet L. Rada, Analyst in the Company's Rate Department.

The Public Staff presented testimony and exhibits from David A. Poole, Staff Accountant.

The public hearing was well attended and the following public witnesses appeared to offer testimony: Suzanne Sullivan, for PIRG, Mary M. Wade, Bob Jackson, Richard Zweigenhaft, Allen Myrick, Lillian Mebane, Sally Pickens, Arthur Donsky, for PIRG, Melanie Bassett, Carolyn Allen, Byron Sykes, and Arthur Saltzman.

The principal concerns expressed by the public witnesses, who testified at the hearing, were that: Duke Power's Greensboro Bus System was not a dependable transit system; one which the poor, elderly and handicapped could afford; the need for better service insofar as better scheduling to enable more people to take advantage of the service; an increase in rates would cause a decrease in riders; a need for rain shelters; a need for some type of assistance for handicapped riders; better routes for a larger area; more advertising of the service offered; Sunday service; better access to bus schedules and a central stop or loading center in downtown Greensboro; improved marketing techniques are needed; there was a need for an off-peak senior citizens and handicapped discount; there should be a delay in implementing the increased rates for six (6) months until Duke improved ridership by 10%; and others.

Based on the record in this docket, including the application of Duke Power Company, and the evidence and exhibits presented at the hearing, the Commission makes the following:

FINDINGS OF FACT

1. That the Applicant, Duke Power Company, is engaged in the transportation of passengers for compensation in the City of Greensboro, North Carolina and is subject to the jurisdiction of the Commission with respect to the fixing of rates and charges for such services.

2. That Duke Power Company seeks authority from the Commission to implement increased fares as follows:

Adult Cash*	$ .50
Student Cash	.35
Senior Citizen Cash	.35
Adult 11-Ride Card*	5.00
Senior Citizen 10-Ride Card	3.00
Student 10-Ride Card	3.00
Adult Transfer	.10
School & Senior Citizen Transfer	No Charge

*Transfer Fare Not Included

3. That for the 12 months ended June 30, 1980, Duke Power Company's Transportation Division for Greensboro, North Carolina experienced a net operating loss of $890,736. The Division's operating ratio for that year before income taxes was 312.3%.

4. That decreases in the number of passengers carried and increases in operating expenses are the factors principally responsible for the decline in the Greensboro Transportation Division's net operating income over the last several years.

5. That the availability of an off-peak card and a senior citizens fare at reduced rates may result in an increase in ridership.

6. That it is desirable to increase the number of passengers carried by Duke Power Company's Greensboro Transit Division and that Duke should take positive steps in marketing and sales to improve the ridership.

7. That the Applicant needs additional operating revenues to partially offset projected operating losses.

8. That, based upon the test year level of operations as adjusted under approved rates, the Applicant would have experienced an operating ratio of 258.1% without any change in ridership (operating expense of $1,310,222, operating revenues of $507,545, including additional revenues of $88,000).

9. That, while service is generally adequate, some passengers using the buses of Duke Power Company's Greensboro Transit System are experiencing difficulties in service.

Based on the above Findings of Fact, the Commission makes the following:

CONCLUSIONS

Duke Power Company, by application filed with this Commission, is seeking increases in its rates and charges for passenger service in Greensboro, North Carolina. The evidence and exhibits presented by the Company and by the Public Staff lead to the conclusion that the Company is faced with substantial and increasing operating losses. The reason for these losses is twofold: a decline in the number of passengers who ride the Company's buses, and an increase in operating expenses incurred by the Company.

For the 12 months ended June 30, 1980, Duke Power Company experienced a net operating loss of $890,736 on its transit operations in Greensboro, North Carolina. The Company's operating ratio for that year before income taxes was 312.3%.

Even with the proposed increase, Duke Power's Greensboro Transit System will have an operating ratio of 258.1%. This is based on present ridership, and additional revenues of $88,059, which would result in an overall loss of $802,677, and operating revenues of $507,545 with operating expenses of $1,310,222.

These unquestioned figures leave the Commission with but one thought, what can be done to reduce the loss? One witness, Mr. Arthur Donsky, a Co-Director of North Carolina Public Interest Research Group, Greensboro, North Carolina, testified at length about suggestions that would help improve ridership in Duke's Greensboro Transit System. He emphasized the fact that increased gasoline prices have been followed by additional statewide passenger usage of intracity buses, particularly during the year 1979. He stated at page 48 of the transcript, commenting on a slight Greensboro ridership increase:

> "I would say that it is not due to any marketing efforts by Duke Power since Duke didn't do any real marketing...."

Witness Donsky went on to state that Duke has many avenues at hand for improving ridership, such as electric bill inserts in the City of Greensboro, radio and television ads, civic club appearances and speeches by Duke Transit personnel. However, Duke has not availed itself of any of these means to improve its corporate transit image.

Throughout these proceedings, the Public Staff has proposed that Duke Power Company should improve its marketing techniques and North Carolina Public Interest Research Group (NCPIRG), another intervenor, agrees. The Commission concludes that the evidence is overwhelming that Duke, in its Greensboro Transit operations, has an overwhelming responsibility and need to examine marketing and advertising techniques which would increase ridership. One such technique that the Commission concludes Duke Power should immediately implement is to make maps and schedules available on each bus and rate schedules for distribution to customers should be readily available.

The Commission agrees with the Public Staff and NCPIRG that off-peak usages should be encouraged through the new rate structure approved herein. After

careful consideration of this matter, the Commission concludes that the most appropriate rate devised to achieve the desired increase in off-peak ridership is an off-peak twenty ride card effective for sixty days. This card should be exclusive of the applicable transfer charge, which in the case of senior citizens or students is zero, upon presentation of the proper identification, as denoted in Rule 6 of the Tariff. Any tranfer initiated upon use of this card is good only during the off-peak period, in order to stay consistent with the intentions of this off-peak discount fare, that being to increase off-peak ridership and revenue. The availability of this off-peak card should be promoted, along with general usage of the bus system, by way of news releases and public service announcements, or in any other way that would not require additional expenditures. Certainly any effort, such as this, to increase ridership benefits all parties, and therefore the Applicant is strongly encouraged to actively seek out and implement other such programs.

NCPIRG, during the hearing, proposed that the Commission postpone final decision of this rate case for a period of six months. The Commission concludes that Duke Power's Transit System, in Greensboro, North Carolina, needs financial help immediately and; therefore, the new rates, with the off-peak pass, should become effective immediately. However, the Applicant should be acutely aware that the Commission is most concerned with many of the transit system's problems that were testified to at the public hearing by the numerous public witnesses. It is in this light that the Commission concludes that Duke Power Company should file with this Commission, twelve months from the date of issuance of this Order, a written report, detailing the steps Duke has taken during this twelve-month period to improve its marketing techniques, ridership, and overall transit operations in Greensboro, North Carolina. This report presented by Duke shall include, but not be limited to, ridership polls, new route proposals, advertising, and any innovative techniques to improve the transit operations in Greensboro, North Carolina.

Lastly, the Commission concludes that the Company should closely review the testimony offered in this docket by public witnesses and should aggressively seek means to remedy complaints regarding service.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order of Suspension in this docket dated November 12, 1980, be, and the same hereby is, vacated and set aside for the purpose of allowing the Local Passenger Tariff attached hereto as Attachment A to become effective.

2. That the publication authorized hereby may be made on 10 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 Duke Power Company should actively explore all areas available in order to implement every fair and reasonable step that will increase the operational stability and effectiveness of the transit system in Greensboro, North Carolina and that a written report, detailing these steps shall be filed with the Commission twelve months from the issuance date of this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of May 1981.

(SEAL)

North Carolina Utilities Commission
Sharon C. Credle, Deputy Clerk

ATTACHMENT A

N.C.U.C. No. 22
Cancels
N.C.U.C. No. 20

DUKE POWER COMPANY

Local Passenger Tariff No. 2-E

Supercedes

Local Passenger Tariff No. 2-D

Naming

Passenger Fares

In The

City of Greensboro

As Shown Herein

Together With

Rules and Regulations Governing Same

Issued: Effective:

Issued on Ten (10) Days' Notice

Pursuant to Order of the

North Carolina Utilities Commission in Docket No. B-209, Sub 20

Dated: _____

Issued by

Douglas W. Booth

Duke Power Company

422 South Church Street

Charlotte, North Carolina 28242

MOTOR BUSES

DOCKET NO. B-209, SUB 21

LOCAL PASSENGER TARIFF
CITY OF GREENSBORO

RULE NO. 1

Passengers will be transported by the Company only upon payment of the exact cash fare, upon payment of the exact transfer fare and presentation of a valid transfer, and no cash change will be given to any passenger. Ride Cards may be purchased either at the business office, 217 North Elm Street, or the Transit Center, 320 East Friendly Avenue or the branch office at 206 North Church Street. Passengers not having the exact fare may request from the bus operator a receipt in lieu of cash change for amounts of change of 10¢ or more, which receipt shall be redeemable in cash within 60 days thereafter upon presentation at the office of the Company in person during normal business hours. Passengers with more than the exact fare, who elect not to receive a receipt, may ride but will not receive change.

RULE NO. 2

SCHEDULE OF FARES AND CHARGES
FOR GREENSBORO AND VICINITY

Adult Fares :	
Adult Cash*	50c
Adult 11-Ride Card*	$ 5.00
Transfer	10c
School Fares :	
Student Cash	35c
Student 10-Ride Card	$ 3.00
Transfer**	No Charge
Senior Citizen Fares :	
Senior Citizen Cash (65 Years and Older)	35c
Senior Citizen 10-Ride Card	$ 3.00
Transfer**	No Charge
Off-Peak :	
Off-Peak 20-Ride Card***	$ 6.00

*Transfer Fare Not Included

**See Rule No. 6

***Users of this card may purchase transfers at the regular price, to be valid only during the off-peak period, except in the case of Senior Citizens or Students, who are covered under Rule 6.

Note: All Ride-Cards good only for sixty (60) days from date of purchase.

MOTOR BUSES

RULE NO. 3

Children, ages 3 through 10, are entitled to ride for one-half (1/2) the cash adult fare when accompanied by a parent. Children, ages two and under, are entitled to ride free when accompanied by a parent.

RULE NO. 4

School fares for school children attending public, private, or parochial elementary school, or high schools, in grades between kindergarten and twelfth grades, both inclusive, shall be good only for transportation of such school children between their homes and such schools between the hours of 7:30 A.M. and 4:30 P.M. on regular school days during the regular school term.

*RULE NO 5

Adult passengers with transfers, when entering another bus shall hand the driver the transfer and deposit the exact ten (10) cents transfer fare in the fare box.

RULE NO. 6

To transfer at no charge, a school I.D. is required for school children and a senior citizen I.D. is required for senior citizens.

RULE NO. 7

A special rate equal to one-half the cash adult fare may be offered to all passengers up to two times a year to support city festivals and other city celebrations.

RULE NO. 8

Off-Peak passes will be honored only during the following hours of operation: Monday through Friday - after 9:00 A.M. until 3:00 P.M., Saturdays - all day, and Holidays - all day. At all other times, passengers will pay the respective regular fare.

*RULE NO. 9

CHARTER BUS RATES

Minimum of three (3) hours or $2.90 per mile, whichever is greater	$90.00
Each additional one (1) hour or fractional hour of $2.90 per mile whichever is greater	$30.00

*Contains no changes from present tariffs

DOCKET NO. B-209, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application by Duke Power Company for Authority to Adjust) ORDER GRANTING
Its Motor Bus Passenger Fares in the City of Durham and) INCREASE IN RATES
Vicinity) CHARGES

HEARD IN: City Council Chambers, City Hall, Durham, North Carolina, and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on March 3 and 4, 1981

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Edward B. Hipp and Douglas P. Leary

APPEARANCES:

For the Applicant:

Shannon D. Freeman and Edward L. Flippen, Duke Power Company, P. O. Box 33189, Charlotte, North Carolina 28242

For the Using and Consuming Public:

Theodore C. Brown, Jr., and Karen E. Long, Public Staff, North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602

For the City of Durham:

William I. Thornton, Jr., City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701

For the Intervenor:

Alice A. Ratliff, North Carolina Legal Assistance Program on behalf of Grace Beck Hamm, P. O. Box 2101, Durham, North Carolina 27702

BY THE COMMISSION: On October 10, 1980, Duke Power Company (Applicant, Company, or Duke) filed an Application with the Commission for authority to adjust and increase its motor bus passenger fares in the City of Durham and vicinity. The proposed schedule of general fares is as follows:

Adult Cash*	$ .50
Student Cash	.35
Senior Citizen Cash	.35
Adult 11-Ride Card*	5.00
Senior Citizen 10-Ride Card	3.00
Student 10-Ride Card	3.00
** 30-day Off-Peak Pass (Unlimited Rides)	12.00
Adult Transfer	.10
School & Senior Citizen Transfer	No Charge

*Transfer Fare Not Included

The fares presently in effect are as follows:

MOTOR BUSES

Adult Cash*	$ .40
Student Cash	.25
Senior Citizen Cash	.30
Adult 10 One-Way Ride Pass*	4.00
Senior Citizen 10 One-Way Ride Pass	3.00
Adult Transfer	.10
School & Senior Citizen Transfer	No Charge
30-Day Off-Peak Pass	6.00

*Transfer Fare Not Included

** In its Application filed October 10, 1980, Duke proposed to eliminate its present 30-Day Off-Peak Pass. At the conclusion of the hearing on March 4, 1981, the Company amended its Application by proposing to retain the off-peak pass in its proposed fare structure but at a charge of $12.00 per pass.

The Commission, being of the opinion that the increase in rates and charges proposed by Duke were matters affecting the public interest, by Order issued on November 12, 1980, declared the Application to be a general rate case pursuant to G.S. 62-137; suspended the proposed rate increases for a period of 270 days; set the matter for hearing on March 3, 1981, in the City Council Chambers, City Hall, Durham, North Carolina, and on March 4, 1981, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina; required Duke to give notice of such hearing by newspaper publications and by public service announcements on radio and television; and established the test period to be used in this proceeding.

Notice of the Application and hearing was published on December 23 and 30, 1980, and January 6, 1981, in the Durham Morning Herald; notice was provided over WTVD-TC on December 26 and 29, 1980, and January 6, 1981; notice was provided over WDNC-Radio on December 26 and 31, 1980, and January 8, 1981; and notice was placed on buses in the Durham transit system on February 25 through March 3, 1981.

A Request for Hearing and Petition for Leave to Intervene was filed on November 10, 1980, by the City of Durham. The City requested in its filing that the Commission enter upon a hearing concerning the lawfulness of the proposed fares by Duke Power Company, that the new rates be suspended, that the City be admitted as an Intervenor, that the matter be set for public hearing in the City of Durham, and that all or a substantial part of such hearing be conducted in the evening. The City was permitted to intervene by Order issued on November 17, 1980.

On December 10, 1980, a Petition to Intervene was filed by People's Alliance of Durham, North Carolina. People's Alliance was permitted to intervene by Order issued on December 17, 1980.

The North Carolina Public Interest Research Group filed a Petition to Intervene on December 11, 1980. The North Carolina Public Interest Research Group was permitted to intervene by Order issued on December 17, 1980.

Subsequently, on January 23, 1981, Notice of Intervention was given by the Public Staff, by and through its Executive Director, Robert Fischbach, on behalf of the Using and Consuming Public. The intervention of the Public Staff is

deemed recognized pursuant to Rule 1-19(e) of the Commission Rules and Regulations.

On February 19, 1981, a Petition of Intervention was filed by the North Central Legal Assistance Program on behalf of and for Grace Beck Hamm, and on February 25, 1981, by Order, the intervention was permitted.

By letter dated November 17, 1980, Duke Power Company offered to sell to the City of Durham its transit system in Durham. Alternative offers of sale were made by Duke to the City of Durham on November 20, 1980, and February 2, 1981. At the close of the hearing on March 4, 1981, the City had not officially responded to the offers by Duke.

The matter came on for hearing as scheduled. In support of its proposed fare increases, the Company offered the testimony and exhibits of the following witnesses: W. G. Plyler, Duke's Manager of Transportation in Durham, who described the operations of the Durham Transit System; Don T. Stratton, Manager of Revenue Studies, who testified to the Company's financial position and the results of its operations under present and proposed fares; and Janet L. Rada, who testified with respect to the development and design of the proposed fare structure and expected revenues.

The Public Staff offered the testimony and exhibits of David A. Poole, Staff Accountant, who testified to the reasonableness of Duke's operating results under the proposed fares.

The public hearing was well attended and the following public witnesses appeared and offered direct testimony: Klay Box, Zakiyyah Saafir, Minnie Mae Lee, Estelle Laws, Elwood Riverbark, Charles Eubanks, Joe Bobbitt, Howard Sherman, Mary MacSarily, Estelle Clinton, Eliasa Walker, Mildred Carlton, Hope P. Blalock, Grace Beck Hamm, Paul Leubke, Kenny Foscue, Marilyn Butler, Dave Rahdert, Peter Mark, Frede Kocher, Barbara Harris, Steven Peters, Virginia Englehard, David Tucker, Willie Lovette, Dave Mortinson, and Alan Evelyn.

The principal concern expressed by the public witnesses was the need for special consideration for senior citizens and other persons on fixed income. According to the witnesses, the elimination of the off-peak pass, as originally proposed by the Company, would have a negative impact on senior citizens and those persons on fixed incomes that use the bus. The public witnesses also testified that the existing bus service was not sufficiently dependable, that route and schedule information was not readily ascertainable, and that bus shelters were not conveniently located.

The Applicant, Intervenors, and Public Staff were provided an opportunity to file proposed Orders on or before May 18, 1981 (30 days after completion and mailing of the transcript).

Based on the record of this proceeding, the verified Application, the testimony and exhibits received into evidence at the hearing, the Commission makes the following

MOTOR BUSES

FINDINGS OF FACT

1. That the Applicant, Duke Power Company, is engaged in the transportation of passengers for compensation in the City of Durham, North Carolina, and is subject to the jurisdiction of this Commission with respect to the fixing of rates and charges for such service.

2. That the rates presently in effect for transit service in Durham were approved by the Commission in Docket No. B-209, Sub 11, effective for service on and after July 1, 1978.

3. That for the 12-month test year ended June 30, 1980, the net operating loss was $909,011, resulting in an operating ratio of 247.5%.

4. That after giving effect to the proposed increase in fares, Duke's test year adjusted operating loss from its transit system in the City of Durham and vicinity is $835,299, resulting in an operating ratio of 203.0%.

5. That decreases in the number of passengers carried and increases in operating expenses are the factors principally responsible for the decline in the Company's net operating revenues.

6. That Duke's proposed Ride-Cards offered at reduced rates to all passenger classes and the 20 ride off-peak card approved herein should result in an increase in ridership.

7. That, while service is generally adequate, passengers using the Duke Power Company transit system in Durham are experiencing some inefficiencies in service.

Based on the Findings of Fact, the Commission makes the following

CONCLUSIONS

Duke Power Company, by Application, filed with this Commission for authority to adjust its motor bus passenger fares in Durham, North Carolina. The evidence and exhibits presented in this case were uncontradicted as to the Applicant's need for rate relief. It is further uncontradicted that the Company is faced with substantial and increasing operating losses. The reason for these losses is twofold: a continuing decline in the number of passengers carried by the Durham transit system and an increase in operating expenses incurred by the Company. Since 1972, the number of passengers carried by Duke Power Company has declined annually, except for a slight increase in 1980. Simultaneously, operating costs have increased significantly. For example, the cost of fuel and motor oil for the 12 months ending June 30, 1979, increased 52% when compared to the 12 months ending June 30, 1980.

In the matter of accounting, only minor adjustments are at issue. Applicant shows that its proposed fare increase with an adult attrition factor of 10.4% and a student attrition factor of 12.4% will result in additional revenues of approximately $117,293. The Public Staff assumes that Duke transit ridership in Durham will remain relatively constant and that the proposed fare increase will result in additional revenues of approximately $146,000. The Commission

concludes that for purposes of determining fair and reasonable rates in this proceeding the Public Staff's additional revenue amount of $146,000 is appropriate.

The City of Durham, through cross-examination of witnesses sponsored by the Applicant, sought to demonstrate the desperate impact of the elimination of the off-peak pass on low as well as fixed income persons. After careful consideration of this matter, and based on the entire evidence of record, the Commission concludes that a discounted fare effective during the off-peak should be a part of the Applicant's tariffs. The most effective discounted fare, that would achieve both Commission objectives to increas ridership and revenues, is a 20-ride card for $6.00. Therefore, the Commission concludes that this card should be implemented by the Applicant, to be effective during the off-peak hours of Monday through Friday from 9:00 a.m. to 3:00 p.m., and all day Saturday and Holidays. This card should be exclusive of the applicable transfer charge, which in the case of senior citizens or students is zero, upon presentation of the proper identification, as denoted in Rule 6 of the tariff. Any transfer initiated upon use of this card is good only during the off-peak discount fare, that being to increase off-peak ridership and revenue. The availability of this off-peak card should be assertively promoted, along with general usage of the bus system, by way of news releases and public service announcements, or in any other way that would not require additional expenditures. Certainly any effort, such as this, to increase ridership benefits all parties, and therefore the Applicant is strongly encouraged to actively seek out and implement other such programs.

The Commission has the duty to balance the needs and rights of both the Company and the public. On one hand, there is the need and right of the citizens of Durham to have efficient, economical mass transportation and on the other hand, there is the need and right of Duke Power Company to a fair return on its investment or just compensation for the service it provides (under Duke's proposed fare increases the Company will neither realize a profit nor break-even in the operation of its Durham transit system). It is the legal responsibility of the Commission to assure, as much as possible, the equitable balance of those interests.

While the Commission concludes that the evidence clearly demonstrates that the proposed tariff increases are not unreasonable, the Company must nevertheless make every effort to provide its customers with dependable and efficient bus service. The Commission, therefore, concludes that the Applicant should aggressively seek means to remedy complaints regarding service where reasonably possible and further, the Company should make every effort to market and promote its Durham transit service.

These efforts should include not only those denoted previously herein, but should also include, among others, the availability of maps and rate schedules on each bus, for distribution to the transit system's customers.

Finally, the Commission concludes that, in order to satisfy its intense concern that Duke make every reasonable effort to improve the transit system's operations, the Applicant must file with the Commission, 12 months from the date of issuance of this Order, a written report. This report should detail the steps taken by Duke during this 12-month period to improve its marketing techniques, ridership, and overall transit operations in Durham, North Carolina.

This report should include, but not be limited to, ridership polls, new route proposals, advertising, and innovative techniques to improve the transit operations. In formulating these plans, the Applicant should closely review the testimony offerred in this docket by the public witnesses.

The Commission would be remiss if attention was not afforded herein to the Applicant's proposals to sell the involved transit system to the City of Durham. The City has turned down each offer made by the Company. Though the Commission cannot order the City of Durham to purchase this system, it certainly feels that the citizens of Durham are entitled to due consideration in this matter. In the past two rate cases, the Commission has admonished the City of Durham to assume some responsibility toward providing transportation for its citizens. The Commission again strongly encourages the City of Durham, like other North Carolina cities, to assume responsibility for the transportation needs of its citizens.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order of Suspension and Investigation in this docket dated November 12, 1980, be, and the same hereby is, vacated and set aside for the purpose of allowing the Local Passenger Tariff attached hereto as Exhibit A to become effective.

2. That the publication of fares hereby approved, which shall comply in all respects with the Commission Rules and Regulations, shall become effective on 10 days' notice to the Commission and to the public.

3. That Duke Power Company should actively explore all areas available in order to implement every fair and reasonable step that will increase the operational efficiency and effectiveness of the transit system in Durham, North Carolina, and that a written report detailing these steps shall be filed with the Commission 12 months from the issuance date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of May 1981.

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

DOCKET NO. B-209, SUB 21

LOCAL PASSENGER TARIFF
CITY OF DURHAM

RULE NO. 1

Passengers will be transported by the Company only upon payment of the exact cash fare, upon payment of the exact transfer fare and presentation of a valid transfer, and no cash change will be given to any passenger. Ride Cards may be purchased either at the business office, 101 East Main Street, or the Transit Center, 111 Vivian Street, Durham, North Carolina. Passengers not having the exact fare may request from the bus operator a receipt in lieu of cash change for amounts of change of $.10 or more, which receipt shall be redeemable in cash within 50 days thereafter upon presentation at the office of the Company in person during normal business hours. Passengers with more than the exact fare, who elect not to receive a receipt, may ride but will not receive change.

MOTOR BUSES

SCHEDULE OF FARES AND CHARGES
FOR DURHAM AND VICINITY

Adult Fares:

Adult Cash*	$ .50
Adult 11-Ride Card*	$5.00
Transfer	$ .10

School Fares:

Student Cash	$ .35
Student 10-Ride Card	$3.00
Transfer**	No Charge

Senior Citizen Fares:

Senior Citizen Cash (65 Years and Older)	$ .35
Senior Citizen 10-Ride Card	$3.00
Transfer**	No Charge

Off-Peak:

Off-Peak 20-Ride Card***	$6.00

* Transfer Fare Not Included
** See Rule No. 6
*** Users of this card may purchase transfers at the regular price, to be valid only during the off-peak period, except in the case of senior citizens or students, who are covered under Rule 6.

Note: All Ride Cards good only for sixty (60) days from date of purchase

RULE NO. 3
Children, ages 3 through 10, are entitled to ride for one-half (1/2) the cash adult fare when accompanied by a parent. Children, ages two and under, are entitled to ride free when accompanied by a parent.

*RULE NO. 4
School fares for school children attending public, private, or parochial elementary school, or high schools, in grades between kindergarten and twelfth grades, both inclusive, shall be good only for transportation of such school children between their homes and such schools between the hours of 7:30 a.m. and 4:30 p.m. on regular school days during the regular school term.

*RULE NO. 5
Adult passengers with transfers, when entering another bus, shall hand the driver the transfer and deposit the exact ten (10) cents transfer fare in the fare box.

RULE NO. 6
To transfer at no charge, a school I. D. is required for school children and a senior citizen I. D. is required for senior citizens.

RULE NO. 7

A special rate equal to one-half the cash fare may be offered to all passengers up to two times a year to support city festivals and other city celebrations.

RULE NO. 8

Off-Peak passes will be honored only during the following hours of operation: Monday through Friday - after 9:00 a.m. until 3:00 p.m., Saturdays - all day, and Holidays - all day. At all other times, passengers will pay the respective regular fare.

*RULE NO. 9

CHARTER BUS RATES

Minimum of three (3) hours or $2.90 per mile, whichever is greater	$90.00
Each additional one (1) hour or fractional hour or $2.90 per mile, whichever is greater	$30.00

*Contains no changes from present tariffs (Exhibit 1)

DOCKET NO. B-209, SUB 21

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Duke Power Company for Authority to) ORDER REAFFIRMING
Adjust Its Motor Bus Passenger Fares in the City of) ORDER OF MAY 22, 1981
Durham and Vicinity

BY THE COMMISSION: On May 22, 1981, the Commission issued an Order Granting Increase on Rates and Charges. On July 7, 1981, oral argument was held on Motion to Reconsider filed jointly by the City of Durham, Grace Beck Hamm, and the North Carolina Public Interest Research Group, the People's Alliance, and the Public Staff - North Carolina Utilities Commission and on Supplemental Motion to Reconsider filed by the City of Durham.

Based upon a careful consideration of the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all of the findings, conclusions, and ordering paragraphs contained in the Order of May 22, 1981, are fully supported by the record. Accordingly, the Commission further finds and concludes that the May 22, 1981, Order should be affirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission Order of May 22, 1981, be, and hereby is, affirmed.

2. That the time for taking Exception and giving Notice of Appeal be, and hereby is, extended until 10 days after the date of this Order, pursuant to ordering paragraph 2 of the May 22, 1981, Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of July 1981.

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

MOTOR TRUCKS

DOCKET NO. T-1062, SUB 6

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Piedmont Fuel & Distributing Co., Inc., P. O. Box 477, Albemarle, North Carolina 28001 - Application for Authority to Amend Territory Description of Certificate No. C-771) RECOMMENDED ORDER) ORDER APPLICATION) IN PART

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on Friday, April 17, 1981, 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 27602
For: Piedmont Fuel & Distributing Co., Inc.

For the Protestants:

Thomas W. Steed, Jr., and Joseph W. Eason, Allen, Steed & Allen, P.A., Attorneys at Law, P. O. Box 2058, Raleigh, North Carolina 27602
For: Fleet Transport Company, Inc., and Kenan Transport Company

BENNINK, HEARING EXAMINER: By application filed on January 27, 1981, Piedmont Fuel & Distributing Co., Inc. (Piedmont or Applicant), seeks authority to amend the territorial description of Common Carrier Certificate No. C-771, Exhibit B(1), which now reads:

"Transportation of petroleum and petroleum products in bulk in tank trucks, over irregular routes, from all existing originating terminals at or near Wilmington, Thrift, Salisbury, Friendship, Morehead City, Selma, Apex, Fayetteville and River Terminal to points and places within the following counties: New Hanover, Moore, Stanly, Mecklenburg, Cleveland, Montgomery, Robeson, Columbus, Harnett, Wayne, Johnston, Greene, and Anson, and of gasoline, kerosene, fuel oils and naphthas, in bulk in tank trucks, over irregular routes, between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals."

So that said certificate will read as follows:

"Transportation of petroleum and petroleum products in bulk, in tank trucks, over irregular routes, from all existing originating terminals at or near Wilmington, Thrift, Salisbury, Friendship, Morehead City, Selma, Apex, Fayetteville and River Terminal to points and places within the following counties: New Hanover, Moore, Stanly, Mecklenburg, Cleveland, Montgomery, Robeson, Columbus, Harnett, Wayne,

Johnston, Greene, Anson, Wilkes, Rowan, Gaston, Caldwell, Iredell, Lincoln, Catawba, Watauga, and Rutherford, and of gasoline, kerosene, fuel oils and naphthas, in bulk in tank trucks, over irregular routes, between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals."

In conjunction with its application, Piedmont also filed a petition for emergency and temporary authority to transport Group 3, petroleum and petroleum products from Thrift Terminal, Mecklenburg County, to the facilities of Rhyne Milling & Oil Company, Gaston County, and the facilities of Crossroads Oil Company, Caldwell County.

By letter dated February 12, 1981, the Commission gave notice to all certificated carriers of petroleum and petroleum products in North Carolina of the Applicant's petition for emergency and temporary authority. A joint protest to both the petition for emergency and temporary authority and the application for permanent authority was filed by Fleet Transport Company, Inc. (Fleet), and Kenan Transport Company (Kenan).

The application was listed on the Commission's Calendar of Hearings dated March 6, 1981, and was thereby scheduled for hearing on Friday, April 17, 1981, at 9:30 a.m.

By Commission Order dated March 18, 1981, Fleet and Kenan (Protestants) were permitted to intervene in this proceeding as protestant parties and the petition for emergency and temporary authority was consolidated for purposes of hearing with the application for permanent authority.

Upon call of the matter for hearing at the appointed time and place, the Applicant and the Protestants were present and represented by counsel. Applicant offered the testimony of Earl H. Thomas, Applicant's President and General Manager, Roger Kizer, a driver for the Applicant and former employee of Petroleum Transportation, Inc., Donald F. Campbell, Jr., President of Crossroads Oil Company, Carl E. Goodhouse, Operations Manager for Fletcher Henley Oil Company, Max Sifford, owner of Sifford's Oil Company and Sifford's Exxon Station, and Ernest Trotter, Vice President and Manager of Rhyne Milling & Oil Company.

After the Protestants' motion to dismiss the application for permanent authority made at the close of the Applicant's evidence was denied, the Protestants offered the testimony of W. H. Kimball, Vice President of Operations and Marketing for Kenan, and the testimony of Russell E. Stone, Director of Commerce and Traffic for Fleet. At the close of the Protestants' evidence, the Protestants' renewed motion to dismiss the application for permanent authority was taken under advisement by the Hearing Examiner. The President of the Applicant, Earl H. Thomas, thereafter was recalled to the stand for further testimony, and a ruling on the Applicant's motion for temporary authority was deferred until a later time. By Order dated May 6, 1981, the Commission deferred its ruling on the Applicant's request for emergency and temporary operating authority, admitted Kenan Exhibit No. 2 into evidence, and set the deadline for submission of proposed Recommended Orders.

Based upon a careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received in evidence and judicially noticed, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Applicant is an authorized common carrier operating under Certificate of Public Convenience and Necessity No. C-771 issued by this Commission which authorizes, inter alia, transportation of petroleum and petroleum products from existing terminals to points in New Hanover, Moore, Stanly, Mecklenburg, Cleveland, Montgomery, Robeson, Columbus, Harnett, Wayne, Johnston, Greene, Anson, Cabarrus, and Union Counties.

2. The Protestant, Fleet Transport Company, Inc., is an authorized common carrier operating under Certificate/Permit No. CP-39 which authorizes, inter alia, the transportation of petroleum and petroleum products statewide.

3. The Protestant, Kenan Transport Company, is an authorized common carrier operating under Certificate/Permit No. CP-245 which authorizes, inter alia, the transportation of petroleum and petroleum products statewide.

4. By this application, Applicant proposes to amend its Certificate by adding the counties of Wilkes, Rowan, Gaston, Caldwell, Iredell, Lincoln, Catawba, Watauga, and Rutherford to its authorized scope of operations as a carrier of petroleum and petroleum products.

5. The area into which Applicant proposes to extend its operations was for many years served extensively by Petroleum Transportation, Inc. (Petroleum Transportation), a common carrier of petroleum products headquartered in Gastonia, North Carolina.

6. Within the past year, Petroleum Transportation has severely curtailed, if not ceased, its operations as a common carrier of petroleum products within the area of this application.

7. This application is supported by three petroleum-distributor shippers who have need for motor transportation of petroleum and petroleum products within a portion of the area encompassed by this application.

8. Since the deterioration of Petroleum Transportation's service, each of the supporting shippers has encountered excessive delays and other problems with delivery of products from originating terminals to their plants and facilities.

9. Crossroads Oil Company (Crossroads), Lenoir, Caldwell County, North Carolina, requires delivery of petroleum and petroleum products to 22 retail outlets and certain retail and wholesale customers located in the counties of Caldwell, Catawba, and Rutherford, North Carolina.

10. Crossroads has experienced late deliveries on most of its shipments of petroleum products since Petroleum Transportation ceased providing service.

11. Recently, Fleet has provided service to Crossroads, but, due to delays in deliveries and other associated problems, that service has not been satisfactory to Crossroads.

12. Kenan has never performed any transportation service for Crossroads.

13. Sifford's Oil Company and Sifford's Exxon Station (Sifford's), Rockwell, North Carolina, require delivery of heating oil, kerosene, and gasoline from Exxon in Salisbury to Rockwell, Rowan County, North Carolina.

14. Exxon currently delivers most of the products ordered by Sifford's, but Exxon has reduced its fleet and is no longer able to consistently make deliveries to Sifford's on a timely and satisfactory basis.

15. When Exxon is behind in its schedule, it calls upon Fleet and other common carriers, which are unfamiliar with Sifford's facilities, to make deliveries.

16. During the past year, Sifford's has experienced late deliveries on half of the shipments it has received. An eight-hour delivery time would be acceptable to said customer.

17. Kenan has never solicited Sifford's transportation business.

18. Rhyne Milling & Oil Company (Rhyne), Dallas, Gaston County, North Carolina, sells kerosene and fuel oil which it obtains from Marathon Oil Company in Charlotte.

19. Rhyne requires night deliveries to its facility in Gaston County because of limited parking facilities. The delivering driver must, therefore, be furnished with a key to Rhyne's plant.

20. During the past several years, Rhyne has lost money because of late deliveries by common carriers.

21. A carrier which employs owner-operators is not acceptable to Rhyne. Fleet employs owner-operators.

22. Kenan has never solicited Rhyne's transportation business.

23. Applicant hauled three loads of petroleum products for Rhyne during 1981 without authority to do so.

24. This application is also supported by Fletcher Henley Oil Company (Fletcher Henley), a petroleum distributor located in Monroe, which requires delivery of petroleum products from Mecklenburg County to points in Union and Cabarrus Counties.

25. During 1981, Fletcher Henley on several occasions called upon Kenan Transport Company for service, and Kenan was unable to respond due to unavailability of equipment.

26. Applicant, which has authority to serve Union County from Mecklenburg County, responsed to Fletcher Henley's request and provided service after Kenan Transport had failed to do so.

27. None of the Applicant's supporting shipper witnesses offered testimony in this proceeding indicating a need for common carrier transportation service into the counties of Wilkes, Iredell, Lincoln, and Watauga as applied for herein by the Applicant.

28. Applicant maintains a terminal in Albemarle and also stations a unit at the home of a driver in Lincolnton.

29. Applicant's driver who is stationed in Lincolnton formerly worked for Petroleum Transportation and, in that job, serviced all of the shippers who support this application.

30. Applicant has substantial assets which exceed its liabilities, is operating at a profit, and annually reports on its financial condition to this Commission.

31. Applicant maintains a fleet of equipment suitable for the transportation of petroleum and petroleum products and a complement of experienced drivers.

32. Applicant has the resources with which to acquire additional rolling equipment as necessary to provide adequate and continuing service to the public.

WHEREUPON, the Hearing Examiner reaches the following

CONCLUSIONS

This application for additional common carrier authority is governed by G.S. 62-262(e) which imposes upon the Applicant the burden of proving the following to the satisfaction of this Commission:

(1) that public convenience and necessity require the proposed service in addition to existing authorized transportation service, and

(2) that the applicant is fit, willing, and able to properly perform the proposed service, and

(3) that the applicant is solvent and financially able to furnish adequate service on a continuing basis.

Consideration of the first statutory criterion requires definition of "pubic convenience and necessity." Utilities Commission v. Queen City Coach Company, 4 N.C. App. 116, 123 and 124, 166 S.E. 2d 441 (1969), defined the phrase as follows:

> "[1] Our Supreme Court has said many times that what constitutes 'public convenience and necessity' is primarily an administrative question with a number of imponderables to be taken into consideration, e.g., 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. Trucking Co., 223 N.C. 687, 28 S.E. 2d 201;

Utilities Commission v. Ray, 236 N.C. 692, 73 S.E. 2d 870; Utilities Commission v. Coach Co. and Utilities Commission v. Greyhound Corp., 260 N.C. 43, 132 S.E. 2d 249.

"[2] We are not inadvertent to the fact that the factors denominated as imponderables, to wit: whether the existing carriers can reasonably meet the need for the service and whether the granting of the application would endanger or impair the operations of existing carriers contrary to the public interest, are not solely determinative of the right of the Commission to grant the Application. Both are directed to the question of public convenience and necessity. Utilities Commission v. Coach Co., 233 N.C. 119, 63 S.E. 2d 113. Nevertheless, if the proposed operation under the certificate sought would seriously endanger or impair the operations of existing carriers contrary to the public interest, the certificate should not be issued. Utilities Commission v. Coach Co., supra."

"Necessity" was defined in Utilities Commission v. Greyhound Corporation, 260 N.C. 43, 52, 132 S.E. 2d 249 (1963):

"...'Necessity' means reasonably necessary and not absolutely imperative. Utilities Commission v. R.R., 254 N.C. 73, 79, 118 S.E. 2d 21. 'Any service or improvement which is desirable for the public welfare and highly important to the public convenience may be properly regarded as necessary.' And if a new service is necessary, and if there are carriers already in the field, there is always the vital question (in determining convenience and necessity) whether the new service should be rendered by the existing carriers or by the new applicant. Mulcahy v. Public Service Commission, 117 P. 2d 298 (Utah 1941); 73 C.J.S., Public Utilities, S. 42, pp. 1099, 1100."

1. Considering the evidence offered in this case in view of the statutory criterion of public convenience and necessity as interpreted by our courts, it is clear that the supporting shippers have stated both a demand and a need for the proposed service in the following counties in North Carolina: Caldwell, Catawba, Rutherford, Rowan, and Gaston. There is a deficiency in service within the above-listed counties, which has, at least in part, been brought about by the reduction or cessation of operations by Petroleum Transportation. The Protestants, Fleet and Kenan, have not filled the void left by Petroleum Transportation. The Applicant is an experienced common carrier with ample resources and a local base of operations which professes to be ready, willing, and able to provide service. The supporting shippers have strongly urged that Applicant be given the opportunity to serve them. With respect to the four (4) additional counties which were encompassed in the application at issue in this docket, the Hearing Examiner concludes 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 in said counties; they being the counties of Wilkes, Iredell, Lincoln, and Watauga. In this regard, the Hearing Examiner notes that the supporting shippers who appeared at the hearing in this matter to testify on behalf of the Applicant failed to describe or state a present need for common carrier transportation service into any of the four above-listed counties. Accordingly, the Hearing Examiner concludes that the Applicant 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.

The second element of public convenience and necessity which must be considered is whether the proposed operation would impair the operations of the Protestants and other existing carriers contrary to the public interest. There is no evidence in this record to support a finding that the service authorized by Exhibit B attached hereto would have a ruinous competitive effect upon other authorized carriers. Nor is there evidence that any substantial traffic will be diverted from the Protestants and other authorized carriers if this application is approved in part. The mere fact that a grant of operating authority to the Applicant would authorize it to compete with the Protestants is certainly not sufficient to establish that such competition would be harmful or ruinous. "There is no public policy condemning competition as such in the field of public utilities; the public policy only condemns unfair or destructive competition." Utilities Commission v. Queen City Coach Company, 261 N.C. 384, 134 S.E. 2d 689 (1964).

Accordingly, the Hearing Examiner concludes that the public convenience and necessity require the service proposed by Applicant in addition to the existing services provided by Protestants and other authorized carriers to the extent set forth and described in Exhibit B attached hereto.

2. Under the second statutory criterion, the only evidence in this record which would tend to detract from the Applicant's fitness to properly perform the proposed service is that pertaining to three movements which it made for Rhyne Milling & Oil Company during the first part of this year. Although those three movements were made without authority, they were freely and fully admitted, and they have not been repeated. This unauthorized hauling by itself does not compel a finding that the Applicant is unfit. All of the other evidence establishes that the Applicant is fit, willing, and able to properly perform the proposed service to the extent set forth in Exhibit B attached hereto. Applicant has been an authorized carrier of petroleum products since 1958. It maintains a terminal, a substantial fleet of equipment, and a complement of experienced drivers with which it serves the shipping public.

Therefore, the Hearing Examiner concludes that Applicant is fit, willing, and able to properly perform the service authorized by Exhibit B attached hereto.

3. The third and final statutory criterion pertains to solvency and financial ability to furnish adequate service on a continuing basis. On the basis of Applicant's financial information submitted with this application and on file with this Commission and the testimony offered at the hearing, there can be no question that Applicant is financially sound and has the resources to purchase additional equipment and facilities as needed.

The Hearing Examiner concludes that Applicant is solvent and financially able to furnish adequate service on a continuing basis.

In sum, a careful consideration of the entire record in this proceeding leads the Hearing Examiner to conclude (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; (2) that the operating authority set forth in Exhibit B attached hereto 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 as a commmn 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.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Piedmont Fuel & Distributing Co., Inc., for authority to amend its Certificate of Public Convenience and Necessity No. C-771 be, and the same is hereby, granted in part and denied in part in accordance with Exhibit B attached hereto and made a part hereof. Upon this Recommended Order becoming final, Certificate No. C-771 shall be revised so as to incorporate and include the 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 Piedmont Fuel & Distributing Co., Inc., shall file with the Commission, to the extent it has not already done so, evidence of required insurance, a list of equipment, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein acquired within thirty (30) days from the date that this Recommended Order becomes effective and final.

3. That unless Piedmont Fuel & Distributing Co., Inc., complies with the requirements set forth in Decretal Paragraph 2 above and begins operations as 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, the operating authority granted herein shall cease and determine.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of July 1981.

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

EXHIBIT B

SCOPE OF OPERATIONS

DOCKET NO. T-1062
SUB 6

Piedmont Fuel & Distributing Co., Inc.
P.O. Box 477, Albemarle, North Carolina 28001

Common Carrier Authority

EXHIBIT B

(1) Transportation of petroleum and petroleum products in bulk, in tank trucks, over irregular routes, from all existing originating terminals at or near Wilmington, Thrift, Salisbury, Friendship, Morehead City, Selma, Apex, Fayetteville and River Terminal to points and places wit hin the following counties: New Hanover, Moore, Stanly, Mecklenburg, Cleveland, Montgomery, Robeson,

Columbus, Harnett, Wayne, Johnston, Greene, Anson, Rowan, Gaston, Caldwell, Catawba, and Rutherford, and of gasoline, kerosene, fuel oils and naphthas, in bulk in tank trucks, over irregular routes, between all points and places within the territory it is now authorized to make deliveries from presently authorized originating terminals.

DOCKET NO. T-825, SUB 261

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Filing of Tariffs for General Increase, Inclusion of Base Fuel Costs in Base Rates, and Zeroing of Monthly Fuel Cost Adjustment Surcharge by North Carolina Household Goods Carriers Affecting Statewide Rates and Charges for North Carolina Instrastate Services	)))))	ORDER GRANTING PARTIAL INCREASE IN RATES AND CHARGES FOR HOUSEHOLD GOODS SERVICES

HEARD IN: The Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on April 22, 1981

BEFORE: Commissioner Douglas P. Leary, Presiding; and Commissioners Sarah Lindsay Tate 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 on January 12, 1981, for and on behalf of North Carolina intrastate motor common carriers of household goods and personal effects (Group 18) seeking an approximate 6.75% increase in annual revenues, approval of an increase in the base cost of fuel to be included in transportation (line haul) and pick-up and delivery base rates, and a "zeroing" of the present monthly 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 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 represented to increase their rates and revenues by approximately 6.75% and subsequently to provide for a "zero" effect for the level of their continuing fuel surcharge rider for the month of May 1981. These tariff supplements are:

Supplement No. 21 to Tariff No. 3, North Carolina Utilities Commission No. 9, issued by North Carolina Movers Association, Inc.

Supplement No. 10 to Tariff No. 18-C, North Carolina Utilities Commission No. 12, issued by North Carolina Motor Carriers Association, Inc.

Supplement No. 10 to Tariff No. 5-D, North Carolina Utilities Commission No. 46, issued by Motor Carriers Traffic Association, Inc.

Each tariff supplement was duly and separately filed and published on January 12, 1981; each supplement bears an effective date not less than 30 days from publication.

Upon recommendation of the Public Staff, and deeming the application and published tariff supplements to constitute a general rate case and otherwise affect the public interest, the Commission on February 13, 1981, issued an Order in the docket suspending effectiveness of the aforesaid tariff supplements for a period of 270 days, scheduled a full general investigation and public hearings into the subject matter, and gave public notice thereof.

On March 18, 1981, the Executive Director, Public Staff - North Carolina Utilities Commission, gave statutory Notice of Intervention for and on behalf of the using and consuming public. No other Interventions or Protests were filed or made.

The Applicants prefiled the testimony and exhibits of three witnesses: Robert F. Drennan, Jr., a cost analysis consultant of Raleigh, North Carolina; C. Darrell Horne, president of one of the applicant carriers and an official with one of the publishing agents; and Wendell Thornton, President of Security Moving and Storage Company of Goldsboro, North Carolina. A number of principals - applicants were present at the hearings and were available to testify orally on behalf of the Applicants.

The Public Staff - North Carolina Utilities Commission prefiled the testimony and exhibits of two witnesses: F. Paul Thomas, Staff Accountant - Accounting Division, and Phillip W. Cooke, Rate Specialist - Transportation Rates Section. The Public Staff likewise had various transportation specialists available at the hearings for oral testimony on behalf of the Applicants.

Substantial issues were framed as a result of the respective prefiled testimony of the parties. Primary among these issues were:

1. Applicants proposed a revision in weight and mileage limitations as contained in their approved and existing Rule governing expedited service. The Public Staff testimony contended this Rule change had the effect of a substantial revenue increase without adequate cost data to support the resulting revenue increase.

2. The Public Staff's extensive audit and analyses revealed substantial variances in mileage and weight brackets and "breakpoints" between existing approved tariffs and those published and proposed by the Applicants.

The matter came on for hearing and was heard on April 22, 1981, as scheduled. At the call of the case for hearing, Applicants moved to amend their application so as to delete their published revisions which would have increased applicable weight and mileage classifications, or categories, in present Paragraphs 1 and 2 of Rule 5, which relates to the provision of expedited service solely at the request of the shipper and in his discretion. While Applicants did not abandon their claim that expedited service was entirely optional in the discretion of the shipper and that the proposed change in the Rule was made for regulatory, or administrative, purposes and not for revenue purposes, they conceded that a straight arithmetic "price-out" on the basis of expedited shipments actually made in the test period would have the effect of substantially increasing the revenues from this class, if the number of requests remained as high in the future. Applicants also conceded that expedited service requests had not been specially studied and that they could not at this time produce cost data tending to support an increase on such service substantially greater than average. The Commission allowed these amendments to the application and to the evidence of Applicants without objection. The revenue effect of the amendment to the application was to reduce the increase from an approximate 6.75% average increase as stated in the application to 5% across-the-board as contended by the Public Staff.

Applicants also conceded clerical error in the reflection of certain weight and mileage brackets in the transportation (Section II) rate provisions of the proposed tariff supplements and moved to amend as indicated by the Public Staff. These amendments were allowed as requested. Since these variances, or clerical errors, were minor there is no material revenue effect to allowing the amendments.

In their application, Applicants gave notice that they would, at the time of hearing, update their base fuel costs to include historic fuel costs being experienced at the time of hearing and would propose to reduce the level of its approved monthly fuel adjustment surcharge, or rider, to "zero" at the same time pursuant to the Commission Order in Docket No. T-825, Sub 255, and Rule R2-16.1(k). At the call of the case, Applicants moved to amend their application, evidence, and transportation (Section II) and pick-up and delivery rates in its proposed tariff supplements to allow for the inclusion in base transportation rates of a base fuel cost of $1.2464 per gallon rather than the $1.0958 per gallon upon which the present and proposed transportation rates were predicated. These amendments were allowed without objection.

As pertinent here, the cumulative effect of the amendments allowed was to substitute Horne Supplemental Exhibit No. 1 in lieu of page 1 of Attachment B to the application, to change all revenue and operating ratio allegations reflected in the application to reflect the effects of reducing the request from a 6.75% average increase to 5%, and to summarize the financial results of all changes in Revised Drennan Exhibit No. 4.

The hearings then proceeded on the verified application as amended. The above-mentioned witnesses for the parties testified, subject to their prefiled testimony as amended, supplemented, and corrected from the stand.

Upon the evidence adduced the Commission makes the following

FINDINGS OF FACT

1. The Applicants are duly certificated and operating common carriers of household goods and personal effects in intrastate commerce in North Carolina and are properly before the Commission, and the Commission has jurisdiction over their rates and services in intrastate regulated 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 reasonable 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. Under the application, as amended, Applicants are proposing a revenue increase in rates for all intrastate regulated services offered by them including Transportation (line haul), Pick-up and Delivery, and Additional Services (packing, storage-in-transit, and accessorial) of approximately 5% across-the-board. Applicants propose a new provision, Item 22, for the convenience and savings of carriers and shippers with Okracoke Island origins or destinations involving ferry capability and charges.

6. In the 12 months' period, May 1979 through April 1980, Applicants' operating expenses as well as capital costs have increased at a rate substantially in excess of intrastate regulated transportation service revenues.

7. The actual, unadjusted intrastate regulated services operating ratio for Applicants for 1979 was 110.27%. Since expenses have continued to increase at a rate greater than intrastate regulated revenues, the unadjusted operating ratio for Applicants was higher in 1980 than in 1979. When the year 1980 is adjusted for rate increases and expenses increases partially in effect in 1979 and 1980, but not for repression or competitive effects, the operating ratio is slightly reduced, but remains in excess of 100%, indicating net operating losses on regulated business, even on an adjusted basis.

8. Had the 5% revenue increase as proposed in the application as amended been in effect throughout calendar 1980, Applicants unadjusted operating ratio would have been in excess of 100%. On an adjusted basis, giving full effect to the proposed increase, but without adjustments for inflation, repression, or competition, Applicants' operating ratio would have been 98.63% in 1980.

9. In the test year 1980, fully adjusted for rate-making purposes, Applicants received pro forma revenues of $6,616,146, but incurred expenses of $6,851,513, for a net operating loss, statewide, of $235,367.

10. The effect of the revenue increase proposed in the docket would have been $330,807 on a pro forma basis, had the increase been in effect throughout 1980. This would have resulted in gross issued revenues of $6,946,953, expenses of $6,851,513, and a pro forma net operating profit of $95,440 statewide.

11. The cost of fuel is a major determinant for Applicants' transportation rates. The present transportation rates are predicated upon a base cost of fuel of $1.0958 per gallon, which is the experienced cost during the month of April 1980. In the ensuing 12 months, Applicants' base cost of fuel has increased to $1.2464 per gallon. Despite the existence of a fuel adjustment rider on transportation rates during said 12 months' period, Applicants have been able to recoup only 13.5% of fuel costs incurred since June 1, 1980. Although applicants are seeking to convert to diesel powered vans and tractors as rapidly as possible, the evidence indicates this will represent only an increase from about 5 miles per gallon to 6 or 7 miles per gallon for such special equipment, whether or not loaded.

12. Applicants in this proceeding have updated base fuel costs through and including April 1981, have proposed that such base costs of fuel be included in their base transportation and pick-up and delivery rates, and that the level of the continuing monthly fuel adjustment rider as previously established for household goods carriers be reduced to zero until such time as the per gallon cost of fuel exceeds or falls beneath $1.25 per gallon. 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. More likely, it will continue to increase at a declining rate.

13. The Commission has taken judicial notice of the facts that by virtue of its Orders in Docket No. T-825, Sub 248, and Docket No. T-825, Sub 255, and the adoption of Rule R2-16.1, together with subsequent amendments, household good carriers have been granted a continuing monthly fuel adjustment mechanism in a general rate case and are authorized to include in base transportation rates in general rate cases the currently experienced, reasonable base cost of fuel, subject to the continued operation of the fuel adjustment provision above or below the base costs of fuel so included. The Application and evidence as amended is in compliance with said established policy and accords with the public interest.

14. The inclusion in base transportation rates of the presently experienced base cost of fuel, coupled with the zeroing of the fuel adjustment level, will not itself increase or decrease the Applicants' operating ratio since the cost is actually incurred on a current basis and will be maintained on a dollar-for-

dollar expense recovery basis for changes therein pending the next general rate case. Owing the extreme volatility of prices of fuel, the large deviation between peak and off-peak seasons for household goods carriers, and the lack of recurring shipments, it is not likely that the existing deficit in fuel cost recovery will be substantially reduced in the immediate future.

15. The transportation and pick-up and delivery rates set forth in Horne Supplemental Exhibit No. 1, in evidence accurately and reasonably reflect a 5% increase and the inclusion of an actually experienced base cost of fuel of $1.2464 per gallon, which for general rate-making purposes is rounded to $1.25.

CONCLUSIONS

1. As amended, the testimony and exhibits present no material disagreement. Nor does the Commission in the exercise of its discretion and judgment find any basis for disapproving in whole or in part the application as amended. The Applicants have borne their burden of proof. They are, therefore, entitled to have their application approved and their tariffs approved for effectiveness, both as discussed and found herein, on May 4, 1981.

2. The increase of approximately 5% on the North Carolina intrastate regulated services offered by Applicants is necessary, just, and reasonable.

3. The inclusion of a base cost of fuel of $1.25 per gallon in the base rates of Applicants is actual, reasonable, and legitimate.

4. The level of the monthly fuel adjustment surcharge provision should be reduced to zero for the month of May 1981, and the base cost of fuel thereafter to be used in computing the level of said monthly rider should be $1.2500 per gallon.

IT IS, THEREFORE, ORDERED:

1. That the application, as amended, be and hereby is approved.

2. That the Applicants are authorized to file, publish, and make effective on May 4, 1981, the rates and tariffs as reflected in Attachment B to the application, amended as herein discussed.

3. That the monthly fuel cost recovery rider, or surcharge, shall be reduced to the base cost level of $1.2500 per gallon at May 4, 1981, and in subsequent months shall be computed and charged on the basis by which the current cost of fuel deviates from a base cost of $1.2500 per gallon.

4. That appropriate tariff supplements to effectuate this Order on service rendered on and after May 4, 1981, be published; further notice is waived.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of May 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

MOTOR TRUCKS

DOCKET NO. T-2105

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of David Alexander Mercer, d/b/a Mercer's Moving & Hauling, 231 Trails End Road, Wilmington, North Carolina 28403 - Application for Authority to Transfer Certificate No. C-624 from State Bank of Raleigh, P.O. Box 19206, Raleigh, North Carolina	) RECOMMENDED ORDER) GRANTING APPLICATION,) AS AMENDED, AND) PETITION)

HEARD IN: THE Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, May 15, 1981, 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 27602
For: David Alexander Mercer, d/b/a Mercer's Moving & Hauling

For the Protestants:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27611
For: Horne Storage Company, Inc., Abe Whitley Moving & Storage, Inc., Airway Moving & Storage, Inc., and Central Carolina Bonded Warehouse, Inc.

BENNINK, HEARING EXAMINER: By joint application filed with the North Carolina Utilities Commission on January 27, 1981, with the scope of said application having been amended at the hearing, David Alexander Mercer, d/b/a Mercer's Moving & Hauling (Mercer) and State Bank of Raleigh (State Bank) seek authority to sell and transfer the motor carrier operating authority contained in Common Carrier Certificate No. C-624 from State Bank to Mercer and for approval nunc pro tunc of a previous loan transaction whereby Carolina Van & Storage Company, Inc. (Carolina Van) issued a promissory note and granted a security interest in Certificate No. C-624 to State Bank. In conjunction with the above-referenced application as subsequently amended, the Applicants Mercer and State Bank also filed a petition seeking approval of a temporary lease of Certificate No. C-624 from State Bank to Mercer.

By letter dated February 11, 1981, the Commission gave notice to all certificated carriers of household goods in North Carolina of the petition filed herein by the Applicants for approval of a temporary lease of Certificate No. C-624 from State Bank to Mercer. Letters of protest to the above-referenced petition were subsequently filed with the Commission by Cardinal Moving & Storage, Inc., Horne Storage Company, Inc., Abe Whitley Moving & Storage, Inc., and Airway Moving & Storage, Inc.

The application was also listed on the Commission's Calendar of Hearings dated March 6, 1981, and was thereby scheduled for hearing on Friday, May 15, 1981, at 9:30 a.m.

On March 18, 1981, a Protest to the permanent application was filed herein by counsel for and on behalf of Horne Storage Company, Inc., Abe Whitley Moving & Storage, Inc., Airway Moving & Storage, Inc., and Central Carolina Bonded Warehouse, Inc. By Commission Order dated April 1, 1981, the above-listed parties were permitted to intervene in this proceeding as protestant parties and the petition for approval of a temporary lease of Certificate No. C-624 was scheduled for hearing on May 15, 1981, and was consolidated for purposes of hearing with the application for permanent authority to transfer Certificate No. C-624 from State Bank to Mercer.

Upon call of the matter for hearing at the appointed time and place, the Applicants and the Protestants were present and represented by counsel. The Applicants offered the testimony of David A. Mercer and Micah Richardson, Collections Officer for State Bank. The Protestants offered testimoy by the following witnesses in opposition to the application: J. T. Dorman, Central Carolina Bonded Warehouse, Inc.; Thomas R. Whitley, Abe Whitley Moving & Storage, Inc.; and William G. Fodrie, Airway Moving & Storage, Inc.

Based upon a careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received in evidence and judicially noticed, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Common Carrier Certificate No. C-624 was issued to Carolina Van & Storage Company, Inc., on December 20, 1955, in Docket No. T-869.

2. On December 6, 1977, Carolina Van borrowed the principal sum of $25,323.56 from State Bank and executed an "Instrument and Security Agreement," which document was a combination promissory note and security agreement. Said security agreement granted State Bank a security interest in all of the assets then owned or thereafter acquired by Carolina Van, including Certificate No. C-624. This security interest was perfected by State Bank upon filing of an appropriate "Financing Statement" with the Office of the Secretary of State of North Carolina on December 21, 1977.

3. Carolina Van entered into the financial transactions described in Finding of Fact No. 2 above without first filing an application with this Commission seeking prior permission to do so. This failure to obtain prior Commission approval was not willful, but was due to inadvertence and ignorance on the part of both Carolina Van and State Bank as to the pertinent requirements of the Public Utilities Act.

4. Carolina Van offered continuous service to the shipping public in North Carolina under Certificate No. C-624 until it encountered financial difficulties and was adjudged bankrupt on March 19, 1979, by Judge Thomas M. Moore, Bankruptcy Judge for the Eastern District of North Carolina, in Docket No. 77-92-BK-5. Gregory B. Crampton, Attorney at Law, was appointed Bankruptcy Trustee by the Bankruptcy Judge.

5. Carolina Van continuously maintained on file with this Commission, until such time as it was adjudged bankrupt, tariffs, a registered list of rolling equipment, a designation of process agent, and evidence of the required cargo and liability insurance.

6. By letter dated June 13, 1981, Gregory B. Crampton wrote to this Commission advising of the bankruptcy of Carolina Van and of his appointment as trustee in bankruptcy for said bankrupt corporation. By letter to the Commission dated June 28, 1979, the Bankruptcy Trustee requested an authorized suspension of operations under Certificate No. C-624 for a period of ninety (90) days. On July 17, 1979, the Commission issued an Order in Docket No. T-869, Sub 1, whereby Carolina Van was granted an authorized suspension of operations under Certificate No. C-624 until October 15, 1979.

7. On September 20, 1979, the Bankruptcy Trustee petitioned the Bankruptcy Court for authorization to abandon, as burdensome property, certain assets of Carolina Van, including Certificate No. C-624, in which State Bank had a perfected security interest.

8. By Order issued September 26, 1979, the Bankruptcy Court authorized the Trustee to abandon Common Carrier Certificate No. C-624, which certificate was in fact abandoned by the Trustee in favor of State Bank and its perfected security interest therein.

9. Subsequent to the abandonment of Certificate No. C-624 referred to in Finding of Fact No. 8 above, State Bank undertook procedures which were designed to expeditiously locate a purchaser for said certificate, including use of a newspaper advertisement and telephone contacts with Commission personnel. State Bank did not at any time perform any transportation services under the certificate in question and, being a banking institution, State Bank was not, in fact, even capable of undertaking same. Nor did State Bank realize that it should have requested a further extension of the authorized suspension of operations referred to in Finding of Fact No. 6 above which expired on October 15, 1979. Rather, State Bank concentrated its efforts on locating a buyer to whom Certificate No. C-624 could be transferred and sold. State Bank ultimately contracted for the services of a broker on or about September 27, 1979, to assist in the location of a buyer for said certificate. It was through the efforts of such broker that David Alexander Mercer was located as a potential purchaser of the certificate in question.

10. Mercer is an exempt carrier of household goods in the commercial zone of Wilmington, North Carolina, operating under Exemption Certificate No. E-26630, which certificate of exemption was issued by this Commission on October 20, 1980. Mercer has handled approximately fifty (50) movements of household goods as an exempt carrier and has had no customer claims or complaints filed with respect to exempt transportation services rendered.

11. Mercer is fit, willing, and able, financially and otherwise, to perform and provide adequate and continuing service to the public under the common carrier operating authority presently contained in Certificate No. C-624.

12. The proposed sale and transfer of Certificate No. C-624 from State Bank to Mercer is in the public interest and is justified by the public convenience and necessity.

13. The sale and transfer of Certificate No. C-624 proposed herein will not adversely affect service to the public under said franchise.

14. The proposed certificate transfer will not unlawfully affect the service to the public by other public utilities.

15. The common carrier operating authority contained in Certificate No. C-624 is not dormant.

16. No matters exist which would disqualify Mercer from operating as a common carrier in this State under the authority contained in Certificate No. -624.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Based upon a careful consideration of the evidence presented, the entire record in this proceeding, and the foregoing findings of fact, the Hearing Examiner is of the opinion, and therefore concludes, that the amended application at issue in this docket, being justified by the public convenience and necessity, should be approved. In this regard, the policy of the State of North Carolina, as declared in the Public Utilities Act, clearly favors the transfer of actively operated motor freight carrier certificates without unreasonable restraint. State ex rel. Utilities Commission v. Associated Petroleum Carriers, 7 N.C. App. 408, 173 S.E.2d 25 (1970).

The Protestants contend that the amended application at issue in this proceeding should be denied for the following reasons:

(1) Carolina Van failed to comply with G.S. 62-111(a) to secure Commission approval prior to the time said company entered into the promissory note and security agreement with State Bank on December 6, 1977, whereby State Bank was granted a security interest in Certificate No. C-624;

(2) G.S. 62-111(d) prohibits a person, including State Bank in this proceeding, from obtaining a franchise for the purpose of transferring same to another; and

(3) Certificate No. C-624 is dormant under G.S. 62-112(c) and approval of the certificate transfer at issue herein 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 Commission v. Estes Express Lines, 33 N.C. App. 99, 234 S.E. 2d 628 (1977).

With respect to the first argument offered by the Protestants, the Hearing Examiner concludes that since the failure of Carolina Van to comply with G.S. 62-111(a) prior to the time said Company entered into the promissory note and security agreement with State Bank on December 6, 1977, did not serve to legally invalidate such transaction and the perfected security interest which State Bank was then granted, such failure to comply with G.S. 62-111(a) should not be found, by like token, to be fatal to the amended application in this

proceeding. Although G.S. 62-111(a) requires the filing of an application for written approval by the Commission, there is nothing in said statute which would prohibit the Commission from approving such an application nunc pro tunc upon a showing of good cause in support of such after-the-fact approval. In the instant case, a showing of good cause has been made since an application for approval was filed with the Commmission as soon as was reasonably possible after the parties hereto became aware of the requirements of G.S. 62-111(a).

The Hearing Examiner further concludes that the proposed sale and transfer of Certificate No. C-624 from State Bank to Mercer does not violate G.S. 62-111(d) as alleged by the Protestants. In this regard, the Hearing Examiner is of the opinon that the clear intent of G.S. 62-111(d) is solely to prohibit trading in motor carrier franchises merely to make a profit from the sale and transfer thereof. In the case at hand, State Bank seeks permission merely to sell and transer the certificate in question to Mercer for $2,250 and to then apply the proceeds of said sale against the obligation of over $18,000 which is still unrecovered from the loan made in good faith to Carolina Van on December 6, 1977. State Bank will not profit from the proposed transaction, but will merely reduce its losses resulting from the loan default to approximately $16,000. Furthermore, the Hearing Examiner does not believe that the General Assembly of the State of North Carolina intended, by enactment of G.S. 62-111(d), to prohibit a bona fide and good faith lienholder from looking to its collateral to satisfy the obligation of a defaulting public utility, either in whole or in part. If such were the case, financing for small motor carriers would be virtually impossible.

With reference to the contention raised herein by the Protestants that the common carrier operating authority contained in Certificate No. C-624 has become dormant and that there is no public need and convenience to be served by it, the Hearing Examiner concludes that the facts of this case clearly support a contrary conclusion. In this regard, G.S. 62-112(c) provides as follows:

> "The failure of a common carrier or contract carrier of passengers or property by motor vehicles to perform any transportation for compensation under the authority of its certificate or permit for a period of 30 consecutive days shall be prima facie evidence that said franchise is dormant and the public convenience and necessity is no longer served by such common carrier certificate or that the needs of a contract shipper are no longer served by such a contract carrier. Upon finding after notice and hearing that no such service has been performed for a period of 30 days the Commission is authorized to find that the franchise is dormant and to cancel the certificate or permit of such common or contract carrier. The Commission in its discretion may give consideration in such finding to other factors affecting the performance of such service, including seasonal requirements of the passengers or commodities authorized to be transported, the efforts of the carrier to make its services known to the public or to its contract shipper, the equipment and other facilities maintained by the carrier for performance of such service, and the means by which such carrier holds itself out to perform such service. A proceeding may be brought under this section by the Commission on its own motion or upon the complaint of any shipper or any other carrier. The franchise of a motor carrier may be canceled

> under the provisions of this section in any proceeding to sell or transfer or otherwise change control of said franchise brought under the provisions of G.S. 62-111, upon finding of dormancy as provided in this section. 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. In determining whether such carrier has made reasonable efforts to perform service under said franchise the Commission may in its discretion give consideration to disabilities of the carrier including death of the owner and physical disabilities." (Emphasis added)

Unquestionably, there has been no transportation under Certificate No. C-624 for a period of time exceeding thirty (30) days. It is equally unquestionable that this failure to perform transportation services has been directly caused by the bankruptcy of Carolina Van. The above-quoted statute specifically authorizes this Commission to consider disability of the carrier in determining whether it has made reasonable efforts to perfom service under its franchise. Of course, bankruptcy is a total disability for a corporate carrier.

Furthermore, under G.S. 62-112(c), the failure to perform transportation services for compensation under the authority of a franchise for a period of thirty (30) days is merely prima facie evidence that the franchise is dormant. Such evidence is sufficient to justify, but not necesarily to compel, a finding that the franchise is actually dormant. Upon such prima facie showing, the Commission in its discretion may then consider other pertinent factors affecting the performance of service. State ex rel. Utilities Commission v. Estes Express Lines, supra.

In this case, the mitigating factors are clearly sufficient to rebut the prima facie evidence of dormancy. Carolina Van operated as a common carrier under Certificate No. C-624 until it became bankrupt. As a bankrupt, it was obviously unable to continue its operations as a motor common carrier. After the Bankruptcy Trustee had been authorized to abandon any interest in the certificate in question, State Bank, as a secured creditor, made diligent efforts to sell said operating authority. Attempts were made by State Bank at varous stages to apprise the Commission through telephone contacts with Commission personnel of the circumstances surrounding its attempts to locate a buyer for Certificate No. C-624. All of the above-listed mitigating circumstances effectively rebut any inference that the certificate has become dormant by reason of abandonment at any time subequent to October 15, 1980, the date of expiration of the authorized suspension secured herein by the Bankruptcy Trustee.

A motor freight franchise is a valuable property right, and the policy of this State clearly favors transfers of certificates without unreasonable restraint. State ex rel. Utilities Commission v. Carolina Coach Company, 269 N.C. 717, 153 S.E. 2d 461(1967). To declare Certificate No. C-624 dormant would be to deprive State Bank of its perfected security interest under the terms of its bona fide and good faith loan to a public utility.

Furthermore, there is no evidence in this record that the transfer of Certificate No. C-624 to Mercer will have any unduly harmful or unlawful effect upon the Protestants. A declaration of dormancy would serve merely as a windfall for the Protestants in that a certificate for which a public convenience and need was established at the time it was issued would be cancelled, leaving them with one less competitor. In this regard, the Petroleum Carriers case, supra, stands for the proposition that the transfer of a franchise to a carrier which may be even more competitive, with possible adverse effects 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. Accordingly, the Hearing Examiner concludes that the proposed transfer will be in the public interest and will not unlawfully affect the service to the public by other existing certificated common carriers.

The Hearing Examiner further concludes that Mercer is certainly fit, willing, and able, financially and otherwise, to perform the transportation services authorized by Certificate No. C-624 and that Mercer can be expected to offer a level of service as a common carrier in North Carolina intrastate commerce which meets or exceeds the level of service previously offered by Carolina Van. Mercer's testimony, his statement of assets and liabilities, and his operations as an exempt carrier serve to support this conclusion. For all of the above-stated reasons, the Hearing Examiner further concludes that the proposed transfer will not adversely affect the service to the public under Certificate No. C-624 and that said transfer, being justified by the public convenience and necessity as required by G.S. 62-111(a), should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the joint application filed herein on January 27, 1981, as amended at the hearing on May 15, 1981, and the petition for approval of temporary lease of Certificate No. C-624, be, and the same are hereby, approved and Certificate No. C-624, as more particularly described in Exhibit B attached hereto and made a part hereof, be, and the same is hereby, transferred to David Alexander Mercer, d/b/a Mercer's Moving & Hauling.

2. That this Order and the authorization contained herein shall itself consitute a certificate until a formal certificate shall have been transmitted to Mercer by the Commission authorizing the transportation set forth in Exhibit B attached hereto.

3. That Mercer 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 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 thirty (30) days from the date this Recommended Order becomes effective and final, unless such time is hereafter extended by the Commission.

4. That unless Mercer complies with the requirements set forth in Decretal Paragraph 3 above and begins operating under the authority herein authorized within a period of thirty (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 and determine.

5. That Mercer shall maintain his books and records in such a manner that all of the applicable items of information required in his prescribed Annual Report to the Commission can be readily identified from said books and records and can be used in the preparation of such Annual Report. A copy of the Annual Report form shall be furnished to Mercer upon request made to the Ac unting Division, Public Staff, North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of June 1981.

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

DOCKET NO. T-2105

David ALexander Mercer
d/b/a Mercer's Moving & Hauling
231 Trails End Road
Wilmington, North Carolina 28403

EXHIBIT B

Transportation of personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods, between all points and places throughout the State of North Carolina. This authority does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants.

DOCKET NO. T-2136

BEFORE THE NORTH CARO INA UTILITIES COMMISSION

In the Matter of
Southeastern Freight Lines, P.O. Box 5887, Columbia, South Carolina 29250 - Application for Authority to Purchase and Transfer Certificate No. C-303 from Super Trans, Inc., McLean Boulevard, Paterson, New Jersey) RECOMMENDED ORDER GRANTING APPLICATION AS AMENDED

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 25 and November 3, 1981

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicants:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602 For: Southeastern Freight Lines and Super Trans, Inc.

For the Protestants:

Joseph W. Eason, Allen, Steed, & Allen, P.A., Attorneys at Law, P.O. Box 2058, Raleigh, North Carolina 27609 For: Fredrickson Motor Express Corporation, Overnite Transportation Company, Standard Trucking Company, and Thurston Motor Lines

BENNINK, HEARING EXAMINER: By joint Application filed with the North Carolina Utilities Commission on June 3, 1981, the scope of the Application having been amended at the hearing, Southeastern Freight Lines (Southeastern) and Super Trans, Inc. (Super Trans or Company), seek: (1) authority for Super Trans to sell and transfer to Southeastern the motor carrier operating authority evidenced by Common Carrier Certificate No. C-303 and (2) approval nunc pro tunc of the previous transfer of the stock in Super Trans from William G. Reese, III, to Riverside Warehouse Corporation (Riverside).

The Application was listed on the Commission's Calendar of Hearings dated July 10, 1981, with a no-protest provision.

On July 30, 1981, a joint protest and motion for intervention was filed by Fredrickson Motor Express Corporation (Fredrickson), Overnite Transportation Company (Overnite), Standard Trucking Company (Standard), and Thurston Motor Lines (Thurston). By Order dated August 6, 1981, said carriers were permitted to intervene in this proceeding as protestant parties.

Notice of a public hearing to be held on Tuesday, August 25, 1981, was then published in the Commission's Calendar of Hearings dated August 4, 1981.

Upon call of the matter for hearing at the appointed time and place, the Applicants and the Protestants were present or represented by counsel. The Applicants offered the testimony of Philip E. Sarna, President of Super Trans, and Thomas G. Sloan, Director of Marketing for Southeastern. Protestant Fredrickson offered the testimony of its Director of Traffic, Charlie F. Finley. The other Protestants did not present testimony.

At the close of proceedings on August 25th, the Protestants requested, and were granted, leave until September 8, 1981, to inspect in Paterson, New Jersey, certain records of Super Trans and, until September 11, 1981, to request further hearings on any matters coming to light as a result of such inspection. An

inspection was conducted by a representative of the Protestants on September 4, 1981, and on September 15, 1981, after having been granted an extension of time, Protestants filed a motion for further hearing. On September 2, 1981, an Order scheduling further hearing for Tuesday, November 3, 1981, was issued. At the hearing on November 3, 1981, witness Sarna was called for further cross-examination, and upon conclusion of cross-examination and redirect, the record was closed.

Based upon a careful consideration of the testimony and evidence presented at the hearings, the documents and exhibits received in evidence and judicially noticed, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.

2. By this Application, Super Trans and Southeastern seek approval of the sale by Super Trans to Southeastern, for a consideration of $75,000.00, of the operating authority evidenced by Certificate No. C-303.

3. The operating authority evidenced by Certificate No. C-303 was purchased by Super Trans from Pilot Freight Carriers, Inc. (Pilot), in 1977 for a purchase price of $100,000.00. That transaction was approved by the Commission in Docket No. T-1882.

4. Super Trans was organized by William G. Reese, III, who borrowed $135,000.00 from Riverside Warehouse Corporation to finance the purchase of the operating authority from Pilot and to provide $35,000.00 working capital. In connection with this loan, a note was executed to Riverside in the face amount of $135,000.00 and Mr. Reese's stock in Super Trans was pledged to Riverside as security for such loan.

5. Riverside in a New Jersey corporation with its principal office located in Paterson, New Jersey. Riverside is not a carrier and holds no authority from this Commission or any other authority to operate as a carrier.

6. In June 1980, being in default on his obligation under the note to Riverside, Mr. Reese, by agreement with Riverside, resigned his position with Super Trans, abandoned his stock to Riverside, and voluntarily relinquished control of the Company. Mr. Sarna, the chief operating officer of Riverside, was then elected President of Super Trans.

7. The stock in Super Trans has been endorsed in blank by Mr. Reese and is held by Riverside but has not been formally transferred to Riverside.

8. Riverside and Mr. Reese entered into the transaction described in Findings of Fact Nos. 4 through 7 above without first filing an Application with this Commission seeking prior permission to do so. This failure to obtain prior Commission approval was not willful, but was due to inadvertence and ignorance as to the pertinent requirements of the Public Utilities Act.

9. In 1980, a portion of the operating authority purchased by Super Trans from Pilot was resold to Pilot. That transaction was approved in Docket No. T-192, Sub 6, and the Order issued in that docket on September 26, 1980, found that Super Trans, the transferor, was "currently conducting operations under Certificate No. C-303."

10. Neither Super Trans nor Riverside, the owner of its stock, will profit from the proposed sale to Southeastern, since the proposed sale price is less than the amount still owed to Riverside by Mr. Reese.

11. Super Trans has continuously maintained on file with this Commission tariffs, evidence of cargo and liability insurance, and a designation of process agent.

12. Super Trans has continuously maintained in Charlotte, North Carolina, an office and terminal for the conduct of its trucking business. It has also maintained arrangements with owner-operators located at various points throughout the State.

13. Super Trans has continuously maintained a fleet of equipment, either owned or leased, for use in intrastate operations under its certificate. At present, Super Trans uses seven owner-operators on a full-time basis in conducting its intrastate operations.

14. Super Trans has actively solicited freight from shippers throughout the State, personal solicitations having been performed by both Mr. Reese, the Company's former President, and Mr. Sarna, its current President. In addition, Super Trans has, from time to time, distributed advertising brochures, entertained prospective customers, and hired commission agents to generate traffic.

15. For the period December 1980 through March 1981, Super Trans realized revenues in excess of $123,000.00 from its North Carolina intrastate operations. Super Trans trucks ran in excess of 98,000 miles in connection with said operations. For the entire 1981 year, Super Trans projects North Carolina intrastate revenues of from $400,000 to $600,000.

16. During the period that Super Trans has been in existence, there has never been a period of as much as 30 days when no intrastate transportation for compensation under its North Carolina certificate has been performed.

17. Super Trans has, for each of the years 1978, 1979, and 1980, filed annual reports with this Commission reflecting North Carolina intrastate transportation for compensation during said years as follows:

Year	Revenues
1978	$126,560
1979	105,450
1980	402,009

18. Southeastern is a South Carolina corporation with its principal office located in Columbia, South Carolina.

19. Southeastern is a motor common carrier of general commodities operating intrastate in South Carolina and Georgia and interstate in Georgia, North Carolina, and South Carolina. In connection with its interstate operations, Southeastern operates terminals at Charlotte, Thomasville, and Raleigh, North Carolina. The Thomasville terminal will be moved to Greensboro in the near future.

20. Southeastern operates 507 tractors, 917 trailers, and 128 straight trucks.

21. Southeastern is operating at a profit with projected revenues for 1981 of $54 - $55 million.

22. Southeastern is fit, willing, and able, financially and otherwise, to perform and provide adequate and continuing service to the public under the common carrier operating authority evidenced by Certificate No. C-303.

23. No matters exist which would disqualify Southeastern from operating as a common carrier in this State under the operating authority evidenced by Certificate No. C-303.

24. Protestants are authorized common carriers of general commodities operating under certificates of public convenience and necessity as follows:

a. Fredrickson - C-1 b. Overnite - C-6 c. Standard - C-356 d. Thurston - C-26

25. The proposed sale and transfer of the operating authority evidenced by Certificate No. C-303 from Super Trans to Southeastern is in the public interest and is justified by the public convenience and necessity.

26. The sale and transfer of the operating authority evidenced by Certificate No. C-303 proposed herein will not adversely affect service to the public under said franchise.

27. The proposed transfer of operating authority will not unlawfully affect the service to the public by other public utilities.

28. The common carrier operating authority evidenced by Certificate No. C-303 is not dormant.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

Based upon a careful consideration of the evidence presented, the entire record in this proceeding, and the foregoing findings of fact, the Hearing Examiner is of the opinion, and therefore concludes, that the amended Application at issue in this docket, being justified by the public convenience and necessity, should be approved. In this regard, the policy of the State of North Carolina, as declared in the Public Utilities Act, clearly favors the transfer of actively operated motor freight carrier certificates without unreasonable restraint. State ex rel. Utilities Commission v. Associated Petroleum Carriers, 7 N.C. App. 408, 173 S.E. 2d 25 (1970). State ex rel.

Utilities Commission v. Carolina Coach Company, 269 N.C. 717, 153 S.E. 2d 461 (1967).

The Protestants basically contend that the amended Application at issue in this proceeding should be denied principally for the following reasons:

(1) Mr. Reese and Riverside failed to comply with G.S. 62-111(a) by securing Commission approval prior to the transfer of the stock in Super Trans by Mr. Reese to Riverside;

(2) G.S. 62-111(d) prohibits a person, including Riverside in this proceeding, from obtaining a franchise for the purpose of transferring same to another; and

(3) Certificate No. C-303 is dormant under G.S. 62-112(c) and approval of the transfer of the operating authority evidenced thereby 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 Commission v. Estes Express Lines, 33 N.C. App. 99,234 S.E. 2d 628 (1977).

With respect to the Protestants' first contention, the Hearing Examiner concludes that the failure of Mr. Reese and Riverside to comply with G.S. 62-111(a) prior to the time the stock in Super Trans was transferred from Mr. Reese to Riverside did not serve to legally invalidate the transaction. G.S. 62-111(a) provides, in pertinent part, that no franchise shall be sold, assigned, pledged, or transferred except after application to and written approval by the Commission. There is nothing in the statute which would prohibit the Commission from approving nunc pro tunc an after-the-fact application, upon a showing of good cause. In the instant case, a showing of good cause has been made since an Application for approval was made as soon as was reasonably possible after the parties became aware of the requirements of G.S. 62-111(a).

The Hearing Examiner further concludes that the proposed sale and transfer of Certificate No. C-303 from Riverside to Southeastern does not violate G.S. 62-111(d) as alleged by the Protestants. In this regard, the Hearing Examiner is of the opinion that the clear intent of G.S. 62-111(d) is solely to prohibit trading in motor carrier franchises merely to make a profit from the sale and transfer thereof. In the case at hand, Riverside seeks permission merely to sell and transfer the certificate in question to Southeastern and to then apply the proceeds of said sale against the obligation which is still unrecovered from the loan made in good faith in 1977 to Mr. Reese. Riverside will not profit from the proposed transaction, but will merely reduce and minimize its losses resulting from the loan default by Mr. Reese. Furthermore, the Hearing Examiner does not believe that the General Assembly of the State of North Carolina intended, by enactment of G.S. 62-111(d), to prohibit a bona fide and good faith lienholder from looking to its collateral to satisfy the obligation of a defaulting public utility, either in whole or in part. If such were the case, financing for small motor carriers would be virtually impossible.

Protestants' third major contention is that the transfer from Super Trans to Southeastern should not be allowed because the involved operating authority is dormant. The Hearing Examiner concludes that the facts of this case clearly support a contrary conclusion. The proposed transaction, being the sale of a

motor carrier franchise, is governed by G.S. 62-111 which provides that this Commission shall approve such sale upon finding that it 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 is fit, willing, and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing of the Application. Considering this Application, as amended, in view of the above-referenced statutory criteria, the Hearing Examiner finds and concludes:

(a) That Super Trans has continuously remained open for business under Certificate No. C-303 and has continously offered service to the public up to the time of filing of the Application at issue in this proceeding; that Super Trans has actively solicited business under said certificate; that the Company has performed transportation for compensation under the authority of said certificate in substantial volume and has continuously maintained a fleet of equipment, either owned or leased from owner-operators, for use in intrastate operations performed under its certificate; that Super Trans has continuously maintained on file with this Commission tariffs, evidence of cargo and liability insurance, and a designation of process agent; that the Company has continuously maintained an office and terminal in Charlote, North Carolina, for the conduct of its trucking business, and presently maintains arrangements with seven owner-operators on a full-time basis in conducting its intrastate operations; and that there has never been a period of as long as 30 days when Super Trans has failed to perform transportation for compensation under the authority of its certificate. Clearly, Certificate No. C-303 is not dormant.

(b) That Southeastern is an experienced carrier of freight with sufficient facilities, equipment, and personnel to exercise the operating authority evidenced by Certificate No. C-303 and to provide service to the public at a level equal to or greater than that provided by Super Trans.

(c) That since Certificate No. C-303 has been actively operated and applied to the satisfaction of the public need heretofore found to exist at the time said certificate was originally issued, its transfer from Super Trans to Southeastern will not unlawfully affect service to the public by other public utilities and said transfer is in the public interest.

In concluding this Order, the Hearing Examiner offers these further comments and conclusions with respect to the issue of dormancy as raised in this case by the Protestants. Mr. Sarna specifically testified that Super Trans' operations under Certificate No. C-303 were continuous and uninterrupted up until the time of filing of the Application at issue herein; that such operations were in fact rendered by Super Trans on a daily basis and that, to his own personal knowledge, such operations were conducted during the period of time from April through August 1979, when the Protestants allege that the certificate in question became dormant. In this regard, G.S. 62-112(c) provides that the failure to perform transportation services for compensation under the authority of a franchise for a period of 30 days is merely prima facie evidence that the franchise is dormant. Such evidence is sufficient to justify, but not necessarily to compel, a finding that the franchise is actually dormant. Upon

such prima facie showing, the Commission in its discretion may then consider other pertinent factors affecting the performance of service. State ex rel. Utilities Commission v. Estes Express Lines, supra.

Even if the Hearing Examiner had found, which is not the case, that Super Trans had failed to perform any transportation for compensation under the authority of its certificate for a period of 30 consecutive days, such a finding would merely constitute prima facie evidence of dormancy, which presumption would certainly be subject to being rebutted by the existence of mitigating circumstances and factors of a convincing nature. In this particular case, the Hearing Examiner concludes that the factors set forth hereinabove in Findings of Fact Nos. 11 through 17 would clearly be sufficient to rebut even a prima facie showing of dormancy.

IT IS, THEREFORE, ORDERED as follows:

1. That the joint Application filed herein on June 3, 1981, as amended at the hearing on August 25, 1981, be, and the same is hereby, approved and Certificate No. C-303, as more particularly described in Exhibit B attached hereto and made a part hereof, be, and the same is hereby, transferred to Southeastern Freight Lines.

2. That this Order and the authorization contained herein shall itself constitute a certificate until a formal certificate shall have been transmitted to Southeastern Freight Lines by the Commission authorizing the transportation set forth in Exhibit B attached hereto.

3. That Southeastern Freight Lines shall file with this Commission evidence of the required insurance, a list of equipment, a tariff schedule of rates and charges, designation of a process agent and otherwise comply with the Rules and Regulations of the Commission, all of which should be accomplished within thirty (30) days from the date this Recommended Order becomes effective and final, unless such time is hereafter extended by the Commission.

4. That unless Southeastern Freight Lines complies with the requirements set forth in Decretal Paragraph 3 above and begins operating under the authority herein authorized within a period of thirty (30) days from the date this Recommended Order becomes effective and 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 and determine.

5. That Southeastern Freight Lines shall 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 in the preparation of such Annual Report. A copy of the Annual Report form shall be furnished to Southeastern Freight Lines upon request made to the Accounting Division, Public Staff, North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of December 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

MOTOR TRUCKS

DOCKET NO. T-2136

Southeastern Freight Lines
Post Office Box 5887
Columbia, South Carolina 29250

IRREGULAR ROUTE COMMON CARRIER AUTHORITY

EXHIBIT B

(1) Transportation of textile product and products used by textile mills in the manufacture of textile products, over irregular routes, between points and places in the counties of Rutherford, Cleveland, Catawba, Iredell, Rowan, Mecklenburg, Davidson, Randolph, Forsyth, Guilford, Alamance, Franklin, Wilkes, Buncombe, McDowell, Gaston, Rockingham, and Stanly.

(2) Transportation of general commodities, except those requiring special equipment, over irregular routes, between points and places within a radius of 150 miles of Greensboro.

(3) Transportation of paper boxes, over irregular routes, from Winston-Salem to points and places in the counties of Buncombe and Haywood.

(4) Transportation of general commodities, except those requiring special equipment, over irregular routes, between all points and places in the State eastward from a line along the western border of Caswell, Alamance, Chatham, Moore, and Scotland counties.

(5) Transportation of bottled beverages, concrete products, metal tanks and steel pipes from points and places in Durham and Wake counties to points and places in the counties of Surry, Yadkin, Iredell, and Mecklenburg, and all counties east thereof.

(6) Transportation of groceries in drop shipments in truck load lots from Raleigh to points and places in the counties of Granville, Wake, Johnston, Sampson, and Pender, and all counties east thereof.

NOTE: The general commodities authority in paragraph (4) may be tacked to the general commodities authority in paragraph (2) to form through routes and service between the points and places in the areas covered by the two authorities.

MOTOR TRUCKS

RESTRICTION: No service is authorized for the transportation of general commodities except those requiring special equipment and except commodities in bulk, in tank vehicles, over irregular routes, between Kernersville, North Carolina, on the one hand, and on the other (1) all points and places in the State within a radius of 150 miles of Greensboro; and (2) all points and places in the State eastward from a line along the western border of Caswell, Alamance, Chatham, Moore, and Scotland counties.

DOCKET NO. R-4, SUB 139

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Norfolk Southern Railway Company - Petition for Authority to) RECOMMENDED ORDER
Discontinue the Agency Station at Belhaven, North Carolina) DENYING PETITION

HEARD IN: Council Chambers, City Hall, Main Street, Belhaven, North Carolina, on July 13, 1981, at 7:00 p.m.

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

APPEARANCES:

For the Applicant:

Odes L. Stroupe, Hunton & Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602, and

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

PARTIN, HEARING EXAMINER: On May 6, 1981, Norfolk Southern Railway Company ("Petitioner" or "Norfolk Southern") filed a Petition for authority to discontinue the agency station at Belhaven, North Carolina. The Petition alleged that the public convenience and necessity does not require the continued operation of the agency station at Belhaven and that the public will be adequately served if all of the business served at that agency station is conducted by and from the Southern Railway agency station at Chocowinity, which is located approximately thirty-one miles from the Belhaven agency station.

The Petition also alleged that Notice to the Public was posted for ten (10) days in compliance with Rule R1-4.

On June 12, 1981, the Commission issued an Order scheduling the Petition for hearing in Belhaven on July 13, 1981, and requiring Notice thereof by publication in a newspaper serving the Belhaven area. The Order recited that the proposed discontinuance was a matter affecting the public interest.

The Public Staff filed Notice of Intervention on June 24, 1981.

The matter came on for hearing in Belhaven as scheduled. Norfolk Southern presented the testimony and exhibits of Charles N. Loughey of Washington, D. C.; Clyde Baliff of Raleigh, the Assistant Division Superintendent of the Petitioner's Eastern Division; and, as a rebuttal witness, Paul Anthony Giles of Plymouth, Trainmaster.

The Public Staff presented the testimony of John Holt, Manager of the Bath FCX; Durwood Laughinghouse, Manager of the A. D. Swindell Grain Company; James Younce, who is in the lumber business; and Ellis Myers, owner of Myers Lime Company.

Upon consideration of the application, the testimony and exhibits presented at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Petitioner, Norfolk Southern Railway Company, is a common carrier by rail in this State and is subject to the jurisdiction of this Commission.

2. The Petitioner presently maintains an agency station in Belhaven which handles freight traffic for a number of businesses in the Belhaven area, including farm products dealers (lime and fertilizer), grain dealers, and lumber companies.

3. Norfolk Southern proposes to discontinue the agency station at Belhaven and to conduct all business served by the Belhaven station from the Southern Railway agency station at Chocowinity, which is located approximately thirty-one (31) miles from the Belhaven station.

4. The Petitioner has published the required Notice to the Public of its Petition in this docket.

5. The operations of the Belhaven agency station were profitable to Norfolk Southern for the calendar year 1979 and the 12-month period ending November 30, 1980. Revenues earned at this station increased from 1979 to 1980, as well as the number of shipments to and from the station.

6. The reasons advanced by the Petitioner for closing the Belhaven station include the following: the saving in station expenses; a more effective use elsewhere of the present station agent, Mr. Parker; the availability of computer facilities at Chocowinity to the shippers who are now served out of the Belhaven station.

7. The present station agent at Belhaven, Mr. Parker, gives good service to the shippers who use the Belhaven station. The shippers who testified at the July 13, 1981, hearing unanimously opposed the closing of the Belhaven station. The personal and attentive service given the shippers by Mr. Parker materially aids them in their businesses.

8. The shippers who use the Belhaven agency make an important contribution to the economy of the Belhaven area. These shippers include dealers in grain, fertilizer, farm products, limestone, and lumber.

9. The shippers who now use the Belhaven station can receive better service from the Belhaven station than from the Chocowinity station.

CONCLUSIONS

The Examiner concludes that the public convenience and necessity require the continued operation of the agency station at Belhaven. Accordingly, the Petition of Norfolk Southern should be denied.

In so deciding, the Examiner notes the following: although the Petitioner has advanced acceptable reasons, standing alone, for discontinuing the Belhaven station, the Public Staff and the shippers who use the station have amply and conclusively demonstrated that the continued operation of the station is justified by the public convenience and necessity. The agency station at Belhaven is profitable to Norfolk Southern. Revenues and shipments at this station have increased from 1979 to 1980. The Belhaven station and its agent, Mr. Parker, play an important role in the local economy. Shippers who deal in fertilizer, farm products, lumber, limestone, and grain rely upon the good service which Mr. Parker provides to them. The testimony of the shippers in this proceeding was unanimous that Mr. Parker gives good service. These shippers expressed their concern that if the Belhaven station were to close the quality of service would decrease. The shippers pointed out individual instances in which the local station agent helped their business perform more profitably and efficiently. For example, Mr. Laughinghouse, the grain dealer, testified that the rail service helps him to meet competition from other grain producing areas. Mr. Younce, the lumber mill owner, testified that Mr. Parker was diligent in getting rail cars for him. Mr. Myers, the limestone dealer in Pantego, testified that Mr. Parker allowed him extra time to unload limestone during the winter when the limestone was frozen; Mr. Parker also saved him money when he advised Mr. Myers to defer rail shipments until rail rates went down.

In deciding between the concerns of Norfolk Southern and the shippers in this proceeding, the Examiner must conclude that the continued operation of the Belhaven station is justified by the public convenience and necessity.

IT IS, THEREFORE, ORDERED that the Petition of Norfolk Southern Railway Company to discontinue the agency station at Belhaven, North Carolina, be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of October 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. R-71, SUB 93

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
The Lumbee Indians of Robeson County of Allenton Community, Complainants	)	ORDER DIRECTING REPAIRS AND IMPROVEMENTS TO DRAINAGE FACILITIES OF RAILROAD
vs.	)	
Seaboard Coast Line Railroad Company, Respondent	)	

HEARD IN: City Council Chambers, Municipal Building, 501 East Fifth Street, Lumberton, North Carolina, February 18 and 19, 1981

BEFORE: Commissioner John W. Winters, Presiding; and Commissioners Edward B. Hipp and Douglas P. Leary

APPEARANCES:

For the Respondent:

Neill W. McArthur, Jr., Assistant General Attorney, Seaboard Coast Line Road Company, 500 Water Street, Jacksonville, Florida 32202
For: Seaboard Coast Line Railroad Company

John T. Alderson, Jr., Contract Attorney, Seaboard Coast Line Railroad Company, 500 Water Street, Jacksonville, Florida 32202
For: Seaboard Coast Line Railroad Company

Everett L. Henry, McLean, Stacy, Henry & McLean, Attorneys at Law, Suite 305 - P.O. Box 1087, Lumberton, North Carolina 28358
For: Seaboard Coast Line Railroad Company

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, and Karen E. Long, 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: At the April 28, 1980, Commission Conference, the Public Staff presented a Supplemental Agenda Item stating that the Executive Director had received a Petition from the Lumbee Indians and landowners in the Allenton Community of Robeson County; the petition requested the Public Staff to petition the Utilities Commission to order the Seaboard Coast Line Railroad (Seaboard) to correct a drainage problem created by the Railroad. The Public Staff made the following recommendation:

> "That the Commission issue a Show Cause Order directing the Seaboard Coast Line Railroad Company to show cause why they haven't taken some positive action to remedy the drainage problems along their tracks in the Allenton Community, Robeson County, North Carolina."

Having considered the Petition and the Public Staff's recommendation, the Commission concluded that the Petition should be treated as a complaint filed with the Commission which prays that this Commission order Seaboard Coast Line Railroad Company "to open their ditches from the main run of the Big Swamp, west to the west side of Bear Bay on both side (sic) of their track."

In accordance with the Commission's Rules of Practice and Procedure, service of the Petition was made on the Respondent, Seaboard Coast Line Railroad Company, by Order Serving Complaint, by United States Certified Mail, return receipt requested, on May 23, 1980. The Respondent was directed to satisfy the

demands of the complaint or to file an answer thereto within thirty (30) days after receipt of the Order.

On June 4, 1980, Seaboard filed a Motion for a Bill of Particulars or in the alternative to make the Complaint more specific. On June 23, 1980, Seaboard filed an Answer to the Complaint, which submitted that Seaboard was without sufficient information to admit or deny any allegation, if such exists, in the complaint.

After obtaining an extension of time for filing response, the Public Staff, on September 15, 1980, filed a Motion and made specific allegations as to the original Complaint and also moved that a public hearing be held in Lumberton to determine the rights and remedies of the parties.

On September 19, 1980, the Commission issued an Order serving the response and motion on Seaboard. On October 6, 1980, Seaboard filed an Answer to the Complaint.

The Public Staff, on October 10, 1980, filed a Motion requesting that the Commission view on-site the utility property in question and that the hearing be held in Lumberton, North Carolina.

On October 21, 1980, the Commission set the matter for hearing on December 4, 1980, in Lumberton, North Carolina.

As a result of the many requests from citizens of the Allenton Community, the Public Staff filed a Motion, on October 22, 1980, requesting that, as a part of the hearing in Lumberton, North Carolina, one night session should be scheduled in order that those public witnesses who worked during daytime hours could appear and give testimony.

Seaboard filed, on October 27, 1980, a Motion to Dismiss the Complaint in this docket, alleging that the Commission lacked jurisdiction to hear the merits of the Complaint, that General Statutes Chapter 62 does not provide jurisdiction for hearing the Complaint, and that any action by the Commission would be a taking of railroad property in violation of the United States Constitution.

The Commission, on November 4, 1980, set the Motion to Dismiss for oral argument on Thursday, December 4, 1980, and also set a night hearing for December 4, 1980, both in Lumberton, North Carolina.

On November 7, 1980, the Public Staff filed a Reply to Motion to Dismiss. Seaboard, on November 12, 1980, filed a Motion to reschedule the December 4, 1980, hearing because of a conflict with a pending Federal lawsuit. The Public Staff, by a motion filed on November 14, 1980, joined with Seaboard for a rescheduling of the case.

Seaboard also filed, on November 17, 1980, an Amended Petition to reschedule the hearing set for December 4, 1980, in Lumberton, North Carolina.

By Order issued on November 26, 1980, the Commission rescheduled the hearing to February 18 and 19, 1981, with a night hearing commencing at 7:00 p.m. on February 18.

RAILROADS

The hearing began in Lumberton on Wednesday night, February 18, 1981. The following witnesses were presented by the Public Staff: Hazel Frances Scott Hunt, a resident of the Allenton area, who signed the Petition and who complained of poor drainage in front of her home; Franklin Parnell, a Department of Transportation Area Foreman for the Allenton area, who testified on the flooding of the State roads in the Allenton area; Cecil Taylor, a farmer in the Allenton area, whose farm abuts Seaboard Coast Line Railroad Company's right-of-way in the area complained of in the Complaint; David Pittman, another farmer and landowner whose property abuts the rail right-of-way complained of; Letha Hammonds, a resident on State Road 2129, who testified as to high water in her yard; Daryl Smith, another farmer and landowner, who testified as to the lack of drainage around the railroad's hot box detector which abuts his fields; Susan Bullard, a housewife residing in the Allenton area, who testified concerning the ponding of water on her driveway; Hubert Surles, a farmer, who testified as to flooding of crop land, loss of crops, and the amount of the loss; Jimmie A. Pittman, a farmer and landowner, who testified concerning the ditches abutting his farmland; Carl West, a retired merchant of the Allenton area, who also testified as to the lay of the land and drainage problems generally; Grady Jacob, Jr., a farmer, who gave testimony about flooding in his area; Delton Morgan, Chairman of Robeson Memorial Park and the Chairman of the Board of Trustees of Smyrna Church, who testified as to the flooding of the cemetery and the gravesites. The hearing adjourned at 11:00 p.m.

The hearing resumed on February 19, 1981. The Public Staff presented these additional witnesses: Rudy Shaw of the Public Staff's Water Division and a former rail and track inspector trainee, who testified on his inspection of the track and the drainage ditches along the railroad in the Allenton area; C.P. Holt, Utilities Commission Rail Safety Inspector, who testified concerning the condition of the railroad and the right-of-way; H.T. Taylor, Robeson County Commissioner, who testified that the Allenton area was in his electoral district and that he was well acquainted with the drainage problem; Memory Curtis Todd, a drainage contractor, who testified as to the cost of repairing drainage ditches in the Allenton area and along the railroad; Robert Bryant, a farmer owning land adjacent to the railroad in the Allenton area, who testified as to the dirt-filled tiles and ditches along the railroad, his fields being covered with water after rains, and as to the filled trestle area.

Seaboard presented the following witnesses: Robert Pregnall, Principal Assistant Engineer, Engineering Department, who testified on the design of the railroad's drainage ditches and the topographical profile of the area; Joseph C. Britt, Assistant Division Engineer, who testified as to the track construction, bridges, and track maintenance; Ed Holland, U.S. District Conservationist for Robeson County, who testified concerning drainage in the Allenton area; G.L. Wynne, retired Seaboard Coast Line Company Roadmaster, who testified on track construction, right-of-way drainage, and general rail maintenance; Robert A. Martin, Seaboard Coast Line Roadmaster, who testified on the drainage in the area between mileposts 302 and 306 in the Allenton area; and W.G. Hall, Seaboard Coast Line Railroad Company Trainmaster in the Wilmington-St. Paul Subdivision, who testified as to the train schedules and the content of freight transportation.

The Commission briefly recessed the hearing on Thursday, February 19, 1981, in order to make an on-site inspection of the railroad's track and drainage facilities between mileposts 302 and 306.

After the close of the hearing in Lumberton, North Carolina, Seaboard filed on March 24, 1981, a "Motion to Remove the Public Staff from this Proceeding; and to Bar the Public Staff from any Further Direct or Indirect Participation in this Proceeding." Seaboard further requested that the Motion be set for oral argument prior to the filing of the post-hearing briefs.

On April 6, 1981, the Public Staff filed its Reply to the Motion of Seaboard requesting that the Motion be denied.

The Motion was set for oral argument on May 1, 1981, and after oral arguments, an Order was issued on May 8, 1981, denying the Motion of Seaboard.

Based upon the testimony and the exhibits presented at the hearing, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. The Complainants are residents and landowners in the Allenton Community of Robeson County, which community is on N.C. Highway 211 a few miles east of Lumberton. The land of the Complainants, which is used mostly for farming and homesites, abuts or is near Seaboard's railroad track and right-of-way under consideration in this proceeding.

2. The Respondent, Seaboard Coast Line Railroad Company, is a common carrier by rail in the State of North Carolina and is subject to the jurisdiction of this Commission.

3. The Commission has jurisdiction to hear the complaint of the Complainants filed in this proceeding and to issue an Order directing Seaboard to make repairs and improvements to its drainage facilities under consideration herein.

4. Seaboard owns and maintains a railroad track which runs in an eastwardly direction from Hamlet to Wilmington, North Carolina. This track runs through the Town of Lumberton and near the community of Allenton in Robeson County. The railroad track and right-of-way under consideration in this proceeding begins at the Seaboard milepost 302 near Allenton, just west of the intersection of State Road 1002 and the track, and ends at milepost 306 in the Big Swamp, just west of the Robeson-Bladen county line. The track was originally laid in 1861 by the Wilmington, Charlotte and Rutherford Railroad Company and is today owned by Seaboard and is maintained as a part of the Lumberton subdivision of the Raleigh Division. Seaboard's right-of-way along this track is 100 feet on either side of the center line of the track, or a total of 200 feet.

5. Between milepost 302 and milepost 306 Seaboard maintains a drainage system on both sides of the railroad track and entirely within the 200-foot right-of-way. There are roadbed ditches which collect the water that falls on the track and the roadbed and on the area around the right-of-way; these ditches are designed to carry the water to the crossings of natural waterways. Seaboard also maintains on its right-of-way various pipes or culverts underneath the track, which are designed to drain water from one side of the track to the other.

6. The elevation of the land alongside the railroad track from milepost 302 near Allenton to milepost 306 in the Big Swamp generally slopes downward toward the Big Swamp.

7. The natural flow of water in the area alongside the track and right-of-way is more or less in an easterly direction toward and into the Big Swamp.

8. The ditches and culverts maintained by Seaboard on its right-of-way between milepost 302 and milepost 306 are in various states of disrepair and, as a consequence, are unable to accommodate and to carry away the water which collects in these ditches and culverts.

9. Debris such as pulpwood and abandoned crossties are in some of the ditches maintained by Seaboard between mileposts 302 and 306; this debris inhibits or prevents the water collecting in these ditches from flowing toward a natural watercourse. Other ditches have become filled in with dirt and vegetation or are virtually nonexistent.

10. Many of the railroad's culverts underneath the track between mileposts 302 and 306 have become filled in with dirt and debris and are incapable of properly draining water from one side of the track to the other; the outlets of some culverts are higher than the ditches they were designed to serve.

11. The water collecting and standing in these ditches and culverts backs up and spills out onto the land adjoining the railroad right-of-way. Much of this land is owned by the Complainants and is used by them as farms and homesites. Many Complainants have suffered damage to their crops and fields. Roads crossing the track have been flooded.

12. The water collecting and standing in the railroad's ditches and culverts also prevents the water which collects on the Complainants' land from flowing downward and eastward to the Big Swamp.

13. At or near Seaboard's hot box detector house, which is located at the intersection of State Road 2118 and the track, the railroad's ditches and tiles on either side of the track have become filled in, further inhibiting the natural flow of water towards the Big Swamp.

14. At or near milepost 303, the rails "swing" or "pump" in muddy, fouled ballast that is unable to drain properly; this condition is unsafe and if it is not corrected, the track could deteriorate further and adversely affect the service of Seaboard over these rails.

15. Seaboard maintains a long trestle on this track just west of milepost 306. In 1919 the trestle was approximately 650 feet long; today it is 262 feet long. Seaboard shortened the trestle by filling it in with dirt and riprap to prevent erosion. The effect of this shortening is to create a weir-like effect, which retards the flow of water along the railroad's ditches towards the Big Swamp.

16. In March 1979 the Commission's track inspector investigated the condition of the track, roadbed, and drainage facilities between mileposts 302 and 306; in his report he noted the standing water in the ditches unable to

drain and the "pumping" or "swinging" rails. He testified in the February 1981 hearing that the same conditions exist today.

17. The Commission has adopted and enforces the Track Safety Standards of the Federal Railroad Administration. These standards are applicable to Seaboard's drainage facilities under consideration herein. Section 213.33, which relates to drainage, reads as follows:

> "Each drainage or other water carrying facility under or immediately adjacent to the roadbed must be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned."

These track standards also incorporate a number of drainage violations, which are identified by a defect code. These violations are:

"33.01 Drainage or water carrying facility not maintained.

33.02 Drainage or water carrying facility obstructed by debris.

33.03 Drainage facility collapsed.

33.04 Drainage or water carrying facility obstructed by vegetation.

33.05 Drainage or water carrying facility obstructed by silting.

33.06 Drainage facility deteriorated to allow subgrade saturation.

33.07 Uncontrolled water undercutting track structure or embankment."

18. The ditches and culverts maintained by Seaboard on its right-of-way between mileposts 302 and 306 do not comply with Section 213.33 of the Track Safety Standards. These ditches and culverts also violate defect codes 33.01 - Drainage or water carrying facility not maintained; 33.02, 33.04, and 33.05 - Drainage or water carrying facility obstructed by debris, vegetation, and silting; and 33.06 - Drainage facility deteriorated to allow subgrade saturation.

19. The failure of Seaboard to maintain its drainage facilities in compliance with the above-described Track Safety Standards results in the drainage problems alongside the railroad's track and right-of-way between mileposts 302 and 306.

20. It is to the advantage of Seaboard to keep its ditches and culverts between mileposts 302 and 306 clean and open and properly maintained. Improperly maintained drainage facilities offer the potential of undermining the rail roadbed and could ultimately cause a derailment.

21. The Complainants have lived in the area affected by this proceeding for most, if not all, of their lives, and they are knowledgeable about the drainage of water in and around Seaboard's ditches and culverts between mileposts 302 and 306.

22. The Complaint filed herein is not an action in tort.

23. Repairs and improvements to Seaboard's drainage ditches and culverts between mileposts 302 and 306 ought reasonably to be made so that the water which runs into and collects therein can flow unobstructedly toward the Big Swamp.

CONCLUSIONS

Conclusion No. 1

The Commission concludes that it has jurisdiction to hear and determine the complaint filed in this proceeding. Seaboard is a common carrier by rail of freight in North Carolina intrastate commerce and is subject to the jurisdiction of the Commission. G.S. 62-235 provides as follows:

> "The Commission is empowered and directed, from time to time, to carefully examine into and inspect the condition of each railroad, its equipment and facilities, in regard to the safety and convenience of the public and the railroad employees; and if any are found by it to be unsafe, it shall at once notify and require the railroad company to put the same in repair."

The Commission is of the opinion that the word "facilities," as used in this statute, includes Seaboard's track and right-of-way between mileposts 302 and 306 on its Hamlet to Wilmington line and the drainage facilities constructed thereon. The testimony in this proceeding is clear that Seaboard's right-of-way along this track is 100 feet on either side of the center of the track, or a total of 200 feet. It is this right-of-way which is discussed throughout this Order.

The Commission's jurisdiction is further supported by G.S. 62-42, which provides, in relevant part, as follows:

> "Compelling efficient service, extensions of services and facilities, additions and improvements.--(a) Whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds:
>
> (1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory, or
>
> * * * * *
>
> (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...ought reasonably to be made, or
>
> (4) That it is reasonable and proper that new structures should be erected to promote the security or convenience or safety of its patrons, employees and the public, or

(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity,

The Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements or additional services or changes shall be made or affected within a reasonable time prescribed in the order."

Attention is also called to G.S. 62-43, which provides in relevant part:

"Fixing standards, classification, etc.; testing service, --(a) The Commission may, after notice and hearing, had upon its own motion or upon complaint, ascertain and fix just and reasonable standards, classifications, regulations, practices, or service to be furnished, imposed, observed or followed by any or all public utilities:..."

The allegations of the Complainants, and the evidence offered in this proceeding in support thereof, are sufficient to invoke this Commission's jurisdiction to inquire into the condition of Seaboard's track and drainage facilities along its right-of-way between mileposts 302 and 306 and, when such facilities are found to be unsafe and in disrepair, to require that Seaboard make repairs and improvements to these facilities.

Conclusion No. 2

The Commission concludes that this is a complaint proceeding against a regulated common carrier by rail, which the Commission is authorized by G.S. Chapter 62 to hear and determine, and is not an action in tort. The Complainants are not seeking monetary damages in this proceeding but are asking that Seaboard open its ditches and culverts on both sides of the track under consideration so that the water that collects and stands therein will drain to the Big Swamp. The Commission has authority to order that this be done.

As discussed in Conclusion No. 1, above, the Commission has jurisdiction to hear the complaint and to issue an appropriate order requiring that Seaboard make repairs and improvements to its drainage facilities. The Commission has made findings and conclusions that the drainage facilities maintained by Seaboard on its right-of-way are in various states of disrepair and that this condition adversely affects the public safety and convenience, including the service provided by Seaboard over this track. The Commission Order herein does not award monetary damages to the Complainants but requires that Seaboard undertake repairs and improvements to its drainage facilities between mileposts 302 and 306. Although the Complainants will benefit individually from the improvements ordered herein, the evidence also amply demonstrates that the public safety and convenience will be served.

Conclusion No. 3

The Commission concludes that there is no "taking" of the Respondent's property in violation of the 14th Amendment of the United States Constitution. In this proceeding Seaboard has had ample notice and opportunity to be heard. "Due process" has been safeguarded, and the repairs and improvements directed by this Order are authorized by statute.

Conclusion No. 4

The Commission concludes that the ditches and culverts maintained by Seaboard on its right-of-way between mileposts 302 and 306 are in various states of disrepair and, as a consequence, are unable to carry away the water which collects in these ditches and culverts.

The evidence in this proceeding, including the Commission's on-site inspection of the area under consideration on Thursday, February 19, 1981, is sufficient to establish that Seaboard's ditches and culverts are in various states of disrepair and are unable to carry away the water which collects therein. Attention is particularly called to the testimony and exhibits of Complainants David Lee Pittman, Cecil Taylor, Daryl Smith, Hubert Surles, Jimmie A. Pittman, Carl West, Delton Morgan, H.T. Taylor, and Robert Bryant. These witnesses live alongside or near the drainage facilities of Seaboard under consideration. Most of them have lived in the Allenton community all of their lives; they are knowledgeable about the drainage of water in and around Seaboard's tracks and right-of-way. They offered valuable and illuminating testimony on the condition of these facilities and on the failure of these facilities to do the job they are supposed to do.

Mr. Pittman, a farmer, testified that he owned land adjacent to the railroad on the south side of the track extending from milepost 303 to the intersection of State Road 2100. He stated that there was a time when the "railroad ditches were more adapted to carrying the water away than they are at the present time." (TR. I, 58) The railroad ditch that abuts his property is filled in and does not allow the water to flow in either direction. (TR. I, 61, 81) In his opinion the lack of adequate drainage in the railroad's ditches is causing the flooding in front of his property. These ditches "are open but they are not free...they are not cut to grade and there is a lot of pulpwood and stuff like this in those ditches that would hamper drainage if they were cut to grade." (TR. I, 64, 65) In some places there is no ditch at all. Public Staff Exhibit 3, a photograph, illustrates Mr. Pittman's testimony on the shallowness of the ditch in front of his property and the wet condition of his fields resulting from the inadequate drainage of this ditch. (TR. I, 58)

Robert Bryant, a neighbor of Mr. Pittman, also lives in the area around milepost 303. He described the condition of a road crossing at the Bryant home place. The railroad's ditch at that location is filled in and there is no tile there. As a result, the railroad's ditch cannot drain across the road unless the water "gets high enough to go over the road." (TR. II, 79) Public Staff Exhibit 9, also a photograph, illustrates Mr. Bryant's testimony on this location. Mr. Bryant also identified the "swinging" crossties in front of his home place, which are shown in Public Staff Exhibit 5. Public Staff Exhibit 10 shows Mr. Bryant next to the railroad's ditch; there is water standing in the ditch and old crossties are floating therein. The tile shown in the picture is filled in with dirt. Mr. Bryant's field is in the background. Mr. Bryant testified on direct examination:

Q. (Mr. Brown) What happens when it rains a heavy rain?

A. If you get a heavy rain, you get water backed out of this ditch, backs out past that pole that is out in the field there and drowns everything out there.

Q. Does it cover the field?

A. Yes, sir.

Q. Have you ever seen it cover that field?

A. Yes, sir.

Q. How many times have you seen it cover that field?

A. Every time you get 3 or 3 1/2 inch rainfall.

* * * * *

Q. Does the water cover that road too?

A. When it comes out of the ditch and over in the field that is across the road. (TR. II, 81, 82)

Public Staff Exhibit 11 shows Mr. Bryant standing at the intersection of a road and the track. He testified that the ditch between the road and the track is on the railroad right-of-way and that the ditch is filled up. (TR. II, 82) Public Staff Exhibit 13 illustrates Mr. Bryant's testimony that the tiles placed by Seaboard under the road near his house does not drain and that water "ponds up" behind the road as a result. This photograph looks west up the track toward Allenton.

Cecil Taylor, who also lives near milepost 303, testified on cross-examination:

Q. You are saying Seaboard Coast Line ditch does not carry the water when the water collects in it?

A. That is right. (TR. I, 48)

He testified that when it rains the water "ponds up beside the railroad track and it don't have anywhere to go" and runs up onto his fields. (TR. I, 46) He further testified that the drainage problem in his area has gotten worse since the railroad built up the roadbed in the early 1960s. (TR. I, 50) Prior to this time the water did flow away from his land. (TR. I, 54)

Hubert Surles, who farms land north of the track near milepost 303, testified that he lost a crop of beans in 1979 when the water backed away from the railroad into the field and flooded it. (TR. I, 107) The water on this land naturally flows toward the railroad. He does not clean the ditches on his land because "they are full of water all the time from the railroad on back towards Mrs. Taylor's house to higher elevation." (TR. I, 110)

Carl West, who has lived in the Allenton community all of his life, testified that the damming up of the long trestle near the Big Swamp causes water to back up in a northerly direction toward the State Highway 211. (TR. I, 123) The natural flow of water is toward the Big Swamp in the east. He further described

how the very wide ditches of the railroad through Bear Bay narrow into nothing more than a "little trail" around milepost 303 at Robert Bryant's house. (TR. I, 124) During the cross-examination of Mr. West, photographs taken by him were admitted into evidence. Perusal of these photographs dramatically reveal the condition of Seaboard's drainage facilities. Especial attention is called to those photographs showing the "swinging" rails, debris in the ditches, and water standing in the fields.

Daryl Smith lives near State Road 2118 and Seaboard's hot box detector house. (TR. I, 93) He testified that the railroad ditch around this house was filled in when the railroad built the house; when it rains the water "ponds" there. (TR. I, 95, 96) He had to dig his own ditch to drain the water away. He further testified that the water used to flow east toward the Big Swamp before the hot box house was built. (TR. I, 100)

Jimmie A. Pittman also lives at State Road 2118 and the hot box detector house. (TR. I, 115) His testimony largely corroborated that of Mr. Smith. He testified that if the railroad's ditches were cleaned out water would flow toward the Big Swamp. (TR. I, 117)

The Public Staff presented the testimony of two witnesses who have had considerable experience in the investigation of railroad drainage facilities. Rudy Shaw was a track inspector trainee with the Commission for four years (he is now with the Water Division of the Public Staff). He has made two inspections of the track in question, one in February 1980 and the other in February 1981. He testified that the long trestle just before milepost 306 was once 650 feet long and is now approximately 260 feet long. (TR. II, 5) He also described the "pumping rail" condition shown in the photograph, Public Staff Exhibit 5. He testified that the Commission has adopted and enforces the Track Safety Standards of the Federal Railroad Administration. (TR. II, 15) He called attention to Section 213.33 of those standards, which relates to drainage (See Finding of Fact No. 17). He also described the defect codes for drainage violations.

C.P. Holt is the present rail safety inspector for the Commission, and he has had more than 25 years of railroad experience with the Norfolk Southern Railroad Company including work as a track supervisor. He made an inspection of the track and drainage facilities in question in March 1979. A copy of his report of the investigation was introduced into evidence as Public Staff Exhibit 8. Mr. Holt found the drainage ditches on the Seaboard right-of-way full of stagnant water with no way to drain; the ditches were also full of debris. He also found that the track in this area was not in good condition. The ballast was "fouled badly and pumping, with water and mud standing in the track." It was his opinion at the hearing that the water standing in an adjacent field had backed into the field from the railroad's ditches. (TR. II, 45) Mr. Holt also described in his report and at the hearing the condition of the "pumping" or "swinging" track near milepost 303. He testified from photograph Exhibit 5 that the pumping track condition was the same just prior to the hearing, when the picture was taken, as it was in March 1979 when he made his on-site investigation. (TR. II, 49) It was his opinion that Seaboard should make an immediate effort to drain the area alongside its ditches and eliminate the hazardous conditions arising from improper drainage.

Ed Holland, a witness for Seaboard, is an employee of the Soil Conservation Service of the U.S. Department of Agriculture, and he works in Robeson County. Part of his testimony should be noted at this point. On cross-examination he described a visit to the track in question that he made with Carl West and H.T. Taylor, a County Commissioner. He observed a large culvert under the railroad track: "water [was] standing on both sides of the track and probably 70 per cent of that culvert was full of water with very little evidence of flows at that time." (TR. II, 197) It was his opinion that the water was "ponding" at this location because "there is no outlet for it." (TR. II, 198) He identified this condition as being within the railroad right-of-way. (TR. II, 199) Attention is also called to the following exchange between Commissioner Leary and Mr. Holland:

Q. (Mr. Leary) How would you describe the problem that you have been hearing about here in this hearing? What would you say is the primary source of the problem of the accumulation of water appearing in various proximity to the railroad on people's farms and around the ditches and so forth?

A. Basically what I have observed in here is that the railroad, the culverts under the railroad track are placed there to convey water from one side of the railroad track to the other side. Some I am assuming that we could probably check by the inverts of the culverts but they were to direct water, allow water to pass from one side of this railroad track to the other side. Now as these culverts, the reason they are standing with water in them now is that the outlet, for whatever reason, be it by design or original construction or by deterioration of the existing channel that served as an outlet for these culverts, it deteriorated to the point that they no longer can effectively pass the volumes of water that these culverts are capable of conveying. (emphasis added)

It was the opinion of Mr. Holland that if the conditions obstructing the water flow could be corrected, the water problem would be solved to some degree. (TR. II, 206)

The witnesses for Seaboard sharply disputed the testimony of the Complainants and the Public Staff with respect to the condition of Seaboard's drainage facilities between milepost 302 and milepost 306 and the causes of flooding on the Complainants' property. Robert Pregnall, a Principal Assistant Engineer for Seaboard, described Seaboard's drainage system as follows:

> "Along the track we have roadbed ditches that collect the water that falls on the track structure itself, the ballast and the roadbed, and goes into these ditches and then these ditches then carry the water to the crossings of natural waterways." (TR. II, 101)

He further testified that the purpose of these ditches is the drainage and protection of the roadbed and track structure; they were not designed to drain the land adjacent to railroad property. (TR. II, 101, 102) Mr. Pregnall presented a profile study of the railroad and its drainage facilities and a description of the topography between mileposts 302 and 306. Based upon his study, it was his opinion that "water could not flow along the railroad due to the highpoints that occur along that road. The drainage is essentially across the railroad in the general direction of Long Branch...there is no opportunity

for the water to naturally flow along the length of the railroad." (TR. II, 118) He admitted on cross-examination, however, that the land along the area under consideration is generally falling downward toward the east. (TR. II, 149)

Joseph C. Britt is an Assistant Division Engineer with Seaboard; his duties include the construction and maintenance of track and drainage facilities. He is familiar with the track under consideration and he likewise generally disputed the testimony of the Complainants and the Public Staff. He testified that the track is in good condition; that the ditches are adequate to carry the rain that falls on the track, which is their only purpose; that there is a drainage problem in the area, which the railroad did not cause; and that water cannot flow in the railroad ditches from milepost 302 to milepost 306. (TR. II, 165, 167, 169, 173) Mr. Britt admitted on cross-examination, however, that one reason that water does not flow from milepost 302 to milepost 306 is that there is a road at milepost 303 that does not have a culvert from one side to the other. (TR. II, 176) He also testified on cross-examination that the condition of the "pumping" rails was not good engineering practice. (TR. II, 175)

G.L. Wynne, the former Roadmaster on the Hamlet to Wilmington line, generally supported the testimony of Mr. Pregnall and Mr. Britt. Robert Martin, the present Roadmaster, testified that the improvements undertaken on the track in question between 1978 and 1980 did not affect the ditches and culverts along the right-of-way; after such improvements, the condition of Seaboard's track, roadbed, and drainage structures was much better than it was in 1978, especially the condition of the crossties. (TR. II, 230) His duties include the inspection of this track; in his opinion Seaboard can safely operate trains over the track. He stated, in response to a question from the Commission, that the "ideal situation" with respect to drainage is to get water away from the track structure, and "the distance the further you get it away the better off you are." (TR. II, 234) He further testified that if water is not taken away from the railbed it would soften the roadbed.

W. G. Hall is a Trainmaster for Seaboard and he supervises the transportation operations of the railroad on the Wilmington line. He likewise testified that the line is in excellent condition and permits operating speeds of 49 miles per hour. (TR. II, 241) He was not aware of any delays in service due to track conditions.

It is the opinion of the Commission that the testimony and exhibits of the Complainants and the Public Staff are sufficient to compel the findings and the conclusions which the Commission has made in this Order, to the effect that the ditches and culverts maintained by Seaboard on its right-of-way between mileposts 302 and 306 are in various states of disrepair and, as a consequence, are unable to carry away the water which collects therein. The Complainants have lived in and around the Allenton community for most if not all of their lives, and they proved to be very knowledgeable about the pattern of drainage on and around Seaboard's right-of-way. Their testimony, and the testimony and exhibits of the Public Staff, have conclusively demonstrated to the satisfaction of the Commission that the drainage facilities maintained by Seaboard on its right-of-way between mileposts 302 and 306 do not do the job they are supposed to do.

In making the findings and conclusion discussed herein, the Commission calls attention to the Track Safety Standards of the Federal Railroad Administration, which have been adopted by the Commission and are applicable to this proceeding. Section 213.33, which relates to the drainage facilities of railroads, provides:

> "Each drainage or other water carrying facility under or immediately adjacent to the roadbed must be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned."

The testimony of the Complainants that the water collecting and standing in Seaboard's ditches and culverts backs up and spills out onto their lands, rather than flowing toward a natural watercourse, amply demonstrates that the railroad's drainage facilities are unable "to accommodate expected water flow for the area concerned"; so does their testimony that water collecting on their land is prevented from flowing downward and eastward to the Big Swamp. The evidence in this proceeding also shows that Seaboard's drainage facilities are in violation of a number of the defect codes contained in the Track Safety Standards, including 33.01 - Drainage or water carrying facility not maintained; 33.02, 33.04, and 33.05 - Drainage or water carrying facility obstructed by debris, vegetation, and silting; and 33.06 - Drainage facility deteriorated to allow subgrade saturation.

Conclusion No. 5

The Commission concludes that the safety and convenience of the public and of the customers and employees of Seaboard require Seaboard to correct the disrepair of its drainage ditches and culverts on its right-of-way between mileposts 302 and 306.

G.S. 62-235, as noted above, empowers the Commission to examine the facilities of any railroad under its jurisdiction in regard to the safety and convenience of the public and the railroad's employees; if any facility is found to be unsafe, the Commission shall require the railroad "to put the same in repair." G.S. 62-42 authorizes the Commission to direct a public utility to make repairs and improvements in the existing plant, facilities, or other physical property of the utility upon a finding that such repairs and improvement ought reasonably to be made.

The evidence in this proceeding amply catalogs the consequences arising from the disrepair of Seaboard's ditches and culverts along mileposts 302 to 306. The Complainants testified in some detail that the water collecting and standing in Seaboard's ditches and culverts backs up and spills out onto their land, most of which is used for farming and homesites. For example, Hubert Surles, whose farm abuts the track and right-of-way at milepost 303, testified that he lost a crop of beans in 1979 as a result of water from the railroad backing onto his field and flooding it. (TR. I, 107) Robert Bryant, another farmer, testified that in a heavy rain (3 or 3 1/2 inches) water will back out of the railroad's ditch and "drown" everything in his field. The photograph offered by the Public Staff as Exhibit 3 illustrates the flooding of the fields described by the Complainants.

Another witness was Delton Morgan, who is Chairman of the Robeson Memorial Park and also Chairman of the Building Committee and the Board of Trustees of Smyrna Church. Robeson Memorial Park has eight acres of land for burial purposes. Mr. Morgan testified that since the early 1960s graves being prepared for burial fill up with water; the problem has been getting worse recently. He further testified that the natural flow of water is south from the cemetery to the railroad and that when the water reaches the railroad it does not go anywhere. "It just backs up. This is where we are getting our backing problem." (TR. I, 153, 154) It was his opinion that if the railroad would ditch on the north side of the track, it would help the problem.

The condition of the "pumping" or "swinging" track near milepost 303 also illustrates the consequences of improper drainage facilities alongside the track. Mr. Holt, the Commission's track inspector, testified that during his investigation in March 1979 he found the ties of the track to be swinging 1 1/2 inches in muddy, fouled ballast. He recommended that the railroad make an immediate effort to drain the area so that this hazardous condition could be eliminated. (This condition still existed at the time of the hearing.) He testified that one of the main purposes of ballast was to drain water away from the track. The section of track under consideration was "fouled up here and there is no way it can drain with the mud in the ballast." (TR. II, 58)

Mr. Shaw also examined the "pumping" track during his two visits to the area in 1981. It was his opinion that the roadbed was not draining properly and that in fact the condition was worsening. It was his further opinion that it was to the advantage of the railroad to keep its drainage free. (TR. II, 9) If there is poor drainage the track would sink under the passage of a train.

Seaboard's own witness, Joseph C. Britt, admitted on cross-examination that the condition of the "pumping" rails was not good engineering practice. (TR. II, 175)

The Complainants and the Public Staff expressed their concern about the possibility of a derailment if the condition of the pumping track, and its causes, were allowed to continue.

The Commission has found and concluded that the ditches and culverts maintained by Seaboard from mileposts 302 to 306 are in various states of disrepair and are unable to carry away the water that collects and stands therein. The evidence in this proceeding, as discussed above, amply shows the deleterious effects from the disrepair of these drainage facilities. The failure of these facilities to accommodate the expected water flow adversely affects the public, who live and farm alongside the tracks, and could adversely affect the customers and the employees of the railroad. The evidence tended to show that Seaboard transports hazardous materials, such as ammunition and chlorine gas, over this track; a derailment could adversely affect the safety of the Complainants and the employees of the railroad. (TR. I, 138) There was also evidence that local vehicular traffic, including school buses, use the roads that cross the railroad in this area. Attention is called to the testimony of witness Bryant and others that roads adjacent to the railroad were subject to flooding.

Conclusion No. 6

The Commission concludes that Seaboard should improve and repair the drainage ditches and culverts on its right-of-way between mileposts 302 and 306 so that the water that runs into and collects therein can flow unobstructedly in an easterly direction towards the Big Swamp.

The evidence in this proceeding is plenary that improvements and repairs to Seaboard's drainage facilities would correct or ameliorate the problems uncovered during the hearing and investigation into the complaint.

Public Staff witness, Memory Curtis Todd, a drainage contractor from Bladen County, testified that he was familiar with the Big Swamp area in and around Allenton, including Seaboard's ditches and culverts on its right-of-way between mileposts 302 and 306. He has dug ditches and cleared land for Mr. Pittman, whose land abuts the railroad. It was his opinion that he could open the railroad's ditches and make the water flow to the Big Swamp at a cost of $.70 a running foot, or a total cost of $19,000. (TR. II, 73, 75)

Robert Pregnall, who is a Principal Assistant Engineer for Seaboard, testified that Mr. Todd's cost estimate was too low and unrealistic. He testified that it would cost Seaboard approximately $275,000 to excavate a ditch from the 48-inch pipe in Bear Bay, just west of milepost 303, to the first trestle at milepost 305, a distance of some 11,071 feet. (TR. II, 150, 151)

These two witnesses gave low and high estimates of what the possible cost to Seaboard would be if the railroad corrected the drainage problems brought to light by this proceeding. It is the finding and conclusion of the Commission that the safety and convenience of the public and of Seaboard's customers and employees require that the improvements and repairs ought reasonably to be made. The railroad has contended throughout this proceeding that its drainage facilities fulfill the purpose for which they were designed and constructed, that is, to drain and protect the roadbed and track structure. (TR. II, 101) These facilities were not designed, according to Seaboard engineer Pregnall, to drain the land adjacent to the railroad's property. The Commission has found, however, that improper drainage has created the pumping rail condition near milepost 303; this condition, if not corrected, could lead to further deterioration of the track and even to a possible derailment.

The Commission has also found and concluded that water collecting and standing in Seaboard's ditches and culverts is backing up onto the land abutting the railroad's right-of-way, instead of flowing toward a natural water course. Attention is called once again to Section 213.33 of the Track Safety Standards:

> "Each drainage or other water carrying facility under or immediately adjacent to the road bed must be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned."

It is clear from the weight of the evidence in this proceeding that Seaboard's ditches and culverts between mileposts 302 and 306 are not doing the job they are supposed to do.

The Commission will order that Seaboard Coast Line Railroad, in the interest of public safety and convenience, take immediate action on the right-of-way of its Lumberton to Wilmington track between mileposts 302 and 306 to clean out its existing ditches on both sides of the track or, where necessary, to excavate new ditches, and either to upgrade its existing culverts so that they will carry water freely from one side of the track to the other, or, where necessary, to construct new culverts, so that the water that runs into and collects in said ditches and culverts will flow in an easterly direction from milepost 302 towards the Big Swamp.

This undertaking is ordered pursuant to the authority granted the Commission in G.S. 62-235 and G.S. 62-42.

IT IS, THEREFORE, ORDERED:

1. That the original Complaint and amended complaint filed in this docket requesting the Commission to order Seaboard Coast Line Railroad to correct the drainage problem on its track and right-of-way between Lumberton and Wilmington is hereby allowed. It is further ordered that the Motion of Seaboard to Dismiss the Complaint be denied.

2. That the Respondent, Seaboard Coast Line Railroad Company, shall undertake immediately, on the right-of-way of its Lumberton to Wilmington track between mileposts 302 and 306, to clean out its existing ditches on both sides of the track or, where necessary, to excavate new ditches, and either to upgrade its existing culverts so that they will carry water freely from one side of the track to the other, or, where necessary, to construct new culverts, so that the water that runs into and collects in said ditches and culverts will flow unobstructedly in an easterly direction from milepost 302 towards the Big Swamp. The work directed to be done by this Ordering Paragraph shall be completed on or before September 30, 1982.

3. The Commission shall retain jurisdiction of this matter pending the filing, on or before September 30, 1982, of a final report by Seaboard with this Commission and with the Public Staff stating that the work ordered to be done in Ordering Paragraph 2 has been completed.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of August 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. R-29, SUB 362

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Railway Company - Petition for Authority to Retire and Remove Sidetrack at Brickton, North Carolina	) ORDER GRANTING MOTION) TO WITHDRAW AND) CLOSING DOCKET

BY THE CHAIRMAN: On October 22, 1981, a Motion to Withdraw was filed in this docket by Odes L. Stroupe, Jr., Attorney for Applicant, Southern Railway Company, requesting that Applicant be allowed to withdraw its petition for removal of sidetrack at Brickton, North Carolina, previously filed in this matter without prejudice. Hearing in this matter has been scheduled for Tuesday, October 27, 1981, at 9:00 o'clock a.m., in the Courtroom, City Hall, 145 Fifth Avenue East, Hendersonville, North Carolina. Upon consideration of the aforesaid Motion and good cause having been shown, the Chairman concludes that the Motion to Withdraw should be allowed.

IT IS, THEREFORE, ORDERED that the Motion to Withdraw filed by Applicant's attorney in this docket on October 22, 1981, be allowed and that the Petition for removal of sidetrack at Brickton, North Carolina, filed in this docket on July 21, 1981, be withdrawn without prejudice.

IT IS FURTHER ORDERED that the hearing in this docket presently scheduled for Tuesday, October 27, 1981, be cancelled and that this docket be closed.

ISSUED BY ORDER OF THE CHAIRMAN.
This the 23rd day of October 1981.

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

DOCKET NO. R-66, SUB 124

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rail Common Carriers-Suspension and Investigation of Proposed Cancellation of Column Rate on Industrial Sand in North Carolina, Scheduled to Become Effective on November 15, 1980	) ORDER OF VACATION) ALLOWING PROPOSED) TARIFF TO BECOME) EFFECTIVE

BY THE COMMISSION: In a Motion filed March 30, 1981, the Respondent Rail Common Carriers requested that an order be issued withdrawing suspension of the rates referred to in this docket and allowing the same to go into effect immediately. This motion was based upon information and belief that all protests in connection with this matter have now been withdrawn. On April 7, 1981, the Public Staff filed a Reply to Motion of Railroad Carrier and stated therein that they do not resist the respondent's Motion as all protestants have withdrawn their opposition. The Commission concludes that the respondent's Motion should be granted.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission Order of Suspension and Investigation in this proceeding be, and the same is vacated and set aside and the hearing now assigned for May 6, 1981 be, and the same is hereby, canceled.

2. That the suspension supplement to the involved tariff be cancelled by the filing of an approximate tariff schedule and that the suspended tariff schedule

involved herein be and the same is hereby ordered to be canceled; provi d, however, that Respondent Rail Carriers be, and the same is hereby, gran d authority to make tariff publication of the proposed rates involved her n effective upon one (1) day notice to the Commission and to the public a shall otherwise comply with the Commission's Rules and Regulations governing e construction and filing of tariff schedules.

3. That upon appropriate tariff publications as authorized herein, the Docket in this matter be, and hereby is, closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of April 1981.

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

TELEPHONE

DOCKET NO. P-19, SUB 179

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Mrs. Trellie Jeffers, Complainant) FINAL ORDER
vs.) AFFIRMING
General Telephone Company of the Southeast, Respondent) RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 21, 1980, at 10:00 a.m.

BEFORE: Commissioner Edward B. Hipp, presiding, and Commissioners Sarah Lindsay Tate, John W. Winters, and Douglas P. Leary

APPEARANCES:

For the Complainant:

Mrs. Jeffers represented herself.

Karen Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602
For: Mrs. Trellie Jeffers

For the Respondent:

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

BY THE COMMISSION: On August 13, 1980, Commission Hearing Examiner Robert P. Gruber isued a Recommended Order directing the Complainant herein to make payment to General Telephone Company of the Southeast in the amount of $193.56 within fifteen (15) days from receipt of the Recommended Order. On August 28, 1980, Complainant filed a Motion to Amend Recommended Order and Exceptions to Findings of Fact, requesting oral argument on these exceptions. The Commission scheduled oral argument on these exceptions for hearing on November 7, 1980, and subsequently rescheduled the hearing for Friday, November 21, 1980. On November 19, 1980, General Telephone filed its Reply to Complainant's Exceptions to Findings of Fact.

The matter came on for argument before Commissioners Hipp, Tate, Winters, and Leary as scheudle. At the hearing the Complainant, Trellie Jeffers, presented argument on her own behalf. A closing statement on behalf of the Complainant was made by counsel for the Public Staff and respondent, General Telephone Company of the Southeast, was represented by counsel who made oral argument in support of the Company's position.

The Commission upon consideration of the record in its entirety, including exceptions and oral argument theron, is of the opinion that the recommended Order is fully supported by the evidence and should be affirmed.

IT IS, THEREFORE, ORDERED as follows:

1. That the Exceptions to Findings of Fact filed herein on August 28, 1980, are hereby overruled and the Motion to Amend Recommended Order is denied.

2. That the Recommended Order issued August 13, 1980, in this docket is hereby affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of January 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-102, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Two-Way Radio of Carolina, Inc., Complainant)
v.) ORDER
Radio Paging Service, Inc., Defendant)

HEARD IN: Raleigh, North Carolina, on December 2, 3, 4, and 22, 1980

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Leigh H. Hammond and A. Hartwell Campbell

APPEARANCES:

For the Complainant: Two-Way Radio of Carolina, Inc.

Thomas R. Eller, Jr., Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611
and
Joseph Warren III, Warren & McKaig, P.A., Attorneys at Law, Suite 205, 6525 Morrison Boulevard, Charlotte, North Carolina 28211

For the Defendant: Radio Paging Service, Inc.

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, P.O. Box 2479, Raleigh, North Carolina 27602
and
Richard E. Thigpen, Jr., Thigpen & Hines, P.A., Attorneys at Law, 3500 NCNB Plaza, Charlotte, North Carolina 28280

For the Intervenor: Tarheel Radio Telephone Association, Inc.

Thomas, R. Eller, Jr., Attorney at Law, P.O. Box 27866, Raleigh, North Carolina 27611

For the Intervenor: Public Staff - North Carolina Utilities Commission

Robert F. Page, Staff Counsel, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter was initiated on November 23, 1977, with the filing of a Complaint, pursuant to G.S. 62-73 and Commission Rule R1-9, by Two-Way Radio of Carolina, Inc. (Two-Way or Complainant), versus Radio Paging Service, Inc. (Radio Paging or Respondent). On April 19, 1978, the Complaint as originally filed was substantially amended. As amended, the Complaint, in general terms, alleges that certain tariffs filed by Defendant on October 26, 1977, initiated a direct competition not theretofore existing for paging service customers in the Charlotte, North Carolina, area for which both Complainant and Defendant have franchises from this Commission as Radio Common Carriers. The Complaint also charges Radio Paging with engaging in wasteful and destructive price competition and with completely changing the nature and scope of its business operations, thus exceeding the scope of its franchise, without seeking and obtaining prior approval of the Commission.

By way of answer, the Defendant Radio Paging generally denied the substantive allegations of the Complaint insofar as such allegations contended that Radio Paging had engaged in unlawful or unauthorized acts. The Defendant also moved to dismiss the Complaint on the grounds that the relief sought by Two-Way would require Radio Paging to raise its rates and that such relief could not be granted in the absence of a general rate case proceeding.

Tarheel Radio Telephone Association, Inc. (TARS), was allowed Intervention on April 26, 1978, and the Public Staff - North Carolina Utilities Commission gave statutory Notice of Intervention on behalf of the using and consuming public.

After various other pleadings and motions were filed which appear of record herein and following oral argument on said motions in August 1978, the Commission issued an Order in December 1978 which denied the pending motions to dismiss and ruled on the other pending procedural motions.

On June 7, 1979, Radio Paging Service, Inc., filed with the Commission a tariff, NCUC Third Revised Page 10, which would: (1) delete its offering of dispatch paging service and (2) establish rates for a new paging offering consisting of communications service and maintenance of customer-owned pagers. The new service would differ from the service currently offered by Radio Paging Service, Inc., in that the pager would be furnished by the customer instead of the carrier. The Commission concluded and so ordered that the provisions of this tariff should be approved on an interim basis and incorporated into this docket for final decision.

Following numerous other procedural motions and requests for continuances, which generally were allowed, and discovery by both of the principal parties, the matter came on for hearing on December 2, 1980. The Public Staff intervened in the matter pursuant to G.S. 62-15.

The Complainant offered the testimony of the following witnesses: Gene N. King, President of Contact, Inc., the parent corporation of the Defendant Radio Paging, who was called as an adverse witness; David I. Odom, General Manager of

Patterson Ans-A-Phone Communications and President of the Tarheel Association of Radio Common Carriers, an Intervenor in the proceeding; Linda C. Guin, Secretary-Treasurer of the Complainant Two-Way; Richard L. Plessinger, a communications engineer and owner of Miami Valley Radio Telephone; H. Randolph Currin, President of Currin and Associates, a utility consulting firm; A.L. Guin, President and majority stockholder of Two-Way Radio of Carolina, Inc.

The Respondent offered the testimony of Adrian Delk, a Certified Public Accountant and member of the accounting firm of Dixon, Odom and Company. The Intervenor Public Staff offered the testimony of Gene A. Clemmons, Director of the Communications Division of the Public Staff. The hearings were concluded on December 22, 1980.

Through its Amended Complaint, Two-Way alleges and contends, and presented the testimony of six witnesses and some 100 exhibits intended to show that Radio Paging constructed an expanded utility system for the provision of a paging service substantially different from that authorized by its "grandfather" Certificate and on or about November 1976 extended its operations and service into the territory certificated to and occupied by Two-Way. Moreover, that Radio Paging set its prices for the identical service of Two-Way at noncompensatory levels sustained by subsidies from its parent, Contact, Inc.

By its Answer to the Complaint, Defendant denies each of the allegations of Two-Way. Radio Paging presented only one witness, Adrian Delk, member of an independent firm of Certified Public Accountants in Charlotte, North Carolina, which had audited the consolidated operations of the 10 company systems owned and operated by Contact, Inc.

The Intervenor, TARS, contended that the signals of several of its members, as authorized by their licenses granted by the Federal Communications Commission, technically over-lap, but that the Certificates issued by the Utilities Commission are controlling as to the territories in the State in which radio common carriers are authorized to provide their service to the public in the State. The Association does not claim personal knowledge of the facts in this case.

The Public Staff presented one witness, Gene A. Clemmons. Mr. Clemmons is the director of the Public Staff's Communications Division and held that position when the tariffs here in question were filed. Mr. Clemmons has been an employee of either the Commission Staff or the Public Staff since 1967.

Mr. Clemmons described in his testimony the manner in which the subject tariffs came to be accepted for filing. He testified that before the subject tariffs were filed he had been in contact with Burch Sutton, President of the Respondent Radio Paging, concerning the proposed rates for three new types of pagers which he proposed to offer to his subscribers and with Contact, Inc., the parent company of Radio Paging, concerning a cost study made by Contact in support of the rates proposed for the three new types of pagers.

Mr. Clemmons further testified that, upon receipt of the cost studies, he performed an analysis to determine if the rates for the proposed new services were, in fact, cost justified. He made the following observations and recommendations:

a. Variable volume control tone and voice pager - The Public Staff's analysis indicated that the $27.00 per month pager rate proposed by the Company was in excess of that which was just and reasonable. The Public Staff's analysis indicated that the rate should not be higher than $25.00 per month.

b. Vibrator pager - The Company had proposed a rate of $20.00 per pager per month. The Public Staff's analysis indicated that this proposed rate was, in fact, below cost and that a rate of $21.00 per month would be cost justified.

c. Dual address pager - The Public Staff's analysis indicated that the $20.00 per pager per month rate proposed by Radio Paging was appropriate.

When Mr. Clemmons furnished the Respondent with the results of his analysis, Radio Paging filed tariffs for the new equipment offerings which adopted the rates which the Public Staff's analysis had indicated were reasonable. The Commission allowed the proposed tariffs to become effective as filed.

As appears of record, the Commission took judicial notice of a number of official decisions, rules, and records pursuant to G.S. 62-65.

Upon a careful review of the competent, material, and substantial evidence contained in the entire record consisting of eight volumes of transcript and more than 100 exhibits, relation to applicable regulatory law, and considering the arguments and briefs of counsel, the Commission makes the following

FINDINGS OF FACT

1. The Complainant, Two-Way Radio of Carolina, Inc., a duly organized North Carolina corporation with principal offices in Charlotte, North Carolina, is the holder of Utilities Commission Certificate of Public Convenience and Necessity No. P-83.

2. The Respondent, Radio Paging Service, Inc., a duly organized North Carolina corporation with principal offices in Charlotte, North Carolina, is the holder of Utilities Commission Certificate of Public Convenience and Necessity No. P-102.

3. The Complainant provides mobile radio service as a common carrier of communications within the boundaries of Mecklenburg, Union, Gaston, Lincoln, and Iredell counties, among others. Complainant renders mobile radio and one-way paging radio common carrier service through local exchanges in and around the localities of Charlotte, Monroe, Gastonia, Shelby, Lumberton, Salisbury, Statesville, Southern Pines, Morganton, Albemarle, Rockingham, and Hickory.

4. Two-Way's systemwide rates for its basic paging services as approved by the Commission and in effect at the times involved in the case are:

	Rental	Customer-Owned
Direct Dial FM Tone plus Voice	$28	$18
Direct Dial FM Tone Only	$20	$13

5. On August 11, 1969, the Commission granted Radio Paging a Certificate of Convenience and Necessity as a Radio Common Carrier under Chapter 766 of the

1969 Session Laws "to offer radio common carrier service from a transmitter located in Charlotte, North Carolina, under a radio license issued by the Federal Communications Commission for Domestic Public Land Mobile Radio Service." The change of Radio Paging's transmitter and antenna to a new and higher building in Charlotte in 1976, and adding an FM transmitting facility 5.3 miles south of the original site, was not in violation of the Certificate.

6. Radio Paging offers the following basic service at the following flat monthly rates:

	Rental	Customer-Owned
Direct Dial FM Tone plus Voice	$23	$18
Direct Dial FM Tone Only	$18	$13

7. Contact, Inc., is a North Carolina corporation with principal offices in Charlotte, North Caorlina. Contact, Inc., is not an operating company. It owns all the common capital stock in approximately 10 operating companies, including Radio Paging. The owning company operates as the central manager for its subsidiary corporations.

8. Contact, Inc., is the "Parent Corporation" of Radio Paging Service as defined in G.S. 55-3.

9. The relationship of Contact, Inc., to the Respondent Radio Paging does not sufficiently affect rates or services of Radio Paging to cause the unregulated parent, Contact, Inc., to be classified a public utility within the meaning of G.S. 62-3(23)(c).

10. The FM, direct dial rental and customer-owned services offered by Radio Paging, beginning in November 1976, provide a superior, more flexible, and valuable service to subscribers.

11. The Complainant has not borne the burden of proof to show that the rates of Radio Paging Service are noncompensatory, noncompetitive, or destructive.

12. The Complainant has not borne the burden of proof that irreparable harm and damage has ensued due to the rates and services of its competitor, Radio Paging Service.

13. The original tariff of Radio Paging does not mention and, therefore, does not limit Respondent to offering tone only pagers.

14. The evidence does not support Complainant's allegation that Radio Paging was ever limited to operate on AM frequency only, or limited to manual operation only.

15. Radio Paging's monthly prices of $23 and $18 for automatic dial FM tone plus voice and tone only rental paging service, respectively, are just and reasonable.

16. Radio Paging's monthly prices for rental of pagers equipped with a volume control, or a dual pager, or a vibrator are just and reasonable.

CONCLUSIONS

Much evidence has been presented recounting the historical evolvement of State regulated radio common carriers. In the 1960s, radio common carriers operated with radio licenses from the FCC without being certificated by the Utilities Commission. When the radio common carrier became interconnected to land line telephones, they were required to obtain a Certificate of Convenience and Necessity from the Utilities Commission. Radio Paging obtained a license from the FCC to operate as a domestic public land mobile radio service, as described in detail in the 1969 Commission Order in Docket No. P-102.

In 1969 Article 6A Radio Common Carriers - G.S. 62-119 through G.S. 62-124 was enacted. This Article provided that:

> "Any person not presently franchised or certificated by the NCUC as a radio common carrier but engaged in the operation of any radio common carrier licensed by the FCC on June 11, 1969, shall receive a certificate of convenience and necessity from the NCUC authorizing such person to continue the operation of such radio common carrier in the territory professed to be served by such person on June 11, 1969, if, within thirty days after June 11, 1969, such person shall file with the Commission an application for such certificate, including copies of any license or licenses issued by the Federal Communications Commission to such person, showing the area professed to be served by such person."

Pursuant to this statute Radio Paging on July 11, 1969, filed an application for a Certificate of Convenience and Necessity from the Utilities Commission. The application included a copy of the Radio Station License issued by the Federal Communications Commission to Radio Paging and Telephone Answering Service of Charlotte, Inc., as a Domestic Public Land Mobile Radio Service, call sign KIM905, issued October 27, 1966. The Federal Communications Commission (FCC) license authorizes the Applicant to operate a transmitter at the Baugh Building, 1112 S. Tryon Street, Charlotte, North Carolina, with authorized control point at Baugh Building, 112 S. Tryon Street and 519 East Trade Street, Charlotte, North Carolina, on a frequency of 35.22 mc/s at 500/250 watts with an antenna height of 1019 feet above mean sea level.

On August 11, 1969, the Commission issued an Order granting the certificate applied for. The August 1969 Order stated:

> "The applicant's radio license does not prescribe a geographical service area for the radio station operator and the area served with a strong radio signal under such license is dependent upon the authorized power of the station and the height of the antenna. The records of the Utilities Commission indicate that the normal and usual extent of a radio signal in the case of Domestic Public Land Mobile Radio Service radio stations usually extends to a radius of approximately 30 miles from the antenna location.
>
> "The Utilities Commission has heretofore held that mobile radio communication service offered by miscellaneous common carriers and by landline telephone companies constituted public utility service under

G.S. 62-3(23)a.6. and the Commission has since 1965 regulated rates and service of mobile radio or mobile telephone service, whether offered by miscellaneous common carriers or landline telephone companies, respectively, upon filing of appropriate application for a Certificate of Convenience and Necessity and proof that there was public convenience and necessity for such service under G.S. 62-110. This service has been subject to regulation as to rates and service in the same manner as other utility companies under Chapter 62 of the General Statutes regulating public utilities in North Carolina.

"The 1969 Radio Common Carrier Act establishes mobile radio service offered by Radio Common Carriers as defined under the 1969 Act as a different classification of utility service from mobile telephone service offered by landline telephone companies. This distinction is in harmony with the rules and regulations of the Federal Communications Commission which assign one group of radio frequencies to landline telephone companies for mobile telephones and a separate and distinct group of frequencies to Domestic Public Land Mobile Radio Service to miscellaneous common carriers for mobile radio service. Under existing practice, each frequency or channel is assigned individually, depending upon the need for channels in a particular area, and in the case of a Radio Common Carrier assigned only one frequency, all of the customers of such frequency are, in effect, on a party line, in that only one customer can talk at a time. The engineering limitation placed on the number of frequencies or channels available for public mobile radio service supports the classification in the 1969 Act, in that it will permit utilization of both mobile telephone and mobile radio frequencies in North Carolina. Mobile radio service is a valuable public service to customers having a need for communications between their automobiles and their business offices or, in the case of a hand-carried mobile radio, offering radio paging service or communications from any location to any other location."

On September 22, 1969, Radio Paging filed Tariff NCUC No. 1 Original Pages 1 through 10. Page 10 indicated the rates, referred to in the Complaint of Two-Way, Exhibit 1.

The First Revised Page 10 was filed October 12, 1977, to clarify the type of service being rendered, Exhibit 2. The Second Revised Page 10 was filed October 26, 1977, to add three new pagers, Exhibit 3. The Third Revised Page 10 was filed on June 7, 1979, (1) to delete the offering of dispatch paging service and (2) to establish rates for "Tone Only and Tone & Voice" subscriber provided equipment, Exhibit 4.

The present case arose upon the filing by Two-Way on November 23, 1977, of a petition which the Commission treated as a complaint, in which Two-Way objects to the rates of Radio Paging, as follows:

"4. The Petitioner is informed, believes, and upon such information and belief alleges that the rates set forth on the revised page 10 of the Tariff of Radio Paging Service, Inc., are noncompensatory, noncompetitive, destructive, and have been established on erroneous

data supplied to the staff of the Commission by Radio Paging Service, Inc.

"5. The Petitioner as a competitor of Radio Paging Service, Inc., will be irreparably harmed and damaged if the Commission should allow the revised Tariff to go into effect.

"WHEREFORE, the Petitioner prays the Commission to suspend the Tariff filed for Radio Paging Service, Inc., NCUC Tariff 1, Fourth Revised Tariff Page 10 and order a full hearing to investigate the matter further."

The Commission did not suspend the tariff and the rates became effective pursuant to G.S. 62-130 and G.S. 62-134, on November 25, 1977. However, on January 19, 1978, the Commission scheduled the complaint for hearing April 11, 1978, and required Two-Way to file testimony supporting its complaint at least 30 days prior to hearing. On March 13, 1978, Two-Way filed a Motion to Vacate Hearing Date, Declare a General Rate Case, and Schedule Investigation. The Motion to Declare a General Rate Case was denied, and the hearing was continued until May 11, 1978. Radio Paging filed a response to the above Motion renewing its earlier Motion to Dismiss the Complaint on the ground that, among other things, Two-Way is not a proper party to initiate this proceeding, as it is not a party "directly interested" as required by G.S. 62-136, which provides in part as follows:

"G.S. 62-136. Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers. - (a) Whenever the Commission, after a hearing and after reasonable notice upon its own motion or upon complaint of anyone directly interested, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law, the Commission shall determine the just, reasonable, and sufficient and nondiscriminatory rates to be thereafter observed and in force, and shall fix the same by order." (Emphasis added.)

Two-Way, in asserting that Radio Paging's rates must be just and reasonable, relied heavily on G.S. 62-131, which states in part, as follows:

"G.S. 62-131. Rates must be just and reasonable; service efficient. -(a) Every rate made, demanded or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable."

This statute was designed to protect the consumer upon the belief that an uncontrolled legal monopoly in an essential service leads, normally and naturally, to poor service and exorbitant charges, (See Adam Smith, the Wealth of Nations (3d Ed.) Book V, Chapter 1, pp. 143-144) thus the need for some regulatory mechanism to ensure good service at just and reasonable prices. Two-Way is a competitor of Radio Paging, rather than a consumer, and the question arises as to whether Two-Way is within the class intended to be protected by G.S. 62-131. The Commission concludes that the evidence herein presented supports the allegation that Two-Way is an interested party.

The Commission concludes that the evidence does not support the inference that Radio Paging was ever limited to operate only on AM frequency, or limited to manual operation. Inasmuch as the original tariff does not mention tone or voice or manual, Two-Way's inference that Radio Paging "abandoned the provision of tone only manual limited and unlimited paging services" is without merit. In fact, Radio Paging provides tone only and tone & voice. Exhibit 2, First Revised Page 10, was filed October 12, 1977, by Radio Paging to clarify the type of service being rendered. On October 26, 1977, Radio Paging filed Second Revised Page 10 (Exhibit 3) which adds three new types of pagers. The Commission concludes that existing services were not abandoned nor were rates for those services changed. By case law it was established that a certificate of public convenience and necessity, which authorizes its holder to render "telephone service," does not limit the holder to the practice of the art of telephony as it was known and practiced on the date the certificate was issued, nor to the use therein of devices, equipment, and methods then in use. Obviously, it is the intent of such a cetitficate to authorize the holder to improve its service by adopting and using new and improved devices and methods for telephonic communication. State ex rel. Utilities Commission v. Two-Way Radio Serv., Inc., 272 N.C. 591, 158 S.E. 2d 855 (1968). Where existing services are continued and new services are optional, the Commission generally does not declare a general rate case. In this case, the Commission declined to declare a general rate case, and upon review of the filing, the new tariff of Radio Paging was approved to go into effect. The Commission further concludes that NCUC Tariff Second Revised Page 10 (Exhibit 3), should remain in full force and effect. Moreover, NCUC Tariff Third Revised Page 10 (Exhibit 4), which by Order issued July 10, 1979, became effective on an Interim Basis should herein be declared effective.

IT IS, THEREFORE, ORDERED:

1. That the Complaint of Two-Way Radio of Carolina, Inc., against Radio Paging Service be, and the same is hereby, dismissed.

2. That NCUC Tariff Third Revised Page 10 Allowed on an Interim Basis by Order issued July 10, 1979, is hereby approved and shall remain in full force and effect.

3. That this docket is closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of November 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

(SEAL)

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 ON RECONSIDERATION) BY THE FULL COMMISSION))

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 19, 1980, at 11:00 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 Complainant:

F. Kent Burns, Boyce, Mitchell, Burns & 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 28204

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. 20036
For: Eslon Thermoplastics, Inc.

BY THE COMMISSION: This case is before the full Commission on reconsideration of a Panel Order issued on December 10, 1980. This case 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 26, 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, with Commissioner Campbell presiding, on September 25, 1980, in Room 213, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. 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.

On December 10, 1980, the Panel issued an Order dismissing Pineville's complaint and authorizing Southern Bell to serve Eslon.

On December 10, 1980, four Commissioners who did not participate in the Panel decision, Leigh H. Hammond, John W. Winters, Edward B. Hipp, and Douglas P. Leary, filed with the Commission a motion made pursuant to G.S. 62-60.1 requesting that the Panel's Order be stayed pending reconsideration by the full Commission. Also, on December 10, 1980, the Commission issued an Order staying the Panel's decision pending review by the full Commission, and an Order scheduling oral argument before the full Commission on the matter on December 19, 1980. The matter came on for oral argument as scheduled before the full Commission. Commissioner Hipp was not present at the oral argument due to medical reasons and did not participate in this decision.

After reviewing the pleadings, transcripts, brief, proposed orders, and after considering oral argument of counsel, the full Commission now concludes that the Panel's Order dismissing Pineville's complaint was in error and should be reversed and vacated, and that an Order should now issue enjoining Southern Bell from providing service to Eslon. The findings, reasons, and basis for this decision are set forth below.

FINDINGS OF FACT

1. That Southern Bell is a "utility" within the meaning of G.S. 62-3(23), and 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 Pineville and Southern Bell have adjoining service territories in the southern parts of Mecklenburg County, North Carolina.

6. That Eslon's existing offices and plant are located on a 15-acre tract of land in Pineville's territory. In the fall of 1979, Eslon needed to expand its plant and purchased a 10-acre tract of land contiguous to its other property. This property is located on the Southern Bell side of the Pineville-Southern Bell boundary.

7. That sometime prior to its purchase of the 10-acre tract, Eslon decided upon the advice of a telecommunications consultant to do the following: (1) lease or purchase a private PBX switch, (2) to install this PBX switch on Eslon's property on the Southern Bell side of the territorial boundary, and (3) to seek service from Southern Bell through interconnection with the PBX switch.

8. That Eslon purchased an electronic PBX switch which is "registered" and "protected" under Part 68 of the Federal Communication Commission's rules. Eslon had this switch installed by RCA in a shed located in Southern Bell's territory, and ran a line to this switch from its telephone stations in Pineville's territory.

9. That after installing the PBX switch in Southern Bell's territory, Eslon contacted Southern Bell and requested Southern Bell to furnish Eslon service by interconnecting to Eslon's PBX.

10. That after reviewing Eslon's request for interconnection and after determining that the subject switch was registered with the FCC and fully protected and after determining that the switch was located in Southern Bell's territory, Southern Bell offered to serve Eslon and to interconnect with the PBX. All of Southern Bell's cable and pole attachments used in making the interconnection are completely within its own territory.

11. Pineville presently provides local, long distance, WATS, and miscellaneous services to Eslon. Pineville received form Eslon total revenues of $110,241 during the 12-month period ending May 21, 1980, compared to total revenues of $538,884.65. These revenues were approximately 21 percent of the gross revenues of Pineville during that period. After considering toll settlements paid to Southern Bell and equipment losses, Pineville's net revenues from Eslon during the period ending May 21, 1980, were $59,478.88 or approximately 11.03% of Pineville's revenues.

12. Pineville constructed a telephone plant including an electronic central office at a cost of $844,000 for the purpose of providing a full range of telephone service to the public in its service area, including Eslon. This equipment was placed in service on May 17, 1980.

13. No communication service or telephone service from Southern Bell to Eslon can be achieved without the extension of telephone cables and telephone stations into the Eslon plant in Pineville. All present communications between Eslon and the outside world originate and terminate at the Eslon plant in Pineville. No station facilities are located within Southern Bell's territory.

NOTE: SEE THE OFFICIAL ORDER IN THE OFFICE OF THE CHIEF CLERK FOR THE EVIDENCE AND CONCLUSIONS TO THE FINDINGS OF FACT WHICH WERE NOT PRINTED DUE TO A SHORTAGE OF SPACE.

SUMMARY

The question here presented is whether a telephone company may do indirectly what it may not do directly. May a telephone company provide facilities which it knows are going to have to be extended across a boundary in order to provide "communications" or "telephone service"? We hold that it may not do so. The reasons which exist for establishing and maintaining boundaries exist whether the boundary is crossed directly by a telephone company or indirectly through an extension by a potential customer. Wastefulness, duplication of facilities, and competition between utilities are fostered by either direct or indirect crossing of the boundary and we believe that this violates G.S. 62-110. Even if it did not violate G.S. 62-110, we could not approve such an arrangement as a matter of sound policy. We agree with the following conclusions stated by the South Carolina Commission in the Fort Mill case:

> "...[If] an entity were to be free to select the utility of his choice by the simple device of constructing its own line to a point within the chosen utility's authorized service area, the continued existence of certificated areas would obviously be jeopardized and our regulatory authority would soon become an academic exercise. Moreover, we see an inherent inequity in imposing on a utility the obligation to serve all within its certificated area, if those to be

served are free to pick and choose their serving utility. Were this concept to gain favor, it seems clear to us that cream skimming would be its inevitable result, with the certificated utility and its remaining customers being the losers..."

"...In short, we simply do not believe that the duly certificated territory of a South Carolina telephone company can be invaded, from without or from within the State, by the simple device of arranging with a customer to have him build his own line across a territorial boundary. Similarly, we do not understand our law or the new Federal rules and regulations with regard to customer-provided communications terminal equipment, to give to a customer the additional option of selecting his servicing utility..."

We have not discussed the evidence relating to whether the quality of Pineville service to Eslon is adequate. We believe that if Eslon in fact does have such a problem, it should ask the Commission to investigate its complaint in a proceeding held for that purpose. The Commission will in such a proceeding act to ensure that service to Eslon is the quality that it should be.

IT IS, THEREFORE, ORDERED:

1. That Southern Bell Telephone and Telegraph Company is permanently enjoined from providing or offering to provide telephone or communications service to Eslon Thermoplastics, Inc., or any other person, firm, or corporation whose residence or principal facilities are in the Pineville Telephone Company service area by means of any direct or indirect connection of its facilities with facilities in the Pineville service area unless such connection is made through Pineville Telephone Company.

2. That the Order issued by the hearing Panel on December 10, 1980, dismissing Pineville's complaint is vacated.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of February 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

KOGER, CONCURRING: As a member of the Commission Panel which originally decided that Pineville's complaint should be dismissed and that Southern Bell should be permitted to serve Eslon, I feel that I should briefly elaborate on what prompted me to vote in favor of vacating the Panel's Order. Although I was concerned that a decision in favor of allowing Southern Bell to serve Eslon was against common sense and sound policy, I believed that the law clearly required Southern Bell to serve Eslon, since Eslon was "located" within Southern Bell's territory. However, upon further consideration, I am now convinced that neither state nor federal legal precedent requires a decision which holds that a customer becomes entitled to receive service from a neighboring utility merely by extending its private facilities into a neighboring utility's territory. I fully agree with the majority's conclusion that the Panel's decision would promote much mischief in the telephone industry.

I would also like to emphasize that I in no way impugn Southern Bell's conduct in this case. I believe that Southern Bell agreed to serve Eslon only because it believed that the law required that it provide service.

Robert K. Koger, Chairman

COMMISSIONER TATE, DISSENTING: I respectfully dissent from the majority's decision restraining Southern Bell from providing service to Eslon. I would affirm the panel's Order which dismissed Pineville's complaint.

The decision in this case has been as difficult for me as any I have made since joining the Commission. I have weighed the legal constraints imposed by Federal decisions and FCC rulings against the North Carolina policy of maintaining territorial boundaries between competing independent telephone companies. I have reluctantly concluded that the Federal law is controlling and preempts the North Carolina Utilities Commission from interfering with Eslon's right to interconnect its own equipment located on its own property in Southern Bell territory to the Southern Bell system.

The majority errs in attempting to regulate what Eslon can do with its equipment on its own land. Eslon is not a public utility, but does own a private communications system. The OKI Discovery III PBX belonging to Eslon is located in Southern Bell territory. Bell is able to connect to this PBX without in any way infringing on Pineville's territory. The PBX is registered with the FCC and the requested connection meets the terms and conditions of Bell's tariffs. Thus, Bell is obligated to serve Eslon. It is in Southern Bell territory that the interconnection to the network occurs and the equipment and the lines leading from the PBX belong to and were installed by Eslon. The majority has concluded that, notwithstanding the physical presence of Eslon's PBX in Bell's territory, it will not recognize Eslon as being located in Bell's territory for the purpose of receiving Bell's service. The majority states that it will not allow Eslon to circumvent State law by extending its private facilities into Bell's territory. These conclusions ignore the fact that Eslon first purchased contiguous property to meet its expansion needs, and then determined that since the expansion property was located in Bell's territory it would seek Bell's service. Requesting service from Bell was part of Eslon's long-range plan to meet its future business needs. Most certainly, Eslon will be entitled to request Bell's service once expansion is completed, and it seems pointless to prevent Eslon from obtaining Bell service until the expansion has been completed.

While this Commission has the right and duty to prevent destructive, competitive practices between utilities, it cannot prevent an unregulated business from exercising its rights under Federal laws and regulations. This Commission is preempted from issuing an Order which restrains Southern Bell from providing service to Eslon. The Fourth Circuit has ruled that FCC regulation of customer terminal equipment displaces all conflicting states regulation. In Continental Telephone Corp. v. FCC et al., 537 Fed 788 at 793 (1976) the Court stated:

> "if..state jurisdiction over intrastate communication facilities is exercised in a way that, in practical effect, either prohibits customer supplied-attachment authorized by tariff FCC No. 263 or restricts their use contrary to the provisions of that or any other

> interstate tariff, the Commission will be frustrated in the exercise of the plenary jurisdiction over the rendition of interstate and foreign communication services that the Act has conferred upon it. The Commission must remain free to determine what terminal equipment can safely and advantageously be interconnected with the interstate communication network and how this shall be done." (Emphasis supplied.)

The FCC has held that the states may not prescribe or limit the interconnection of customer-provided devices duly registered pursuant to FCC rules, nor may a state in any manner impair a user's right to free an unimpeded interconnection.

This Commission by enjoining Southern Bell from serving Eslon has attempted to interfere in an area clearly preempted by the Federal authorities. Furthermore, this Commission has placed Southern Bell in the untenable position of having to violate either FCC regulations or an Order of this Commission.

We have entered into a new era in the regulation of telecommunications. Some of us fear the future and foresee the demise of the smaller independent telephone companies as a result of the competition being fostered by the Federal regulators. Nonetheless, the Federal Courts and the FCC have charted the course and set the policy. The NCUC has valiantly led the opposition to the changes in the direction of telecommunication regulation. (See N.C.U.C. v. FCC, 552, F. 2d. 1036, (1977). See N.C.U.C. v. FCC, 537 F. 2d. 787, (1976).) But in each case this Commission has been overruled. Once again the majority has refused to recognize that Federal law and Federal regulations are controlling. This is a position I cannot adopt.

Sarah Lindsay Tate, Commissioner

COMMISSIONER CAMPBELL DISSENTING: Respectfully, I must dissent from this decision because I believe the woven web of rationalization utilized by the majority is contrary to law, contradictory of previous decisions by this Commission, and because the conclusions result in discrimination.

There is no controversy in the present proceeding as to the legal right and duty of Southern Bell to provide service within its territorial boundaries as determined by this Commission. Southern Bell has been franchised under G.S. 62-110 to serve the territory upon which Eslon Thermoplastics, Inc., has constructed a building for the specific purpose of receiving service.

> G.S. 62-110. Certificate of convenience and necessity. - "No public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to construction into territory continguous to that already occupied and not receiving similar service from another public utility, nor to construction in the ordinary conduct of business." (Emphasis added.)

According to the Findings of Fact, Southern Bell is not in violation of this territorial section of the law. There is absolutely no encroachment by Southern Bell upon the territorial rights of Pineville Telephone. Southern Bell has made no effort to extend service outside its boundaries. As a matter of law, Southern Bell could be forced to serve Eslon had it refused service to Eslon by reason of violation of the interpretation of G.S. 62-140.

Discrimination prohibited. - In a court proceeding the following language was used:

> "Commission May Not Permit Undustified Service Refusal - A refusal by a telephone company to serve without a reasonable justification thereof is a violation of the company's duty, and the Commission has no authority to permit it. State ex rel. Utilities Commission v. National Merchandising Corp., 288 N.C. 715, 220 S.E. 2d 304 (1975)."

Had Southern Bell refused to serve Eslon, the Commission would have had to order such service.

In this proceeding, had Eslon constructed a building to house the executive offices of its company, Southern Bell could not refuse to serve Eslon. The ordering paragraph of this Order clearly is in violation of this because it would not be proven that such a building would be the principal facility of that company. This is an arbitrary and capricious judgment on the part of the Commission, and would relate only to the size and use of a building which would be privately owned.

Under the law, Southern Bell (G.S. 62-140) has no right to question the size of the building or the intended use of such building. The Commission by this Order is attempting to question the size, purpose, and motives of a private business or enterprise. In my opinion, the Commission is in violation of its statutory rights in trying to delineate the size of a customer or to what legal uses it may have for the service.

The fact remains that Southern Bell has the right and duty to serve Eslon strictly upon the fact that the property is within the legally designated territory of Bell is so ordered by the customer.

It is obvious that this Commission has no jurisdiction over Eslon to question the needs or purposes for which the service is ordered unless the Commission had reason to suspect that Eslon was to become a supplier of services to others.

> G.S. 62-2 Declaration of policy. - ..."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 this regulatory jurisdiction of said Commission."

Since Eslon is clearly not a regulated utility, this Commission has no jurisdiction over Eslon as to what size building it has, the purpose of such service, or the quantity of service. There is an implied authority in the Conclusions of the Order on page 18 when the majority opinion says: "This Commission holds only that as Pineville's and Southern Bell's territories are now constituted, ESLON MUST RECEIVE SERVICE FROM PINEVILLE." (Emphasis added.)

A clear implication of this reading means that the Commission is attempting to control the actions of Eslon.

The Ordering Paragraph reads as follows:

> "1. That Southern Bell Telephone and Telegraph Company is permanently enjoined from providing or offering to provide telephone or communications service to Elson Thermoplastics, Inc., or any other person, firm, or corporation whose residence or principal facilities are in the Pineville Telephone service area by means of any direct or indirect connection of its facilities in the Pineville service area unless such connection is made through Pineville Telephone Company."

At no place in the Findings of Fact, Conclusions or Summary does the majority decision cite a single incidence in which Southern Bell has violated any section of law, Commission rule, or Court decision. Therefore, this Order deprives Southern Bell of its rights and duties and, as such, diminishes, the size, scope, and value of this franchise. In my judgment, this encroachment of the franchise of Southern Bell is reversible.

So far as Eslon Thermoplastics, Inc., is concerned this Order deprives them of their legal right to obtain service from a utility that is legally bound to serve them. The service ordered by Eslon from Southern Bell is both legal and proper. They have obtained property upon which they might wish to build another type of industry, but one which might be secondary in size and purpose to their present facility within Pineville territory. This Order would absolutely prohibit them from such service, and I find that contrary to law or common sense.

To me the record is clear. Two utilities are legally qualified by law and territorial boundaries to serve the customer, Eslon. The old adage "the customer is always right" may be a distortion in exaggeration, but it should be obvious that the customer does have definite rights.

Utilities exist to serve customers, not customers to serve utilities. Territories are assigned to insure service to customers, not to insure that customers are to be required to take service from any single utility. Becasue of its unique boundary location, Eslon has the right and opportunity to take service from Pineville or Southern Bell. The law, and decisions flowing therefrom, clearly establishes the fact that competition between utilities is not prohibited unless it is unfair or destructive. (NCUC v. Carolina Coach, 261 N.C. 384, 134 SE 2d 689 (1964).) Under such circumstances a customer's free choice as to which among available suppliers of service it wishes to take service must be accorded great weight. (Boone v. Lexington Telephone Company, 44 PUR 3d 216 (N.C. 1962).)

In this case, Eslon finds it is facing an opportunity to connect its own PBX and take service from either Pineville or Southern Bell. The choice by Eslon does not promote or cause unfair or destructive competition between utilities. Pineville serves many customers in Southern Bell's territory in or near the Southland Industrial Park area. At least two of these, McGraw-Edison and Specialty Manufacturing Company, are commercial customers which have the option of choosing either Pineville's or Southern Bell's service. Pineville does not

deny that this competitive situation exists nor the right of these customers to choose their supplier. To deny this right to Eslon which owns property adjacent to McGraw-Edison would patently be discrimination between customers, and this is expressly forbidden by law. Southern Bell and Pineville currently serve subscribers all along the perimeter and outlying areas of Southland and their service cables run virtually side by side along Southland's Northern and Western and Southern boundaries. Pineville's attempt to portray Southern Bell as having duplicated Pineville's existing facilities ignores the fact that all of Southern Bell's cable and pole attachments are completely within its own franchised territory. If anything, Pineville's cable facilities running outside of its franchised territory are a duplication of Southern Bell's, and not the reverse.

A customer's choice to select service between competing utilities seems to have been clearly established by Commission and court decisions. The North Carolina Supreme Court, in deciding an electric utility controversy, stated that, "Unless compelled by some cogent reason, one seeking electric service should not be denied the right to choose between vendors." Blue Ridge Electric Membership Corporation v. Duke Power Company, 258 N.C. 278, 281 (1962). Furthermore, this Commission has recognized the principle of customer preference in Rasor v. Carolina Power & Light Company Docket E-2, Sub 47, NCUC Reports 1956-58, p. 1116. In Boone v. Lexington Telephone Company, this Commission upheld a subscriber's choice of supplier where lines of two telephone companies were accessible and available to customers and either could serve such customers. 44 PUR 3d 218 (NC 1962). In Cooper v. Carolina Telephone and Telegraph, this Commission again expressed approval where it wrote, "It is our desire that telephone customers, where possible and practical, seek out and demand telephone service of their own choosing." 71 PUR 3d 457, 460 (NC 1967).

Any restriction placed by this Commission on Eslon has the effect of taking away from Eslon its rights and privileges, and is an attempt to do what has been expressly prohibited in G.S. 62-2 as cited above.

The Commission majority seem to try to recognize the federally-established interconnection prerogatives of customers who supply their own telephone equipment. Eslon should be permitted to the use of its own terminal equipment in ways and means that are privately beneficial unless there is an obvious violation of state law and policies and federal regulations. Commissioner Tate has dissented from this Order in an able manner which cites the requirement that this Commission recognize its obligation to abide by the law and intent of F.C.C. Part 68. There is no need to duplicate her position. I do concur in her opinion.

For the above reasons of law and fact, I must respectfully dissent from this Order.

A. Hartwell Campbell, Commissioner

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DOCKET NO. P-55, SUB 776

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Investigation of the Need for Extended Area Service (EAS) Between the Locust Exchange and Each of the Exchanges of Norwood, Albemarle, Oakboro, New London, and Badin, Stanly County, North Carolina	) ORDER DIRECTING) IMPLEMENTATION OF) EXTENDED AREA) SERVICE

HEARD IN: Stanly County Courthouse, Albemarle, North Carolina, on July 8, 1980, and Raleigh, North Carolina, on May 12, 1980

BEFORE: Commissioners Leigh H. Hammond, Presiding; and Commissioners Sarah Lindsay Tate and John W. Winters

APPEARANCES:

For the Respondents:

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

and

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

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

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 March 14, 1979, the Commission received a letter from the Stanly County Board of Commissioners expressing an interest in countywide Extended Area Service (EAS) for Stanly County. The provision of such service would require the establishment of EAS between Southern Bell Telephone and Telegraph Company's (hereinafter Southern Bell) Locust exchange and each of the exchanges of Albemarle (County Seat), Oakboro, New London, and Badin all served by Concord Telephone Company (hereinafter Concord) and Norwood served by Mid-Carolina Telephone Company (hereinafter Mid-Carolina). Subsequently, the Commission received expressions of suppport for the countywide EAS from citizens, businesses, institutions, and local governments in Stanly County.

The Commission decided that an evidentiary hearing should be held to determine whether countywide EAS should be ordered, with or without a poll of the subscribers, and to determine what increases in basic monthly rates would be required in order to implement EAS. At issue in determining what increases in rates would be required for EAS was whether the monthly rate increases for each

exchange should reflect both the additional equipment costs and toll revenue losses or should reflect only additional equipment costs.

By Order issued May 12, 1980, the Commission set the matter for a public hearing to be held on Tuesday, July 8, 1980, in the Stanly County Courthouse in Albemarle, North Carolina. The Order also required that public notice of the hearing be published by Southern Bell, at its expense, in newspapers within the service areas of the affected exchanges. The public notice indicated that: "After the hearing, the Commission may, based on testimony presented at the hearing order the companies to implement EAS forthwith, or it may determine that a poll of the subscribers in each of the Stanly County exchanges is required in order to fully determine the need for EAS."

The matter was called for hearing at the appointed time and place. Southern Bell offered the direct testimony of W. F. Dyer, Jr., District Staff Manager - Rates. Concord offered the direct testimony of Phil W. Widenhouse, Executive Vice-President and Treasurer. Archie Thomas, President of Mid-Carolina was available to answer any questions, but did not offer any direct testimony. The Public Staff offered the direct testimony of Hugh L. Gerringer, Communications Engineer. Also, the Public Staff represented the twenty-eight (28) public witnesses who appeared and testified regarding the establishment of countywide EAS in Stanly County. The Commission took judicial notice of two items: (1) the transcript representing the record of the Commission's Agenda Conference held on March 17, 1980, regarding this EAS matter, and (2) a copy of a decision rendered by the Ohio Supreme Court in Arcadia Telephone Company v. Ohio Public Utilities Commission, 30 PUR 4th, p. 131 (1979), which allowed the exclusion of the net toll revenue loss in determining EAS rate increases.

Based on the testimony presented at the July 8, 1981, hearing, the Commission concluded that sufficient interest existed in countywide EAS in Stanly County to justify a poll of all affected subscribers and that, in polling the subscribers, the monthly rate increases for EAS should be based on additional costs alone as recommended by the Public Staff, thus denying the Company's request to include loss of toll revenue in the monthly increases.

On October 20, 1980, the Commission ordered:

1. That an EAS poll be conducted of all affected subscribers to determine their desire for EAS between Southern Bell's Locust exchange and each of the exchanges of Albemarle, Oakboro, New London, and Badin, all served by Concord, and Norwood served by Mid-Carolina.

2. That the basic monthly rate increases to be used for polling and to become effective at the in-service date of the EAS if ultimately approved shall be the following:

	Monthly Rate Increase	
Company and Exchanges	Residence	Business
Southern Bell (Locust)	$ .95	$2.35
Mid-Carolina (Norwood)	.10	.25
Concord (For each exchange of Albermarle, Oakboro, New London, and Badin)	.20	.40

The three involved telephone companies polled the afffected subscribers on or about December 5, 1980. The polling results and statements suggesting that there did not exist sufficient interest and support to implement countywide EAS were filed with the Commission by the Companies in January 1981. The Public Staff without making any recommendations presented the polling results for Commission consideration at the Commission Staff Conference of January 19, 1981.

Because the Locust exchange of Southern Bell serves subscribers who reside in Cabarrus County and subscribers who reside in Stanly County, the Commission faced a special problem in analyzing the polling results as they related to the Locust exchange subscribers. For this reason, on March 6, 1981, the Commission requested that Southern Bell separate the polling data between Locust exchange, Cabarrus County and Stanly County subscribers. On March 20, 1981, Southern Bell filed the requested analysis (Appendix B).

On March 31, 1981, the Commission issued an "Order Setting Further Investigation and Hearing." The Commission concluded as follows:

> "In view of the Locust exchange analysis which shows that only 6% of the Cabarrus County subscribers favor the requested EAS, while 71% of the Stanly County subscribers favor countywide EAS in Stanly County, the Commission concludes there is not sufficient community of interest among the Cabarrus County residents to involve them in the proposed EAS arrangement. On the other hand, the interest expressed by the Stanly County subscribers causes the Commission to conclude that a further investigation and hearing should be held to determine the feasibility of offering countywide EAS to the Stanly County residents of the Locust exchange while excluding the Cabarrus County residents from the Stanly County EAS arrangement. Specifically, Southern Bell should determine the cost of establishing restricted equipment groups in the existing Locust central office which would allow Stanly County residents to have two-way EAS countywide but exclude Cabarrus County residents. In addition to the restricted equipment group study, Southern Bell may, if it desires, make and present engineering studies of other possible methods of offering countywide EAS to Stanly County subscribers in the Locust exchange."

The matter came on for hearing as scheduled before Commissioners Hammond, Tate, and Winters. Southern Bell offered the direct testimony of Donald L. McKimsey, General Manager, Switch Services, regarding the technical changes necessary in the Locust central office to provide EAS to Stanly County subscribers (and not to Cabarrus subscribers), and to identify the costs of those changes. The Commission also heard from the following public witnesses: Hazel Efird, Chairman of the Stanly County Board of Commissioners, Windell Talley, a turkey farmer and grain producer, Paul E. Bowers, a Stanly County Commissioner, Roy W. Brooks, an insurance agent with the North Carolina Farm Bureau Insurance Company, Frank Simpson, Chairman of the Agriculture Extension Service in Stanly County, Gene McIntyre, an employee of the Stanly County Board of Education, Ken Thomas, Director of Emergency Service for Stanly County, and Robert McCoy, a businessman from Midland.

After reviewing all of the testimony, exhibits, and the polling results, the Commission makes the following

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FINDINGS OF FACT

1. Southern Bell Telephone and Telegraph Company, the Concord Telephone Company, and Mid-Carolina Telephone Company are public utilities subject to the jurisdiction of the Commission and provide telephone service throughout the various areas of North Carolina where they have undertaken to serve, including Stanly County and Cabarrus County, North Carolina.

2. The Stanly County Board of Commissioners and other residents of Stanly County by letter dated March 14, 1981, expressed an interest in having toll-free calling (EAS) from the Albemarle, Oakboro, New London, Badin, and Norwood exchanges to the Locust exchange.

3. Southern Bell provides telephone service and facilities in the Locust exchange, which is located partially in Cabarrus County; Concord provides telephone service and facilities to the Albemarle, Oakboro, New London, and Badin exchanges; and Mid-Carolina provides telephone service and facilities to the Norwood exchange.

4. There is presently no EAS service from the Albemarle, Oakboro, New London, Badin, and Norwood exchanges to the Locust exchange. However, Extended Community Calling (ECC) exists between Locust and Albemarle, Oakboro, Charlotte, Concord, and Monroe. ECC is a service offering whereby customers can buy one hour's worth of calling for a flat fee, and additional one-tenth hour increments, also for a flat fee.

5. All of the exchanges involved in this proceeding, except for the Locust exchange, can call each other toll-free through existing EAS networks.

6. The Locust exchange and the other exchanges herein considered are in reasonably close proximity with each other. Locust is 18 miles from New London, 21 miles from Badin, 18 miles from Norwood, 15 miles from Albemarle, and six miles from Oakboro.

7. As of April 1981, Southern Bell served 2566 main stations through its Locust central office. Of these stations 1635 (63.7%) are located in Stanly County and 931 (36.3%) are located in Cabarrus County.

8. The results of a poll of all affected subscribers were filed with the Commission in January 1981 and are set forth in Appendix A to this Order. The results show that 52.8% of total ballots cast supported EAS, but that only 46% of the subscribers located in Southern Bell's Locust exchange favored EAS.

9. On March 6, 1981, the Commission requested that Southern Bell file an additional analysis of the polling data which separates the results between Locust subscribers residing in Stanly and Cabarrus Counties.

10. On March 20, 1981, Southern Bell filed the requested analysis (Appendix B). This analysis shows that of the Locust exchange subscribers who voted, only six percent of the Cabarrus County subscribers favored the proposed EAS, whereas 71% of the Stanly County subscribers favored the proposed EAS.

11. As a result of this analysis, the Commission conducted a further hearing on May 12, 1981, to determine the feasibility of establishing restricted equipment groups in the existing Locust central office which would allow Stanly County residents to have EAS countywide but would exclude Cabarrus County residents.

12. The required engineering adaptations and administrative costs needed by Southern Bell to provide EAS to only those Locust subscribers residing in Stanly County would be in the range of $300,000 to $500,000.

13. The annual revenue requirement for splitting the Locust office would be approximately $100,000.

14. The annual charges on equipment necessary to provide EAS to Stanly County subscribers would be approximately $34,500 per year.

15. The Locust central office was placed in service in 1955 and uses step-by-step switching. Southern Bell plans to replace this outmoded equipment with electronic switching equipment by the early 1990's. Once electronic switching equipment is in place, it will become economically feasible to provide EAS service only to Stanly subscribers in the Locust exchange.

16. A significant amount of interest and support for countywide EAS in Stanly County has been expressed by citizens, businesses, institutions, and local governments in Stanly County.

17. Implementation of countywide EAS in Stanly County is needed to enhance and improve the following governmental services:

a. Law enforcement,

b. Service to the disabled, elderly, and low income citizens who cannot afford toll calls,

c. Dissemination of agricultural information,

d. Emergency services,

e. Communication between grade and high school teachers and administrators and students and their parents, and

f. Veterans services.

18. Implementation of countywide EAS in Stanly County would enhance the growth of banks and other businesses in Stanly County.

19. Implementation of countywide EAS in Stanly County would enhance and improve the provisions of services provided by churches.

CONCLUSIONS

In deciding whether to order Southern Bell to provide EAS from its Locust exchange in Stanly County to the other exchanges in that county, the Commission is faced with certain unusual, if not unique, circumstances:

1. The Locust exchange serves both Stanly and Carbarrus Counties;

2. A poll of subscribers in the Locust exchange shows that 71% of Stanly County voters favor EAS, while only 6% of Cabarrus County voters favor EAS. There is a strong community of interest between Stanly County subscribers and the other affected exchanges, but not between Cabarrus subscribers and the other exchanges.

3. It is not economically feasible to split the Locust exchange and provide EAS to only Stanly County subscribers (and will not be until the early 1990s), but it is presently economically feasible to provide EAS to all Locust subscribers.

The three telephone companies serving Stanly County, Southern Bell, Concord, and Mid-Carolina, have urged the Commission to deny EAS on the grounds that only 46% of the Locust exchange subscribers who voted in the poll supported EAS. The Commission concludes that an outright denial of EAS would ignore the strong support for EAS in Stanly County (71%) which is reflected in the poll results and would not give proper weight to the testimony of Stanly County's governmental, civic, and business leaders who appeared at hearings in this case. On the other hand, the Public Staff has urged the Commission to provide EAS to the entire Locust exchange without any increase in rates to Locust subscribers. The Public Staff argues that giving free EAS to the Locust exchange would cost only $30,000, and that this relatively small amount can be absorbed without undue burden by the general body of Southern Bell's ratepayers.

The Commission concludes that while implementation of the Public Staff's proposal would not cause an undue burden to Southern Bell's subscribers, the proposal is at variance with the Commission's policy of charging those customers primarily benefiting from EAS at least the present worth of equipment, maintenance, and administrative costs of providing EAS. Considering that recent legislative enactments in Congress and rulings by the FCC foretell higher local rates for all customers, the Commission is extremely reluctant to issue a ruling which would cause the general body of ratepayers to completely subsidize a local service without placing any of the burden on the subscribers who stand to directly benefit. The cumulative effect of such a policy if it were implemented on a statewide basis would cause an undue burden to the general body of subscribers.

Faced with these considerations, the Commission concludes that Southern Bell should provide EAS to the entire Locust exchange, but to charge only subscribers living in Stanly County higher rates for such service. The Commission believes that this is a fair result in that it will not burden Cabarrus subscribers, who have no community of interest with the Stanly exchange and who will therefore receive little or no benefit from being able to call Stanly exchanges, with increased rates. At the same time, this result will require Stanly subscribers, who stand to benefit from being able to call anywhere in Stanly County toll free, to pay their fair portion of the increased costs.

In reaching this conclusion, the Commission has considered the testimony and the poll results to determine the respective community of interests and desires of both Stanly and Locust subscribers, the economic feasibility of the plan, and whether it will impose an undue burden on the general body of ratepayers.

The Commission has also considered the principle that local ratepayers, rather than the general body of ratepayers, should pay at least a portion of the costs of what is essentially a local service.

The Commission has also considered whether the plan approved by this Order is discriminatory as a matter of law. The Commission concludes that notwithstanding the fact that EAS will be provided free to Cabarrus subscribers, while Stanly subscribers will pay higher rates, there is no unlawful discrimination. Unlawful discrimination exists only when a rate differential or other preference is applied to those operating under substantially similar circumstances and conditions. Utilities Commission v. Oil Co., 302 N.C, 14 (1981). In this case, the conditions affecting the Cabarrus and Stanly subscribers of Southern Bell's Locust exchange are very dissimilar in that circumstances of geography and subscriber desires indicate that Cabarrus subscribers, unlike Stanly subscribers, neither need nor want EAS between Locust and the five exchanges located in Stanly County, and that it is highly improbable that the Locust-Cabarrus subscribers will avail themselves of EAS to any great extent.

G.S. 62-140(a) provides as follows:

> "No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission may determine any questions of fact arising under this section."

The California Commission, in interpreting a similar statute, has stated that to be undue, the preference or prejudice must be shown to be a source of advantage to the parties or traffic allegedly favored and a detriment to the other parties or traffic. California Portland Cement Co. v. Union Pac. R.R., 12 P.U.R. 3d 782, 485-86 (Cal. Pub. Util. Comm'n 1955). This Commission agrees with that interpretation and concludes that Cabarrus' subscribers have received no undue advantage by being able to call communities in which they have little or no interest, and which they will be unlikely to call. The Commission concludes that Stanly's subscribers have suffered no detriment by reason of the differential.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell, Concord, and Mid-Carolina are hereby ordered to implement EAS between Southern Bell's Locust exchange and each of the exchanges of Albemarle, Oakboro, New London, and Badin (all served by Concord) and Norwood (served by Mid-Carolina).

2. That the basic monthly rate increases aproved for such service are as follows:

Company and Exchanges	Monthly Rate Increase	
	Residence	Business
Southern Bell (Locust)	$.95	$2.35
Mid-Carolina (Norwood)	.10	.25
Concord (For each exchange of Albemarle, Oakboro, New London, and Badin)	.20	.40

3. That Southern Bell shall prior to the in service date of EAS identify all Locust exchange subscribers residing in Cabarrus County and thereafter exclude them from the charges for EAS approved in decretal paragraph 2.

4. That Southern Bell, Mid-Carolina, and Concord shall report within 30 days of the date of this Order the schedule for making the charges to EAS set forth above.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of October 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A
SUMMARY OF POLL

Company and Exchanges	Monthly Rate Increase	
Southern Bell (Locust)	$ .95	$2.35
Mid-Carolina (Norwood)	.10	.25
Concord (For each exchange of Albemarle, Oakboro, New London and Badin)	.20	.40

POLL RESULTS

	Locust	Albemarle	Oakboro	New London	Badin	Norwood	Total
No. ballots mailed	2479	9776	1810	1779	920	2158	18922
No. valid ballots returned	1747	4634	1144	792	336	950	9603
% valid ballots returned	70.5	47.4	63.2	44.5	36.5	44.0	50.8
No. valid ballots returned voting in favor	795	2232	997	353	119	575	5071
% valid ballots returned voting in favor	45.5	48.2	87.2	44.6	35.4	60.6	52.8

APPENDIX B

POLL RESULTS
LOCUST EXCHANGE

	Ballots Mailed		Ballots Returned	
	#	%	#	%
Cabarrus County	942	38	690	73
Stanly County	1537	62	1057	69
Combined	2479	100	1747	70

	Ballots Returned For EAS		Ballots Returned Against EAS	
	#	%*	#	%
Cabarrus County	42	6	648	94
Stanly County	753	71	304	29
Combined	795	46	952	54

*Based on those returned

COMMISSIONER TATE, DISSENTING: The Majority Opinion in this case departs from all precedent in the handling of EAS matters by the North Carolina Commission, and in my opinion, departs from sound regulatory principles.

The facts are simple enough. After a public hearing, the six exchanges in Stanly County were polled to decide whether or not there should be EAS to and from Locust with all the other five Stanly County Exchanges. When the results were tabulated, four of the six exchanges had voted against EAS, including the Locust Exchange. By a bare majority of 52.8%, there was a favorable vote. However, the Commission has in its past decisions required a more substantial majority before ordering EAS. It is of note that while the other five exchanges would be subjected to a charge of only 10 or 20 cents, the charge to customers in the Locust Exchange would be 95 cents per month. Some 1,747 customers in the Locust Exchange (out of 2,479 mailed ballots) returned the ballots and only 795 agreed to be willing to pay the 95 cent charge, a 54.5% negative vote. In passing, it is interesting to note that in the largest exchange, Albemarle (which is also the County Seat), 51.8% voted against the EAS although their increased charge would only be 20 cents. It is true that a large number of civic leaders and interested people in the community have appeared before the panel, both in the hearing at Albemarle and at various Staff Conferences in Raleigh. They spoke of the need of citizens to be able to communicate with their government, to be able to reach law enforcement and emergency services, to have access to other governmental services to the disabled elderly, etc. However, it is also a fact that these county officials could provide free access to Stanly County governmental services by implementing the 911 service. After the poll had been taken and the results showed that only a bare majority of Stanly County citizens seemed to desire EAS, a County Commissioner appearing before us said, "You should give us what we need and not what we want and what we ask for in this vote." This I am unwilling to do.

The Panel refers to the Stanly County situation as unusual, if not unique. It does not appear so to me. More than 62% of Southern Bell's Exchanges include more than one county and the problems that arise therefrom come before the

Commission with painful regularity. In some cases it has been impossible to split the exchange so that only residents of one county remain in the exchange. Here that was not economically feasible and the Public Staff as well as some of the witnesses, conceded that the cost would be uneconomical. Faced with these facts, the Majority refused to accept that the residents in these exchanges had voted and had declined to support the inclusion of the Locust Exchange into the EAS available to the rest of Stanly County. In this commonplace situation the Majority chose a unique solution. It decided to allow EAS for all of the Locust Exchange, but only to charge the residents of Stanly County and to give the service to Cabarrus citizens on the Locust Exchange for free. Of course, the balance in cost will be picked up by the general body of ratepayers, who have neither a vote nor any interest in this local problem.

The Majority quote the law but have distorted its clear meaning in concluding that this is not discriminatory regulation. G.S. 62-140 provides: "No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person.." And it is obvious that the citizens of Cabarrus County who now have free service to all exchanges in Stanly County are receiving unreasonable preferences. State ex rel. U.C. v. Edmisten, 291 N.C. 424 (1976) states "There must be no unreasonable discrimination between those receiving the same kind and degree of service." Universally, it is held that "Free service (or service for compensation or consideration other than money) rendered by a public utility to some of its consumers is discriminatory against its other consumers and, therefore, unlawful." 22 PUR 265 (Pennsylvania, 1938) Sound regulatory theory requires that the cost causer should pay the bill. The cost still exists for providing the service of extended area service to those customers in the Locust Exchange but only a part of the cost is being charged to the residents of Stanly County, and the balance of that cost is charged to ratepayers who have done nothing to cause the cost. Additionally, the citizens of Cabarrus County in the Locust Exchange are receiving a free service. It is immaterial whether or not they want or use the service; the fact is they are being provided a free service. I do not believe that this decision complies with Commission precedent or with the laws of North Carolina, and I cannot concur with the tortuous reasoning of the Majority in their decision in this case.

Sarah Lindsay Tate, Commissioner

DOCKET NO. P-7, SUB 652

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Telephone and Telegraph Company	)	RECOMMENDED ORDER
for an Adjustment of Its Retail Telephone Rates and	)	GRANTING PARTIAL
Charges in Its Service Area Within North Carolina	)	INCREASE IN RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and the Cities of Elizabeth City, Tarboro, New Bern, and Fayetteville

TELEPHONE

DATES: January 6-8, 1981, and January 13-22, 1981

BEFORE: Commissioner Leigh H. Hammond, Presiding; and Commissioners Douglas P. Leary and Sarah Lindsay Tate (Commissioner Hammond dissenting)

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., and Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602
For: Carolina Telephone and Telegraph Company

Dwight W. Allen, General Counsel, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company

For the Intervenors:

Paul L. Lassiter, Karen E. Long, and Robert F. Page, Staff Attorneys, 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 August 28, 1980, Carolina Telephone and Telegraph Company, Inc. (Applicant, the Company, or Carolina), filed an application with the Commission seeking to adjust and increase telephone rates and charges for its North Carolina subscribers. The requested increase in retail rates and charges was designed to produce $25,523,726 of additional revenues from the Company's North Carolina subscribers when applied to a test period consisting of the 12 months ended March 31, 1980. The Company requested that such increased rates be allowed to take effect for service rendered on and after October 3, 1980. In supplemental testimony filed with the Commission on January 2, 1981, the Company indicated that the increase in gross revenues needed to give the Company an opportunity to earn its requested rate of return had increased to $36,260,850.

On August 22, 1980, the Public Staff filed a Motion to incorporate in this rate application the earlier filing of Carolina in Docket No. P-7, Sub 654, to obsolete its existing EAS rate component tables and institute new EAS component tables. On September 4, 1980, the Commission issued an Order consolidating Docket No. P-7, Subs 654 and 652.

The Commission, being of the opinion that the increase in rates and charges proposed by Carolina was a matter affecting the public interest, by Order issued on October 1, 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 270 days; set the matter for hearing before the Commission beginning on January 6, 1981; required Carolina to give notice of such hearing by newspaper publications and by appropriate bill inserts; established the test period to be used in the

proceeding; and required protests or interventions to be filed in accordance with the Commission Rules and Regulations.

Notice of Intervention in this docket was given by the Public Staff on December 1, 1980. The intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations.

Out-of-town hearings were conducted by the Commission for the purpose of receiving testimony from members of the using and consuming public with regard to Carolina's proposed rate increase. The first such hearing was held in Elizabeth City, North Carolina, at 7:00 p.m., on January 6, 1981; the second in Tarboro, North Carolina, on January 7, 1981, at 11:00 a.m.; the third in New Bern, North Carolina, on January 7, 1981, at 7:30 p.m; the fourth on January 8, 1981, in Fayetteville, North Carolina, at 2:00 p.m.; and the fifth hearing in Fayetteville, North Carolina, at 7:00 p.m. Public witnesses at these hearings included the following persons:

Elizabeth City - Raleigh Carver, W. T. Alexander, R. T. Thompson, William C. Paradise, R. R. Ettinger, Dwight Steiner, and R. J. Hendee;

Tarboro - Dr. Samuel Bruce Pettiway, Mark Jordan, Russell Carter, Donald L. Lemish, David J. Whichard, II, and Cheston V. Mottershead;

New Bern - David I. Odom, Leland Hargrove, Nancy Hollows, Jim Hamilton, John E. Bamberry, and Lonnie E. Pridgen;

Fayetteville - Harold Arne, Fletcher Womble, Janice Koellner, Horace Thompson, Arthur Cobb, David Parnell, Charles A. Justice, Paul Lewis, Tommy Furmage, Paul Nijhawan, and Hal Watts.

The matter came on for hearing in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on January 13, 1981, at 10:00 a.m. At the start of the hearing, the Commission heard testimony from the following four public witnesses: (1) James E. "Red" Smith, (2) Edison E. Temple, (3) Herman Rooker, and (4) Thomas S. Yow.

Carolina offered the testimony and exhibits of the following witnesses: Ted P. Williamson, Vice-President - Administration for Carolina; Stanley Fisher, President of North Supply Company; J. B. Teal, Vice President - Operations of Carolina; H. Jack Runnion, Jr., Executive Vice President, Wachovia Bank and Trust Company and Treasurer of The Wachovia Corporation; E. D. Wooten, Toll Revenue Requirements Supervisor for Carolina; Robert E. Baker, Jr., Assistant Vice President - Rate Case Matters by United Telephone Systems, Inc. (United); Dr. James H. Vander Weide, Associate Professor of Finance in the graduate school of Business Administration, Duke University, and Vice President of University Analytics; W. C. Morris, Jr., Controller of Carolina; A. J. Sykes, Employee of the Local Revenue Requirement Department of Carolina; and J. R. Owen, Local Revenue Requirement Supervisor of Carolina.

The Public Staff offered the testimony and exhibits of the following witnesses: Thi-Chen Hu, Communications Engineer - Communications Division; Millard N. Carpenter, Public Utilities Engineer - Communications Division; Benjamin R. Turner, Jr., Communications Engineer - Communications Division; Leslie C. Sutton, Communications Engineer - Communications Division; William J.

Willis, Communications Engineer - Communications Division; Richard G. Stevie, Staff Economist - Economic Research Division; George E. Dennis, Staff Accountant - Accounting Division; Curtis Toms, Jr., Supervisor of Communications Section - Accounting Division; William W. Winters, Supervisor of Electric Section - Accounting Division; and Hugh L. Gerringer, Communications Engineer - Communications Division.

Carolina offered the rebuttal testimony and exhibits of the following witnesses: William C. Morris, Jr., Controller of Carolina; John F. Utley, National Industry Director - Public Utilities for the firm of Deloitte, Haskins & Sells; J. R. Owen, Local Revenue Requirements Supervision; Joseph F. Brennan, President of Associated Utility Services, Inc.; and Dr. James H. Vander Weide.

Based upon the foregoing, the testimony and exhibits admitted at the hearing, and the entire files and records in this docket, the Commission now reaches the following

FINDINGS OF FACT

1. That the Applicant, Carolina Telephone and Telegraph Company, is a wholly owned subsidiary of United Telecommunications, Inc., a parent holding company.

2. That Carolina is a public utility as defined by G. S. 62-3(23)a.6. and, as such, is subject to the jurisdiction of this Commission and is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its proposed rates and charges.

3. That the test period for purposes of this proceeding is the 12-month period ended March 31, 1980. Carolina is seeking an increase in its rates and charges for local service to its North Carolina customers of approximately $25,523,726.

4. That the overall quality of service provided by Carolina is adequate. However, there are some problem areas which should receive attention and corrective action from the Company.

5. That the reasonable original cost of Carolina'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 - less than one year) is $366,797,317.

6. That the reasonable allowance for working capital is $7,051,275.

7. That Carolina's reasonable original cost rate base is $373,848,592. This amount consists of net utility plant in service and construction work in progress of $366,797,317, plus a reasonable allowance for working capital of $7,051,275.

8. That Carolina's gross revenues for the test year, under present rates and after accounting and pro forma adjustments, are $186,564,937. After giving effect to Carolina's proposed rates, such gross revenues are $212,088,663.

9. That the reasonable level of test year intrastate operating revenue deductions after accounting, pro forma, end-of-period, and after-period adjustments is $153,840,790. This amount includes $38,154,647 for investment currently consumed through reasonable actual depreciation on an annual basis.

10. That the capital structure for Carolina which is appropriate for use in this proceeding is as follows:

	Present
Debt	60.03%
Preferred	2.72%
Equity	37.25%
	100.00%

11. That the Company's proper embedded costs of debt and preferred stock are 8.82% and 7.86%, respectively. The reasonable rate of return for Carolina to be allowed to earn on its common equity is 15.00%. 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 11.09% to be applied to the Company's original cost rate base. Such rate of return will enable Carolina, 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.

12. That based upon the foregoing, Carolina should be allowed an increase, in addition to the $186,564,937 of annual gross revenues which would be realized increase is required in order for the Company to have a reasonable opportunity to earn the 11.09% 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.

13. That the Applicant's proposed changes in rates for mileage service are just and reasonable.

14. That the proposed increase in the rates for equipment furnished to Telephone Answering Service (TAS) firms is excessive; and the recommendations of the Public Staff on the rates and the amount of additional revenue to be produced from these services are just and reasonable.

15. That Carolina's rates applicable to supplemental services should be designed as embodied by the Public Staff to produce $10,825,662 additional gross revenues and that certain of the Company's proposals related to local service rates are reasonable and should be followed in designing appropriate rates.

16. That the Company's alternative EAS matrix methodology should be implemented in order to recover costs associated with this supplemental service.

17. That the Company should design rates to satisfy the $18,398,691 of additional gross revenues approved herein, provided that the level of additional revenues generated by supplemental services be $10,825,662 and that zone charges be eliminated.

18. That the Company should continue its present practice of offering certain in-place station apparatus for sale.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence for these findings is contained in the verified application, the Commission Order Setting Hearing, the testimony and exhibits of Company witnesses Williamson and Morris, and the testimony and exhibits of Public Staff witness Toms. These findings are essentially informational, procedural, and jurisdictional in nature and were basically uncontested. These findings require no further discussion at this point.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this conclusion is contained in the testimony of the public witnesses: R. T. Thompson, William C. Paradise, Samuel Bruce Pettiway, Russell Carter, David J. Whichard, Leland Hargrove, John E. Bamberry, Lonnie E. Pridgen, Harold Arne, Fletcher Womble, and Horace Thompson, in the testimony and exhibits of Company witness Teal, and in the testimony and exhibits of Public Staff witness Hu.

The testimony of Company witness Teal indicated that he believed the service the Company was providing was meeting or surpassing the Commission's service objectives and that the service was judged favorably by a substantial majority of customers. He cited certain key indicators of Carolina's performance, including the measurement of the speed of outward toll operator answers, the measurements of equipment blockages and failures for their service observing program, and favorable results from customer opinion surveys.

He also pointed out that the results of trouble reports per 100 stations, percent of toll answers in 10 seconds, and the blockages and failures on DDD calls attempted by subscribers had met and surpassed the Commission's objectives.

Company witness Teal testified that improvements still need to be made in the Norfolk Carolina area before service will be completely adequate. He stated, however, that Carolina does have substantial construction activities underway at the present time to help correct these service problems.

Public Staff witness Hu testified that while Carolina's switching and trunking networks were in proper working condition, the Company was not meeting some Commission objectives. Witness Hu testified that the Company should give close attention and bring corrective actions to those weak spots which were summarized in Hu Exhibit 25. The witness further testified that the overall quality of service offered by Carolina was adequate.

The Commission concludes that the overall quality of service offered by Carolina is adequate. However, the Commission recognizes that the service in

some areas does not meet the Commission's objectives and concludes that the Company should continue its efforts to improve the service in those weak spot areas testified to by witness Hu.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is in the testimony and exhibits presented by Company witness Morris and Public Staff witnesses Toms and Winters. In addition, Company witnesses Morris and Utley presented rebuttal testimony on this subject, and Public Staff witness Winters presented surrebuttal testimony. The following chart summarizes the amounts which the Company and the Public Staff contend are the proper levels of the original cost of Carolina's investment in telephone plant in service for use in this proceeding:

Item	Company	Public Staff
Telephone plant in service	$619,274,445	$618,976,628
Telephone plant under construction (less than one year)	5,228,894	5,228,894
Plant acquisition adjustment	97,272	97,272
Accounts payable - plant in service	(917,969)	(917,969)
Accounts payable - plant under construction	(191,138)	(191,138)
Depreciation and amortization reserve	(170,815,985)	(193,399,170)
End of period customer deposits	(1,216,094)	(1,216,094)
Deferred taxes	(54,211,489)	(59,996,407)
Pre-1971 investment tax credit	(1,248,208)	(1,248,208)
Total original cost of telephone plant in service	$395,999,728	$367,333,808

As the summary shows, the Company and the Public Staff were in agreement on the proper levels to be included in rate base relative to telephone plant under construction (less than one year), plant acquisition adjustment, accounts payable - plant in service, accounts payable - plant under construction, end-of-period customer deposits, and the pre-1971 investment tax credit; therefore, these items will not be discussed further.

The first area of difference involves telephone plant in service. Public Staff witness Toms recommended an amount which was $297,817 less than the amount proposed by Company witness Morris. Witness Toms excluded $103,353 from telephone plant in service due to the Company's entry into the competitive market for the direct sale of terminal equipment. Witness Toms testified in his prefiled testimony that the direct sale of terminal equipment was a nonregulated activity and thus his adjustment recognizes that a portion of the Company's telephone plant in service is also being used by the Company to facilitate this nonregulated activity.

Company witness Morris did not make this adjustment. He testified under cross-examination that the Company had very little sales activity during the test period and that formal emphasis was not placed on terminal equipment sales until after the end of the test period. Witness Morris did admit under cross-

examination that a portion of the plant in service at the end of the test period (March 31, 1980) was being used for terminal sales purposes. He testified, however, that November data should not have been used for purposes of making the adjustment to telephone plant.

Witness Toms asserted that the November data was the most appropriate upon which to base this adjustment in order to achieve the level of test year plant in service devoted to utility operation after consideration of changes up to the time of the close of the hearing. Witness Toms predicated the utilization of this known change in plant in service upon Chapter 62-13 3(c) which states:

> "...the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility'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..."

In addition, witness Toms stated that justification for his adjustment was implanted in Chapter 62-133(d) which states:

> "The Commission shall consider all other material facts of record that will enable it to determine what are reasonable and just rates."

Finally, he testified that:

> "...if this change is not recognized for rate-making purposes, the ratepayers of Carolina Telephone and Telegraph Company will be paying rates to subsidize a nonregulated function."

Based upon the evidence presented by the witnesses, the Commission concludes that Mr. Toms' adjustment to exclude plant related to sales of terminal equipment from telephone plant in service is necessary and proper. The Commission bases its decision on the fact that the Company is actually using a portion of the test year telephone plant in service to facilitate its sales of new terminal equipment. The Commission concludes that a continued emphasis on the sale of terminal equipment will occur in the future and that the adjustment proposed by witness Toms is reasonable. Customers of Carolina should not be required to pay rates to subsidize a nonregulated function, the ultimate effect of which would be to give Carolina a competitive advantage in the sale of terminal equipment at the expense of its regulated customers.

However, the Commission disagrees with parts of the methodology employed by witness Toms to derive at the dollar amount related to this adjustment. Therefore, consistent with the applicable methodology found to be fair and reasonable under Evidence and Conclusions of Finding of Fact No. 9, the Commission concludes that $86,395 should be deducted from plant in service in order to reflect March 31, 1980, plant in service usage in nonutility operations.

The remaining difference in telephone plant in service of $194,464 was due to Mr. Toms' adjustment to remove a 28-acre tract of land from telephone plant in service. Mr. Toms contended that the land, which was purchased during the test year and transferred to plant in service along with the Company's new

administrative headquarters building which it adjoined, should have been classified as plant held for future use. Company witness Morris objected to Mr. Toms' adjustment to exclude this tract of land on the grounds that this particular tract of land was no different from any other land surrounding the building. However, Mr. Morris did admit under cross-examination that no portion of the new administrative headquarters building was located on any portion of the land. The Company's proposed order accepted this adjustment.

Based upon the evidence presented by the witnesses, the Commission concludes that Mr. Toms' adjustment to exclude land valued at $194,464 is proper. In reaching its decision the Commission is mindful of the fact that the Company does not have plans to use this land to provide useful telephone service to its ratepayers in the near future. Finally, since this tract of land is, in fact, not used and useful in providing telephone service, it should not be included as a component of the original cost rate base.

Through his rebuttal testimony, Company witness Morris recommended that the Commission increase telephone plant in service to the December 31, 1980, level of $658,515,944, should the Commission accept Public Staff witness Toms' proposed adjustment to increase the depreciation reserve in recognition of the depreciation expense related to plant in service at March 31, 1980, which the ratepayers have provided to the Company for the period April 1, 1980, through December 31, 1980. However, witness Morris did not recommend that any additional revenues or expenses be added in recognition of the additional revenues and expenses that would have been generated by the increased level of plant in service. In response to this, Public Staff witness Toms testified during his cross-examination that telephone plant in service should not be updated unless the related revenues, expenses, and taxes that were generated by this plant were updated. Witness Toms testified further that his adjustment to increase the depreciation reserve was not an updating adjustment and that he was simply recognizing an actual known change.

Based upon the foregoing, the Commission concludes that telephone plant in service should not be increased to the December 31, 1980, level as advocated by Company witness Morris. The Commission bases its decision in part on G. S. 62-133(c) which states in part 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." The Commission is mindful of the fact that, while Company witness Morris presented rebuttal testimony in support of an increase in telephone plant in service, he did not propose any increase in operating revenues, or expenses. There is a direct relationship between plant, revenues, and expenses and, therefore, plant in service should not be increased for actual known changes exclusive of those items.

The Commission, therefore, finds that the appropriate level of telephone plant in service to be included in this proceeding for the determination of fair and reasonable rates is $618,993,586.

The second item on which the witnesses disagree is the proper level that should be included for the depreciation reserve. There are two items which comprise the $22,583,185 difference.

The first difference of $23,251 results from Public Staff witness Toms' adjustment to the depreciation reserve to exclude that portion allocable to terminal sales. Mr. Toms testified as follows:

> "Since a portion of telephone plant in service has been removed from the original cost rate base consistency requires the removal of the portion of the depreciation reserve assigned to sales."

Since the Commission has previously found in the discussion of the proper level of telephone plant in service that a portion of a telephone plant in service relative to terminal sales should be allocated to nonutility operations, consistency dictates the removal of the related depreciation reserve in the amount of $15,402.

The remaining difference of $22,606,436 results from Public Staff witness Toms' adjustment to increase the depreciation reserve to allow the ratepayers the benefits of depreciation expense which they have provided to the Company for the period April 1, 1980, through December 31, 1980, on the level of telephone plant in service at the end of the test period. Mr. Toms referenced G. S. 62-133(b) which states:

> "In the fixing of rates, the Commission shall...(1) ascertain the reasonable original cost of the public utility's property used and useful, or to be used and useful..., less that portion of cost which has been consumed by previous use recovered by depreciation expense..."

Witness Toms stated further:

> "Carolina Telephone and Telegraph Company's ratepayers have been paying in rates to cover the depreciation expense on plant in service at the end of the test period through the date of these hearings; therefore, the ratepayers should receive the benefit of these payments by an increase to the depreciation reserve. If this is not done, rates will be set which result in the ratepayer paying a return on capital which they have already provided to the Company."

Witness Toms testified under cross-examination that his adjustment to increase the depreciation reserve was the same as witness Morris' wage adjustment and FICA tax adjustment wherein each of these items was increased for actual known changes occurring up through January 1, 1981. Witness Toms also emphasized the point that he had only taken depreciation on the March 31, 1980, level of plant and that he had not updated the depreciation reserve to take depreciation on plant additions subsequent to the end of the test period. He testified also that it would not be proper to update telephone plant in service unless revenues, expenses, and taxes were updated. Witness Toms accepted subject to check that a plant factor was incorrectly used to allocate the reserve adjustment and that the proper amount of the adjustment is $22,161,382. The Commission concludes that $22,161,382 is the correct amount of the adjustment.

As stated earlier Company witness Morris offered rebuttal testimony in opposition to witness Toms' proposed adjustment to increase the depreciation reserve relative to capital contributions which the Company's ratepayers have

provided to the Company. Witness Morris testified in his rebuttal testimony as follows:

> "Morris Rebuttal Exhibit 1 illustrates that at December 31, 1980, telephone plant in service increases from $618,976,628 to $658,515,944 and the depreciation reserve at December 31, 1980, was actually $181,378,499. If depreciation reserve is to be established at that date as Mr. Toms advocates, it is appropriate to bring the level of telephone plant in service to the same point in time. We maintain that the Commission should adopt a depreciation reserve as of the end of the test year. If it should increase the reserve based upon Mr. Toms' recommendation, however, telephone plant in service should be increased to $658,515,944."

The Commission concludes that there is an important distinction between an adjustment to increase the level of plant in service for additions beyond the end of the test period and an adjustment to recognize actual changes in the end-of-period level of depreciation reserve applicable to plant in service (adjusted for retirements) at the end of the test period. There is a direct relationship between plant in service, revenues, expenses, and other elements of cost of service such as deferred taxes. An update of plant for additions subsequent to the end of the test year necessitates an update of all elements of cost of service directly related to plant. Such an update constitutes a change in the test year itself. No party, in fact, has proposed such a change in the test year even though all parties had ample opportunity to do so.

An adjustment to recognize actual changes in the end-of-period depreciation reserve resulting from the consumption of end-of-period plant subsequent to the test year through reasonable actual depreciation (which has been paid to the utility by its customers through rates) does not, alone, necessitate a change in the other elements of cost of service as is the case with plant in service. Further, this adjustment clearly meets the requirements of an actual change as defined in G. S. 62-133(c).

After considering all of the evidence presented by the witnesses, the Commission concludes that Carolina's ratepayers have provided revenue to cover depreciation expense incurred subsequent to the end of the test period on the level of plant in service at the end of the test period adjusted for retirements. Further, the Commission concludes that the ratepayers should not be required to pay a return on capital which they have already provided to the Company. Therefore, the Commission finds that it is proper to increase the depreciation reserve as recommended by Public Staff witness Toms.

Based upon the foregoing, the Commission finds that the proper level of the depreciation reserve for use in this proceeding is $192,961,965 ($170,815,985 - $15,402 + $22,161,382).

The final area on which the witnesses disagree involves deferred taxes. The amount proposed by Public Staff witness Toms is $5,784,918 greater than the amount proposed by Company witness Morris and results from two adjustments.

The first difference of $1,546,835 results from Public Staff witness Toms' two-part adjustment. First, he reversed Company witness Morris' adjustment to

normalize and defer the tax savings on capitalized payroll taxes and fringe benefits. Witness Toms testified in his prefiled testimony as follows:

> "The effect of this part of our adjustment is to continue to flow through to the Company's customers the current tax savings resulting from those capitalized items. Our treatment here is consistent with the treatment accorded this item by the Commission in Docket No. P-7, Sub 624."

Company witness Morris admitted under cross-examination that the Company had used flow-through for rate case purposes rather than normalization in its last rate case before this Commission. He also testified that the Company had used flow-through since the IRS wrote a regulation allowing the deduction for tax purposes. When he was asked why he had changed his position concerning the deduction of these capitalized payroll taxes and fringe benefits in this case, he stated the following:

> "Well, I think it's time we change the treatment of these capitalized items. In the past they were flowed through. The significance of the tax rate at that time was not great. The FICA tax rate was a few years ago, less than three percent. The unemployment rate at that time was very low. Those items were not as significant as they are today. Today those costs are running 25, roughly, payroll load is running 25 to 30 percent of the costs of labor. It's time we look at these items and normalize them because it's appropriate accounting to do so."

The Company also took strong opposition to flow-through through its rebuttal witness Utley. As to the Public Staff's argument that the construction period for an electric company is much larger than the construction period for a telephone company, Mr. Utley testified as follows:

> "The answer is yes, of course the electric company has a larger construction program, but the extent or significance of that is missing. The matter of normalization as a matter of principle applies to telephone companies and electric companies equally. And the relevance of the materiality of their construction program is none."

When he was asked whether or not investors worried about dollars probably more so than principles, Mr. Utley stated that investors were worried about regulatory climate as one significant factor and that if this Commission moves in a direction against every other regulatory body it would be perceived negatively.

As to Public Staff witness Toms' position that this Commission should continue to flow through the tax benefits as they have in the past in rate cases involving telephone cases, Mr. Utley admitted under cross-examination that there was a certain consistency in the Staff recommendations looked at from individual companies. He testified further that there are other benefits to using normalization as opposed to flow-through which inure to both the Company and its customers such as improved debt coverage, improved quality of earnings, improved cash flow, and lower cost financing. Public Staff witness Winters offered surrebuttal testimony in opposition to Company rebuttal witness Utley.

The Commission has very carefully considered the entire evidence of record with respect to the issue of flow-through versus normalization accounting for the income tax effect of the timing difference related to capitalized items. The Commission believes, based upon said evidence, that the arguments put forward by the proponents of normalization in support of their view that normalization is the proper methodology for this Commission to follow in determining the proper level of income tax expense to be included in the test year cost of service clearly outweigh arguments of the Public Staff in support of flow-through. The arguments offered in support of normalization which the Commission finds to be valid and compelling may be summarized as follows:

1. Normalization as opposed to flow-through results in a better matching of revenues and costs.

2. Normalization as opposed to flow-through results in the most equitable allocation of costs and benefits among present and future customers.

3. Normalization as opposed to flow-through materially improves the Company's financial position with respect to cash flow.

4. Normalization as opposed to flow-through materially improves key financial ratios (e.g., fixed charge coverage rates, effective tax rates, etc.) used by the investment community in determining the rental rate its members will charge for the use of its capital - the more favorable the ratios, the lower the capital costs.

5. Normalization as opposed to flow-through results in more informative disclosure in financial reporting with respect to an entity's potential future income tax liability.

6. Normalization as opposed to flow-through when limiting one's considerations solely to a present worth analysis (i.e., without considering advantages of normalization), when based upon realistic assumptions, results in economic advantages to both the company and its customers.

Based upon the foregoing, the Commission finds that the benefits associated with normalization exceed the benefits, if any, that may arise from the short-term effect of flow-through and, therefore, concludes that normalization is proper for use herein. Consequently, the Commission concludes that witness Tom's adjustment of $990,654 to remove deferred income taxes related to the normalization of the tax savings on capitalized taxes and fringe benefits is improper and should not be considered in setting rates in this proceeding.

The Commission will now consider the second part of witness Toms' proposed adjustment to reverse the Company's adjustment to normalize the tax savings related to the interest component of interest during construction (IDC). Witness Toms testified in his pre-filed testimony as follows:

> "By making this adjustment the Company has actually normalized the tax effects of this interest twice. Since the Company and I have both adjusted the interest expense used in the calculation of income taxes to the amount associated with rate base, we have both already normalized the income tax effects of IDC. We are in effect saying

that the Company is capitalizing IDC at a net tax rate. Therefore, another adjustment to normalize these tax effects would be wrong."

Public Staff witness Toms was not asked any questions concerning this item during his cross-examination. However, Company witness Morris admitted under cross-examination through a series of cross-examination exhibits that another adjustment to deferred income taxes would not be proper.

Based upon the foregoing the Commission concludes that witness Toms' adjustment to reverse the Company's pro forma adjustment to normalize the tax savings related to the interest component of IDC is proper. This adjustment results in the reduction of deferred income taxes of $556,181.

The final area of difference concerns deferred taxes on intercompany profits. Company witness Baker testified in his prefiled testimony that deferred taxes on intercompany profits resulted from consolidated tax regulations which were established in 1966 by the Department of the Treasury. He testified that the profit a manufacturing sales unit makes when it sells depreciable property to an affiliate is taxed over the period of years during which the purchasing affiliate depreciates the property. He stated further that United Telecommunications established a deferred federal income tax liability on these profits and issued through its general services and license billing procedure a credit representing a return on deferred income taxes due to intercompany profits. He made an adjustment to increase the return credit on deferred income taxes on intercompany profits above the amount actually refunded to Carolina by United Telecommunications during the test year. He computed his adjustment by applying the earned return on toll operations to deferred taxes calculated on the gross profits basis. For local operations he applied the return proposed by the Company which included the embedded cost of debt and a 15.50% return on common equity.

Public Staff witness Toms deducted deferred income taxes on intercompany profits from rate base and testified as follows:

"My approach, deducting these deferred taxes on intercompany profits from telephone plant in service, automatically assigns a return equal to what the Commission finds fair in this proceeding. It is our opinion that this is the proper way to handle this item, and the Commission affirmed this in Docket No. P-7, Sub 624."

Based upon the evidence presented, the Commission finds that the methodologies employed by Company witness Baker and Public Staff witness Toms are not materially different. However, the Commission concludes that witness Toms' methodology is most appropriate for use in this proceeding because the return found fair by this Commission will automatically be assigned to these deferred taxes.

In summary, the Commission concludes that the proper level of investment in plant for use herein is $366,797,317, which amount may be calculated as follows:

Item	
Telephone plant in service	$618,993,586
Telephone plant under construction (less than one year)	5,228,894
Plant acquisition adjustment	97,272
Accounts payable - plant in service	(917,969)
Accounts payable - plant under construction	(191,138)
Depreciation and amortization reserve	(192,961,965)
End of period customer deposits	(1,216,094)
Deferred taxes	(60,987,061)
Pre-1971 investment tax credit	(1,248,208)
Total original cost of telephone plant in service	$366,797,317

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Morris and Public Staff witness Dennis presented direct testimony and exhibits in regard to the proper allowance for working capital. The amount of working capital proposed by these witnesses is set forth in the following chart:

Item	Company	Public Staff
Cash	$3,409,114	$3,409,114
Materials and supplies	6,694,570	6,694,570
Accounts payable - materials and supplies	(737,464)	(737,464)
Customer funds advanced for operations	(1,159,058)	(2,314,945)
Total alowance for working capital	$8,207,162	$7,051,275

As reflected above, the total net difference between the witnesses in this regard is $1,155,887 and is attributable to the customer funds advanced for operations.

Both the Company and the Public Staff utilized a lead-lag study to determine the customer funds advanced for operations. The differences between the studies of the Company and the Public Staff lie in four areas. These four differences, which account for all of the $1,155,887 difference in the allowance for working capital proposed by the Company and the Public Staff, are the following:

1. The Public Staff assigned a lag of 19.28 days to billed revenue; whereas the Company assigned it a revenue lag of 20.72 days.

2. The Public Staff assigned maintenance materials from stock an expense lag of zero; whereas the Company assigned it an expense lead of 48.64 days.

3. The Public Staff assigned other operating expense an expense lag of 14.59 days; whereas the Company assigned it an expense lag of 13.45 days.

4. The Public Staff assigned interest expense an expense lag of 70.52 days; whereas the Company assigned it an expense lag of 65.09 days.

With respect to the first area of difference, witness Dennis testified that the Company had assigned 20.72 lag days to billed revenue. According to the witness, the Company's lag of 20.72 days included 1.44 lag days, measured from the time the Company received the customers' payments until those payments were deposited in the bank by the Company. Witness Dennis testified that the inclusion of a deposit float in this instance is inappropriate since the Company failed to include the disbursement float in the calculation of the expense lag. He also testified that he requested the Company to provide a calculation of the disbursement float, but the Company was unable to provide this data. In contrast, witness Morris testified that it was improper to disallow the deposit float lag simply because witness Dennis was unable to calculate the disbursement float lag.

The Commission, after having carefully examined all of the evidence, concludes that consistency dictates that the Public Staff's treatment of the deposit lag is proper.

With respect to the second area of difference, witness Dennis testified that the Company had assigned 48.64 lead days to maintenance materials from stock. He further testified that since the rate base has already been reduced by the amount of accounts payable related to materials and supplies it is appropriate to assign zero lag days to this item. He also testified that the effect of the Company's treatment of this item would be to allow the Company to earn on the same investment twice.

The Commission, after having carefully examined all of the evidence, concludes that the Public Staff's treatment of the lag for maintenance materials from stock is proper and that it is reasonable to assign zero lag days to this item.

With respect to the third area of difference, witness Dennis testified that the Company had assigned 13.45 lag days to other operating expenses. He testified that the Company's calculation of this lag is based on a composite lag. He further testified that, due to his revision of the lag days for maintenance material from stock, the composite lag for other operating expenses would be 14.59 lag days.

The Commission, after having carefully examined all of the evidence, concludes that consistency dictates that the Public Staff's treatment of the lag for other operating expenses is proper.

With respect to the final area of difference, witness Dennis testified that the Company assigned 65.09 lag days to fixed charges. According to the witness, this composite lag was based on interest payments for the year ended December 31, 1974. He testified that he updated this composite lag for the interest payments during the test period, which is similar in nature to the updating by the Company of the current test year's composite revenue lag. He further testified that it would be inappropriate to perform a new lag study for fixed charges unless a new lag study was conducted for all of the other cost of service items. Company witness Morris testified that, if the composite interest lag is changed, it should be based on a new lag study of fixed charges.

The Commission concludes that the Public Staff's treatment of the lag for fixed charges is proper and that it is reasonable to assign 70.52 lag days to this expense.

Based on the evidence presented, the Commission concludes that the reasonable level of customer funds advanced for operations is $2,314,945. The following chart summarizes the amounts which the Commission concludes are proper for purposes of calculating the allowance for working capital for use herein:

Item	
Cash	$3,409,114
Materials and supplies	6,694,570
Accounts payable - materials and supplies	(737,464)
Customer funds advanced for operations	(2,314,945)
Total allowance for working capital	$7,051,275

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Commission, having previously determined that the reasonable original cost of the Company's investment in telephone plant which should properly be used in this case is $366,797,317, which amount includes $5,228,894 for telephone plant under construction (less than one year), and that the reasonable allowance for working capital is $7,051,275, concludes that the proper original cost rate base for use in this proceeding is $373,848,592 ($366,797,317 + $7,051,275).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence regarding the proper level of operating revenues was presented by Company witness Morris and Public Staff witnesses Willis, Gerringer, and Toms. The following chart summarizes the amounts proposed by the witnesses:

Item	Company	Public Staff
Local Service	$ 98,962,656	$100,388,884
Toll Service	76,913,043	77,898,781
Miscellaneous	9,701,404	9,876,308
Uncollectibles	(1,724,338)	(263,313)
Total operating revenues	$183,852,765	$187,900,660

As the summary shows, the witnesses were in disagreement with respect to each item of operating revenues.

Company witness Morris testified that he developed his estimate of the end-of-period levels of local service and directory advertising revenues by annualizing the revenues from the last month of the test period. During cross-examination, he stated that he was unaware that the Commission had used regression analysis to determine the end-of-period level of local service revenues in Docket No. P-55, Sub 777, but, rather, that he had believed that the Commission had annualized the last month of the test-period revenues. He stated that local revenues could be determined using regression analysis as he had done to establish end-of-period toll revenues. He estimated local service and miscellaneous end-of-period revenues as $98,962,656 and $9,701,404, respectively, based on his annualizing the last month of test-period revenues.

Public Staff witness Willis testified he established end-of-period revenues for local service and miscellaneous revenues by using regression analysis. Witness Willis testified he developed mathematical equations using 17 months of local service and miscellaneous revenue data from which he determined values of representative revenues occurring at the end of the test period which he annualized. His methodology indicated local service revenues adjusted to an end-of-period amount are $100,388,884, while miscellaneous revenues adjusted to end of period are $9,876,308.

Witness Willis illustrated graphically that the results from the procedure he used to establish end-of-period revenue levels compared favorably to actual yearly revenues progressing over time and closely duplicated the uniform growth exemplified by these revenues; whereas, the annualization of unadjusted monthly revenue figures do not track or follow the actual booked yearly revenues. He further commented that the procedure he used removed the abrupt variations that occur from month to month and eliminated the exaggerated results which occur by simply multiplying booked data by 12.

Witness Willis stated in both his direct testimony and during cross-examination that he had used the same procedure for adjusting and annualizing monthly revenue figures to obtain end-of-period revenue levels for Carolina as he did in Southern Bell Docket No. P-55, Sub 777, and Ans-A-Phone Docket No. P-83, Sub 6. On cross-examination, he stated he made no attempt to separate out different accounts for local service revenues but plotted them in the aggregate. He indicated on cross-examination that if he had isolated one particular class of revenue the final aggregate result would have been the same.

The Commission concludes that the use of regression analysis to reduce inherent variations normally found among monthly local revenue data is a reasonable method of determining representative levels of monthly local revenues which in turn may be annualized to establish yearly revenue levels. Conversely, the Commission concludes that the annualization of unadjusted book monthly revenues to establish an end-of-period year revenue level, as done by witness Morris, does not provide as accurate an estimate as the regression methodology.

The next area of difference concerns the appropriate level of toll revenues. In his original direct testimony and exhibits, Company witness Morris included a level of intrastate toll revenues for the test period of $81,945,922, which was the result of accounting and pro forma adjustments made to the booked test period intrastate toll revenues of $79,452,392. This level was brought to an end-of-period level at March 31, 1980, using a simple linear regression analysis applied to March 31, 1980, annualized. Nineteen months of booked intrastate toll revenues (November 1978 to May 1980) were used in making the regression analysis. The annualized intrastate toll settlement ratio over this 19-month period was 13.40%. The resulting end-of-period level of intrastate toll revenues was $85,648,490. To this level, $2,052,055 was added reflecting the results of after period adjustments to account for known material changes occurring after the test period but which were expected to occur prior to the end of the hearing. Therefore, the resulting end-of-period level of intrastate toll revenues reflected in witness Morris' original testimony and exhibits was $87,700,545.

Witness Morris filed supplemental testimony and exhibits prior to the beginning of the hearing which reflected among other changes a net reduction of $10,787,502 in the Company's end-of-period level of intrastate toll revenues resulting in a final end-of-period level of $76,913,043, which was $2,539,349 less than the intrastate toll revenues booked for the test period. One major adjustment that impacted the net reduction amount was an update of the data used in the regression analysis made for end-of-period purposes. The 19 months of booked intrastate toll revenues originally used was updated to include 25 months (November 1978 - November 1980). According to witness Morris, the annualized intrastate toll settlement ratio over this 25-month period was 12.85%.

Another major adjustment that impacted the net reduction amount of $10,787,502 was a reduction in the intrastate toll settlement ratio from a 12.85% average of the settlement ratios for the 25 months used in the updated linear regression analysis to an estimated 10.25%. Witness Morris indicated that the estimated 10.25% settlement ratio was based upon the evidence before the Commission in Docket No. P-100, Sub 53, concerning proposed changes in the intrastate toll rates, not including the potential effects on the settlement ratio of the Commission's final decision in that docket.

Public Staff witness Gerringer filed supplemental testimony and exhibits in response to the supplemental testimony and exhibits filed by Company witness Morris in order to show the development of what the Public Staff considered to be the Company's representative level of intrastate toll revenues at the end of the test period, March 31, 1980. Witness Gerringer based this development on the method he used in the Company's last rate case in Docket No. P-7, Sub 624, which consists of taking the format for calculating toll settlements for connecting companies settling with Southern Bell on an actual cost basis and making an intrastate toll settlement calculation for the entire test period based on end-of-test-period operating results apportioned to intrastate toll using appropriate intrastate toll factors. This calculation utilizes the intrastate toll net investment (settlement rate base), operating expenses, and an intrastate toll settlement ratio, all adjusted or restated to an end-of-period level as of March 31, 1980.

The intrastate toll settlement ratio used by witness Gerringer was 12.17%, which he indicated was developed based on the following considerations:

1. The settlement ratio which is computed monthly by Southern Bell shows large monthly fluctuations. In addition, past estimates of the settlement ratio for either short periods of time or for longer periods of time have missed in many cases by wide margins. In some cases, estimates have been too high and in other cases have been too low when compared to the actual achieved settlement ratios. For these reasons, he considered it reasonable to develop the end-of-test-period settlement ratio used in the end-of-period toll calculation based on the final monthly ratios actually achieved for a period of time encompassing the end of the test period.

2. Actual toll settlements are made using the intrastate toll portion of average net investment. Therefore, he considered it reasonable to develop a ratio based on a 12-month period with six months falling on each side of the end of the test period. A 12-month ratio developed on this basis is consistent with actual toll settlement arrangements in that the end-of-test-period net

investment that was used in his end-of-test-period calculation can be interpreted to represent the average or mid-point net investment for the same 12-month period considered for developing the settlement ratio.

Based on these considerations the 12.17% settlement ratio was determined by summing the final monthly settlement ratios for the months of October 1979 through September 1980. During cross-examination, witness Gerringer noted that final settlement ratios were available for the months of October 1980 and November 1980 which when annualized were 12.23% and 12.67%, respectively. Further, he expressed much doubt as to the accuracy of the estimates of the settlement ratio presented in Docket No. P-100, Sub 53.

Witness Gerringer's end-of-period toll calculation produced a level of intrastate toll revenues of $81,053,975. To that amount he added $275,923, which were noncost study type intrastate toll revenues not developed through his calculation. Further, he added an estimated intrastate toll revenue amount of $443,746 to reflect the results of the Public Staff's position regarding the intrastate toll rate changes proposed by Southern Bell in Docket No. P-100, Sub 53. He indicated that amount may be subject to change depending on the Commission's final decision regarding the proposed toll rate changes. By adding these three amounts, the preliminary representative level of intrastate toll revenues for the Company at the end of the test period, March 31, 1980, was $81,773,644.

Public Staff witness Toms decreased this amount determined by witness Gerringer by $3,874,863 for the toll revenue effects of his adjustments to rate base and to operating expenses. This resulted in witness Toms' level of end-of-period intrastate toll revenues of $77,898,781.

The Company's proposed order presented for the Commission's consideration the toll settlement ratio of 11.38% to be used in the methodology employed by witness Gerringer in developing end-of-period toll revenues. This ratio is that which was actually achieved in the quarter ending September 1980. After careful consideration of the entire record in this matter, the Commission concludes that the toll settlement methodology employed by witness Gerrringer should be utilized with a 11.38% toll settlement ratio to determine the proper level of end-of-period toll revenues to be used in this proceeding. This amount of $79,009,406 should be decreased by $3,434,383 to reflect Commission adjustments to utility investment and expenses and increased by $275,923 of noncost study type intrastate toll revenues. In addition, $712,112 should be added to reflect the Commission Order in P-100, Sub 53. Hence, the proper level of end-of-period toll revenues is $76,563,058.

The final area of difference in operating revenues concerns the proper level of uncollectible revenues. Public Staff witness Toms calculated end-of-period uncollectible revenues by applying the uncollectible rate for the test period of .2388% to the Public Staff's proposed local service and miscellaneous revenues. Witness Toms testified that since witness Gerringer did not include any amount to cover uncollectibles in his calculation of toll revenues, it would be improper to recognize any uncollectible toll revenues.

The Commission concludes that witness Toms' adjustment to uncollectible revenues is proper. The Commission bases its conclusion on the fact that Public

Staff witness Gerringer's methodology of calculating end-of-period toll revenues, which was accepted by the Commission, did not included an amount to cover uncollectibles. If uncollectibles had been recognized in this calculation of toll revenues, then the resultant toll revenue amount would have been larger. Therefore, the proper level of intrastate end-of-period uncollectible revenues is $263,313 as calculated by Public Staff witness Toms.

In summary, the Commission concludes based upon the preceding discussion that the proper level of operating revenues to be used in setting rates in this proceeding is $186,564,937, which consists of local service revenues of $100,388,884, toll service revenues of $76,563,058, miscellaneous revenues of $9,876,308, and uncollectible revenues of $263,313.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact consists of the testimony and exhibits of Company witness Morris and Public Staff witnesses Toms and Winters, as well as the rebuttal testimony of Company witnesses Morris and Utley and the surrebuttal testimony of Public Staff witness Winters. The following chart reflects the level of operating revenue deductions, net of interest income, that the Company and the Public Staff contend are proper for use in this proceeding:

Item	Company	Public Staff
Operating expense	$83,022,019	$ 82,650,858
Depreciation and amortization	38,166,260	38,154,091
Interest income	(21,276)	(13,851)
Other interest expense	489,269	66,460
Other income charges	73,352	54,742
Operating taxes - other than income tax	20,130,275	21,030,654
State and federal income taxes	10,878,934	11,304,914
Total	$152,738,833	$153,247,868

As the above chart shows, the Company and the Public Staff proposed different amounts for each component of operating revenue deductions, net of interest income. The adjustments comprising the difference for operating expense are shown in the chart that follows:

	Item	Amount
1.	Public Staff adjustment to reduce salaries and wages	$ (926,314)
2.	Public Staff adjustment to remove computer lease short-fall expenses	(120,268)
3.	Public Staff adjustment to remove moving expense and costs of plants for new headquarters building	(44,944)
4.	Public Staff adjustment to remove lobbying expense	(33,473)
5.	Public Staff adjustment to reduce advertising expense	(82,927)
6.	Public Staff adjustment for expenses allocable to sales of new terminal equipment	(505,856)
7.	Public Staff adjustment to increase pay station commissions	25,085
8.	Public Staff adjustment to remove prior period leasehold improvements	(11,535)
9.	Public Staff adjustment to remove prior period expense	(8,118)
10.	Public Staff adjustment to decrease pension expense	(103,291)
11.	Public Staff adjustment to increase insurance expense	27,935
12.	Public Staff adjustment to remove expense associated with an open house	(2,318)
13.	Public Staff adjustment to general services and licenses to eliminate the return credit on deferred taxes on inter-company profits, and to remove license contract expenses	1,414,863
	Total	$ (371,161)

The first area of difference listed above concerns an adjustment made by Public Staff witness Toms to decrease end-of-period salaries and wages expense due to a decrease in the level of total employees subsequent to the end of the test period. As justification for his adjustment he testified as follows:

> "At March 31, 1980, the Company had 5,593 total employees, as compared to 5,409 total employees at November 30, 1980. Therefore, to adjust for the effect of the known decrease in the number of employees, I have removed the effect of Mr. Morris' application of the annualization factor to the per book and pro forma adjusted wages. The level of salaries and wages which I have included in operating expenses includes the average number of employees of 5,527 at the wage rates in effect at March 31, 1980 for non-bargaining employees and at November 30, 1980 for bargaining employees."

As to the methodology employed by Company witness Morris, witness Toms testified as follows:

> "Company Witness Morris did not recognize the effect of the total decrease in employees past the end of the test period in developing either his pro forma, end-of-period, or after-period salary and wage adjustments. Mr. Morris computed his pro forma adjustment to salaries and wages by applying the effective percentage increase in wages for bargaining and non-bargaining employees to actual salaries and wages for each month of the test period on a retroactive basis. His end-of-period adjustment was computed by applying the annualization factor to the sum of intrastate operating expenses including salaries and wages after accounting and pro forma adjustments. Finally, Mr. Morris computed his after-period wage adjustment by applying wage increases

at November 30, 1980, to base wages at March 31, 1980, for bargaining employees only."

Public Staff witness Toms was not asked any questions concerning this adjustment during his cross-examination. However, Company witness Morris took exception to Public Staff witness Toms' adjustment to end-of-period salaries and wages and testified in his rebuttal testimony as follows:

"Mr. Toms has examined the total level of employees at November 30, 1980, determined that there were fewer employees at that time than at the end of the test period, and has refused to bring wage expense to a go-forward basis through application of an annualization factor, for that reason. We deem Mr. Toms' treatment improper. The number of employees at November, 1980, is unrepresentative. During 1979 our construction program totaled $103.2 million. We anticipated an expenditure of $110 million for 1980, however, this construction estimate had to be altered during the year to $92.7 million. The facilities in the area formerly served by Norfolk Carolina were inadequate according to our projections to meet the peak demands during the summer months of 1980. Therefore, we were forced to spend over half of the 1980 allocated construction budget to make improvements in those facilities during the first half of the year. Also, during the first half of 1980, economic conditions worsened, the cost of capital soared, and our earnings declined. We, therefore, were forced to reduce the 1980 construction budget to approximately $93 million, a large percentage of which had already been spent. The construction level at November reflected a curtailment due to lack of construction funds. Our construction budget for 1981 is estimated to be $102.4 million. It will be fundamentally necessary to bring the level of construction spending to at least this level to continue projects that were deferred or reduced during the last half of 1980 and likewise necessary to increase employees to support this construction activity. These projects include outside plant construction and work centers from which installation and maintenance personnel work.

"In addition to the extraordinary curtailment in construction expenditures during the latter half of 1980, the month of November is normally unrepresentative since there is a seasonal drop-off in traffic operator forces during the winter months. Therefore, we maintain that the calculation of the go-forward level of wage expense as determined by the Company is appropriate, and Mr. Toms' failure to apply the annualization factor is erroneous."

Based upon the evidence presented by the witnesses, the Commission concludes that Public Staff witness Toms' adjustment to decrease salaries and wages expense by $926,314 on an intrastate basis is proper. The Commission agrees with witness Toms' adjustment because of the decrease in the total level of employees from the end-of-period level of 5,593 employees to 5,409 employees at November 30, 1980. This suggests that the average level of employees is more appropriate for calculating an adjustment to salaries and wages than the end-of-period level. The Commission is not persuaded by Company witness Morris'

rebuttal testimony concerning changes in the construction program because the major impact of future increases in the construction program will ultimately be capitalized rather than expensed.

Since Mr. Morris applied the effective percentage increases in wages to the actual salaries and wages for bargaining and nonbargaining employees for each month of the test period on a retroactive basis, the adjustment made by witness Toms to exclude the end-of-period effect of the annualization factor is proper. Witness Toms has included in operating expense the salaries and wages attributable to the average number of employees of 5,527 at the wage rates in effect at March 31, 1980, for nonbargaining employees and at November 30, 1980, for bargaining employees.

The second area of disagreement concerns Public Staff witness Toms' adjustment to remove expenses attributable to a computer lease shortfall in the amount of $120,268, on an intrastate basis. He testified in his prefiled testimony that Carolina receives data processing services from the East Regional Data Center in Bristol, an affiliated company, which bills Carolina each month for service rendered. He stated that as a result of the data center's decision to replace a smaller computer with a larger computer, it incurred a penalty for early termination of a lease from the computer vendor. He testified that his proposed adjustment removed from operating expense that portion of the penalty that was allocated to Carolina, as an affiliated company, because the expense was extraordinary and nonrecurring in nature. He stated on cross-examination that, since Carolina was not expected to incur this expense on an annual basis, it would not be appropriate to amortize the penalty.

Based upon the evidence of record, the Commission concludes that Public Staff witness Toms' adjustment to remove the computer lease shortfall expense from operating expenses in the amount of $120,268 on an intrastate basis is proper. However, the Commission concludes that this expense should be amortized over a three-year period in recognition of its extraordinary and recurring nature. Certainly, the growing demand for computer services and the related fast developing technology lends credence to this conclusion. Thus the cost of service upon which rates will be based in this proceeding should include computer lease shortfall amortization expense of $40,089.

The third item of difference is Public Staff witness Toms' $44,944 adjustment to remove moving expense and the cost of house plants from intrastate operating expenses. He testified that both of these items were incurred as a result of the Company's move into its new headquarters building in December 1979. He testified further that he removed these expenses because they were nonrecurring. On cross-examination, he stated that the Company did not have plans to move to another headquarters building in the future.

In recognition of the fact that these expenses cannot be expected to occur on an annual basis, the Commission concludes that for rate-making purposes the item is most appropriately treated through amortization over a five-year period.

The next item of difference is Public Staff witness Toms' adjustment to remove lobbying expenses in the amount of $33,473 on an intrastate basis. He testified in his prefiled testimony that he had removed lobbying expenses from the cost of service because the Company's ratepayers should not be required to

pay rates to cover expenses incurred by the Company in its attempt to influence legislative or public opinion concerning matters that may prove to be of ultimate benefit to the stockholders of the Company. He was not cross-examined with regard to this adjustment.

During his cross-examination, Company witness Morris agreed that the purpose of Carolina's registered lobbyist position is to enhance the image of the Company to the public, to contribute to the achievement of corporate revenue goals through planning, and the development and implementation of programs to assure that the Company's views, interest, legislation, and other public issues are effectively communicated or represented. He stated further under cross-examination that he would assume that the Company's lobbyist performed some functions that were beneficial to the stockholders as well as to the subscribers.

The Commission is of the opinion that the expenses of a registered lobbyist should not be allowed for rate-making purposes and thus concludes that Public Staff witness Toms' adjustment to exclude lobbying expenses from operating expenses is proper.

The fifth item of difference is an adjustment made by Public Staff witness Toms to reduce advertising expense by $82,927 on an intrastate basis. He proposed the elimination of the cost of open house expenses; the cost of give-aways which included lighters, letter openers, jar openers, report card covers, address books, calendars, and mirrors; the cost of image advertising; and finally, the cost of directory inserts. He testified that these types of advertising do not promote the use of telephone company service, do little to help the Company provide service to its customers, and should be charged to the Company's shareholders. With respect to the directory inserts, he testified that he removed 26.9% of the cost of these inserts because the inserts showed several models which were available for sale only. Witness Toms was not cross-examined on this subject.

The Commission concurs with Public Staff witness Toms' adjustment to exclude advertising expense in the amount of $82,927 from intrastate operating expenses. Since Carolina's customers can only get telephone service from the Company, the Commission concludes that advertising expenses which have been incurred by the Company for items such as those listed above should be charged to the Company's shareholders.

The sixth item of difference concerns Public Staff witness Toms' adjustment to exclude operating expenses allocable to the sales of new terminal equipment in the amount of $505,856 on an intrastate basis. As mentioned earlier under Evidence and Conclusions for Finding of Fact No. 5, the Company formally entered the terminal equipment sales market in April 1980, just after the end of the test period, but did not make an adjustment to reduce test-period expenses relative to this activity. During his cross-examination, Company witness Morris testified the Company had allocated some sales related expenses below the line during the test year and that some of these expenses related to advertising. He testified also that the Company had placed increased emphasis on terminal sales subsequent to the end of the test period and that the Company is presently allocating terminal sales related expenses to nonutility operations. He answered under cross-examination that some employees had allocated their time to

terminal sales activities prior to the inception of formal emphasis on terminal sales and stated that the Company had added some new employees for terminal sales purposes and that sales activity had increased.

Public Staff witness Toms testified that his adjustment recognized an actual known change that should be recognized to ensure that Carolina's ratepayers do not subsidize a nonutility function. He stated in his direct testimony that effective April 1, 1980, many of Carolina's marketing, traffic, and other employees began splitting their time between regulated and nonregulated functions. He further testified that cost allocations have been made by the Company between utility and nonutility expenses each month since the formal inception of the program. Since those cost allocation procedures have changed continually, he stated that he used November 1980 data to make his adjustment since that data was the most recent information available. In response to cross-examination questions concerning his use of November 1980 data, he testified that he had made the most conservative adjustment possible. He stated that he had reviewed data for the months of April through September and had found that even if he had used an average of all those months, the adjustment would have been in excess of the adjustment he was proposing.

When witness Toms was asked under cross-examination if the Company had provided him with information which showed that the number of employees in the commercial department had increased from an average level of 680 at March 31, 1980, to 737 at November 30, 1980, or an increase of 8.38%, he so acknowledged, but also stated that the level of total employees had decreased by 184 by the end of November. With respect to the increase in commercial employees subsequent to the end of the test period, Mr. Toms testified that he had been told that many of those employees had been transferred into the commercial department from the traffic and maintenance departments. He testified further that the test-period salaries of those traffic and maintenance employees that were transferred to commercial after the end of the test period were still included in operating expense.

The evidence shows that witness Toms utilized the most recent information available to him in making his adjustment. While Mr. Morris offered evidence which tended to show that commercial employees were increasing, conversely, Mr. Toms presented evidence to show that some of this increase could be attributed to employees who were transferred from the traffic and maintenance departments. Based on the evidence of record concerning this matter, the Commission concludes that an adjustment is necessary to test year operating expenses in order to properly reflect the relationship between test year expenses and the nonutility function of terminal sales. Though the methodology employed by witness Toms has some merit, the Commission concludes that principles of equity dictate that a more direct relationship between the November operating results and the test year must be established. Since witness Toms' methodology does not conclusively engulf this relationship, the Commission concludes that the ratio of November intrastate nonutility expenses to total November intrastate utility expenses more clearly represents this desired relationship and should be used to calculate the appropriate adjustment to test year expenses for sales of terminal equipment. This methodology is consistent with that employed under Evidence and Conclusions for Finding of Fact No. 5 and results in an adjustment of $396,606. This adjustment recognizes that the ratepayers of Carolina should not pay rates to subsidize the nonregulated sale of new terminal equipment.

The seventh area of difference is an adjustment made by Public Staff witness Toms to increase intrastate pay station commissions by $25,085. Since the Company offered no argument concerning this item, the Commission concludes that witness Toms' adjustment is proper.

The eighth item of difference is Public Staff witness Toms' adjustment to remove leasehold improvements of $11,535 on an intrastate basis. He testified that the Company wrote off leasehold improvements which had been completed by February 1978, at which time they were recorded in a deferred charge account. He testified further that generally when a lease will expire in one year or less, the system of accounts calls for the immediate expensing of the item. Finally, he testified that since all charges had been accumulated by February 1978, these charges should have been written off no later than January 1979, rather than April 1979. Based upon the foregoing, the Commission concludes that Mr. Toms' adjustment to remove leasehold expenses relative to a prior period is proper.

The ninth area of difference is Public Staff witness Toms' adjustment to remove a prior period expense totaling $8,118 on an intrastate basis from general office expenses. He testified in his prefiled testimony that during the test year, the Company paid a consulting engineer for a cost study for the fiscal year ended June 30, 1978. He also stated that the expense should have been removed from test-period expense because it related to a prior period. Based upon the foregoing, the Commission concludes that his adjustment to remove this expense related to a prior period is proper.

The tenth area of difference is Public Staff witness Toms' adjustment to decrease intrastate end-of-period pension expense by $103,291 due to a decrease in the level of employees. He testified that he had employed essentially the same methodology in recognizing the pension effect of the decrease in employees as he did in his adjustment to decrease end-of-period salaries and wages. Since the Commission has previously found that Public Staff witness Toms' adjustment to end-of-period salaries and wages was proper, the Commission also concludes that his adjustment to decrease pension expense related to those wages is also proper.

The eleventh item of difference is Public Staff witness Toms' adjustment to increase insurance expense by $27,935 on an intrastate basis. He testified that test-period insurance expense had been reduced due to a retroactive insurance adjustment and, therefore, the test-period level of insurance expense should be increased. Based upon the foregoing, the Commission concludes that his adjustment to increase intrastate expense by $27,935 is proper.

The twelfth item of difference is Public Staff witness Toms' adjustment to remove from intrastate operating expenses $2,318 associated with an open house which was held at the new administrative headquarters building. He testified that this item was very similar in nature to his previous adjustment to advertising expense in which he also removed open house expenses. He testified that this expense should be removed from operating expenses because it did not benefit the ratepayers and was nonrecurring in nature. Based upon the evidence presented, the Commission concludes that his adjustment to exclude open house expenditures is proper. These expenditures are in the nature of good will advertising which should not be allowed as an expense for rate-making purposes.

The final area of difference concerns general services and license expense and involves a two-part adjustment. In the first adjustment Public Staff witness Toms proposed an adjustment to general services and license expenses to eliminate the return credit on deferred taxes on intercompany profits by $1,723,934 on an intrastate basis. In Evidence and Conclusions for Finding of Fact No. 5, the treatment of deferred taxes on intercompany profits was discussed in detail and the Commission, for reasons previously discussed, adopted the methodology proposed by witness Toms. Correspondingly, the Commission finds that this adjustment of adding the return credit calculated by Company witness Baker back to operating expenses is proper.

The second part of the adjustment to general services and license expense involves an adjustment made by Public Staff witness Winters to certain expenses charged Carolina by its parent, United Telephone Systems, Inc. These expenses were related to four areas: flight operations, advertising, public relations, and charitable contributions.

First, witness Winters testified that flight operations should be allocated based on the ratio of hours flown on behalf of Carolina to total hours flown rather than the salaries and wages allocation factor used by the Company. After review of the entire record concerning this matter, the Commission concludes that the preponderance of evidence dictates that this adjustment should not be made. The Commission is particularly concerned that witness Winters' allocation methodology does not consider flight expenses indirectly related to Carolina.

Second, witness Winters proposed to eliminate $79,833 of national advertising from the intrastate cost of service because the ratepayers receive little or no benefit from this type of advertising. He testified on cross-examination that the advertising was directed toward the financial community with the purpose of creating a favorable Company image and that the advertising did not refer to specific offerings for the sale of securities. The Commission finds that there is no direct benefit to the ratepayers of North Carolina for this type of image advertising and concludes that his adjustment of $79,833 is appropriate.

Third, witness Winters made an adjustment to reduce the intrastate cost of service by $71,855 for public relations expenses incurred by the Corporate Communications Department of United Telephone Systems. He testified that he excluded the costs of those projects which appeared to be in the nature of institutional advertising and provided little or no direct benefit to the ratepayers of North Carolina. After a review of the items involved in this adjustment, the Commission concludes that only those expenses related to the sale of securities should be excluded and therefore this adjustment should be $4,237.

As a final adjustment, witness Winters reduced the intrastate cost of service by $30,641 to eliminate charitable contributions made by the parent company and billed to Carolina. He testified that this treatment is consistent with prior Commission decisions as well as the Company's treatment of contributions made directly by Carolina. The Commission finds this adjustment appropriate and concludes that the intrastate cost of service should be reduced by $30,641.

Witness Winters, in addition to his adjustments, made a recommendation regarding the allocation procedures used by United Telephone Systems, Inc. He

testified that expenses incurred on behalf of an operating company should be directly assigned to the company receiving the benefit whenever possible. He further testified that when costs are incurred which benefit more than one company, allocation factors should be developed which accurately allocate the costs to the companies receiving the benefits. He stated that general allocation factors based on revenues, wages, plant in service, etc., should not be used when it is possible to determine a more specific factor. The Commission finds that this recommendation is based on sound cost accounting principles and concludes that parent company expenses which cannot be directly assigned should be allocated on the basis of benefits received to the extent possible.

In summary, the Commission concludes that the proper level of operating expenses is $83,001,204.

The second component of operating revenue deductions is depreciation and amortization expense. The chart below summarizes the differences between the Company and the Public Staff.

	Item	Amount
1.	Public Staff adjustment to decrease depreciation and amortization expense relative to the sale of terminal equipment	$3,385
2.	Public Staff adjustment to remove prior period amortization expense from depreciation and amortization expense	$8,784
	Total	$12,169

The first area of difference is Public Staff witness Toms' adjustment to remove depreciation expense relative to the sale of terminal equipment from depreciation and amortization expense. Since the Commission has previously found under Evidence and Conclusions for Finding of Fact No. 5, that it is proper to decrease the depreciation and amortization reserve relative to the sale of terminal equipment, the Commission also concludes that it is proper to remove the depreciation and amortization expense allocable to terminal sales. However, since the Commission's methodology to achieve this adjustment is different from that employed by the Public Staff, the Commission concludes that this adjustment should be $2,829.

The second item of difference is witness Toms' adjustment to exclude prior period amortization expenses of $8,784 from intrastate operating expenses. He removed this expense because it pertained to the year 1978, but was not recorded until May 1979. Based upon the foregoing, the Commission concludes that his adjustment is proper. After the exclusion of this adjustment, the test-period amortization expense will be correctly stated.

In summary, the Commission concludes that the proper level of depreciation and amortization expense for use in this proceeding is $38,154,647 ($38,166,260-$11,613).

The next component of operating revenue deductions is interest income, an item which was netted against operating revenue deductions. The difference of $7,425 results from witness Toms' adjustment to remove nonoperating income from other income. He testified that since this revenue was not derived from

providing telephone service, it should not be considered in the fixing of rates. The Commission agrees and concludes that his adjustment to remove nonoperating interest income is proper. Therefore, the appropriate level of interest income for use in this proceeding is $13,851 ($21,276 - $7,425).

The fourth component of operating revenue deductions is other interest expense. The difference of $422,809 between the Company and the Public Staff results from witness Toms' adjustment to remove other interest expense and nonoperating interest expense from the cost of service. In his proposed adjustment, he removed nonoperating interest expense due to the refund of overcollections in rates, interest due to property tax assessments, interest due to the purchase of property, and interest expense incurred due to IRS audits of State and federal income tax liabilities. With respect to the interest due to the refund of the overcollection of rates, he testified that Carolina's ratepayers should not be required to pay rates to cover interest expense that was incurred due to the overcollection of rates which have subsequently been refunded. He testified further that if rates were set to cover this interest, the ratepayers would be giving back to the Company the interest which this Commission required the Company to pay as a result of these overcollections. He allowed interest on customer deposits and interest on deferred compensation as appropriate operating revenue deductions.

After a careful review of these items included in the adjustment of $422,809, the Commission concludes that fairness and reasonableness require that the Commission allow only the adjustment to remove interest related to overcollections.

The fifth item of operating revenue deductions is other income charges. The difference of $18,610 results from two adjustments that were made by witness Toms as follows:

	Item	Amount
1.	Public Staff adjustment to remove fees and dues	$13,627
2.	Public Staff adjustment to remove the end-of-period effect of adjustments to exclude other income, other interest expense, and other income charges from adjusted net operating income.	4,983
	Total	$18,610

Witness Toms testified that fees and dues totaling $13,627 should be removed from other income charges because they included payments to country clubs and miscellaneous service clubs. He testified further that he thought these items should be paid by the stockholders of the Company rather than by its ratepayers.

Under cross-examination, Company witness Morris testified that he thought it was necessary for the Company's president to be seen at the country club to meet people. Company witness Williamson testified that he thought those membership dues benefited both the Company and the subscribers and that the Company was able to obtain a great deal of information through associations. On cross-examination, witness Toms testified that the Company could also obtain information regarding construction and development from the local town planning commission.

Based upon the information presented by the witnesses, the Commissio concludes that the adjustment proposed by witness Toms to country club penses is proper but that Civic dues are a fair and reasonable operating expen of Carolina and should therefore be allowed in the cost of service.

Witness Toms made a second adjustment to other income charges to rem e the end-of-period annualization effect of his proposed adjustments to other ncome, other interest expense, and other income charges. By applying an annualization factor of 1.01996% to each of his adjustments to these items, he derived an intrastate adjustment decreasing expenses by $4,983. The Commission agrees with the methodology behind this adjustment; however, since the Commission did not accept all of the proposed adjustments to other interest expense and other income charges, this adjustment necessarily must be reduced.

The sixth component of operating income deductions is the appropriate level of intrastate operating taxes - other than income. The following chart depicts the adjustments which comprise the differences between the Company and the Public Staff:

	Item	Amount
1.	Public Staff adjustment to remove FICA tax on salary of lobbyist	$ (1,135)
2.	Public Staff adjustment to remove State and federal unemployment tax on salary of lobbyist	(71)
3.	Public Staff adjustment to remove FICA tax on salaries allocable to sales of terminal equipment	(18,571)
4.	Public Staff adjustment to decrease FICA tax due to decrease in end-of-period wages	(55,864)
5.	Public Staff adjustment to increase gross receipts tax	976,020
	Total	$900,379

As the chart shows, each of the adjustments listed above were proposed by the Public Staff. Since the Commission has previously concluded that witness Toms' adjustments to operating expenses for lobbying expenses and end-of-period salaries are proper, the Commission also concludes that his adjustment for the payroll tax effects of each of these adjustments is also proper. Since the Commission's methodology in making the adjustment to salaries related to terminal sales differs from that employed by witness Toms, as discussed above, the related FICA tax adjustment is different and in the amount of $14,737.

The final adjustment to other operating taxes made by witness Toms increases the level of gross receipts taxes by $976,020. Since the Commission has previously found under Evidence and Conclusions for Finding of Fact No. 8 that the appropriate level of intrastate operating revenues for use in this proceeding is $187,900,660, which is different from that proposed by either the Company or the Public Staff, the Commission concludes that the appropriate level of gross receipt taxes is $11,193,896.

The Company and the Public Staff were in agreement with respect to the appropriate level of intrastate property taxes and other taxes of $5,933,477 and $37,698, respectively. Therefore, the Commission concludes that these levels of property taxes and other taxes are appropriate.

In summary, the Commission concludes that the appropriate level of intrastate operating taxes - other than income is $20,972,115.

The last area of disagreement concerns the appropriate level of intrastate State and federal income tax expense. Both the Company and the Public Staff made adjustments to State and federal income taxes to reflect the income tax effects of adjustments that each made to operating revenues and operating revenue deductions.

Company witness Morris and Public Staff witness Toms each also made adjustments to State and federal income tax expense due to the income tax effects of disallowed depreciation, amortization of the reserve for uncollectibles, interest expense net of hypothetical interest expense related to the Job Development Investment Tax Credit (JDIC), amortization of the investment tax credit, surtax exemption, and the new jobs credit. The two witnesses disagreed, however, with respect to the treatment to be accorded capitalized payroll taxes and fringe benefits and with respect to the appropriate amount of interest expense.

Company witness Morris proposed that the income tax savings associated with capitalized payroll taxes and fringe benefits be normalized; whereas, Public Staff witness Toms proposed that the tax benefits associated with these capitalized payroll taxes and fringe benefits be flowed-through to current ratepayers as a current tax deduction. Witness Toms increased the capitalized taxes and fringe benefits per books to reflect the capitalized payroll taxes and fringe benefits relative to pro forma, after-period, and supplemental wage and pension adjustments. Since the Commission has previously discussed the issue of flow-through versus normalization and has also found under Evidence and Conclusions for Finding of Fact No. 5 that normalization was appropriate for use in this proceeding, the Commission will not discuss this issue further. Thus, the Commission concludes that his adjustment to flow-through capitalized payroll taxes and fringe benefits totaling $1,972,633 is improper.

As to the appropriate level of interest to be used to compute State and federal income taxes, each witness utilized the annualized interest expense associated with the debt capital supporting their respective intrastate original cost rate base less the hypothetical interest expense associated with JDIC. As the Commission will note in the Evidence and Conclusions for Findings of Fact Nos. 10 and 11 (to be discussed hereinafter), the capital structure ratios and embedded cost rates as developed by Public Staff witness Stevie are appropriate for rate-making purposes. In Evidence and Conclusions for Finding of Fact No. 7, the Commission also found that the appropriate level for the original cost rate base is $373,848,592. Using the appropriate capital structure, embedded cost of debt, and the appropriate level of rate base, the Commission finds that the proper level of interest expense is $19,793,960, less the hypothetical interest expense associated with the plant financed by JDIC of $1,278,277, or interest expense for tax calculation purposes of $18,515,683.

In summary, the Commisison concludes that the appropriate level of State and federal income tax expense for use herein is $11,375,138 ($1,606,540 + $9,768,598), as shown in the following chart:

Item	Amount
Operating income before income taxes and fixed charges	$44,099,285
Add: Disallowed depreciation	1,195,771
Deduct: Amortization of reserve for uncollectibles	3,697
Interest expense	18,515,683
Operating income subject to State income taxes	26,775,676
State income taxes ($26,775,676 x 6%)	1,606,540
Operating income subject to federal income taxes	25,169,136
Federal income taxes ($25,169,136 x 46%)	11,577,803
Less: Amortization of investment tax credit	1,785,718
Surtax exemption	21,881
New jobs credit	1,606
Federal Income Taxes	$ 9,768,598

Finally, the Commission concludes that the total level of intrastate operating revenue deductions is $153,840,790, consisting of operating expenses of $83,001,204, depreciation and amortization expense of $38,154,647, other income of $337,686, operating taxes - other than income of $20,972,115, and State and federal income taxes of $11,375,138.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 11

Two witnesses were originally presented in the area of cost of capital and capital structure. The Company offered the testimony of Dr. James H. Vander Weide, an Associate Professor of Finance at Duke University and a Vice President of University Analytics, Inc., a consulting firm. The Public Staff offered the testimony of Dr. Richard G. Stevie, staff economist - Economic Research Division. In addition, the Company offered two rebuttal witnesses to the testimony of Dr. Stevie. Joseph F. Brennan, President of Associated Utility Service, Inc., presented rebuttal testimony to Dr. Stevie's use of the consolidated capital structure and his estimation of the cost of equity in arriving at an overall cost of capital. Dr. Vander Weide also presented rebuttal testimony to Dr. Stevie's estimation of the cost of equity.

Dr. Vander Weide testified that the Company should be granted the opportunity to earn an overall return of at least 11.96%, his estimate of Carolina's cost of capital. His recommendation was based upon Carolina's capital structure composed of 49.05% common equity with a cost rate of 15.5%; .44% preferred stock with an embedded cost of 11.7%; and 50.51% long term debt with an embedded cost of 8.54%. He derived his estimate of equity cost using the Discounted Cash Flow (DCF) model and the Spread Test. With the DCF model, he arrived at an equity cost range of 15.5% to 17.0%. Using the Spread Test, he estimated Carolina's equity cost to be between 16.5% and 17.0%.

Dr. Stevie testified that the overall rate of return which the Company should be allowed to earn was 10.66%. His recommendation was derived using the consolidated capital structure of United Telecommunications, Inc. (UNITEL), which owns all of the common stock of Carolina. He testified that the consolidated capital structure provides a basis for identifying the equity investor in the market place and it recognizes all the debt and equity in the UNITEL system. According to Dr. Stevie, the consolidated capital structure is

composed of 37.25% common equity at a cost of 13.85%, 2.72% preferred stock at an embedded cost of 7.86%, and 60.03% debt at an embedded cost of 8.82%. He derived his equity cost estimate using two methods: the DCF model and the Capital Asset Pricing Model (CAPM). With the DCF model, he derived an equity cost range of 13.4% to 14.1%. Using the CAPM, he estimated the cost of equity to be 13.9%. From these analyses, he concluded that a reasonable cost of equity is 13.8%. To this estimate, he added five basis points for floatation cost in arriving at his final estimate of 13.85%. Combining this equity cost estimated with the consolidated capital structure ratios and associated embedded cost rates produced his recommended 10.66% overall rate of return.

On cross-examination, Dr. Stevie was questioned on his use of the consolidated capital structure as opposed to Carolina's capital structure. He testified that due to the Commission's ruling in the last Southern Bell case, wherein the Commission adopted the consolidated capital structure, he has recommended that the consolidated capital structure of UNITEL be employed in this proceeding. He further testified that while use of the consolidated capital structure treats all subsidiaries in a similar fashion, the range of equity ratios is narrower for UNITEL subsidiaries than for subsidiaries of AT&T in the Bell System.

Company witness Brennan testified in rebuttal to the capital structure and equity cost testimony of Public Staff witness Stevie. Witness Brennan testified that the consolidated capital structure of UNITEL is inappropriate for use in deriving the cost of capital for Carolina. He testified that while a consolidated capital structure may be appropriate for application to subsidiaries of AT&T, it was not appropriate for subsidiaries of UNITEL, because the subsidiaries of UNITEL are not similar to each other as are the subsidiaries of the Bell System. In addition, he noted differences in bond ratings and financing methods. With regard to equity cost estimation, he testified that, in his opinion, Dr. Stevie incorrectly applied the DCF and CAPM in arriving at his equity cost estimates. He further testified that the resulting coverage ratios derived from Dr. Stevie's recommendation were too low. Company witness Vander Weide also testified in rebuttal to the equity cost testimony of Staff witness Stevie. Dr. Vander Weide testified that Dr. Stevie inappropriately employed the DCF model, resulting in a low estimate of the cost of equity. Dr. Vander Weide also testified that, in addition to the CAPM being inappropriate for measuring the cost of equity, Dr. Stevie underestimated the components of the CAPM.

After considering all the evidence presented by the parties on this issue, it is evident that the central issue to be resolved is whether and to what extent, if any, the impact of the affiliated parent-subsidiary relationship between Carolina and United Telecommunications, Inc., should be recognized. The Company's recommendation does not recognize any impact of the affiliation between Carolina and United. Alternatively, the Public Staff's recommendation only partially recognizes the parent-subsidiary relationship.

It is the Commission's opinion that the parent-subsidiary affiliation should be considered. Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the reasonable capital structure which is appropriate for use in this proceeding is as follows:

	Percent
Debt	60.03%
Preferred stock	2.72%
Common equity	37.25%
Total	100.00%

The Commission also concludes that the reasonable embedded costs of debt and preferred stock are 8.82% and 7.86%, respectively.

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 is 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. 277, 206 S. E. 2d 269 (1974).

The nature of the evidence in a case such as this makes it extremely difficult to balance all of 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, with the constant reminder that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. The Commission must use its impartial judgment to ensure that all the parties involved are treated fairly and equitably. In coming to a final decision on this matter, the Commission is not unmindful of the upward pressure on capital costs present in the economy today, as demonstrated by the current yield at the time of the hearing on UNITEL's bonds of 14.89%.

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the fair rate of return that Carolina should have the opportunity to earn on the original costs of its rate base is 11.09%. Such fair

rate of return will yield a fair return on common equity of approximately 15.00%.

The Commission cannot guarantee that the Company will, in fact, achieve the level of returns herein found to be just and reasonable. Indeed, the Commission would not guarantee it if it could. Such a guarantee would remove necessary incentives for the Company to undertake to achieve the utmost in operational and managerial effficiency. The Commission believes, and thus concludes, that the level of returns approved herein will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to the ratepayers. The Commission can do no more.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Carolina should be given the opportunity to earn.

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 the conclusions heretofore and herein approved by the Commission.

TELEPHONE

SCHEDULE I
CAROLINA TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED MARCH 31, 1980

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Local Service	$100,388,884	$18,398,691	$118,787,575
Toll Service	76,563,058		76,563,058
Miscellaneous	9,876,308		9,876,308
Uncollectibles	263,313	43,936	307,249
Total Operating Revenues	$186,564,937	$18,354,755	$204,919,692
Operating Revenue Deductions			
Maintenance	39,138,368		39,138,368
Depreciation and Amortization	38,154,647		38,154,647
Traffic	12,197,572		12,197,572
Commercial	11,545,644		11,545,644
General Office	8,821,623		8,821,623
Other Expenses	11,297,997		11,297,997
Operatiang Taxes - Other Than Income	20,972,115	1,101,285	22,073,400
State Income Taxes	1,606,540	1,035,208	2,641,748
Federal Income Taxes	9,768,598	7,460,401	17,228,999
Other Income Charges and Interest Expense	337,686		337,686
Total Operating Revenue Deductions	153,840,790	9,596,894	163,437,684
Net Operating Income for Return	$ 32,724,147	$ 8,757,861	$ 41,482,008

SCHEDULE II
CAROLINA TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED MARCH 31, 1980

	Present Rates	After Approved Increase
Investment in Telephone Plant		
Telephone Plant in Service	$618,993,586	$618,993,586
Telephone Plant Under Construction (Less Than One Year)	5,228,894	5,228,894
Plant Acquisition Adjustment	97,272	97,272
Accounts Payable-Plant in Service	(917,969)	(917,969)
Accounts Payable-Plant Under Construction	(191,138)	(191,138)
Depreciation and Amortization Reserve	(192,961,965)	(192,961,965)
Customer Deposits	(1,216,094)	(1,216,094)
Deferred Taxes	(60,987,061)	(60,987,061)
Pre-1971 Investment Tax Credit	(1,248,208)	(1,248,208)
Net Investment in Telephone Plant	$366,797,317	$366,797,317
Allowance For Working Capital		
Cash	3,409,114	3,409,114
Materials and Supplies	6,694,570	6,694,570
Accounts Payable-Materials and Supplies	(737,464)	(737,464
Customer Funds Advanced for Operations	(2,314,945)	(2,314,945
Total Working Capital Allowance	7,051,275	7,051,275
Original Cost Net Investment	$373,848,592	$373,848,592
Rate of Return	8.75%	11.09%

SCHEDULE III
CAROLINA TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF CAPITALIZATION OF AND RELATED COSTS
TWELVE MONTHS ENDED MARCH 31, 1980

	Original Cost Net Investment	Ratio %	Embedded Cost %	Net Operating Income
		Under Present Rates		
Long Term Debt	$224,421,310	60.03	8.82	19,793,960
Preferred Stock	10,168,682	2.72	7.86	799,258
Common Equity	139,258,600	37.25	8.71	12,130,929
Total	$373,848,592	100.00		32,724,147
		Under Approved Rates		
Long Term Debt	$224,421,310	60.03	8.82	19,793,960
Preferred Stock	10,168,682	2.72	7.86	799,258
Common Equity	139,258,600	37.25	15.00	20,888,790
Total	$373,848,592	100.00		41,482,008

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

Company witness Sykes presented the Company's proposals on foreign central office, station line, tie line, and intraexchange private line mileage services. Public Staff witness Carpenter reviewed the Company's proposals on these services and concluded that the proposals were reasonable.

Regarding the Company's proposals on rates for equipment provided to telephone answering service firms, two public witnesses presented comments on the effect of the proposed increases on their firms. David I. Odum, Vice President and General Manager of Patterson Anserphone Communications Enterprises, Incorporated (PACE), testified regarding the increases proposed in the two switchboards which PACE rents from Carolina. He stated that the present monthly rate for a fully equipped switchboard is $138 and that Carolina's proposed rate is $285.50. He stated that a 105% increase is unfair since he is bound by five-year termination contracts which he signed less than a year ago and that he would be penalized financially if he removed the boards from service. He stated that his monthly communications bill was one of three major expenses for his firm.

Harold Arne, who operates Telephone Answering of Fayetteville and provides telephone answering service to approximately 400 customers in the Fayetteville area, testified regarding the effect on his business of the proposed increase in the rates for his five switchboards. He stated that all of his switchboards had been in service for more than five years and that one had been in service for approximately 23 years. He stated that he felt an increase of over 100% on this equipment was unreasonable and expressed concern about the effect of the increase which he would have to pass on to his customers who are primarily small businessmen.

Public Staff witness Carpenter presented the results of his review of the Company's proposals on this equipment. He concluded that the 86% overall increase proposed by Carolina on the TAS equipment is excessive and that any increase allowed should be limited to no more than 50%. He proposed that each of the three rates for TAS equipment be increased by 50% in lieu of increases of up to 150% as proposed by Carolina.

Based on the testimony and exhibits of witnesses Sykes and Carpenter and public witnesses Odum and Arne with regard to the Company's tariff provisions, rates and charges, the Commission concludes:

1. That the Applicant's proposals regarding mileage services are reasonable; and

2. That the proposed increase in revenues from equipment furnished to TAS firms is excessive and that the increase in the three rates applicable to that equipment should be limited to 50%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The purpose of Company witness J. R. Owen's testimony was to show the revenue effect of the rate changes which are proposed to produce the Company's overall revenue requirement and to explain the rate changes, rating principles, and philosophy applied to the Company's basic local exchange flat rate schedule, EAS rates, and zone charges. He stated that the Company's additional revenue requirement of $25,523,726 as determined by witness Morris is satisfied by the rates proposed by the Company, based on test year units existing at March 31, 1980.

Witness Owen stated that the Company's overall philosophy in the development of its proposed rates is to provide the best possible telephone service at the lowest reasonable basic local exchange rates in order to best serve the public interest. A major change in the rate application of the Company's basic rate is the "unbundling" of its basic rates and its telephone set charges. This proposal is in accordance with the FCC Order in Docket No. 20828. Other rate change proposals included by witness Owen were the application of PBX trunk rates to announcement lines, changing the rates for auxiliary line and rotary line service, establishing a multiple of 1.25 times the business one-party rate for key trunks, and charging the business one-party rate for semipublic pay stations in the former Norfolk Carolina areas.

Witness Owen proposed to regroup those exchanges which have outgrown their existing rate groups and to group the exchanges in the former Norfolk Carolina Telephone Company under the Carolina Telephone Company rate groupings. He recommended that a rate group 16 be added to the present 15 groups for future growth and to be used in possible EAS proposals. Further, witness Owen recommended compressing the differential in rates between the Company's smallest rate group and its largest rate group from the 98% range to 75% which would more properly reflect the value of service between these groups. Finally, witness Owen proposed complete elimination of the Company's zone charges.

Company witness Sykes presented testimony on all other areas concerning the Company's proposed rate changes not addressed by Company witness Owen. He

stated that consistent with the unbundling of the telephone set from basic rates he was proposing to eliminate the residual charge in extension service and thus charge only for the telephone set. The level of charge proposed for the telephone set would prevent it from being subsidized by basic local service rates. Under this proposal, the installed cost of inside wiring will be recovered through service charges on a nonrecurring basis.

Witness Sykes testified that supplemental services and equipment were proposed at prices which would at least recover their embedded cost and, where practical, were priced to provide an additional contribution toward the Company's total revenue requirement. An objective also considered in pricing services was to achieve a reasonable balance of customer acceptability and understanding, as well as ease of administration. His last objective of achieving uniform price structures was to remedy the disparate pricing situation existing as a result of the Company's merger with the former Norfolk Carolina Telephone Company and United Telephone Company of the Carolinas.

Witness Sykes described the basis for increasing supplemental services. He proposed a 5% increase on special assembly items that are two to five years old and on tier B rates over two years old. For items over five years old he proposed a 7.5% increase. He set his proposed directory listing charges at the levels currently approved for Southern Bell. The rate of commission payments on coin telephone service was proposed to be changed to a uniform 9% throughout the Company's operating areas. Witness Sykes proposed rates on other suplemental services, such as key telephone equipment, miscellaneous service, auxiliary equipment, data, and mobile telephone equipment which would be set at the higher of either the Company's approved tariff rates or the levels proposed in its last general rate proceedings. He remarked that across-the-board increases ranging from 5% to 10% were applied to some obsolete service offerings, including Centrex service. He explained that, in all of his proposed rates, he sought to gain uniform regulations and charges on all active service and equipment offerings throughout the Company's operating areas.

Public Staff witness Willis stated that he had the responsibility of reviewing the Company's tariff proposals other than those examined by witness Sutton and witness Carpenter. He stated that he had no basic problem with the Company's rate proposals for which he was responsible. He recommended that the Commission approve the Company's proposal on unbundling of local basic service rates, the elimination of zone charges, the regrouping of certain exchanges, and the creation of a uniform rate structure. He summarized the revenue effect of testimonies given by Public Staff witness Carpenter on telephone answering equipment, witness Sutton on Extended Area Service Components and Service Charges, and his own recommendations on the remaining rate structure in order to show the Public Staff's proposed distribution of the Company's revenue requirements.

Based on the testimony and exhibits of witnesses Owen, Sykes, Willis, Carpenter, and Sutton, the Commission reaches the following conclusions with regard to the Company's tariff provisions, rates, and charges:

1. The Commission concludes that all of the exchanges identified by the Company as exceeding their present rate group limits should be reclassified to the next higher group.

2. The Commission concludes that the unbundling of rates for station telephone sets from the charges for access lines is necessary and proper in today's business environment.

3. The Commission concludes that zone charges should be eliminated.

4. The Commission concludes that Carolina should operate with a unified set of rate schedules. Further, the Commission concludes that the appropriate level of additional supplemental services revenues to be realized by Carolina is $10,825,662. This amount is derived by using the Company's proposed rates for this category except for the 50% limitation on charges for TAS equipment, as supported by the Public Staff and found to be reasonable under Evidence and Conclusions for Findings of Fact Nos. 13 and 14.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence to support the proposed methodologies for the recovery of cost attributed to EAS is contained in the testimonies of Company witnesses Wooten and Owen and Public Staff witness Sutton.

The Company originally proposed to recover EAS costs through a matrix that reflects value of service pricing concepts and mileage considerations. The value of service pricing concept employed by Carolina in its EAS matrix causes the subscribers of a small exchange to pay a higher rate than subscribers of a large exchange for a similar service. The mileage consideration results in subscribers with similar calling scopes paying different rates. Since the present level of EAS charges does not recover the associated cost of $18,133,397, the Company proposes to revise the matrix rates in order to eliminate the deficit. Much of the argument put forth by witness Owen in suppport of the matrix is that he considers the EAS to be an optional or supplemental service instead of a part of basic service.

The Public Staff's proposal is to eliminate the present EAS matrix and determine rates for future EAS arrangements on the basis of an engineering cost study. Witness Sutton stated several reasons that make the use of the proposed matrix undesirable. One of these reasons presented is that matrix rates are inappropriate for new EAS arrangements since the matrix rates are based upon embedded costs while the costs incurred in providing new EAS arrangements are necessarily current costs. Further, he stated that matrix rates are rarely, if ever, equal to the cost of providing the service for any given EAS arrangement.

Witness Sutton stated that another disadvantage of the matrix originally presented by witnesss Owen is that it does not afford equitable treatment to subscribers in similar situations. Hence, subscribers with identical calling scopes may have substantially different monthly rates. An example of this inequity is the Parkton-Fayetteville EAS arrangement. Although those two exchanges have the same calling scope, the Parkton subscribers would be required to pay $3.10 more than the Fayetteville subscribers under the Company's original proposal. (Under the Company's original proposal, the Parkton rate would be $12.20 and the Fayetteville rate would be $9.10.)

Finally, witness Sutton stated the philosophical difference between the position of Carolina and the Public Staff which surrounds the determination of

who should pay for the expanded calling scope. According to Mr. Sutton, the position of the Public Staff is that all subscribers of North Carolina are entitled to adequate, efficient, and reasonable service. Continuing, he indicated that the value of a subscriber's telephone service is directly related to the size of the local calling scope and that it is the position of the Public Staff that the rate for that service should be based upon that calling scope. Furthermore, he stated that it is the position of the Public Staff that if the local calling scope must be expanded in order to satisfy the local community of interest, then that expanded calling scope is an inherent part of the basic service of the subscribers of that exchange and the rates for the service should be the same for all exchanges of the Company which are in the same calling scope and rate grouping.

On rebuttal, Company witness Owen presented an alternative EAS plan which generated the same amount of gross revenues, but that did not incorporate the value of service principle in which the smaller exchange is burdened with more of the cost than the larger exchange. Consequently, this alternative EAS proposal recognizes only the distance of the EAS territory involved and the size of the calling scope grouping.

The Commission has studied this issue with much care and diligence. It is concluded that the methodology engulfed in the Company's alternative EAS proposal is the best method to be used by Carolina to recoup costs associated with EAS from the ratepayers benefiting from this supplemental service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The Commission has approved herein a gross revenue increase of $18,329,088 for the Applicant. As concluded above, $10,825,662 of this additional revenue should be generated from Supplemental Services. In addition, the Commission concluded above that zone charges should be eliminated, which means that the additional gross revenues to be generated by Service Connection Charges, EAS Charges, and Basic Local Exchange Service is $9,463,799 ($18,398,691 - $10,825,662 + $1,890,770). The Commission concludes that the Company should file rates with the Chief Clerk's office which satisfy the gross revenue increase of $18,398,691 and the rate guidelines denoted above. Further, the Commission concludes that all parties of record should have five working days after the filing of such rates, in which to file written comment thereon.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence in support of this finding was presented by Public Staff witness Turner. Mr. Turner's testimony concerned the Company's practice of allowing telephone subscribers the opportunity to purchase telephone apparatus which is in service. The Commission concludes that the Company's efforts in this area should be encouraged.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Carolina Telephone Company, be, and hereby is, authorized to adjust its North Carolina local exchange telephone rates and charges as set forth below to produce, based upon stations and operations as of March 31, 1980, an increase in annual gross revenues not to exceed $18,398,691.

2. That the Applicant is hereby called on to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the additional revenues approved herein in accordance with the conclusions set forth within this Order. Five sets of work papers supporting such proposals should be filed with the proposed tariffs.

3. That all parties of record may file written comments concerning the Company's tariffs within five working days of the date upon which they are filed with the Commission.

4. That the rates, charges, and regulations necessary to produce the additional annual gross revenues authorized herein shall become effective upon the issuance of a further order approving the tariffs filed pursuant to paragraph 2 above.

5. That Carolina continue to improve service weak spots, with due attention paid to those pointed out by Public Staff witness Hu.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of April 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. P-7, SUB 652

HAMMOND, COMMISSIONER, DISSENTING: I must dissent on the issue of the rate of return allowed on common equity capital. In my opinion the majority has been entirely too generous in allowing a 15 percent return on equity.

In Docket No. P-55, Sub 777 (the last Southern Bell General Rate Case) I dissented on the issue of double leverage. Where a holding company owns all the common equity of an operating subsidiary, the funds to purchase equity in the subsidiary are composed of a combination of debt, preferred equity, and common equity of the parent company. This combination of capital sources results in a lower cost rate than for equity alone. This lower cost rate should be used to determine the equity return for the subsidiary.

The majority of the Commission, as well as the majority of this Panel, has chosen not to recognize the full benefits of the parent-subsidiary relationship. Although in the Southern Bell decision the Commission suggested that the return on equity had been adjusted to account for that relationship, "...a cost rate for common equity adjusted to give further recognition of 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." (emphasis added).

The Panel has chosen similarly to utilize United Telecommunications' capital structure, but in my mind has not given sufficient, if any, recognition to adjusting the return on equity to account for the parent-subsidiary relationship.

The determination of what level of return on equity to allow require a balance of the interests of the ratepayers and the utility investors. The North Carolina Supreme Court has stated that the Legislature intended that th

Commission set rates as low as possible consistent with the requirement that the utility, by sound management, be able to earn a fair profit, maintain its facilities and services, and compete in the market for capital funds on terms which are reasonable [State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 377, 206 S.E. 2d 269 (1974)].

It is not persuasive to me that a lower rate of return on equity would seriously impair the ability of Carolina Telephone and Telegraph Company, or United Telecommunications for that matter, to compete in the capital markets on reasonable terms. If this be true, and I am convinced that it is true, then we have failed to meet our obligation to set rates as low as possible.

It seems to me that the Utilities Commission has an obligation to do everything within its power to help, in some way, to stem the tide of runaway inflation. I seriously question whether we are fulfilling that obligation in this case.

If one assumes that the cost of equity to United Telecommunications is the 15 percent allowed in this case and employs the double leverage principle, then the net effect of this Panel decision is to place an additional burden of, at least, $2,131,000 on the ratepayers. That is unreasonable even in these times of financial uncertainty. It seems that the Commission, instead of being a part of the solution, may have become a part of the problem by fueling the fires of inflation even more.

Leigh H. Hammond, Commissioner

DOCKET NO. P-10, SUB 400

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Central Telephone Company for Authority to Adjust Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina	)))	NOTICE OF DECISION AND ORDER

HEARD IN: Catawba County Public Library, Tuesday, June 9, 1981, at 7:00 p.m., Newton, North Carolina; City Hall, Wednesday, June 10, 1981, at 10:00 a.m., Elkin, North Carolina; Randolph County Courthouse, Wednesday, June 10, 1981, at 7:00 p.m., Asheboro, North Carolina; and the North Carolina Utilities Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, June 11-18, 1981

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Douglas P. Leary and A. Hartwell Campbell

APPEARANCES:

For the Respondent:

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

Donald W. Glaves, Ross, Hardies, O'Keefe, Babcock & Parsons, Attorneys at Law, One IBM Plaza, Chicago, Illinois 60611
For: Central Telephone Company

For the Intervenors:

Theodore C. Brown, Jr., and Paul L. 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 January 21, 1981, Central Telephone Company (Central, Company, or Applicant) filed an application with the Commission for authority to adjust its rates and charges for telephone service in North Carolina to become effective on service rendered on and after February 20, 1981. The Applicant filed testimony and exhibits along with and in support of its application.

By Order issued February 18, 1981, the Commission set the matter for investigation, declared the matter to be a general rate case, required public notice, suspended the proposed rates, and set the matter for hearing in the following locations: the Auditorium, Catawba County Public Library, on Tuesday, June 9, 1981, 115 West C. Street, Newton, North Carolina; the Courtroom, City Hall, on Wednesday, June 10, 1981, 116 East Market Street, Elkin, North Carolina; Courtroom A, Randolph County Courthouse, on Wednesday, June 10, 1981, 145 Worth Street, Asheboro, North Carolina; and the North Carolina Utilities Commission Hearing Room, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 11-18, 1981. The Order also established the test period for the proceeding as the 12-month period ended September 30, 1980.

On January 27, 1981, the Public Staff filed a motion in this docket to incorporate the EAS tariff filing (Docket No. P-10, Sub 397) into the General Rate Case, Docket No. P-10, Sub 400. The Commission, on February 4, 1981, by Order, closed Docket No. P-10, Sub 397, and stated the matter in the P-10, Sub 397, docket would be considered in the General Rate Case docket.

On April 15, 1981, the Public Staff filed written Notice of Intervention and The New Telephone Company filed a petition to intervene on May 29, 1981. The Commission, on June 3, 1981, allowed The New Telephone Company's intervention.

The public hearing in the Auditorium, Catawba County Public Library, on Tuesday, June 9, 1981, at 7:00 p.m., in Newton, North Carolina, was attended by the public, with the Company attorneys and the Public Staff's counsel present. Seven public witnesses testified concerning problems they experienced with Central's Mountain View Exchange and Sherrils Ford Exchange. These witnesses also spoke of a lack of understanding of EAS. The seven witnesses were: Tommy

Hartsoe, J. W. Woodside, Irene Keller, Jacob B. Huffman, Irene DeCosta, Claudia Wagner, and Wilma Eisenhour. One witness, David Black of Hickory, North Carolina, a tire and appliance businessman, said that he was not against the rate increase and that he experienced good telephone service on his business and home phones. Tom Cox, President of The New Telephone Company, testified that he was an intervenor and competitor of Central Telephone Company in the terminal equipment market.

On Wednesday, June 10, 1981, at 10:00 a.m., in the Courtroom of City Hall, Elkin, North Carolina, a public hearing was held. Seven members of the public presented testimony on service and the rate increase. They were: Jean Dobbins, Yadkin County Merchants Association; James Earl Hobson, President, Booneville Lions Club; Albert Martin, former Legislator and member of the Booneville Lions Club; Harvey Smith, Mayor of Booneville; Grady R. Motsinger, Mayor of Dobson; Lois Bottomley, Vice President of the Chamber of Commerce of Wilkes County; and Benny Folger, a banker of Elkin, North Carolina.

On Wednesday, June 10, 1981, at 7:00 p.m., in Courtroom A in the Randolph County Courthouse, Asheboro, North Carolina, a public hearing was held wherein the following public witnesses gave testimony concerning service, rates, and EAS: Ruth Hayes, Asheboro, North Carolina; Peggy Haywood, Asheboro, North Carolina; Duane McCartney, Asheboro, North Carolina; Marshall Brewer, Asheboro, North Carolina; Odell C. Hayes, Franklinville, North Carolina; Augusta Yow, Franklinville, North Carolina; Lee Ashburn, President of East Coast Lumber Company and Welcome Lumber Company, Asheboro, North Carolina; Harold Moffitt, Asheboro, North Carolina; Bobby Crumley, Asheboro, North Carolina; Teresa Crumley, Asheboro Credit Bureau, Asheboro, North Carolina; Lowell D. Hilton, Asheboro, North Carolina; Tom Brantley, Asheboro, North Carolina; and Linda Covington, Asheboro, North Carolina.

At the hearings held in Raleigh, the Company presented the testimony and exhibits of the following witnesses: George B. Kemple, Vice President of Central Telephone Company, as to Company operations and the expenditures required to maintain and improve service; Roy L. Puryear, General Network and Switching Manager, concerning service evaluation standards; Stephen M. Bailor, Assistant Controller - Financial Reporting, as to operating revenues, expenses, and rate base for the Company's North Carolina operations; John P. Fournier, Operational Planning Coordinator, on the Company's request for new depreciation rates; Thomas S. Moncho, General Regulatory Manager, as to the proposed rate design; Dr. Charles F. Phillips, Jr., Professor of Economics at Washington and Lee University, as to cost of capital and rate of return; Thomas A. Owens, Vice President and Chief Financial Officer of Central Telephone Company, as to cost of capital and rate of return; Larry L. Huber, Vice President of Accounting and Financing for the Business Systems Group of Centel Communications Company, concerning the operations and costs of the Supply Division of Centel Communications Company; and Lyle C. Roberts, General Separations and Settlements Staff Manager of the Regulatory Organization of Central Telephone Company, on the toll cost separations.

The Public Staff presented the testimony and exhibits of the following witnesses: Hugh L. Gerringer, Telephone Engineer, concerning toll settlements and separations and end-of-period intrastate toll revenues; Thi-Chen Hu, Telephone Engineer, concerning the quality and adequacy of service; Karyl Lam,

Staff Accountant, concerning working capital allowance; Candace A. Paton, Staff Accountant, concerning transactions between Central Telephone Company - North Carolina and Centel Communications Company - Supply Division; Benjamin R. Turner, Telephone Engineer, on the appropriateness of new depreciation rates proposed by the Company; James D. Seabolt, Staff Economist, on rate of return and cost of capital; Leslie C. Sutton, Telephone Engineer, as to end-of-period miscellaneous revenues and the Company's proposal to select the "flash-cut" option instead of the "phase-in" approach for the expensing of new inside wiring; Millard N. Carpenter, III, Telephone Engineer, regarding proposed changes in rates and regulations; and Elizabeth C. Porter, Staff Accountant, concerning levels of operating revenues, expenses, and rate base for the Company's North Carolina operations.

Based on the foregoing, the application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Central Telephone Company is a duly franchised public utility lawfully incorporated, providing telephone services to subscribers in its North Carolina service area, subject to the jurisdiction of this Commission, and is properly before this Commission for a determination of the justness and reasonableness of its proposed rates and charges.

2. That the test period for purposes of this proceeding is the 12 months ended September 30, 1980.

3. That the total increases in rates and charges Central is seeking in its application would produce $10,862,364 in additional annual gross revenues for the Company.

4. That the overall quality of service provided by the North Carolina Division of Central Telephone Company is good; however, there are some problem areas which the Company should correct.

5. That Central's reasonable original cost rate base is $105,431,881. This consists of utility plant in service of $166,486,435 plus telephone plant under construction of $3,603,541 reduced by: negative working capital of $64,312; accumulated depreciation of $37,435,883; accounts payable - plant under construction of $574,862; unamortized pre-1971 investment tax credits of $191,000; accumulated deferred income taxes of $24,865,000; customer deposits of $365,038; and excess profits on purchases from Centel Supply in plant of $1,162,000.

6. That the Company should begin expensing inside wiring cost on a "flash-cut" basis on or before the effective date of the rates approved in this Order.

7. That the schedule of depreciation rates as shown in Appendix A is approved.

8. That Central's gross revenues for the test year under present rates, after accounting and pro forma adjustments, are $56,659,619.

9. That the reasonable level of test year intrastate operating revenue deductions after accounting, pro forma, end-of-period, and after-period adjustments is $45,979,401. This amount includes $10,157,412 for investment currently consumed through actual depreciation on an annual basis.

10. That the capital structure for Central Telephone Company which is appropriate for use in this proceeding is:

Long-Term Debt	55.67%
Preferred Stock	3.60%
Common Equity	40.73%
Total	100.00%

11. That the Company's proper embedded costs of long-term debt and preferred stock are 8.77% and 5.47%, respectively. The reasonable rate of return for Central to earn on its common equity is 15.80%. Using the capital structure, heretofore determined, with the cost rates for debt, preferred stock, and common equity yields an overall fair rate of return of 11.51% to be applied to the Company's rate base. Such rate of return will enable Central, 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 compete in the market for capital funds on terms which are reasonable and fair to the customers and to the investors.

12. That Central has an annual gross revenue requirement of $59,859,609. This requires an increase in annual gross revenues of $3,199,990. This increase is required in order for the Company to have a reasonable opportunity to earn the 11.51% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based on 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.

13. 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 $3,199,990, shall become effective upon the issuance of a further Order by this Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witness Moncho and Public Staff witness Carpenter presented testimony and exhibits on the proposed rate design and the schedule of rates and charges necessary to generate the additional revenues required for Central.

Company witness Moncho recommended a schedule of rates and charges necessary to provide the annual increase in revenues requested by the Company of $10,862,364. Witness Moncho testified the following with regard to the Company's objectives regarding rate design:

"The rates and charges proposed are structured wherever possible to pursue the following objectives:

1. Produce the requested amount of annual revenue increase.
2. Distribute the requested increase among the customers equitably.
3. Relate cost to provision of service wherever possible.

4. Minimize impact on basic local exchange access rates.
5. Recognize the changing nature of the terminal equipment market brought about by changes in regulations, competition and technology.
6. Strike a balance of administrative ease, customer understanding and general acceptability."

Public Staff witness Carpenter presented testimony regarding Central's proposed changes in rates and regulations. Witness Carpenter outlined changes in Central's present rate schedules necessary to produce the increase in gross revenues proposed by the Public Staff. The Company and the Public Staff were in disagreement on the following rate design proposals: (1) service connection charges, (2) automatic regrouping, (3) reserved rotary numbers, (4) rates for standard single line sets, (5) rates for TAS switchboards, and (6) the method of unbundling.

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 Local Exchange Access Rates

The Commission concludes that only a small portion, if any, of the increase in local service revenues approved herein need be obtained from the basic local exchange access rates. Indeed, the Commission is aware that a decrease in the basic local exchange access rates may result from other rate design decisions made in this proceeding which are discussed below.

Service Connection Charges

Regarding regular service connnection charges, the Company's recommendations result in an increase in revenues associated with such charges of $1,641,938 or an increase of 183.3%. The Company's recommendations in this regard are premised on the theory that service connection charges should be based upon the cost of providing such services.

Public Staff witness Carpenter proposed to increase service connection charges by $109,784 or 12.26%. Mr. Carpenter testified that the Company's proposed service connection charge increase was in his opinion too large to be readily understandable or acceptable to Central's subscribers, that the line work charge component of the service connection charges should be eliminated, and that both the premise visit charge and the equipment work charge proposed by Central were above the actual costs of those functions.

Having carefully considered all the evidence presented concerning service connection charges, the Commission concludes that the following charges are proper and should therefore be implemented by the Company:

Service Connection Charges	Residential	Business
Service order		
(1) Primary	$20.00	$28.00
(2) Secondary	10.00	15.00
Premise visit	5.65	5.65
Central office work	4.00	4.50
Inside wiring	10.00	13.00
Jack		
(1) Desk	3.35	3.35
(2) Wall	5.85	5.85
Equipment	3.60	6.10
Concealed postwiring	20.65	31.90

Expedited Service Connection Charges

Central, through the testimony of Company witness Moncho, proposed to include in its service charge tariff a service charge premium of 50% to be imposed on applicable service whenever (1) the customer requests installation sooner than the normally scheduled date or (2) the customer's request requires that the work be performed outside of regularly scheduled work hours. The Public Staff opposed the extra nonrecurring charge because of the possibilities of abuse and the inability of the Commission or the Public Staff to track Central's operation in this area.

The Commission, being of the opinion that expedited installation service is a reasonable service to be provided by the Company, finds the proposals made by Central in this regard to be appropriate. Additionally, the Commission concludes that Central should report to the Commission, on a semiannual basis, the frequency of requests for the expedited service connection offerings.

Regrouping Exchanges

Company witness Moncho proposed that Central be allowed to regroup exchanges automatically whenever the calling scope for a particular exchange outgrew its respective rate group limits. Additionally in initial filings, Mr. Moncho testified that 19 exchanges had outgrown present rate groupings based on station data at the end of the test year and should therefore be regrouped. Witness Moncho recognized that the EAS component of 17 exchanges would also necessarily be reclassified based upon station data at the end of the test year.

In additional testimony presented at the time of the hearing, Mr. Moncho reiterated the Company's position regarding regouping outside of a rate case and proposed the regouping of six additional exchanges due to growth through April 1981. Mr. Moncho did not propose to update the classification of EAS components based upon the same period.

Public Staff witness Carpenter opposed the upgrading of exchanges outside of rate cases in principle because such adjustments would substantially affect Central's rate structure, could affect the Company's rate of return, and because such a policy would not provide adequate opportunity for the Commission to make a determination of additional revenue requirements if any exist. Additionally, witness Carpenter opposed the proposal of Company witness Moncho regarding the regrouping of the six additional exchanges.

The Commission concludes that the Company's proposal regarding regrouping outside the confines of a general rate proceeding should be rejected. With regard to the regrouping of the six additional exchanges which are in contention by the parties, the Commission finds such regrouping proposal to be proper. However, the Commission is of the opinion that the EAS classifications should be based on the period ended April 1981 also.

Reserved Rotary Numbers

Company witness Moncho proposed to establish a charge for reserved rotary numbers in this proceeding. This proposal was opposed by witness Carpenter on the basis that the charge is unnecessary and would discriminate against subscribers who are served by older vintage offices. Based on the foregoing, the Commission concludes that the Company's proposal regarding reserved rotary numbers should be rejected.

Standard Telephone Set Charge

The Company recommended establishing monthly standard telephone set charges in this proceeding of $1.45 for standard singleline rotary and $2.20 for touch call stations. Central provided cost studies to support such charges. Public Staff witness Carpenter took issue with the Company's cost studies regarding the average service life of the stations. Based upon an appropriate average service life for station apparatus, witness Carpenter recommended charges not greater than $1.25 and $1.75 for rotary and touch call stations, respectively.

The Commission finds that monthly charges of $1.25 for rotary stations and $1.75 for touch call stations are reasonable and should be implemented by the Company.

TAS Switchboards

Company witness Moncho recommended increasing the charges for TAS switchboard service from $120 to $238 or approximately 98.3%. Public Staff witness Carpenter disagreed with the cost study supporting the Company's proposal regarding TAS switchboards because Central used 1973 material costs and current labor costs for installation. Mr. Carpenter testified that since the equipment has been obsoleted and is not offered for new installations, in his opinion, an average original cost basis for cost determination of the offering is appropriate. Based upon such a determination, Mr. Carpenter recommended a monthly rate not to exceed $170.00.

The Commission finds the Public Staff's proposal in this regard to be both reasonable and proper.

Return Responsibility Plan

Public Staff witness Carpenter recommended a refinement in Central's return responsibility plan whereby the subscriber would be allowed to request that Central pick up the subscriber's station and the subscriber would pay a premise visit charge for the service.

The Commission concludes that the return responsibility plan implemented by the Company and authorized by the Commission in January 1981 is adequate and should not be expanded to include an additional pickup service.

Residence Package

The Company recommended that, consistent with the concept of "unbundling of rates," the residential package plan which offers discounts for combination of station services be eliminated. The Public Staff opposed the Company's recommendation relative to the residence package. The Commission concludes that the residential package plan should be eliminated as requested by the Company.

Extended Area Service Charges

On November 10, 1980, Central filed Docket No. P-10, Sub 397, which contained tariffs of proposed revisions in the EAS rate component matrices. On January 27, 1981, the Public Staff filed a motion to incorporate the EAS tariff filing into the currently pending general rate case Docket No. P-10, Sub 400. On February 4, 1981, the Commission consolidated the issues raised in Docket No. P-10, Sub 397, for investigation and hearing into the general rate proceeding.

In his determination of the rate design recommendations necessary to implement the Company's initially requested rate increase of $10,862,364, Company witness Moncho applied the proposed rate component charges to all existing EAS plans and proposed that said matrices be utilized in all future EAS matters. Evidence was presented in this proceeding which indicated that Central's current EAS rate component matrices were established in the last general rate case, Docket No. P-10, Sub 369, and were implemented on April 11, 1978. Such charges were based upon cost established prior to 1978.

The Commission concludes that Central has failed to provide sufficient evidence to substantiate approving 100% of the proposed EAS rate component increase. However, in the Commission's opinion, it is reasonable to assume that some increases have occurred in the cost of providing EAS services since 1978 and, consequently, that some increase in the EAS rate component matrices is warranted. Said increases shall be proposed by the Company to be reviewed by the Public Staff and shall not exceed 50% of the increase proposed by the Company.

Evidence was presented during the course of the hearing which indicated that in its monthly billings to its customers Central segregates the EAS component portion of a customers bill from the basic monthly charges. In the Commission's opinion such a procedure leads to customer confusion and should therefore be discontinued.

Other Local Service

The Commission concludes that certain increases in rates and charges applicable to miscellaneous services, auxiliary equipment, and similar service offerings are appropriate and that such increases should not exceed 70% of the Company's requested increase.

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
CENTRAL TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
For the Test Year Ended September 30, 1980

Item	Present Rates	Increase Approved	Approved Rates
Operating Revenues			
Local service	$33,683,909	$3,199,990	$36,883,899
Toll service	20,854,336	-	20,854,336
Miscellaneous	2,121,374	-	2,121,374
Uncollectibles	(64,637)	(5,773)	(70,410)
Total operating revenues	56,594,982	3,194,217	59,789,199
Operating Revenue Deductions			
Maintenance	11,631,616	-	11,631,616
Depreciation	10,157,412	-	10,157,412
Traffic	3,356,611	-	3,356,611
Commercial	3,818,889	-	3,818,889
General office	4,017,646	-	4,017,646
Other expenses	1,815,608	-	1,815,608
Operating taxes - other than income taxes	6,210,137	191,653	6,401,790
State income tax	676,463	180,154	856,617
Federal income tax	4,273,424	1,298,309	5,571,733
Interest on customer deposits	21,595	-	21,595
Total operating revenue deductions	45,979,401	1,670,116	47,649,517
Operating income for return	$10,615,581	$1,524,101	$12,139,682

TELEPHONE

SCHEDULE II
CENTRAL TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended September 30, 1980

Item	Amount
Investment in Telephone Plant:	
Telephone plant in service	$166,486,435
Telephone plant under construction	3,603,541
Accounts payable - plant under construction	(574,862)
Depreciation reserve	(37,435,883)
End-of-period customer deposits	(365,038)
Deferred taxes	(24,865,000)
Pre-1971 investment tax credit	(191,000)
Net investment in telephone plant	106,658,193
Working capital allowance	(64,312)
Excess profits on affiliated sales	(1,162,000)
Original cost rate base	$105,431,881
Rate of return:	
Present rates	10.07%
Approved rates	11.51%

SCHEDULE III
CENTRAL TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended September 30, 1980

Item	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$55,102,656	55.67%	8.77%	$4,832,503
Preferred stock	3,563,312	3.60%	5.47%	194,913
Common equity	40,314,913	40.73%	12.25%	4,938,549
Subtotal	98,980,881	100.00%		9,965,965
Post-1971 unamortized JDITC	6,451,000	-	10.07%	649,616
Total - Present Rates	$105,431,881	100.00%		$10,615,581
	Approved Rates - Original Cost Rate Base			
Long-term debt	$55,102,656	55.67%	8.77%	$4,832,503
Preferred stock	3,563,312	3.60%	5.47%	194,913
Common equity	40,314,913	40.73%	15.80%	6,369,756
Subtotal	98,980,881	100.00%		11,397,172
Post-1971 unamortized JDITC	6,451,000	-	11.51%	742,510
Total - Approved Rates	$105,431,881	100.00%		$12,139,682

IT IS, THEREFORE, ORDERED:

1. The Applicant, Central Telephone Company, be and hereby is authorized to adjust its telephone rates and charges to produce, based upon stations and operations as of September 30, 1980, an increase in annual gross revenues not to exceed $3,199,990.

2. The Applicant is hereby called on to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the additional revenues approved herein in accordance with the conclusions set forth in Evidence and Conclusions for Finding of Fact No. 13 within ten (10) days from the date of this Order. Work papers supporting such proposals should be provided to the Commission and all parties of record (formats such as Item 30 of the minimum filing requirement, NCUC Form P-1 are suggested).

3. Exceptions and comments to said proposed tariffs shall be filed within five (5) working days of the date upon which they are filed with the Commission.

4. The rates, charges, and regulations necessary to produce the additional annual gross revenues authorized herein shall become effective upon the issuance of a further order approving the tariffs filed pursuant to paragraph 2 above.

5. That Central shall continue to seek improvement in the "out of service received before 5:00 p.m., carried over" and "repeat trouble report" objectives, and should continue to keep close watch on its Mountain View Exchange to ensure good service to those customers served by this Exchange.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of August 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

CENTRAL TELEPHONE COMPANY APPENDIX A

DEPRECIATION RATES

Account		Present			Approved		
		Life* (yr.)	Net Salvage (%)	Rate (%)	Life* (yr.)	Net Salvage (%)	Rate (%)
212	Building	42.0	3.0	2.3	38.7	4.0	2.5
221.1	Step-by-Step	21.0	3.0	4.6	11.6	10.0	7.8
221.2	Manual	14.0	(1.0)	7.2	10.5	(4.0)	9.9
221.3	Radio	16.0	1.0	6.2	15.3	1.0	6.5
221.4	Circuit	15.0	2.0	6.5	9.4	11.0	9.5
221.5	Crossbar	27.0	1.0	3.7	12.7	6.0	7.4
221.9	Electronic	33.0	0.0	3.0	25.0**	0.0	4.0
231	Station Apparatus	14.0	4.0	6.9	6.7**	11.0	9.6
232	Station Connections-Other	-	-	***	20.0	0.0	5.0
234	Large PBX	13.0	7.0	7.2	5.8	10.0	15.5
241	Pole Lines	25.0	(7.0)	4.3	27.4	(49.0)	5.4
242.1	Aerial Cable	34.0	0.0	2.9	37.6	(8.0)	2.9
242.2	Underground Cable	43.0	0.0	2.3	37.4	(14.0)	3.0
242.3	Buried Cable	35.0	(2.0)	2.9	38.0	(5.0)	2.7
243	Aerial Wire	12.0	(2.0)	8.5	13.0	(56.0)	12.0
244	Underground Conduit	65.0	(5.0)	1.6	63.9	0.0	1.6
261	Furniture & Office Equipment	18.0	13.0	4.8	23.3	10.0	3.9
264.1	Vehicles	6.5	35.0	10.0	8.4	22.0	9.3
264.2	Other Work Equipment	10.0	20.0	8.0	17.6	2.0	5.6

Notes: * Average Service Life
** Remaining Life
*** No rate previously assigned for this account. Accruals were allowed to equal charges.

TELEPHONE

DOCKET NO. P-10, SUB 400

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Central Telephone Company for Authority	) ORDER GRANTING
to Adjust Its Rates and Charges Applicable to	) PARTIAL INCREASE IN
Intrastate Telephone Service in North Carolina	) RATES AND CHARGES

HEARD IN: Catawba County Public Library, Newton, North Carolina, Tuesday, June 9, 1981, at 7:00 p.m.; City Hall, Elkin, North Carolina, Wednesday, June 10, 1981, at 10:00 a.m.; Randolph County Courthouse, Asheboro, North Carolina, Wednesday, June 10, 1981, at 7:00 p.m.; and the North Carolina Utilities Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, June 11-18, 1981

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Douglas P. Leary and A. Hartwell Campbell

APPEARANCES:

For the Respondent:

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

Donald W. Glaves, Ross, Hardies, O'Keefe, Babcock & Parsons, Attorneys at Law, One IBM Plaza, Chicago, Illinois 60611
For: Central Telephone Company

For the Intervenors:

Theodore C. Brown, Jr., and Paul L. 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 January 21, 1981, Central Telephone Company (Central, Company, or Applicant) filed an application with the Commission for authority to adjust its rates and charges for telephone service in North Carolina to become effective on service rendered on and after February 20, 1981. The Applicant filed testimony and exhibits along with and in support of its application.

By Order issued February 18, 1981, the Commission set the matter for investigation, declared the matter to be a general rate case, required public notice, suspended the proposed rates, and set the matter for hearing in the following locations: the Auditorium, Catawba County Public Library, 115 West C. Street, Newton, North Carolina, on Tuesday, June 9, 1981; the Courtroom, City Hall, 116 East Market Street, Elkin, North Carolina, on Wednesday, June 10, 1981; Courtroom A, Randolph County Courthouse, 145 Worth Street, Asheboro, North Carolina on Wednesday June 10, 1981; and the North Carolina Utilities Commission Hearing Room, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 11-18, 1981. The Order also established the test period for the proceeding as the 12-month period ended September 30, 1980.

On January 27, 1981, the Public Staff filed a motion in this docket to incorporate the EAS tariff filing (Docket No. P-10, Sub 397) into the General Rate Case, Docket No. P-10, Sub 400. The Commission, on February 4, 1981, by Order, closed Docket No. P-10, Sub 397, and stated that the matter in the P-10, Sub 397, docket would be considered in the General Rate Case docket.

On April 15, 1981, the Public Staff filed written Notice of Intervention and The New Telephone Company filed a petition to intervene on May 29, 1981. The Commission, on June 3, 1981, allowed The New Telephone Company's intervention.

The public hearing in the Auditorium, Catawba County Public Library, in Newton, North Carolina, on Tuesday, June 9, 1981, at 7:00 p.m., was attended by the public, with the Company attorneys and the Public Staff's counsel present. Seven public witnesses testified concerning problems they experienced with Central's Mountain View Exchange and Sherrils Ford Exchange. These witnesses also spoke of a lack of understanding of EAS. The seven witnesses were: Tommy Hartsoe, J. W. Woodside, Irene Keller, Jacob B. Huffman, Irene DeCosta, Claudia Wagner, and Wilma Eisenhour. One witness, David Black of Hickory, North Carolina, a tire and appliance businessman, said that he was not against the rate increase and that he experienced good telephone service on his business and home phones. Tom Cox, President of The New Telephone Company, testified that he was an intervenor and competitor of Central Telephone Company in the terminal equipment market.

On Wednesday, June 10, 1981, at 10:00 a.m., in the Courtroom of City Hall, Elkin, North Carolina, a public hearing was held. Seven members of the public presented testimony on service and the rate increase. They were: Jean Dobbins, Yadkin County Merchants Association; James Earl Hobson, President, Booneville Lions Club; Albert Martin, former Legislator and member of the Booneville Lions Club; Harvey Smith, Mayor of Booneville; Grady R. Motsinger, Mayor of Dobson; Lois Bottomley, Vice President of the Chamber of Commerce of Wilkes County; and Benny Folger, a banker of Elkin, North Carolina.

On Wednesday, June 10, 1981, at 7:00 p.m., in Courtroom A in the Randolph County Courthouse, Asheboro, North Carolina, a public hearing was held wherein the following public witnesses gave testimony concerning service, rates, and EAS: Ruth Hayes, Asheboro, North Carolina; Peggy Haywood, Asheboro, North Carolina; Duane McCartney, Asheboro, North Carolina; Marshall Brewer, Asheboro, North Carolina; Odell C. Hayes, Franklinville, North Carolina; Augusta Yow, Franklinville, North Carolina; Lee Ashburn, President of East Coast Lumber Company and Welcome Lumber Company, Asheboro, North Carolina; Harold Moffitt, Asheboro, North Carolina; Bobby Crumley, Asheboro, North Carolina; Teresa Crumley, Asheboro Credit Bureau, Asheboro, North Carolina; Lowell D. Hilton, Asheboro, North Carolina; Tom Brantley, Asheboro, North Carolina; and Linda Covington, Asheboro, North Carolina.

At the hearings held in Raleigh, the Company presented the testimony and exhibits of the following witnesses: George B. Kemple, Vice President of Central Telephone Company, as to Company operations and the expenditures required to maintain and improve service; Roy L. Puryear, General Network and Switching Manager, concerning service evaluation standards; Stephen M. Bailor, Assistant Controller - Financial Reporting, as to operating revenues, expenses, and rate base for the Company's North Carolina operations; John P. Fournier,

Operational Planning Coordinator, on the Company's request for new depreciation rates; Thomas S. Moncho, General Regulatory Manager, as to the proposed rate design; Dr. Charles F. Phillips, Jr., Professor of Economics at Washington and Lee University, as to cost of capital and rate of return; Thomas A. Owens, Vice President and Chief Financial Officer of Central Telephone Company, as to cost of capital and rate of return; Larry L. Huber, Vice President of Accounting and Financing for the Business Systems Group of Centel Communications Company, concerning the operations and costs of the Supply Division of Centel Communications Company; and Lyle C. Roberts, General Separations and Settlements Staff Manager of the Regulatory Organization of Central Telephone Company, on the toll cost separations.

The Public Staff presented the testimony and exhibits of the following witnesses: Hugh L. Gerringer, Telephone Engineer, concerning toll settlements and separations and end-of-period intrastate toll revenues; Thi-Chen Hu, Telephone Engineer, concerning the quality and adequacy of service; Karyl Lam, Staff Accountant, concerning working capital allowance; Candace A. Paton, Staff Accountant, concerning transactions between Central Telephone Company - North Carolina and Centel Communications Company - Supply Division; Benjamin R. Turner, Telephone Engineer, on the appropriateness of new depreciation rates proposed by the Company; James D. Seabolt, Staff Economist, on rate of return and cost of capital; Leslie C. Sutton, Telephone Engineer, as to end-of-period miscellaneous revenues and the Company's proposal to select the "flash-cut" option instead of the "phase-in" approach for the expensing of new inside wiring; Millard N. Carpenter, III, Telephone Engineer, regarding proposed changes in rates and regulations; and Elizabeth C. Porter, Staff Accountant, concerning levels of operating revenues, expenses, and rate base for the Company's North Carolina operations.

On August 27, 1981, the Commission issued a Notice of Decision and Order in this docket which stated that Central should be allowed an opportunity to earn a rate of return of 11.51% on its investment used and useful in providing telephone service in North Carolina. In order to have the opportunity to earn a fair rate of return, Central was authorized to adjust its telephone service rates and charges to produce an increase in gross revenues of $3,199,990 on an annual basis. Central 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 August 31, 1981, Central filed its proposed rates, charges, and regulations as required by the Commission. On September 8, 1981, the Commission issued an Order approving rates, charges and regulations for Central Telephone Company.

Based on the foregoing, the application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. That Central Telephone Company is a duly franchised public utility lawfully incorporated, providing telephone services to subscribers in its North Carolina service area, subject to the jurisdiction of this Commission, and is

properly before this Commission for a determination of the justness and reasonableness of its proposed rates and charges.

2. That the test period for purposes of this proceeding is the 12 months ended September 30, 1980.

3. That the total increases in rates and charges Central is seeking in its application would produce $10,862,364 in additional annual gross revenues for the Company.

4. That the overall quality of service provided by the North Carolina Division of Central Telephone Company is good; however, there are some problem areas which the Company should correct.

5. That Central's reasonable original cost rate base is $105,431,881. This consists of utility plant in service of $166,486,435 plus telephone plant under construction of $3,603,541 reduced by: negative working capital of $64,312; accumulated depreciation of $37,435,883; accounts payable - plant under construction of $574,862; unamortized pre-1971 investment tax credits of $191,000; accumulated deferred income taxes of $24,865,000; customer deposits of $365,038; and excess profits on purchases from Centel Supply in plant of $1,162,000.

6. That the Company should begin expensing new inside wiring costs on a "flash-cut" basis on or before September 8, 1981, the effective date of the new rates set in this proceeding.

7. That the schedule of depreciation rates as shown in Appendix A is approved.

8. That Central's gross revenues for the test year under present rates, after accounting and pro forma adjustments, are $56,659,619.

9. That the reasonable level of test year intrastate operating revenue deductions after accounting, pro forma, end-of-period, and after-period adjustments is $45,979,401. This amount includes $10,157,412 for investment currently consumed through actual depreciation on an annual basis.

10. That the capital structure for Central Telephone Company which is appropriate for use in this proceeding is:

Long-Term Debt	55.67%
Preferred Stock	3.60%
Common Equity	40.73%
Total	100.00%

11. That the Company's proper embedded costs of long-term debt and preferred stock are 8.77% and 5.47%, respectively. The reasonable rate of return for Central to earn on its common equity is 15.80%. Using the capital structure, heretofore determined, with the cost rates for debt, preferred stock, and common equity yields an overall fair rate of return of 11.51% to be applied to the Company's rate base. Such rate of return will enable Central, 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 compete in the market for capital funds on terms which are reasonable and fair to the customers and to the investors.

12. That Central has an annual gross revenue requirement of $59,859,609. This requires an increase in annual gross revenues of $3,199,990. This increase is required in order for the Company to have a reasonable opportunity to earn the 11.51% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based on 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.

13. That the rates, charges, and regulations filed pursuant to the Commission's August 27, 1981, Notice of Decision and Order and in accordance with the guidelines contained herein, which will produce an increase in annual revenues of $3,199,990, are just and reasonable.

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 were uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this conclusion is contained in the testimony of approximately 29 public witnesses, the testimony and exhibits of Company witnesses Puryear and Kemple, and in the testimony of Public Staff witness Hu. A number of the public witnesses in the Mountain View and Sherrils Ford exchanges testified that their telephone service was not satisfactory. Several witnesses in Asheboro testified that they had encountered problems including "crosstalk," busy circuits, and loud noises while making calls.

Mr. Puryear testified that the Company was vitally concerned about the service it provided, particularly to provide a quality of service that would allow a majority of the customers to have not only a favorable opinion of the Company but also service they could depend on. He cited some indicators of the Company's performance, including "Trouble Reports per 100 Stations," "Service Orders Completed within Five Days," "Appointments Not Met for Company's Reasons," "Primary and Regrade Held Orders," "Operator Speed of Answer on Toll Recording and Directory Assistance," "The Dial Central Office Service Index," and "The Toll Incoming and Outgoing Service Indices for Equipment Blockages and Failures." He pointed out that the above-mentioned indicators have met or surpassed the Commission's standards.

Mr. Hu testified that Central's switching and trunking facilities were in good working condition, that the availability of such services as operator, directory assistance, and repair was adequate, and that the Company has met all but the following two Commission service-related objectives:

1. % Repeated reports of total trouble reports - The Eden District

2. % Out-of Service trouble reports received before 5:00 p.m. carried over - The North Carolina Division.

Witness Hu testified that the Company should make strong efforts to correct these problems. He further testified that the overall quality of service provided by the North Carolina Division of Central Telephone Company is good.

The Commission concludes that the overall quality of service offered by Central is good. However, the Commission recognizes that the service in some areas does not meet the Commission's objectives and concludes that the Company should continue to seek improvement in the "out of service report received before 5:00 p.m., carried over" and "repeat trouble report" objectives; and should keep close watch on the Mountain View Exchange to ensure good service to those customers served by this Exchange.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding is contained in the testimony and exhibits of Company witnesses Bailor and Huber and Public Staff witnesses Porter, Lam, and Paton. The following chart compares the amounts which the Company and the Public Staff contend should be included in the original cost rate base to be used in setting rates in this proceeding.

Item	Company	Public Staff	Difference
Telephone plant in service	$166,486,435	$166,486,435	$ -
Telephone plant under construction	3,603,541	3,603,541	-
Working capital allowance	(64,312)	(64,312)	-
Accounts payable - plant under construction	(574,862)	(574,862)	-
Depreciation reserve	(32,998,282)	(40,618,596)	(7,620,314)
Pre-1971 investment tax credit	(191,000)	(191,000)	-
Deferred taxes	(24,865,000)	(24,865,000)	-
End-of-period customer deposits	(365,038)	(365,038)	-
Excess profits on affiliated sales	-	(1,185,000)	(1,185,000)
Original cost rate base	$111,031,482	$102,226,168	($8,805,314)

The Company and the Public Staff are in agreement on the amounts for telephone plant in service and telephone plant under construction. There being no evidence to the contrary, the Commission concludes that the amounts presented by both the Company and the Public Staff are reasonable and proper.

Although there were diferences in the Companu's and Public Staff's proposals relative to the working capital allowance, accounts payable - plant under construction, pre-1971 investment tax credit, deferred taxes, and end-of-period customer deposits in the testimony and exhibits filed by Company and Public Staff witnesses in this proceeding, the Company has elected in its proposed order not to contest the positions held by the Public Staff with regard to these items. Since there is no disagreement in these amounts proposed by the Public Staff and conceded to by the Company as is shown in the above chart, the

Commission finds a negative working capital allowance of $64,312, accounts payable - plant under construction of $574,862, unamortized investment tax credit of $191,000, accumulated deferred income taxes of $24,865,000, and customer deposits of $365,038 appropriate for use herein.

The first item of difference of $7,620,314 pertains to the accumulated provision for depreciation. The difference between the amounts proposed by Company witness Bailor and Public Staff witness Porter is due to three adjustments made by witness Porter which are listed in the schedule below.

Item	Intrastate Amount
Represcription of depreciation rates	$1,968,923
Known changes after test year	4,437,601
Amortization of inside wiring	1,213,790
Total adjustments to accumulated depreciation	$7,620,314

Public Staff witness Porter's first adjustment of $1,968,923 represents the corollary adjustment to accumulated depreciation resulting from an adjustment to depreciation expense. The adjustment to depreciation expense reflects the effects of bringing depreciation expense to an end-of-period level and the represcription of depreciation rates. Witness Porter testified that the Public Staff and the Company were in agreement on the aforementioned adjustment to depreciation expense. However, opinions diverge regarding the adjustment to accumulated depreciation. In support of the Public Staff's position, Ms. Porter testified that the adjustment to depreciation expense was calculated as if the represcribed depreciation rates had been in effect the entire test year and as if end-of-period plant in service had been in service the entire test year. Ms. Porter continues by asserting that if in fact the depreciation rates had been represcribed at the beginning of the test year and end-of-period plant had been in service the entire test period, as theorized in making the adjustment to depreciation expense, then not only would depreciation expense be greater but accumulated depreciation would also be greater by a like amount. Finally, witness Porter argues that fairness and equity require "that the ratepayer be given the benefit of the additional depreciation in determining an end-of-period level of accumulated depreciation."

The second adjustment made to the accumulated depreciation by Public Staff witness Porter of $4,437,601 focuses on the depreciation expense paid to the Company by its ratepayers subsequent to the end of the test year through April 30, 1981.

In support of her adjustment witness Porter testified:

"Chapter 62-133(b) of the General Statutes of North Carolina states:

`In fixing such rates the Commission shall: (1) Ascertain the reasonable original cost of the public utility's property used and useful, or to be used and useful ... less that portion of the costs which has been consumed by previous use recovered by depreciation expense...'

"The customers of Central Telephone North Carolina have been paying in rates to cover depreciation expense on plant in service at the end of the test period for the months subsequent to the test year. I have increased the reserve for the months October, 1980 through April, 1980 to assure that the ratepayer receives full benefit of the additional depreciation he has paid in. If this is not done, rates will be set which result in the ratepayer paying a return on capital which they have already provided to the company."

The final difference in accumulated depreciation amounting to $1,213,790 relates to the expensing of station connections - inside wiring as ordered by the Federal Communications Commission in March 1981. Both the Public Staff and the Company filed revisions to their original testimony in order to recognize the impact on test period operating income of expensing station connections - inside wiring. Public Staff witness Porter also made a corresponding adjustment to reflect the effect of the depreciation expense adjustment relating to expensing station connections - inside wiring on accumulated depreciation. The reasons advanced by Ms. Porter for making the aforesaid adjustment to accumulated depreciation are the same as previously discussed for adjusting accumulated depreciation to reflect the additional depreciation expense due to an end-of-period adjustment and prescription of depreciation rates.

Company witness Bailor presented rebuttal testimony in opposition to the three previously discussed adjustments of Public Staff witness Porter to accumulated depreciation. Mr. Bailor testified in this regard that "if the Commission accepts the Public Staff's adjustment to the Company's rate base in fixing prospective rates, the Company will never be able to earn the rate of return on its rate base which the Commission allows." Additionally, witness Bailor argues that the Public Staff's adjustments will result in the Company's failure to recover its investment since the Public Staff's methodology assumes recovery of the investment prior to the time it is actually amortized. Mr. Bailor further testified that "The Public Staff in this case is proposing to reduce rate base below the actual rate base at the end of the test year after adjusting revenues and expenses to end of test year levels. This artificially reduces rate base and has the effect of anticipating accretion in earnings because the Company will not be given the opportunity to earn its fair rate of return on its investment at the end of the test year. The Public Staff has not shown any accretion in earnings."

With respect to Public Staff witness Porter's adjustment to increase accumulated depreciation for the effect of the prescription of depreciation rates, Company witness Bailer testified that if such an adjustment was accepted by the Commission then a corollary adjustment to accumulated deferred income taxes should also be made. He testified that Central calculates deferred income taxes on the difference between book depreciation expense and tax depreciation expense and that an increase in depreciation rates would necessarily result in a reduction in deferred income taxes. Consequently, witness Bailor argues that if the prescribed rates had been in effect the entire test year not only would accumulated depreciation be greater but accumulated deferred income taxes would also be a lesser amount by $1,187,830.

The Commission has carefully analyzed all of the evidence presented regarding the accumulated depreciation. It is the Commission's belief that the

objective in this regard is to determine a reasonable and representative level of accumulated depreciation to be deducted from plant in service in arriving at an appropriate end-of-test-period level of investment. Specifically, the Commission has considered the appropriateness of each of the three adjustments proposed by Public Staff witness Porter to accumulated depreciation. The Commission recognizes that many arguments both pro and con have been offered in this proceeding relative to the end-of-period and updating adjustments proposed by Public Staff witness Porter to accumulated depreciation. Ultimately, the question of validity of any methodology must be determined on the basis of whether or not such methodology results in a reasonable and representative level of investment on which to set rates. In the Commission's opinion the appropriate level of accumulated depreciation for use in this proceeding is $37,435,883. Such amount is calculated by adding the updating accumulated depreciation adjustment proposed by witness Porter of $4,437,601 to the accumulated depreciation proposed by the Company of $32,998,282.

The last item of difference in arriving at the appropriate original cost rate base for Central is an adjustment of $1,185,000 made by Public Staff witness Paton to eliminate excess profits on plant purchased by the North Carolina Division of Central Telephone Company from Centel Communications Company - Supply Division (Centel Supply).

Company witnesses Kemple and Huber and Public Staff witness Paton presented testimony on the transactions between Central and the Supply Division of Centel Communications Company, which is a wholly owned subsidiary of Central Telephone and Utilities Corporation as is Central. Company witness Huber testified that Centel Supply purchases, warehouses, and sells equipment and supplies to affiliated telephone companies such as Central Telephone, other nonregulated affiliates, and unaffiliated customers.

With regard to Centel Supply's pricing policy and the nature of the sales relationship between Central and Centel Supply, witness Huber testified as follows:

> "...There is no contract which commits Central Telephone Company to make purchases from the Supply Division. Prices offered to all customers of the Supply Division are very competitive since the volume of business done with affiliated and unaffiliated customers allows the Supply Division to take advantage of volume discounts offered by various manufacturers...
>
> "The only significant difference in trade terms between affiliated and unaffiliated customers is that often unaffiliated customers incur a finance charge if payment is not made within the trade terms of the Supply Division. No such finance charge is imposed on affiliated customers."

Mr. Huber also testified that it is the policy of Centel Supply to sell and distribute materials to affiliated telephone companies at prices which are equal to or less than those which the companies would have to pay for the same or comparable material from other reputable, dependable suppliers. Evidence of the comparability of Centel Supply's prices was supplied by Company witness Kemple

in his Exhibit 1. Kemple Exhibit 1, pages 8 through 12, is a comparison of material prices charged by Centel Supply at September 1980 to prices charged by GTE Automatic Electric Company, Northern Electric Company, and Graybar Electric Company for similar materials at the same date. Mr. Kemple's Exhibit 1 indicates that the prices charged by Centel Supply are parallel to, competitive with, and in some cases less than, the prices charged by the aforementioned comparison companies.

Company witness Kemple also testified that certain advantages are received by Central as a consequence of purchasing from Centel Supply. Such advantages include faster delivery commitments, a lower material and supplies inventory, and additional cost-free capital in the form of deferred Federal income taxes resulting from the filing of a consolidated Federal income tax return.

Public Staff witness Paton also testified regarding the relationship between the Supply Division of Centel Communications Company and Central Telephone Company. Ms. Paton testified that since an affiliated relationship exists between Centel Supply and Central, it is necessary to examine transactions between the companies to determine whether or not the transactions occurred in an arm's-length atmosphere.

In order to make such a determination, Public Staff witness Paton first reviewed the dollar volume of sales purchased by Central's North Carolina Division from Centel Supply. During the period 1967 through the first nine months in 1980 (excluding 1975 and 1976 for which data was not available) the North Carolina Division of Central made approximately 58.02% of its total purchases for equipment and supplies from Centel Supply.

Ms. Paton then reviewed the return on sales, the return on average investment, and the return on average equity for Centel Supply for the period 1967 through the first nine months in 1980. The returns on equity for Centel Supply ranged from a high of 609.84% in 1968 to a low of 16% in the first nine months of 1980.

As a result of the previously described reviews performed by witness Paton, she concluded that a more detailed study involving comparable earnings tests should be made to determine the reasonableness of earnings achieved by Centel Supply on sales to Central. For the period 1967 through 1976 Ms. Paton relied upon comparable earnings tests performed in Docket No. P-10, Sub 369, wherein it was determined that the return on equity of Centel Supply should be limited to 15%, the highest return earned on equity for the comparison companies.

For the period 1977 through September 30, 1980, Public Staff witness Paton performed a comparable earnings test, which compares the equity returns earned by Centel Supply to the returns on equity of similar supply companies not affiliated with a major customer. The supply companies chosen by Ms. Paton were electrical wholesale distributors with sales volumes comparable to Centel Supply which include Hughes Supply (Hughes), Noland Company (Noland), and Raybro Electric Supplies (Raybro). In addition, Ms. Paton testified that she included Graybar Electric Company, Inc. (Graybar), the largest electrical wholesale distributor, in her comparison companies.

The average return on equity for Centel Supply for the period was 22.73% while the average return on equity for the independent companies ranged from 6.20% to 12.79%. Based upon this comparison Ms. Paton concluded that Centel Supply has consistently been able to achieve a higher return on common equity than the independent comparison companies.

In order to determine if any economies of operation accrue to Centel Supply by virtue of its affiliation with its customers, witness Paton analyzed various financial statistics for Centel and the four independent companies. These statistics include gross margin, operating expenses as a percentage of sales, the sales to average assets ratio, the sales to inventory ratio, accounts receivable as a percentage of sales, accounts payable as a percentage of sales, and finally, return on sales. Witness Paton testified that "the previous ratios tended to show that Centel Supply is able to operate with fewer expenses and a smaller investment than the independent companies."

As a result of the foregoing analyses, Ms. Paton concluded that for the period 1977 through the test year the earnings level of sales from Centel Supply to Central - North Carolina should be limited to 15%. Ms. Paton testified the following with regard to limiting Centel Supply's return on equity. "This method of limiting Centel Supply's earnings would in effect recognize the economies inherent as a result of the existence of a captive market, and has the effect of flowing these economies back to the operating companies which make up that captive market. In addition, this method gives the operating telephone companies the price benefit that Centel Supply receives from being able to purchase equipment at distributor prices, which are lower than the prices which the operating telephone companies would have to pay."

The Company through the rebuttal testimony of Company witness Huber took issue with the analyses and conclusions reached by Public Staff witness Paton. Mr. Huber testified regarding the propriety of Ms. Paton's comparable earnings tests and specifically criticized her choice of comparison companies. Having reviewed the annual reports of two of the comparison companies, Company witness Huber testified that in his opinion Hughes Supply and Noland Company were not comparable to Centel Supply due to dissimilar operating characteristics and accounting policies.

The Commission concludes that Centel enjoys economies of operation which are the result of its close affiliation with its customers. The testimony of Company witness Huber makes reference to certain economies of operation enjoyed by Centel Supply. Specifically, Company witness Huber testified that in contrast to the comparison companies Centel Supply makes larger sales to fewer customers and has no manufacturing divisions. Further, Mr. Huber stated that Centel Supply does not require substantial investment in property, plant, and equipment since Centel serves a limited number of large customers from one centralized processing facility and six warehouses and approximately 50% of its sales are drop shipments. Mr. Huber also testified that Centel Supply does not incur any operating expenses for corporate type expenses such as corporate officers, and corporate personnel.

The Commission recognizes that price comparisons are a significant part of any determination of the resonableness of affiliated transactions and that the Company has presented such a comparison which tends to show that the prices

charged by Centel Supply are comparable to prices charged by other supply companies. However, the Commission is not persuaded that price comparisons need be the sole criteria on which the Commission determines that the purchases of Central from Centel Supply have been carried on in an arm's length or a competitive manner. The Commission further concludes that a policy of tracking prices charged by other supply companies to unaffiliated telephone companies ignores economies of operations previously discussed and results in Centel Supply earning returns on equity which are excessive and unreasonable.

The Commission believes it fair and reasonable to permit the supply affiliate to include in transfer prices charged the North Carolina Division of Central Telephone Company a reasonable level of profit. In Docket No. P-10, Sub 369, the Commission found that the transfer prices paid for telephone equipment and supplies by the North Carolina Division of Central Telephone Company to Centel Supply for the period 1967 through 1976 had been unreasonable and excessive to the extent that they produced a return on equity to Centel Supply in excess of 15%. After careful consideration of the matter, the Commission concurs in that decision. For the period 1977 through the test period, the Commission finds that the return on equity for sales made to Central Telephone Company's North Carolina Division by Centel Supply should be limited to the same return on equity found fair for Central in this proceeding of 15.8% (Finding of Fact No. 11). In reaching this decision, the Commission has recognized that certain comparability problems exist in the companies used in the Public Staff's comparable earnings study.

The Commission concludes that the Applicant's net investment in intrastate telephone plant in service should be adjusted to exclude "excess profits" surviving in the net plant accounts at September 30, 1980, in the amount of $1,162,000.

Based on the foregoing, the Commission concludes that the proper level of original cost rate base to be used in this proceeding is $105,431,881 calculated as follows:

Telephone plant in service	$166,486,435
Telephone plant under construction	3,603,541
Accounts payable - plant under construction	(574,862)
Depreciation reserve	(37,435,883)
End-of-period customer deposits	(365,038)
Deferred taxes	(24,865,000)
Pre-1971 investment tax credit	(191,000)
Working capital allowance	(64,312)
Excess profits on affiliated sales	(1,162,000)
Original cost rate base	$105,431,881

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

On March 31, 1981, the Federal Communications Commission (FCC) amended Part 31 of the Uniform System of Accounts to require Class A and Class B telephone companies to separate Account 232, station connections into two subclasses: (1) station connections - inside wiring and (2) station connections

- other, and to begin expensing the new inside wiring portion of station connection costs. The expensing of the new inside wiring costs is to be phased-in over four years (1981-1984) unless, with State regulatory approval, a company elects the "flash-cut" option whereby the company expenses all new inside wiring costs immediately. These FCC revisions effective October 1, 1981, also provide for the recovery of the embedded investment related to prior capitalization of inside wiring over a 10-year amortization period.

Central requested to expense new inside wiring costs using the flash-cut methodology and amortized the embedded investment in inside wiring over 10 years. The evidence to justify the Company's selection of the flash-cut instead of the "phase-in" approach is presented in the testimonies of Company witness Bailor and Public Staff witness Sutton. Witness Bailor testified that the flash-cut arrangement produces a larger local service revenue requirement in the first two years than the phase-in option, but the phase-in revenue requirement is greater in all the remaining years of the 13-year study and in total.

Using a present worth analysis of the annual cost, witness Sutton found the flash-cut procedure to be the more frugal selection and thus concurred with Mr. Bailor's viewpoint that the flash-cut is the more economically attractive alternative. However, witness Sutton stated that other considerations must be given before the Public Staff can establish its position regarding the Company's selection of the flash-cut. Specifically, he stated that the Public Staff must consider the impact of the additional revenue requirements resulting from the selection of the flash-cut as well as any other additional revenue requirement on the rate structure of the Company. Summarizing the position of the Public Staff, Witness Sutton stated:

> "In view of the long-term economic advantage of flash-cut over phase-in and considering the Public Staff's determination of the total additional revenue requirements in this case, we concluded that the flash-cut for station connection expensing would be tolerable in this instance. A considerably greater additional revenue requirement than that found necessary by the Public Staff could have made `flash-cut' infeasible."

Further, witness Sutton stated that the Commission should order Central to begin expensing on or before the effective date of the new rates established in this case.

Based on the foregoing considerations, the Commission concurs with witnesses Bailor and Sutton that the Company should flash-cut new inside wiring costs and amortize the embedded investment related to prior capitalization of inside wiring over a 10-year period. Therefore, the Commission authorizes Central to implement the flash-cut approach for expensing new inside wiring costs and orders the Company to begin expensing on or before September 8, 1981, the effective date of the new rates set in this case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence as to the appropriate depreciation rates which should be applied to the Company's property accounts was presented by Company witness Fournier and Public Staff witness Turner. Witness Fournier testified on his depreciation study and presented the Company's proposal to revise its depreciation rates.

Witness Turner testified as to his review and evaluation of the Company's depreciation study. As a result of this evaluation, Mr. Turner recommended alternative rates of 9.6% and 8.0% for station apparatus and station connections, respectively.

At the time of the hearing, Mr. Fournier revised his recommended rate of 12% for station apparatus to agree with the rate of 9.6% recommended by Public Staff witness Turner. Both the Company and the Public Staff revised their recommended rates for station connections of 13.4% and 8.0%, respectively, due to the Company's subsequent request on May 29, 1981, to follow the flash-cut procedure for expensing station connections - new inside wiring. Witness Turner testified that the rate of 8.0% would not be proper if the Commission approved expensing of station connections which requires the division of the station connections account into two parts: station connections - inside wiring and station connections other. The inside wiring portion would be expensed and the other portion would be capitalized. For this capitalized portion, witness Turner recommended a depreciation rate of 5%, which is the rate that has been accepted by the FCC and concurred with by this Commission. The Company agreed with this recommendation.

Based on the foregoing and the Commission's approval of the flash-cut option for Central as discussed in Evidence and Conclusions for Finding of Fact No. 6, the Commission approves the schedule of depreciation rates shown in Appendix A of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witnesses Bailor and Moncho and Public Staff witnesses Gerringer, Porter, and Sutton testified concerning the representative end-of-period level of operating revenues. The following schedule presents the respective positions of the Company and the Public Staff in their proposed orders.

Item	Company	Public Staff	Difference
Local service revenues	$33,683,909	$33,683,909	$ -
Toll service revenues	21,712,076	20,591,230	(1,120,846)
Miscellaneous revenues	209,160	2,121,374	1,912,214
Gross operating revenues	55,605,145	56,396,513	791,368
Uncollectibles	(64,381)	(64,637)	(256)
Net operating revenues	$55,540,764	$56,331,876	$ 791,112

Both parties agree that the end-of-period level of local service revenues amounts to $33,683,909. There being no evidence to the contrary, the Commission concurs.

The first area of difference concerns the appropriate level of intrastate toll revenues. Witness Gerringer used the method that consists of taking the format for calculating toll settlements for connecting companies settling with Southern Bell on an actual cost basis and making an intrastate toll settlement calculation for the entire test period based on end-of-test-period operating results apportioned to intrastate toll using appropriate intrastate toll allocation factors. In this calculation Mr. Gerringer used the Company's determination of its intrastate toll net investment and operating expenses

(including taxes other than income), which had been restated or adjusted by the Company to a going level at September 30, 1980, as if they had been in effect throughout the entire test period.

Witness Gerringer's end-of-test-period toll calculation which was based on an 11.69% intrastate toll settlement ratio produced a $21,123,000 level of intrastate toll revenues from message toll, WATS, and B-I (Bell to Independent) private line services. To this amount Mr. Gerringer added $82,000 for noncost study type intrastate toll revenues not developed through his settlement calculation. Further, consistent with the Commission Order issued April 3, 1981, in the last toll rate case in Docket No. P-100, Sub 53, he added intrastate toll revenues of $164,000. By adding these three amounts, the preliminary representative level of intrastate toll revenues for the Company at the end of the test period, September 30, 1980, was $21,369,000. During the hearing the Company agreed with Public Staff witness Gerringer's calculation of $21,369,000 as the basic level of end-of-test-period intrastate toll revenues. There being no disagreement between the parties, the Commission agrees with this initial toll revenue amount.

However, this preliminary level of toll revenues was adjusted to reflect the Public Staff Accounting Division adjustments to expenses, taxes (other than income), net investment, and other items in which the intrastate toll portion enters into the calculation of the intrastate toll settlements. Thus, the Commission and the Company likewise have to make adjustments to this initial toll revenue amount to recognize the impact of their acceptance and/or rejection of these Public Staff accounting adjustments. As a result of differences in opinion between the Company and the Public Staff as to the appropriateness of these adjustments to rate base and operating expenses, there exists a difference of $1,120,846 in toll service revenues. In the determination of the rate base (Evidence and Conclusions for Finding of Fact No. 5) and the proper level of operating revenue deductions (Evidence and Conclusions for Finding of Fact No. 9), the Commission approves only part of these adjustments and therefore concludes that $20,854,336 is the proper amount of toll service revenues to be included in this proceeding.

The second area of controversy is a $1,912,214 difference in miscellaneous revenues. The major portion of this difference is the result of the Company's removal of directory advertising revenues from miscellaneous service revenues in the amount of $1,784,208.

Company witness Moncho testified that the operation of the yellow page directory was completely separate from the regulated operations and that the rates charged for advertisements in the yellow pages were nonregulated. Witness Moncho further stated, through rebuttal testimony, that the provision of directory yellow pages is not essential to the provision of adequate telephone service to the public. Mr. Moncho also stated that there is competition in Central's service area from competing directory companies. Upon cross-examination of witness Moncho, it was determined that the competitive directories were city directories, the majority of which were not distributed to households or businesses.

Public Staff witness Porter testified to the elimination of the Company's proposed adjustment to remove directory yellow page advertising from the

regulated sector. Witness Porter stated that yellow pages are an integral part of telephone service. In Ms. Porter's opinion, the origination, the use, and the market for yellow pages are directly related to the telephone itself. To separate the two, according to Ms. Porter, would create an inequitable situation for the ratepayer who is providing the market for yellow pages yet receiving no benefits. Witness Porter further stated that there was a lack of competition in Central's service area.

The Commission is aware that yellow page advertising is in competition with advertising dollars which are spent on other advertising media, such as electronic yellow page systems, newspapers, television, radio, and other competitive media; but, based on the evidence presented, there is presently no substantial competition posing a threat to Central's advertising market in North Carolina. The Commission recognizes that there is a movement toward the separation of ancillary services from the regulated area in the telephone industry. However, the classified directory, in which advertising appears, is an integral part of providing adequate telephone service; thus, the absence of the classified directory would diminish the value of telephone service to the Company's customers. Over the years this Commission has consistently included directory advertising revenues and expenses in determining cost of service of telephone companies in rate-making proceedings.

Based on the foregoing and the entire evidence of record, the Commission concludes that revenues and costs associated with Central's directory advertising operations should be included in the test year for purposes of this proceeding.

The remaining difference in miscellaneous service revenues is due to Public Staff witness Sutton's adjustment to bring miscellaneous revenues to an end-of-period level. Witness Sutton used a regression analysis approach to determine the representative level of miscellaneous revenues for the 12-month period ending September 30, 1980. An adjustment to increase miscellaneous revenues in the amount of $142,008 was recommended by witness Sutton to bring these revenues to an end-of-period level. To determine this amount witness Sutton used total miscellaneous revenues which are a composite of Accounts 521 (Telegraph Commission), 523 (Directory Advertising and Sales), 524 (Rent Revenue), and 526 (Other Operating Revenues).

In their proposed order the Company apparently included a small portion of the $142,008 adjustment made by witness Sutton to bring its miscellaneous revenue number to an end-of-period level, and excluded the portion of Mr. Sutton's adjustment which they determined to be the result of including directory advertising revenues.

The Commission agrees with witness Sutton that miscellaneous service revenues should be brought to an end-of-period level. Based upon the foregoing discussion and the Commission's decision regarding directory advertising revenues, the Commission concludes that the proper level of end-of-period miscellaneous service revenues is $2,121,374.

The final item of disagreement in operating revenues involves the appropriate level of uncollectible operating revenues. There exists a $256 difference in the amounts proposed by the Company and the Public Staff for uncollectible

revenues, which is due to the Public Staff's adjustment to increase uncollectible revenues for the effect of witness Sutton's adjustment to miscellaneous revenues.

The Commission finds that uncollectible operating revenues should be adjusted to an end-of-period level based upon the ratio developed by Public Staff witness Porter of .1804% and the end-of-period level of local service and miscellaneous revenues heretofore found proper. Consequently, the Commission concludes that the appropriate end-of-period level of uncollectible revenues is $64,637.

In summary, the Commission concludes that the appropriate level of gross operating revenues under present rates is $56,659,619. This consists of local service revenues of $33,683,909, toll service revenues of $20,854,336, and miscellaneous revenues of $2,121,374. The level of net operating revenues is $56,594,982 with uncollectible revenues of $64,637 taken into account.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Bailor and Public Staff witness Porter presented testimony and exhibits showing the level of intrastate operating revenue deductions to be used in this proceeding. According to the proposed orders of the Company and the Public Staff their positions are summarized as follows:

Item	Company	Public Staff	Difference
Operating expenses	$35,826,270	$34,701,629	$(1,124,641)
Interest on customer deposits	21,595	21,595	-
Other operating taxes	6,211,063	6,194,351	(16,712)
Income taxes - State and Federal	4,447,286	4,952,719	505,433
Total operating revenue deductions	$46,506,214	$45,870,294	$(635,920)

With respect to interest on customer deposits the Company and the Public Staff are in agreement, thus the Commission concurs that $21,595 is the proper amount for interest on customer deposits.

The first item of difference in the operating revenue deductions stated above concerns operating expenses. This $1,124,641 difference is comprised of the following adjustments made by Public Staff witness Porter:

Item No.	Item	Amount
1.	Adjustment to maintenance, traffic, commercial and general office expenses for salaries and wages	$ (899,287)
2.	Adjustment to maintenance expense for excess profits on purchases from Centel Supply Company	(2,521)
3.	Adjustment to maintenance expense for expensing of station connections - inside wiring	(45,905)
4.	Adjustment to maintenance, traffic, commercial and general office expenses for compensated absences	(330,997)
5.	Adjustment to depreciation expense for excess profits on purchases from Centel Supply Company	(73,660)
6.	Adjustment to depreciation expense for the special amortization of Account 232 - station connections - other	(109,625)
7.	Adjustment to commercial expense for yellow page directory advertising	353,122
8.	Adjustment to other expense for accident and sick benefits and dental insurance	(15,768)
	TOTAL	$(1,124,641)

Item 1 results from the elimination of the Company's adjustment to maintenance, traffic, commercial, and general office expenses for the pro forma wage increase scheduled to be effective in August 1981 and an estimated projected hiring of additional employees beyond the end of the test year, between September 30, 1980, and December 31, 1981.

Company witness Kemple testified that the Company's employees are represented by two unions, the International Brotherhood of Electrical Workers (IBEW) representing 63% of all employees and the Communications Workers of America (CWA) representing the remaining union employees. Witness Kemple stated that both unions negotiate three-year contracts with the Company which expire in the same year, in this case May and August of 1981. In May 1981 a new agreement with the CWA was negotiated and resulted in a 10% increase at the top of each wage schedule and a 9.8% increase overall. Mr. Kemple pointed out that, historically, the IBEW wage increases track extremely close to the CWA increases: in each of the five years from 1976 through 1980 the IBEW wage increases were the same or very slightly higher than the CWA increases. Further, the CWA increase negotiated in May 1981 established the parameters of the IBEW contract negotiations in August 1981 and thus Mr. Kemple felt he could estimate the amount of the August 1, 1981, wage increase with reasonable certainty.

Public Staff witness Porter testified that adjustments to reflect the pro forma wage increase scheduled to be effective in August 1981 and the projected increase in the labor force should be eliminated on the basis that such amounts were estimates and were anticipated to occur beyond the close of the hearing. She further stated that the level of wages included in operating expenses as proposed by the Public Staff was representative, giving effect to test year wages and to pro forma wage increases which became effective in April and May 1981 at the level of employees at those dates. In witness Porter's opinion, allowing the pro forma wage increases beyond the close of the hearing would be acting against G.S. 62-133(c) which allows the inclusion of actual changes through the close of the hearing. In addition, she offered testimony concerning

the level of employees during subsequent months to the test year as related to the projected hirings. She testified that the level of employees had fluctuated every month showing no steady trend of growth. Company witness Bailor upon cross-examination agreed that the August increase was not known, and the contract had not been signed. Based upon the evidence presented by both parties, the Commission concludes that it is improper to include the estimated August 1981 wage increase and thus, finds it is appropriate to decrease wages proposed by the Company by $899,287.

Items 2 and 5 are adjustments to maintenance expense and depreciation expense resulting from excess profits on purchases from Centel Supply Company which were expensed during the test year. In Evidence and Conclusions for Finding of Fact No. 5, the Commission has found that the profits of Centel Supply Company on sales to Central Telephone Company which generated more than a 15% return on equity in the years between 1967 - 1976 and profits above a 15.8% return on equity between the years of 1977 - the first nine months of 1980 were excessive. Consistent with that decision, the Commission finds that an adjustment of $1,566 to exclude excess profits on maintenance materials purchased from Centel Supply Company and a $72,354 adjustment to eliminate the depreciation expense associated with the excess profits in the plant accounts are proper.

Item 3 is an adjustment to maintenance expense of $45,905 related to the expensing of station connections - inside wiring. Both Public Staff witness Porter and Company witness Bailor adjusted maintenance expense to reflect the recent FCC ruling regarding expensing of inside wiring rather than capitalizing and depreciating it. The difference of $45,905 is due to the August 1, 1981, pro forma wage adjustments discussed earlier. In accordance with the Commission's decision to eliminate the pro forma wage increase as recommended by witness Porter, the Commission finds that it is proper to decrease maintenance expense by $45,905 to eliminate the impact of the August 1981 wage increase on the expensing of inside wiring.

Item 4 results from the Company's and the Public Staff's different opinions on the treatment of the expense for compensated absences resulting from "Statement of Financial Accounting Standards No. 43" which was released in November 1980 and requires an employer to accrue a liability for earned vacation benefits which employees have not yet taken. This adjustment consists of two parts:

1. To recognize the accrual of the expense for compensated absences determined as of September 30, 1979. This amounts to $1,114,253 on a combined basis which Company witness Bailor proposes to amortize over three years for rate-making purposes. It results in an increase in test year wage costs of $371,418.

2. To recognize the expense for compensated absences during the test year. This results in an additional test year wage cost of $147,077 on a combined basis for financial reporting purposes.

Company witness Bailor reduces the sum of these two wage costs by a nonutility portion applicable to direct sales and construction programs and allocates the balance to intrastate operations resulting in a $330,997 increase in test year operating expense.

Public Staff witness Porter did not accept this adjustment for a number of reasons. She testified that the requirements of Statement 43 will not materially impact Central's cost of service for rate-making purposes on a going level basis. It was witness Porter's opinion that once the initial liability for compensated absences is recognized in the earliest possible year, only changes in wage levels, changes in the level of employees, and changes in vacation eligibility can impact expenses in any year. She further stated that the Company has recovered its costs in prior years and will recover its costs in future years, since rates are set to cover a representative level of wages including vacation time. Witness Porter reported that the vast majority of Central's employees must have taken their eligible vacations during the test year, otherwise they would have lost it due to Company policy. She adjusted actual test year wages, which included wages for compensated absences, to reflect wage increases which went into effect during the test year as if they had been in effect for the entire year. And she increased actual wage expense for increases which occurred subsequent to the test year on April 2 and May 27, 1981, as if they too had been in effect for the entire test year. Since these adjustments were based on a representative level of employees, Ms. Porter remarked that she had included in Central's cost of service a level of wages which will cover their wage costs, including compensated absences on a going level basis.

Ms. Porter stated that she considers the amortization of the accrual for compensated absences to be applicable to prior years and nonrecurring. She believes that the inclusion of this cost in the test year will result in current and future ratepayers paying a cost incurred in the past which is not representative of Central's on-going level of wages. In support of her argument witness Porter cited the following quotes:

Statement 43 specifically states that:

> "Accounting changes adopted to conform to this statement shall be applied retroactively.... If retroactive restatement of all years presented is not practicable, the financial statements presented shall be restated for as many consecutive years as practicable and the cumulative effect of applying the Statement shall be included in determining net income of the earliest year restated...
>
> "The addendum to APB Opinion No. 2, Accounting for the Investment Credit states ... differences may arise in the application of generally accepted accounting principles as between regulated and nonregulated businesses, because of the effect in regulated businesses of ratemaking process..."

Witness Bailor through rebuttal testimony made the following statements regarding the accrual for compensated absences:

> "... It is one thing for a Commission to allow recovery of expenses over a period different than the period the same expenses are recorded in an unregulated enterprise, but it is entirely something else when a Commission totally disallows an expense for ratemaking purposes. The addendum [to APB Opinion No. 2] does not provide for the use of a different set of accounting principles by utilities than those

accounting principles used in unregulated enterprises. It only recognizes that rate regulation puts another economic dimension in the timing of the recognition of revenue and expenses.

"In my proposed adjustment to recover the costs associated with the Company's required vacation accrual, I am proposing recovery of the liability over future periods because it is an actual liability which should be recorded under generally accepted accounting principles, it is a cost of providing service in North Carolina and since the Company is regulated, this is the only means for it to recover this cost from its ratepayers. If this procedure is approved, the Company will record the expenses as proposed thereby recording the expenses in the same periods that the related revenues are recorded..."

Upon review of the evidence the Commission concludes that only the expense for compensated absences occurring in the test year amounting to $93,891 is properly includable in test-period operating expenses. Such amount reflects changes in wage levels, changes in the number of employees, changes in vacation eligibility requirements, changes in policies concerning vacation days to be carried over at year's end, and changes in the frequency of vacationing for the test period. The previously enumerated factors will undoubtedly alter or vary from year to year; therefore, the test year expense amount is viewed by the Commission to be of a recurring nature. For example, it is reasonable to assume that wage increases will be allowed in the future which will necessarily result in increased expenses for compensated absences. Alternatively, the accrual of expenses for compensated absences for the period through September 30, 1979, is considered by the Commission to be nonrecurring. Further, in the Commission's opinion the expenses for compensated absences for the period through September 30, 1979, the year prior to the test year, relate to prior periods.

Item 6 relates to the Company's request for a special amortization of the other portion of Account 232 - station connections. With respect to the other costs included in Account 232, which are the costs of drop and block wires and protectors, the Public Staff proposed and the Company agreed to a 5% depreciation rate as previously discussed in Evidence and Conclusions for Finding of Fact No. 7. However, the Public Staff disagreed with the Company's proposal for a special amortization of Account 232 - station connections - other.

In support of the Company's request for additional depreciation for the new station connections account, Company witness Fournier testified that the nature of the other investment remaining in Account 232 now gives that account the characteristics of a cable account, which due to its age requires a reserve. To calculate this theoretical reserve balance which witness Fournier finds is now required for Account 232, he found the ratio of the amounts in the depreciation reserve accounts for aerial and buried cable to the amounts in the plant accounts for aerial and buried cable. This ratio was then applied to the Company's investment in drop and block wires and protectors to determine the amount of the reserve requirement for that equipment. It is this reserve requirement of $1,353,540 on a combined basis which the Company proposed to be recovered via amortization along with the 10-year amortization of the embedded cost of inside wiring, or, in other words, by a special amortization of $135,354 annually. Accordingly, this special annual amortization expense is $109,625 for the intrastate operations.

Public Staff witness Turner testified that this is not an appropriate expense. He referred to comments filed with the FCC by the Commission and the Public Staff in which it was concluded that the debit/credit approach to assigning a depreciation reserve to specific plant accounts, where the reserve has not been maintained by plant accounts, was preferred to the creation of a reserve through theoretical means. Mr. Turner stated that if the Company maintains an actual reserve based on debits and credits which Central does, then this reserve, whatever it is, should be used instead of creating a reserve through some theoretical means. In addition, Mr. Turner stated that based on his analysis of the FCC's order of March 31, 1981, in Docket No. 79-105 allowing the expensing of inside wiring of station connections, that zero reserve is assigned to the station connections - inside wiring subaccount and the existing reserve to the station connections - other subaccount. It is Mr. Turner's opinion that the order cannot be construed to permit the creation of a theoretical reserve for the station connections - other subaccount.

Based on the foregoing, the Commission concludes that the debit/credit approach to assigning the depreciation reserve to specific plant accounts is prefered to using some theoretical means. It is also noted that the Company assigns its reserve by plant account using the debit/credit approach. In the Commission's opinion the FCC's order of March 31, 1981, in Docket No. 79-105 allowing expensing of the inside wiring portion of station connections does not require creation of a theoretical reserve. Therefore, the Commission concludes that the special amortization of Account 232 - station connections - other of $109,625 is not appropriate.

Item 7 reflects the treatment accorded yellow page directory operations. As discussed earlier, the Commission's position concerning directory yellow pages is that they should be included in the current proceeding on the basis that they are an integral part of providing telephone service. It is, therefore, proper to increase commercial expense in the amount of $353,122 to include all expenses associated with directory yellow pages and to annualize these expenses by the main station growth factor of 1.0148, a factor proposed by the Company and agreed to by the Public Staff.

Item 8 concerns the proper amount of expense for accident and sick benefits and dental insurance. Witness Porter offered testimony stating that these expenses are considered employee benefits and are directly related to the level of wages. Since the Commission agreed to Ms. Porter's adjustment to eliminate pro forma wage increases for August 1981 and projected labor force increases, it is proper to eliminate associated benefits relating to those wages. It is the opinion of the Commission, therefore, that the elimination of accident and sick benefits and dental insurance totaling $15,768 is necessary to arrive at a representative level of other expense for use in this proceeding.

The Commission concludes that the proper amount of ope ting expenses to be used in this proceeding is $34,797,782 which is composed of maintenance expense ($11,631,616), depreciation expense ($10,157,412), traffic expense ($3,356,611), commercial expense ($3,818,889), general office expense ($4,017,646), and other expenses ($1,815,608).

The second component of operating revenue deductions on which the witnesses disagree is operating taxes - other than income taxes. This difference is outlined below:

Item	Company	Public Staff	Difference
Gross receipts tax	$3,332,446	$3,379,913	$(47,467)
Property tax	1,659,190	1,659,190	-
Payroll tax	1,209,830	1,145,651	64,179
Other tax	9,597	9,597	-
Total other operating taxes	$6,211,063	$6,194,351	$ 16,712

The first area of difference concerns gross receipts taxes. This $47,467 adjustment by the Public Staff results from the difference in the calculations by the Company and the Public Staff of the proper amount of net operating revenues which is used to determine gross receipts taxes. The Commission concludes that the proper level of gross receipts tax is $3,395,699, based on end-of-period gross operating revenues of $56,659,619 less uncollectible revenues of $64,637 which were the amounts found fair by the Commission in the discussion in Evidence and Conclusions for Finding of Fact No. 8.

The second area of difference deals with the proper level of payroll taxes. Public Staff witness Porter adjusted payroll taxes to eliminate the taxes associated with the pro forma wage increase for August 1981 and the projected labor force increase. The Commission, in concurring with witness Porter's wage adjustment, finds it proper to likewise adjust payroll taxes related to those wage increases disallowed. The proper level of payroll tax is, therefore, $1,145,651.

There being no disagreements on the amount of property taxes and other taxes, the Commission agrees that these balances are correct and thus finds that the proper amount of total operating taxes other than income taxes is $6,210,137.

The remaining operating revenue deduction upon which the witnesses differ is income taxes - State and Federal. Although the witnesses used the same statutory tax rates, their resulting tax amounts were not equal due to the different levels of operating revenues and operating revenue deductions claimed by each party in this proceeding. The Commission finds the proper amount of State income taxes to be $676,463 and Federal income taxes to be $4,273,424 for a total of $4,949,887. These levels of taxes are based upon revenues and expenses heretofore found proper by the Commission.

In summary, the Commission concludes that the appropriate level of intrastate operating revenue deductions is $45,979,401. This total may be calculated as follows:

Item	Amount
Maintenance	$11,631,616
Depreciation and amortization	10,157,412
Traffic	3,356,611
Commercial	3,818,889
General office	4,017,646
Other expenses	1,815,608
Operating taxes - other than income taxes	6,210,137
Income taxes - State and Federal	4,949,887
Interest on customer deposits	21,595
Total operating revenue deductions	$45,979,401

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 11

Three witnesses testified regarding the cost of capital and the capital structure of Central Telephone Company. The Company presented Thomas A. Owens, Jr., Vice President and Chief Financial Officer of Central Telephone & Utilities Corporation, and Dr. Charles F. Phillips, Jr., Professor of Economics at Washington and Lee University. James D. Seabolt, a staff economist, was presented by the Public Staff. In addition, the Company offered rebuttal testimony by both witnesses on the estimation of the cost of capital and the capital structure presented by Mr. Seabolt.

The recommendation of the Company as set forth in its proposed order was for the use of the objective capital structure of the North Carolina Division of Central Telephone Company at September 30, 1980, which was 57% common equity with a cost rate of 16.00% and 43% long-term debt with a cost rate of 8.39%. As a result of this capital structure and these cost rates, the Company requested that they be granted the opportunity to earn an overall rate of return of 12.73%. This capital structure is very similar to the corporate capital structure of Central Telephone, which also contains 57% common equity. Mr. Owens testified that an objective capital structure for Central Telephone's operations in North Carolina was proposed because Central Telephone's corporate capital structure reflects a composite of varying business risks posed by operations in Nevada, Iowa, and Minnesota, as well as North Carolina. Mr. Owens further stated that the use of the objective divisional capital structure is consistent with the determination of jurisdictional rate base, revenues and expenses, and lowers the cost of debt assigned to North Carolina operations. Witness Owens remarked that a capital structure comprised of 57% common equity reflects the increased business risk of telephone companies due to increasing competition, technological changes, and the uncertainties brought on by inflation.

To determine the Company's cost of equity, Mr. Owens and Dr. Phillips used comparable earnings approaches. Because of the limited information available for small telephone operating companies, Mr. Owens used the five largest independent telephone companies as a benchmark and found that for the period 1975 through 1979, their average return on book equity was 15.3%, while the average market return was 14.2%. These historic returns were then adjusted for inflation by two methods. Under the first method, the real book and market returns on equity were determined by subtracting the average inflation rate during 1975 through 1979. Thus, adjusted for inflation the real returns on book and market equity were 7.2% and 8.1%. The expectation of future inflation, in

the range of 10% to 11%, was added to the real returns to arrive at a cost of equity in the range of 17.2% to 18.2% on book return data and 16.1% to 17.1% on market return data. The second method calculated the risk premium of telephone stock over A rated utility bonds, which was found to be 5.7% on book return and 4.6% on market. The expected bond yields of 11.4% to 12.4% were added to the risk premium on common equity, to arrive at a cost of equity between 17.1% and 18.1% and between 16% and 17% for book and market return data.

As a result of these methods, Mr. Owens concluded that the cost of equity for the large telephone companies was between 16% and 18.2% and that, given the expectations of inflation at the time of the hearing, it is at least 18%. He testified that Central Telephone's cost of equity is slightly lower for three reasons: (1) it is an operating company that owns income properties, not just investments in subsidiaries; (2) the cost of equity of the large independents is affected by their unregulated business; and (3) most importantly, Central Telephone has an equity ratio of 57%, which is higher than the equity ratios of the companies used and produces less financial risk.

Company witness Phillips computed the average returns on common equity since 1965 for Moody's 24 Utilities, Standard & Poor's 400 Industrials and the five largest independent telephone companies. The computations of the average book equity returns for these groups show that from 1970 to 1974, industrial earnings increased from 10.4% to 14.8%. Due to recession, industrial earnings decreased in 1975 to 12.4%, but rose to 14.5% in 1976, 14.6% in 1977, 15.2% in 1978, and to 17.3% in 1979. In contrast the rate of return earned on equity for Moody's 24 Utilities declined from 11.1% in 1970 to 10.4% in 1975, rose to 11.1% in 1977, declined to 10.8% in 1978, and rose to 11.1% in 1979. On the other hand, the large independent telephone companies in recent years have earned returns on common equity more in line with the earnings of industrial enterprises. In the period 1975 through 1979 returns on common equity of the five largest independent telephone companies averaged 15.3% and from 1977 through 1979 those returns have been 15.5%, 16.4%, and 16.2%.

Dr. Phillips also analyzed the relative financial risks between industrials and electric utilities and between telephone and electric utilities and concluded that investors have reappraised upward the relative financial risk of telephone utilities vis-a-vis industrial enterprises due to the growth of competition, inflation, technological changes, and regulation. Based on these studies, he arrived at a 16% cost of equity for Central Telephone by averaging the industrials' 1979 earnings of 17.3% and their projected 1980 earnings of 14.7%. He also testified that new long-term debt would cost Central Telephone at least 14.50%, thus, a return on common equity of 16.00% would represent a spread of only 1.50 percentage points, while a spread of 3.00 percentage points would not be unreasonable in view of Central Telephone's financial risk.

Public Staff witness Seabolt testified that the overall rate of return which North Carolina Centel should be allowed to earn was 11.33%. His recommendation was derived using the consolidated capital structure of Central Telephone & Utilities with subsidiaries (Centel) which owns all the common equity in Central Telephone Company. Witness Seabolt testified that the consolidated capital structure provides a basis for identifying the equity investor in the marketplace and it recognizes all the debt and equity in the Centel system. Witness Seabolt utilized the consolidated capital structure which is composed of

40.73% common stock at a cost of 15.34%, 3.60% preferred stock at an embedded cost of 5.47%, and 55.67% long-term debt at an embedded cost of 8.77%. Witness Seabolt derived his common equity cost estimate using two methods: the Discounted Cash Flow (DCF) model and the Capital Asset Pricing Model (CAPM). In the DCF model, witness Seabolt used a set of 30 firms having comparable betas, Value Line safety rankings, and Moody's bond ratings and derived an equity cost of 16.09%. Using the CAPM, witness Seabolt estimated the cost of equity to be 14.52%. From these analyses, he concluded that a reasonable cost of equity is 15.30%. To this estimate, witness Seabolt added four basis points for flotation cost in arriving at his final estimate of 15.34%. Combining this equity cost estimate with the consolidated capital structure ratios and associated embedded cost rates produced witness Seabolt's recommended 11.33% overall rate of return.

On cross-examination, witness Seabolt was questioned on his use of the consolidated capital structure as opposed to Central's North Carolina Division capital structure. He testified that due to the Commission's ruling in the last Southern Bell case, the last Carolina Telephone Company case, and the last Western Telephone and Westco Telephone Companies case, wherein the Commission adopted the consolidated capital structure, he recommended that the consolidated capital structure of Centel be employed in this proceeding. He further testified that many aspects of North Carolina Centel were controlled by Centel, including the capital structure; that the executives of North Carolina Centel were officers of Centel; that accounting records for North Carolina Centel are kept by Central Telephone Company; that financial and legal assistance comes from Centel; and that they purchase equipment through Centel's supply division.

Company witness Phillips testified in rebuttal to the capital structure and equity cost testimony of Public Staff witness Seabolt. Dr. Phillips testified that the consolidated capital structure of Centel is inappropriate for use in deriving the cost of capital for Centel. He stated that the risks between parent and subsidiary are not similar, citing that Centel is a diversified telecommunications firm. Company witness Owens also testified in rebuttal to the capital structure and equity cost testimony of Public Staff witness Seabolt. Mr. Owens testified that the consolidated capital structure of Centel is inappropriate for this proceeding because: (1) the subsidiaries are not comparable and (2) even though the parent provides all of the subsidiaries equity capital, it does not guarantee the long-term debt of the subsidiaries. Both Mr. Owens and Dr. Phillips testified that if Centel's consolidated capital structure and capital costs are used to determine Central Telephone's fair rate of return, then the cost of equity should be at least 18%. This estimate of Centel's current cost of equity was based on (1) the current cost of debt, with a risk premium of at least 2.50 percentage points, (2) a DCF analysis using Mr. Seabolt's data for Centel, and (3) a DCF analysis using four of the firms selected by Mr. Seabolt which have all three of Mr. Seabolt's risk dimensions in common.

After considering all the evidence presented by the parties on this issue, it is evident that the central issue to be resolved is the impact if any of the affiliated parent-subsidiary relationship to be considered in arriving at a fair rate of return for Central. The components of a fair rate of return which is allowed on rate base are the cost rates for the components of the capital structure weighted by their respective ratios in the capital structure. The

full or partial impact of Central's affiliation may be reflected by use of a consolidated capital structure; 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 these. In arriving at a fair rate of return for Central in this proceeding, the alternatives with which the Commission is faced are recognition of no benefits associated with the affiliation between Centel and Central as recommended by the Company or recognition of the impact of Central's affiliation in part through use of a consolidated capital structure as proposed by the Public Staff.

It is the Commission's opinion that the affiliated relationship must be considered in arriving at a fair rate of return for Central. The Commission concludes that Central Telephone Company is not an autonomous corporation and that it does derive a benefit from the holding company form of structure in the financing of its operations. Based upon the foregoing and the entire record in this docket, the Commission finds that the Central Telephone & Utilities Corporation with subsidiaries' consolidated capital structure (excluding cost-free capital and JDIC) is the reasonable capital structure which is appropriate for use in this proceeding and is as follows:

Item	Percent
Long-term debt	55.67%
Preferred stock	3.60%
Common equity	40.73%
Total	100.00%

The Commission further concludes that the reasonable embedded cost rates to be associated with debt and preferred stock are the actual embedded cost rates of Central Telephone & Utilities Corporation and subsidiaries of 8.77% and 5.47%, respectively.

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, aslthey then exist,etohmaintainsitsof the 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. 277, 206 S.E. 2d 269 (1974)."

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the fair rate of return that North Carolina Central Telephone Company should have an opportunity to earn on the original cost of its rate base is 11.51%. Employing the Central Telephone & Utilities Corporation and subsidiaries' consolidated capital structure and associated costs, such fair rate of return will yield a fair return on common equity of approximately 15.80%.

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 to discharge its obligations and to achieve and maintain a high level of service to the public.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Central Telephone Company should be afforded an opportunity to earn.

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 the conclusions heretofore and herein made by the Commission.

TELEPHONE

SCHEDULE I
CENTRAL TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
For the Test Year Ended September 30, 1980

Item	Present Rates	Increase Approved	Approved Rates
Operating Revenues			
Local service	$33,683,909	$3,199,990	$36,883,899
Toll service	20,854,336	-	20,854,336
Miscellaneous	2,121,374	-	2,121,374
Uncollectibles	(64,637)	(5,773)	(70,410)
Total operating revenues	56,594,982	3,194,217	59,789,199
Operating Revenue Deductions			
Maintenance	11,631,616	-	11,631,616
Depreciation	10,157,412	-	10,157,412
Traffic	3,356,611	-	3,356,611
Commercial	3,818,889	-	3,818,889
General office	4,017,646	-	4,017,646
Other expenses	1,815,608	-	1,815,608
Operating taxes - other than income taxes	6,210,137	191,653	6,401,790
State income tax	676,463	180,154	856,617
Federal income tax	4,273,424	1,298,309	5,571,733
Interest on customer deposits	21,595	-	21,595
Total operating revenue deductions	45,979,401	1,670,116	47,649,517
Operating income for return	$10,615,581	$1,524,101	$12,139,682

SCHEDULE II
CENTRAL TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended September 30, 1980

Item	Amount
Investment in Telephone Plant:	
Telephone plant in service	$166,486,435
Telephone plant under construction	3,603,541
Accounts payable - plant under construction	(574,862)
Depreciation reserve	(37,435,883)
End-of-period customer deposits	(365,038)
Deferred taxes	(24,865,000)
Pre-1971 investment tax credit	(191,000)
Net investment in telephone plant	106,658,193
Working capital allowance	(64,312)
Excess profits on affiliated sales	(1,162,000)
Original cost rate base	$105,431,881
Rate of return:	
Present rates	10.07%
Approved rates	11.51%

SCHEDULE III
CENTRAL TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended September 30, 1980

Item	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$55,102,656	55.67%	8.77%	$4,832,503
Preferred stock	3,563,312	3.60%	5.47%	194,913
Common equity	40,314,913	40.73%	12.25%	4,938,549
Subtotal	98,980,881	100.00%		9,965,965
Post-1971 unamortized JDITC	6,451,000	-	10.07%	649,616
Total - Present Rates	$105,431,881	100.00%		$10,615,581
	Approved Rates - Original Cost Rate Base			
Long-term debt	$55,102,656	55.67%	8.77%	$4,832,503
Preferred stock	3,563,312	3.60%	5.47%	194,913
Common equity	40,314,913	40.73%	15.80%	6,369,756
Subtotal	98,980,881	100.00%		11,397,172
Post-1971 unamortized JDITC	6,451,000	-	11.51%	742,510
Total - Approved Rates	$105,431,881	100.00%		$12,139,682

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witness Moncho and Public Staff witness Carpenter presented testimony and exhibits on the proposed rate design and the schedule of rates and charges necessary to generate the additional revenues required for Central.

Company witness Moncho recommended a schedule of rates and charges necessary to provide the annual increase in revenues requested by the Company of $10,862,364. Witness Moncho testified the following with regard to the Company's objectives regarding rate design:

"The rates and charges proposed are structured wherever possible to pursue the following objectives:

1. Produce the requested amount of annual revenue increase.
2. Distribute the requested increase among the customers equitably.
3. Relate cost to provision of service wherever possible.
4. Minimize impact on basic local exchange access rates.
5. Recognize the changing nature of the terminal equipment market brought about by changes in regulations, competition and technology.
6. Strike a balance of administrative ease, customer understanding and general acceptability."

Public Staff witness Carpenter presented testimony regarding Central's proposed changes in rates and regulations. Witness Carpenter outlined changes in Central's present rate schedules necessary to produce the increase in gross revenues proposed by the Public Staff. The Company and the Public Staff were in disagreement on the following rate design proposals: (1) service connection charges, (2) automatic regrouping, (3) reserved rotary numbers, (4) rates for standard single line sets, (5) rates for TAS switchboards, and (6) the method of unbundling.

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 Local Exchange Access Rates

The Commission concludes that only a small portion, if any, of the increase in local service revenues approved herein need be obtained from the basic local exchange access rates. Indeed, the Commission is aware that a decrease in the basic local exchange access rates may result from other rate design decisions made in this proceeding which are discussed below.

Service Connection Charges

Regarding regular service connnection charges, the Company's recommendations result in an increase in revenues associated with such charges of $1,641,938 or an increase of 183.3%. The Company's recommendations in this regard are premised on the theory that service connection charges should be based upon the cost of providing such services.

Public Staff witness Carpenter proposed to increase service connection charges by $109,784 or 12.26%. Mr. Carpenter testified that the Company's proposed service connection charge increase was in his opinion too large to be readily understandable or acceptable to Central's subscribers, that the line work charge component of the service connection charges should be eliminated, and that both the premise visit charge and the equipment work charge proposed by Central were above the actual costs of those functions.

Having carefully considered all the evidence presented concerning service connection charges, the Commission concludes that the following charges are proper and should therefore be implemented by the Company:

Service Connection Charges	Residential	Business
Service order		
(1) Primary	$20.00	$28.00
(2) Secondary	10.00	15.00
Premise visit	5.65	5.65
Central office work	4.00	4.50
Inside wiring	10.00	13.00
Jack		
(1) Desk	3.35	3.35
(2) Wall	5.85	5.85
Equipment	3.60	6.10
Concealed postwiring	20.65	31.90

Expedited Service Connection Charges

Central, through the testimony of Company witness Moncho, proposed to include in its service charge tariff a service charge premium of 50% to be imposed on applicable service whenever (1) the customer requests installation sooner than the normally scheduled date or (2) the customer's request requires that the work be performed outside of regularly scheduled work hours. The Public Staff opposed the extra nonrecurring charge because of the possibilities of abuse and the inability of the Commission or the Public Staff to track Central's operation in this area.

The Commission, being of the opinion that expedited installation service is a reasonable service to be provided by the Company, finds the proposals made by Central in this regard to be appropriate. Additionally, the Commission concludes that Central should report to the Commission, on a semiannual basis, the frequency of requests for the expedited service connection offerings.

Regrouping Exchanges

Company witness Moncho proposed that Central be allowed to regroup exchanges automatically whenever the calling scope for a particular exchange outgrew its respective rate group limits. Additionally in initial filings, Mr. Moncho testified that 19 exchanges had outgrown present rate groupings based on station data at the end of the test year and should therefore be regrouped. Witness Moncho recognized that the EAS component of 17 exchanges would also necessarily be reclassified based upon station data at the end of the test year.

In additional testimony presented at the time of the hearing, Mr. Moncho reiterated the Company's position regarding regouping outside of a rate case and proposed the regouping of six additional exchanges due to growth through April 1981. Mr. Moncho did not propose to update the classification of EAS components based upon the same period.

Public Staff witness Carpenter opposed the upgrading of exchanges outside of rate cases in principle because such adjustments would substantially affect Central's rate structure, could affect the Company's rate of return, and because such a policy would not provide adequate opportunity for the Commission to make a determination of additional revenue requirements if any exist. Additionally, witness Carpenter opposed the proposal of Company witness Moncho regarding the regrouping of the six additional exchanges.

The Commission concludes that the Company's proposal regarding regrouping outside the confines of a general rate proceeding should be rejected. With regard to the regrouping of the six additional exchanges which are in contention by the parties, the Commission finds such regrouping proposal to be proper. However, the Commission is of the opinion that the EAS classifications should be based on the period ended April 1981 also.

Reserved Rotary Numbers

Company witness Moncho proposed to establish a charge for reserved rotary numbers in this proceeding. This proposal was opposed by witness Carpenter on the basis that the charge is unnecessary and would discriminate against subscribers who are served by older vintage offices. Based on the foregoing, the Commission concludes that the Company's proposal regarding reserved rotary numbers should be rejected.

Standard Telephone Set Charge

The Company recommended establishing monthly standard telephone set charges in this proceeding of $1.45 for standard singleline rotary and $2.20 for touch call stations. Central provided cost studies to support such charges. Public Staff witness Carpenter took issue with the Company's cost studies regarding the average service life of the stations. Based upon an appropriate average service life for station apparatus, witness Carpenter recommended charges not greater than $1.25 and $1.75 for rotary and touch call stations, respectively.

The Commission finds that monthly charges of $1.25 for rotary stations and $1.75 for touch call stations are reasonable and should be implemented by the Company.

TAS Switchboards

Company witness Moncho recommended increasing the charges for TAS switchboard service from $120 to $238 or approximately 98.3%. Public Staff witness Carpenter disagreed with the cost study supporting the Company's proposal regarding TAS switchboards because Central used 1973 material costs and current labor costs for installation. Mr. Carpenter testified that since the equipment has been obsoleted and is not offered for new installations, in his opinion, an average original cost basis for cost determination of the offering is

appropriate. Based upon such a determination, Mr. Carpenter recommended a monthly rate not to exceed $170.00.

The Commission finds the Public Staff's proposal in this regard to be both reasonable and proper.

Return Responsibility Plan

Public Staff witness Carpenter recommended a refinement in Central's return responsibility plan whereby the subscriber would be allowed to request that Central pick up the subscriber's station and the subscriber would pay a premise visit charge for the service.

The Commission concludes that the return responsibility plan implemented by the Company and authorized by the Commission in January 1981 is adequate and should not be expanded to include an additional pickup service.

Residence Package

The Company recommended that, consistent with the concept of "unbundling of rates," the residential package plan which offers discounts for combination of station services be eliminated. The Public Staff opposed the Company's recommendation relative to the residence package. The Commission concludes that the residential package plan should be eliminated as requested by the Company.

Extended Area Service Charges

On November 10, 1980, Central filed Docket No. P-10, Sub 397, which contained tariffs of proposed revisions in the EAS rate component matrices. On January 27, 1981, the Public Staff filed a motion to incorporate the EAS tariff filing into the currently pending general rate case Docket No. P-10, Sub 400. On February 4, 1981, the Commission consolidated the issues raised in Docket No. P-10, Sub 397, for investigation and hearing into the general rate proceeding.

In his determination of the rate design recommendations necessary to implement the Company's initially requested rate increase of $10,862,364, Company witness Moncho applied the proposed rate component charges to all existing EAS plans and proposed that said matrices be utilized in all future EAS matters. Evidence was presented in this proceeding which indicated that Central's current EAS rate component matrices were established in the last general rate case, Docket No. P-10, Sub 369, and were implemented on April 11, 1978. Such charges were based upon cost established prior to 1978.

The Commission concludes that Central has failed to provide sufficient evidence to substantiate approving 100% of the proposed EAS rate component increase. However, in the Commission's opinion, it is reasonable to assume that some increases have occurred in the cost of providing EAS services since 1978 and, consequently, that some increase in the EAS rate component matrices is warranted. Said increases shall be proposed by the Company to be reviewed by the Public Staff and shall not exceed 50% of the increase proposed by the Company.

Evidence was presented during the course of the hearing which indicated that in its monthly billings to its customers Central segregates the EAS component portion of a customers bill from the basic monthly charges. In the Commission's opinion such a procedure leads to customer confusion and should therefore be discontinued.

Other Local Service

The Commission concludes that certain increases in rates and charges applicable to miscellaneous services, auxiliary equipment, and similar service offerings are appropriate and that such increases should not exceed 70% of the Company's requested increase.

IT IS, THEREFORE, ORDERED:

1. That the Applicant, Central Telephone Company, is authorized to adjust its telephone rates and charges to produce, based upon stations and operations as of September 30, 1980, an increase in annual gross revenues not to exceed $3,199,990.

2. That the Notice of Decision and Order of August 27, 1981, and the Order Setting Rates of September 8, 1981, are affirmed.

3. That Central shall implement the "flash-cut" option as requested for expensing new inside wiring costs and should begin this expensing on or before September 8, 1981, the effective date of the new rates set in this case.

4. That Central shall continue to seek improvement in the "out of service received before 5:00 p.m., carried over" and "repeat trouble report" objectives, and should continue to keep close watch on its Mountain View Exchange to ensure good service to those customers served by this Exchange.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of September 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

TELEPHONE

CENTRAL TELEPHONE COMPANY APPENDIX A

DEPRECIATION RATES

Account		Present			Approved		
		Life* (yr.)	Net Salvage (%)	Rate (%)	Life* (yr.)	Net Salvage (%)	Rate (%)
212	Building	42.0	3.0	2.3	38.7	4.0	2.5
221.1	Step-by-Step	21.0	3.0	4.6	11.6	10.0	7.8
221.2	Manual	14.0	(1.0)	7.2	10.5	(4.0)	9.9
221.3	Radio	16.0	1.0	6.2	15.3	1.0	6.5
221.4	Circuit	15.0	2.0	6.5	9.4	11.0	9.5
221.5	Crossbar	27.0	1.0	3.7	12.7	6.0	7.4
221.9	Electronic	33.0	0.0	3.0	25.0**	0.0	4.0
231	Station Apparatus	14.0	4.0	6.9	6.7**	11.0	9.6
232	Station Connections-Other	-	-	***	20.0	0.0	5.0
234	Large PBX	13.0	7.0	7.2	5.8	10.0	15.5
241	Pole Lines	25.0	(7.0)	4.3	27.4	(49.0)	5.4
242.1	Aerial Cable	34.0	0.0	2.9	37.6	(8.0)	2.9
242.2	Underground Cable	43.0	0.0	2.3	37.4	(14.0)	3.0
242.3	Buried Cable	35.0	(2.0)	2.9	38.0	(5.0)	2.7
243	Aerial Wire	12.0	(2.0)	8.5	13.0	(56.0)	12.0
244	Underground Conduit	65.0	(5.0)	1.6	63.9	0.0	1.6
261	Furniture & Office Equipment	18.0	13.0	4.8	23.3	10.0	3.9
264.1	Vehicles	6.5	35.0	10.0	8.4	22.0	9.3
264.2	Other Work Equipment	10.0	20.0	8.0	17.6	2.0	5.6

Notes: * Average Service Life
** Remaining Life
*** No rate previously assigned for this account. Accruals were allowed to equal charges.

DOCKET NO. P-19, SUB 182

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of General Telephone Company of the Southeast) ORDER
for an Adjustment to Its Rates and Charges Applicable) GRANTING PARTIAL
to Intrastate Telephone Service in North Carolina) INCREASE IN RATES

HEARD IN: City Council Chambers, City Hall, 101 City Hall Plaza, Durham, North Carolina, on September 14, 1981; Multi-Purpose Room, Room 115, Union County Courthouse, 500 N. Main Street, Monroe, North Carolina, on September 22, 1981; and in the Hearing Room of the Commission, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on September 14, 15, 16 17, 18, 29, and 30, 1981

TELEPHONE

BEFORE: Commissioners Leigh H. Hammond, Presiding; and Commissioners Edward B. Hipp and John W. Winters

APPEARANCES:

For the Applicant:

William C. Fleming, Vice President, General Counsel and Secretary, and Richard W. Stimson, Senior Attorney, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702
For: General Telephone Company of the Southeast

A. H. Graham, Jr., and James T. Hedrick, Newsome, Graham, Hedrick, Murray, Bryson & Kennon, Attorneys at Law, P.O. Box 2088, Durham, North Carolina 27702
For: General Telephone Company of the Southeast

For the Intervenors:

Thomas K. Austin and Vickie 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: This matter is before the Commission on the application of General Telephone Company of the Southeast (General, GTSE, or the Company), a wholly owned subsidiary of General Telephone and Electronics (GTE), filed on April 6, 1981, for authority to increase its rates and charges on intrastate service. The Company sought to increase annual gross local revenues by the amount of $10,065,229.

On April 29, 1981, the Commission set General'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.

In its Order of May 20, 1981, the Commission scheduled public hearings as follows: September 14, 1981, in the City Council Chambers, City Hall, 101 City Hall Plaza, Durham, North Carolina; September 22, 1981, in the Multi-Purpose Room, Room 115, Union County Courthouse, 500 N. Main Street, Monroe, North Carolina; and beginning on September 15, 1981, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. Upon the agreement of the parties and the approval of the Commission, the hearing scheduled for the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, began on September 14, 1981.

The Public Staff of the North Carolina Utilities Commission filed Notice of Intervention on May 4, 1981.

The matter came on for hearing at the times and places listed above. All parties were present and represented by counsel.

General Telephone Company of the Southeast offered the direct testimony of the following witnesses: Claude O. Sykes, Vice President in charge of General's operations in North Carolina, with respect to General's operations in North

Carolina, especially service; Jerry L. Austin, Treasurer, with respect to rate of return; John P. Blanchard, Controller, with respect to accounting issues; C. V. Fleming, Vice President - Revenue Requirements, with respect to rates and charges; Charles E. Brown, Vice President - Network Engineering and Construction, with respect to depreciation rates; Herbert L. Justinger, Assistant Controller - Accounting Controls and Applications of GTE Automatic Electric, with respect to the intercorporate relations of GTE and Automatic Electric; and Richard H. Pettway, Professor of Finance, University of Florida, with respect to cost of capital. Upon the stipulation of the parties, the testimony of George M. Weber, Vice President - Controller GTE Directories Corporation, with respect to directory revenues was copied into the record. Following the presentation of evidence by the Public Staff in this proceeding, General called the following witnesses to present rebuttal testimony: Paul J. Garfield of Foster Associates, Inc., with respect to rate of return; Jerry L. Austin (recalled) with respect to consolidated capital structure; William Beranek, Professor of Banking and Finance, University of Georgia, with respect to consolidated capital structure; James H. Vander Weide, Associate Professor of Finance of Duke University, with respect to cost of capital and regression analysis; Richard H. Pettway (recalled) with respect to consolidated capital structure and cost of capital; John P. Blanchard (recalled) with respect to depreciation reserve; and Steven F. Maier, Professor of Finance, Duke University, with respect to end-of-period local service and miscellaneous revenues and the toll settlement ratio.

The Public Staff's witnesses presenting direct testimony were: Teresa L. Kiger, Economist with the Economic Research Division, with respect to cost of capital and fair rate of return; Hugh L. Gerringer, Engineer - Communications Division, with respect to the end-of-period representative level of toll revenues; Leslie C. Sutton, Engineer - Communications Division, with respect to expensing of inside wiring; Richard G. Stevie, Director - Economic Research Division, with respect to excess profits; William J. Willis, Jr., Engineer - Communications Division, with resepct to rates and charges and end-of-period representative levels of local and miscellaneous revenues; Karyl J. Lam, Accountant - Accounting Division, with respect to working capital; Candace A. Paton, Accountant - Accounting Division, with respect to rate base, revenues, expenses and adjustments; Benjamin R. Turner, Jr., Engineer - Communications Division, with respect to depreciation rates; and Thi-Chen Hu, Engineer - Communications Division, with respect to service. Mr. Gerringer was recalled in surrebuttal to Company witnesses Vander Weide and Maier.

Approximately 10 people attended the hearing in Durham to protest the Company's service and proposed rate increase. Four people appeared at the public hearing in Monroe.

After due consideration of the testimony offered during the hearing, with the benefit of having considered the arguments of counsel and upon a review of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. General Telephone Company of the Southeast is a duly franchised public utility lawfully incorporated and licensed to do business in North Carolina, is providing telephone service 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 General's application would have produced $10,065,229 in additional annual gross revenue for the Company.

3. The test period used in this proceeding and established by Commission Order is the 12-month period ended December 31, 1980.

4. The overall quality of service provided by General is good.

5. The reasonable allowance for working capital is $2,324,040.

6. General's reasonable original cost intrastate rate base is $79,329,405, consisting of telephone plant in service of $112,368,994; telephone plant under construction of $4,001,342; working capital of $2,324,040 reduced by accumulated depreciation of $26,573,081; deferred income taxes of $11,390,238; pre-1971 investment tax credit of $252,652; customer deposits of $295,877; accounts payable - plant in service of $47,330; accounts payable - CWIP of $167,793; and excess profits on affiliated sales of $638,000.

7. General's net revenues for the test year, under present rates, after accounting and pro forma adjustments, are $40,578,609. After giving effect to General's proposed rates, such net revenues are $50,643,838.

8. The reasonable level of test year intrastate operating revenue deductions after accounting, pro forma, end-of-period, and after-period adjustments is $34,262,073. This amount includes $7,819,843 for actual investment currently consumed through reasonable actual depreciation on an annual basis.

9. The capital structure for General Telephone of the Southeast which is appropriate for use in this proceeding is as follows:

	Ratio
Debt	52.00%
Preferred stock	7.00%
Equity	42.00%
Total	100.00%

10. The Company's proper embedded costs of debt and preferred stock are 9.25% and 7.00%, respectively. The reasonable rate of return for GTSE to be allowed to earn on its common equity is 15.95%. 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 11.93% to be applied to the Company's original cost rate base. Such rate of return will enable GTSE, 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.

11. Based on the foregoing, General should be allowed an increase in annual gross revenues not to exceed $6,624,941. This increase is required in order for the Company to have a reasonable opportunity to earn the 11.93% overall rate of return which the Commission has found just and reasonable. This increased revenue requirement is based on 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.

12. The Company should begin expensing new inside wiring cost on a flash-cut basis effective October 1, 1981.

13. The depreciation rates as shown on Appendix A are reasonable.

14. The Company should offer its subscribers the option to purchase in-place or in-plant telephone equipment.

15. The rates, charges, and regulations to be filed pursuant to this Order in accordance with the guidelines contained herein which produce an increase in annual revenue of $6,624,941 will be just and reasonable.

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, and in the record as whole. The findings are essentially procedural and jurisdictional in nature and are uncontested and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence supporting this finding of fact is contained in the application and in the testimony and exhibits of Company witness Blanchard and Public Staff witness Paton. The Commission Order of April 29, 1981, established the test period as the 12 months ended December 31, 1980. As the Commission subsequently discusses, the Public Staff proposed an adjustment to increase the depreciation reserve based upon plant in service at December 31, 1980, by the amount of depreciation expense for the period January 1, 1981, through August 31, 1981. The Company opposed this adjustment through the testimony of witness Blanchard and, in fact, filed an update of all elements of cost of service - investment, revenues, and expenses - on August 4, 1981, for the updated period through May 31, 1981, and subsequently filed similar information for the period ended d July 31, 1981. As the Commission discusses in Finding of Fact No. 6, the Commission does not adopt the Public Staff's proposed adjustment. Witness Blanchard testified that if the Commission did not adopt the proposed adjustment to the depreciation reserve, it would not be inappropriate for the Commission to utilize a December 31, 1980, test period. The Commission finds, therefore, that the appropriate test period to be utilized in this case is the 12-month period ended December 31, 1980.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this conclusion is contained in the testimony of four public witnesses, the testimony and exhibits of Company witness Sykes, and in the testimony and exhibits of Public Staff witness Hu.

Company witness Sykes testified that the Company was providing its subscribers with good service and that the Company was continually looking for ways to improve that service. Witness Sykes during his direct testimony stated that General was meeting or surpassing the Commission's standards used for evaluating service quality. However, witness Sykes admitted on cross-examination that the Company had exceeded the Commission's objective for trouble reports per 100 stations for four of the five months between June 1980 and October 1980. It was also brought out on cross-examination that in certain areas that went into making up the composite companywide figure for trouble reports per 100 stations, the objective had been exceeded. Public Staff witness Hu testified that General's switching and trunking facilities are maintained properly and are in good working condition. Witness Hu noted, "For the most part, operator, directory assistance, repair service, and business office answer time test results indicate the availability of such service is adequate." He further testified that the overall quality of service was good.

The Commission concludes that the overall quality of service offered by General Telephone Company of the Southeast in North Carolina is good; however, the Commission encourages General to work toward consistently meeting the objective of six trouble reports per 100 stations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Company witness Blanchard and Public Staff witness Lam each presented direct testimony and exhibits concerning the proper allowance for working capital. The amount of working capital proposed by each witness is shown in the chart below:

Item	Company Witness Blanchard	Public Staff Witness Lam
Cash, including compensating bank balances	$ -	$ 501,522
Materials and supplies	2,704,482	2,290,914
Accounts payable - materials and supplies	-	(18,342)
Investor funds advanced for operations	257,321	-
Customer funds advanced for operations	-	(450,054)
Total working capital allowance	$2,961,803	$2,324,040

Since in its proposed order the Company adopted the Public Staff's level of working capital allowance for determining rates in this proceeding, the Commission concludes that the fair and reasonable level of working capital allowance is $2,324,040.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding is contained in the testimony and exhibits of Company witness Blanchard and Public Staff witnesses Paton, Lam, and Stevie. The following chart summarizes the level of rate base presented by the Company and the Public Staff, respectively:

	Company	Public Staff	Difference
Telephone plant in service	$118,352,549	$112,368,994	$(5,983,555)
Telephone plant under construction	4,134,997	4,001,342	(133,655)
Working capital allowance	2,961,803	2,324,040	(637,763)
Less: Accumulated depreciation reserve	(28,511,707)	(29,779,313)	(1,267,606)
Deferred income taxes	(11,653,322)	(11,390,238)	263,084
Pre-1971 investment tax credit	(252,652)	(252,652)	-
Customer deposits	(295,877)	(295,877)	-
A/P plant in service	-	(47,330)	(47,330)
A/P CWIP	-	(167,793)	(167,793)
Excess profits on affiliated sales	-	(638,000)	(638,000)
Original cost rate base	$84,735,791	$76,123,173	$(8,612,618)

The Company stated that while it did not agree with all the adjustments which the Public Staff proposed, it did not contest several adjustments. In fact, for purposes of this proceeding, in its proposed order the Company adopted all of the Public Staff amounts comprising the original cost net investment except that related to the balance of accumulated depreciation. Therefore, the Commission concludes that the Public Staff's amounts for all components of original cost net investment, except that related to accumulated depreciation, which will be discussed below, are reasonable and appropriate.

The difference in the level of accumulated depreciation as shown in the parties' respective proposed order is related to three items, as shown in the table below:

1. Public Staff adjustment for depreciation on end-of-period plant incurred subsequent to end of the test year	$4,416,555
2. Public Staff exclusion of amortization related to inventory adjustment	(294,090)
3. Company exclusion of effect of change in radio telephone depreciation rate	(16,899)
Total difference	$4,105,566

The first item of difference concerns an adjustment to increase the depreciation reserve of $4,416,555 to reflect depreciation expense which the Public Staff contends the ratepayers have paid subsequent to the end of the test period, on plant existing at December 31, 1980. The proposed adjustment reflects eight months of depreciation, January 1981 through August 1981. The Public Staff contends that the adjustment is appropriate under G.S. 62-133(b)(1) and G.S. 62-133(c). The Public Staff contends that during the months subsequent to the end of the test year, the customers of the Company have been paying in rates to cover depreciation expenses on plant in service existing at the end of the test period. The Public Staff, therefore, increased the reserve for the eight-month period January 1981 through August 1981.

With respect to this adjustment and with respect to the Public Staff's contention that it is authorized by the aforementioned statute, the Company

offered testimony and made several arguments. First, the Company contends that the adjustment is at odds with the rate-making process. Second, the Company stated that the basic objective of a utility regulatory body is to carefully examine the facts surrounding the Company's operations at a fixed point in time and to establish rates for the Company's services which will allow the Company a reasonable opportunity to earn the fair return found appropriate. The rebuttal testimony of witness Blanchard sought to show that the adjustment proposed by the Public Staff will prohibit the Company from achieving the return found reasonable.

Based upon the foregoing and the entire evidence of record concerning this matter, the Commission is persuaded that the Company's position should be adopted. Concerning the issue of the filing of updates, the Commission encourages the Company to make every reasonable effort in future general rate case applications to fulfill the filing requirements of Commission Rule R1-17(b)(14), quoted in part below:

> "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."

The Commission is persuaded that, notwithstanding that the Company's updated data has not been audited, its revenues, expenses, and investment are increasing in such a relationship that its revenue requirement is increasing. Consistent with the foregoing analysis of the evidence, the Commission is convinced that the Company's updated evidence and the Public Staff's proposed adjustment, in effect, cancel each other out and the Commission will decide the case based upon the originally filed test period of December 31, 1980.

This conclusion is based on the fact that the Commission is constrained by statute to the use of a proper pro forma end-of-period test year rate base. The addition of accumulated depreciation, accrued (capital recovered) during the interim of time between the point that plant in service is established and the close of the hearing, without updating all of the other items of costs entering into the total cost of service, violates the matching concept and is, therefore, entirely inconsistent and improper.

The second and third items of disagreement concerning the proper level of accumulated depreciation concern numeric differences related to the agreement on proper depreciation rates and amortization made between the parties. The Commission concludes that the agreed upon depreciation rates related to Station

Apparatus, Teletypewriter Equipment, Large PBX, and Radio Telephone Equipment should be approved and that the agreed upon inventory amortization should be approved. Therefore, the Commission concludes that the appropriate level of accumulated depreciation to be used in determining fair and reasonable rates in this proceeding is $26,573,081 ($30,695,546 - $4,416,555 + $294,090).

Based upon the foregoing, the Commission concludes that the proper level of intrastate original cost rate base to be used in this proceeding is $79,329,405, calculated as follows:

Telephone plant in service	$112,368,994
Telephone plant under construction	4,001,342
Working capital allowance	2,324,040
Accumulated depreciation reserve	(26,573,081)
Deferred income taxes	(11,390,238)
Pre-1971 investment tax credit	(252,652)
Customer deposits	(295,877)
A/P plant in service	(47,330)
A/P CWIP	(167,793)
Excess profits on affiliated sales	(638,000)
Original cost rate base	$ 79,329,405

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witnesses Blanchard, Maier, and Vander Weide and Public Staff witnesses Gerringer, Paton, and Willis presented testimony concerning the representative end-of-period level of operating revenues. The Public Staff's end-of-period level of toll revenues was determined by witness Gerringer. Public Staff witness Willis testified to the end-of-period level of miscellaneous revenues. Public Staff witness Paton incorporated the revenues determined by witnesses Gerringer and Willis into her testimony and exhibits.

Witnesses Blanchard and Paton each testified as to the appropriate level of operating revenues after accounting and pro forma adjustments. The following tabular summary shows the amounts claimed by each witness:

Item	Company	Public Staff
Local service revenues	$23,388,752	$24,243,500
Toll service revenues	14,151,553	14,547,937
Miscellaneous revenues	1,173,210	1,139,048
Total	35,713,515	39,930,485
Uncollectibles	(499,712)	(110,308)
Total	$38,213,803	$39,820,177

In its proposed order the Company adopted the Public Staff's level of local service revenues, miscellaneous service revenues, and uncollectibles, and therefore the Commission concludes that the respective appropriate levels for these items are $24,243,500, $1,139,048, and $(110,308).

There was a $129,052 difference between the parties' respective levels of toll service revenues, as shown in their proposed orders. This difference results from different levels of adjustments to telephone plant investment, and expenses, and different toll settlement ratios. The Commission concludes that

the appropriate level of adjustments to telephone plant investment and expenses to be included in determining the Company's toll service revenues should be those related to the levels of plant and expenses found to be proper elsewhere in this Order.

The Company's toll settlement ratio of 10.97% is lower than the Public Staff's of 11.84%. This 11.84% resulted from witness Gerringer's summing actually achieved final settlement ratios for a 12-month period - July 1980 through June 1981 - with six months falling on each side of the end of the test period (December 31, 1980). Following the cross-examination of witness Gerringer regarding the intrastate toll settlement ratio, Commissioner Hammond requested that a late filed exhibit be prepared showing the results of regressing the monthly settlement ratios. Witness Gerringer prepared the requested exhibit using 30 months (January 1979 -June 1981) of intrastate toll settlement ratios reflecting certain adjustments and using a regression program that selected from four curves or mathematical forms - linear, exponential, logarithmic, and power series - the form or curve that best fitted the data. The results of running this program showed that the best fitting curve for the data was logarithmic of the form Y=A+Bx1nX, where Y is the dependent variable or settlement ratio and X is the independent variable or time. However, the coefficient of determination, R*2#, for this best fitting curve was only 0.1866 (R*2# ranges between 0 and 1 with the closer R*2# is to 1, the better the curve fit). Using these regression results, witness Gerringer determined an intrastate toll settlement ratio of 11.65% at the end of the test period, December 31, 1980.

The Company offered two rebuttal witnesses, both from the Fuqua School of Business at Duke University, regarding the intrastate toll settlement ratio. Dr. Steven F. Maier rebutted witness Gerringer's direct testimony while Dr. James H. Vander Weide rebutted the late filed exhibit provided by witness Gerringer at Commissioner Hammond's request. Dr. Maier's testimony was directed to determining whether a trend existed in the settlement ratio data. He ran a linear and a log-linear ordinary least squares regression on monthly data for the period January 1979 through June 1981, in which certain adjustments were reflected. (Note: Witness Gerringer for the purpose of his late filed exhibit used the identical data set that Dr. Maier used). Dr. Maier's results showed that a log-linear trend existed with a 98% confidence level. Dr. Maier stated that in his opinion the toll settlement ratio for the Company fell within the range of 10.70% to 10.77%. The 10.70% end of the range was for the full year of 1981 determined by projecting the ratios for the last six months of 1981 from the log-linear regression curve and adding them to the actual ratios for the first six months of 1981.

Under cross-examination, Dr. Maier admitted that the log-linear form was a transformation of the exponential form and that he had not tested the logarithmic and power series forms. Also, Dr. Maier indicated that the R*2# for his log-linear fit was very low (0.18). Finally, Dr. Maier stated that the 98% confidence level resulted in a wider confidence interval than would a lower confidence level.

Dr. Vander Weide in his rebuttal testimony stated that the best fitting curve for the data was logarithmic, but that the equation used by witness Gerringer was not appropriate since the equation took the logarithm of the time indicator

variable resulting in giving more weight to the earlier months' toll settlement ratios than those of the latter months when the time intervals are numbered consecutively from 1 to 30. (Both Dr. Maier and witness Gerringer had so numbered the time intervals). Finally, Dr. Vander Weide pointed out that the regression analysis performed by both witness Gerringer and him showed that the slope of the best fit curve was negative and, therefore, the toll settlement ratio was trending downward.

As requested and allowed by the Commission Panel, witness Gerringer was granted time to respond to Dr. Vander Weide's rebuttal testimony. Witness Gerringer pointed out that determining the settlement ratio by using regression analysis was not the methodology he used in his testimony and he noted that one of the reasons for not using regression analysis for this purpose was the fact that all the curves showed a poor fit or had low R*2#s. Witness Gerringer noted that there is a problem in using regression due to the large fluctuations that occur in the month-to-month settlement ratios. To smooth out the fluctuations in order to obtain a more consistent set of data for regression purposes would require a large number of necessary adjustments. Regarding a downward trend in the settlement ratio, witness Gerringer indicated that results using regression analysis for this purpose were highly dependent on the selection of the data. The starting point (January 1979) of the 30 data points selected by Dr. Maier happened to correspond to the point at which the settlement ratios were the highest that they have been over the past five years. Further, regarding a trend, witness Gerringer pointed out that his methodology resulted in an end-of-period settlement ratio of 11.84% which was lower than the settlement ratio of 12.07% actually achieved for the test period. Witness Gerringer pointed out for the Commission's consideration there is a pending toll rate case, Docket No. P-100, Sub 57, which could have an upward impact on the settlement ratio.

Witness Gerringer defended his use of 12 months of ratios rather than six months, three months, or some other number less than 12. He pointed out that the use of 12 months of settlement ratios gives weight to a full cycle, instead of a partial cycle, of the fluctuations that characterize the month-to-month settlement ratios.

The Commission concludes that the appropriate toll settlement ratio to be used in this proceeding is 11.84% and coupled with the other conclusions concerning toll service revenues contained herein results in an end-of-period level of toll service revenues of $15,306,369. The Commission further concludes that the proper level of total net revenues under present rates is $40,578,609.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Blanchard and Public Staff witness Paton presented testimony and exhibits showing the level of intrastate operating revenue deductions which they contend should be used for setting rates in this proceeding. The following summary shows the amounts presented by each party in their respective proposed orders:

Item	Company Witness Proposed Order	Public Staff Proposed Order
Operating expenses	$27,769,111	$26,200,933
Interest on customer deposits	19,486	19,486
Operating taxes other than income	4,400,989	4,377,736
State and Federal income taxes	1,800,654	1,990,249
Interest during construction	-	-
Income effect of expensing station connections		
Total operating revenue deductions	$33,990,240	$33,588,404

The difference in operating expense levels is caused by two items. First, witness Paton made an adjustment to operating expenses of $259,475 related to the level of wages presented by the Company. Witness Paton testified that her level of wages included actual wages as of June 30, 1981, plus the annualized increases associated with union contracts which became effective on July 26, 1981, and August 9, 1981. The wage level presented by the Company includes wage levels which the Company asserted will be experienced before new rates are approved in this proceeding. The Commission concludes that in order for the Company to be allowed a reasonable opportunity to earn the rate of return found reasonable herein, this adjustment should be disallowed.

Second, the parties' respective proposed orders presented different levels of end-of-period depreciation expense as follows:

Company proposed order	$ 7,836,617
Public Staff proposed order	7,527,914
Difference	$ (308,703)

The difference is due to apparent exclusions in the parties' end-of-period depreciation calculation. These exclusions are spoken to earlier in this Order under Evidence and Conclusions For Finding of Fact No. 6, and relate to numeric disagreements related to newly agreed upon depreciation rates and the inventory loss amortization. After review of the entire record and consistent with the Evidence and Conclusions for Finding of Fact No. 6, the Commission concludes that the proper level of depreciation expense to be used in determining fair and reasonable rates in this proceeding is $7,819,843.

Based on the foregoing, the Commission concludes that the appropriate level of operating expenses is $27,752,337. Since both the Company and the Public Staff's proposed order present $19,486 as the proper level of interest on customer deposits, the Commission concludes that this amount is appropriate.

Two items resulted in the Company's and the Public Staff's presenting different levels of operating taxes other than income. First, Public Staff witness Paton made a $(15,510) adjustment to the Company's level of payroll taxes. Since the Commission has disagreed with the level of wages proposed by witness Paton, the Commission concludes that her adjustment to payroll taxes is also inappropriate. Second, each party had a different level of gross receipts taxes due to different levels of end-of-period revenues. The Commission's end-of-period revenues is different from that of either party, and therefore, the resulting level of gross receipts taxes is different. Therefore, the Commission

concludes that the appropriate level of taxes other than income is $4,425,692.

The Company and the Public Staff presented different levels of State and Federal income taxes due to their different levels of revenues, expenses, and interest. Based on the Commission's conclusions regarding the appropriate levels of revenues, expenses, and interest, the Commission concludes that the appropriate levels of State and Federal income taxes are $308,595 and $1,755,963 respectively.

Based on the foregoing, the Commission concludes that the proper level of total end-of-period operating revenue deductions for use in this proceeding is $34,262,073, as detailed in Column (a) of Schedule I, attached to Evidence and Conclusions for Finding of Fact No. 11.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 AND 10

Three witnesses were originally presented in the area of cost of capital and capital structure. The Company offered the testimony of Jerry L. Austin, Treasurer of GTSE, and Dr. Richard H. Pettway, Professor of Finance at the University of Florida. The Public Staff offered the testimony of Teresa Kiger of the Economic Research Division. In addition, the Company offered the testimony of five rebuttal witnesses to the testimony of witness Kiger: Dr. Paul J. Garfield, an economist and a member of the firm of Foster Associates, Inc.; Jerry L. Austin, Treasurer of GTSE; Dr. William Beranek, Professor in Banking and Finance at the University of Georgia; Dr. James H. Vander Weide, an Associate Professor of Finance at the Fuqua School of Business of Duke University; and Dr. Richard H. Pettway, Professor of Finance at the University of Florida.

Company witness Austin testified in his updated testimony that the Company should be granted the opportunity to earn an overall return of at least 13.42%, his estimate of GTSE's cost of capital. His recommendation was based upon GTSE's capital structure composed of 41.61% mortgage bonds at a cost of 8.96%, 0.51% debentures at a cost of 4.85%, 3.42% other long-term debt at a cost of 10.00%, 5.22% short-term debt at a cost of 15.00%, 0.52% preferred stock at a cost of 4.64%, and 48.72% common equity with a cost of 17.5%. He derived his estimate of the cost of equity using the Discounted Cash Flow (DCF) model and a risk premium approach. Witness Austin performed a DCF on 10 comparable companies from which he found the cost of equity to be 18.22% or 19.79% after adding 10% for flotation expense and market pressure. He also testified that a DCF analysis of five telephone companies produces a cost of equity of 17.4% or 18.4% with a 10% adjustment for flotation expense and market pressure. Witness Austin also performed a risk premium analysis by estimating a spread between utility bonds and Moody's 24 utilities' common stock for the years 1937-1980 and by estimating a spread between telephone utility bonds and telephone utility common stock for the years 1958-1980. In the first risk premium spread method, witness Austin testified that the spread was 4%-6% which produced an equity cost of 20%-21%. Witness Austin found the risk premium above telephone bonds to be 5.03% to 5.96%.

Dr. Pettway also testified on the cost of equity to GTSE. Dr. Pettway employed three methods in his testimony: DCF, Capital Asset Pricing Model

(CAPM), and a Risk Premium Model (RPM). Under the DCF, Dr. Pettway found the cost of equity to be in the range of 17.3% to 17.8%; for the CAPM, 18.49% to 18.63%; and with the RPM, 17.9% to 18.04%. Dr. Pettway concluded that the cost of equity is 18.2% using GTSE's own capital structure.

Public Staff witness Kiger, in her updated testimony, testified that the overall rate of return which GTSE should be allowed to earn was 11.83%. Her recommendation was derived using the consolidated capital structure of General Telephone and Electronics, Inc. (GTE), which owns all of the common stock of GTSE. She testified that the consolidated capital structure accounts for all of the debt and equity in the GTE and GTSE structure. According to witness Kiger, the consolidated capital structure is composed of 56.28% debt at a cost of 9.58%, 8.51% preferred stock at a cost of 7.68%, and 35.21% common stock at a cost of 16.44%. She derived her equity cost estimate using two methods: the DCF and the CAPM. With the DCF model, she derived an equity cost range of 17.62% to 17.81% with a mid-point of 17.57%. Using the CAPM, she estimated the cost of equity to be 15.23%. To these results, she added four basis points for flotation costs. This produced her zone of reasonableness (15.27% to 17.61%) from which she concluded that the cost of equity was 16.44%. Combining this equity cost with the consolidated capital structure ratios and associated embedded cost rates produced her recommended 11.83% overall rate of return.

Five witnesses testified for the Company in rebuttal to the testimony of Public Staff witness Kiger. Dr. Garfield testified that the use of GTE's consolidated capital structure in determining the rate of return for GTSE is not consistent with the Hope Natural Gas case; and is inappropriate to use in terms of financial theory. Dr. Garfield also testified that witness Kiger's equity return was too low and that short-term debt should not be omitted from the capital structure.

Company witness Austin also testified that witness Kiger's return recommendation allows only a 13.94% return on GTSE's equity. He stated that GTSE is viewed independently from GTE in financial markets and is responsible for its own debt. He further testified that there are different risks among the subsidiaries of GTE and that short-term debt should be included in witness Kiger's recommended capital structure.

Dr. Beranek testified that the consolidated capital structure (CCS) is a double leverage method that is inappropriate to use. He stated that GTSE stands alone and is viewed independently of GTE. He further testified that GTSE's affiliation to GTE is irrelevant and that the CCS theory has no support in modern financial or economic theory. Dr. Beranek concluded that there is no support for the use of the CCS approach.

Dr. Vander Weide also testified that witness Kiger's recommended rate of return only provides a 13.94% equity return on GTSE's equity. He further stated that the CCS leads to a misallocation of society's resources and ignores differences between GTE and GTSE's financial and business risks. Finally, Dr. Vander Weide testified that witness Kiger inappropriately employed the DCF model and that, in addition to the CAPM being an inappropriate model, she underestimated the components of the CAPM.

Dr. Pettway also testified that witness Kiger inappropriately applied the DCF model and criticized her method for adjusting the cost of equity for flotation cost. He further stated that witness Kiger's cost of equity estimate was too low in light of the current cost of debt. He also testified that the CCS approach is counter to the economic and financial spirit of the Hope Natural Gas case and that the CCS approach is not consistent with modern finance theory. Finally, he testified that short-term debt should not be excluded from witness Kiger's recommended capital structure.

Another central theme throughout the Company's rebuttal testimony was that GTE's consolidated operations is not all telephone service oriented, in that many of the affiliates are exclusively engaged in other activities, such as manufacturing.

After considering all the evidence presented by the parties on this issue, it is evident that the central issue to be resolved is whether and to what extent, if any, the impact of the affiliated parent-subsidiary relationship between GTSE and GTE should be recognized. The Company's recommendation does not recognize any impact of the affiliation between GTSE and GTE. Alternatively, the Public Staff's recommendation does recognize the parent-subsidiary relationship.

It is the Commission's opinion that the parent-subsidiary affiliation should be considered. However, based upon the evidence regarding the diversity of GTE's consolidated operations, the Commission concludes that the Public Staff's recommended capital structure is inappropriate for setting rates in this proceeding. Since neither parties' capital structure is appropriate, and after much review of the information in the record and the Commission's files on which the Commission takes judicial notice, the Commission concludes that the appropriate pro forma capital structure to be used in this proceeding is as follows:

	Percent
Debt	52.00%
Preferred stock	6.00%
Common equity	42.00%
Total	100.00%

Consistent with the evidence supporting the above included capital structure, the Commission concludes that the appropriate reasonable pro forma embedded costs of debt and preferred stock are 9.25% and 7.00%, respectively.

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 is 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 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 provided 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. 277, 206 S.E. 2d 269 (1974).

The nature of the evidence in a case such as this makes it extremely difficult to balance all of 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, with the constant reminder that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. The Commission must use its impartial judgment to ensure that all the parties involved are treated fairly and equitably. In coming to a final decision on this matter, the Commission is not unmindful of the upward pressure on capital costs present in the economy today.

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the fair rate of return that GTSE should have the opportunity to earn on the original costs of its rate base is 11.93%. Such fair rate of return will yield a fair return on common equity of approximately 15.95%.

The Commission cannot guarantee that the Company will, in fact, achieve the level of returns herein found to be just and reasonable. Indeed, the Commission would not guarantee it if it could. Such a guarantee would remove necessary incentives for the Company in order to achieve the utmost in operational and managerial efficiency. The Commission believes, and thus concludes, that the level of returns approved herein will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to the ratepayers. The Commission can do no more.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which General Telephone Company of the Southeast should be afforded an opportunity to earn.

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 the conclusions heretofore and herein made by the Commission.

SCHEDULE I
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended December 31, 1980

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Local service	$24,243,500	6,624,941	$30,868,441
Toll service	15,306,369		15,306,369
Miscellaneous	1,139,048		1,139,048
Uncollectibles	(110,308)	(30,143)	(140,451)
Net operating revenues	40,578,609	6,594,798	47,173,407
Operating Revenue Deductions			
Maintenance	10,551,771		10,551,771
Depreciation and amortization	7,819,843		7,819,843
Traffic	2,147,836		2,147,836
Commercial	2,041,320		2,041,320
General office	2,599,098		2,599,098
Other expenses	2,592,469		2,592,469
Operating taxes - other than income	4,425,692	395,688	4,821,380
State income tax	308,595	371,947	680,542
Federal income tax	1,755,963	2,680,495	4,436,458
Interest on customer deposits	19,486		19,486
Total operating revenue deductions	34,262,073	3,448,130	37,710,203
Net operating income for return	$ 6,316,536	$3,146,668	$ 9,463,204

TELEPHONE

SCHEDULE II
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1980

	Present Rates	After Approved Increase
Investment in Telephone Plant		
Telephone plant in service	$112,368,994	$112,368,994
Telephone plant under construction	4,001,342	4,001,342
Accounts Payable - plant in service	(47,330)	(47,330)
Accounts payable - CWIP	(167,793)	(167,793)
Depreciation and amortization reserve	(26,573,081)	(26,573,081)
Customer deposits	(295,877)	(295,877)
Deferred income taxes	(11,390,238)	(11,390,238)
Pre-1971 investment tax credit	(252,652)	(252,652)
Excess profits on affiliated sales	(638,000)	(638,000)
Net investment in telephone plant	77,005,365	77,005,365
Allowance for Working Capital		
Cash	501,522	501,522
Materials and supplies	2,290,914	2,290,914
Accounts payable - materials and supplies	(18,342)	(18,342)
Customer funds advanced for operations	(450,054)	(450,054)
Total working capital allowance	2,324,040	2,324,040
Original cost net investment	79,329,405	79,329,405
Rate of return	7.96%	11.93%

SCHEDULE III
GENERAL TELEPHONE COMPANY OF THE SOUTHEAST
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1980

	Original Net Investment	Ratio %	Embedded Cost %	Net Operating Income
		Under Present Rates		
Long-term debt	$41,251,291	52.00	9.25	$3,815,744
Preferred stock	4,759,764	6.00	7.00	333,183
Common equity	33,318,350	42.00	6.50	2,167,609
Total	$79,329,405	100.00		$6,316,536
		Under Approved Rates		
Long-term debt	41,251,291	52.00	9.25	3,815,744
Preferred stock	4,759,764	6.00	7.00	333,183
Common equity	33,318,350	42.00	15.95	5,314,277
Total	$79,329,405	100.00		$9,463,204

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Commission takes note of the fact that on March 31, 1981, the Federal Communications Commission (FCC) amended Part 31 of the Uniform System of Accounts to require Class A and Class B telephone companies to separate Account 232, station connections into two subclasses: (1) station connections - inside wiring and (2) station connections - others, and to begin expensing the new inside wiring portion of station connection costs. The expensing of the new inside wiring costs is to be phased in over four years (1981-1984) unless, with State regulatory approval, a company elects the flash-cut option whereby the Company expenses all new inside wiring costs immediately. These FCC revisions effective October 1, 1981, also provide for the recovery of the embedded investment related to prior capitalization of inside wiring over a 10-year amortization period.

The Company requested to expense new inside wiring costs using the flash-cut methodology and to amortize the embedded investment in inside wiring over 10 years.

The Commission takes judicial notice of the fact that subsequent to the Company's request in this rate case, General, in response to a memorandum issued by the Commission on May 19, 1981, submitted a request to flash-cut and included supporting cost studies. The Commission further notes that as a result of its decision reached at the August 31, 1981, Staff Conference, a letter was sent to General authorizing flash-cut to be effective October 1, 1981.

In his testimony filed on August 25, 1981, witness Sutton found that the flash-cut procedure is the more frugal selection and thus concurred with the Company's viewpoint that the flash-cut is the more economically attractive

alternative. However, witness Sutton stated that other factors must be considered before the Public Staff can establish its final position regarding the Company's selection of the flash-cut. Specifically, he stated that the Public Staff must consider the impact of the additional revenue requirements resulting from the selection of the flash-cut as well as any other additional revenue requirement on the rate structure of the Company.

Based on the foregoing considerations, the Commission concludes that the Company should flash-cut new inside wiring costs and amortize the embedded investment related to prior capitalization of inside wiring over a 10-year period. Therefore, the Commission reaffirms its authorization for General to implement the flash-cut approach for expensing new inside wiring costs and orders the Company to begin expensing effective October 1, 1981.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Testimony on depreciation was presented by Company witness Brown and Public Staff witness Turner.

Witness Brown testified concerning the specific depreciation filing for station apparatus and Large PBXs filed with the FCC and this Commission on November 7, 1980. The filing of November 7, 1980, requested the approval of new depreciation rates for station apparatus and Large PBX using the remaining life methodology. In additional testimony witness Brown presented an update of his testimony to include depreciation filings made with the FCC in June 1980. This filing proposed depreciation rates for all accounts utilizing remaining life procedures and currently approved depreciation studies. The remaining life rates for station apparatus and Large PBX were the same as those in the November 7, 1980, filing. This filing also proposed ELG capital recovery schedules for central office equipment, outside plant, buildings, and general plant accounts in accordance with the FCC's phase-in of the ELG process.

Witness Turner testified that by the time of the hearing the Company's depreciation expense adjustments involved three separate rate proposals. A proposed set of remaining life rates for the station apparatus and the Large PBX accounts, along with relevant study materials were filed with the FCC on November 7, 1980. These rates were included in the company's rate application filed with the Commission on April 6, 1981. The Company filed additional testimony and exhibits on August 4, 1981, including an adjustment to depreciation expense reflecting proposed remaining life rates for all accounts other than the terminal equipment accounts and straight line equal life group (SLELG) capital recovery schedules for plant added. Witness Turner explained that where telephone plant is common to both State and Federal jurisdictions the procedure has been for the FCC staff and State Commission staff to analyze the Company's application. Following their analysis, a three-way meeting of the FCC, the State Commission, and the Company representatives is arranged to review the Company's proposal. The FCC then notifies the Commission of the rates agreed to by the participants at the three-way meeting and allows the State Commissioners an opportunity to make further comments on the proposed rates. After this contact the new rates are approved by the FCC. In connection with the apparatus rates proposed on November 7, 1980, a three-way agreement was reached by the Company, the FCC, and the Public Staff. These rates were reflected on Supplemental Turner Exhibit 1 and are shown below:

DEPRECIATION RATES

Account	Recommended Rates
Teletypewriter equipment	5.9
Telephone station apparatus	10.4
Radio telephone equipment	0.0
Large PBX	16.2

The Company's originally proposed remaining life rate for telephone station apparatus is 16.8%. Underlying this proposed rate was a $5,439,478 verification adjustment. The Company had treated this adjustment as an ordinary retirement, drawing down both the asset account and the reserve by the same amount. The FCC objected to this proposed treatment and because of this objection the Company has agreed to treat $3,540,576 or 56% of the $5,439,478 amount as an ordinary retirement and the $2,384,902 balance as an extraordinary retirement to be amortized over a six-year period.

In regard to the remaining life rates and straight line equal life group (SLELG) rates proposed in the Company's August 4, 1981, testimony and exhibits, witness Turner testified that the Commission should not approve those rates at this time. Witness Turner testified that the Commission should consider the matter after an agreement is reached at a three-way meeting. Following such a meeting the FCC would send a schedule of rates to this Commission for further comments. If no further comments were received, the FCC would then approve the rates.

Based on the foregoing evidence the Commission hereby approves the schedule of depreciation rates shown on Appendix A. The approved new rates for the terminal equipment accounts are based on the remaining life methodology. The Commission will consider, upon further request, the remaining life and ELG rates proposed by the Company in its August 4, 1981, filing after the three-way meeting process has been concluded.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The testimony on the sale of in-place terminal equipment was presented by Public Staff witness Turner and Company witness Fleming.

Witness Turner recommended that the Commission order the Company to offer for sale to the public telephone terminal equipment such as: telephone sets, key systems, small PBX and large PBX which is in-place, in-service, or obsolete. Witness Turner noted that such an offering will improve capital recovery for terminal equipment through increasing net salvage. He stated that it will also give subscribers interested in owning their own sets the chance to reduce their monthly bill by eliminating the set charge. Simply stated, in-place sales increase net salvage for telephone terminal equipment. Witness Turner testified that net salvage would be increased by an in-place sales program and an increase in net salvage would make the depreciation rate lower. He stated that this increase in net salvage will improve capital recovery by allowing the Company to recover part of its terminal equipment investment through salvage without increasing the depreciation expense.

In reaction to witness Turner's prefiled testimony, witness Fleming testified during direct examination that by January 1, 1982, the Company will offer for sale new and in-place instruments if the customer desires and expresses such a desire.

Based on the foregoing evidence, the Commission concludes that the Company's plan to offer for sale to its subscribers in-place terminal equipment or terminal equipment which is in-plant should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Company witness Fleming and Public Staff witness Willis presented testimony concerning General Telephone Company's proposed rate structure.

Witness Fleming testified that he was responsible for proposed rate changes being allocated to individual tariffed items and for the overall rate design being established. Among the changes proposed by witness Fleming are the unbundling of station equipment from access lines and the reclassification of certain work components in service connection charges. Witness Fleming noted that the Company was proposing a records only charge and a customer return plan which would encourage customers to remove instruments and return them to the Company. He stated that his proposals would allow the Company's subscribers to participate in providing their own services, the opportunity to select various services, and options and flexibility in controlling their cost. In the Company's service charge tariffs witness Fleming also proposed to change from $15.00 to $35.00 the minimum service charges which must be incurred for a customer to have the option to spread the cost over two equal payments.

Witness Fleming proposed a new flexible pricing concept for single line telephone instruments that would allow the Company to initiate price changes with a minimal amount of regulation.

With regard to the pricing relationships between classes of service, witness Fleming indicated that they are based on the representative usage of an average line and the service's value. Based upon these considerations, he proposed to increase the existing relationship between the key and PBX trunk rates and the business one-party rate.

The Public Staff had certain specific recommendations which it presented through the testimony of William J. Willis regarding the Company's proposed rate structure. These recommendations are set out in the paragraphs below.

In the offerings that include a telephone instrument as an integral part of a single rate, witness Willis recognized the need to separate out the instrument charge. It was witness Willis' recommendation that the unbundling of local basic service rates be allowed, consistent with previous Commission decisions in telephone general rate case proceedings.

In connection with the Company's proposal to change rates for its standard and dial-in-handset telephone instruments upon interim filings with the Commission, witness Willis remarked that the Public Staff had recommended and the Commission previously allowed companies to sell telephone instruments for a nonrecurring charge. Witness Willis stated that to his knowledge the Commission

had never allowed a company to make offerings for which the monthly rate could be changed by filing of interim tariff revision. He indicated that two-level arrangements for certain equipment allows capital cost to be changed on vintage filings but in-place equipment charges are not changed. Witness Willis stated that, if approved, the tariff would cause charges for standard and dial-in-handset telephone instruments to change for all subscribers using these instruments. He stated the Public Staff does not support the flexible tariff.

According to Witness Willis, the Company's proposed changes in the rate relationships between key and PBX trunks and the business one-party rates coupled with either the Company's or Public Staff's proposed increases in basic exchange rates would result in excessive price pressure for these basic services. Thus witness Willis concluded that, in the absence of stronger justification in support of the proposed ratio changes, the present relationships should be maintained.

The Company proposed to institute a $5.00 charge for each rotary number which a subscriber wishes to reserve for his future use. Witness Willis commented that, though rotary service has been provided in step-by-step offices for years and years, no company in North Carolina charges for reserved rotary numbers. Witness Willis noted that this proposal is made at a time when the Company is replacing its step-by-step offices with digital central offices in which reserved numbers are not required. Witness Willis recommended that General's proposal for a reserved rotary number charge be denied.

Witness Willis agreed with the proposal of the Company to establish a records only service ordering charge. He also agreed with the Company's customer return plan as modified with the station handling charge separated out from the premises visit charge. He disagreed with the minimum charge of $35.00 to establish service and recommended a charge of $24.90 which is the sum of the Company's proposed primary service ordering charge of $17.00 and his recommended $7.90 central office work charge. Witness Willis stated that he felt that as long as the concept of universality of service is valid for residential basic service then it is equally as valid for establishing service. He added that his proposal of $7.90 for the central office work reduced the $35.00 minimum proposed by the Company to $24.90 which was still some 19% greater than Southern Bell Telephone's minimum charges for service.

On the subject of inside wiring charges, witness Willis pointed out that cost studies had been submitted this year by Carolina Telephone Company and Southern Bell Telephone Company which indicated costs of $8.95 and $8.77 respectively. He related that General's estimate, which is some 50% higher, gave him concern. Therefore he recommended that the highest rate approved this year for either Carolina or Southern Bell be used rather than accepting General's proposal.

Witness Willis testified that it would be proper to set tariff provision 4.2.1(c) so all service charges equal to or greater than $24.90 may be spread over the first two billing periods in equal payments after service is completed. Witness Willis noted the other differences in his recommendations and the Company's proposals for service charges related to the levels of the inside wiring charge, central office work charge, and maintenance of service charge. Witness Willis stated that for these items he generally proposed charges equal to the highest rates approved by the Commission this year.

Public Staff witness Willis testified that there are additional modifications to the Company's proposed service charges which may be developed to give the customer greater flexibility in controlling his costs. According to witness Willis a tariff which allows subscribers to install their own inside wiring and modular jacks allows avoidance of Company costs and customer charges for the premises visit charge, inside wiring charge, station handling, and jack installation work functions. Witness Willis recommended that the Company be required to file a tariff with the Commission which would allow customers to provide their own premises wiring and standard modular jacks. He stated that the technical standards and installation guidelines such as those the Commission approved for Southern Bell Telephone Company should be included in the filing.

Witness Willis agreed with the Company's proposal to allow customers a 14-day trial period to assess the effectiveness of custom callng without financial obligation. Instead of moving the present provisions and rates to the obsolete tariff section and having the new provisions and rates as a general offering, thus having two sets of rates for the same offering, witness Willis recommended that the Company's new custom calling tariff proposal be applicable to both new and existing service as a general offering.

Witness Willis submitted two exhibits illustrating how he proposed the additional revenues recommended by the Public Staff be distributed. During cross-examination he stated he had developed a percentage number which he applied to all of the Company's proposed increases with the exception of the areas which he had given specific recommendations. Witness Willis indicated that one of the reasons for his approach was to maintain a relative semblance of the Company's proposed increases. Additionally, witness Willis recommended the rates proposed by General when the proposed rates were less than would have been arrived at by applying the proposed percentage increase shown on his Exhibit No. 7.

Based on the testimony and exhibits of witnesses Fleming and Willis, the Commission reaches the following conclusions with regard to the Company's tariff provisions rates and charges:

1. That the charges for telephone sets should be unbundled from the access line charges.

2. That the Company's flexible pricing proposal conflicts with the regulatory process, is not in the public interest, and therefore, should be disallowed.

3. That the present ratio relationships between basic business services are improper and should be changed to the following:

Business Service (one-party)	Approved Rate Relationship
Manual access line (key trunk)	1.4
Automatic access line (PBX trunk)	2.1
Semi-public service	1.75
Residential Service (one-party)	
Manual access line (key trunk)	1.4
Automatic access line (PBX trunk)	2.1

4. That the proposed charge for reserved rotary numbers should be approved.

5. That the following service connection charges are reasonable and should be implemented.

SERVICE CONNECTION CHARGES

I.	RESIDENTIAL RATES	
A.	Service Order	
	1. Primary	$17.00
	2. Secondary	7.50
	3. Record	6.75
B.	Premises visit, each	6.75
C.	Central office work, each	7.90
D.	Inside wiring, each	9.00
E.	Station connector work, each	5.00
F.	Station handling work, each	6.65
G.	Equipment work, each	10.50
H.	Restoration	18.00
I.	Customer return plan	11.00
II.	BUSINESS RATES	
A.	Service order	
	1. Primary	$19.00
	2. Secondary	8.50
	3. Record	7.25
B.	Premises visit, each	6.75
C.	Central office work, each	11.75
D.	Inside wiring, each	15.05
E.	Station connector work, each	5.00
F.	Station handling work, each	8.00
G.	Equipment work, each	10.50
H.	Restoration	18.00

Maintenance of Service Charge	
First 30 minutes	
Business	27.00
Residence	27.00
Each Additional 30 minutes	
Business	11.25
Residence	11.25

6. That residential applicants or subscribers should be allowed to pay for service charges in two equal payments over the first two billing periods after such service work is completed where the total exceeds $24.90, unless the subscriber is a known credit risk to the Company.

7. That a tariff which permits the Company's subscribers to provide their own inside wiring and modular jacks is in the public interest and should be filed by the Company.

8. That the Company's proposed customer calling tariff should be implemented as a general offering.

9. That those rate structure changes proposed by the Company and not herein addressed but agreed to by the Public Staff should be adopted.

10. The Commission concludes that revenues remaining to be distributed among rate categories after allowing for the Commission's previous conclusions should be spread over all the remaining proposed rate categories. The revenue increase in each category should equal the given percentage of the revenue increase proposed by the Company for these remaining categories. The percentage number should be determined by dividing those revenues yet to be distributed by the total additional revenues proposed by the Company to be generated by the remaining categories.

11. The Commission concludes that in conformance with the revenues established in the Commission's conclusion number 9, rates within each category should be construed on a generally uniform basis.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, General Telephone Company of the Southeast, be, and hereby is, authorized to adjust its telephone rates and charges to produce, based upon stations and operations as of December 31, 1980, an increase in annual gross revenues not to exceed $6,624,941.

2. That the Applicant is hereby called on to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the additional revenues approved herein in accordance with the guidelines established by this Commission in Evidence and Conclusions for Finding of Fact No. 15 within 10 days from the date of this Order. Workpapers supporting such proposal should be provided to the Commission and all parties of record (formats such as Item 30 of the Minimum Filing Requirement, NCUC Form P-1 are suggested). Comments to the Company's rate schedule proposals shall be filed within five days after the tariffs are filed.

3. That the rates, charges, and regulations necessary to produce the additional annual gross revenues authorized herein shall become effective upon the issuance of a further order approving the tariffs filed pursuant to paragraph 2 above.

4. That the Company should begin expensing new inside wiring cost on a flash-cut basis effective October 1, 1981.

5. That the depreciation rates as shown on Appendix A are approved.

6. That the Company be, and hereby is, allowed to develop and implement practices to offer for sale in-place or in-plant telephone equipment and to notify its subscribers of any such program so instituted. These practices shall be filed with the Commission within 45 days of the date of this Order.

7. That General Telephone of the Southeast shall give notice of the rate increase approved herein by bill insert mailed 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.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of November 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

TELEPHONE

APPENDIX A

GENERAL TELEPHONE COMPANY OF THE SOUTHEAST

DEPRECIATION RATES

Account Code	Class of Plant	Present	Approved
C121	Buildings	2.2%	2.2%
C202	Manual switching	9.2	9.2
C203	Automatic switching	5.4	5.4
C204	Automatic message	11.8	11.8
C205	Circuit equipment	5.0	5.0
C206	Radio equipment	6.8	6.8
C401	Telephone station apparatus	6.8	10.4*
C404	Teletypewriter equipment	7.6	5.9*
C407	Radio telephone equipment	10.0	0.0*
C450	Station connections - other	5.0	5.0
C481	Large PBX	10.5	16.2*
C601	Pole lines	5.7	5.7
C602	Aerial cable	4.9	4.9
C603	Underground cable	3.1	3.1
C604	Buried cable	3.8	3.8
C606	Aerial wire	16.6	16.6
C607	Underground conduit	1.7	1.7
C811	Furniture and office equipment	4.4	4.4
C821	Motor vehicles	8.8	8.8
C822	Aircraft	4.0	4.0
C831	Motor vehicle shop equipment	6.3	6.3
C841	Tools and other work equipment	6.6	6.6

Based on remaining life.

DOCKET NO. P-55, SUB 784

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Southern Bell Telephone and Telegraph) ORDER GRANTING
Company for an Adjustment to Its Rates and Charges) PARTIAL INCREASE
Applicable to Intrastate Telephone Service in North Carolina) IN RATES

HEARD IN: County Office Building, 720 East Fourth Street, Charlotte, North Carolina, on January 20, 1981; Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on January 21, 1981; New Hanover County Courthouse, Wilmington, North Carolina, on January 26, 1981; and in the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 27, 28, 29, 30, February 3, 4, 5, 6, 10, 11, 12, and 13, 1981

TELEPHONE

BEFORE: Commissioners Edward B. Hipp, Presiding; and John W. Winters and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Hunton & Williams, 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

Gene V. Coker, 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. Box 27866, Raleigh, North Carolina 27611
For: North Carolina Textile Manufacturers Association, Inc.

E. Gregory Stott, Attorney at Law, P.O. Box 131, Raleigh, North Carolina 27602
For: Sonitrol of East Carolina, Inc., Sonitrol of North Carolina, Inc., and Sonitrol Piedmont, Inc.

Dennis L. Myers, Meyer, Capel, Hirschfield, Muncey, Jahn & Alden, Attorneys at Law, 306 West Church Street, P.O. Drawer 577, Champaign, Illinois 61820
For: Charlotte Telephone Answering Service, Inc., Telephone Answering Services, Inc., Answering Services, Inc., Telephone Answering Service, Inc., of Greensboro, Telephone Answering Service, Answering Charlotte, Inc., Ans-A-Phone Communications, Inc., and Patterson Anserphone Communications Enterprises, Inc.

Will J. Dooley, Jr., Senior Trial Attorney, Department of Defense, 5611 Columbia Pike, Room 422, Falls Church, Virginia 22041
For: Federal Executive Agencies of the United States

Henry A. Mitchell, Jr., Attorney at Law, Smith, Anderson, Blount, Dorsette, Mitchell & Jernigan, P.O. Box 31, Raleigh, North Carolina 27602
For: American District Telegraph Company

Jerry B. Fruitt, Chief Counsel, and 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

TELEPHONE

BY THE COMMISSION: This matter is before the Commission on 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 September 4, 1980, for authority to increase its rates and charges on intrastate service (toll and local). The Company sought to increase total intrastate revenues in the amount of $68,174,088 or 13.1%.

On September 26, 1980, 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: January 20, 1981, in the County Office Building, 720 East Fourth Street, Charlotte, North Carolina; January 21, 1981, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina; January 26, 1981, in the New Hanover County Courthouse, Wilmington, North Carolina; and beginning on January 27, 1981, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. In a subsequent Order dated December 30, 1980, the Commission scheduled an evening hearing in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina.

The Public Staff of the North Carolina Utilities Commission filed Notice of Intervention on October 8, 1980.

The following parties petitioned the Commission for leave to intervene: The United States Department of Defense and all other Executive Agencies of the Federal Government on September 24, 1980; Sonitrol of East Carolina, Inc., Sonitrol of North Carolina, Inc., and Sonitrol Piedmont, Inc., on November 17, 1980; North Carolina Textile Manufacturers Association, Inc., on November 24, 1980; American District Telegraph Company on January 8, 1981; Charlotte Telephone Answering Service, Inc., Telephone Answering Service, Inc., Answering Service, Inc., et al., on January 9, 1981; Business Services Company on January 23, 1981. The Commission issued Orders allowing intervention as follows: to the Federal Executive Agencies of the United States on October 3, 1980; to Sonitrol of East Carolina, Inc., et al., on November 19, 1980; to American District Telegraph Company on January 9, 1981; and to Charlotte Telephone Answering Service, Inc., et al., on January 13, 1981.

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: Allan E. Thomas, Vice-President in charge of Southern Bell's operations in North Carolina, with respect to Southern Bell's operations in North Carolina; James H. Vander Weide, President and Secretary of University Analytics, Inc., with regard to the cost of and return on common equity capital; Willard T. Carleton, Kenan Professor of Business Administration at the University of North Carolina - Chapel Hill, with respect to the fair rate of return on equity; Timothy H. Weaver, District Manager - Price Comparison Methods in the Bell System Purchased Products Division for the American Telephone and Telegraph Company, with respect to price comparison studies; Thomas F. Clifford, Manager of Corporate Analysis in the Regulatory Matters Division of the Western Electric Company, with respect to Western Electric's purchases and sales to the Bell System; Jeanne de Laehne, Division Manager - License Contract and Regulatory Matters in the Comptroller's

Department of the American Telephone and Telegraph Company, with respect to license contracts; Jack T. Gathright, Division Staff Manager in the Revenue Requirements Department of Southern Bell in Atlanta, with respect to the services received by the Company's North Carolina operations as a result of license contracts; Robert L. Savage, Division Staff Manager - Rates for Southern Bell, with respect to the proposed changes in rates and charges; Roderick G. Turner, Jr., Division Manager - Comptroller's Department of Southern Bell, with respect to the revenue requirements of Southern Bell in North Carolina; A. Max Walker, Vice-President and Treasurer of Southern Bell, with respect to the overall fair rate of return. Following the presentation of evidence by the other parties to this proceeding, Southern Bell recalled A. Max Walker to present rebuttal testimony regarding the testimony of the Public Staff's witnesses as to reductions in rate base and end-of-period expenses, increases in end-of-period revenues, adjustments to interest expense and test year expenses, and rate of return on equity.

The Public Staff's witnesses presenting direct testimony were: William F. Watson, Director of the Economic Research Division, with respect to cost of capital and fair rate of return; Donald E. Daniel, Assistant Director of the Accounting Division, with respect to revenues, expenses, and investment of the Company; Benjamin R. Turner, Jr., Engineer - Communications Division, with respect to quality of service, depreciation rates, sale of in-place station apparatus, and optional local measured service; Millard N. Carpenter, III, Engineer - Communications Division, with respect to proposed increases for intraexchange mileage services and equipment and facilities provided for telephone answering services; Hugh L. Gerringer, Engineer - Communications Division, with respect to the apportionment of interstate and intrastate operations and the determination of representative intrastate toll revenue for the test period; Leslie C. Sutton, Engineer - Communications Division, with respect to proposed changes in service connection charges; Mark D. Sherman, Staff Accountant - Accounting Division, with respect to license contract agreements; William J. Willis, Jr., Engineer - Communications Division, with respect to proposed changes in local service and miscellaneous revenue levels.

The North Carolina Textile Manufacturers Association, Inc., offered the testimony of Louis R. Jones, Manager of Corporate Communications Department of Burlington Industries, Inc., Greensboro, North Carolina. Witness Jones testified as to the effect the Company's proposed rate increases would have upon Burlington Industries, Inc., and upon the textile manufacturers of North Carolina in general.

Intervenor Sonitrol of East Carolina, Inc., et al., offered the testimony of W. K. Edwards, Director of the Sonitrol Telephone Assistance Program. Witness Edwards testified in opposition to the proposed increases in rates for leased telephone lines; he also testified with respect to the methodology used by the Company to arrive at such rates and charges.

The intervening Telephone Answering Services presented the testimony of two witnesses: A. W. Griffin, Jr., of Business Services Company of Goldsboro, North Carolina, and Paul Hutson Moody of Ans-A-Phone Communications, Inc., of Greensboro, North Carolina. Both witnesses testified as to the adverse effect that the proposed increases in rates and charges would have upon their individual businesses and upon the telephone answering service industry in general and upon the service's customers.

The Federal Executive Agencies of the United States offered the testimony of Mark Langsam, General Services Administration, Washington, D. C. Witness Langsam testified with respect to the cost of capital for the Bell Telephone System and the current state of the Bell System's credit.

The American District Telegraph Company offered the testimony of William R. McLester, American District Telegraph Company, Charlotte, North Carolina. Witness McLester testified with respect to the proposed increase in rates in particular as these apply to private lines used for burglar alarm and fire alarm circuits.

Approximately 40 public witnesses testified in the hearings held throughout the State. The testimony of these witnesses tended to address the issues of optional local measured service and proposed increases in private line services.

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 Southern Bell's original application would have produced $68,174,088 in additional annual gross revenue for the Company; however, in a letter to the Commission filed January 16, 1981, the Company requested the Commission to establish rates which would produce $109,442,813 in additional annual gross revenue.

3. The test period used by all parties in the proceeding and established by the Commission is the 12 months ended July 31, 1980.

4. Southern Bell's investment in telephone plant in service in North Carolina is reasonable.

5. The quality of service provided by Southern Bell is adequate; however, there are areas in which improvement is needed and areas in which the Company has moved further from the Commission's service quality objectives that it was ordered to meet in the last rate case proceeding (Docket No. P-55, Sub 777).

6. Southern Bell's reasonable original cost rate base is $952,373,000, consisting of utility plant in service of $1,312,010,000, telephone plant under construction of $38,553,000, telephone plant acquisition adjustment of $4,091,000 and working capital of $13,842,000 reduced by depreciation reserve of $277,107,000, customer deposits of $2,541,000, accumulated deferred income taxes of $134,400,000, and unamortized investment tax credit of $2,075,000.

7. Southern Bell's gross revenues for the test year after accounting and pro forma adjustments are $527,626,000. After giving effect to Southern Bell's proposed rates, such gross revenues would be $595,800,088.

8. The reasonable level of test year intrastate operating revenue deductions after accounting, pro forma, end-of-period, and after period adjustments is $440,114,000. This amount includes $84,422,000 for investment currently consumed through reasonable actual depreciation on an annual basis.

9. The revenues, expenses, and net operating income of the Company's Directory Advertising Operations are properly includable in the cost of service in this proceeding.

10. The Company should be allowed a rate of return on original cost rate base of 10.95% which will allow the Company a return on common equity of 13.5%.

11. Based on the foregoing, Southern Bell should be allowed an increase, in addition to the $527,626,000 of annual gross revenues which would be realized under its present base rates, not to exceed $41,281,000. This increase is required in order for the Company to have a reasonable opportunity to earn the 10.95% 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.

12. 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 $41,281,000 (taking into account those adjustments authorized in Docket No. P-100, Sub 53), will be just and reasonable.

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 were uncontested and uncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commission concludes that the Applicant's investment in plant is reasonable based on the uncontroverted testimony in this case. The Commission, under its statutory authority, would be remiss, however, if it failed to express concern and reservations about the huge construction programs that Southern Bell has planned for North Carolina. The Commission is strongly supportive of improvement in technology and its advantages to the consumer. However, the Commission urges Southern Bell to analyze and reevaluate its projected construction program in order to reassure itself and this Commission that all of the projects are essential for quality service to Applicant's customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence related to the quality of service was presented by Company witness Thomas and Public Staff witness Turner.

In witness Thomas' testimony, he referred to the service objectives the Commission had ordered the Company to meet in Docket No. P-55, Sub 777, and stated that the Company had met a majority of the objectives. Witness Thomas did acknowledge on cross-examination, however, that the Company was still having problems meeting some of the Commission's objectives. Specifically, he stated that while the Commission's objectives for out-of-service cleared within 24 hours is 95%, the average for the State was in and around 90%; that the repeat report rate in the year had increased over the prior 12-month period and was above the Commission's objective; that subsequent reports have not met the Commission's objective of 10% with a statewide average of 15.34% in 1979 and 14.67% in 1980. Witness Thomas also stated that in the 23 test centers around the State some are meeting the subsequent report objective and some have been missing the objective in some substantial range.

Witness Turner testified that the Public Staff's review of the quality of service provided by the Company included central office tests, answer time tests, public pay station tests, and a review of service order and trouble report handling indices. Based on the results of his review, witness Turner concluded that the overall quality of service is adequate, but that the Company is not meeting the Commission's objective for out-of-service reports cleared within 24 hours, repeat reports, and subsequent reports. He also stated and outlined certain districts which are weak in meeting installation appointments and the Commission's objective for trouble reports. The weak districts are shown in Appendix B.

Witness Turner's testimony also included two recommendations concerning clarification of the wording for the installation work time objective and the installation appointment objective and a recommendation on the repeat report objective level. He stated that the installation work time objective should include the words "company negotiated" as follows: 90% of Company negotiated regular service orders completed within five working days. His recommendation concerning the installation appointment objective was to omit the word "new" from the objective and state the objective as follows: 5% or less of regular service installation appointments, not met for Company reasons. In connection with the repeat report objective of 10%, witness Turner stated that based on an analysis of the repeat report index, the objective for this service should be increased from 10% to 15%.

Based on the evidence, the Commission concludes that while the overall quality of service is adequate, Southern Bell is not meeting all of the Commission's service quality objectives. The Commission further concludes that the areas in which the Company is not meeting the objectives are primarily related to trouble report handling and service order handling. These are areas in which the Company must improve.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Turner and Public Staff witness Daniel. Company witness Walker presented rebuttal testimony relating to the Public Staff adjustment to the reserve for depreciation. The following chart compares the amounts which the Company and the Public Staff contend should be included in the original cost net investment for use in this proceeding.

TELEPHONE

(000's Omitted)

Item	Amount Company	Public Staff	Difference
Telephone plant in service	$1,311,831	$1,312,010	$ 179
Telephone plant under construction (short term)	38,961	38,553	(408)
Property held for future use	326	-	(326)
Telephone plant acquisition adjustment	4,091	4,091	-
Working capital	13,842	13,842	-
Depreciation reserve	(238,149)	(263,708)	(25,559)
Customer deposits	(2,541)	(2,541)	-
Accumulated deferred income tax	(134,400)	(134,400)	-
Unamortized investment tax credit	(2,075)	(2,075)	-
Original cost net investment	$ 991,886	$ 965,772	$(26,114)

The Company and the Public Staff are in agreement on the amounts for the plant acquisition adjustment, working capital, customer deposits, deferred income taxes, and unamortized investment tax credit. There being no evidence to the contrary, the Commission concludes that the amounts presented by both the Company and the Public Staff are reasonable and proper.

The first difference of $179,000 relates to telephone plant in service. Public Staff witness Daniel added back $179,000 applicable to directory advertising operations. This adjustment is consistent with the inclusion of directory advertising revenues and expenses in cost of service by the Public Staff. Company witness Turner had eliminated this amount from plant in service because he had excluded directory advertising revenues and expenses from cost of service. Having found in Finding of Fact No. 9 that directory advertising revenues and expenses should be included in cost of service, the Commission concludes that plant in service applicable to directory advertising operations must also be included in investment. The Commission, therefore, adopts the $1,312,010,000 level of plant in service proposed by the Public Staff.

The second difference of $408,000 concerns telephone plant under construction. Company witness Turner proposed $38,961,000 for this item which he stated on cross-examination was "plant under construction as of the end of the test period in accordance with the other items shown in our plant rate base." He also indicated that this was a representative figure for plant under construction.

Public Staff witness Daniel testified that:

> "I have used the average for the test year of $38,553,000 because I believe it to be more representative of the ongoing level of investment in short-term construction maintained by the Company."

Witness Daniel stated on cross-examination that his average was based on 13 months but that it would be an average of 12 months' activity in the account. He agreed that his average was not the balance at a given time, but that he had used an average because the balance in this account turns approximately every four months and any one month is not generally going to be representative of a going level.

In response to cross-examination on the impact of inflation on the balance in construction, witness Daniel stated:

> "...the level at July 31, 1980, was $52,780,000. By November it was $47 million. If what you say is hypothetically true, that it is going to grow, then we've had deflation, which I don't believe to be the case."

Witness Daniel stated:

> "But again I would like to point out that I am not including dollars that are representative of July 31. I am stating that that average is representative of a going level of cost whatever they may be including inflation that should be included in the rate base."

Witness Daniel stated in response to questions on Daniel cross-examination Exhibit 4 that:

> "It reflects 11 months activity in the account. There are 12 balances but it reflects the activity for 11 months."

The Commission concludes that due to the rapid turnover of construction work in progress (approximately every four months) and the fluctuations in the balances as reflected on Daniel Exhibit I, Schedule 2-1, that an average is more representative than a point in time balance of the on-going level of construction work in progress which should be included in the rate base. The Commission further concludes that the 13-month average used by witness Daniel is the correct method for determining the average. The Commission, therefore, concludes that the proper level of construction work in progress to be included in the rate base is $38,553,000.

Property held for future use is the next area of difference to be resolved.

Company witness Turner included $326,000 of property held for future use in his rate base. He stated:

> "Property held for future telephone use comprises primarily the original cost of land not currently in service but necessary for the provision of service. Each item has been acquired under a definite plan for its use in the provision of telephone service within two years."

Public Staff witness Daniel excluded the property held for future use stating:

> "Property held for future use does not, in my opinion, meet the criterion of being used and useful in providing telephone service to the public; therefore, property held for future use cannot 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 a utility, 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 property held for future use in determining the rate base for use in this proceeding.

The final item on which the witnesses differ is accumulated depreciation. Both witnesses agree that the end-of-period accumulated depreciation after pro forma adjustments to depreciation expense is $238,149,000. Public Staff witness Daniel increased this amount by $25,559,000 "to give the ratepayers the benefit of depreciation expenses which they paid to the Company subsequent to the end of the test period."

In support of his adjustment witness Daniel testified:

> "Chapter 62-133(b) of the General Statutes of North Carolina states: 'In fixing such rates, the Commission shall...(1) Ascertain the reasonable original cost of the public utility's property used and useful, or to be used and useful..., less that portion of the cost which has been consumed by previous use recovered by depreciation expense...' During the period from July 31, 1980 to the close of the hearings (estimated to be January 31, 1981) the ratepayers have been paying the depreciation expense on the plant in service at the end of the test period; therefore, they should receive the benefit of those payments by an increase in the accumulated depreciation. If this is not done, rates will be set which result in the ratepayer paying a return on capital which they have already provided to the Company."

On cross-examination, witness Daniel contended that he had not mismatched plant at one date and accumulated depreciation at another. He stated:

> "...What I have done is to pull back into the test year as of July 31, 1980, the depreciation paid in by the customers subsequent to July 31, 1980 through the close of this hearing just as the Company pulled back into the test year wage adjustments, FICA adjustments..."

Witness Daniel contended that it was not necessary to increase plant by the same $25.5 million that he had increased the depreciation reserve in order to recognize the benefit to the ratepayer of the reinvestment of that amount in additional plant. He stated:

> "To the extent that the Company reinvested that money in additional plant, I think that there is a presumption that that additional plant produces additional revenues and, therefore, the Company is earning a return on that plant in addition to what it was earning as of the test year."

He further stated, when asked if the Staff had not grown additional revenues, that:

"I believe that the Staff has adjusted revenues to a level, a going level basis as of the end of July 31, 1980."

When asked if it was not necessary to bring gross plant up to January 31, 1981, witness Daniel stated:

"No, sir, I would differ with you on that point. I believe that at the point you update plant, you don't update plant, you change the test year totally. At that point you would have to redo the whole test year revenues, expenses, all assets, the whole test year would have to be adjusted."

On being charged with straying from the test year concept where it serves to reduce plant in service but not making the totality of the adjustments as of whatever date you bring your reserve to, witness Daniel responded:

"I believe the adjustment I made conforms to the definition an actual change has taken place with regard to the plant in place as of July 31, 1980, and further as regards going forward, we have accepted any Company adjustments that have gone forward beyond the end of the test period other than any we might have excluded, but to update the gross plant beyond the end of the test year does require the update of the test year to that point in time also."

When asked if he was advocating a depreciation reserve greater than the Company's present depreciation reserve, witness Daniel responded that he did not know what the current book depreciation reserve was or what caused it to be what it currently is on the books, but that based on what he did know he was recommending the $264 million depreciation reserve.

Company witness Walker on rebuttal testified that the reserve adjustment

"...provides no recognition for the reinvestment of these funds in new plant...telephone plant growth has offset the additions to depreciation reserve...over this same period the Company has invested over five times the proposed adjustment amount in new plant and equipment to serve our North Carolina subscribers."

He further testified:

"The Company's depreciation reserve as adjusted by Mr. Turner thus already encompasses the depreciation expense during the six months period July 31, 1980 - January 31, 1981, which the Staff is proposing to recognize. The Company's financial statements for the end of the test year reflect and properly match all elements of revenues, expenses and rate base."

He continued:

"Finally, as of January 31, 1981, the Company's actual intrastate plant in service was $1.39B and the associated depreciation reserve was $248.9M. This contrasts with Public Staff's recommended test year level of plant in service of $1.31B and associated depreciation reserve of $263.7M."

In evaluating Company witness Walker's rebuttal, the Commission concludes that he failed to consider that Company witness Turner's adjustment to the end-of-period depreciation reserve was applicable only to plant additions during the test year, while Public Staff witness Daniel's reserve adjustment is properly applicable to the total plant in service as of the end of the test year.

Further, the difference of $14.8 million ($263.7M - $248.9M) in the depreciation reserve could be easily accounted for by retirements during the period subsequent to the test year. This is supported by the fact that, according to witness Walker, plant increased $80 million through January 31, 1981, while witness Walker also claimed additions of five times the Public Staff's reserve adjustment, or $127.5 million ($25.5M x 5).

The only specific challenge to the amount of witness Daniel's adjustment was that it exceeded the January 31, 1981, book depreciation reserve. A major cause of his difference is obviously retirements. When an asset is retired, the plant and depreciation reserve are reduced by the same amount (exclusive of salvage and cost of removal). Thus, the absolute amount of the reserve would be reduced, but the amount of net plant would remain the same.

The Commission also notes that witness Daniel reduced his adjustment by $1,011,000 to give effect to retirements subsequent to the test year.

The Commission believes that adjustments to reflect capital recovered by the Company subsequent to the close of the test year but prior to the close of the hearing are proper. The Commission does not, however, agree with witness Daniel that it is necessary to eliminate the corollary adjustment to accumulated depreciation as proposed by the Company to reflect the impact of its pro forma adjustment to depreciation expense in order to avoid a so-called "double dipping." The Commission believes that it is entirely consistent and proper to proform accumulated depreciation consistent with pro forma adjustments to depreciation expense.

The Commission believes that there is an important distinction between an adjustment:

1. To increase the level of plant in service for additions beyond the end of the test period, and

2. To recognize actual changes in the end-of-period level of depreciation reserve applicable to plant in service (adjusted for retirements) at the end of the test period.

There is a direct relationship between plant in service, revenues, expenses, and other elements of cost of service such as deferred taxes. An update of plant for additions subsequent to the end of the test year necessitates an update of all elements of cost of service directly related to plant. Such an update constitutes a change in the test year itself. No party, in fact, has proposed such a change in the test year.

An adjustment to recognize actual changes in the end-of-period depreciation reserve resulting from the consumption of end-of-period plant subsequent to the test year through reasonable actual depreciation (which has been paid to the

utility by its customers through rates) does not, alone, necessitate a change in the other elements of cost of service as is the case with subsequent additions to plant in service. Further, the adjustment to reflect capital recovered subsequent to the close of the hearing clearly meets the requirements of an actual change as defined in G.S. 62-133(c). The Commission considers the adjustment to reflect capital recovered subsequent to the close of the test year necessary so as to achieve a proper matching of rate base with associated test year revenues and expenses which were also adjusted to recognize actual changes subsequent to the test year.

After considering all the evidence presented by the witnesses, the Commission concludes that the Company's ratepayers have provided revenue to cover depreciation expense incurred subsequent to the end of the test year. The Commission, therefore, concludes that the ratepayers should not be required to pay a return on capital which they have already paid in to the Company through rates. Further, as will be discussed subsequently, the Commission has included pro forma depreciation expense in the amount of $13,399,000 in the test year cost of service. Accordingly, the Commission finds it entirely consistent and proper to make the corollary adjustment of $13,399,000 to accumulated depreciation. The Commission, therefore, concludes that the proper amount of depreciation reserve to be used in determining rate base for purposes of this proceeding is $277,107,000.

Based upon the foregoing, the Commission concludes that the proper level of original cost net investment or rate base to be used in this proceeding is $952,373,000, which is calculated as follows:

(000's Omitted)

Item	Amount
Telephone plant in service	$1,312,010
Telephone plant under construction (short term)	38,553
Telephone plant acquisition adjustment	4,091
Working capital	13,842
Depreciation reserve	(277,107)
Customer deposits	(2,541)
Accumulated deferred income tax	(134,400)
Unamortized investment tax credit	(2,075)
Total	$ 952,373

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence on the proper level of operating revenues is contained in the testimony of Company witness Turner and Public Staff witnesses Willis, Gerringer, and Daniel. The following chart summarizes the amounts proposed by the witnesses:

(000's Omitted)

Item	Amount	
	Company	Public Staff
Local service	$300,206	$303,715
Toll service	183,077	187,386
Miscellaneous	35,989	35,984
Uncollectibles	(2,740)	(2,781)
Total	$516,532	$524,304

As the summary shows the witnesses were in disagreement with respect to each item of operating revenues.

Company witness Turner testified that Local Service Recurring Revenues were brought to end of period using a revenue per main station factor based on March-July 1980 multiplied by end-of-period main stations plus an adjustment for loss of main stations in the Chapel Hill Exchange during summer school recess. He testified that he adjusted Local Service Nonrecurring Revenues to end of period by annualizing the average of the last four months' actual data plus expected installation charges for student phones at the beginning of the school year (Chapel Hill Exchange). According to witness Turner, he divided miscellaneous revenues into two parts and adjusted Miscellaneous Revenues to an end-of-period level by applying the annual growth rate for the 12-month period ending July 31, 1980, to the annual revenue level at January 31, 1980.

During cross-examination, when asked to explain his methodology on calculating end-of-period revenues, witness Turner explained that there had been an increase in local rates the early part of February and he had, therefore, considered only the last three or four months to obtain an average representative month of revenue which he then annualized. He continued his discussion by stating that the best estimate of end-of-period revenues is the sum of 12 consecutive months of actual revenue data, the midpoint of which occurred at the end of the test period.

Public Staff witness Willis testified that he established end-of-period levels of local service and miscellaneous revenues by using the basic principle of annualizing the last month of test-period revenue. He stated, however, that he adjusted the data in order to reduce the variability which results from annualizing booked monthly revenues (unadjusted). He remarked that it was his intention to utilize a procedure that would tend to neither understate not overstate the end-of-period level of revenue. In his exhibits he graphically demonstrated that actual yearly revenue was exemplified by an extremely smooth transition from month to month, as contrasted with the more variable movement of annualized unadjusted monthly revenues.

In order to reduce this variance, which according to witness Willis is a potential source of great inaccuracy, he developed a mathematical equation by using the regression analysis technique using 30 months of actual local service and miscellaneous revenue data ending October 30, 1980, from which he determined values of representative months of revenue occurring at the end of the test period which he annualized.

During cross-examination, witness Wilis agreed that the use of additional data improves the results of regression analysis. He remarked that in this context the Company had strongly opposed the Public Staff's updating revenue data in Southern Bell Docket No. P-55, Sub 777, and the Company's objection was upheld by the Commission. On cross-examination, concerning the "six months before and after" procedure, he observed that neither he nor the Company had used this method; however, witness Willis continued by stating that his reasons for not choosing this procedure were that this data is not always available at the time of the hearing, the procedure assumes linear growth and unnecessarily restricts the use of data to 12 months. Witness Willis expressed his concern about using this method of adjustment by stating that he did not believe it was proper to update a procedure that no one had endorsed in the hearing in order to pick and choose results.

The Commission concludes that the use of regression analysis to reduce inherent variations normally found among monthly revenue data is a resonable method of determining representative levels of monthly revenues which in turn may be annualized to establish yearly revenue levels. The Commission, therefore, concludes that the proper levels of local service and miscellaneous revenues for use herein are $303,715,000 and $35,984,000 respectively.

The next area of difference concerns the appropriate level of toll revenues. In his original testimony and exhibits, Southern Bell witness Turner included an end-of-period amount of intrastate toll revenues of $180,704,000 under present toll rates. He computed this amount through the use of a linear regression equation which was developed using 26 data points (June 1978 - July 1980) which represented monthly booked intrastate toll revenues summed from the revenue amounts in Account 510 (Message Toll), Account 511 (WATS), Account 512 (Toll Private Line), and Account 516 (Other Toll). At the time witness Turner computed this toll revenue amount, July 1980 was the latest month for which he had booked intrastate toll revenues. Using the regression equation, he forecasted monthly toll revenue amounts for the six months beyond the end of the test period of August 1980 through January 1981. He then added to this six months of forecasted revenues the sum of the actual booked toll revenues for the last six months of the test period, February 1980 through July 1980, yielding the $180,704,000 amount. From this amount witness Turner subtracted $2,771,000, the amount estimated by Southern Bell to be the impact of the toll rate changes proposed by Southern Bell in Docket No. P-100, Sub 53, resulting in a final level of intrastate toll revenues of $177,933,000. Therefore, for computing an end-of-period level of toll revenues, witness Turner used the methodology of developing total toll revenues over a 12-month period, the midpoint of which occurs at the end of the test period. Assuming uniform growth in toll revenues, the total toll revenues determined for that 12-month period would represent the average revenues for that period with this average occurring at the midpoint of the period or at the end of the test period.

Witness Turner filed revised testimony and exhibits prior to the beginning of the hearings which reflected among other changes an end-of-period amount of intrastate toll revenues of $183,077,000 under present toll rates. This revision in toll revenues resulted from updating the regression equation by using one more month, August 1980, of available booked intrastate toll revenues, making a total of 27 data points. Using the same methodology employed for computing the initial amount of end-of-period toll revenues, witness Turner

forecasted five months of toll revenues (September 1980 through January 1981) and added that amount to the sum of the actual booked, toll revenues for the preceding seven months (February 1980 through August 1980) to arrive at the revised end-of-period amount of intrastate toll revenues of $183,077,000. Again, witness Turner subtracted the $2,771,000 amount reflecting the impact of the proposed toll rate changes resulting in a final level of intrastate toll revenues of $180,306,000.

Public Staff witness Gerringer testified as to the representative level of intrastate toll revenues at the end of the test period, July 31, 1980, which witness Daniel used in his calculation of end-of-period revenues. Witness Gerringer, as witness Turner had done, also made use of a simple linear regression analysis to determine his end-of-period level of toll revenues. The data used for the analysis was Southern Bell's booked intrastate toll revenues summed by month from the toll revenues contained in Accounts 510, 511, 512, and 516 for 29 months beginning with June 1978 and ending with October 1980. This data represented all actual monthly booked intrastate toll revenues available at the time witness Gerringer prepared his testimony and included the full impact of the last intrastate toll rate changes that were approved in Docket No. P-100, Sub 45, and which became effective in April and May of 1978. Witness Gerringer stated that since the purpose of using regression analysis is to establish a trend line through a set of data points which exhibit fluctuations, the greater the number of data points the more representative and more useful the trend line becomes.

From the regression line established using 29 actual toll revenue data points, witness Gerringer computed a representative monthly amount of intrastate toll revenues of $15,541,000 corresponding to the last month of the test period (July 31, 1980) which he annualized by multiplying by 12 resulting in an end-of-period level of intrastate toll revenues under present intrastate toll rates of $186,492,000. Witness Gerringer pointed out that his method of utilizing the regression analysis was the same method that he had used and which was accepted by the Commission in Southern Bell's last general rate case in Docket No. P-55, Sub 777.

Finally, witness Gerringer testified that consistent with the results that reflect the Public Staff's position regarding the proposed intrastate toll rate changes as presented in Docket No. P-100, Sub 53, an estimated additional increase in intrastate toll revenues of $894,281 should be included for Southern Bell making a final representative level of intrastate toll revenues at the end of the test period, July 31, 1980, of $187,386,281. Witness Gerringer pointed out that the $894,281 amount may be subject to revision depending on the Commission's final decision regarding the proposed toll rate changes. Even though both witness Gerringer and witness Turner made use of regression analysis, the Commission is concerned with the way each witness applied the results of the regression analysis. Witness Turner in actuality used a method in which regression analysis was used as a means to an end to forecast the monthly revenues not available to establish a 12-month revenue picture - six months before and six months after the end of the test period. Therefore, witness Turner used only 12 months of data and a portion of that was forecasted. On the other hand, witness Gerringer's method relied completely on the use of regression analysis as an end in which 29 known, not forecasted, data points were used, thereby making the method inherently more reliable.

Based on the testimony and evidence presented in this case, the Commission concludes that the method used by Public Staff witness Gerringer yields a more reasonable and reliable end-of-period level of intrastate toll revenues than the method used by Southern Bell witness Turner and, therefore, an amount of intrastate toll revenues under present toll rates of $186,492,000 should be included in this case. The Commission further concludes based on its decision in the toll rate case in Docket No. P-100, Sub 53, that an additional amount of $1,435,119 should be included for Southern Bell in this case resulting in a total amount of intrastate toll revenues of $187,927,000.

The final difference concerns the level of uncollectible revenues. Public Staff witness Daniel calculated an end-of-period level of uncollectible revenues by using an uncollectible rate of .528%. The basic difference between the Company and the Public Staff for this item is the revenue base to which the uncollectibles rate is applied. The Commission concludes that witness Daniel's rate is reasonable for purposes of reflecting the impact of uncollectibles with respect to adjustments made to the Company's proposed level of end-of-period revenues. Based on the foregoing, the Commission concludes that the proper level of operating revenues under present rates to be used for purposes of this proceeding is as follows:

(000's Omitted)

Item	Amount
Local service	$303,715
Toll service	187,927
Miscellaneous	35,984
Uncollectibles	(2,784)
Total	$524,842

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Turner and Public Staff witness Daniel presented testimony and exhibits showing the levels of operating revenue deduction 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)

	Amount		
Item	Company	Public Staff	Difference
Current maintenance	$111,025	$111,025	$ -
Depreciation and amortization	86,664	84,422	(2,242)
Traffic	20,737	20,737	-
Commercial	43,091	43,091	-
General	19,933	19,933	-
Relief and pensions	28,206	28,206	-
General services and licenses	10,860	8,665	(2,195)
Other general and miscellaneous	31,579	26,437	(5,142)
Operating taxes	87,180	93,719	6,539
Total	$439,275	$436,235	$ (3,040)

Company witness Turner and Public Staff witness Daniel proposed the same amounts for current maintenance expense, traffic expense, commercial expense, general expense, and relief, and pensions expense. The Commission, therefore, concludes, absent evidence to the contrary, that the proper amounts of these expenses are those proposed by both the Company and the Public Staff.

The first difference relates to depreciation expense. Company witness Roderick Turner increased depreciation expense by $2,242,000 for represcription of depreciation rates effective January 1, 1981.

Public Staff witness Benjamin Turner testified that this adjustment results from a pending application by Southern Bell before the Federal Communications Commission. Public Staff witness Turner also stated that "...the procedure followed by the FCC in the past has been to review depreciation proposals with each State Commission through a three-way meeting involving FCC, State Commisison, and Company representatives." He also testified that "As of now, none of the normal Federal/State review steps have taken place."

Company witness Roderick Turner stated on cross-examination that the FCC had not yet approved the rates but that he anticipated that they would be approved. He accepted subject to check that comments on the proposed rates are not due to the FCC until April 1 of this year.

Based on the above, the Commission concludes that it is too early in the Federal Communications Commission regulatory process to reasonably ascertain if, when, and in what amount the proposed depreciation rates will be approved. Due to the uncertainty, the proposed rates do not meet the criteria of an actual change under G.S. 62-133(c). The Commission, therefore, concludes that the additional $2,242,000 of depreciation expense should not be allowed and that the proper amount of depreciation and amortization expense to be used in this proceeding is $84,422,000.

The next difference in operating revenue deductions reflects a $2,195,000 adjustment proposed by Public Staff witness Sherman reducing general services and license expense. The following tabular summary shows the components of witness Sherman's adjustment:

(000's Omitted)

Item	Amount
Charitable contributions	$ 27
Public affairs departmental expense	41
Inappropriately charged Bell Telephone Laboratories research costs	1,435
Department of Justice Antitrust Suit	692
Total	$2,195

Witness Sherman stated that he had excluded charitable contributions because Southern Bell ratepayers should not be forced to pay contributions through telephone rates to organizations to which they may not desire to contribute. Additionally, the Commission has consistently excluded contributions from the cost of service.

The Commission concurs with the position of Public Staff witness Sherman and adopts his adjustment reducing expense by $27,000.

The second component of witness Sherman's adjustment is the exclusion of $41,000 of Public Affairs Departmental expense. Witness Sherman stated that the primary function of the Public Affairs Department is to develop a Bell System strategy with respect to federal legislation and advocate that position where appropriate with governmental personnel, and that he had made the adjustment because the Public Affairs Department conducts political lobbying activities for which ratepayers should not be required to pay.

Witness Sherman stated that he was not sure how much ratepayers benefit or to the extent they benefit, but that the shareholders also benefit and that his conclusion to exclude all of Public Affairs expense bas based in part on the budget decision packages of AT&T Public Affairs Department.

Company witness De Laehne's Exhibit Part IV, page 38, states:

> "The overall function of the Public Affairs Department is to give advice, assistance, and information to Operating Company public affairs representatives on legal, regulatory (except FCC and State Commissions), and legislative matters arising at all levels of government, and on non-legislative matters pertaining to Federal government departments and agencies. Included are the maintenance of a centralized legislative data information interchange and liaison with national, regional and state legislative groups."

The descriptions of the functions of the Public Affairs Department by the witnesses differ; however, both descriptions characterize an organization ideally suited to be a vehicle for conducting lobbying activities. The Commission is of the opinion that the expense of lobbying activities should not be borne by the ratepayers and while there are indications in the record of possible customer benefits the Commission concludes that the Company has not borne the burden of proof that customer benefits exist or the burden of proving Public Staff witness Sherman's conclusion inaccurate. The Commission, therefore, concludes that the $41,000 of expense associated with the Public Affairs Department should be disallowed.

The third component of witness Sherman's adjustment relates to research costs of $1,435,000 allocated to North Carolina operations from billings by Bell Laboratories. The adjustment consists of three elements:

(000's Omitted)

Item	Amount
Applied research	$ 848
Product related research	581
Government related research	6
Total	$1,435

Witness Sherman testified that the total intrastate amount of Bell Laboratories billings for the test year was $3,533,259.

Witness Sherman testified that in the determination of his adjustment, he performed an in-depth review of all Bell Telephone Labs Research Systems Engineering case authorizations for both 1979 and 1980. He also stated that his adjustments were based on his review and that only product related costs were included in his adjustment.

He testified that he had made his adjustments for the following reasons:

1. Applied research contributes to specific commercial objectives with respect to products and processes and should be assigned to Western Electric Company, not to the operating telephone companies.

2. Product related research costs are readily identifiable to specific trademarked products and should be assigned to the manufacturing concern.

3. Government related research is performed for various branches of the Federal Government and the cost should be paid by the government.

Company witnesses DeLaehne and Gaithright testified on the services provided by Bell Labs to AT&T and thus the operating telephone companies.

Witness DeLaehne testified that:

> "Bell Labs is the research and development organization of the Bell System and is owned equally by AT&T and Western Electric. This organization employs numerous specialists including physicists, chemists, metallurgists, mathematicians, and engineers. Bell Labs performs research and systems engineering work for AT&T in all fields related to telephony. This work is a primary obligation of AT&T under the License Contract Companies in fulfilling their principal objective, that of furnishing quality telephone service at reasonable cost. Part III of my exhibit provides more detailed descriptions of the principal fields of research and systems engineering and associated work performed by Bell Labs on behalf of the Operating Companies."

In his prefiled testimony, witness Gaithright stated that:

> "There is the service of research and systems engineering provided by AT&T through Bell Telephone Laboratories. This research is continuous in nature and is directed to the sciences which underlie telecommunications. Bell Labs research and system engineering provides the scientific and technological basis for new and improved telecommunications systems and services."

Based on the evidence, the Commission concludes that research costs of Bell Laboratories can be separated into costs properly chargeable directly to the operating telephone companies and those costs properly assignable to the operating companies through the purchase of products. The Commission further concludes that applied research costs and product related research costs fall in the latter category. The Commission is also of the opinion that the cost of government related research should be borne by the government. The Commission, therefore, adopts witness Sherman's $1,435,000 adjustment as reasonable and proper.

The last component of witness Sherman's adjustment concerns the allocation to North Carolina intrastate operations AT&T's expenses associated with the Department of Justice Antitrust Case.

Witness Sherman stated that he excluded $692,000 in Department of Justice antitrust expenses from license contract expenses because they were incurred to maintain the existing corporate structure of the Bell System. He adds:

> "By maintaining the existing corporate structure, AT&T maintains its existing profit-making capacity. The primary benefit of retaining this profit-making capacity accrues to the stockholders of AT&T, not to the ratepayers of the operating companies."

On cross-examination, witness Sherman was asked whether or not he agreed that legal expenses were prudent business expenses. Witness Sherman replied that legal expenses were appropriate business expenditures, but that in the regulated environment, legal expenses should be to the benefit of the ratepayer before they are included in the determination of utility rates.

Witness Sherman pointed out that his adjustment to exclude the DOJ expenses would eliminate only 48% of the total AT&T expenditures on the Antitrust Suit. 51% of the expenses would still be collected through Western Electric and the Long Lines Department of AT&T.

The Commission disagrees with witness Sherman in this regard. The Commission believes that costs incurred with respect to the antitrust suit are reasonable and proper costs associated with providing public utility service. The Commission, therefore, rejects the Public Staff's proposal to exclude certain costs associated with the Department of Justice Antitrust Suit from the test year cost of service.

The next difference concerns Public Staff witness Daniel's $5,142,000 adjustment to other general and miscellaneous expenses. The components of the adjustment are tabulated below:

(000's Omitted)

Item	Amount
Miscellaneous expense	$ 326
Lobbying expense	73
Depreciation on capitalized wages	249
All other expenses	4,494
Total	$5,142

The first adjustment of $326,000 consists of contributions and educational programs and materials. Public Staff witness Daniel stated that he had eliminated these costs because their inclusion would force ratepayers to support organizations and activities which they may not desire to support.

On cross-examination witness Daniel did concede that the educational programs had some value to the ratepayer but maintained that the primary purpose of these expenditures was the promotion of Southern Bell.

The Commission has consistently excluded charitable contributions from the cost of service for the reasons stated by Public Staff witness Daniel and it hereby reaffirms that policy. The Commission also places the educational programs and materials in a similar category. Moreover, promotional costs do not constitute a reasonable and necessary expense of a utility. The Commission, therefore, concludes that the $326,000 adjustment proposed by the Public Staff is reasonable and proper.

The next adjustment proposed by witness Daniel is the elimination of $73,000 of lobbying expense. Witness Daniel stated that ratepayers should not be required to pay the cost of influencing legislative and public opinion. The Commission having previously concluded herein that lobbying expense is not a proper cost for inclusion in the rate-making process adopts the Public Staff adjustment of $73,000.

The next adjustment of $249,000 concerns depreciation on capitalized wages. Witness Daniel stated that it was improper to include in expense depreciation on pro forma wages capitalized. Witness Daniel agreed on cross-examination that Company witness Turner had flowed through the tax effect of payroll taxes and fringe benefits related to the capitalized wages. The Commission, therefore, believes that this adjustment is improper because it fails to consider related offsetting adjustments. Accordingly, the Commission rejects the Public Staff's adjustment in this regard.

The final difference in other general and miscellaneous expense relates to the annualization of expenses which were not specifically adjusted. Company witness Turner used a composite of the main station growth factor (1.26%) plus an average of the producer price index for the test year (5.85%) resulting in an annualization factor of 7.11%. Public Staff witness Daniel used only the main station growth factor of 1.26% in his annualization rate. He testified that while we live in an inflationary time consideration must be given to expenses included in the test year cost of service which result in technological advances and productivity gains.

Company witness Walker contended in rebuttal testimony that there were no unrecognized productivity gains and that price level changes are ignored using only the 1.26% growth factor. He further contended that such a factor produces results contrary to historical experience.

The Commission believes that the methodology employed by the Company is superior to the methodology employed by the Public Staff. While it may be true that the Company's methodology does not reflect any gains in productivity, it is also clear that the Public Staff's methodology does not fully reflect price level changes that occurred during the test year. The Commission, therefore, rejects the Public Staff's adjustment reducing all other expenses by $4,494,000.

The last difference in operating revenue deductions concerns operating taxes. Public Staff witness Daniel increased operating taxes by $6,539,000. Of this amount $8,313,000 represents Public Staff adjustments to income taxes applicable to revenue and expense adjustments which in part have been rejected by the Commission. As a result of the Commission's decision with respect to certain Public Staff adjustments to revenue and expense, it becomes necessary for the Commission to adjust for the income tax effect related thereto. Accordingly,

the Commission concludes that the level of income tax expense as proposed by the Public Staff in this regard should be reduced by $2,427,000 ($4,929,000 x .4924).

An additional $466,000 represents an increase in gross receipts tax applicable to revenue adjustments previously found to be proper. This amount however must be further increased by $32,000 to reflect the impact of the Commission's decision with respect to intrastate toll revenues.

The remaining component of the Public Staff's adjustment to operating taxes relates to the income tax effect of interest on long-term debt assigned to the Company's intrastate operations in the amount of $2,241,000.

Public Staff witness Daniel testified that his adjustment treated interest expense hypothetically applicable to job development investment tax credit (JDIC) as a deduction from taxable income. He stated that "...I believe that the manner in which I have treated it not only conforms to the treatment mandated by the Internal Revenue Service code and the regulation...requiring a sharing of the benefits, if you will of the JDIC and at the same time providing the lowest possible cost to the ratepayers of Southern Bell." He also contended that absent the statute the JDIC would be entitled to no return at all because it is cost-free capital.

Witness Daniel stated that this treatment was not consistent with the treatment accorded this item by the Commission in Southern Bell's last general rate case, Docket No. P-55, Sub 777.

Witness Daniel also testified that he had failed to consider a $2,065,000 adjustment to end-of-period interest expense proposed by Company witness Turner.

With respect to witness Daniel's assignment of hypothetical interest to investment supported by funds realized from utilization of JDIC, this matter was addressed by the Commission in great detail in Docket No. P-55, Sub 777, wherein the Commission concluded that the interest expense deduction for income tax purposes should not reflect hypothetical expense related to plant financed by JDIC. For reasons clearly stated in its Orders in said docket, and having heard no new evidence in the instant proceeding, the Commission rejects the Public Staff's proposal in this regard.

With respect to the remaining difference between the witnesses concerning interest expense used in the calculation of income tax expense, the Commission finds neither witness Turner's nor witness Daniel's proposal to be proper. Rather the Commission concludes that the total interest deduction appropriate for use herein is $35,717,000.

Based on the foregoing, the Commission concludes that the proper level of operating taxes for use in this proceeding is $92,163,000.

In summary, the Commission concludes that the proper level of test year operating revenue deductions is $440,114,000. Such sum may be calculated as follows:

(000's Omitted)

Item	Amount
Current maintenance	$111,025
Depreciation and amortization	84,422
Traffic	20,737
Commercial	43,091
General	19,933
Relief and pensions	28,206
General services and licenses	9,357
Other general and miscellaneous	31,180
Operating taxes	92,163
Total	$440,114

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding is contained in the testimony of Company witnesses Turner and Thomas and Public Staff witness Daniel.

Company witness Turner eliminated $6,894,000 of net operating income applicable to directory advertising operations from his determination of net operating income for rate-making purposes. He stated that he had made this adjustment on the recommendation of Company witness Thomas.

Company witness Thomas stated this adjustment is appropriate in view of the present competitive environment. He stated that at the federal level there is the clear intent that we eliminate, insofar as possible, cross-subsidies among services.

Public Staff witness Daniel testified that the elimination of directory advertising is both inequitable and unjustified. To separate the operations of directory advertising from utility operations permits the Company to realize revenue directly related to the operations of a public utility but which will not be considered in establishing rates. Witness Daniel did not reflect the impact of the adjustment to directory advertising proposed by Company witness Turner in developing the test year cost of service.

The Commission recognizes that there is a movement toward the separation of ancillary services from the regulated area in the telephone industry. It also recognizes that competitive pressures may eventually be a factor in the marketing of directory advertising by Southern Bell in its North Carolina operations; however, based on the evidence presented, there is presently no substantial competition posing a threat to Southern Bell's advertising market in North Carolina. Moreover, none appears to be on the horizon. The classified directory, in which advertising appears, is an integral part of providing adequate telephone service; thus, the absence of the classified directory would diminish the value of telephone service to the Company's customers. Finally, this Commission has consistently over the years included directory advertising revenues and costs in determining Southern Bell's total cost of service.

Based on the foregoing and the entire evidence of record, the Commission concludes that revenues and costs associated with Southern Bell's directory advertising operations should be included in the test year for purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The Company presented the testimony of witness Walker on the issue of embedded cost rates of senior securities. Witness Walker updated his prefiled testimony on January 15, 1981, on these issues to show the following embedded cost rates:

Item	Cost Rate
Long-term debt	8.44%
Preferred equity	7.79%

The Public Staff presented the testimony of witness Watson. In his prefiled testimony, witness Watson incorporated the following cost rates:

Item	Cost Rate
Long-term debt	7.78%
Preferred equity	7.84%

Finally, the Federal Government presented the testimony of witness Langsam. He incorporated 8.2% as the cost of debt and preferred stock.

On cross-examination, witness Watson stated that embedded cost rates which incorporate more recent issues than those which he has in his testimony would be higher if the marginal cost of debt is higher than the embedded cost rate.

The Commission, therefore, concludes that the appropriate cost rates for use herein are:

Item	Cost Rate
Long-term debt	8.44%
Preferred equity	7.79%

The issue of capital structure was addressed by witness Walker for the Company, witness Watson for the Public Staff, and witness Langsam for GSA. All of the witnesses addressed the issue through the use of the consolidated Bell System capital structure.

Witness Langsam briefly addressed the issue in arguing for a capital structure which contains no more than 50% common equity or the actual amount of common equity whichever is lower. This is based on the argument for an optimal capital structure.

Witness Walker offered the following figures in his original prefiled testimony:

Item	Ratio
Debt	46.90%
Preferred stock	2.30%
Common equity	50.80%
Total	100.00

In his updated testimony, he presented the following capital structure:

Item	Ratio
Debt	46.57%
Preferred stock	2.21%
Common equity	51.22%
Total	100.00

Witness Watson incorporated the following in his prefiled testimony:

Item	Ratio
Debt	46.90%
Preferred stock	2.60%
Common equity	50.50%
Total	100.00

These figures were as of July 1980.

The differences among the witnesses point out a basic problem with determining a unique capital structure for rate-making purposes. Obviously, the issuance of any one security at a given time will change the capital structure because securities are issued in discreet sums and at different times. Therefore, it is the task of this Commission to determine an objective capital structure for a company from which it should not stray far, rather than relying on the actual capital structure at any one time. Obviously, the mix of all financial intruments in their proper proportions as dictated by business and financial risks is both a cost saver to the company and to the consumer. The Commission, therefore, finds the following capital structure for Southern Bell to be proper for use herein:

Item	Ratio
Debt	47.50%
Preferred stock	2.50%
Common equity	50.00%
Total	100.00

The evidence for the finding of fact on the fair rate of return on common equity is found in the testimonies of Company witnesses Vander Weide, Carleton, and Walker; Public Staff witness Watson; and General Services Administration witness Langsam. The methodologies used in presenting the evidence upon which the Commission's conclusion is based can be broadly categorized into three groups. These are: (1) the discounted cash flow (DCF) analysis; (2) the risk spread or risk premium test; and (3) the comparable earnings test. Each of these are reviewed below.

The DCF methodology was used by all of the aforementioned witnesses except Company witness Walker. The DCF methodology consists of analyzing the market

data of a security or a group of securities and determining the cost of capital through the addition of the two components by which investors realize their returns. These two components are the dividend yield and the growth in dividends per share. Since market data and its interpretation in the DCF analysis are not exact, there are several different results from the witnesses' application of the DCF analysis. These will be summarized following the statement of appropriate application below.

The Commission is concerned with the fair rate of return allowed on local and intrastate toll service for Southern Bell in North Carolina. Since Southern Bell does not actively trade common equity, but issues common equity through the parent-subsidiary relationship with AT&T, the appropriate application of the DCF in this case is for AT&T. This was recognized by all of the witnesses in this case.

The dividend yield component of AT&T's common equity capital presented by the various witnesses in this case is summarized as follows:

Witness	Recommendation
Carleton	9.94 - 10.35%
Langsam	9.00 - 11.00%
Vander Weide	10.1%
Watson	10.0%

Obviously, there is very little disagreement with regard to the dividend yield component. The growth component of the DCF is less clear. The following is a summary of the various witnesses' growth estimates:

Witness	Recommendation
Carleton	5.07 - 7.95%
Langsam	4.00%
Vander Weide	5.00 - 6.00%
Watson	3.00 - 4.50%

Some discussion of these differences is in order.

Company witness Carleton employs several estimates of growth in dividends per share. The lowest of these estimates is derived by multiplying a retention rate of earnings times the return on book value of common equity. The highest of this range is derived by the use of a log-linear regression of historical earnings per share over the 10 years, 1969-1979. Federal Government witness Langsam derives a 4% growth rate by analyzing AT&T's historical growth rates in earnings per share and book value per share, along with several indices of utilities' growth rates. His final figure is a general statement regarding all of these measures. Company witness Vander Weide estimates growth rates based on historical data and examines several analysts' future projections of growth. His final estimate of growth rates is a general statement regarding all of this information. Public Staff witness Watson estimates historical data for AT&T, historical data for the six publicly traded Bell System subsidiaries, and Value Lines's projection of future growth rates. His estimated range is a general statement using all of this information.

As stated before, the DCF method is an addition of the two components of the method. The final recommendations based on the DCF of each of the witnesses is summarized below:

Witness	Range	Recommendation
Carleton	14.80 - 20.93%	16 - 16.5%
Langsam	13.0 - 15.0%	13.5 - 14.0%
Vander Wiede	15.1 - 16.2%	16.0% (17.5%)
Watson	13.0 - 14.5%	13.5%

The witnesses who presented testimony regarding the risk premium approach in determining the cost of common equity capital for AT&T were Company witness Vander Weide and Public Staff witness Watson. Witness Vander Weide presented the results of several studies including his own to determine the premium required by stockholders over that required by bondholders. His review of the results led to his determination that a stockbond differential of five percentage points is what is required by the investor in the average common equity security.

Public Staff witness Watson presented the results of a sample of roughly 1600 companies whose risk is defined by him as beta. He shows that as risk increases (as defined by beta) the return on equity required by investors increases. Using year-end 1979 data, the required return for the risk class in which AT&T falls is 13.23%.

The comparable earnings methodology was used by Company witness Vander Weide and by GSA witness Langsam. Inherent in Dr. Vander Weide's use of the comparable earnings methodology is his assertion that AT&T is at least as risky as the average industrial stock. He shows average rates of return for the Standard and Poor's 400 Industrials for each of the five years 1975-1979. The average over all of these years is 15.9%.

GSA witness Langsam employs several measures of risk and compares AT&T and the Bell System to other utilities and industrials to determine a comparable earnings rate of return for AT&T. Witness Langsam's conclusion is that the overall investment risk of the Bell System is below that of the average industrial as well as the average utility.

There are several issues which the Commission must resolve in order to perform its task of determining a fair rate of return to common equity of Southern Bell. It has been recognized by all of the witnesses in this case that the parent-subsidiary relationship that Southern Bell enjoys with AT&T requires the analyst to approach the issue of cost of capital through the parent. Therefore, the resolution of these issues will be in terms of AT&T and its impact on Southern Bell.

First, the Commission does not accept the proposition that AT&T is as risky as the average industrial. In the Company's case, both Dr. Carleton and Dr. Vander Weide make this proposition purely as a judgmental matter. They cite that increasing competition, rapidly changing technology, and regulatory lag have all pushed the telecommunications industry into a higher risk profile. The Commission does not agree that opening the telecommunications industry to competition necessarily increases risk. Indeed, regulation is a surrogate for competition, and in the absence of competition, a second best alternative.

Neither does the Commission put any store in the fact that rapidly changing technology will adversely impact AT&T. To the contrary, AT&T has been a major innovator in the telecommunications industry, and it is difficult to understand how an innovative concern such as the Bell System can be adversely affected by something in which the Bell System has long been a leader.

As for regulatory lag, its existence cannot be denied. However, North Carolina's liberal allowances for updating and for construction work in progress in the rate base make North Carolina a "progressive" regulatory State.

On the other hand, witnesses Watson and Langsam attempt to quantify the level of risk inherent in AT&T stock ownership. Through the use of several generally accepted measures of risk, AT&T compares favorably with the market as a whole in terms of having less risk. The Commission can only conclude that AT&T is less impacted by risk in the investment community and therefore does not require a return on equity at the level of the overall market.

It is left then to determine the level of return required by AT&T and by inference, to Southern Bell. As cited previously, the various recommendations are listed by witnesses. These range from 13.5% to 17.5%. The broad range of recommendations in this case can best be shown when comparing the broad range of estimates for the growth component of the DCF methodology because as mentioned previously, the dividend yield components that each witness employed is roughly equal. Estimates of growth in the future can only be made by analysis of historical performance of the higher growth estimates. The historical time period used to derive these estimates tends to capture cyclical recovery from the depressed period of 1974-1975. Since cyclical recovery does not appear to be able to continue forever, these higher growth estimates must be rejected. The lower estimates tend to be derived using 10- or 15-year historical periods and/or using publicly traded Bell System subsidiaries. These are more appropriate when trying to establish trend growth without conforming cyclical growth into the estimate. Based on these lower estimates of growth in the DCF methodology, and the fact that AT&T does not require the risk premium necessary to compensate the investor for the "average" equity investment, the Commission concludes that the cost of common equity for AT&T is in the neighborhood of 13.5% to 14.5%.

The last issue to be resolved with regard to fair rate of return to the common equity of Southern Bell is what weight to assign the posture of Southern Bell in the corporate structure of the Bell System. Public Staff witness Watson has inferred that Southern Bell, when considered within the Bell System contributes less than average to the overall corporate risk of the Bell System. He cites stability of revenues, insulation from the uncertainty of change, and the fact that Western Electric and Long Lines are riskier than average. Indeed, the Company's witness Clifford offers the argument with respect to Western Electric. The Commission concurs with witness Watson.

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 stockholder, 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 interest, 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.

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 10.95%. Employing the Bell System's consolidated capital structure and associated costs, such fair rate of return will yield a fair return on common euqity of approximately 13.5%.

In setting the approved rates of return at the foregoing levels, the Commission has considered all of the relevant testimony, and 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. 11

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Southern Bell Telephone and Telegraph Company should be afforded an opportunity to earn.

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 the conclusions heretofore and herein made by the Commission.

SCHEDULE I
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended July 31, 1980

(000's Omitted)

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues:			
Local service	$303,715	$41,281	$344,996
Toll service	187,927	-	187,927
Miscellaneous	35,984	-	35,984
Uncollectibles	(2,784)	(218)	(3,002)
Total operating revenues	524,842	41,063	565,905
Operating Revenue Deductions:			
Maintenance	$111,025	-	$111,025
Depreciation and amortization	84,422	-	84,422
Traffic	20,737	-	20,737
Commercial	43,091	-	43,091
General office	19,933	-	19,933
Relief and pensions	28,206	-	28,206
General services and licenses	9,357	-	9,357
Other expenses	31,180	-	31,180
Operating taxes	92,163	21,470	113,633
Total operating revenue deductions	440,114	21,470	461,584
Operating income for return	$ 84,728	$19,593	$104,321

SCHEDULE II
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended July 31, 1980

(000's Omitted)

Item	Amount
Investment in Telephone Plant:	
Telephone plant in service	$1,312,010
Telephone plant under construction	38,553
Plant acquisition adjustment	4,091
Depreciation and amortization reserve	(277,107)
End-of-period customer deposits	(2,541)
Deferred taxes	(134,400)
Pre-1971 investment tax credit	(2,075)
Net investment in telephone plant	938,531
Allowance for Working Capital	13,842
Original Cost Rate Base	$ 952,373
Rate of return:	
Present rates	8.90%
Approved rates	10.95%

SCHEDULE III
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended July 31, 1980

(000's Omitted)

Item	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$452,377	47.50	8.44	$ 38,181
Preferred stock	23,809	2.50	7.79	1,855
Common equity	476,187	50.00	9.39	44,692
Total - Present Rates	$952,373	100.00	-	$ 84,728
	Approved Rates - Original Cost Rate Base			
Long-term debt	$452,377	47.50	8.44	$ 38,181
Preferred stock	23,809	2.50	7.79	1,855
Common equity	476,187	50.00	13.50	64,285
Total - Approved Rates	$952,373	100.00	-	$104,321

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Company witnesses Savage and Thomas; Public Staff witnesses Sutton, Turner, Carpenter, and Willis; and the intervenor's witnesses Jones (Burlington Industries), Moody (Telephone Answering Service), Griffith (Business Service Company), Edwards (Sonitrol), Leight (University of North Carolina at Chapel Hill), and McLester (American District Telegraph) presented testimony concerning Southern Bell's proposed rate structure. In addition, there were several public witnesses, who appeared and testified in opposition to specific rate proposals and increases which they believed were not in their best interest.

Witness Svage 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, acceptability and understandability to customers. The Company filed tariffs with its Application which, if adopted, would produce an increase of $68,174,088 in annual revenues.

These pricing principles, according to witness Savage, were subsequently applied to formulate rate changes for basic exchange service, directory listings, key and pushbutton service, private branch exchange service, miscellaneous and auxiliary equipment connecting arrangements, data-phone service, mobile telephone service, and obsolete services. Basic flat rate increases of: $1.40 per month for residential individual lines, $1.00 per month for residence two-party lines, $3.50 per month for business one-party lines, and $2.50 per month for business two-party lines were recommended by Company witness Savage. Additionally, the Company proposed the regrouping of 17 exchanges and implementing optional residence low use measured service for those customers served by an electronic switching system (ESS) office.

The Public Staff had certain specific recommendations which it presented through the testimony of Leslie Sutton regarding the Company's proposed service connection charges; Millard Carpenter regarding rates and charges to the telephone answering firms and intraexchange private line services; Benjamin Turner regarding the Company's proposal for an optional low use measured service rate and the Public Staff's proposal for the sale of in-place station apparatus; and William Willis regarding the remaining Public Staff rate proposals. The intervenors, such as Sonitrol, Telephone Answering Service, and Business Services Company, presented testimony on increases which expressly related to their specific businesses.

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 RATES

The Commission concludes that one-party residential rates should be increased $.95 per month for all 10 rate groups. Correspondingly, for all 10 rate groups, two-party residential rates should be increased $.70 per month.

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 telephone companies dated January 23, 1979. The Company proposed to increase the rate for volume control equipment to $1.40 per month. The Commission finds that rates for services used by people with impaired hearing should be maintained at the present rate of $.60 per month as requested in the Commission's memorandum of January 23, 1979.

REGROUPING EXCHANGES

Company witness Savage proposed to regroup 17 exchanges due to growth that has caused the number of main stations and PBX trunks of each exchange to exceed the upper limits of their existing rate groups. These exchanges are Anderson, Black Mountain, Castle Hayne, Cleveland, Enka-Candler, Fairmont, Kings Mountain, Lattimore, Lawndale, Lincolnton, Lumberton, Pembroke, Rowland, Scotts Hills, Shelby, Swannanoa, and Wrightsville Beach. Public Staff witness Willis supported this proposal and gave the same recommendation. Regrouping of the 17 exchanges as proposed by the Company is found to be proper by this Commission.

SERVICE CONNECTION CHARGES

The Company proposed rates that would increase service connection charge revenues from $12,094,504 to $19,847,566, an increase in excess of 64%. The recommendation of the Public Staff is that service connection charges be raised to the point that revenues will be increased from $12,094,504 to $13,289,203, an increase of 10%. Public Staff witness Sutton indicated that rapidly escalating service connection charges could serve as a deterrent to basic service and thus discourage the development of universal telephone service, a concept firmly endorsed by this Commission and not yet achieved in North Carolina.

The Commission concludes that the following service connection charges are reasonable and should be implemented.

Service Connection Charges	Residential	Business
Service Order		
(1) Primary	$13.00	$21.25
(2) Secondary	7.95	11.35
(3) Record	6.60	8.65
Premise visit	5.75	5.75
Central office work	7.90	10.95
Premise wiring	8.75	15.05
Jack	3.90	3.90
Equipment work	3.05	4.10
Secretarial line	20.20	20.20
Number change	3.85	3.85
Restoral		
(1) Denial	3.85	3.85
(2) Customer request	3.85	3.85
Student mass sign up credit	-5.35	N/A

Based upon these approved charges, service connection charges for establishment of residential service at a location not previously served will increase from $36.75 to $42.35 and the business service connection charges will increase from $48.10 to $61.00, increases of 15% and 27%, respectively.

INTRAEXCHANGE MILEAGE SERVICES AND TELEPHONE ANSWERING SERVICES

Southern Bell witness Savage stated that the proposed intraexchange mileage service rates were based on current costs, that is, on what it would cost to furnish the service if facilities were to be constructed today. Witness Savage acknowledged that the proposed increases amounted to 101.4% overall on extension and tie line mileage services and that large increases were proposed in other areas.

Public Staff witness Carpenter recommended that the increases in revenues from the various categories of intraexchange mileage service be limited to 30% on monthly revenues and 50% on nonrecurring revenues.

The Company proposed to increase the rates and charges on the principal items of equipment used by the telephone answering service (TAS) firms as follows: 137% increase on the 557-B switchboard, 451% increase on the concentrator and a 248% increase on the identifier. Company witness Savage acknowledged that the 557-B switchboard is electromechanical equipment based on a 1940-1950 design and that it as well as the concentrator-identifier has been available in North Carolina since the late 1950's or early 1960's. Witness Savage stated that the proposed monthly rates for equipment furnished to TAS firms, the 557-B switchboard and concentrator-identifier were based on current costs at the time the studies were done in May 1979. Witness Savage estimated that the average date of installation of the switchboards is probably 1974 or 1975.

Public Staff witness Carpenter recommended that existing TAS services be grandfathered at rates which approximate their "average original" cost level. In order to determine the appropriate rate level for those items of equipment already in service, witness Carpenter reduced the monthly revenue requirements

which he took from "average original" cost studies for the switchboard and identifier done by Southern Bell in the last general rate case to reflect the customer's payment of the installation charges associated with those items. Witness Carpenter recommended that equipment now in service, in stock, or subsequently removed and reinstalled should continue to be available at the rates he recommended. He recommended that any new switchboards, concentrators, and identifiers be offered under a full-term contract at current costs or under a two-tier arrangement which he expected Southern Bell to file shortly after the rate Order. Witness Carpenter recommended that increases in other items of equipment furnished to TAS firms be limited to 30% on individual monthly rates and 50% on nonrecurring revenues because of the substantial increases his recommendation would mean on the major items.

Witness Carpenter recommended that the proposed increase on channels furnished for TAS service be limited to 30% on monthly revenue and 50% on nonrecurring revenue in lieu of the 37.8% and 320% which Southern Bell proposed.

The Commission concludes that the recommendations of witness Carpenter to grandfather existing TAS services and apply rates based upon current costs only to new equipment will ease the impact on existing firms and yet protect Southern Bell from having to purchase new equipment at inflated prices and offer that equipment at rates below current costs. The Commission further concludes that additional revenue should be obtained from intraexchange mileage service and TAS firms under the recommendations and limitations proposed by witness Carpenter. Therefore, the Commission finds that the following revenue increases are appropriate for intraexchange mileage service and TAS services.

Item	Present Revenue	Approved Revenue	Increase Allowed
Mileage Services			
Recurring	$ 9,557,400	$12,136,832	$2,579,432
Nonrecurring	1,571,180	2,356,771	785,591
Subtotal	11,128,580	14,493,603	3,365,023
Other private line services			
Recurring	1,691,598	1,955,685	264,087
Nonrecurring	40,910	53,641	12,731
Subtotal	1,732,508	2,009,326	276,818
TAS equipment and channels			
Recurring	694,328	910,741	216,413
Nonrecurring	24,915	37,373	12,458
Subtotal	719,243	948,114	228,871
Total	$13,580,331	$17,451,043	$3,870,712

MOBILE TELEPHONE SERVICE

Concerning implementation of air-time usage charges for mobile telephone service in Chapel Hill and expansion of usage charges to cover the first minute of usage for all mobile services, the Public staff and the Applicant came to an understanding during the course of the hearing that public notice would be necessary in both cases. Therefore, the Commission concludes that Southern Bell must provide notice to mobile subscribers in Chapel Hill prior to implementation of air-time usage charges and separate notice to all mobile subscribers prior to implementation of charges for the first minute of usage associated with a

completed call. The Commission, further, concludes that the revenue increase approved for the mobile telephone rate category is to be determined by applying an across-the-board percentage increase, after giving effect to all the specific Commission approved rate adjustments herein.

Low Use Optional Measured Service

In addition to the existing flat rate local service, the Company proposed to offer an optional tariff wherein residential rates in areas equipped with ESS would be based on four factors: (1) the number of calls made, (2) the duration of the call, (3) the time of day, and (4) the distance over which the call is placed. When rate structures take into account these cost-related elements, we designate this structure as Local Measured Service (LMS or MS). Because the Company proposes to offer these rates on a customer-choice basis, it is herein designated Optional Local Measured Service (OLMS). The evidence concerning OLMS was presented by Company witnesses Thomas and Savage, Public Staff witness Turner, and approximately 17 public witnesses.

Company witness Thomas testified that OLMS is the most important development in placing the subscriber in control of his telephone bill and protecting his ability to obtain service tailored to his needs and budget. Witness Thomas believes that this plan is the best method of pricing telephone service and will assist in maintaining universal service at fair and reasonable price levels. The Company maintains that OLMS provides network access at very low rates for the budget-minded subscriber while offering the heavy user a service which meets his needs at a premium rate in keeping with the costs he generates. The proposed OLMS would provide network access at a monthly rate ranging between $5.05 and $5.95, depending on the size of the exchange and a nominal amount of local calling. Witness Thomas stated that currently this low rate would be available in exchanges serving about 33% of Southern Bell customers, and by year end 1981 it would be available to 44%, to 74% by year-end 1985, and to 100% by 1989.

On cross-examination witness Thomas states:

"We are offering measured service as an option in the market place for people who can utilize it. There is nothing that I know of that says we are going to withdraw from the flat rate market in residential service. In contrast, as a matter of fact, we are not advocating that people take the measured service. Flat rate offering is there and we are simply providing a choice now in response to what we think is a market time."

Public Staff witness Turner and most public witnesses testified in opposition to the proposed OLMS plan. The Public Staff maintains that the service is not cost-justified and would not provide the advantages stated by the Company. Moreover, that OLMS rates would cause current flat rates to increase by $2.5 million at the 33% availability level. Finally, the Public Staff believes that the proposal is a first step toward nonoptional local measured service which would eventually replace the traditionally flat rate service entirely.

The Commission concludes that it is premature to authorize OLMS at a time when the Company is only equipped to make the service available to 33% of the subscribers who might apply for it. The Commission takes judicial notice of

Docket No. P-55, Sub 778, which allowed Southern Bell to offer experimental OLMS rates to Davidson exchange subscribers from December 1979 until December 1980. In October 1980 Southern Bell filed a proposal to extend the trial period for the Davidson experiment until December 1, 1981, for two reasons: (1) to provide the Company with additional experience with the concept and the opportunity to further track/analyze relative data, and (2) to maintain "status quo" while the Company continues with its efforts to comply with Ordering Paragraph 6 of the Commission Order of February 8, 1980, in Docket No. P-55, Sub 777. The Commission having granted the requests concludes that it is inappropriate to adopt the Company's proposal to expand its offering of OLMS in this procedure.

Sale of In-Place Station Apparatus

Public Staff witness Turner and Company witnesses Savage and Thomas presented testimony concerning the Public Staff's recommendation that the Commission order Southern Bell to allow customers to purchase in-place telephone sets, Key Systems, Small PBX and Large PBX Systems. Witness Turner stated that the sale of in-place station apparatus would work well with the Company's proposal to unbundle the set charges and benefit the customers by allowing them to eliminate the monthly set charge and that it would also improve capital recovery.

Southern Bell, through its witnesses Savage and Thomas, strenuously objected to the Commission ordering the Company to sell this equipment. They enumerated a number of problems, including the effect on its revenue stream, loss of monthly rentals, maintenance and repair, and possible confusion of the sale of this equipment in only one jurisdiction in the country. Furthermore, the witnesses urged that it is the management of the Company which must ultimately determine whether or not to sell its property.

The Commission concludes that there does not exist on this record credible evidence that there is a customer demand to purchase these sets. Nor can the Commission here determine whether such sale would have a positive effect on capital recovery or a negative effect on the Company's revenue stream. Thus, the Commission will not at this time order the sale of in-place station equipment. However, the Commission finds that if subscribers should desire to purchase their equipment, Southern Bell should provide a variety of similar new equipment from which the customer can make a selection and purchase for a fair and reasonable price.

STANDARD TELEPHONE SET CHARGE

The Company proposed to increase the standard telephone set charge from $.65 per month to $1.10 per month.

Public Staff witness Willis agreed with the Company's proposal of $1.10 per month basic set charge if/and only if the Commission were to order Southern Bell to sell in-place station apparatus. He remarked that if the Commission chose not to order the sale of telephone sets in-place he saw no advantage to the subscriber to be encouraged to buy their telephone sets from another supplier. Under that circumstance, witness Willis recommended that the standard telephone set charge be increased to a level of approximately $.75 per month.

The Commission concludes that the recurring rate for a standard telephone set should be $.90 per month - an increase of $.25 above the present rate.

OTHER RATES AND CHARGES

Based upon the testimony and exhibits of Company witnesses Savage and Thomas, and Public Staff witnesses Willis, Sutton, Carpenter, and Turner, the Commission reaches the following conclusions with regard to the Company's tariff provisions, rates and charges:

1. The Commission concludes that all rate categories with Company proposed percentage increases less than the Commission's across-the-board percentage increase and Company proposed rate decreases be allowed as proposed.

2. The Commission concludes that, after making rate adjustments for the previously discussed specifically approved increases and decreases in rate revenues, all additional rate schedule changes necessary to produce the increase in annual gross revenue requirements approved herein shall be attained by increasing such remaining rates on an essentially uniform percentage basis over the Company's nontoll subscribers.

3. The Commission concludes that any rate schedule proposals, contrary to this general methodology, just described, should be accompanied with an explanation of the necessity and appropriateness of such a deviation.

4. The Commission 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 as follows:

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 July 31, 1980, an increase in annual gross revenues not to exceed $41,281,000.

2. That the Applicant is hereby called on to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the additional revenues approved herein in accordance with the guidelines established by this Commission in Evidence and Conclusions for Finding of Fact No. 12 within 10 days from the date of this Order. Work papers supporting such proposals should be provided to the Commission and all parties of record (formats such as item 30 of the minimum filing requirement, NCUC Form P-1 are suggested). Comments to the Company's rate schedule proposals shall be filed within five days thereafter.

3. That the rates, charges, and regulations necessary to produce the additional annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs filed pursuant to paragraph 2 above.

4. That Southern Bell shall take action to meet or continue to meet the service objectives as shown on Appendix A of this Order. Southern Bell shall also take action to meet the objectives in the weak districts as shown on Appendix B of this Order.

5. That Southern Bell shall develop and implement practices to offer for sale new telephone sets, key systems, small PBX systems, and large PBX systems. These practices shall be filed with the Commission within 45 days of the date of this Order.

6. That Southern Bell shall give notice of the rate increase approved herein by bill insert 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. Southern Bell shall provide notice to mobile subscribers in Chapel Hill prior to implementation of air-time usage charges and separate notice to all mobile subscribers prior to implementation of charges for the first minute of usage associated with a completed call. Such Notices to Customers shall be submitted to the Commission for approval prior to issuance.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of April 1981.

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

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)	33 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 pay stations 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 15% or less of total trouble reports
95% of out-of-service trouble reports cleared within 24 hours
90% of company-negotiated 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 service installation appointments not met for company reasons.

APPENDIX B
WEAK DISTRICTS

1. Asheville
   a. Installations not completed within 5 working days.
   b. Missed installation appointments.
   c. Trouble reports per 100 stations.
2. Charlotte-Gastonia
   a. Installations not complete within 5 working days.
   b. Missed installation appointments.
   c. Trouble reports per 100 stations.
3. Lenoir
   a. Installations not completed within 5 working days.
4. Raleigh-Chapel Hill
   a. Installations not completed within 5 working days.
5. Wilmington
   a. Installation not completed within 5 working days.

DOCKET NO. P-78, SUB 47

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Westco Telephone Company for an Adjustment of Rates and Charges Applicable to Intrastate Telephone Service) ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Courtroom Basement, Corner of Main and Court Streets, Marion, North Carolina, on Tuesday, March 17, 1981, and

Commissioner's Board Room, Room 204, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on Tuesday, March 17, 1981, and

Community Services Room, First Floor, Community Services Building, Hospital Road, Sylva, North Carolina, on Wednesday, March 18, 1981, and

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday and Wednesday, March 24 and 25, 1981.

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners John W. Winters and Edward B. Hipp

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns and Smith, Attorneys at Law, P. O. Box 2479, Raleigh, North Carolina 27602

For the Intervenor:

Graham Duls and T. Patrick Lordeon, Attorneys at Law, Western North Carolina Legal Services, Inc., P. O. Box 426, Sylva, North Carolina 28779
For: Edward Cisco, Route 1, Box 13C, Bryson City, North Carolina 28713

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

BY THE COMMISSION: On October 28, 1980, Westco Telephone Company (Westco) filed an application with this Commission for authority to adjust its rates and charges for intrastate service. The proposed rates and charges were to be effective for service rendered on and after November 28, 1980, and were based on a test year ending on June 30, 1980.

By Order issued on November 25, 1980, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates and charges for 270 days from the November 28, 1980, effective date, set hearings to begin on March 17, 1981, declared the test period to be the 12 months ending June 30, 1980, required the Company at its expense to give public notice of the proposed increase and hearings and set the time for the Public Staff and other interested parties to file interventions and/or testimonies.

By Order issued on December 2, 1980, the Commission combined for hearing the application filed in this docket with the application of Western Carolina Telephone Company (Western Carolina), Docket No. P-58, Sub 117.

The Public Staff filed Notice of Intervention in this docket on February 24, 1981. The intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations. On March 9, 1981, Western North Carolina Legal Services, Inc., filed a Motion to Intervene on behalf of Edward Cisco. That motion was allowed by Commission Order issued March 11, 1981.

The Commission conducted out-of-town hearings for the purpose of receiving testimony from the Using and Consuming Public. The first such hearing was held in Marion, North Carolina, at 2:00 p.m. on March 17, 1981; the second in Asheville, North Carolina, at 7:30 p.m. on March 17, 1981; and the third in Sylva, North Carolina, at 10:00 a.m. on March 18, 1981.

The following public witnesses appeared and offered testimony in Marion at the consolidated hearings for Western Carolina and Westco Telephone Companies:

Daniel A. Abernathy, Jessie Boy, Pearl Huskins, D. A. Grayson, Helen Turner, Merle Brooks, Steven Wilkins, Bill Conner, Paul Richardson, Jack Harmon, Rod Birdsong, Colonel W. M. Turner, John English, and Shirley Washburn.

The following public witnesses appeared and offered testimony in Asheville at the consolidated hearings for Western Carolina and Westco Telephone Companies:

C. L. Kessler, Samuel J. Tucker, Ruby Cox, H. H. Cosgrove, Betty Hulst, William Bickham, and Blanche Vines.

The following public witnesses appeared and offered testimony in Sylva at the consolidated hearings for Western Carolina and Westco Telephone Companies:

Orwell Coward, Mrs. George C. Sandlin, George C. Sandlin, Matilda Conroy, Marie Leatherwood, Eleonor Sutton, Bennett Flink, Karen Jacobus, Gladys Griffin, Veronica Nicholas, Grace Thomas, Allison Laird-Larte, Dottie Israel, Miller Hall, Graham Duls, and Frank Young.

The hearings were resumed in Raleigh at 9:30 a.m. on March 24, 1981, for the purpose of receiving further testimony of public witnesses and the testimony and cross-examination of the Applicant, the Public Staff, and intervenors. Westco Telephone Company offered the testimony and exhibits of the following witnesses:

Eugene Morris, President of Westco Telephone Company; Lloyd W. Darden, Jr., Division Customer Service Manager for the Mid-South Division of Continental; Clarence Prestwood, Revenue Requirements Manager for Continental Telephone Service Corporation; Joseph Brennan, President of Associated Utility Services, Inc.; and Edwin H. Guffey, Director of Rates and Tariffs, Continental Telephone Service Corporation - Eastern Region.

The Public Staff offered the testimony and exhibits of the following witnesses:

Leslie C. Sutton, Engineer - Communications Division; Benjamin Turner, Jr., Engineer - Communications Division; William J. Willis, Jr., Engineer - Communications Division; Candace Paton, Staff Accountant - Accounting Division; William L. Dudley, Staff Accountant - Accounting Division; and Teresa Kiger - Economic Research Division

Westco Telephone Company offered the rebuttal testimony and exhibits of the following witnesses:

Clarence Prestwood and Joseph F. Brennan.

Based upon the foregoing, the testimony and exhibits admitted at the hearing, and the entire record in this docket, the Commission now reaches the following

FINDINGS OF FACT

1. The Applicant, Westco Telephone Company, is a duly organized North Carolina corporation and is a subsidiary of Continental Telephone Corporation. Westco holds a franchise from this Commission to provide public utility telephone service in 15 exchanges located in western North Carolina. Westco is properly before the Commission in this proceeding, pursuant to G.S. 62-133, for a determination of the justness and reasonableness of its proposed rates and charges.

2. That Westco Telephone Company has filed application with the Commission seeking an increase in its rates and charges for intrastate telephone service to produce an additional $1,223,666 in annual gross revenues for the Company.

3. That the test year for this proceeding is the 12 months ending June 30, 1980.

4. That the overall quality of service provided by Westco is inadequate.

5. That Westco's reasonable original cost rate base is $19,369,329, consisting of utility plant in service of $25,664,560, telephone plant under construction of $2,091,036 and working capital of $402,379 reduced by accumulated depreciation of $6,137,894, residual excess profit in plant accounts of $86,000 and accumulated deferred income taxes of $2,564,752.

6. That Westco's reasonable allowance for working capital is $402,379.

7. That excess profits of $86,000 included in Westco's intrastate net investment in telephone plant in service should be excluded from rate base.

8. That Westco's gross revenues for the test year after accounting and pro forma adjustments are $7,302,404. After giving effect to Westco's proposed rates, the revenues would be $8,526,070.

9. That Westco's reasonable level of test year intrastate operating revenue deductions after accounting and pro forma adjustments is $5,659,709. This amount includes $1,591,782 for investment currently consumed through reasonable actual depreciation on an annual basis.

10. That the Company's appropriate capital structure for use in this proceeding is as follows:

Long-Term Debt	58.97%
Preferred Stock	6.22%
Common Equity	34.81%

11. That the failure of Westco to provide adequate telephone service is a material factor to be considered in establishing the fair rate of return. The Company's proper embedded costs of long-term debt and preferred stock are 9.53% and 8.65%, respectively. The fair rate of return which the Company should be allowed to earn on the original cost net investment is 11.03% and a return of 14.00% on common equity.

If the service of Westco had been adequate a return of 11.29% on the original cost net investment and a return of 14.77% on common equity would be just and reasonable.

12. That based on the foregoing, Westco should be allowed in addition to the $7,302,404 of annual gross revenues which would be realized under its present base rates an increase not to exceed $1,092,595. This increase is required in order for the Company to have a reasonable opportunity to earn the 11.03% rate of return on its rate base which the Commission has found just and reasonable. The 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.

13. That the Company's current program to sell "in-place" telephone terminal equipment is encouraged.

14. That Westco should submit to the Commission and the Public Staff a report detailing the operating and accounting methods and procedures to be employed by the Company to insure that all revenues and costs associated with the sale of terminal equipment are properly recorded and accounted for.

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 $1,092,595, will be just and reasonable.

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

The evidence supporting these findings of fact is contained in the verified application, in the testimony and exhibits, and in the record as a whole. These findings are essentially procedural and jurisdictional in nature and were uncontested and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the quality of service was presented by Company witness Darden, Public Staff witness Turner, and 38 public witnesses. Also, the Commission takes judicial notice of the prior Orders of the Commission in Docket Nos. P-58 and P-78.

The official records in the Western and Westco dockets include the following: On March 20, 1967, in Docket No. P-58, Sub 61, the Commission issued an Order of Investigation and Show Cause to Western Carolina, Westco Telephone Company, and Continental Telephone Corporation. In this Order the Commission noted that, as a result of numerous complaints and various field observations, the service provided by Western Carolina and Westco "is or may be inadequate" and ordered a general investigation and a show cause proceeding. This proceeding, which still remains open, contains numerous Orders relating to the Commission's investigation into the service of the two companies and their efforts to meet the Commission's objectives.

In an Order dated July 15, 1970, in Docket No. P-58, Sub 61, the Commission listed 17 requirements for improving service with which Western and Westco were ordered to comply. In that docket the Commission found the service of the companies to be "insufficient and inadequate." In an Order in Docket No. P-78, Sub 25, issued on November 21, 1972, the Commission found the Company's service once again to be inadequate and stated:

> "The Commission considered the level of service in Docket No. P-58, Sub 61, a Show Cause proceeding, and during the present case. The Commission had anticipated that Westco Telephone Company would take aggressive and thorough action to provide a level of telephone service that was efficient and dependable to its customers. However, the weight of the evidence in this case indicates that the service has not

reached such a level. The Commission concludes that specific service improvements required in the Commission's July 15, 1970, Order in Docket No. P-58, Sub 61 must be effectuated, and the specific service levels provided therein should be met as specified and the service improvements plan should be expedited where possible."

In Docket No. P-78, Sub 32, in an Order issued on May 1, 1975, the Commission found as a fact that while the Company had made significant and continuing improvements in its level of service, such level of service continued to be insufficient and inadequate, particularly in the Company's Western District. In this docket the Commission found it necessary once again to set rates which were lower than those rates which would have been approved if the service were adequate.

In Docket No. P-78, Sub 35, in an Order issued on April 29, 1976, the Commission, as a result of the inadequate service, established rates which were lower than those rates which would have been approved if the service had been adequate.

In the instant proceeding, a total of 38 public witnesses testified in Marion, Asheville, and Sylva. The majority of these witnesses complained of various service and billing problems. There were also complaints concerning the increase in rates proposed by the Company.

Company witness Darden's testimony compared the service indices with each of the service objectives which the Company was required to achieve in Docket P-78, Sub 32, and incorporated by reference in Docket P-78, Sub 35. The result of this comparison showed that although some improvements have been made, the Company has not yet reached the service standards required by this Commission.

Public Staff witness Turner testified regarding the Public Staff's investigation of the quality of service and its conclusion as to the adequacy of service. He testified that the Company has had a long history of service problems; to wit, the Commission's previous findings of poor service and the Commission's Orders directing the Company to meet specific service objectives. His testimony and exhibits relate the test results and service indices to the specific service objectives imposed by the Commission. This comparison shows that the Company is meeting some of the Commission's objectives, but that improvement is still needed in the areas of trouble report rate, troubles cleared within 24 hours, and regular service orders worked within five working days. The objective set by the Commission is that the subscriber trouble report rate should not average more than eight reports per 100 stations in each exchange for any six-month period. The Public Staff's investigation showed that this objective has not been met in 15 of Western's and Westco's 26 exchanges. Witness Turner's testimony also revealed that although the Commission ordered the Company to clear 95% of all trouble reports within 24 hours after the trouble is reported, this objective is not being met on an overall Company basis. In addition, the Commission's objective requiring Westco to work at least 90% of all regular service orders within five working days from the date on which the service order was placed; or five working days from the date on which the subscriber requested service has been partially met, but not completely achieved.

The Commission is most concerned that all telephone subscribers being served by companies under its jurisdiction provide adequate service, as required by the statutes of the State of North Carolina. Thus, although the Company's overall level of service has improved, the Commission must conclude that during the test period and up to the time of the hearings, the Company had not provided a fully adequate level of service throughout its North Carolina operations. While the Commission does not herein raise the standards of service specifically stated in Docket No. P-78, Sub 32, those service objectives must be achieved in order to provide adequate service to the subscribers of Westco. Consequently, the Commission concludes that the Company's level of service, though showing improvement from the past record, does not meet the parameters of efficient and reasonable service as required by G.S. 62-131.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this Finding of Fact is found in the testimony and exhibits of Company witness Prestwood and Public Staff witnesses Dudley and Paton. Company witness Prestwood presented rebuttal testimony relating to the Public Staff adjustment for excess profits in plant accounts. The following chart compares the amounts which the Company and Public Staff contend should be included in the original cost net investment for use in this proceeding.

	Company	Public Staff	Difference
Telephone plant in service	$25,664,560	$25,664,560	$ -0-
Accumulated depreciation	(6,056,391)	(6,130,766)	(74,375)
Construction work in progress	2,091,036	2,091,036	-0-
Allowance for working capital	537,363	402,379	(134,984)
Accumulated deferred income taxes	(2,564,752)	(2,564,752)	-0-
Excess profit in plant accounts	-0-	(86,000)	(86,000)
Original Cost Net Investment	$19,671,816	$19,376,457	$(295,359)

The Company and the Public Staff are in agreement on the amounts for total investment in telephone plant in service, construction work in progress, and accumulated deferred income taxes. There being no evidence to the contrary, the Commission concludes these amounts presented by both the Company and the Public Staff are reasonable and proper.

The first difference of $74,375 relates to accumulated depreciation. Public Staff witness Dudley increased accumulated depreciation by an adjustment containing two components. First, witness Dudley increased accumulated depreciation by $81,503 to recognize the increase in accumulated depreciation related to Company witness Prestwood's adjustment increasing depreciation expenses to an annual level based on end-of-period plant. The Commission has consistently recognized that a pro forma adjustment to depreciation expense requires a corresponding pro forma adjustment to accumulated depreciation and concludes that the adjustment is proper in this proceeding. Second, witness Dudley decreased accumulated depreciation by $7,128 to remove from accumulated depreciation the amount applicable to excess profits in plant accounts as determined by Public Staff witness Paton. However, the Commission finds that this adjustment should not have been made since witness Paton's adjustment was made to net plant.

The Commission therefore concludes that the proper level of accumulated depreciation for use in this proceeding is $6,137,894 (6,056,391 + 81,503).

The Commission has found in Finding of Fact No. 6 that the proper level of working capital allowance is $402,379 and the Commission has also found in Finding of Fact No. 7 that $86,000 of residual excess profits existing in plant accounts should be removed.

Based on the above and all of the testimony and evidence in this case, the Commission concludes that the proper Original Cost rate base for use in this proceeding is $19,369,329, constituted as follows:

Telephone plant in service	$25,664,560
Accumulated depreciation	(6,137,894)
Construction work in progress	2,091,036
Allowance for working capital	402,379
Accumulated deferred income taxes	(2,564,752)
Excess profit in plant accounts	(86,000)
Total	$19,369,329

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Prestwood and Public Staff witness Dudley each presented a different amount for the working capital allowance. Witness Prestwood testified that he used a modified FPC formula in computing cash working capital. This method considers the lag in collection of revenues but does not consider the lag in payment of expenses. Materials and supplies are added to the cash requirement while customer deposits are deducted. Using this method Company witness Prestwood derived a working capital allowance of $537,363.

Public Staff witness Dudley presented a working capital allowance of $402,379 consisting of 1/12 of operating expenses excluding depreciation and taxes, plus average prepayments and compensating bank balances, less average tax accruals and end-of-period customer deposits. Witness Dudley's written testimony states that he used "in the absence of a lead-lag study, the formula method of determining working capital computed in a manner consistent with the Commission's past decisions regarding working capital."

A comparison of the two working capital allowances is presented below:

	Company	Public Staff	Difference
Cash	$231,630	$243,698	$ 12,068
Average materials and supplies	357,696	357,696	-
Minimum bank balances	-	72,550	72,550
Average prepayments	-	7,082	7,082
Average tax accruals	-	(226,684)	(226,684)
Customer deposits	(51,963)	(51,963)	-
Total	$671,816	$402,379	$(134,984)

The major differences in the two calculations arise due to Public Staff witness Dudley's inclusion of minimum bank balances, prepayments and average tax accruals in his calculations while Company witness Prestwood excluded these

three elements. Minimum bank balances and prepayments represent items of working capital which a company must maintain in conducting its business. Average tax accruals are a reduction of the amount of working capital supplied by debt and equity investors.

The Commission concludes that, in the absence of a lead-lag study, the formula method of determining the working capital allowance as presented by witness Dudley should be used in this case. The Commission therefore concludes that the reasonable allowance for working capital is $402,379.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Evidence for this finding is contained in the testimony and exhibits of Public Staff witness Paton, and the rebuttal testimony and exhibits of Company witness Prestwood.

In reaching the decision in this finding, the Commission must first answer two questions. (1) Is the cost in Westco's rate base for purchases from its affiliated companies reasonable? (2) In the event that the cost is unreasonable or that excess profits do exist in the rate base of Westco, what adjustments are necessary to eliminate the unreasonable portion of the cost from rate base or eliminate the excess profits from the rate base?

Public Staff witness Paton testified that when there is a parent subsidiary relationship, business transactions may be carried on in a less than arm's-length atmosphere and that there is an incentive for the buyers and sellers to establish transfer prices that will maximize combined profits. Witness Paton further testifed that a comparable earnings study comparing the manufacturing and supply affiliates of Westco with similar independent companies shows that the affiliates of Westco have been able to earn higher returns on equity than have similar companies operating in the open market.

Witness Paton also testified that her analysis indicated that the supply affilitate, Continental Supply and Service Corporation (CSSC), enjoys economies of operation as a result of its close affiliation with its customers. As compared to the independents, CSSC is able to make its sales with fewer operating expenses, smaller accounts receivable, and generally fewer assets.

In comparing her adjustment to rate base with that made by the Company, witness Paton stated that Continental files a consolidate Federal income tax return which includes its domestic telephone subsidiaries and other domestic subsidiaries that qualify for such inclusion. In the consolidated return, gross profit earned on sales to eligible affiliated telephone companies of products manufactured or purchased for resale is eliminated from consolidated taxable income. The resulting income tax deferral is refunded to the individual telephone company making such purchases. This accumulated deferred income tax is what Westco has deducted from rate base. This adjustment in effect eliminates from the cost of plant in service that portion of the price paid to the manufacturing or supply affiliate to cover taxes. Since the profit and associated taxes are deferred due to consolidation, it is fair and reasonable to deduct the amount for taxes included in the cost of plant in service.

Witness Paton testified that her adjustment eliminates from rate base the excess profits earned by the manufacturing and supply affiliates on sales to Westco. She continued that her adjustment was made based on the net, or after tax, income of the manufacturing or supply affiliates, and that since her adjustment is based on after tax net income, it is unrelated to the adjustment made by the Company.

Witness Paton further testified that the excess profit adjustment is absolutely essential in calculating the utility's original cost net investment when the manufacturing or supply affiliate's net income is considered excessive. This is true even though the payments of deferred income taxes received by the utility are greater than the affiliate's net income earned on sales to the utilities.

Witness Paton testified that a 15% return on common equity was reasonable for CSSC. A 15% return was found by the Commission to be reasonable in the last rate case because that was the return comparable companies were earning. While the average returns of such companies were less than 15%, for the years 1975 through 1979, witness Paton recommended that CSSC again be allowed a 15% return to give them sufficient incentive to stay in business.

Company witness Prestwood testified that the important thing to consider is the price that Westco has to pay for a product, and whether they could obtain that product at a lower price elsewhere. On cross-examination, witness Paton said that in considering whether goods and service of a certain quality are being bought at the lowest price, it is necessary to look at the cost to CSSC of supplying goods to affiliates. If CSSC were selling to anyone other than affiliates, their costs would be a lot higher. CSSC would be unable to sell to nonaffiliated companies at the same level of expense that they have in selling to the affiliates. Witness Paton testified that CSSC is efficient because it sells to affiliated interests.

The fact that the prices paid by Westco for purchases from its affiliated companies are not greater than those which it would have to pay if it made the purchases in the open market has not been disputed. However, the Commission is of the opinion that due to the close relationships between Westco and its affiliated suppliers, it is necessary to consider the possibility of less than arm's-length transactions between buyer and seller.

An analysis of Paton Exhibit I, Schedule 4, shows that Continental Supply and Service Corporation for the years 1977 through 1979 earned an average return on equity of 43.3%, while independent companies competing in the open market earned returns ranging from 6.2% up to 12.79%. Since the sale of the manufacturing affiliates in 1976, all of the sales of CSSC have been made to affiliated operating telephone companies. The existence of this captive market is the primaary reason that the supply affiliate of Westco Telephone Company is able to sell its products at prices comparable to companies competing in the open market and still achieve a rate of return much greater than those achieved by the independent companies selling in the open market. Since the high profits of the supply company are the direct result of the affiliation with the telephone operating companies, the Commission concludes that it is only fair that these profits be shared with those captive market telephone operating companies. The Commission therefore concludes that the level of costs of purchases from

affiliated companies by Westco included in the rate base is not reasonable, and that Westco's rate base includes excess profits which should be removed. This decision is consistent with past Commission decision's concerning transactions between a regulated utility and its supply and/or manufacturing affiliate.

Based on the above, and all the evidence, testimony, and exhibits of the witnesses, the Commission concludes that the cost included in Westco's utility plant in service for purchases from its manufacturing and supply affiliates should be adjusted to eliminate excess profits surviving in the net plant accounts at the end of the test year. Thus, the Commission concludes that the Applicant's net investment in utility plant in service should be adjusted to exclude "excess profits" surviving in the net plant accounts at June 30, 1980, in the amount of $86,000. The adjustment is based on the concept of limiting the earnings of the supplier affiliate to a reasonable rate of return on equity. The Commission concludes that, on transfers of equipment and supplies between the manufacturing and supply affiliates of Continental and the Applicant, a return of 15% is a reasonable rate of return on equity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding is contained in the testimony and exhibits of Company witness Prestwood and Public Staff witnesses Dudley and Sutton. Company witness Prestwood and Public Staff witness Dudley proposed revenues of the following amounts:

	Company	Public Staff	Difference
Local service revenues	$4,153,004	$4,153,004	$ -
Toll service revenue	2,985,802	2,969,196	(16,606)
Miscellaneous revenue	180,204	180,204	-
	7,319,010	7,302,404	(16,606)
	(27,337)	(27,337)	-
	7,291,673	$7,275,067	$(16,606)

The only difference between the witnesses is the adjustments to toll revenues by Public Staff witness Dudley necessitated by adjustments to rate base and expenses adopted by the Commission elsewhere in these findings.

Company witness Prestwood testified that he had calculated end-of-period intrastate toll revenues using a toll settlement ratio of 12.386% which was a Southern Bell estimate for calendar year 1980. He stated that the actual settlement ratio for 1980 was 12.07%. He further testified that any revenue effect from the Commission's decision in toll case, Docket No. P-100, Sub 53, should be included in this case by way of incorporating that effect on the toll settlement rate of return.

Public Staff witness Sutton stated that, using the actual monthly settlement ratio for the 12 months of calendar year 1980, he determined settlement ratio for Western and Westco by employing two different methodologies. He stated that one methodology produced a settlement ratio of 12.11%, while the other produced a settlement ratio of 12.32%. Further, witness Sutton stated that any decision reached in Docket No. P-100, Sub 53 (intrastate toll case) affecting the toll revenues of Westco should be reflected in Westco's general rate case. Witness

Sutton further testified that the settlement ratio would increase .23% if the Commission changes the private line schedules as proposed by the Public Staff and the operator service as proposed by Bell. Thus, the two settlement ratios determined by witness Sutton would become 12.34% and 12.55% in order to reflect the two proposed changes in Docket No. P-100, Sub 53.

Mr. Sutton stated that in view of the fact that the settlement ratio used by the Company (12.386%) in the prefiled testimony of witness Prestwood was between the two modified settlement ratios he had determined (12.34% and 12.55%), it would be appropriate and reasonable to use the end-of-period toll revenues determined by witness Prestwood in his prefiled testimonies, and that it would then not be necessary to add the additional $84,697 in toll revenues to reflect the two changes proposed in Docket No. P-100, Sub 53.

A review of the evidence presented in this case indicates the erratic and volatile nature of the toll settlement ratio. As a result, the Commission is of the opinion that any decision it reaches should be based upon an actual achieved settlement ratio as determined by Mr. Sutton. Moreover, in light of the foregoing discussion and considering our decision in Docket No. P-100, Sub 53, the Commission concludes that it is proper to use the 12.386% settlement ratio to determine the end-of-period level of toll revenues for the two companies. Accordingly, the Commission finds the end-of-period intrastate toll revenues for Westco to be $2,969,196 and total gross revenues to be $7,302,404, which, when reduced by uncollectible revenue of $27,337, produces net revenues of $7,275,067.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding is contained in the testimony and exhibits of Company witness Prestwood and Public Staff witnesses Dudley and Paton. Company witness Prestwood and Public Staff witness Dudley presented testimony and exhibits showing the levels of operating revenue deductions which each contends should be used by the Commission in this proceeding. The following tabular summary shows the amounts presented by each witness:

	Company	Public Staff	Difference
Maintenance expense	$1,582,910	$1,581,329	$(1,581)
Depreciation and amortization	1,598,910	1,591,782	(7,128)
Traffic expense	110,739	110,739	-
Commercial expense	363,802	363,802	-
General office expense	418,411	418,411	-
Other operating expense	450,095	450,095	-
Taxes other than income	746,940	745,944	(996)
State income tax	64,718	68,071	3,353
Federal income tax	385,099	409,266	24,167
Total revenue deductions	$5,721,624	$5,739,439	$17,815

Company witness Prestwood and Public Staff witness Dudley proposed the same amount for Traffic, Commercial, General Office, and Other Operating Expenses. The Commission therefore concludes, absent evidence to the contrary, that the proper amounts for these expenses are those proposed by both the Company and the Public Staff.

The first difference in operating revenue deductions is a $1,581 reduction in maintenance expense proposed by Public Staff witness Dudley. This adjustment relates to excess profits on supplies purchased by Westco from its affiliate, Continental Supply and Service Corporation. The Commission has found in Finding of Fact No. 7 that the earnings of CSSC on sales to Westco should be limited. The Commission therefore concludes that the $1,581 reduction in maintenance expense is proper.

The second difference, a $7,128 reduction in depreciation expense, represents the depreciation applicable to the excess profits included in plant. The Commission has already concluded that these excess profits should be removed from plant. It necessarily follows that the depreciation expense applicable to that excess profit in plant should also be removed. The Commission concludes that the $7,128 reduction in depreciation expense is proper.

The third difference is a $996 reduction in taxes other than income. This adjustment represents the gross receipts tax applicable to the $16,606 reduction in toll revenues which the Commission found proper in Finding of Fact No. 8. The Commission therefore adopts the $996 reduction in other taxes.

The final differences involve the increases in State and Federal income taxes of $3,353 and $24,167, respectively, made by Public Staff witness Dudley.

An analysis of Dudley Exhibit I, Schedule 3-4, shows that his income tax adjustments may be separated into two broad categories. One category concerns the income taxes applicable to revenue and expense adjustments previously adopted in these findings. The calculation of the income tax adjustments in this category is summarized below:

Reduction in toll revenues	$(16,606)
Reduction in expenses	9,705
Decrease in taxable income	6,901
Decrease in state income tax ($6,901 x .06)	414
Decrease in federal income tax ($6,901 - $414 x .46)	$ 2,984

The other category concerns income tax applicable to differences in the amount of interest expense used by the two witnesses. Public Staff witness Dudley based his adjustment on the interest expense of $917,647 shown on his Schedule 1 reduced by the interest applicable to Job Development Investment Credit (JDIC). This component of the adjustment to income tax expense must be revised due to the Commission's adoption in Findings of Fact Nos. 5, 10, and 11, respectively, of a rate base, capital structure and embedded cost of debt different from those used by witness Dudley.

The proper adjustment to income taxes applicable to interest expense is calculated below:

1.	Interest expense adopted by the Commission		$1,088,525
2.	Unamortized investment tax credit (NCUC P-1, Item 1a)	$1,483,217	
3.	Pre-1971 investment tax credit (Prestwood Schedule 22)	82,360	
4.	Unamortized JDIC (Line 2 - Line 3)	1,400,857	
5.	Intrastate factor (NCUC P-1, Item 40c)	.7234	
6.	Intrastate JDIC (L4 x L5)	1,013,380	
7.	Debt component of Commission adopted capital structure	.5897	
8.	Debt component of JDIC (L6 x L7)	597,590	
9.	Embedded cost of debt adopted by Commission	.0953	
10.	Intrastate JDIC interest (L8 x L9)		56,950
11.	Interest for income tax calculation (L1 - L10)	1,031,575	
12.	Company interest expense (Prestwood Schedule 21)	932,444	
13.	Increase in interest expense	99,131	
14.	Decrease in state income tax ($99,131 x .06)	5,948	
15.	Decrease in federal income tax ($99,131 - $5,948 x .46)	$ 42,864	

Based on the above, the Commission concludes that the State income tax expense presented by the Company should be reduced by $6,362 ($414 + $5,948) and the figure for Federal income tax expense presented by the Company should be reduced by $45,848 ($2,984 + $42,864). This results in total State and Federal income tax expense of $58,356 and $339,251, respectively.

In summary, the Commission concludes that the proper level of operating revenue deductions is $5,659,709 as shown below:

Maintenance expense	$1,581,329
Depreciation and amortization	1,591,782
Traffic expense	110,739
Commercial expense	363,802
General office expense	418,411
Other operating expense	450,095
Taxes other than income	745,944
State income tax	58,356
Federal income tax	339,251
	$5,659,709

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 11

The Company offered the testimony of Joseph F. Brennan, President of Associated Utility Services, Inc., and the Public Staff offered the testimony of Teresa L. Kiger, of the Economic Research Division concerning the Applicant's fair and reasonable overall cost of capital.

Company witness Brennan testified that the Company should be allowed to earn a 10.91% overall rate of return. Witness Brennan's recommendation was based

upon Westco's capital structure and costs, composed of the following: 63.7% total debt with an embedded cost rate of 7.99%, 1.3% preferred stock with an embedded cost rate of 10.25%, and 35% common equity with an estimated cost rate of 16.25%. He derived his cost of equity estimate using the Earnings/Price Ratio (E/P Ratio), the Discounted Cash Flow (DCF) Model, the Earnings/Net Proceeds Ratio, a Comparable Earnings approach, and a Bare Rent approach.

The E/P Ratio revealed a cost of equity of 13.8%; and the Earnings/Net Proceeds Ratio yielded a cost of equity of 14.5%. Using the DCF Model, witness Brennan arrived at an equity cost of 15.8%. He estimated the cost of equity to be 15.5% using the Bare Rent approach and a cost of 16.2% using the Comparable Earnings approach. Witness Brennan's final recommendation was a cost of common equity of 15.5% for Western and Westco on a combined basis. He adjusted the 15.5% cost for the combined companies to 16.25% for Westco. As there is no market information on Westco, witness Brennan used various telephone companies as proxy for the combined Western and Westco, to estimate the cost of equity capital. These companies include AT&T, five telephone holding companies, three independent telephone companies, and Continental Telephone Company - the parent.

Public Staff witness Kiger testified that the overall rate of return which should be allowed the Company was 11.29%. Her recommendation was based on the consolidated capital structure of Continental Telephone Company (Continental) which owns all of the common stock of Western, which in turn owns all of the common stock of Westco. Witness Kiger testified that the consolidated capital structure provides a basis for identifying the equity investor in the market place and recognizes all the debt and equity in the Continental system. This testimony shows that this parent/subsidiary relationship affords benefits to Western and Westco, therefore the affiliation should not be overlooked in a cost of capital analysis. According to witness Kiger, the consolidated capital structure is composed of 58.97% long-term debt at an embedded cost of 9.53%, 6.22% preferred stock at an embedded cost of 8.65%, and 34.81% common equity at an estimated cost rate of 14.77%. Witness Kiger derived her equity cost estimate using three approaches: the E/P Ratio, the DCF Model, and the Capital Asset Pricing Model (CAPM). She explained that the E/P Ratio for Continental indicated a cost of equity capital of 14.02%. Using historical and projected earnings and dividend data of five independent telephone companies to calculate the growth factor of the DCF Model, witness Kiger found the cost of equity to be in the range of 14.91% - 15.5%. Analysis using the CAPM indicates a cost of equity capital to Continental of 14.63%. Each of these estimates were weighted according to the confidence placed in each approach. Using this method it was concluded that the cost of common equity to be 14.7%. To this estimate witness Kiger added seven basis points for selling and issuance expense, arriving at the final recommendation of 14.77%. Combining this equity cost with the consolidated capital structure ratios and associated embedded cost rates produced witness Kiger's recommended 11.29% overall rate of return.

On cross-examination, witness Kiger was asked if the risk of investing in Western or Westco is the same as the risk of investing in Continental's other assets. She testified that the risks were the same, as Continental's other assets are telephone subsidiaries facing similar risks. It was brought out that Western and Westco issue their own debt and preferred stock on the market and that Continental only owns the equity portion of capital. Witness Kiger replied

that was entirely correct and that Western's and Westco's debt and preferred stock, as well as equity capital, were all accounted for in a consolidated approach. Though it was pointed out that Continental does not have any legal obligation to pay the debt of Western and Westco, witness Kiger testified that there is an indirect obligation to Continental's management to ensure that the subsidiaries' debt is paid.

Company witness Brennan testified in rebuttal to the capital structure and equity cost testimony of Public Staff witness Kiger. He agreed with the use of several methodologies to arrive at a cost of equity estimate. Witness Brennan did not disagree with witness Kiger's methodologies as he used a form of each in his own testimony; however, witness Brennan did not agree with all the figures witness Kiger incorporated into the models. He prepared several exhibits demonstrating how use of different figures in the E/P Ratio, DCF, and CAPM Methods would produce a higher cost of equity estimate. With regard to the capital structure, witness Brennan testified that it is better to use Westco's own capital structure and costs instead of witness Kiger's consolidated approach. However, witness Brennan also testified that when properly applied, the consolidated approach will yield essentially the same estimate as the Company's own capital structure.

After considering all the evidence presented by the parties on this issue, it is evident that one of the central questions to be resolved is the impact of the parent/subsidiary relationship between Western, Westco, and Continental. The Company's recommendation does not recognize any impact of the affiliation between the three. Alternatively, the Public Staff's recommendation does recognize this fact. Therefore, the Commission concludes that the parent/subsidiary relationship should be considered and based upon the foregoing and entire record in this docket, the Commission further concludes that the reasonable capital structure appropriate for use in this proceeding is as follows:

Long-Term Debt	58.97%
Preferred Stock	6.22%
Common Equity	34.81%
Total	100.00%

The Commission also concludes the reasonable embedded costs of debt and preferred stock are 9.53% and 8.65%, respectively.

The determination of the appropriate fair rate of return for the Company is of great importance. The return allowed will have an immediate impact on the Company, its stockholders, and its customers. Determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. The allowed return must balance the interest of ratepayers and investors while meeting 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."

Following the Commission's earlier conclusion that the Company's level of service continues to be inadequate, while recognizing improvements have been made, the Commission concludes that the fair and reasonable return on common equity for Westco is 14.00%, resulting in an overall rate of return of 11.03%. Although this overall rate of return is less than that which the Commission would have found to be reasonable if service were adequate, the net operating income which will be produced by application of the schedule of rates necessary to produce the approved overall rate of return will be more than sufficient to cover all fixed charges and preferred dividends. Based upon the present service level, such a return is fair and reasonable. A rate of return producing any higher rate of return on original cost net investment would be unjust and unreasonable at this time. It should be noted that the approved increase in gross revenue is almost 89% of the requested increase.

The failure or inability of Westco to provide adequate, efficient, and reasonable service at the present time is a material factor to be considered in establishing just and reasonable rates. Especially is this true in light of previous Commission Orders, dating back to 1970, requiring service improvements. The record clearly reflects, and is supported by the testimony of numerous public witnesses, that the minimum service standards established by this Commission are not being met in all categories. In order to achieve the desired level of adequate service, Westco should meet all of the service objectives in Appendix A, attached hereto, with special attention and effort afforded to the weak areas denoted in Appendix B, additionally attached hereto.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Westco should be given the opportunity to earn.

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.

TELEPHONE

SCHEDULE I
WESTCO TELEPHONE COMPANY
N. C. Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended June 30, 1980

	Present Rates	Increase Approved	After Approved Increase
Operating Revenues			
Local service revenue	$4,153,004	$1,092,595	$5,245,599
Toll service revenue	2,969,196		2,969,196
Miscellaneous revenue	180,204		180,204
Uncollectible revenue	(27,337)		(27,337)
Total operating revenue	7,275,067	1,092,595	8,367,662
Operating Revenue Deductions			
Maintenance	1,581,329		1,581,329
Depreciation and amortization	1,591,782		1,591,782
Traffic	110,739		110,739
Commercial	363,802		363,802
General office	418,411		418,411
Other operating expenses	450,095		450,095
Taxes other than income	745,944	65,556	811,500
State income tax	58,356	61,622	119,978
Federal income tax	339,251	444,092	783,343
Total operating revenue deduction	5,659,709	571,270	6,230,979
Net operating income for return	$1,615,358	$ 521,325	$2,136,683

SCHEDULE II
WESTCO TELEPHONE COMPANY
N. C. Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended June 30, 1980

Investment in Telephone Plant	
Telephone plant in service	$25,664,560
Telephone plant under construction	2,091,036
Depreciation reserve	(6,137,894)
Deferred taxes	(2,564,752)
Net investment in telephone plant	19,052,950
Allowance for working capital	402,379
Excess profits	(86,000)
Original cost rate base	$19,369,329
Return on rate base	11.03%

SCHEDULE III
WESTCO TELEPHONE COMPANY
N. C. Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COST
Twelve Months Ended June 30, 1980

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$11,422,093	58.97	9.53	$1,088,525
Preferred stock	1,204,772	6.22	8.65	104,213
Common equity	6,742,464	34.81	6.27	422,620
Total	$19,369,329	100.00		$1,615,358
	Approved Rates - Original Cost Rate Base			
Long-term debt	$11,422,093	58.97	9.53	$1,088,525
Preferred stock	1,204,772	6.22	8.65	104,213
Common equity	6,742,464	34.81	14.00	943,945
Total	$19,369,329	100.00		$2,136,683

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence in support of this finding was presented by Public Staff witness Turner and Company witness Morris.

During cross-examination, witness Morris testified that Westco was presently offering for sale both "new" and "in-place" telephone terminal equipment. He also explained that while Westco's efforts were rather aggressive with regard to business equipment, they had not implemented an aggressive sales program in regard to either "in-place" or "new" basic telephone sets to the residential customer.

Witness Turner recommended that the Commission order Westco to develop an "in-place" terminal equipment sales program explaining that the Public Staff's investigation had revealed that Westco had no well-defined program to promote the sale of "in-place" telephone instruments. Westco had not developed set prices or plans to advertise the offering by newspaper advertisements, bill inserts, or company-customer contacts. Witness Turner explained this was reasonable under the then existing present circumstances; however, with unbundling and the set charges being proposed, some interest in the purchase of "in-place" instruments could be expected. The Public Staff therefore proposed the enunciation of a company program to offer for sale "in-place" telephone sets, key systems, and small and large PBXs. Witness Turner explained that if the Company does not offer the customer the option of owning his own set, those customers desiring ownership will buy the set from another source. When this happens, the Company misses the chance to salvage the set at a fair market price and has to dispose of the set in another way. Witness Turner further states that such a program is consistent with the movement toward deregulation of terminal equipment and competition. There is also the benefit of higher net salvage for terminal equipment, which will result in lower depreciation rates.

Based on the foregoing evidence, the Commission concludes that Westco should be encouraged to develop and implement practices which will offer its customers "in-place" telephone terminal equipment at fair prices.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Public Staff witness Dudley stated in his testimony that the Company should be required to submit to the Commission and the Public Staff its policies, detailed accounting procedures and practices, and other relevant information regarding terminal sales activity.

Company witness Prestwood stated that the Public Staff had been provided with information concerning how the Company accounts for the revenues and expenses associated with the sales of "in-place" equipment, but that he would be glad to provide such information again.

The Commission recognizes that sales of terminal equipment will constitute a substantial part of the placement of such equipment in the future. Adequate policies and procedures will be essential in properly assigning costs and revenues to these activities in future rate proceedings. The Commission therefore concludes that the Company should submit to the Commission and the Public Staff its policies, detailed accounting procedures and practices, and other relevant information regarding terminal equipment sales activity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding is found in the testimony of Company witness Guffey and Public Staff witnesses Willis and Sutton.

Company witness Guffey testified that the objectives he considered in designing his rate structure were the recognition of changes in the terminal market, pricing more related to the cost of providing service, keeping basic telephone service rates as low as possible and ease of understanding by the customers and administration by the Company.

He stated to accomplish this purpose the Company's non-basic services were reviewed in order to maximize the revenues to be derived from those services. Witness Guffey stated that a contribution study was made for private branch exchange services, key telephone services, centrex services and others. The rates for these services were increased to a level that contributes to the Company's financial well-being. After determining the additional revenues that could be gained through service charge connection increases, the revenue requirement remaining was distributed over basic telephone service access line charges.

Witness Guffey explained that FCC action in its Docket No. 20828 requires the unbundling of access lines and telephone sets from their present composite rates. He further stated that the customer providing his own registered telephone set would pay only the monthly rate for the access line, while the customer using a Company telephone set would pay an additional individual monthly charge for usage of the set.

In addition, the Burnsville, Haysville, Micaville, Murphy, and Suit exchanges were regrouped to reflect growth. Witness Guffey formulated rates for special assemblies, directory listings, semipublic line rates, key and pushbutton telephone service, private branch exchange service, miscellaneous service arrangements, auxiliary equipment, connections with facilities of others, local private lines and obsolete services.

Public Staff witness Willis had the responsibility of reviewing these proposals and making recommendations. Consistent with recent Commission's decisions and Public Staff policy, witness Willis recommended that Westco be allowed to unbundle local basic service rates. Hence, the Commission concludes that the unbundling of rates for telephone sets should be accomplished by creating individual telephone set charges.

Noting the Public Staff's position that regrouping of basic exchange rates should be done only during a general rate case, witness Willis recommended the regrouping of all the Company's exchanges which had outgrown their existing rate group's upper limits as of the end of the test period. The Commission concludes that the five exchanges identified as exceeding their present rate group limits should be reclassified to the next highest group.

Witness Willis explained that the Company had proposed to increase its key access line multiple, a charge for a central office access line terminating in key telephone equipment, from 1.2 to 1.75, or an increase of 45.8%. Application of the 1.75 multiple to the proposed business one-party rate would produce an increase of 61.0% for the key access line rate. Witness Willis further stated that the Public Staff did not have information or data which would support a multiple of 1.75, and therefore a recommendation of a multiple of 1.5 was in order.

Witness Willis discussed the station telephone set charge which would apply under the Company's proposal. He stated that the present rate of $1.25 per month for an extension includes the use of the inside wiring and the station telephone set. Under the Company's proposal, charges would be structured to cover inside wiring costs on a non-recurring basis and the telephone set costs on a recurring basis. Witness Willis emphasized that the $1.65 per month charge proposed by the Company would increase residential extension rates by 32% and would further increase all billings to basic services using Company owned standard telephone sets. Consistent with his testimony concerning Western Carolina, witness Willis recommended a level of $1.45 per month for the standard telephone set charge.

Under the Company's proposals, service connection charges for establishment of residential service at a location not previously served would increase from $31.50 to $64.00, an increase of 103%. Similarly, service connection charges for establishment of business service at a location not previously served would increase from $45.40 to $86.75, an increase of 91%.

Public Staff witness Sutton recommended that aggregate service connection revenues be increased 34%. Under the Staff's proposal, the service connection charge for establishment of residential service at a location not previously served would increase from $31.50 to $38.00, an increase of 25%. Similarly, the service connection charge for establishment of business service at a

location not previously served would increase from $45.40 to $54.75, an increase of 21%.

In that the gross revenue increase approved herein is different from that proposed by either the Public Staff or the Applicant, it necessarily follows that the applicable rate structure is also different from that of the two parties. The approved gross revenue increase is $131,071 less than that requested in Westco's application. In order to reflect this reduction, the Commission concludes that the following changes should be implemented to the Company's proposed tariffs. First, the central office work element component of the service connection charge should be reduced from the proposed $10.00 level to $5.05. Second, the monthly charge for a telephone set should be $1.50. Third, all zone charges should be reduced 19.62%. Lastly, in order that the rate schedules produce the approved level of gross revenues, the directory listing charges should be set at the level approved for Southern Bell in its most recent general rate case.

A summary of the Commission's conclusions in regard to the Company's tariff provisions, rates and charges follows:

1. That the unbundling of rates for station telephone sets should be accomplished by creating individual telephone set charges and access line charges.

2. That the five exchanges identified as exceeding their present rate group limits should be reclassified to the next highest group.

3. That the key set access line multiple should be increased from 1.2 to 1.75 and the charge for a telephone standard set should be set at $1.50 per month.

4. That all zone charges be reduced by 19.62%.

5. That the central office work element charge should be $5.05 rather than the $10.00 rate proposed by the Company.

6. That all other rates proposed by the Company are just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Westco Telephone Company, be and hereby is authorized to adjust its North Carolina local exchange telephone rates and charges in order to produce, based upon stations and operations as of June 30, 1980, an increase in gross revenues not to exceed $1,092,595.

2. That the Applicant is hereby called on to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the additional revenues approved herein in accordance with the conclusions set forth above within 10 days from the date of this Order. Work papers supporting such proposals should be provided to the Commission and all parties of record (formats such as Item 30 of the minimum filing requirements, NCUC Form P-1 are suggested).

3. That parties may file written comments concerning the Company's tariffs within 5 days of the date upon which they are filed with the Commission.

4. That the rates, charges, and regulations necessary to produce the additional annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs filed pursuant to paragraph 2 above and the Applicant shall be required to give public notice of the approved increase.

5. That the Applicant take action to meet or continue to meet the service objectives as shown on Appendix A of this Order. The Company shall also take action to meet the objectives in the applicable weak areas as shown on Appendix B of this Order.

6. That the Applicant's present program to sell "in-place" telephone terminal equipment is encouraged.

7. That the Applicant be, and hereby is, ordered to submit to the Commission and Public Staff its policies, detailed accounting procedures and practices, and other relevant information regarding terminal equipment sales activity.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of May 1981.

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

APPENDIX A

Commission Service Objectives for Westco Telephone Company

1. The number of held orders for new service in each service center (excluding those which can be worked but are pending customer action) over 14 days of age shall not exceed 0.1% of the number of total stations in that service center.

2. Regrade requests shall be worked promptly and the number held over 14 days (excluding those which can be worked but are pending customer action) in each service center shall not exceed 1% of the total number of stations in that service center.

3. The number of subscriber trouble reports shall not exceed an average of eight reports per 100 stations in each exchange for any six-month period.

4. The Company shall clear at least 95% of all subscriber trouble reports each month within 24 hours after the trouble is reported.

5. The Company shall achieve and maintain a minimum operator answer time of 90% within 10 seconds for manual toll, 95% within 10 seconds for DDD recording, and 85% within 10 seconds for directory assistance.

6. The Company shall maintain public paystations in proper working condition, keep current and accurate instructions posted on each paystation indicating the telephone number and dialing instructions for local, toll,

directory assistance, and emergency assistance and have a current directory available for each paystation. Routine maintenance and inspections should be planned so that at no time are more than 10% of the Company's paystations out of service in any exchange.

7. The Company shall work at least 90% of all regular service orders within five working days from the date on which the service order was placed or five working days from the date on which the subscriber requested service, whichever is later.

8. The Company shall maintain its plant so that dial completion test results will meet the following objectives:

Type of test	Maximum Failure Rate
a. Intraoffice call completion	1%
b. Interoffice call completion	2%
c. DDD call completion	5%

Type of test	Limits	Maximum % of Calls Out of Limits
d. Interoffice transmission	2 to 10 db loss	5%
e. DDD transmission	3 to 12 db loss	5%
f. Interoffice noise	30 dbrnc max.	5%
g. DDD noise	33 dbrnc max.	5%

APPENDIX B

WEAK AREAS

1. Trouble Report Rate
   - a. Bryson City exchange
   - b. Cherokee exchange
   - c. Cullowhee exchange
   - d. Franklin exchange
   - e. Hayesville exchange
   - f. Murphy exchange
   - g. Robbinsville exchange
   - i. Marion exchange
   - j. Sevier exchange
   - k. Guntertown exchange
   - l. Hot Springs exchange
   - m. Marshall exchange
   - n. Bakersville exchange
   - o. Micaville exchange
2. Troubles Cleared Within 24 Hours - Companywide
3. Regular Service Orders Worked Within Five Working Days - Western District

TELEPHONE

DOCKET NO. P-58, SUB 117

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Western Carolina Telephone Company for an Adjustment of Rates and Charges Applicable to Intrastate Telephone Service	) ORDER GRANTING) PARTIAL RATE) INCREASE

HEARD IN: Courtroom Basement, Corner of Main and Court Streets, Marion, North Carolina, on Tuesday, March 17. 1981, and

Commissioner's Board Room, Room 204, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on Tuesday, March 17, 1981, and

Community Services Room, First Floor, Community Services Building, Hospital Road, Sylva, North Carolina, on Wednesday, March 18, 1981, and

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday and Wednesday, March 24 and 25, 1981.

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners John W. Winters and Edward B. Hipp

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns and Smith, Attorneys at Law, P. O. Box 2479, Raleigh, North Carolina 27602

For the Intervenor:

Graham Duls and T. Patrick Lordeon, Attorneys at Law, Western North Carolina Legal Services, Inc., P. O. Box 426, Sylva, North Carolina 28779
For: Edward Cisco, Route 1, Box 13C, Bryson City, North Carolina 28713

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

BY THE COMMISSION: On October 28, 1980, Western Carolina Telephone Company (Western Carolina) filed an application with this Commission for authority to adjust its rates and charges for intrastate service. The proposed rates and charges were to be effective for service rendered on and after November 28, 1980, and were based on a test year ending on June 30, 1980.

By Order issued on November 25, 1980, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates and charges for 270 days from the November 28, 1980, effective date, set hearings to begin on March 17, 1981, declared the test period to be the 12 months ending June 30, 1980, required the Company at its expense to give public notice of the proposed increase and hearings and set the time for the Public Staff and other interested parties to file interventions and/or testimonies.

By Order issued on December 2, 1980, the Commission combined for hearing the application filed in this docket with the application of Westco Telephone Company (Westco), Docket No. P-78, Sub 47.

The Public Staff filed Notice of Intervention in this docket on February 24, 1981. The intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission Rules and Regulations. On March 9, 1981, Western North Carolina Legal Services, Inc., filed a Motion to Intervene on behalf of Edward Cisco. That motion was allowed by Commission Order issued March 11, 1981.

The Commission conducted out-of-town hearings for the purpose of receiving testimony from the Using and Consuming Public. The first such hearing was held in Marion, North Carolina, at 2:00 p.m. on March 17, 1981; the second in Asheville, North Carolina, at 7:30 p.m. on March 17, 1981; and the third in Sylva, North Carolina, at 10:00 a.m. on March 18, 1981.

The following public witnesses appeared and offered testimony in Marion at the consolidated hearings for Western Carolina and Westco Telephone Companies:

Daniel A. Abernathy, Jessie Boy, Pearl Huskins, D. A. Grayson, Helen Turner, Merle Brooks, Steven Wilkins, Bill Conner, Paul Richardson, Jack Harmon, Rod Birdsong, Colonel W. M. Turner, John English, and Shirley Washburn.

The following public witnesses appeared and offered testimony in Asheville at the consolidated hearings for Western Carolina and Westco Telephone Companies:

C. L. Kessler, Samuel J. Tucker, Ruby Cox, H. H. Cosgrove, Betty Hulst, William Bickham, and Blanche Vines.

The following public witnesses appeared and offered testimony in Sylva at the consolidated hearings for Western Carolina and Westco Telephone Companies:

Orwell Coward, Mrs. George C. Sandlin, George C. Sandlin, Matilda Conroy, Marie Leatherwood, Eleonor Sutton, Bennett Flink, Karen Jacobus, Gladys Griffin, Veronica Nicholas, Grace Thomas, Allison Laird-Larte, Dottie Israel, Miller Hall, Graham Duls, and Frank Young.

The hearings were resumed in Raleigh at 9:30 a.m. on March 24, 1981, for the purpose of receiving further testimony of public witnesses and the testimony and cross-examination of the Applicant, the Public Staff, and intervenors. Western Carolina Telephone Company offered the testimony and exhibits of the following witnesses:

Eugene Morris, President of Western Carolina Telephone Company; Lloyd W. Darden, Jr., Division Customer Service Manager for the Mid-South Division of Continental; Clarence Prestwood, Revenue Requirements Manager for Continental Telephone Service Corporation; Joseph Brennan, President of Associated Utility Services, Inc.; and Edwin H. Guffey, Director of Rates and Tariffs, Continental Telephone Service Corporation - Eastern Region.

The Public Staff offered the testimony and exhibits of the following witnesses:

Leslie C. Sutton, Engineer - Communications Division; Benjamin Turner, Jr., Engineer - Communications Division; William J. Willis, Jr., Engineer - Communications Division; Candace Paton, Staff Accountant - Accounting Division; William L. Dudley, Staff Accountant - Accounting Division; and Teresa Kiger - Economic Research Division

Western Carolina Telephone Company offered the rebuttal testimony and exhibits of the following witnesses:

Clarence Prestwood and Joseph F. Brennan.

Based upon the foregoing, the testimony and exhibits admitted at the hearing, and the entire record in this docket, the Commission now reaches the following

FINDINGS OF FACT

1. The Applicant, Western Carolina Telephone Company, is a duly organized North Carolina corporation and is a subsidiary of Continental Telephone Corporation. Western Carolina holds a franchise from this Commission to provide public utility telephone service in 11 exchanges located in western North Carolina. Western Carolina is properly before the Commission in this proceeding, pursuant to G.S. 62-133, for a determination of the justness and reasonableness of its proposed rates and charges.

2. That Western Carolina has filed application with the Commission seeking an increase in its rates and charges for intrastate telephone service to produce an additional $2,336,236 in annual gross revenues for the Company.

3. That the test year for this proceeding is the 12 months ending June 30, 1980.

4. That the overall quality of service provided by Western Carolina is inadequate.

5. That Western Carolina's reasonable original cost rate base is $33,927,450, consisting of utility plant in service of $44,129,203, telephone plant under construction of $4,748,650 and working capital of $667,273 reduced by accumulated depreciation of $9,570,825, residual excess profit in plant accounts of $265,000 and accumulated deferred income taxes of $5,781,851.

6. That Western Carolina's reasonable allowance for working capital is $667,273.

7. That excess profits of $265,000 included in Western Carolina's intrastate net investment in telephone plant in service should be excluded from rate base.

8. That Western Carolina's gross revenues for the test year after accounting and pro forma adjustments are $15,185,693. After giving effect to Western Carolina's proposed rates, the revenues would be $17,521,929.

9. That Western Carolina's reasonable level of test year intrastate operating revenue deductions after accounting and pro forma adjustments is $11,912,409. This amount includes $2,894,438 for investment currently consumed through reasonable actual depreciation on an annual basis.

10. That the Company's appropriate capital structure for use in this proceeding is as follows:

Long-Term Debt	58.97%
Preferred Stock	6.22%
Common Equity	34.81%

11. That the failure of Western Carolina to provide adequate telephone service is a material factor to be considered in establishing the fair rate of return. The Company's proper embedded costs of long-term debt and preferred stock are 9.53% and 8.65%, respectively. The fair rate of return which the Company should be allowed to earn on the original cost net investment is 11.03% and a return of 14.00% on common equity.

If the service of Western Carolina had been adequate a return of 11.29% on the original cost net investment and a return of 14.77% on common equity would be just and reasonable.

12. That based on the foregoing, Western Carolina should be allowed in addition to the $15,185,693 of annual gross revenues which would be realized under its present base rates an increase not to exceed $1,170,774. This increase is required in order for the Company to have a reasonable opportunity to earn the 11.03% rate of return on its rate base which the Commission has found just and reasonable. The 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.

13. That the Company's current program to sell "in-place" telephone terminal equipment is encouraged.

14. That Western Carolina should submit to the Commission and the Public Staff a report detailing the operating and accounting methods and procedures to be employed by the Company to insure that all revenues and costs associated with the sale of terminal equipment are properly recorded and accounted for.

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 $1,170,774, will be just and reasonable.

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

The evidence supporting these findings of fact is contained in the verified application, in the testimony and exhibits, and in the record as a whole. These findings are essentially procedural and jurisdictional in nature and were uncontested and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the quality of service was presented by Company witness Darden, Public Staff witness Turner, and 38 public witnesses. Also, the Commission takes judicial notice of the prior Orders of the Commission in Docket Nos. P-58 and P-78.

The official records in the Western and Westco dockets include the following: On March 20, 1967, in Docket No. P-58, Sub 61, the Commission issued an Order of Investigation and Show Cause to Western Carolina, Westco Telephone Company, and Continental Telephone Corporation. In this Order the Commission noted that, as a result of numerous complaints and various field observations, the service provided by Western Carolina and Westco "is or may be inadequate" and ordered a general investigation and a show cause proceeding. This proceeding, which still remains open, contains numerous Orders relating to the Commission's investigation into the service of the two companies and their efforts to meet the Commission's objectives.

In an Order dated July 15, 1970, in Docket No. P-58, Sub 61, the Commission listed 17 requirements for improving service with which Western and Westco were ordered to comply. In that docket the Commission found the service of the companies to be "insufficient and inadequate." In an Order in Docket No. P-58, Sub 85, issued on November 21, 1972, the Commission found the Company's service once again to be inadequate and stated:

> "The Commission considered the level of service in Docket No. P-58, Sub 61, a Show Cause proceeding, and during the present case. The Commission had anticipated that Westco Telephone Company would take aggressive and thorough action to provide a level of telephone service that was efficient and dependable to its customers. However, the weight of the evidence in this case indicates that the service has not reached such a level. The Commission concludes that specific service improvements required in the Commission's July 15, 1970, Order in Docket No. P-58, Sub 61 must be effectuated, and the specific service levels provided therein should be met as specified and the service improvements plan should be expedited where possible."

In Docket No. P-58, Sub 93, in an Order issued on April 30, 1975, the Commission found as a fact that while the Company had made significant and continuing improvements in its level of service, such level of service continued to be insufficient and inadequate, particularly in the Company's Western District. In this docket the Commission found it necessary once again to set rates which were lower than those rates which would have been approved if the service were adequate.

In Docket No. P-58, Sub 99, in an Order issued on April 29, 1976, the Commission, as a result of the inadequate service, established rates which were lower than those rates which would have been approved if the service had been adequate.

In the instant proceeding, a total of 38 public witnesses testified in Marion, Asheville, and Sylva. The majority of these witnesses complained of various service and billing problems. There were also complaints, to a lesser degree, concerning the increase in rates proposed by the Company.

Company witness Darden's testimony compared the service indices with each of the service objectives which the Company was required to achieve in Docket P-78, Sub 32, and incorporated by reference in Docket P-78, Sub 35. The result of this comparison showed that although some improvements have been made, the Company has not yet reached the service standards required by this Commission.

Public Staff witness Turner testified regarding the Public Staff's investigation of the quality of service and its conclusion as to the adequacy of service. He testified that the Company has had a long history of service problems; to wit, the Commission's previous findings of poor service and the Commission's Orders directing the Company to meet specific service objectives. His testimony and exhibits relate the test results and service indices to the specific service objectives imposed by the Commission. This comparison shows that the Company is meeting some of the Commission's objectives, but that improvement is still needed in the areas of trouble report rate, troubles cleared within 24 hours, and regular service orders worked within five working days. The objective set by the Commission is that the subscriber trouble report rate should not average more than eight reports per 100 stations in each exchange for any six-month period. The Public Staff's investigation showed that this objective has not been met in 15 of Western's and Westco's 26 exchanges. Witness Turner's testimony also revealed that although the Commission ordered the Company to clear 95% of all trouble reports within 24 hours after the trouble is reported, this objective is not being met on an overall Company basis. In addition, the Commission's objective requiring Westco to work at least 90% of all regular service orders within five working days from the date on which the service order was placed; or five working days from the date on which the subscriber requested service has been partially met, but not completely achieved.

The Commission is most concerned that all telephone subscribers being served by companies under its jurisdiction provide adequate service, as required by the statutes of the State of North Carolina. Thus, although the Company's overall level of service has improved, the Commission must conclude that during the test period and up to the time of the hearings, the Company had not provided a fully adequate level of service throughout its North Carolina operations. While the Commission does not herein raise the standards of service specifically stated in Docket No. P-58, Sub 93, those service objectives must be achieved in order to provide adequate service to the subscribers of Westco. Consequently, the Commission concludes that the Company's level of service, though showing improvement from the past record, does not meet the parameters of efficient and reasonable service as required by G.S. 62-131.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this Finding of Fact is found in the testimony and exhibits of Company witness Prestwood and Public Staff witnesses Dudley and Paton. Company witness Prestwood presented rebuttal testimony relating to the Public Staff adjustment for excess profits in plant accounts. The following chart compares the amounts which the Company and Public Staff contend should be included in the original cost net investment for use in this proceeding.

	Company	Public Staff	Difference
Telephone plant in service	$44,129,203	$44,129,203	$ -0-
Accumulated depreciation	(9,481,630)	(9,546,658)	(65,028)
Construction work in progress	4,748,650	4,748,650	-0-
Allowance for working capital	1,023,952	667,273	(356,679)
Accumulated deferred income taxes	(5,781,851)	(5,781,851)	-0-
Excess profit in plant accounts	-0-	(265,000)	(265,000)
Original Cost Net Investment	$34,638,324	$33,951,617	$(686,707)

The Company and the Public Staff are in agreement on the amounts for total investment in telephone plant in service, construction work in progress, and accumulated deferred income taxes. There being no evidence to the contrary, the Commission concludes these amounts presented by both the Company and the Public Staff are reasonable and proper.

The first difference of $65,028 relates to accumulated depreciation. Public Staff witness Dudley increased accumulated depreciation by an adjustment containing two components. First, witness Dudley increased accumulated depreciation by $89,195 to recognize the increase in accumulated depreciation related to Company witness Prestwood's adjustment increasing depreciation expenses to an annual level based on end-of-period plant. The Commission has consistently recognized that a pro forma adjustment to depreciation expense requires a corresponding pro forma adjustment to accumulated depreciation and concludes that the adjustment is proper in this proceeding. Second, witness Dudley decreased accumulated depreciation by $24,167 to remove from accumulated depreciation the amount applicable to excess profits in plant accounts as determined by Public Staff witness Paton. However, the Commission finds that this adjustment should not have been made since witness Paton's adjustment was made to net plant.

The Commission therefore concludes that the proper level of accumulated depreciation for use in this proceeding is $9,570,825 (9,546,658 + 24,167).

The Commission has found in Finding of Fact No. 6 that the proper level of working capital allowance is $667,273 and the Commission has also found in Finding of Fact No. 7 that $265,000 of residual excess profits existing in plant accounts should be removed.

Based on the above and all of the testimony and evidence in this case, the Commission concludes that the proper Original Cost rate base for use in this proceeding is $33,927,450, constituted as follows:

Telephone plant in service	$44,129,203
Accumulated depreciation	(9,570,825)
Construction work in progress	4,748,650
Allowance for working capital	667,273
Accumulated deferred income taxes	(5,781,851)
Excess profit in plant accounts	(265,000)
Total	$33,927,450

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Prestwood and Public Staff witness Dudley each presented a different amount for the working capital allowance. Witness Prestwood testified that he used a modified FPC formula in computing cash working capital. This method considers the lag in collection of revenues but does not consider the lag in payment of expenses. Materials and supplies are added to the cash requirement while customer deposits are deducted. Using this method Company witness Prestwood derived a working capital allowance of $1,023,952.

Public Staff witness Dudley presented a working capital allowance of $667,273 consisting of 1/12 of operating expenses excluding depreciation and taxes, plus average prepayments and compensating bank balances, less average tax accruals and end-of-period customer deposits. Witness Dudley's written testimony states that he used "in the absence of a lead-lag study, the formula method of determining working capital computed in a manner consistent with the Commission's past decisions regarding working capital."

A comparison of the two working capital allowances is presented below:

	Company	Public Staff	Difference
Cash	$ 507,210	$ 536,413	$ 29,203
Average materials and supplies	624,147	624,147	-
Minimum bank balances	-	289,040	289,040
Average prepayments	-	7,087	7,087
Average tax accruals	-	(682,009)	(682,009)
Customer deposits	(107,405)	(107,405)	-
Total	$1,023,952	$ 667,273	$(356,679)

The major differences in the two calculations arise due to Public Staff witness Dudley's inclusion of minimum bank balances, prepayments and average tax accruals in his calculations while Company witness Prestwood excluded these three elements. Minimum bank balances and prepayments represent items of working capital which a company must maintain in conducting its business. Average tax accruals are a reduction of the amount of working capital supplied by debt and equity investors.

The Commission concludes that, in the absence of a lead-lag study, the formula method of determining the working capital allowance as presented by witness Dudley should be used in this case. The Commission therefore concludes that the reasonable allowance for working capital is $667,273.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Evidence for this finding is contained in the testimony and exhibits of Public Staff witness Paton, and the rebuttal testimony and exhibits of Company witness Prestwood.

In reaching the decision in this finding, the Commission must first answer two questions. (1) Is the cost in Western Carolina's rate base for purchases from its affiliated companies reasonable? (2) In the event that the cost is unreasonable or that excess profits do exist in the rate base of Western Carolina, what adjustments are necessary to eliminate the unreasonable portion of the cost from rate base or eliminate the excess profits from the rate base?

Public Staff witness Paton testified that when there is a parent subsidiary relationship, business transactions may be carried on in a less than arm's-length atmosphere and that there is an incentive for the buyers and sellers to establish transfer prices that will maximize combined profits. Witness Paton further testifed that a comparable earnings study comparing the manufacturing and supply affiliates of Western Carolina with similar independent companies shows that the affiliates of Western Carolina have been able to earn higher returns on equity than have similar companies operating in the open market.

Witness Paton also testified that her analysis indicated that the supply affilitate, Continental Supply and Service Corporation (CSSC), enjoys economies of operation as a result of its close affiliation with its customers. As compared to the independents, CSSC is able to make its sales with fewer operating expenses, smaller accounts receivable, and generally fewer assets.

In comparing her adjustment to rate base with that made by the Company, witness Paton stated that Continental files a consolidate Federal income tax return which includes its domestic telephone subsidiaries and other domestic subsidiaries that qualify for such inclusion. In the consolidated return, gross profit earned on sales to eligible affiliated telephone companies of products manufactured or purchased for resale is eliminated from consolidated taxable income. The resulting income tax deferral is refunded to the individual telephone company making such purchases. This accumulated deferred income tax is what Western Carolina has deducted from rate base. This adjustment in effect eliminates from the cost of plant in service that portion of the price paid to the manufacturing or supply affiliate to cover taxes. Since the profit and associated taxes are deferred due to consolidation, it is fair and reasonable to deduct the amount for taxes included in the cost of plant in service.

Witness Paton testified that her adjustment eliminates from rate base the excess profits earned by the manufacturing and supply affiliates on sales to Western. She continued that her adjustment was made based on the net, or after tax, income of the manufacturing or supply affiliates, and that since her adjustment is based on after tax net income, it is unrelated to the adjustment made by the Company.

Witness Paton further testified that the excess profit adjustment is absolutely essential in calculating the utility's original cost net investment when the manufacturing or supply affiliate's net income is considered excessive. This is true even though the payments of deferred income taxes

received by the utility are greater than the affiliate's net income earned on sales to the utilities.

Witness Paton testified that a 15% return on common equity was reasonable for CSSC. A 15% return was found by the Commission to be reasonable in the last rate case because that was the return comparable companies were earning. While the average returns of such companies were less than 15%, for the years 1975 through 1979, witness Paton recommended that CSSC again be allowed a 15% return to give them sufficient incentive to stay in business.

Company witness Prestwood testified that the important thing to consider is the price that Western Carolina has to pay for a product, and whether they could obtain that product at a lower price elsewhere. On cross-examination, witness Paton said that in considering whether goods and service of a certain quality are being bought at the lowest price, it is necessary to look at the cost to CSSC of supplying goods to affiliates. If CSSC were selling to anyone other than affiliates, their costs would be a lot higher. CSSC would be unable to sell to nonaffiliated companies at the same level of expense that they have in selling to the affiliates. Witness Paton testified that CSSC is efficient because it sells to affiliated interests.

The fact that the prices paid by Western Carolina for purchases from its affiliated companies are not greater than those which it would have to pay if it made the purchases in the open market has not been disputed. However, the Commission is of the opinion that due to the close relationships between Western Carolina and its affiliated suppliers, it is necessary to consider the possibility of less than arm's-length transactions between buyer and seller.

An analysis of Paton Exhibit I, Schedule 4, shows that Continental Supply and Service Corporation for the years 1977 through 1979 earned an average return on equity of 43.3%, while independent companies competing in the open market earned returns ranging from 6.2% up to 12.79%. Since the sale of the manufacturing affiliates in 1976, all of the sales of CSSC have been made to affiliated operating telephone companies. The existence of this captive market is the primary reason that the supply affiliate of Western Carolina Telephone Company is able to sell its products at prices comparable to companies competing in the open market and still achieve a rate of return much greater than those achieved by the independent companies selling in the open market. Since the high profits of the supply company are the direct result of the affiliation with the telephone operating companies, the Commission concludes that it is only fair that these profits be shared with those captive market telephone operating companies. The Commission therefore concludes that the level of costs of purchases from affiliated companies by Western Carolina included in the rate base is not reasonable, and that Western Carolina's rate base includes excess profits which should be removed. This decision is consistent with past Commission decision's concerning transactions between a regulated utility and its supply and/or manufacturing affiliate.

Based on the above, and all the evidence, testimony, and exhibits of the witnesses, the Commission concludes that the cost included in Westco's utility plant in service for purchases from its manufacturing and supply affiliates should be adjusted to eliminate excess profits surviving in the net plant accounts at the end of the test year. Thus, the Commission concludes that the

Applicant's net investment in utility plant in service should be adjusted to exclude "excess profits" surviving in the net plant accounts at June 30, 1980, in the amount of $265,000. The adjustment is based on the concept of limiting the earnings of the supplier affiliate to a reasonable rate of return on equity. The Commission concludes that, on transfers of equipment and supplies between the manufacturing and supply affiliates of Continental and the Applicant, a return of 15% is a reasonable rate of return on equity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding is contained in the testimony and exhibits of Company witness Prestwood and Public Staff witnesses Dudley and Sutton. Company witness Prestwood and Public Staff witness Dudley proposed revenues of the following amounts:

	Company	Public Staff	Difference
Local service revenues	$8,539,666	$8,539,666	$ -
Toll service revenue	6,243,579	6,203,017	(40,562)
Miscellaneous revenue	443,010	443,010	-
	15,226,255	15,185,693	(40,562)
Uncollectible revenue	(89,283)	(89,283)	-
Total operating revenues	$15,136,972	$15,096,410	$(40,562)

The only difference between the witnesses is the adjustments to toll revenues by Public Staff witness Dudley necessitated by adjustments to rate base and expenses adopted by the Commission elsewhere in these findings.

Company witness Prestwood testified that he had calculated end-of-period intrastate toll revenues using a toll settlement ratio of 12.386% which was a Southern Bell estimate for calendar year 1980. He stated that the actual settlement ratio for 1980 was 12.07%. He further testified that any revenue effect from the Commission's decision in toll case, Docket No. P-100, Sub 53, should be included in this case by way of incorporating that effect on the toll settlement rate of return.

Public Staff witness Sutton stated that, using the actual monthly settlement ratio for the 12 months of calendar year 1980, he determined settlement ratio for Western and Westco by employing two different methodologies. He stated that one methodology produced a settlement ratio of 12.11%, while the other produced a settlement ratio of 12.32%. Further, witness Sutton stated that any decision reached in Docket No. P-100, Sub 53 (intrastate toll case) affecting the toll revenues of Western Carolina should be reflected in Western Carolina's general rate case. Witness Sutton further testified that the settlement ratio would increase .23% if the Commission changes the private line schedules as proposed by the Public Staff and the operator service as proposed by Bell. Thus, the two settlement ratios determined by witness Sutton would become 12.34% and 12.55% in order to reflect the two proposed changes in Docket No. P-100, Sub 53.

Mr. Sutton stated that in view of the fact that the settlement ratio used by the Company (12.386%) in the prefiled testimony of witness Prestwood was between the two modified settlement ratios he had determined (12.34% and 12.55%), it

would be appropriate and reasonable to use the end-of-period toll revenues determined by witness Prestwood in his prefiled testimonies, and that it would then not be necessary to add the additional $84,697 in toll revenues to reflect the two changes proposed in Docket No. P-100, Sub 53.

A review of the evidence presented in this case indicates the erratic and volatile nature of the toll settlement ratio. As a result, the Commission is of the opinion that any decision it reaches should be based upon an actual achieved settlement ratio as determined by Mr. Sutton. Moreover, in light of the foregoing discussion and considering our decision in Docket No. P-100, Sub 53, the Commission concludes that it is proper to use the 12.386% settlement ratio to determine the end-of-period level of toll revenues for the two companies. Accordingly, the Commission finds the end-of-period intrastate toll revenues for Western Carolina to be $6,203,017 and total gross revenues to be $15,185,693, which, when reduced by uncollectible revenue of $89,283, produces net revenues of $15,096,410.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding is contained in the testimony and exhibits of Company witness Prestwood and Public Staff witnesses Dudley and Paton. Company witness Prestwood and Public Staff witness Dudley presented testimony and exhibits showing the levels of operating revenue deductions which each contends should be used by the Commission in this proceeding. The following tabular summary shows the amounts presented by each witness:

	Company	Public Staff	Difference
Maintenance expense	$ 3,042,695	$ 3,033,630	$ (9,065)
Depreciation and amortization	2,918,605	2,894,438	(24,167)
Traffic expense	926,142	926,142	-
Commercial expense	673,638	673,638	-
General office expense	805,017	805,017	-
Other operating expense	998,533	998,533	-
Taxes other than income	1,502,713	1,500,279	(2,434)
State income tax	169,816	166,616	(3,200)
Federal income tax	1,075,301	1,052,241	(23,060)
Total revenue deductions	$12,112,460	$12,050,534	$(61,926)

Company witness Prestwood and Public Staff witness Dudley proposed the same amount for Traffic, Commercial, General Office, and Other Operating Expenses. The Commission therefore concludes, absent evidence to the contrary, that the proper amounts for these expenses are those proposed by both the Company and the Public Staff.

The first difference in operating revenue deductions is a $9,065 reduction in maintenance expense proposed by Public Staff witness Dudley. This adjustment relates to excess profits on supplies purchased by Western Carolina from its affiliate, Continental Supply and Service Corporation. The Commission has found in Finding of Fact No. 7 that the earnings of CSSC on sales to Western Carolina should be limited. The Commission therefore concludes that the $9,065 reduction in maintenance expense is proper.

The second difference, a $24,167 reduction in depreciation expense, represents the depreciation applicable to the excess profits included in plant. The Commission has already concluded that these excess profits should be removed from plant. It necessarily follows that the depreciation expense applicable to that excess profit in plant should also be removed. The Commission concludes that the $24,167 reduction in depreciation expense is proper.

The third difference is a $2,434 reduction in taxes other than income. This adjustment represents the gross receipts tax applicable to the $40,562 reduction in toll revenues which the Commission found proper in Finding of Fact No. 8. The Commission therefore adopts the $2,434 reduction in other taxes.

The final differences involve the decreases in State and Federal income taxes of $3,200 and $23,060, respectively, made by Public Staff witness Dudley.

An analysis of Dudley Exhibit I, Schedule 3-4, shows that his income tax adjustments may be separated into two broad categories. One category concerns the income taxes applicable to revenue and expense adjustments previously adopted in these findings. The calculation of the income tax adjustments in this category is summarized below:

Reduction in toll revenues	$40,562
Reduction in expenses	35,666
Decrease in taxable income	4,896
Decrease in state income tax ($4,896 x .06)	293
Decrease in federal income tax ($4,896 - $293 x .46)	$ 2,117

The other category concerns income tax applicable to differences in the amount of interest expense used by the two witnesses. Public Staff witness Dudley based his adjustment on the interest expense of $1,607,910, shown on his Schedule 1 reduced by the interest applicable to Job Development Investment Credit (JDIC). This component of the adjustment to income tax expense must be revised due to the Commission's adoption in Findings of Fact Nos. 5, 10, and 11, respectively, of a rate base, capital structure and embedded cost of debt different from those used by witness Dudley.

The proper adjustment to income taxes applicable to interest expense is calculated below:

1.	Interest expense adopted by the Commission		$1,906,669
2.	Unamortized investment tax credit (NCUC P-1, Item 1a)	$2,960,190	
3.	Pre-1971 investment tax credit (Prestwood Schedule 23)	107,293	
4.	Unamortized JDIC (Line 2 - Line 3)	2,852,897	
5.	Intrastate factor (NCUC P-1, Item 40c)	.7234	
6.	Intrastate JDIC (L4 x L5)	2,063,786	
7.	Debt component of Commission adopted capital structure	.5897	
8.	Debt component of JDIC (L6 x L7)	1,217,014	
9.	Embedded cost of debt adopted by Commission	.0953	
10.	Intrastate JDIC interest (L8 x L9)		115,981
11.	Interest for income tax calculation (L1 - L10)		1,790,688
12.	Company interest expense (Prestwood Schedule 21)		1,461,737
13.	Increase in interest expense		328,951
14.	Decrease in state income tax ($318,951 x .06)		19,737
15.	Decrease in federal income tax ($318,951 - $19,737 x .46)		$ 142,238

Based on the above, the Commission concludes that the State income tax expense presented by the Company should be reduced by $20,030 ($293 + $19,737) and the figure for Federal income tax expense presented by the Company should be reduced by $144,355 ($2,117 + $142,238). This results in total State and Federal income tax expense of $149,786 and $930,946, respectively.

In arriving at net operating income, Company witness Prestwood added interest during construction of $13,659 to the net operating income calculated by deducting operating revenue deductions from revenues. Public Staff witness Dudley excluded this item in arriving at his net operating income. The Commission concludes that exclusion of this amount is proper.

In summary, the Commission concludes that the proper level of operating revenue deductions is $11,912,409 as shown below:

Maintenance expense	$ 3,033,630
Depreciation and amortization	2,894,438
Traffic expense	926,142
Commercial expense	673,638
General office expense	805,017
Other operating expense	998,533
Taxes other than income	1,500,279
State income tax	149,786
Federal income tax	930,946
	$11,912,409

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 AND 11

The Company offered the testimony of Joseph F. Brennan, President of Associated Utility Services, Inc., and the Public Staff offered the testimony of Teresa L. Kiger, of the Economic Research Division concerning the Applicant's fair and reasonable overall cost of capital.

Company witness Brennan testified that the Company should be allowed to earn a 12.43% overall rate of return. Witness Brennan's recommendation was based upon Western Carolina's capital structure and costs, composed of the following: 41.3% total debt with an embedded cost rate of 9.31%, 2.9% preferred stock with an embedded cost rate of 7.13%, and 55.8% common equity with an estimated cost rate of 15.00%. He derived his cost of equity estimate using the Earnings/Price Ratio (E/P Ratio), the Discounted Cash Flow (DCF) Model, the Earnings/Net Proceeds Ratio, a Comparable Earnings approach, and a Bare Rent approach.

The E/P Ratio revealed a cost of equity of 13.8%; and the Earnings/Net Proceeds Ratio yielded a cost of equity of 14.5%. Using the DCF Model, witness Brennan arrived at an equity cost of 15.8%. He estimated the cost of equity to be 15.5% using the Bare Rent approach and a cost of 16.2% using the Comparable Earnings approach. Witness Brennan's final recommendation was a cost of common equity of 15.5% for Western and Westco on a combined basis. He adjusted the 15.5% cost for the combined companies to 15.00% for Western Carolina. As there is no market information on Western Carolina, witness Brennan used various telephone companies as proxy for the combined Western Carolina and Westco, to estimate the cost of equity capital. These companies include AT&T, five telephone holding companies, three independent telephone companies, and Continental Telephone Company - the parent.

Public Staff witness Kiger testified that the overall rate of return which should be allowed the Company was 11.29%. Her recommendation was based on the consolidated capital structure of Continental Telephone Company (Continental) which owns all of the common stock of Western, which in turn owns all of the common stock of Westco. Witness Kiger testified that the consolidated capital structure provides a basis for identifying the equity investor in the market place and recognizes all the debt and equity in the Continental system. This testimony shows that this parent/subsidiary relationship affords benefits to Western and Westco, therefore the affiliation should not be overlooked in a cost of capital analysis. According to witness Kiger, the consolidated capital structure is composed of 58.97% long-term debt at an embedded cost of 9.53%, 6.22% preferred stock at an embedded cost of 8.65% , and 34.81% common equity at an estimated cost rate of 14.77%. Witness Kiger derived her equity cost estimate using three approaches: the E/P Ratio, the DCF Model, and the Capital Asset Pricing Model (CAPM). She explained that the E/P Ratio for Continental indicated a cost of equity capital of 14.02%. Using historical and projected earnings and dividend data of five independent telephone companies to calculate the growth factor of the DCF Model, witness Kiger found the cost of equity to be in the range of 14.91% - 15.5%. Analysis using the CAPM indicates a cost of equity capital to Continental of 14.63%. Each of these estimates were weighted according to the confidence placed in each approach. Using this method it was concluded that the cost of common equity to be 14.7%. To this estimate witness Kiger added seven basis points for selling and issuance expense, arriving at the final recommendation of 14.77%. Combining this equity cost with the

consolidated capital structure ratios and associated embedded cost rates produced witness Kiger's recommended 11.29% overall rate of return.

On cross-examination, witness Kiger was asked if the risk of investing in Western or Westco is the same as the risk of investing in Continental's other assets. She testified that the risks were the same, as Continental's other assets are telephone subsidiaries facing similar risks. It was brought out that Western Carolina and Westco issue their own debt and preferred stock on the market and that Continental only owns the equity portion of capital. Witness Kiger replied that was entirely correct and that Western Carolina's and Westco's debt and preferred stock, as well as equity capital, were all accounted for in a consolidated approach. Though it was pointed out that Continental does not have any legal obligation to pay the debt of Western Carolina and Westco, witness Kiger testified that there is an indirect obligation to Continental's management to ensure that the subsidiaries' debt is paid.

Company witness Brennan testified in rebuttal to the capital structure and equity cost testimony of Public Staff witness Kiger. He agreed with the use of several methodologies to arrive at a cost of equity estimate. Witness Brennan did not disagree with witness Kiger's methodologies as he used a form of each in his own testimony; however, witness Brennan did not agree with all the figures witness Kiger incorporated into the models. He prepared several exhibits demonstrating how use of different figures in the E/P Ratio, DCF, and CAPM Methods would produce a higher cost of equity estimate. With regard to the capital structure, witness Brennan testified that it is better to use Western Carolina's own capital structure and costs instead of witness Kiger's consolidated approach. However, witness Brennan also testified that when properly applied, the consolidated approach will yield essentially the same estimate as the Company's own capital structure.

After considering all the evidence presented by the parties on this issue, it is evident that one of the central questions to be resolved is the impact of the parent/subsidiary relationship between Western Carolina, Westco, and Continental. The Company's recommendation does not recognize any impact of the affiliation between the three. Alternatively, the Public Staff's recommendation does recognize this fact. Therefore, the Commission concludes that the parent/subsidiary relationship should be considered and based upon the foregoing and entire record in this docket, the Commission further concludes that the reasonable capital structure appropriate for use in this proceeding is as follows:

Long-Term Debt	58.97%
Preferred Stock	6.22%
Common Equity	34.81%
Total	100.00%

The Commission also concludes the reasonable embedded costs of debt and preferred stock are 9.53% and 8.65%, respectively.

The determination of the appropriate fair rate of return for the Company is of great importance. The return allowed will have an immediate impact on the Company, its stockholders, and its customers. Determination of a fair rate of return must be made by this Commission, using its own impartial judgment and

guided by the testimony of expert witnesses and other evidence of record. The allowed return must balance the interest of ratepayers and investors while meeting 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."

Following the Commission's earlier conclusion that the Company's level of service continues to be inadequate, while recognizing improvements have been made, the Commission concludes that the fair and reasonable return on common equity for Western Carolina is 14.00%, resulting in an overall rate of return of 11.03%. Although this overall rate of return is less than that which the Commission would have found to be reasonable if service were adequate, the net operating income which will be produced by application of the schedule of rates necessary to produce the approved overall rate of return will be more than sufficient to cover all fixed charges and preferred dividends. Based upon the present service level, such a return is fair and reasonable. A rate of return producing any higher rate of return on original cost net investment would be unjust and unreasonable at this time. It should be noted that the approved increase in gross revenue is almost 50% of the requested increase.

The failure or inability of Western Carolina to provide adequate, efficient, and reasonable service at the present time is a material factor to be considered in establishing just and reasonable rates. Especially is this true in light of previous Commission Orders, dating back to 1970, requiring service improvements. The record clearly reflects, and is supported by the testimony of numerous public witnesses, that the minimum service standards established by this Commission are not being met in all categories. In order to achieve the desired level of adequate service, Western Carolina should meet all of the service objectives in Appendix A, attached hereto, with special attention and effort afforded to the weak areas denoted in Appendix B, additionally attached hereto.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Western Carolina should be given the opportunity to earn.

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
WESTERN CAROLINA TELEPHONE COMPANY
N. C. Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended June 30, 1980

		Increase	
Operating Revenues			
Local service revenue	$ 8,539,666	$1,170,774	$ 9,710,440
Toll service revenue	6,203,017	-	6,203,017
Miscellaneous revenue	443,010	-	443,010
Uncollectible revenue	(89,283)	-	(89,283)
Total operating revenue	15,096,410	1,170,774	16,267,184
Operating Revenue Deductions			
Maintenance	3,033,630	-	3,033,630
Depreciation and amortization	2,894,438	-	2,894,438
Traffic	926,142	-	926,142
Commercial	673,638	-	673,638
General office	805,017	-	805,017
Other operating expenses	998,533	-	998,533
Taxes other than income	1,500,279	70,246	1,570,525
State income tax	149,786	66,032	215,818
Federal income tax	930,946	475,868	1,406,814
Total operating revenue deduction	11,912,409	612,146	12,524,555
Net operating income for return	$ 3,184,001	$ 558,628	$ 3,742,629

SCHEDULE II
WESTERN CAROLINA TELEPHONE COMPANY
N. C. Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended June 30, 1980

Investment in Telephone Plant	
Telephone plant in service	$44,129,203
Telephone plant under construction	4,748,650
Depreciation reserve	(9,570,825)
Deferred taxes	(5,781,851)
Net investment in telephone plant	33,525,177
Allowance for working capital	667,273
Excess profits	(265,000)
Original cost rate base	$33,927,450
Approved rate of return	11.03%

SCHEDULE III
WESTERN CAROLINA TELEPHONE COMPANY
N. C. Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COST
Twelve Months Ended June 30, 1980

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	$20,007,017	58.97	9.53	$1,906,669
Preferred stock	2,110,288	6.22	8.65	182,540
Common equity	11,810,145	34.81	9.27	1,094,792
Total	$33,927,450	100.00		$3,184,001
	Approved Rates - Original Cost Rate Base			
Long-term debt	$20,007,017	58.97	9.53	$1,906,669
Preferred stock	2,110,288	6.22	8.65	182,540
Common equity	11,810,145	34.81	14.00	1,653,420
Total	$33,927,450	100.00		$3,742,629

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence in support of this finding was presented by Public Staff witness Turner and Company witness Morris.

During cross-examination, witness Morris testified that Western Carolina was presently offering for sale both "new" and "in-place" telephone terminal equipment. He also explained that while Western Carolina's efforts were rather aggressive with regard to business equipment, they had not implemented an aggressive sales program in regard to either "in-place" or "new" basic telephone sets to the residential customer.

Witness Turner recommended that the Commission order Western Carolina to develop an "in-place" terminal equipment sales program explaining that the Public Staff's investigation had revealed that Western Carolina had no well-defined program to promote the sale of "in-place" telephone instruments. Western Carolina had not developed set prices or plans to advertise the offering by newspaper advertisements, bill inserts, or company-customer contacts. Witness Turner explained this was reasonable under the then existing present circumstances; however, with unbundling and the set charges being proposed, some interest in the purchase of "in-place" instruments could be expected. The Public Staff therefore proposed the enunciation of a company program to offer for sale "in-place" telephone sets, key systems, and small and large PBXs. Witness Turner explained that if the Company does not offer the customer the option of owning his own set, those customers desiring ownership will buy the set from another source. When this happens, the Company misses the chance to salvage the set at a fair market price and has to dispose of the set in another way. Witness Turner further states that such a program is consistent with the

movement toward deregulation of terminal equipment and competition. There is also the benefit of higher net salvage for terminal equipment, which will result in lower depreciation rates.

Based on the foregoing evidence, the Commission concludes that Western Carolina should be encouraged to develop and implement practices which will offer its customers "in-place" telephone terminal equipment at fair prices.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Public Staff witness Dudley stated in his testimony that the Company should be required to submit to the Commission and the Public Staff its policies, detailed accounting procedures and practices, and other relevant information regarding terminal sales activity.

Company witness Prestwood stated that the Public Staff had been provided with information concerning how the Company accounts for the revenues and expenses associated with the sales of "in-place" equipment, but that he would be glad to provide such information again.

The Commission recognizes that sales of terminal equipment will constitute a substantial part of the placement of such equipment in the future. Adequate policies and procedures will be essential in properly assigning costs and revenues to these activities in future rate proceedings. The Commission therefore concludes that the Company should submit to the Commission and the Public Staff its policies, detailed accounting procedures and practices, and other relevant information regarding terminal equipment sales activity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding is found in the testimony of Company witness Guffey and Public Staff witnesses Willis and Sutton.

Company witness Guffey testified that the objectives he considered in designing his rate structure were the recognition of changes in the terminal market, pricing more related to the cost of providing service, keeping basic telephone service rates as low as possible and ease of understanding by the customers and administration by the Company.

He stated to accomplish this purpose the Company's non-basic services were reviewed in order to maximize the revenues to be derived from those services. Witness Guffey stated that a contribution study was made for private branch exchange services, key telephone services, centrex services and others. The rates for these services were increased to a level that contributes to the Company's financial well-being. After determining the additional revenues that could be gained through service charge connection increases, the revenue requirement remaining was distributed over basic telephone service access line charges.

Witness Guffey explained that FCC action in its Docket No. 20828 requires the unbundling of access lines and telephone sets from their present composite rates. He further stated that the customer providing his own registered telephone set would pay only the monthly rate for the access line, while the

customer using a Company telephone set would pay an additional individual monthly charge for usage of the set.

In addition, the Andrews, Bryson City, and Cherokee exchanges were regrouped to reflect growth. Witness Guffey formulated rates for special assemblies, directory listings, semipublic line rates, key and pushbutton telephone service, private branch exchange service, miscellaneous service arrangements, auxiliary equipment, connections with facilities of others, local private lines and obsolete services.

Public Staff witness Willis had the responsibility of reviewing these proposals and making recommendations. Consistent with recent Commission's decisions and Public Staff policy, witness Willis recommended that Western Carolina be allowed to unbundle local basic service rates. Hence, the Commission concludes that the unbundling of rates for telephone sets should be accomplished by creating individual telephone set charges.

Noting the Public Staff's position that regrouping of basic exchange rates should be done only during a general rate case, witness Willis recommended the regrouping of all the Company's exchanges which had outgrown their existing rate group's upper limits as of the end of the test period. The Commission concludes that the three exchanges identified as exceeding their present rate group limits should be reclassified to the next highest group.

Witness Willis explained that the Company had proposed to increase its key access line multiple, a charge for a central office access line terminating in key telephone equipment, from 1.2 to 1.75, or an increase of 45.8%. Application of the 1.75 multiple to the proposed business one-party rate would produce an increase of 61.0% for the key access line rate. Witness Willis further stated that the Public Staff did not have information or data which would support a multiple of 1.75, and therefore a recommendation of a multiple of 1.5 was in order.

Witness Willis discussed the station telephone set charge which would apply under the Company's proposal. He stated that the present rate of $1.25 per month for an extension includes the use of the inside wiring and the station telephone set. Under the Company's proposal, charges would be structured to cover inside wiring costs on a non-recurring basis and the telephone set costs on a recurring basis. Witness Willis emphasized that the $1.65 per month charge proposed by the Company would increase residential extension rates by 32% and would further increase all billings to basic services using Company owned standard telephone sets. Consistent with his testimony concerning Westco, witness Willis recommended a level of $1.45 per month for the standard telephone set charge.

Under the Company's proposals, service connection charges for establishment of residential service at a location not previously served would increase from $31.50 to $64.00, an increase of 103%. Similarly, service connection charges for establishment of business service at a location not previously served would increase from $45.40 to $86.75, an increase of 91%.

Public Staff witness Sutton recommended that aggregate service connection revenues be increased 56%. Under the Staff's proposal, the service connection

charge for establishment of residential service at a location not previously served would increase from $31.50 to $38.00, an increase of 25%. Similarly, the service connection charge for establishment of business service at a location not previously served would increase from $45.40 to $54.75, an increase of 21%.

The gross revenue increase approved herein is different from that proposed by either the Public Staff or the Applicant and thus it follows that the applicable rate structure is also different from the two parties. The approved gross revenue increase is $1,165,462 less than that requested in Western Carolina's application. In order to reflect this reduction, the Commission concludes that the following changes should be implemented to the Company's proposed tariffs. First, the central office work element component of the service connection charge should be reduced from the proposed $10.00 level to $5.05. Second, the monthly charge for a telephone set should be $1.50. Third, all zone charges should be reduced 19.62%. Fourth, basic local exchange access line charges proposed by the Company should be reduced by *$962,692. Lastly, in order that listing charges should be set at the level approved for Southern Bell in its most recent general rate case.

A summary of the Commission's conclusions in regard to the Company's tariff provisions, rates and charges follows:

1. That the unbundling of rates for station telephone sets should be accomplished by creating individual telephone set charges and access line charges.

2. That the three exchanges identified as exceeding their present rate group limits should be reclassified to the next highest group.

3. That the key set access line multiple should be increased from 1.2 to 1.75 and the charge for a telephone standard set should be set at $1.50 per month.

4. That all zone charges be reduced by 19.62%.

5. That the central office work element charge should be $5.05 rather than the $10.00 rate proposed by the Company.

6. That all other rates proposed by the Company are just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Western Carolina Telephone Company, be and hereby is authorized to adjust its North Carolina local exchange telephone rates and charges in order to produce, based upon stations and operations as of June 30, 1980, an increase in gross revenues not to exceed $1,170,774.

2. That the Applicant is hereby called on to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the additional revenues approved herein in accordance with the conclusions set forth above within 10 days from the date of this Order. Work papers supporting such proposals should be provided to the Commission and all parties of record

(formats such as Item 30 of the minimum filing requirements, NCUC Form P-1 are suggested).

3. That parties may file written comments concerning the Company's tariffs within 5 days of the date upon which they are filed with the Commission.

4. That the rates, charges, and regulations necessary to produce the additional annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs filed pursuant to paragraph 2 above and the Applicant shall be required to give public notice of the approved increase.

5. That the Applicant take action to meet or continue to meet the service objectives as shown on Appendix A of this Order. The Company shall also take action to meet the objectives in the applicable weak areas as shown on Appendix B of this Order.

6. That the Applicant's present program to sell "in-place" telephone terminal equipment is encouraged.

7. That the Applicant be, and hereby is, ordered to submit to the Commission and Public Staff its policies, detailed accounting procedures and practices, and other relevant information regarding terminal equipment sales activity.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of May 1981.

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

* Corrected by Order dated 6-1-81.

APPENDIX A

Commission Service Objectives for Western Carolina Telephone Company

1. The number of held orders for new service in each service center (excluding those which can be worked but are pending customer action) over 14 days of age shall not exceed 0.1% of the number of total stations in that service center.

2. Regrade requests shall be worked promptly and the number held over 14 days (excluding those which can be worked but are pending customer action) in each service center shall not exceed 1% of the total number of stations in that service center.

3. The number of subscriber trouble reports shall not exceed an average of eight reports per 100 stations in each exchange for any six-month period.

4. The Company shall clear at least 95% of all subscriber trouble reports each month within 24 hours after the trouble is reported.

5. The Company shall achieve and maintain a minimum operator answer time of 90% within 10 seconds for manual toll, 95% within 10 seconds for DDD recording, and 85% within 10 seconds for directory assistance.

6. The Company shall maintain public paystations in proper working condition, keep current and accurate instructions posted on each paystation indicating the telephone number and dialing instructions for local, toll, directory assistance, and emergency assistance and have a current directory available for each paystation. Routine maintenance and inspections should be planned so that at no time are more than 10% of the Company's paystations out of service in any exchange.

7. The Company shall work at least 90% of all regular service orders within working days from the date on which the subscriber requested service, whichever is later.

8. The Company shall maintain its plant so that dial completion test results will meet the following objectives:

	Type of test	Maximum Failure Rate
a.	Intraoffice call completion	1%
b.	Interoffice call completion	2%
c.	DDD call completion	5%

	Type of test	Limits	Maximum % of Calls Out of Limits
d.	Interoffice transmission	2 to 10 db loss	5%
e.	DDD transmission	3 to 12 db loss	5%
f.	Interoffice noise	30 dbrnc max.	5%
g.	DDD noise	33 dbrnc max.	5%

APPENDIX B

WEAK AREAS

1. Trouble Report Rate
   a. Bryson City exchange
   b. Cherokee exchange
   c. Cullowhee exchange
   d. Franklin exchange
   e. Hayesville exchange
   f. Murphy exchange
   g. Robbinsville exchange
   h. Suit exchange
   i. Marion exchange
   j. Sevier exchange
   k. Guntertown exchange
   l. Hot Springs exchange
   m. Marshall exchange
   n. Bakersville exchange
   o. Micaville exchange
2. Troubles Cleared Within 24 Hours - Companywide
3. Regular Service Orders Worked Within Five Working Days - Western District

DOCKET NO. W-201, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application by W.E. Caviness, d/b/a Touch and Flow Water System, for Authority to Transfer the Water Utility Service in Royal Acres, a Portion of Colonial Heights and Legend Hill Subdivisions in Wake County, and Scottsdale Subdivisions in Cumberland County to Anthony Ray Frazier, Route 1, Box 113-A, Jacksonville, North Carolina) RECOMMENDED ORDER DENYING APPLICATION

HEARD IN: Commission Hearing Room 213, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 24, 1981, at 9:30 a.m.

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Public Staff:

F. Clark Crampton, Assistant Staff Attorney, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

PARTIN, HEARING EXAMINER: On May 19, 1982, W.E. Caviness, d/b/a Touch and Flow Water System, Jacksonville, North Carolina, filed an application with the Commission for authority to transfer the water utility service in several subdivisions to Anthony Ray Frazier, also of Jacksonville. The systems proposed to be transferred are located in Royal Acres, Colonial Heights,and Legend Hill Subdivisions, Wake County; and in Scottsdale Subdivision, Cumberland County.

On June 26, 1980, the Commission issued an Order setting the application for hearing on September 11, 1980, and requiring the Applicant to give notice of the proposed transfer to all customers located in the affected service areas. The matter come on for hearing as scheduled on September 16, 1980, at which time it was discovered that the Applicants had not given notice to the affected customers as required by the Order of June 26, 1980. The hearing was recessed and the Commission reissued an Order setting hearing on October 24, 1980, and requiring Applicants to furnish notice to the customers of the proposed transfer and the rescheduled hearing date.

On September 5, 1980, the Public Staff filed Notice of Intervention in this proceeding.

On September 29, 1980, Mr. Caviness filed a Certificate of Service stating that he had hand-delivered to all affected customers the notice required by the Order of September 16, 1980.

The matter came on for hearing as scheduled on October 24, 1980. Mr. Caviness and Mr. Frazier were present and offered testimony in support of the application. The Public Staff offered the testimony of Henry Payne, Acting

Director of the Water Division, and Jerry Tweed, Utilities Engineer with the Water Division.

Upon consideration of the application, the testimony and exhibits presented at the hearing, and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. By application filed in this proceeding, W.E. Caviness seeks authority to sell and transfer to Anthony Ray Frazier the following water utility systems:

Subdivisions	County
Colonial Heights	Wake County
Royal Acres	Wake County
Legend Hills	Wake County
Scottsdale	Cumberland County

2. By Order dated February 5, 1975, in Docket No. W-201, Sub 14, Mr. Caviness' franchise for water and sewer utility service in Scottsdale subdivision was cancelled, and a trustee was appointed by the Superior Court of Cumberland County to operate the system. The trusteeship continues as of this date. Mr. Caviness holds a franchise from this Commission for Royal Acres aubdivision and for the 32 lots on Malibu Road in Colonial Heights; he does not hold a franchise for Legend Hills or the Malibu Drive section of Colonial Heights.

3. On May 2, 1980, Mr. Caviness as seller and Mr. Frazier as buyer entered into an "Articles of Sales Agreement." This agreement provides in relevant part as follows:

i. The purchase price for the water and sewer systems in $70,000.

ii. The buyer shall pay $3,000 as down payment and $600 "per month until paid out."

his wife shall decease, the party of the second party (Mr. Frazier) has no further obligations."

iv. "If the party of the second part (Mr. Frazier) shall decease, the entire system shall devert (sic) back to the party of the first part (Mr. Caviness)."

4. Mr. Frazier is willing to operate the water systems in wuestion and to employ a plumber locally to handle service calls for the subdivisions. Mr. Frazier does not have waste water treatment plant operator's certificate nor has he ever owned or operated a water or sewer utility. He has had some plumbing work experience, including assisting Mr. Caviness and other plumbers.

5. No information has been provided on that part of the applicaiton calling for revenue, expense and net income data of the water systems in question. Mr. Caviness could not provide revenue, expense, or net income data at the hearing, nor has he provided such information since the close of the hearing.

6. Mr. Frazier has not made a study of any books or records of Mr. Caviness to determine what revenues he might reasonably receive or what expenses he might incur in operating the water systems proposed to be transferred. Nor have any books or records been made available to him for inspection. Mr. Frazier did not present any revenue, expense, or net income data at the hearing, nor did he present other financial data showing his ability to operate the systems.

7. The Public Staff made a study of the financial operations of Mr. Caviness' water systems, excluding Scottsdale, which is under trusteeship. As a result of this study, it was the opinion of the Public Staff that the four remaining water systems, consisting of 140 customers, will not produce revenues sufficient to enable Mr. Frazier to make the monthly payments of $600 and to properly operate the water system.

8. No information was provided on that part of the application calling for investment in utility system data. Commission Orders in the following dockets made determination of Mr. Caviness' investments in the following water systems:

Docket No.		Investment
W-201, Sub 7 (1970)	Royal Acres	$1,674
W-201, Sub 8 (1972)	Colonial Heights	$2,000

No information was provided for Legend Hill. With respect to Scottsdale: Mr. Caviness testified that he invested approximately $58,000 in the Scottsdale sewer system. The Public Staff's evidence tended to show that Mr. Caviness' investment in Scottsdale was considerably less.

9. The level of routine maintenance in the subject water systems (excluding Scottsdale) is very low. In the opinion of the Public Staff, which has had much experience with these water systems, a considerable amount of money needs to be put in the water systems in order to upgrade them.

CONCLUSIONS

G.S. 62-111(a) provides that no franchise granted by this Commission shall be sold or transferred "except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity." G.S. 62-110 provides that no public utility shall begin the operation of any public utility system, or acquire ownership or control thereof, without first obtaining from the Commission a certificate that public convenience and necessity requires such operation or acquisition.

The Hearing Examiner concludes that the Applicants have not met the burden of proof to show that approval of the application is justified by the public convenience and necessity. In determining whether or not the application should be approved, the Commission can inquire into the ability of the purchaser to provide an adequate level of service to the utility customers he proposes to serve. The Applicants have not offered any substantial, competent evidence to show the financial ability of Mr. Frazier to provide the level of water utility service required by law and the regulations of this Commission. On the other hand, the Public Staff offered evidence that the subject water systems would not produce sufficient revenues to enable Mr. Frazier to make the monthly payments

od $600 called for in the Sales Agreement and to properly operate the water systems. The Public Staff also offered evidence that the level of routine maintenance in the water systems is very low and that considerable money should be invested in the systems to upgrade them.

Consequently, the Examiner concludes that the Applicants have failed to show that the purchaser will have the financial ability to provide adequate water service to the customers of the affected systems.

The Examiner also expresses concern about that provision in the Sales Agreement which provided that if Mr. Frazier "shall decease," the entire system would divert back to Mr. Caviness. Both Mr. Caviness and Mr. Frazier testified that it was their understanding of this provision that if the death of Mr. Frazier shold occur before the purchase price of $70,000 was fully paid, the water system would revert to Mr. Caviness. However remote the contingency may be of this event occurring, the Examiner strongly questions, for a number of reasons, whether this provision is in the public interest; most notably, the provision appears to violate G.S. 62-111(a), which requires Commission approval of the transfer of a public utility.

This case raises questions of some difficulty. The Examiner recognizes the general right of a property owner to sell his property subject only to applicable constitutional and statutory provisions. In this proceeding the application for sale and transfer is controlled by G.S. 62-110 and G.S. 62-111(a).* The Examiner also recognizes the desire of Mr. Caviness to sell his property to a willing buyer, and the Examiner has found and concluded, however, that the Applicants have failed to show the financial ability of Mr. Frazier to provide an adequate level of water utility service. Nothing else appearing, this finding and conclusion is sufficient to support an Order denying the application. (The Commission denied an earlier application for transfer by Mr. Caviness and Mr. Frazier for failure to provide sufficient information: Docket No. W-605, Sub 1, Recommended Order Denying Transfer, September 23, 1976.)

For the reasons set forth herein, the Hearing Examiner issues this Recommended Order denying the application. This Order is without prejudice to the Applicants' filing another application at a later date.

IT IS, THEREFORE, ORDERED that the application of W.E. Caviness and Anthony Ray Frazier filed in this docket on May 19, 1980, be, and the same is hereby, denied without prejudice.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of January 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

* With respect to those systems for which there is no franchise, the Examiner treats the application as filed pursuant to G.S. 62-110.

WATER AND SEWER

DOCKET NO. W-734

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Waverly Mills, Inc., P.O. Box 309, Laurinburg, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in East Laurinburg, Scotland County, North Carolina, and for Approval of Rates	) RECOMMENDED ORDER) DECLARING PUBLIC) UTILITY STATUS, GRANTING) FRANCHISE, AND APPROVING) LEASE AGREEMENT

HEARD IN: Commission Hearing Room 213, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on Wednesday, March 11, 1981, at 10:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicant:

L. Stacy Weaver, McCoy, Weaver, Wiggins, Cleveland and Raper, Attorneys at Law, P.O. Box 2129, Fayetteville, North Carolina 28302
For: Waverly Mills, Inc.

For the Public Staff:

Vickie L. Moir, 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 November 10, 1980, Waverly Mills, Inc. (Applicant, Waverly Mills, or Company), filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide water and sewer utility service in the Town of East Laurinburg, Scotland County, North Carolina.

On December 3, 1980, an Order was issued scheduling the matter for hearing on January 16, 1981, and requiring public notice. In response to a Motion for a continuance filed by the Public Staff on December 29, 1980, the hearing was rescheduled for February 17, 1981. In response to a Motion filed on February 13, 1981, by counsel for the Applicant, the Commission issued an Order on February 13, 1981, continuing the hearing until March 11, 1981. On February 17, 1981, the Commission issued an Order requiring the Applicant to give public notice of the rescheduled hearing. On February 23, 1981, the Applicant filed a Certificate of Service indicating that notice of the hearing had been given as required by the Commission's February 17, 1981, Order.

On March 6, 1981, the Applicant filed a Motion to Dismiss the proceeding and the application. This motion was grounded on the fact that the Applicant had entered into a lease agreement with the Town of East Laurinburg which purported to lease its water and sewer facilities to that municipality, and that the term

"public utility" does not include a municipality under G.S. 62-3(23). The lease agreement was attached to the Applicant's motion.

Upon the hearing of this matter on March 11, 1981, the Applicant presented the testimony of Mr. John Gaw, President of the Applicant. The Public Staff appeared through counsel. Oral arguments in support of and in opposition to the Applicant's Motion to Dismiss were offered by counsel for the Applicant and the Public Staff, respectively.

By agreement of the parties, the Applicant subsequently filed an amendment to the lease agreement with the Commission on April 2, 1981, whereby the facilities serving the Applicant's commercial consumers were also leased to the Town of East Laurinburg. In addition, the Applicant's attorney provided additional information indicating that the Town of East Laurinburg had made arrangements to purchase water directly from the City of Laurinburg. The Applicant further represented that it would not make any sales of any kind to the Town of East Laurinburg or to any other person, firm, or corporation.

Based upon a careful consideration of the application, the testimony, and lease as amended, the arguments of counsel and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant, Waverly Mills, Inc., is a corporation duly organized and existing under the laws of the State of North Carolina with its principal office and place of business being located in Laurinburg, Scotland County, North Carolina.

2. Waverly Mills, Inc., has provided water and sewer utility service for compensation for a number of years to certain of its employees and other customers residing in the Town of East Laurinburg through a water and sewer system owned entirely by said Company. The Applicant has provided said utility service without first having obtained a certificate of public convenience and necessity from this Commission. The Applicant presently purchases water from the City of Laurinburg which is then resold to its 140 residential customers on a flat rate basis (regardless of the amount of water used) and to its four commercial customers on a metered basis. Sewer service is also provided by the Applicant to 136 residential customers on a monthly flat rate basis, while commercial sewer service to four customers is metered. Sewage collected by the Applicant is collected and fed through the Applicant's system for ultimate treatment by the City of Laurinburg. The system has been operated at a loss by Waverly Mills, Inc. The Applicant has been willing to operate in such manner because many of its own employees live in the Town of East Laurinburg and, therefore, derive significant economic benefit from the provision of such service.

3. On November 10, 1980, Waverly Mills, Inc., filed an application with this Commission seeking a certificate of public convenience and necessity to provide water and sewer utility service in the Town of East Laurinburg, Scotland County, North Carolina.

4. Waverly Mills, Inc., is presently engaged in the operations of a "public utility" as defined by G.S. 62-3(23)a.2.

5. The Applicant has entered into a lease and lease amendment with the Town of East Laurinburg whereby it is proposed, if said amended lease agreement be approved by this Commission, that the water and sewer utility system in question will be leased to the Town of East Laurinburg, which municipality will then assume complete responsibility for the operation thereof.

6. The lease of the water and sewer utility system in question by the Applicant to the Town of East Laurinburg is subject to the jurisdiction of and approval by this Commission.

7. Under terms of the amended lease agreement referred to in Finding of Fact No. 5 above, the Town of East Laurinburg will purchase water directly from the City of Laurinburg for resale to all of the residential and commercial utility customers now served by the Applicant. The City of Laurinburg will bill the Town of East Laurinburg for all of the residential customers on a flat rate basis and will bill for the four metered commercial customers on the basis of actual usage. The Town of East Laurinburg will collect for water and sewer utility service provided to all customers, both residential and commercial, and make direct payment to the City of Laurinburg for service provided. Waverly Mills, Inc., would then be billed directly by the City of Laurinburg for the balance or remaining amount of the charges for water consumed through the entire system. Regardless of the amount of water consumed by any particular flat rate residential customer, residential water and sewer utility bills will not vary under the terms of the amended lease agreement and any resulting charges for additional residential water and sewer usage will be paid by Waverly Mills, Inc.

8. By the express terms of the amended lease agreement at issue herein, the Town of East Laurinburg will pay the Applicant $500 per month in advance as a rental payment for the water and sewer utility system in question, in return for which Waverly Mills, Inc., has agreed to ensure quiet enjoyment of the system, pay all ad valorem property taxes that may be lawfully imposed on or assessed against the water and sewer utility system, and keep, at its own expense, said utility system in good repair and make all alterations, improvements, renewals, changes and replacements for the proper maintenance of the system as a modern and efficient plant.

9. The Town of East Laurinburg, being a "municipality" as said term is defined in G.S. 62-3(19), is expressly excluded from the definition of the term "public utility" as set forth in G.S. 62-3(23)d.

10. The amended lease agreement in question, being justified by the public convenience and necessity, should be approved.

11. So long as the amended lease agreement remains in full force and effect, Waverly Mills, Inc., will not be subject to regulation by this Commission as a "public utility," since during the term of said amended lease agreement, Waverly Mills, Inc., will not be distributing or furnishing water to or for the public for compensation, or operating a public sewage system for compensation. However, if said amended lease agreement should hereafter be terminated by

either of the parties thereto for any reason, Waverly Mills, Inc., will again become subject to immediate regulation by this Commission.

Whereupon, the Hearing Examiner reaches the following

CONCLUSIONS

A careful consideration of the entire record in this proceeding leads the Hearing Examiner to conclude that Waverly Mills, Inc., is presently operating as a public utility within the meaning of G.S. 62-3(23)a.2 and is, therefore, subject to the jurisdiction of this Commission. In this regard, the statutory definition of a public utility as set forth in G.S. 62-3(23)a.2 reads as follows:

> "`Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for: ...
>
> 2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation,; provided, however, that the term `public utility' shall not include any person or company whose sole operation consists of selling water to less than 10 residential customers...."

The evidence presented at the hearing in this matter clearly establishes the fact that the Respondent is presently the owner of and responsible for a water and sewer utility system which has been operated for many years to provide water utility service to 10 or more customers for compensation and sewer utility service for compensation in the Town of East Laurinburg. Each element of the statutory definition of a public utility has been met. Therefore, the Hearing Examiner is compelled to conclude that the Applicant is currently operating as a public utility under the applicable laws of the State of North Carolina and is, consequently, subject to regulation by this Commission. Accordingly, the Hearing Examiner concludes that the Applicant should be required to accept a certificate of public convenience and necessity from this Commission, including the rights, duties, and obligations arising thereunder, to provide water and sewer utility service in conformity with the application therefor as originally filed in this docket on November 10, 1980. Said certificate is attached hereto as Appendix A.

Notwithstanding the above, the Hearing Examiner further concludes that Waverly Mills, Inc., should also be authorized in this proceeding to lease the water and sewer utility system in question to the Town of East Laurinburg pursuant to the terms and conditions specified in the amended lease agreement. In this regard, the Hearing Examiner concludes that approval of the amended lease agreement will have the effect of exempting Waverly Mills, Inc., from regulation by this Commission as a "public utility" as defined in G.S. 62-3(23)a.2. throughout the period of time that said amended lease agreement remains in full force and effect. This conclusion follows because Waverly Mills, Inc., would not then be continuing to distribute or furnish water to or for the public for compensation, or continuing to operate a public sewage system for compensation.

In the opinion of this Hearing Examiner, the $500 per month rental fee which Waverly Mills, Inc., will receive from the Town of East Laurinburg is not in the nature of "compensation" as that term would normally be defined in interpreting G.S. 62-3(23)a.2. Rather, said rental payment is more in the nature of a payment for maintenance and repair services to be provided by Waverly Mills, Inc., to the water and sewer utility system in question during the term of the lease thereof to the Town of East Laurinburg. In this regard, the Hearing Examiner notes that in return for the monthly rental payment referred to above, Waverly Mills, Inc., has agreed, by the express terms of the amended lease agreement, to pay all ad valorem property taxes levied against the utility system, to keep, at its own expense, said utility system in good repair, and to make all alterations, improvements, renewals, changes and replacements necessary for the proper maintenance of the system as a modern and efficient plant.

Furthermore, the Hearing Examiner concludes that, subsequent to approval of the amended lease agreement by this Commission and commencement of operation of the utility system in question by the Town of East Laurinburg, Waverly Mills, Inc., will not be providing water or sewer utility service to any customers, either for compensation or otherwise. Pursuant to the terms of the amended lease agreement, the Town of East Laurinburg will assume complete control and responsibility for the day-to-day operation of said utility system and will provide service to all residential and commercial customers now served by Waverly Mills, Inc. Furthermore, the Town of East Laurinburg will purchase all of the water necessary to supply the needs of its customers directly from the City of Laurinburg and will be billed directly therefor by said municipality. The town of East Laurinburg will also be responsible for all customer billing and attendant record-keeping functions. Waverly Mills' only duty under the amended lease agreement will be to repair and maintain the water and sewer utility system of which it retains ownership, presumably as directed by the Town of East Laurinburg since said municipality will then be in complete control of the utility system and entirely responsible for operating same.

It further follows that so long as the Town of East Laurinburg operates the water and sewer system in question pursuant to the terms of the amended lease agreement at issue in this proceeding, such utility service will not be subject to regulation by this Commission in view of the fact that municipalities such as the Town of East Laurinburg are expressly excluded from the definition of the term "public utility" as set forth in G.S. 62-3(23)d. The Hearing Examiner further concludes that, notwithstanding the fact that approval of the amended lease agreement at issue in this case will, in essence, have the effect of suspending the power of this Commission to regulate Waverly Mills, Inc., as a public utility during the period of time said lease remains in full force and effect or to regulate the activities of the Town of East Laurinburg in operating said utility system, approval of the amended lease agreement is justified by the public convenience and necessity.

The Hearing Examiner believes that Waverly Mills, Inc., is acting in good faith in leasing its utility system to the Town of East Laurinburg as a legitimate means of avoiding regulation by this Commission as a public utility. In this regard, the Town of East Laurinburg has clearly indicated that it is ready, willing, and able to assume the important responsibilities which are associated with providing adequate and reliable water and sewer utility service to its residents. The Hearing Examiner strongly believes that the obligations

which the Town of East Laurinburg will owe to those of its residents to whom utility service will be provided and the ultimate accountability of the Town's elected officials to its citizenry will serve to ensure that the customers of the utility system in question will continue to receive adequate and reliable service at reasonable rates. Thus, there is no legitimate or compelling reason which would justify requiring Waverly Mills, Inc., to unwillingly continue to operate as a public utility when the Town of East Laurinburg is willing, in good faith, to undertake to lease the Applicant's system and thereby provide water and sewer utility service to its residents.

Furthermore, Waverly Mills, Inc., has asserted that if it is required to continue to operate the utility system in question as a regulated public utility, it will, by necessity, have to increase rates to its customers as a result of requirements associated with such regulation and that such rates will, in all likelihood, be higher than they might otherwise be if the system were to be operated by the Town of East Laurinburg as a nonregulated municipality. The Hearing Examiner believes that this argument may well have merit.

The Hearing Examiner has also been strongly influenced in deciding this case by the fact that Waverly Mills, Inc., will continue to bear ultimate responsibility for operating the utility system in question, since termination of the amended lease agreement by either of the parties thereto will again subject said corporation to automatic and immediate regulation by this Commission as a public utility under the certificate of public convenience and necessity attached hereto as Appendix A.

Accordingly, the Hearing Examiner concludes that Waverly Mills, Inc., should be granted a certificate of public convenience and necessity to provide water and sewer utility service in the Town of East Laurinburg, North Carolina, and, further, that Waverly Mills, Inc., should also be authorized to lease said utility system to the Town of East Laurinburg. Until such time as actual control and operation of the utility system is assumed by the Town of East Laurinburg, Waverly Mills, Inc., shall operate as a regulated public utility and shall be authorized to charge for water and sewer service in conformity with the Schedule of Rates attached hereto as Appendix B.

At such time as the Town of East Laurinburg has in fact begun to operate the utility system servicing its residents pursuant to the amended lease agreement approved herein, the Hearing Examiner will then entertain a petition by Waverly Mills, Inc., requesting an authorized suspension of its certificate filed pursuant to G.S. 62-112(b) for a term not to exceed one year. Said petition shall be accompanied by an appropriate affidavit or affidavits in support thereof clearly stating that Waverly Mills recognizes that, upon termination of the amended lease argeement by either of the parties thereto, it will then become subject to automatic and immediate regulation by this Commission as a public utility under the certificate of public convenience and necessity attached hereto as Appendix A and that it will also immediately advise this Commission with respect to the occurence of any such lease termination. Upon the granting of a petition for an authorized suspension of its certificate, Waverly Mills, Inc., will not be subject to regulation by this Commission during the course of such suspension, unless, of course, the amended lease agreement with the Town of East Laurinburg should be terminated. Under the above-described procedure, it will also be necessary for Waverly Mills, Inc., to

seek subsequent authorized suspensions of its certificate of public convenience and necessity from the Commission at intervals no greater than one year. Each such subsequent request for continuation of an authorized suspension shall also be supported by an appropriate affidavit or affidavits as previously described hereinabove.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Waverly Mills, Inc., is hereby granted a Certificate of Public Convenience and Necessity in order to provide water and sewer utility service in the Town of East Laurinburg, as described herein and, more particularly, as described in the application made a part hereof by reference.

2. That Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix B is hereby approved and said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

4. That the Applicant be, and the same is hereby, authorized to lease the water and sewer utility system in question to the Town of East Laurinburg pursuant to the terms and conditions set forth in the amended lease agreement previously discussed hereinabove, said lease agreement being hereby approved.

5. That Waverly Mills shall, if it desires to remove itself from regulation by this Commission as a regulated public utility during the period of time that the amended lease agreement remains in full force and effect, file a petition with this Commission seeking an authorized suspension of the certificate attached hereto as Appendix A. Said petition shall be filed pursuant to G.S. 62-112(b) for a term not to exceed one year and shall be accompanied by an appropriate affidavit or affidavits in support thereof clearly stating that Waverly Mills recognizes that, upon termination of the amended lease agreement by either of the parties thereto, it will then again become subject to automatic and immediate regulation by this Commission as a public utility under the certificate of public convenience and necessity attached hereto as Appendix A and that it will also immediately advise this Commission with respect to the occurrence of any such lease termination. Waverly Mills, Inc., shall seek subsequent authorized suspensions of its certificate of public convenience and necessity at intervals no greater that one year by the filing of an appropriate petition and supporting affidavit or affidavits in conformity with the above.

6. That Waverly Mills, Inc., and the Town of East Laurinburg shall submit a proposed customer notice for approval by the Commission in conjunction with the filing of the petition referred to in decretal paragraph no. 5 above which shall clearly advise the customers of the water and sewer system in question of the actions which have been taken in this docket with reference to approval of the lease of said system to the Town of East Laurinburg. Said customer notice shall also advise the customers in question of the water and sewer rates and charges to be put into effect by the Town of East Laurinburg and shall give notice of all pertinent service regulations to be followed and instituted by said municipality, including, but not necessarily limited to, deposit requirements, disconnection procedures, billing procedures, customer service complaint procedures, and the like.

7. That the Town of East Laurinburg, being a municipality as defined in G.S. 62-3(19), shall not be subject to regulation by this Commission during the period of time that the amended lease agreement in question remains in full force and effect. It shall be the duty of said municipality to ensure that the customers to whom it will then be providing water and utility service receive reliable and efficient service at fair and reasonable rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July 1981.

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

APPENDIX A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

Waverly Mills, Inc.
Scotland County, North Carolina

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water and sewer utility service

in

EAST LAURINBURG
SCOTLAND COUNTY, NORTH CAROLINA

subject to such orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July 1981.

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

APPENDIX B

SCHEDULE OF RATES

WAVERLY MILLS, INC.

EAST LAURINBURG
SCOTLAND COUNTY, NORTH CAROLINA

WATER AND SEWER RATE SCHEDULE

FLAT RATE: (Residential Service)

Water: $8.00 per month
Sewer: $8.00 per month

NONRESIDENTIAL SERVICE RATES:

Minimum 2,000 gallons - $3.85
Next 8,000 gallons - $ .70 per 1,000 gallons - ($5.60)
Next 10,000 gallons - $ .60 per 1,000 gallons - ($6.00)
Next 80,000 gallons - $ .50 per 1,000 gallons - ($140.00)
Next 400,000 gallons - $ .40 per 1,000 gallons - ($160.00)

Total times (2) (sewer charge) times $1.60 (outside city limits) times $1.50 (capacity and variable charge) equals total charge for water and sewer.

RECONNECTION CHARGES:

If water service cut off by utility for good cause (NCUC Rule R7-20(f)):	$ 4.00
If water service discontinued at customer's request (NCUC Rule R7-20(g)):	$ 2.00
If sewer service cut off by utility for good cause (NCUC Rule R10-16(f)):	$15.00

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-734 on July 2, 1981.

WATER AND SEWER

DOCKET NO. W-169, SUB 18

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Cumberland Water Company, P.O. Box 53646, Fayetteville, North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in all Service Areas in Cumberland County, North Carolina	)) RECOMMENDED ORDER) GRANTING RATE) INCREASE

HEARD IN: Hearing Room #3, Second Floor, Old Cumberland County Courthouse, 130 Gillespie Street, Fayetteville, North Carolina, on December 2, 1980, at 10:00 a.m.

BEFORE: Carolyn D. Johnson, Hearing Examiner

APPEARANCES:

For the Applicant:

Robert G. Ray, Rose, Thorp, Rand & Ray, Attorneys at Law, P.O. Box 1239, Fayetteville, North Carolina 28303

For the Public Staff:

Thomas K. Austin, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

JOHNSON, HEARING EXAMINER: On August 22, 1980, Cumberland Water Company (hereinafter Applicant, Company, or Cumberland), filed an application with the North Carolina Utilities Commission for approval of increased rates for water and sewer service in Cumberland County, North Carolina.

By Order dated September 24, 1980, the Commission declared the application to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates, required the Applicant to give notice of its application, and set the matter for hearing on Tuesday, December 2, 1980, in Hearing Room #3, Second Floor, Old Cumberland County Courthouse, 130 Gillespie Street, Fayetteville, North Carolina. On November 3, 1980, the Public Staff filed Notice of Intervention pursuant to G.S. 62-15 on behalf of the using and consuming public of North Carolina.

Public notice was furnished to each customer by the Applicant and was published in the Fayetteville Observer, Fayetteville, North Carolina, in accordance with the Orders of the Commission, advising that anyone desiring to intervene or protest the application was required to file said intervention or protest with the Commission by the date specified in the notice.

The public hearing was held at the time and place specified in the Commission's Order of September 24, 1980. The Applicant offered the testimony of William L. Oden, CPA, Secretary of Cumberland Water Company, who testified concerning the Applicant's financial position and R. A. Rumbough, General Manager of Cumberland Water Company, who testified concerning the Applicant's

general utility operations and structure. Candace A. Paton, Staff Accountant, and Rudy C. Shaw, Utilities Engineer, appeared as witnesses for the using and consuming public. No one appeared at the hearing to protest the application.

Based on the information contained in the application and the Commission's files and on the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Cumberland Water Company, is a North Carolina corporation and is a public utility as defined in G.S. 62-3, holding a Certificate of Public Convenience and Necessity granted by the North Carolina Utilities Commission to provide water and sewer utility service in certain areas in Cumberland County, North Carolina.

2. The Applicant presently furnishes water and sewer utility service utilizing the following rates:

Water:
Up to first 3,000 gallons per month, minimum charge - $3.50
All over 3,000 gallons per month - $.55 per 1,000 gallons

Sewer:
Up to first 3,000 gallons per month, minimum charge - $5.25
All over 3,000 gallons per month - $.75 per 1,000 gallons

Maximum sewer charge per month (residential only) - $12.50

Flat Rates - Apartments:

Water:
$4.00 per month per unit (whether or not unit is occupied)

Sewer:
$5.50 per month per unit (whether or not unit is occupied)

Connection Charges:
Inside Service Area - $100.00
Outside Service Area - $100.00 plus cost of providing tap

Reconnection Charges:

If water service cut off by utility for good cause (NCUC Rule R7-20 (f)):	$ 4.00
If water service discontinued at customer's request (NCUC Rule R7-20 (g)):	$ 2.00
If sewer service cut off by utility for good cause (NCUC Rule R10-16 (f)):	$15.00

The Applicant proposes to charge the following rates for water and sewer utility service:

Water:
Up to first 3,000 gallons per month - $4.50 minimum
All over 3,000 gallons per month - $ .60 per 1,000 gallons

Sewer:
Up to first 3,000 gallons per month - $5.56 minimum
All over 3,000 gallons per month - $.80 per 1,000 gallons
Maximum sewer charge per month (residential only) $14.00

Flat Rates - Apartments:

Water:
$5.00 per month per unit (whether or not unit is occupied)

Sewer:
$6.50 per month per unit (whether or not unit is occupied)
(Remaining Charges Same as Before)

4. That the test period used in this proceeding is the 12-month period ending December 31, 1979.

5. That the quality of service provided by the Applicant is very good.

6. That the operating ratio, the ratio of total expenses to total revenues, will be the basis for the determination of rates in the proceeding.

7. That the annualized test period net operating revenues of Cumberland were $470,293 under the rates then in effect and would have been $516,386 under the Applicant's alternate proposed rates. The breakdown of the Company's revenue between water and sewer under the rates in effect during the test period was as follows: water revenue = $280,003 and sewer revenue = $190,290. A similar breakdown of the revenues under the proposed rates is water revenue, $313,107 and sewer revenue, $203,279.

8. That Cumberland's expenditures for officers' salaries during the test period in the amount of $20,000 were reasonable in amount and ordinary and necessary expenses of a utility, such as Cumberland, that has assets costing over $3,000,000 and annual income of over $435,000.

9. That the total operating revenue deductions (operating expenses) of the Company during the test period as annualized were $436,907, of which $264,979 were allocated to water and $171,928 to sewer.

10. That under the Applicant's alternate proposed revenues, Cumberland's combined water and sewer operations would produce an operating ratio of 89.7 (89.11 for water and 89.00 for sewer) which is found to be reasonable by this Commission for the operations of Cumberland Water Company.

11. That the alternate proposed rates for water and sewer service by the Applicant are just and reasonable rates for its customers and the public utility.

Based on the foregoing findings of fact, the Commission reaches the following

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The basis for Finding of Fact No. 1 is North Carolina G.S. 62-133 and for Findings of Fact Nos. 2, 3, and 4, Commission Order of September 24, 1980, and the record, generally.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

All evidence elicited regarding the service rendered by Cumberland to its customers indicated that the service was excellent. In particular, testimony of witnesses for both the Company and the Public Staff indicated:

1. That the equipment of the system is maintained in excellent working condition,

2. That the quality of the water of the system meets all acceptable standards,

3. That the Utilities Commission has never received any complaints as to abnormal service interruptions or service of the Company, and

4. That the billing practices of the Company were accurate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

All witnesses for the Public Staff and the Applicant testified that the proper method of fixing rates in the case of Cumberland was based on its operating ratio. North Carolina G.S. 62-133.1(a) provides "in fixing rates for any water or sewer utility, the Commission may fix such rates on the ratio of the operating expenses to the operating revenues, such ratio to be determined by the Commission..."

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

All of the operating revenue computations involved in the case were agreed upon by both the Company and the Public Staff. The Company's initial proposed rates would have generated total water and sewer revenues of $544,568. The witnesses for the Company testified that after receiving the computations of the Public Staff they realized that the rate increase which they had proposed would generate more income than had been anticipated. The Company's witnesses, although there were no customers of the system to complain, indicated that after reviewing the Public Staff's computations, they felt that the rates proposed in their application were unreasonably high. On that basis, the Company proposed alternate rates for the water and sewer service. Such alternate rates were equal to or less than the rates in Cumberland's application in all instances and the total amount of revenue to be generated under the alternate rates was approximately $28,000 less than the revenue that would have been generated under the rates proposed in Cumberland's initial application. The Commission concludes that the rates contained in Cumberland's initial application were excessive and that the alternate proposed rates by Cumberland are fair and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The assets of Cumberland Water Company are worth in excess of $3,000,000 and the approximate gross income of the Company for the test period was about $435,000. For the test period the Company paid its officers combined salaries of $20,000. These salary levels had been established shortly after the inception of the Company in 1962 and had remained constant for more than 15 years. All testimony on the point indicated that Cumberland Water Company was a very well run private water company. The officers of the Company include William L. Oden, a certified public accountant, and Joseph P. Riddle, its president. The salary Mr. Riddle received from Cumberland Water Company was not greater on an hourly basis than his salary from other entities with which he is employed.

The Public Staff contended that the appropriate level of executive compensation for the Company was $7,500 per year rather than the $20,000 paid, based primarily on the amount per hour paid to the officers of the Company. Based on an annual salary of $7,500, the total officers' salaries would be less than $150 per week. The Commission concludes that it would be unreasonable for a company with assets of over $3,000,000 and annual income in excess of $435,000 to turn its operations over to a person it could employ for less than $150 per week and further concludes that the sum of $20,000 is a reasonable management compensation level for Cumberland Water Company when taking into account the excellent manner in which this Company has been operating. The Commission concludes that this reasonable management compensation level for utilities is more appropriately determined based on the results shown by management rather than the time expended in management operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The Public Staff allocated indirect expenses based on the number of customers served by water and sewer. The Company first allocated all direct sewer expenses to sewer and then allocated indirect expenses on the basis of income from water and sewer, after deducting expenses of sewer served by the Public Works Commission.

This difference in allocation to sewer arises out of the manner of Cumberland's sewer operations. Prior to 1977, Cumberland had operated its own sewer treatment plants and had allocated expenses in those years just as the Public Staff proposed in this case. However, in 1977, Cumberland turned over treatment of sewer for over 90% of its customers to the Public Works Commission (PWC) for the City of Fayetteville. Cumberland's rates were then tied into those of PWC and Cumberland essentially became a collection agent for the PWC customers. During the test period, 1531 out of 1679 of Cumberland's sewer customers were serviced by PWC. Cumberland did retain a treatment plant for its remaining 148 customers. Testimony indicated that Cumberland's only manpower expense relating to the sewer served by PWX is the salary of one person for not more than 10 hours per week.

It is noted that in the prior Docket (W-169, Sub 17) this same issue was raised and that Cumberland had only allocated direct expenses to sewer in the test period in that case. Even with the direct allocation the Commission concluded that Cumberland's allocation was "reasonable and appropriate under the

circumstances." In this Docket, Cumberland allocated 13.2% of its indirect costs to sewer based on income. It is concluded that such an allocation of operating revenue deductions by Cumberland is both reasonable and appropriate for purposes of this case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Based on the foregoing, the Commission concludes that the operating ratio for Cumberland under the alternate proposed rate for its combined water and sewer operations would be 89.7% on a gross basis and 88.02% computed net of tax as per Exhibit A attached and that the allocation of the operating ratios between water and sewer is as follows:

	Water	Sewer
Operating Ratio	89.11	89.00
Operating Ratio Net of Tax	88.17	87.74

The Commission notes that in its prior proceedings the rates allowed to Cumberland have generated operating ratios of 87.90% and 88.52%. The operating ratio in this proceeding is higher than the rates previously allowed to Cumberland and are, therefore, clearly reasonable. The rate increase on the basis of the Applicant's alternate proposed rates should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates attached hereto as Appendix A is hereby approved and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138 and that said Schedule of Rates is hereby authorized to become effective for water and sewer services rendered to customers on or after the effective date of this Order.

2. That the Applicant notify its customers of its new rate schedule by bill insert (attached hereto as Appendix A) in the next regular billing.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of March 1981.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

WATER AND SEWER

EXHIBIT A

CUMBERLAND WATER COMPANY

COMPUTATION OF OPERATING RATIO UNDER PRESENT AND APPROVED RATES

	Water		Sewer	
	Present	Approved	Present	Approved
Revenues	$280,003	$313,107	$190,290	$203,279
Less: Gross Receipts	11,082	12,395	11,391	12,167
Income Taxes	3,389	12,440	4,140	8,163
Net Revenue	$265,532	$288,272	$174,759	$182,949
Operating Expenses				
Salaries	$ 17,360	$ 17,360	$ 2,640	$ 2,640
Contract Fees	18,749	18,749	2,851	2,851
Operations Labor	44,749	44,749	6,805	6,805
Administrative & General	22,563	22,563	3,431	3,431
Maintenance & Repair	123,196	123,196	18,135	18,135
Sewer Treatment			124,665	124,665
Uncollectibles	2,946	3,236	448	492
Depreciation	10,168	10,168	677	677
Gross Receipts	11,082	12,395	11,391	12,167
Property	8,345	8,345		
Other	5,821	5,821	885	885
Operating Expenses Before Income	264,979	266,582	171,928	172,748
Taxes: Income Taxes	3,389	12,440	4,140	8,163
Total Operating Expenses	268,368	279,022	176,068	180,911
Less: Gross Receipts	11,082	12,395	11,391	12,167
Income Taxes	3,389	12,440	4,140	8,163
Net Expenses	$253,897	$254,167	$160,537	$160,581
Operating Ratio Net of Taxes	95.61%	88.17%	91.86%	87.74%
Operating Ratio	95.84%	89.11%	92.53%	89.00%

APPENDIX A
Cumberland Water Company
WATER AND SEWER RATE SCHEDULE
For All Service Areas in North Carolina

METERED RATES:

Water:
Up to first 3,000 gallons per month - $4.00 minimum
All over 3,000 gallons per month - $ .60 per 1,000 gallons

Sewer:
Up to first 3,000 gallons per month - $5.56 minimum
All over 3,000 gallons per month - $ .80 per 1,000 gallons
Maximum sewer charge per month (Residential only) - $14.00

FLAT RATES (Apartments, Mobil Homes, etc.)

Water:
$5.00 per month per unit (whether or not unit is occupied)

Sewer:
$6.50 per month per unit (whether or not unit is occupied)

CONNECTION CHARGES:
Inside Service Area - $100.00
Outside Service Area - $100.00 plus cost of providing tap

RECONNECTION CHARGES:

If water service cut off by utility for good cause
NCUC Rule R7-20(f): $ 4.00
If water service discontinued at customers request
NCUC Rule R7-20(g): $ 2.00
If sewer service cut off by utility for good cause
NCUC Rule R10-16(f): $15.00

BILLS DUE: On billing date

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT: None

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-169, Sub 18, on March 18, 1981.

DOCKET NO. W-369, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Goose Creek Utility Company for Authority to) RECOMMENDED
Increase Rates for Water and Sewer Utility Service in) ORDER GRANTING
Fairfield Plantation Subdivision, Union County, North Carolina) PARTIAL INCREASE

HEARD IN: Room 306, Mecklenburg County Office Building, 720 East Fourth Street, Charlotte, North Carolina, on December 16, 1980, beginning at 9:00 a.m.

BEFORE: Allen L. Clapp, Hearing Examiner

APPEARANCES:

For the Applicant:

Louis H. Parham, Jr., Parham, Helms & Kellam, Attorneys at Law, 215 Executive Park, Charlotte, North Carolina 28202

For the Public Staff:

Karen E. Long, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602

CLAPP, HEARING EXAMINER: On September 2, 1980, Goose Creek Utility Company ("Applicant" or "Company") filed an application with this Commission seeking authority to increase its rates for water and sewer utility service in Fairfield Plantation Subdivision, Union County, effective November 10, 1980. By Order issued September 24, 1980, the Commission declared the matter a general rate case, suspended the proposed rates, required public notice and scheduled a public hearing. Applicant attested it had furnished public notice to each customer in Fairfield Plantation by certificate of service filed October 13, 1980.

The public hearing was held at the time and place specified in the Commission Order. William Trotter and Robert Ingraham were present and testified on behalf of the Applicant. Thomas Hoyte Cook, C. Wayne Marsh, Larry Evans, Dick Ward, and Joseph W. Fortune, residents of Fairfield Plantation Subdivision, testified regarding their opposition to the proposed rate increase and some service problems they had experienced. The Public Staff offered the testimony of Candace A. Paton, Staff Accountant, and Jerry Tweed, Water Division Engineer.

On December 22, 1980 the Public Staff filed a late-filed exhibit in this proceeding consisting of corrected testimony and exhibits. The transcript was mailed on April 6, 1981, and the proposed orders of the Public Staff and the Company were filed on April 17 and May 4, respectively.

The following findings of fact are based on the prefiled testimony and exhibits, the testimony at hearing and the entire record in this matter.

WATER AND SEWER

FINDINGS OF FACT

1. The Applicant, Goose Creek Utility Company, is a public utility which has been granted a Certificate of Public Convenience and Necessity to provide water and sewer utility service in Fairfield Plantation Subdivision in Union County, North Carolina, by Commission Order issued June 26, 1973, in Docket No. W-369.

2. The Applicant currently charges the following rates in Fairfield Plantation Subdivision:

Water	
Up to first 3,000 gallons per month	$7.00 minimum
All over 3,000 gallons per month per 1,000 gallons	$1.20
Sewer	
Up to first 3,000 gallons per month	$9.00
All over 3,000 gallons per month per 1,000 gallons	$1.45

3. The Applicant is requesting an increase in rates and has submitted three different proposals for rate increase.

In its original application the Applicant proposed to charge:

Water	
Up to first 3,000 gallons per month	$ 9.00
All over 3,000 gallons per month per 1,000 gallons	$ 1.60
Sewer	
Up to first 3,000 gallons per month	$12.00
All over 3,000 gallons per month per 1,000 gallons	$ 1.80

At the hearing, Applicant changed its request and proposed two alternate sets of rates:

a. If rate of return on rate base is the revenue determinant:

Water	
Up to first 3,000 gallons per month	$ 7.00
All over 3,000 gallons per month per 1,000 gallons	$ 1.31
Sewer	
All over 3,000 gallons per month per 1,000 gallons	$ 1.94

or

b. If operating ratio is the revenue determinant:

Water	
Up to first 3,000 gallons per month	$ 7.00
All over 3,000 gallons per month per 1,000 gallons	$ 1.22

Sewer	
Up to first 3,000 gallons per month	$11.00
All over 3,000 gallons per month per 1,000 gallons	$ 1.83

4. The Public Staff's proposed rates for Applicant are:

Water	
Up to first 3,000 gallons per month	$ 7.00 minimum
All over 3,000 gallons per month per 1,000 gallons	$ .80
Sewer	
Up to first 3,000 gallons per month	$10.50 minimum
All over 3,000 gallons per month per 1,000 gallons	$ 2.00

5. The test year used in this proceeding is the twelve month period ending December 31, 1979, updated through the hearing date.

6. The number of customers served by this utility is 195 as of the date of the hearing. The annual revenues under various rate structures presented by Public Staff witness Tweed at the hearing and in his prefiled testimony were based on 191 customers. The following annualized revenues take into account the revenues which should be received from the 4 additional customers.

The approximate total operating revenues of Goose Creek Utility Company under present rates on an end-of-period basis are $26,771 for water operations and $33,370 for sewer operations for a total of $60,141. Annualized revenues under the Company's original proposed rates would be $34,914 for water operations and $43,363 for sewer operations for a total of $78,277. At the hearing the Company proposed another set of rates to provide a 17% rate of return. Those rates would produce annualized water revenues of $27,722 and sewer revenues of $42,207 for a total of $69,929.

7. There was a 525 foot section of plastic water pipe on this water system which had been troublesome for the utility company since prior to the previous rate case for this Company. As a result of problems with this line, the Company incurred approximately $2,123 in repair costs and $10,837 in replacement costs. It is appropriate to amortize the costs of this work over five (5) years. It is also appropriate to amortize rate case expenses, painting expenses and radiological testing costs.

8. The level of operating expenses under present rates is $58,962, which includes the amount of $3,104 for actual investment currently consumed through depreciation.

9. After adjustments, the Applicant's end-of-period original cost net investment in water plant is $27,503, including plant in service of $167,110, a working capital allowance of $2,121, deductions for accumulated depreciation of $6,053, contributions in aid of construction of $145,228, and unamortized balances (less deferred income taxes) of $9,553. This plant is supported by approximately $11,000 of debt and $16,503 equity financing.

10. After adjustments the Applicant's end-of-period original cost net investment in sewer plant is $36,036, including plant in service of $346,283, a

working capital allowance of $3,712, deductions for accumulated depreciation of $16,059, contributions in aid of construction of $302,398, and unamortized balances (less deferred income taxes) of $4,498. This plant is supported by approximately $2,000 of debt and $34,036 of equity financing.

11. After adjustments the Applicant's total end-of-period original cost net investment is $63,539.

12. The rate of return on original cost net investment methodology is the appropriate basis for determining rates in this proceeding.

13. Under present rates, Applicant would earn a return on rate base of 5.54%. Under the Company's alternate proposed rates, the Applicant would earn a return on rate base of 16.86%, which is a fair and reasonable rate of return to the Applicant.

14. The water provided by the Applicant is "hard" water, due mainly to the presence of calcium and magnesium compounds. These compounds form incrustation or scale on the metal surfaces found in water heaters, humidifiers, coffee percolators, etc. Many customers of the Applicant periodically replace the heating elements in their water heaters due to the scaling buildup. Customers are divided in opinion whether the cost of installing effective water softening equipment is worth further increase in their rates. The level of hardness is diminishing as the aquifer strata is flushed over time by the pumping of water for utility service.

15. The reconnection charges proposed to be charged by the Company are as follows:

If water service cut off by utility for good cause	$ 20.00
If water service cut off at customer's request	$ 10.00
If sewer service discontinued for good cause	$110.00

The reconnection charges proposed by the Public Staff are as follows:

If water cut off by utility for good cause
- step connection fee: $ 5.00 first reconnection
$ 7.50 second reconnection
$10.00 third and all subsequent reconnections

If water service cut off at customer's request	$ 2.00
If sewer service discontinued by utility for good cause	None

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1-5

The evidence for Finding of Fact Nos. 1-5 is found in the verified application, uncontested testimony at hearing, and the official record on file with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony of Public Staff witnesses Paton and Tweed. Witness Paton made her presentation of end-of-

period water and sewer revenues and revenues under Company proposed rates based on an investigation and certain calculations made by the Public Staff engineers. Public Staff engineer Tweed described this investigation and the calculation in his direct testimony. Witness Paton also presented testimony concerning the level of net operating income realized by the Applicant at end-of-period levels for its water and sewer operations, based on both present and proposed rates. The Company presented different amounts for end-of-period water and sewer revenues and net operating income.

Both witness Paton and witness Tweed based their calculations of annual revenues at hearing on the assumption that there were 191 customers of the Applicant at the end-of-period levels. However, testimony by Company witness Ingraham at hearing indicated that there were 195 customers at the end-of-period. Witness Tweed indicated that the new customer level of 195 should be used. These customers would produce additional revenues.

The revenues in this finding of fact were derived by adding the 48 additional billings which would be made for 4 additional customers and the corresponding commodity consumption billed of 171,000 gallons, based on system average use, to the billing determinants used by witness Tweed. The revenues were then recalculated.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 7-11

Both the Company and the Public Staff presented evidence as to the end-of-period level of operating expenses. In her testimony, Public Staff witness Paton presented the test year level of operating expenses for both water and sewer operations, adjusted for known changes. Some of her figures were based on technical information supplied by Public Staff witness Tweed.

Public Staff witness Tweed testified at the hearing that the depreciable life of the new main should be 50 years rather than 25 years as was stated in both witness Tweed's and witness Paton's prefiled testimony.

The Company presented operating and maintenance expenses in excess of the Public Staff's. Some of these differences were due to the Company's proposed expensing of fees paid for long term tests. The Public Staff amortized these expenses. The Company proposed to expense the costs of repairing and replacing the main; the Public Staff capitalized those costs. The Company also included estimated interest expense on a note it had signed the day before the hearing. Public Staff witness Paton imputed a different debt ratio into her capital structure of the Company. Public Staff witness Tweed testified that Company has in the past, in contravention of Commission Rule R7-16, financed expenses for expansions itself, rather than to charge its developer for construction.

It should be noted that the method of allocating contributions-in-aid of construction to water and to sewer plant was not disputed and is accepted herein. However, it is obvious that this method lacks some specificity because the dollar amounts so allocated vary greatly with a change in the investment on one side. Using this method, the Public Staff proposal to include the water main repair and replacement cost as plant investment resulted in an allocation of contributions-in-aid of $148,142 to water and $277,799 to sewer. However, since this Order approves an amortization of these costs, the method causes a

reallocation of $141,668 to water and $284,273 to sewer. This occurs without any change in sewer investment. While this does not change the total contributions-in-aid, it does change the responsibility and results in tax effects because of the different gross receipts tax rates between water and sewer. While the effect is small in this case, it would be appropriate for the Public Staff to investigate this allocation problem with a view toward development of a methodology which would not result in such variations over time.

Evidence for Findings of Fact 9, 10, and 11 is based on the testimony of all the Company and Public Staff witnesses. Witness Paton's final figure for net investment was $60,440 at the time of hearing. However, in updating its testimony, Applicant presented evidence that it had invested some $1,477 more in its plant than was in the estimates originally supplied to the Public Staff. In view of this, the Public Staff indicated in its proposed order that the proper amount of Applicant's total end-of-period original cost net investment, using the Public Staff capitalization recommendations, is $61,948.

The Public Staff performed a credible investigation of the operations of Goose Creek. As a result, the recommendations made by the Staff are, in general, appropriate and necessary. One large item which presented controversy in this case was the treatment of the cost to Goose Creek of the extraordinary maintenance and replacement of over five hundred feet of main. The Company wanted to treat the cost as an ordinary repair cost and to include it in maintainance expenses , in effect amortizing the cost over one year. Straight expensing of this abnormal cost in one year is not appropriate and the Public Staff correctly objected to that practice. The Staff proposed that the cost be treated as a capital investment and included both the repair cost and the replacement cost in the plant accounts. The effect of this treatment is to amortize the cost over the life of the new main. However, the Staff did not complete the "equations".

There are two ways of handling occurences of this kind. Method "A" would be to capitalize the costs of the new line and then either expense or amortize the undepreciated cost of the replaced plant. Method "B" would be to leave the existing plant account balances alone and to treat the cost of repair and replacement as an extraordinary maintainance expense and amortize it over an appropriate period.

Theoretically, it can be argued that Method "A" is most appropriate, since it recognizes the cost of the new line and would depreciate that line over its new life. However, Method "A" is difficult to effect in practice because it is seldom possible to determine the undepreciated cost of the removed line in order to either expense or amortize the correct amount.

Method "B", on the other hand, is easy to administer, since the costs to be amortized are readily known. In addition, it may more appropriately reflect the level of expense activity which the Company would be expected to incur again from time to time in the future for similar such maintenance and repair.

The Goose Creek system was built in the early 1970's. This pipe replacement is the first major repair expense incurred by the Company. Since such expenses are not expected to be incurred annually, it is inappropriate to do as the

Company suggests and expense the cost in one year. However, as the system continues to age, it must be expected that the Company will, from time to time, incur a similar major repair expense. For that reason, it is appropriate to amortize such maintenance expenses in an effort to normalize the actual experience of the Company in a manner consistent with future expectations of the continuance of past history.

After careful review of the evidence in this docket, it is concluded that the most appropriate treatment of the cost of this extraordinary repair is to amortize the cost of the repair and replacement of pipe over a five-year period.

In each of the instances where the Public Staff recommended amortization of an item, such as rate case expenses, the Staff made an appropriate recommendation. However, the Staff neglected to place the unamortized balance of these items in the rate base. The Company did incur these costs and will continue to incur similar costs from time to time in the future. The only manner in which such costs can be funded is from retained earnings, debt or equity financing. While amortization of the costs is appropriate, it is also appropriate to include the unamortized portion, less the deferred tax effects, in the rate base. This treatment appropriately normalizes and reflects the full costs of such expenses to the Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12 AND 13

Public Staff witness Paton presented evidence indicating that the Applicant's utility plant in service is substantially supported by contributions-in-aid of construction. Notwithstanding this fact, the Applicant's rate base of $63,539 exceeds its cost base of $61,558. However, because the expense level is nearly equal to the rate base, it is necessary to see that an appropriate operating ratio is also met by the allowed rates.

Under present rates, the Company is earning a 5.54% rate of return on its original cost net investment in water and sewer utility property. This results from the division of the total return of $2,340 ($1,179 equity, $2,340 interest) by the net rate base of $63,539. Witness Paton testified that, until the day before the hearing, the Applicant was a totally equity funded company. Because this is many times the most expensive way to fund a company, the Public Staff Economic Division, no member of which was present at the hearing, imputed a capital structure composed of both debt and equity to the Applicant. Witness Paton testified that, had the Company been 100% debt funded, which she alleged to be the cheapest way to raise capital, the Public Staff would still have imputed an equity portion to the Company's capital structure.

Witness Paton further testified that the Public Staff Economic Division computed the embedded cost of debt for water utilities from some 30 water companies listed in Moody's at 7.7%, while cost of equity to these same companies was 18.2%. Witness Paton did not know the type or age of debt which made up the 7.7%. She testified that she did not think that Goose Creek could sell a long term bond. Given the imputed capital structure, Ms. Paton recommended that a reasonable rate of return is 12.46%, using these costs of capital.

Public Staff witness Paton further testified that if the Company were to use an operating ratio pursuant to G. S. 62-133.1, a 12.46% return on cost base or an 88.54% operating ratio would be fair and reasonable.

These recommendations were countered by Company witness Trotter who testified that, although the present annual debt service rate was at 21%, he expected that an average of 18% could be expected through the next year. The debt rate floats at "prime" plus 1% and is set each quarter. Witness Trotter indicated that, under the circumstances of the present economy, it is almost impossible for such a company to borrow money under any circumstances and that such conditions would continue for the forseeable future.

Witness Trotter, Chairman of the Board and sole stockholder in Goose Creek, requested a 17% return to reflect the risk in operating the utility. Alternatively he requested a return of 15% over and above expenses.

In order for Goose Creek to be able to continue to operate its plant efficiently and to maintain that plant, it is necessary that rates cover the expenses and generate a return sufficient to recognize the risk of the operation and the volatility of expenses.

In order to appropriately measure the operating ratio, it is necessary to remove income taxes and interest from both the gross revenues and the gross operating expenses. In this case, the income taxes ($1,859) and interest ($2,340) reduce the gross revenues ($69,929) to $65,730 and reduce the gross operating expenses ($61,558) to $57,359. Dividing the latter by the former yields an operating ratio of 87.26% which, considering the operations of this utility, is a just and reasonable ratio of net expenses to net revenues.

The rates approved herein will be sufficient, under efficient management by the Company, to produce revenues sufficient to pay an average of 18% interest expense on the existing debt and to generate a 16.56% return on the equity investment which, under the present financial circumstances of this utility, is just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Evidence supporting this finding came from the various public witnesses, from Public Staff witness Tweed and from Company witnesses Ingraham and Trotter. Based on the statements of these witnesses, it is concluded that the Company should continue to use the water treatment equipment ordered to be installed in Docket No. W-369, Sub 1, March 28, 1977, to help alleviate the hardness in its water. However, the Company should not install more expensive sodium ion exchange equipment. At this time, such equipment will increase Applicant's investment and operating expenses and may not provide a satisfactory solution to the problems due to the possible health impact of its own operation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding is found in the testimony of Public Staff witness Tweed, Company witness Ingraham and in the application.

The matter of the appropriate level of reconnection charges is one which frequently becomes a problem. As costs of travel and labor go up, so does the cost of special trips to a water system site. If normal, credit-worthy ratepayers are not to be discriminated against, the charges for reconnection must reflect the costs of such service. The reconnection charges proposed by the Company are reasonable for the service rendered and should be allowed.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates attached hereto as Appendix "A" is hereby approved, and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138 and that said Schedule of Rates is hereby authorized to become effective with Applicant's next regularly scheduled billing.

2. That the Applicant continue to operate and maintain presently installed equipment designed to alleviate the problem of hard water.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May 1981.

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

APPENDIX A

SCHEDULE OF RATES

GOOSE CREEK UTILITY COMPANY

Fairfield Plantation Subdivision - Union County

WATER AND SEWER RATE SCHEDULE

METERED RATES: (Residential Service)

Water:	Up to first	3,000 gallons per month	$ 7.00 minimum
	All over	3,000 gallons per month	$ 1.31 per 1,000 gallons
Sewer:	Up to first	3,000 gallons per month	$10.00 minimum
	All over	3,000 gallons per month	$ 1.94 per 1,000 gallons

Sewer charges shall be applied to first 14,000 gallons usage per month during summer months. (May through August)

CONNECTION CHARGES:

$250 - paid developer

RECONNECTION CHARGES:

If water service cut off by utility for good cause	$ 20.00
If water service cut off at customer's request:	$ 10.00
If sewer service cut off by utility for good cause:	$110.00

BILLS DUE: On billing date

BILLS PAST DUE: Twenty (20) days after billing date

BILLING FREQUENCY: Shall be monthly for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-369, Sub 5, on this the 20th day of May 1981.

APPENDIX B
Schedule 1

GOOSE CREEK UTILITY COMPANY

Item	Public Staff Proposed Rates		Company Proposed Rates (Allowed)		Present Rates	
	Water	Sewer	Water	Sewer	Water	Sewer
Total operating expenses before int. and taxes	$20,464	$31,899	$20,464	$31,899	$20,464	$31,899
Other taxes	384	471	384	471	384	471
Interest	1,980	360	1,980	360	1,980	360
Subtotal	22,828	32,730	22,828	32,730	22,828	32,730
Gross receipts tax	933	2,493	1,109	2,532	1,071	2,002
Total op. BIT	23,761	35,223	23,937	35,262	23,899	34,732
Income tax	(98)	1,389	832	1,527	631	(300)
Total operating expense	23,663	36,612	24,769	36,789	24,530	34,432
Total Co. expense	60,275		61,558		58,962	
Net income	(348)	4,933	2,953	5,418	2,241	(1,062)
Total company net income	4,585		8,371		1,179	
Gross revenues	23,315	41,545	27,722	42,207	26,771	33,370
Less TOE BIT	23,761	35,223	23,937	35,262	23,899	34,732
Gross profit	(446)	6,322	3,785	6,945	2,872	(1,362)
Less State inc. tax (6%)	(27)	379	227	417	172	(82)
	(419)	5,943	3,558	6,528	2,700	(1,280)
Less Fed. inc. tax (17%)	(71)	1,010	605	1,110	459	(218)
Net income	(348)	4,933	2,953	5,418	2,241	(1,062)
Total income taxes	(98)	1,389	832	1,527	631	(300)
Total Co. inc. taxes	$1,291		$2,359		$331	
Net income	(348)	4,933	2,953	5,418	2,241	(1,062)
+ Net equity investment	16,503	34,036	16,503	34,036	16,503	34,036
Return on equity	(2.11)%	14.49%	17.89%	15.92%	13.58	(3.12)%
Total Co. equity return	4,585		8,371		1,179	
+ Total Company equity	50,539		50,539		50,539	
% ROR on equity	9.07%		16.56		2.33	
Net Income	4,585		8,371		1,179	
+ interest	2,340		2,340		2,340	
Total return	6,925		10,711		3,519	
+ Rate base	63,539		63,539		63,539	
% ROR on rate base	10.90		16.86		5.54	

APPENDIX B
Schedule 2

GOOSE CREEK UTILITY COMPANY

ALLOWED EXPENSES

	Per Application		Allowed Adjustments		After Allowed Adjustments	
	Water	Sewer	Water	Sewer	Water	Sewer
Operating Expenses						
Wages	$ 8,435	$14,044	$ 924	$ 2,350	$ 9,359	$16,394
Administrative and general	1,787	5,302	(741)	3,378	1,046	1,924
Power for pumping	3,400	3,197	483	454	3,883	3,651
Maintenance and repair	2,776	7,851	(1,756)	(4,174)	1,020	3,677
Transportation	-0-	-0-	894	1,093	894	1,093
Depreciation	1,494	2,983	(591)	(782)	903	2,201
Subtotal	17,892	33,377	(787)	(4,437)	17,105	28,940
Amortization Expenses	-0-	-0-	3,359	2,959	3,359	2,959
Total Operating Expenses Before Interest and Taxes	$17,892	$33,377	$2,572	$(1,478)	$20,464	$31,899

APPENDIX B
Schedule 3

GOOSE CREEK UTILITY COMPANY

ORIGINAL COST NET INVESTMENT

Line No.	Item (a)	Water 1980 Additions (b)	Water Rate Base (c)	Sewer 1980 Additions (d)	Sewer Rate Base (e)
1.	Water plant in service	$25,081	$167,110	$16,267	$346,283
2.	Unamortized balances less				
3.	Working capital	72	2,121	(87)	3,712
4.	Total	34,706	178,784		354,493
5.	Deductions:				
6.	Accumulated depreciation	903	6,053	2,201	16,059
7.	Contributions in aid of construction	27,216	145,228	43,725	302,398
8.	Total		151,281		318,457
9.	Original cost net investment		$ 27,503		$ 36,036
10.	Debt portion		11,000		2,000
11.	Equity portion		16,503		34,036

APPENDIX B
SCHEDULE 4

GOOSE CREEK UTILITY COMPANY

SCHEDULE OF AMORTIZATION

Amortized Expense Description	Total (a)	Allowed Expense (1)÷yrs.	Unamortized Balance (1)-(2)	Deferred Income Tax (3) x .2402	Net Rate Base Addition Water (3)-(4)	Net Rate Base Addition Sewer (3)-(4)
Rate Case: Sub 3						
(3 years) Sewer	$ 2,622	$ 874	$ 1,748	$ 420	$	$ 1,328
Rate Case: Sub 5						
Water .45	1,704	568	1,136	273	863	
Sewer .55	2,082	694	1,388	333		1,055
(3 years)	3,786	1,262	2,524	606		
Painting						
(8 years) water	950	119	831	200	631	
(3 years) sewer	4,174	1,391	2,783	668		2,115
Pipe Repair & Replacement						
(5 years) water	10,837	2,167	8,670	2,083	6,587	
(5 years) water	2,123	425	1,698	408	1,290	
Radiological test						
(4 years) water	320	80	240	58	182	
Subtotals					9,553	4,498
Total					$14,051	

Water	3,359
Sewer	2,959

APPENDIX B
Schedule 5

GOOSE CREEK UTILITY COMPANY

ADJUSTMENT TO DEPRECIATION EXPENSE

Item	Water	Sewer
Plant in service 12/31/79	$142,029	$330,016
Additions during 1980	25,081	9,956
Amounts improperly expensed		5,981
Waste treatment plant improvements		330
Total plant in service	167,110	346,283
Less land ($21,685)	3,560	18,125
Depreciable plant	163,550	328,158
Percentage of total depreciable plant	33.26%	66.74%
Contributions in aid of construction:		
($447,626 -$21,685) x 33.26%	141,668	
($447,626 -$21,685) x 66.74%		284,273
Percentage of plant funded by CIAoC	86.62%	86.63%
Total straight line depreciation	6,752	16,461
Depreciation allowed	903	2,201
Test year depreciation per application	1,494	2,983
Adjustment to depreciation expense	$ (591)	$ (782)

DOCKET NO. W-173, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Montclair Water Company for an Adjustment in) RECOMMENDED ORDER
Its Rates and Charges Applicable to Water and Sewer in all) APPROVING PARTIAL
Its Service Areas in North Carolina) INCREASE IN RATES

HEARD IN: County Office Building, Auditorium, Highway 301 South, Fayetteville, North Carolina, and Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602

BEFORE: Hearing Examiner Jim Panton

APPEARANCES:

For the Applicant:

L. Stacy Weaver, Jr., McCoy, Weaver, Wiggins, Cleveland & Raper, P.O. Box 2129, Fayetteville, North Carolina

For the Using and Consuming Public:

Thomas K. Austin, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

WATER AND SEWER

PANTON, HEARING EXAMINER: On April 20, 1981, Montclair Water Company, Inc. (Applicant), filed an application for a rate increase. By Commission Order of March 10, 1981, this matter was scheduled for public hearing on July 9, 1981. Pursuant to Applicant's Motion of March 23, 1981, this matter was rescheduled for public hearing on June 9, 1981, by Commission Order of March 25, 1981. The Applicant prefiled the testimony of Phil W. Haigh on May 14, 1981, and the Public Staff prefiled the testimony of Jesse Kent, Jr., Henry Payne, and Dr. Richard Stevie on May 29, 1981. The hearing came on as scheduled in the Commission Order of March 25, 1981. The Commission Order of June 11, 1981, scheduled a further public hearing which commenced on July 2, 1981.

At the public hearings on June 9 and July 2, 1981, several public witnesses testified on this matter. The vast majority of these witneses were from the Devonwood and Devonwood West Subdivisions served by the Applicant. At the hearings, the Company presented the testimony of Homer Barrett, Company President, Phil W. Haigh, CPA, and Dan Blackstock, Company Office Manager. The Public Staff presented the testimony of Jesse Kent, Jr., Staff Accountant, Henry Payne, Utilities Engineer, and Dr. Richard Stevie, Economist.

Based on the information contained in the Commission's files, and in the application and the entire record in this proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. That the Applicant has a Certificate of Public Convenience and Necessity to furnish water utility service in all service areas in North Carolina.

2. That the Applicant owns and controls the water systems serving its service areas in North Carolina.

3. That the Applicant's quality of service is adequate.

4. That the Applicant's present water rates produce a net operating loss of ($3,480).

5. That the Applicant's present sewer rates produce a net operating loss of ($15,143).

6. That the Applicant's proposed water and sewer rates are excessive and should be disallowed.

7. That the water rates approved herein produce an operating ratio of 87.31% on the Applicant's water operations.

8. That the sewer rates approved herein produce an operating ratio of 87.61% on the Applicant's sewer operations.

9. That the approved operating ratios are based on a 16.2% return on operating expenses exclusive of gross receipts and income taxes.

10. That in order to achieve the 16.02% return found reasonable the Applicant's gross revenue requirement is increased by $52,850 for water operations and by $62,796 for sewer operations.

11. That the rates contained in Appendix A attached hereto will result in satisfying the Applicant's gross revenue requirements.

CONCLUSIONS

From a review and study 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. The evidence supporting Findings of Fact Nos. 1 and 2 is contained in the verified application and the testimony presented by both the Applicant and the Public Staff. These findings are essentially informational, procedural, and jurisdictional in nature and were uncontested.

2. Finding of Fact No. 3 is supported by the testimony of the Public Staff and Company witnesses and that of the public witnesses. Several customers of the Applicant appeared at the hearing and generally testified on the quality of service and level of rates. Most of these customers are residents of the Devonwood or Devonwood West Subdivisions of the Applicant's service area.

The Hearing Examiner must be concerned with the service complaints voiced at the hearing and expects both the Applicant and its customers to fulfill their responsibilities to one another while working to satisfactorily correct the service problems. Certainly, the record indicates that the Applicant's quality of service has been adequate in the past. This level of service is reflective of both the intent of the Applicant's management and the policy and procedures employed by the Applicant's personnel. Though the Applicant's quality of service is found to be adequate for purposes of this proceeding, as has been done in previous rate cases before this Commission, the Hearing Examiner urges the Applicant to continue to make every fair and reasonable effort to maintain standards of good service, in order that complacency may never come between it and its customers.

Many of the public witnesses expressed deep concern and perplexity with the level of the Applicant's sewer rates. This concern centered on the practice of the Applicant to charge metered sewer rates based on water consumption. Public Staff and Company testimony concurred that the Public Works Commission (PWC) of Fayetteville charges the Applicant for sewage treatment based on the same methodology. The Hearing Examiner feels the same frustrations as the public witnesses questioning this billing practice, but must conclude it is the only reasonable mechanism allowable to the Applicant based on the state of the art and cost constraints. Clearly, the record shows that even though this billing practice may not be appreciated, its utilization results in the Applicant being a mere conduit for PWC, for all sewage treated by PWC. Though this billing practice accrues no financial advantage to the Applicant, the Hearing Examiner urges Montclair Water Company to make every reasonable effort to minimize the charges from PWC through any prudent means possible.

3. The evidence supporting Findings of Fact Nos. 4 and 5 is contained in the testimony and exhibits of Company witness Haigh and Public Staff witnesses Kent and Payne. The proper level of revenues under present rates was presented by witnesses Haigh and Payne. After careful review of the record, the Hearing Examiner concludes that the proper level of revenues under present rates is

$208,741 for water operations and $163,507 for sewer operations, as shown in witness Payne's Appendix B, filed June 25, 1981.

At the hearing witness Haigh presented Haigh Exhibit B which was a revision of the operating expense level of the Applicant in this proceeding. This exhibit employed the Public Staff's operating expense level, as reflected in witness Kent's prefiled testimony and exhibit, as its base, and made further adjustments to arrive at the Applicant's revised operating expense level. The Public Staff filed Kent Exhibit 1, Schedule 1 revised, which made a few adjustments to the prefiled Exhibit 1, Schedule 1. Based on these exhibits, the different levels of operating expenses exclusive of gross receipts and income taxes and the annualization adjustment of the parties are shown in the chart below:

Item	Water	Sewer
Public staff operating expenses before gross receipts and income taxes and annualization adjustment	$170,619	$163,640
Tank painting amortization	5,692	-
Caustic soda	8,387	-
Maintenance reflected of accelerated maintenance program	2,603	1,247
Different rate case allocation	69	(69)
Association dues	300	200
Computer	1,445	955
Chlorine	6,132	-
New well in Montclair	4,044	-
Management salary	3,612	2,388
Total adjustments	32,284	4,721
Company operating expenses before gross receipts and income taxes and annualization adjustment	$202,903	$168,361

The first item of difference is the amortization of tank painting expenses. The Public Staff included an amount for the amortization of tank painting expenses which had actually occurred or could be reasonably expected to occur. In contrast, the Applicant amortized a level of tank painting expenses reflective of work already completed and additional work planned. The Public Staff did not contest that the tank painting planned and included by the Applicant was an unreasonably operational expense, but rather that it was improper to include these expenses for rate-making purposes in this proceeding. The Hearing Examiner concludes that the record supports the Applicant's position that inclusion of the adjustment of these expenses represents a fair and reasonable level of tank painting amortization expense. However, the Hearing Examiner further concludes that the Applicant should file with the Commission, within one year of the effective date of this Order, a written report concerning the completion of the planned tank painting. If the Applicant's proposed tank painting, as reflected in the record, is not completed by that date, then the Commission shall reduce the Applicant's cost of service in this proceeding and consider a corresponding reduction in rates.

Haigh Exhibit B supports a $8,387 adjustment to caustic soda expense. This adjustment is based on the annualization of the caustic soda expense for the

last six months of the test year. Haigh Exhibit B, Exhibit B supports the adoption of this annualization adjustment, as the Company embarked on a pH control program in June 1980. After careful review of the record, the Hearing Examiner concludes that the $8,387 annualization of caustic soda expense should be included in determining rates in this proceeding.

The Applicant adjusted operating expenses to reflect an accelerated maintenance program. This adjustment increased water maintenance expense by $2,603 and sewer maintenance expense by $1,247. The Public Staff excluded this adjustment on the basis that the resulting level of maintenance expense is not representative and properly included for the consideration of rates in this proceeding. The Hearing Examiner concludes that the preponderance of evidence supports the exclusion of this adjustment to maintenance expense.

The Public Staff's Kent Exhibit 1, Schedule 1 revised, adopted the rate case expense presented in Haigh Exhibit B. However, the Public Staff and the Company disagree as to the proper allocation factor to be applied to these expenses. The Hearing Examiner concludes that the allocation factor utilized by the Public Staff is proper and, therefore, the approved level of rate case expenses is $69 less for water operations and $69 more for sewer operations than that presented by the Applicant.

The next item of difference relates to dues to the National Association of Water Companies and the North Carolina Association of Water Companies. In this proceeding the Company included $380 for the national association and $120 for the State association. Company witness Barrett testified that the national association had been joined but that the organizational status of the State association was uncertain. Based on the disparity and diversity of the water industry, the Hearing Examiner concludes that water company association dues are a fair and reasonable expense to be included in the Applicant's cost of service. However, since the State association has not been formerly organized, the Hearing Examiner concludes that only the dues for the national association should be included in the cost of service. Therefore, water operating expenses are increased by $213 and sewer operating expenses by $167 to reflect the inclusion of this item.

The next item relates to data processing expenses. The Company recently purchased a 5120 IBM Model computer in the belief that the past practice of computer time sharing may be terminated by the Company selling the computer time. The Public Staff did not adjust expenses to reflect the purchase of this computer and, through cross-examination of Company witness Barrett, raised the issue of whether the capacity of this computer could be allocated, in part, to future customers. Haigh Exhibit B, Exhibit B, page 2, item 5, contends that the purchased computer will increase efficiency and eliminate trips to the former processing center; however, these cost reducing contentions are not reflected, or quantified, in the Applicant's calculation of $1,445 increase in water operating expenses and $955 increase in sewer operating expenses. After a review of the record, the Hearing Examiner concludes that the Applicant's adjustment for increased computer expense is unreasonable and should not be allowed.

The next item of difference relates to expenses incurred in chlorinating the Applicant's water supply. The North Carolina Division of Health Services has

recommended that the Applicant should chlorinate all wells in the Montclair Subdivision. Based upon the dosage calculation of the Division of Health Services and the addition of a new well in Montibello, the Applicant determined that chlorination expense should be increased by $6,132. Though the Public Staff did not contest the recommendation of the Division of Health Services to the Applicant concerning chlorination of the wells serving the Montclair Subdivision, Public Staff engineer Payne questioned the level of chlorine dosage used in the Applicant's calculation. Based on the record, the Hearing Examiner concludes that the chlorination expense should be allowed for the existing used and useful wells in the Montclair Subdivision, and results in an increase to water operating expense of $6,500, after an adjustment to correct a mathematical error on Haigh Exhibit B, Exhibit C, page 9.

The Company increased expenses to reflect operation of a new well in Montclair as reflected in the $4,044 increase to water operation expenses shown in the table above. Under cross-examination, Company witness Barrett testified that the well had not been completed nor had it been approved by the Health Department. The Hearing Examiner concludes that the new well in Montclair had not been placed into service prior to the close of the hearing and, therefore, it was not used and useful during the test year. Consequently, a pro forma adjustment for expenses related to this item should not be made.

The final item of difference relates to the Applicant's increasing executive management salaries on January 1, 1980, by a combined total of $6,000. The Public Staff disallowed this increase on the basis that the annual unadjusted level of executive management salaries of $24,000 was a reasonable level of this expense to be included in the Applicant's cost of service. The Hearing Examiner has examined the record closely concerning this matter. After much consideration, with specific emphasis on an analysis of the Applicant's total wage expense, the Hearing Examiner concludes that the proper level of executive management salary expense to be considered in this proceeding is $30,000, with $3,360 allocated to water operations and $2,640 to sewer operations.

Hence, the Hearing Examiner concludes that the proper level of operating expenses before gross receipts and income taxes and the annualization adjustment is $194,771 for water operations and $166,447 for sewer operations, as shown in the table below.

Item	Water	Sewer
Public staff operating expenses before gross receipts and income taxes and the annualization adjustment	$170,619	$163,640
Tank painting amortization	5,692	-
Caustic soda	8,387	-
Association dues	213	167
Chlorine	6,500	-
Management salary	3,360	2,640
Operating expenses before gross receipts and income taxes and the annualization adjustment	$194,771	$166,447

Since the Hearing Examiner adopted the revenues under rates presented by the Public Staff, consistency dictates that the Public Staff's gross receipts taxes

should be adopted. In addition, the Hearing Examiner concludes that the Public Staff's annualization adjustment should be adopted, resulting in an increase in water operations expense of $2,936 and sewer operations expense of $2,391.

Since the Applicant's level of water and sewer operating revenues and expenses under present rates, as determined by the Hearing Examiner, are different from either that of the Company or the Public Staff, the level of income tax expense found to be fair and reasonable by the Hearing Examiner is different from that purported by either the Company or the Public Staff. Consequently, the Hearing Examiner concludes that the Applicant's proper level of income tax expense under present rates is ($1,100) for water operations and ($4,787) for sewer operations.

The evidence supporting Findings of Fact Nos. 6, 7, 8, 9, 10, and 11 is found primarily in the testimony and exhibits of Company witness Haigh and Public Staff witness Kent, Payne, and Stevie. After a review of these testimonies and exhibits, it is clear that the Applicant's requested rate increase would result in an unfair and unreasonable level of revenues and operating ratio.

Public Staff witness Stevie presented testimony recommending a structured method for examining rate requests of water and sewer companies and consequently employed this method in determining a reasonable operating ratio and rate of return for the Applicant. Dr. Stevie's testimony, in part, presents the results of research into the viability and applicability of various methods used in the regulatory process to determine the proper operating ratio or rate of return for small water and sewer utilities. This presentation included a formula for the determination of gross revenue requirements for water companies regulated under the operating ratio approach. Mathematically, this formula may be expressed as follows:

$$RR = O\&M + D + GRT + IT + r(O\&M + D)$$

Where:
- RR = revenue requirements
- O&M = operation and maintenance expense
- D = depreciation expense
- GRT = gross receipts tax
- IT = income tax
- r = rate of return

After determining the gross revenue requirements, Dr. Stevie simply divided total company outlays by total gross revenues to arrive at the proper operating ratio.

The Hearing Examiner agrees with Dr. Stevie's analysis that water companies with little or no rate base, such as Montclair Water Company, due to the reduction of investment by contribution in aid, should be regulated employing the operating ratio methodology. The Hearing Examiner also agrees with Dr. Stevie that there is some doubt in the regulatory environment as to an accepted definition and deployment of the operating ratio methodology. As to this point, the Hearing Examiner concludes that the operating ratio methodology presented by Dr. Stevie results in a fair and resonable operating ratio to both the Applicant and its ratepayers.

The Hearing Examiner's conclusion to adopt the operating ratio methodology put forth by Dr. Stevie should be explained further. The Hearing Examiner applauds the methodology in its utilization of a rate of return applied to expenses related to operations. This application is superior to other operating ratio methodologies in that a return is not calculated on expenses related to revenues (gross receipts and income taxes) and that the return is more clearly based on the regulator's evaluation of the Company's economic and financial position relative to the rest of the market.

The determination of the proper rate of return to be employed in the operating ratio methodology of Dr. Stevie must be studied carefully. Dr. Stevie's recommendation of a reasonable rate of return in this proceeding considers four factors:

1. The return must provide sufficient revenues for the firm to cover its interest expense;

2. In addition to the interest expense, the return should provide a return to stockholders;

3. The return should reflect current market conditions including investor expectations of inflation; and

4. Quality of service and efficiency of operation.

These tests of reasonableness are applied to the rate of return to determine if it is indeed the proper rate of return to be used in the instant proceeding. The rate of return is determined, under Dr. Stevie's methodology, by adding a risk adjustment to the risk-free rate. Dr. Stevie's calculation of a risk-free rate is based on an analysis of historic yields on Treasury notes. To this risk-free rate, Dr. Stevie added the risk premium associated with the firm of 3%.

In this proceeding, Dr. Stevie recommended a risk-free rate of 13.2% based on an average of the weekly five-year rates on Treasury notes from January 2, 1981, to April 24, 1981. Adding the risk premium of 3% to the 13.2%, Dr. Stevie derived his recommended rate of return of 16.2%, to be applied to operation and maintenance expenses in determining the Applicant's gross revenue requirements. After applying the tests of reasonableness recommended by Dr. Stevie and further analysis of the Hearing Examiner, it is concluded that the proper rate of return to be used in the operating ratio methodology adopted herein is 16.2%.

Using the methodology of Public Staff witness Stevie adopted herein, with the approved rate of return of 16.2% yields a gross revenue requirement for return of $61,333 on a combined basis. This equates to a gross revenue requirement for return on water operations of $33,205 and on sewer operations of $28,128.

The 16.2% rate of return approved herein, applied to the methodology of Dr. Stevie, will yield an operating ratio on a combined company basis of 87.45%. This equates to an operating ratio of 87.31% on water operations and 87.61% on sewer operations.

WATER AND SEWER

The following schedules present the Applicant's operating results under present and approved rates and operating ratio and revenue for return under approved rates:

MONTCLAIR WATER COMPANY, INC.
SCHEDULE OF OPERATING INCOME, PRESENT AND APPROVED RATES

	Present			Approved		
Item	Water	Sewer	Combined	Water	Sewer	Combined
Gross operating revenues	$208,741	$163,507	$372,248	$261,591	$226,303	$487,894
Operating expenses:						
Electric power for pumping	35,260	16,457	51,717	35,260	16,457	51,717
Other operation and maintenance expense	159,511	149,990	309,501	159,511	149,990	309,501
Interest on customer deposits	1,452	945	2,397	1,452	945	2,397
Annualization adjustment	2,936	2,391	5,327	2,936	2,391	5,327
Taxes - Gross receipts	8,350	9,810	18,160	10,464	13,578	24,042
- Miscellaneous	5,812	3,844	9,656	5,812	3,844	9,656
Income taxes	(1,100)	(4,787)	(5,887)	12,951	10,970	23,921
Total operating expenses	212,221	178,650	390,871	228,386	198,175	426,561
Net operating income	$ (3,480)	$(15,143)	$(18,623)	$ 33,205	$ 28,128	$ 61,333

MONTCLAIR WATER COMPANY
OPERATING RATIO AND RETURN SCHEDULE

Item	Water	Sewer	Combined
Total operating expenses	$204,971	$173,627	$378,598
Gross receipts tax	10,464	13,578	24,042
State and federal income taxes	12,951	10,970	23,921
Interest expense	-	87	87
Rate of return base [LN1]	204,971	173,627	378,598
Approved return	16.2%	16.2%	16.2%
Return requirement [LN6 x LN4]	33,205	28,128	61,333
Revenue requirement [L1 + L2 + L3 + L7]	$261,591	$226,303	$487,894
Operating ratio [(L1 + L2 + L3 + L4) ÷ L8]	87.31%	87.61%	87.45%

Since the Applicant's revenue requirements approved herein are different from that proposed by either of the parties, the Hearing Examiner concludes that the rates contained in Appendix A attached hereto are fair and reasonable, and result in the Applicant achieving the level of gross revenue requirements approved herein.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant be, and hereby is, allowed to increase its rates by $52,850 for water service and by $62,796 for sewer service in all of its service areas in North Carolina for service rendered on or after the effective date of this Order.

2. That the rate schedule on Appendix A attached hereto be, and hereby is, approved for service rendered on or after the effective date of this Order.

3. That a copy of Appendix A be sent to each customer with the next bill.

4. That the Applicant report in writing to this Commission on or before one year from the effective date of this Order, denoting all, if any, tank painting completed during the period, and itemizing all costs, if any.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of August 1981.

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

DOCKET NO. W-173, SUB 14

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Montclair Water Company for an Adjustment in Its Rates) ERRATA
and Charges Applicable to Water and Sewer in all Its Service Areas in) ORDER
North Carolina)

HEARING EXAMINER PANTON: It appearing that the rate schedule attached as Appendix A to the Recommended Order of August 3, 1981, did not reflect the Hearing Examiner's intent to approve both the requested increase in connection charges and the finance charge for late payment, and with due cause,

IT IS, THEREFORE, ORDERED as follows:

1. That the rate schedule on Appendix A attached hereto be, and hereby is, approved for service rendered on or after the effective date of the August 3, 1981, Recommended Order.

2. That the rate schedule on Appendix A attached hereto be, and hereby is, substituted for and replaces in the entirety the rate schedule attached as Appendix A to the August 3, 1981, Recommended Order.

3. That the directions in ordering paragraph 3 of the Recommended Order of August 3, 1981, be applied only to the rate schedule attached hereto as Appendix A.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of August 1981.

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

APPENDIX A
Montclair Water Company
All Service Areas in North Carolina
Water and Sewer Rate Schedule

METERED RATES: (Residential and Commercial):

Water:	Minimum charge (first 3,000 gallons).	$4.00
	Next 7,000 gallons.	.75 per 1,000 gallons
	All over 10,000 gallons.	1.00 per 1,000 gallons
Sewer:	Minimum charge (first 3,000 gallons).	$5.15
	All over 3,000 gallons.	.90 per 1,000 gallons

FLAT RATES: (Apartments, Mobile Homes, etc.)
Water: $4.00 per month per unit (whether or not unit is occupied)
Sewer: $5.10 per month per unit (whether or not unit is occupied)

STREET LIGHTING:
$1.00 per customer per month

CONNECTION CHARGE: (Payable by developers, per contract):

Water:	$200.00 tap fee	Sewer:	$150.00 tap fee
	$400.00 extension fee		$600.00 extension fee

RECONNECTION CHARGES:
If water service cut off by utility for good cause (NCUC Rule R7-20(f)): $4.00
If water service discontinued at customer's request (NCUC Rule R7-20(g)): $2.00
If sewer service cut off by utility for good cause (NCUC Rule R10-16(f)): $15.00

BILLS DUE: On billing date

BILLS PAST DUE: Fifteen (15) days after billing date

BILL FREQUENCY: Shall be monthly, for service in arrears

FINANCE CHARGE FOR LATE PAYMENT: 1% per month when unpaid 25 days after billing

RETURNED CHECK CHARGE: $5.00

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-173, Sub 14, effective August 24, 1981.

WATER AND SEWER

DOCKET NO. W-693, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
The Joint Application of Brandywine Bay Utility Company, Brandywine Bay Development Corporation and Brandywine Bay, Inc., for Permission to Transfer all of the Outstanding Shares of the Capital Stock of Brandywine Bay Utility Company to Brandywine Bay, Inc., and for Approval of Financing and Pledge of the Assets of Brandywine Bay Utility Company	) ORDER) APPROVING) TRANSFER OF) STOCK AND) PLEDGE OF) ASSETS

BY THE COMMISSION: On April 24, 1981, a Joint Application was filed by Brandywine Bay Development Corporation (hereinafter Development Corporation), Brandywine Bay, Inc., (hereinafter Owner), and Brandywine Bay Utility Company (hereinafter Utility Company), for permission to transfer all of the issued and outstanding shares of the capital stock of Utility Company from Development Corporation to Owner and for approval of the financing and pledge of the assets of the Utility Company as security for the indebtedness of Owner to the Development Corporation.

FINDINGS OF FACT

1. Owner has acquired from the Development Corporation at the price of One Million Seven Hundred Fifty Thousand Dollars ($1,750,000.00) 602 acres of land generally known as the Brandywine Bay Development, together with the water and sewer systems serving said lands, and the right to have transferred to Owner all of the issued and outstanding shares of the capital stock of Utility Company. The purchase price of the land and the Utility Company assets was a package deal and no specific allocation was made for Utility property.

2. Utility Company is franchised to serve Oak Bluff Subdivision in accordance with Order of this Commission in Docket No. W-693 dated April 23, 1979. Contiguous areas presently served by the Utility Company are The Villas Subdivision and the completed portions of Brandywine Bay Development. Owner is in process of developing the 602 acres aforesaid, all of which will be served by the Utility Company as development requires and to the extent practicable.

3. The lands heretofore conveyed to Owner, together with all of the sewer and water systems property now belonging to the Utility Company, real and personal, now are and until the indebtedness of Owner to the Development Corporation is paid in full will continue to be subject to the security interest of the Development Corporation for the balance owed the Development Corporation by Owner, which secured principal indebtedness, originally $1,300,000.00 as of April 1979, now reduced to $700,000.00, is current as to payments.

4. That in addition to approval of the existing security interest of the Development Corporation in the sewer and water systems property of Utility Company, Applicants desire approval for the pledge to the Development Corporation of the issued and outstanding capital stock of the Utility Company as additional security to the Development Corporation upon the transfer of said issued and outstanding capital stock of the Utility Company to the Owner.

5. That the Development Corporation acting through a ranking officer should be required to file an affidavit in this proceeding agreeing that in the event of acquisition on foreclosure by the Development Corporation of the assets of Utility Company, the Development Corporation would abide by all applicable statutes, rules and regulations governing a public utility with regard to the operation of the Utility Company.

6. That the existing financing and the transfer of the issued and outstanding shares of the capital stock of Utility Company to Owner from the Development Corporation and the pledge of the stock by Owner to the Development Corporation in no way will affect the presently satisfactory routine and emergency operations of the Utility Company.

7. That the existing financing of the assets of the Utility Company and the proposed transfer of the issued and outstanding shares of the capital stock of the Utility Company to the Owner and the pledge of such shares by the Owner to the Development Corporation as additional security for the existing indebtedness of the Owner in no way is detrimental to the Utility Company.

8. That no change in the rates of the Utility Company is proposed in the proceeding.

9. That by reason of the relationships among the Applicants through the evolution of the Utility Company, the books and records of all three Applicants should be available and subject to audit as to utility matters by the Commission and/or Public Staff Personnel if and when a future rate case should be filed for the Utility Company.

10. That the approval of financing requested in this proceeding, together with the stock transfer approval and the approval of pledge of the issued and outstanding shares of the capital stock of the Utility Company requested in this proceeding in themselves and standing alone shall not change the valuation of the property of the Utility Company for rate-making purposes.

11. That this proceeding proposes no adjustments of any kind which could be adverse to the consumers and ratepayers of the Utility Company.

12. That the public convenience and necessity will be served by the approval of the transfer of shares by the Development Corporation to Owner and by the approval of the existing financing and pledge of the shares of the Utility Company in conjunction with the financing and conveyance as security of the lands of the Owner served and to be served by the Utility Company.

CONCLUSIONS

There is a demand and need for water and sewer service in the franchised area previously granted to Brandywine Bay Utility Company and the extensions thereof. Brandywine Bay Utility Company is fit and able to continue to provide this service. The concerns of the Commission and Public Staff with regard to valuation for rate-making purposes and with regard to the operation of the utility in the event of the foreclosure can be met adequately.

IT IS, THEREFORE, ORDERED:

1. That the existing financing arrangement whereunder Brandywine Bay Development Corporation holds a security interest in the lands of Brandywine Bay, Inc., and in the real and personal properties of Brandywine Bay Utility Company hereby is approved.

2. That the transfer of all the issued and outstanding shares of Brandywine Bay Utility Company from Brandywine Bay Development Corporation to Brandywine Bay, Inc., is hereby approved.

3. That the pledge of all of the issued and outstanding shares of the capital stock of Brandywine Bay Utility Company as additional security to Brandywine Bay Development Corporation by Brandywine Bay, Inc., hereby is approved.

4. That the foregoing approval is subject to compliance by the various Applicants with the following conditions:

(a) That Brandywine Bay Development Corporation forthwith upon receipt of this Order file with the Commission an Affidavit signed by one of its ranking officers stating that in the event of acquisition upon foreclosure of the assets of Brandywine Bay Utility Company, Brandywine Bay Development Corporation will abide by all applicable statutes, rules and regulations governing a public utility in the operation of Brandywine Bay Utility Company.

(b) That each of the Applicants, Brandywine Bay Development Corporation, Brandywine Bay, Inc., and Brandywine Bay Utility Company, agree that the books of each of the corporations shall be subject to audit, as to utility matters, by the Commission and/or the Public Staff Personnel if and when a future rate case shall be filed by Brandywine Bay Utility Company.

5. That the approval of financing and the transfer of pledge of the shares of stock of Brandywine Bay Utility Company as contained herein and standing alone shall not change the valuation of the utility properties of Brandywine Bay Utility Company for rate-making purposes.

6. That the rates previously approved in Docket No. W-693 for Brandywine Bay Utility Company are to continue to remain in effect.

7. That this Order shall be in full force and effect upon, and only upon, receipt from each of the Applicants of written notice of acceptance to the terms and conditions of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of June 1981.

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

WATER AND SEWER

DOCKET NO. W-281, SUB 4

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Cregg Bess, Inc., 902 Bessemer City Road, Gastonia,) ORDER
North Carolina, for Authority to Transfer Water Utility Service in) REAFFIRMING
Farmwood, Forest Acres, and Lamar Acres, Tablerock and Park Place) BENCH
Subdivisions in Gaston County, North Carolina, from Bess Brothers) RULING
Water Works)

HEARD IN: Council Chambers, City Hall, Corner of South Street and Franklin Boulevard, Gastonia, North Carolina, on Thursday, April 23, 1981, at 9:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Applicants:

Morris W. Keeter and Julius T. Sanders, Sanders, Lafar & Keeter, Attorneys at Law, P. O. Box 1575, Gastonia, North Carolina 28052
For: Cregg Bess, Inc.

For the Intervenors:

Charles J. Katzenstein, Jr., Attorney at Law, 146 South Street, Gastonia, North Carolina 28052
For: Residents of Tablerock Subdivision

For the Public Staff:

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

BENNINK, HEARING EXAMINER: On February 11, 1981, Bess Brothers Water Works (Bess Brothers), as seller, and Cregg Bess, Inc., as buyer, filed a joint application with the North Carolina Utilities Commission seeking authority to transfer water utility service in the Farmwood, Forest Acres, Lamar Acres, Tablerock, and Park Place Subdivisions from Bess Brothers to Cregg Bess, Inc. All of the above-referenced subdivisions are located in Gaston County, North Carolina. The proposed water utility rates are the same as the rates presently being charged by Bess Brothers.

By Commission Order dated March 4, 1981, the application was scheduled for public hearing at 9:00 a.m., on April 23, 1981, in Gastonia, North Carolina, with the Applicants being required to give public notice of said proceeding. The official Commission file in this docket contains a notarized Certificate of Service which was filed with the Chief Clerk of this Commission on March 25, 1981, by Cregg Bess, Inc., stating that public notice of the hearing had been given as required by the above-referenced Commission Order.

On March 26, 1981, 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, Cregg Bess, Inc., the Public Staff, and the intervening residents of the Tablerock Subdivision (Intervenors) were present and represented by counsel. Testimony was offered by eleven (11) of the intervening residents of the Tablerock Subdivison with respect to the problems which said customers are continuing to experience with their water utility service. Cregg A. Bess, President of Cregg Bess, Inc., testified in support of the utility transfer application at issue in this docket. The Applicant also presented the testimony of Evelyn Anderson Jenkins. Tommy Ray Feemster, Sanitarian with the Gaston County Health Department, testified at the request of the Intervenors. The Public Staff presented testimony by James P. Adams, Environmental Engineer with the North Carolina Division of Health Services, and Andy Lee, Utilities Engineer with the Public Staff Water Division.

At the conclusion of the hearing, the Hearing Examiner, based upon a consideration of the entire record in this proceeding, issued a bench order requiring the Applicant to undertake and complete certain improvements with respect to the water systems in question by August 1, 1981, as a precondition to approval of the transfer application under consideration in this docket. This Order is now being issued to restate and reaffirm the bench order heretofore entered in this docket on April 23, 1981, by the Hearing Examiner.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant Cregg Bess, Inc., be, and the same is hereby, required to undertake all actions and improvements necessary in the Tablerock, Farmwood, Forest Acres, Lamar Acres, and Park Place Subdivisions to ensure that the water utility systems serving said subdivisions are brought into full compliance with all of the pertinent rules, regulations, and requirements governing same as established by the North Carolina Division of Health Services and the North Carolina Utilities Commission. The improvements required hereby shall be completed not later than August 1, 1981.

2. That the Applicant Cregg Bess, Inc., shall file monthly progress reports with the Commission beginning on May 1, 1981, detailing the actions which it has taken and what success it has experienced in complying with the requirements set forth in decretal paragraph number 1 above. Subsequent monthly progress reports shall be filed in this docket on or about June 1, 1981, and July 1, 1981, with a final report being due on or before August 3, 1981.

3. That the North Carolina Division of Health Services and the Public Staff be, and the same are hereby, requested to evaluate and monitor the monthly progress reports to be filed in this docket by the Applicant and to submit follow-up reports on or about the 15th day of each month, beginning on or about May 15, 1981, setting forth the results of their continued investigations into this matter.

4. That the Hearing Examiner shall retain jurisdiction of this matter pending the filing of a final report herein by the Applicant pursuant to decretal paragraph number 2 above.

5. That the Applicant Cregg Bess, Inc., be, and the same is hereby, granted temporary operating authority to provide water utility service in the Tablerock, Farmwood, Forest Acres, Lamar Acres, and Park Place Subdivisions pending issuance of a final Commission Order in this docket.

6. That the Applicant Cregg Bess, Inc., be, and the same is hereby, authorized to charge the following interim water utility rates pending final Commission action in this docket:

Tablerock, Farmwood, Forest Acres, and Lamar Acres Subdivisions

Metered Rates:

First	3,000 gallons per month	-	$5.00 minimum
Next	1,000 gallons per month	-	$1.00
All over	4,000 gallons per month	-	$0.10 per 100 gallons

Park Place Subdivision

Metered Rates:

First	3,000 gallons per month	-	$3.50 minimum
Next	1,000 gallons per month	-	$0.70
All over	4,000 gallons per month	-	$0.07 per 100 gallons

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of May 1981.

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

DOCKET NO. W-731

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Paul Jarrell, 1605 Broom Street, Lincolnton, North Carolina 28092, Operating a Public Water Utility in Modern Homes Estates Subdivision, Lincoln County, in Violation of the North Carolina Public Utilities Law) RECOMMENDED ORDER) DISMISSING SHOW) CAUSE PROCEEDING AND) CLOSING DOCKET

BENNINK, HEARING EXAMINER: This proceeding was instituted on October 14, 1980, when the North Carolina Utilities Commission issued a Show Cause Order whereby the Respondent, Paul Richard Jarrell, Jr., was directed to appear before the Commission on November 7, 1980, to show cause why the Commission should not find that he was operating as a "public utility" as defined in G.S. 62-3 by providing water utility service in the Modern Home Estates Subdivision located in Lincoln County, North Carolina. Respondent Jarrell was also directed to continue to operate the water utility system serving the Modern Home Estates Subdivision pending final Commission action in this matter.

Upon call of the matter for hearing at the appointed time and place, both the Respondent and the Public Staff were present and represented by counsel. The

Public Staff presented testimony by Andy Lee, Utilities Engineer with the Public Staff Water Division, and Curtis Carnes, a resident of the Modern Home Estates Subdivision. Respondent Jarrell testified in his own behalf. The Respondent also offered brief testimony by Houston D. Talbert, Jr., a retired contractor.

Subsequent to the hearing, the Hearing Examiner entered an Orderr in this docket on November 24, 1980, whereby the Respondent was authorized to charge and collect an interim water rate in the amount of $5.00 per month from each customer residing in the Modern Home Estates Subdivision pending final Commission action in this matter.

On March 23, 1981, the Hearing Examiner entered a further Order in this docket entitled "Recommended Order Declaring Public Utility Status and Requiring Submission of Application for Certificate of Public Convenience and Necessity."

On April 6, 1981, counsel for and on behalf of the Respondent filed certain Exceptions to the above-referenced Recommended Order. However, on April 9, 1981, a letter (which was treated as a motion) was filed with the Commission by Respondent's attorney whereby the Commission was requested to conduct a further investigation in this matter for the purpose of ascertaining whether the customers of the water system in question would be willing to purchase said water system from the Respondent. Accordingly, the Commission issued an Order on April 14, 1981, whereby the Public Staff was requested to conduct a further investigation in conformity with Respondent's above-described letter-motion and to file a report with the Commission detailing the results of such further investigation.

On April 30, 1981, the Public Staff filed a report with the Commission wherein it was stated that Respondent's customers had decided to form a homeowner's association for the purpose of purchasing the water system in question from Mr. Jarrell and that said homeowners had, in fact, offered to purchase said system from Mr. Jarrell for $2,000, which offer had been accepted by the Respondent.

On October 28, 1981, the Public Staff filed a further report in this docket which, as a part thereof, included a letter dated October 15, 1981, which was signed by Curtis B. Carnes as President of the Modern Home Estates Water Corporation, a non-profit corporation which had been formed by Respondent's customers to purchase and operate the water system in question. In his letter, Mr. Carnes set forth the following statements in pertinent part:

> "Enclosed is a copy of our Deed dated the 1st day of June, 1981 for Modern Home Estates Water Corporation.
>
> "We have settled with Mr. Paul Jarrell in this matter and have gotten our Corporate Seal and Test Water Number for our monthly water analysis. We also have our easement papers and Corporation By-Laws.
>
> "We believe this information will be enough to enable you to close your official file in this matter." (Emphasis added).

A careful consideration of all of the foregoing leads the Hearing Examiner to conclude that the show cause proceeding heretofore instituted in this docket

against Paul Richard Jarrell, Jr., the Respondent herein, should be dismissed and that the docket should be closed for the reason that Mr. Jarrell is no longer operating as a de facto "public utility" in North Carolina since the water system in question has been transferred to the Modern Home Estates Water Corporation, a non-profit organization serving only its own members.

IT IS, THEREFORE, ORDERED as follows:

1. That the show cause proceeding initiated in this docket against Paul Richard Jarrell, Jr., by Commission Order dated October 14, 1980, be, and the same is hereby, dismissed.

2. That this docket be, and the same is hereby, closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of November 1981.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

1981 ANNUAL REPORT

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Piedmont Natural Gas Company, Inc.
G-9, Sub 211 (6-30-81) (Allowing Installation of Pipeline)
G-9, Sub 212 (12-14-81) (Denying Motion Filed by Propane Dealers)
G-9, Sub 216 (11-24-81) (Approving Refund Plan)

Public Service Company of North Carolina, Inc.
G-5, Sub 154 (4-29-81) (Approving Change in Rules and Regulations)
G-5, Sub 159 (11-24-81) (Approving Refund Plan)

IV. HOUSING AUTHORITY

A. Certificates Granted
H-17, Sub 1 (3-23-81) (Lexington Housing Authority)
H-22, Sub 2 (5-27-81) (Henderson Housing Authority)

H-26, Sub 1 (1-7-81) (City of Charlotte)
H-41, Sub 2 (4-7-81) (City of Raleigh)

V. MOTOR BUSES

A. Abandonment/Discontinuance of Service
B-233, Sub 6 (5-22-81) Safety Transit Lines
B-79, Sub 21 and B-69, Sub 128 (6-24-81) Seashore Transportation Company and Trailways Southeastern Lines, Inc.

B. Applications Dismissed/Denied
B-362 (2-6-81) Asheville Carriage Service, Inc.

C. Broker's License
B-344 (1-20-81) Hospitality Tours
B-361 (1-23-81) Manning Tours, Inc.
B-364 (4-28-81) New Bern Guided Tours
B-305, Sub 1 (1-28-81) Tours of the Lower Cape Fear, Inc.
B-353 (1-19-81) Town and Country Tours, Ltd.
B-367 (7-30-81) Travel Time of Salisbury
B-371 (12-18-81) Treasure Circuit
B-351, Sub 1 (12-18-81) Western Carolina Tours, Inc.

D. Certificates Cancelled
B-356 (1-5-81) Boone Transit, Inc.
EB-51 (1-17-81) Roy Lee Huneycutt
EB-534 (5-21-81) I'Mabus of Charlotte Corp.
EB-638 (4-24-81) Rosman Bus Line
EB-673 (9-9-81) James Lindberg Sessoms

E. Name Change
B-339, Sub 2 (8-31-81) Lake Gaston Bus Service

F. Sales and Transfers
B-366 (7-21-81) American Charters, Ltd., from Shelby Bus Lines, Inc.
B-362, Sub 1 (12-18-81) Asheville Carriage Service, Inc., from Western Carolina Tours
B-363 (4-10-81) Piedmont Tours and Charters Incorporated from Piedmont Bus Lines, Inc.; Errata (4-14-81)

G. Miscellaneous
B-366 (5-29-81) American Charters, Ltd. (Granting Temporary Authority)

Carolina Coach Company
B-15, Sub 184 (9-23-81) (Allowing Revised Schedules and Cancel Hearing)
B-15, Sub 185 (10-9-81) (Granting Petition to Revise Schedules)

B-98, Sub 10 (10-2-81) D & M Bus Company (Allowing Withdrawal of Tariff Filing to Discontinue Schedules, Cancelling Hearing, and Closing Docket)

Greyhound Lines, Inc.
B-7, Sub 95 6-17-81) (Establishing Separate Passenger Bus Station in Asheville)
B-7, Sub 96 (11-18-81) (Removing Restriction Between Raeford and Fayetteville)

B-105, Sub 39 (2-16-81) Intercity Motor Passenger Carriers (Appointment of Representative to Market Study Advisory Committee)
B-82, Sub 16 (8-19-81) Silver Fox Lines (Cancelling Hearing)

Trailways Southeastern Lines, Inc.
B-69, Sub 129 (8-12-81) (Cancelling Hearing and Closing Docket)
B-69, Sub 131 (10-9-81) (Granting Petition to Revise Schedules on a Temporary Basis)

B-373 (12-29-81) Country Cottage Tours (Granting Temporary Authority)
B-371 (11-17-81) Treasure Circuit (Cancelling Hearing)
B-365 (5-13-81) Tri-State Bus Company (Granting Temporary Authority)

VI. MOTOR TRUCKS

A. Applications Denied, Dismissed, or Withdrawn
T-1979, Sub 1 (11-3-81) Ace Transport, Ltd.
T-2116 (5-20-81) D & D Mobile Home Repairs
T-2069 (5-27-81) Hailey & Son Trucking and Leasing, Inc.
T-2148 L.W. Roach Co. (12-22-81)
T-1974, Sub 1 (5-1-81) McLaurin Trucking Company, Inc.
T-2089 (4-28-81) National Electronics Transit Corporation of North Carolina, Inc.
T-804, Sub 20 (7-7-81) O'Boyle Tank Lines, Inc.
T-2118 (5-27-81) Ray, Franklin D.
T-2095 (3-18-81) Stephens, Daniel Edward
T-1994, Sub 1 (9-23-81) Waco Drivers Service, Inc.
T-2137 (8-5-81) Watson, Frank R.

B. Authority Granted - Common Carrier
T-2109 (6-12-81) A-1 Wrecker Service of Chatham County, Inc. (Recommended)
T-22 Sub 5 (12-9-81) A.V. Debmon Trucking, Inc.
T-2140 (10-21-81) Big King Mobile Home Sales
T-2120 (6-5-81) Blue Bird - Diamond Cab Association (Recommended)
T-407, Sub 7 (9-23-81) Blue Ridge Trucking Company
T-2093 (1-28-81) Boward Truck Line, Inc. (Recommended)
T-1930, Sub 1 (11-3-81) Bralley-Willett Tank Lines, Inc. (Recommended); Clarifying Order (11-12-81)
T-1638, Sub 5 (3-4-81) Builders Transport, Inc. (Recommended)
T-281, Sub 3 (8-28-81) Byrd Motor Line, Inc.
T-2096 (3-4-81) C & H Transportation Company, Inc. (Recommended)
T-2036, Sub 1 (1-7-81) C & N Evans Trucking Company, Inc. (Recommended)
T-2077, Sub 1 (10-16-81) Campbell, Cecil S.
T-2097 (3-18-81) Carlyle Brothers Trucking (Recommended)
T-541, Sub 3 (9-25-81) Carpenter Trucking Company, Inc.
T-779, Sub 6 (8-13-81) Carr Transport, Inc.
T-2119 (7-29-81) Coley's Welding Service, Inc. (Recommended)
T-304, Sub 9 (9-25-81) Columbus Motor Lines, Inc.
T-2098 (3-13-81) Cooley Transport, Inc. (Recommended)
T-299, Sub 4 (5-19-81) Dixie Trucking Company, Inc. (Recommended)
T-2031, Sub 1 (3-3-81) East Spencer Moving Corporation, The (Recommended)
T-1889, Sub 6 (10-16-81) Eastern Delivery Service, Inc.
T-2103, Sub 1 (8-28-81) Electric Transport, Inc.
T-676, Sub 8 (5-15-81) Estes Express Lines (Recommended)
T-645, Sub 18 (2-16-81) Fredrickson Motor Express Corporation (Recommended)

T-645, Sub 18 (12-9-81) Fredrickson Motor Express Corporation (Cancelling Hearing)
T-2150 (12-2-81) Hendley, Grover Gerald
T-125, Sub 10 (8-28-81) Goldston Transfer, Inc.
T-2125 (8-28-81) Land of the Sky Delivery Service
T-2086 (1-26-81) Lorraine Transporters (Recommended)
T-1613, Sub 6 (1-9-81) M.L. Hatcher Pickup and Delivery Service, Inc. (Recommended)
T-2145 (10-21-81) McMillan Crane Service, Inc.
T-2099 (6-26-81) Metro Transport Company, Inc. (Recommended); Amendment (6-30-81)
T-2114 (6-15-81) McKinney, James
T-368, Sub 10 (1-2-81) Mid-State Delivery Service, Inc. (Recommended)
T-208, Sub 34 (12-9-81) Overnight Transportation Company
T-2146 (9-30-81) PDC Trucking Company
T-1776, Sub 1 (1-21-81) Piedmont Delivery Service, Inc. (Recommended)
T-1906, Sub 2 (2-27-81) Regional Storage & Transport, Inc. (Recommended)
T-1895, Sub 1 91-2-81) Russell Transfer, Inc. (Recommended)
T-2128 (7-29-81) Skyline Transportation, Inc.
T-2079, Sub 1 (8-28-81) Western Carolina Express, Inc.

C. Authority Granted - Contract Carrier
T-2156 (8-31-81) Aluminum Distribution Company
T-2101, Sub 1 (6-12-81) Arnold Erection Company (Recommended)
T-18009, Sub 2 (11-18-81) A.T. Nichols Trucking Company, Inc.
T-2104 (8-28-81) B.I. Transportation, Inc.
T-2130 (8-28-81) Baker Transport, Inc.
T-2172 (12-17-81) Brothers, Jack Wayne
T-504, Sub 9 (10-16-81) Bruce Johnson Trucking Company, Inc.
T-2144 (9-10-81) C.S. Transport, Inc.
T-2117 (8-28-81) Callicutt Enterprises, Inc.
T-2077 (5-22-81) Campbell, Cecil S. (Recommended)
T-1743, Sub 2 (8-28-81) Carolina Taxi and Industrial Transportation, Inc.
T-2141 (11-18-81) Cencar Services, Inc. (Recommemded)
T-2126 (8-13-81) Central Feeds, Inc.
T-1791, Sub 2 (5-28-81) Commercial Couriers, Inc. (Recommended)
T-2107 (6-10-81) Cornatzer, Connie (Recommended)
T-1995, Sub 1 (1-27-81) Cresco Lines, Inc. (Recommended)
T-2121 (7-14-81) Davidson, Robert (Recommended)
T-299, Sub 5 (12-10-81) Dixie Trucking Company
T-1922, Subs 1 and 2 (1-5-81) East Carolina Cartage Company (Recommended)
T-2103 (4-27-81) Electric Transport, Inc. (Recommended)
T-2132 (7-29-81) Essick, Ike C.
T-2110 (9-10-81) HFCS Transport Company
T-2111 (6-4-81) H&S Truck Service (Recommended)
T-2048, Sub 1 (7-14-81) Harris, William Lester (Recommended)
T-2082 (3-18-81) Jackson Trading Company, Inc. (Recommended)
T-2124 (6-10-81) Johnson, Richard Kim (Recommended)
T-2106 (5-6-81) KFM Transport, Inc. (Recommended)
T-2153 (11-18-81) K & W Enterprises, Inc.
T-1682, Sub 3 (1-14-81) Kindle's Pick-Up and Delivery Service, Inc. (Recommended)
T-2027, Sub 3 (2-23-81) Kugler, George W., Inc. (Recommended)
T-2101 (2-27-81) L. U. Carriers, Inc. (Recommended)
T-2112 (6-19-81) Piedmont Paper Stock Company, Inc. (Recommended)
T-2080 (4-13-81) Richmond-Norfolk Transport, Inc. (Recommended)

T-2067, Sub 1 (9 25-81) Riggan, George E.
T-1745, Sub 2 (10-21-81) Russ Transport, Inc.
T-2092 (1-26-81) Sam Winston Jones (Recommended)
T-2017 (5-27-81) Silver Trucking (Recommended)
T-2164 (12-16-81) Smith, Bobby B.
T-2151 (11-18-81) Stiller, James Richard
T-2149 (11-18-81) Tahweelan Express, Inc.
T-2134 (8-28-81) Trans World Oil Corporation
T-2042 (4-13-81) 2800 Corporation (Recommended)
T-2113 (6-11-81) UTF Carriers, Inc. (Recommended)

D. Hearings Cancelled@
T-1809, Sub 2 (10-21-81) A.T. Nichols Trucking Company, Inc.
T-22, Sub 5 (11-19-81) A.V. Debmon Trucking, Inc.
T-2104 (7-30-81) B.I. Transportation, Inc.
T-407, Sub 7 (8-6-81) Blue Ridge Trucking Company
T-504, Sub 9 (9-17-81) Bruce Johnson Trucking Company, Inc.
T-2077, Sub 1 (7-30-81) Cecil S. Campbell
T-2140 (7-30-81) C&T Enterprises, Inc.
T-541, Sub 3 (9-3-81) Carpenter Trucking Company, Inc.
T-1268, Sub 6 (12-8-81) Coley Moving & Storage, Inc.
T-304, Sub 9 (9-11-81) Columbus Motor Lines, Inc.
T-299, Sub 5 (11-18-81) Dixie Trucking Company, Inc.
T-1889, Sub 6 (9-22-81) Eastern Delivery Service, Inc.
T-2103, Sub 1 (7-14-81) Electric Transport, Inc.
T-2132 (7-15-81) Essick, Ike C.
T-2159 (12-21-81) Gene Inman Trucking
T-2150 (11-10-81) Hendley, Grover Gerald
T-2155 (11-16-81) Johnson Beverage Company, Inc.
T-825, Sub 268 (12-3-81) Kallam Transfer Co., Inc.
T-2153 (11-16-81) K & W Enterprises, Inc.
T-1516, Sub 3 (12-10-81) Lower Creek Mobile Home Park
T-2154 (11-16-81) Lumbee Trucking Company, Inc.
T-2145 (8-26-81) McMillan Crane Service, Inc.
T-2147 (9-14-81) Medley, Floyd M.
T-208, Sub 34 (11-9-81) Overnite Transportation Company
T-2146 (9-29-81) PDC Trucking Company
T-2142 (8-11-81) Rowan Freight Company
T-1745, Sub 2 (9-11-81) Russ Transport, Inc.
T-2151 (11-6-81) Stiller, James Richard
T-2134 (7-30-81) Tahwheelalen Express, Inc.
T-2134 (7-30-81) Trans World Oil Corporation
T-2079, Sub 1 (8-12-81) Western Carolina Express, Inc.

E. Certificates/ Permits Amended
T-24, Sub 5 (5-7-81) A.G. Boone Company, The (Recommended)
T-125, Sub 10 (7-14-81) Goldston Transfer, Inc.
T-2026, Sub 2 (5-21-81) Tobacco Transport
T-2085, Sub 1 (4-6-81) West Brothers Transfer and Storage, Hauling and Storage Division, Inc.

F. Certificates Cancelled
Bailey, James A., Inc.
T-1841, Sub 1 (5-29-81)
T-1841, Sub 1 (5-31-81)

T-2005, Sub 1 (11-23-81) Bruner Transfer and Storage, Inc.
T-1941, Sub 2 (4-14-81) Donnie A. Dixon, Inc.
T-2069 (6-16-81) Hailey & Son Trucking and Leasing, Inc.
T-2041 (1-5-81) Pembroke Trucking Company, Inc.
T-132, Sub 8 (9-8-81) Petroleum Transportation, Inc.
T-1742, Sub 1 (1-28-8) Stewart, Henry Carl
T-132, Sub 8 (9-8-81) Petroleum Transportation, Inc.
T-1973, Sub 1 R.L. Stowe Mills
T-1510, Sub 6 (5-13-81) United Limestone Products, Inc.

G. Certificates Reinstated
T-1475, Sub 1 (1-13-81) Wilson Freight Company

H. Complaints
T-263, Sub 9 (5-28-81) Proctor & Gamble Distributing Company, The; (10-27-81) Order Closing Docket

I. Leases
T-2157 (10-29-81) American Trailer Haul, Incorporated

J. Mergers
T-127, Sub 16 (10-29-81) Kenan Transport Company
T-2115 (5-6-81) Morris Oil Company

K. Name Change
T-951, Sub 10 (9-28-81) Burnham Van Service, Inc.
T-948, Sub 7 (3-19-81) Central Warehouse Company of Durham, Inc.
T-1896, Sub 1 (8-20-81) Distribution Service Systems, Inc.
T-2138 (10-9-81) Hodges Transfer and Storage
T-2139, Sub 1 (9-2-81) Oak Hill Mobile Home Movers
T-1603, Sub 2 (6-5-81) S & R Wrecker Service, Inc.
T-315, Sub 3 (1-13-81) Standard Trucking Company

L. Rates
Motor Common Carriers - T-825, Sub 263 (6-5-81); T-825, Sub 264 (7-10-81); Final Order (7-10-81); T-825, Sub 266 (9-30-81)
Emergency Fuel Surcharge - T-825, Sub 248 (3-12-81); T-825, Sub 248 (3-3-81); T-825, Sub 248 (3-3-81); T-825, Sub 248 (3-12-81); T-825, Sub 248 (Errata) (3-16-81); T-825, Sub 248 (3-16-81) Errata; T-825, Sub 248 (3-30-81); T-825, Sub 248 (4-10-81); T-825, Sub 248 (4-30-81)

Citizen Express, Inc.
T-68, Sub 13 (1-20-81) (Recommended)
T-68, Sub 13 (1-20-81)

Morgan Drive Away, Inc.
T-1069, Sub 6 (8-4-81) (Recommended)
T-1069, Sub 6 (8-10-81)

T-1436, Sub 3 (12-15-81) Fleet Transport Company, Inc.
T-1367, Sub 9 (5-15-81) Schwerman Trucking Company
T-1317, Sub 18 (5-7-81) United Parcel Service, Inc.

M. Sales and Transfers
T-2152 (10-29-81) Arndt Trucking, Inc.
T-2102 (4-6-81) Arnold Erection Company; Errata (4-9-81)

T-1012, Sub 8 (10-5-81) Barnett Truck Lines, Inc.
T-1952, Sub 1 (9-9-81) Borders Mobile Home Movers
T-2100 (2-6-81) Broglin's Delivery Service
T-2127 (7-15-81) Caldwell Freight Lines, Inc.; Errata (7-21-81)
T-2131 (8-13-81) Carl's Mobile Home Service
T-2133 (8-10-81) C.L.P. Enterprises
T-2084 (2-6-81) Decato Bros., Inc.
T-1828, Sub 1 (10-29-81) Federated Transport, Inc.
T-2138 (8-19-81) Hodges Brothers
T-2038, Sub 1 (8-20-81) K. B. D. Services, Inc.
T-200, Sub 9 (7-15-81) Martin Transport Co., Inc.
T-2105 (10-27-81) Mercer's Moving & Hauling
T-2108 (3-27-81) North American Van Lines, Inc.
T-2139 (8-12-81) Oak Hill Homes, Inc.
T-1887, Sub 1 (2-6-81) Rucker Transfer & Storage, Inc.
T-2094 (2-6-81) Stephenson's Mobile Transport
T-1981, Sub 1 (2-25-81) Wilson Trucking Corporation

N. Securities
T-192, Sub 7 (7-28-81) Pilot Freight Carriers, Inc.
T-920, Sub 6 (7-15-81) Winston Movers, Inc.

O. Tariffs
T-825, Sub 260 (3-3-81) Dixie Trucking Company, Inc.
T-825, Sub 267 (10-30-81) Motor Common Carrier of Tobacco

P. Miscellaneous
Motor Common Carriers
T-825, Sub 262 (3-27-81) (Denying Petition)
T-825, Sub 240 (10-7-81) (Approving Substitution of Cost Carriers)

Rates - Truck - T-825, Sub 257 (4-2-81) (Adopting Uniform Allocations Method)

T-1883 and T-1738, Sub 1 (7-17-81) Camel Service Company (Terminating Lease and Granting Authorized Suspension of Operations)
T-1791, Sub 2 (7-28-81) Commercial Couriers, Inc. (Overruling Exceptions and Affirming Recommended Order - Final)
T-1694, Sub 2 (8-4-81) Hopkins, D.O., Trucking Incorporated (Rescinding Authorized Suspension of Operations)
T-2086 (4-14-81) Lorraine Transporters (Denying Motion for Reconsideration and Reaffirming Recommended Order)
T-825, Sub 265 (6-3-81) Motor Carriers Traffic Association, Inc., Agent (Granting Approval of Joint Rate Agreement)
T-192, Sub 7 (7-15-81) Pilot Freight Carriers, Inc. (Approving Change of Control)
T-2110 (7-21-81) Sommerhauser, Peter M. (Amending Application and Allowing Protest Withdrawal)
T-2137 (7-21-81) Watson, Frank R. (Granting Intervention and Denying Request for Temporary Authority)

VII. RAILROADS

A. Closing Docket
R-66, Sub 125 (9-2-81) Rail Common Cariers
R-29, Sub 362 (10-23-81) Southern Railway Company

B. Open and Prepay Tariffs
Southern Railway Company
R-29, Sub 354 (6-11-81) (Remove Station at Shepherds)
R-29, Sub 358 (11-2-81) (Remove Station at Ellerson)
R-29, Sub 359 (8-13-81) (Remove Station at Hewitt)
R-29, Sub 365 (11-13-81) (Remove Station at Majolica)

C. Mobile Agency Concept
Seaboard Coast Line Railroad Company
R-71, Sub 15 (8-21-81)
R-71, Sub 20 (8-21-81)
R-71, Sub 94 (8-21-81)
R-71, Sub 101 (11-3-81)
R-71, Sub 105 (12-2-81)
R-71, Sub 108 (12-7-81)

Southern Railway Company
R-29, Sub 325 (1-30-81)

D. Agency Stations - Discontinued
R-4, Sub 139 (10-31-81) Norfolk Southern Railway Company

E. Sidetracks and Team Tracks
Norfolk Southern Railway Company
R-4, Sub 138 (1-21-81)
R-4, Sub 140 (11-2-81)

Seaboard Coast Line Railroad Company
R-71, Sub 96 (3-19-81)
R-71, Sub 97 (6-11-81)
R-71, Sub 98 (11-2-81)
R-71, Sub 99 (11-2-81)
R-71, Sub 100 (11-2-81)
R-71, Sub 102 (11-13-81)
R-71, Sub 103 (11-16-81)
R-71, Sub 106 (11-24-81)
R-71, Sub 107 (11-24-81)

Southern Railway Company
R-29, Sub 299 (5-12-81)
R-29, Sub 321 (3-19-81)
R-29, Sub 331 (5-14-81)
R-29, Sub 336 (1-16-81)
R-29, Sub 340 (1-20-81)
R-29, Sub 341 (1-20-81)
R-29, Sub 343 (3-27-81)
R-29, Sub 344 (4-10-81)
R-29, Sub 346 (4-30-81)
R-29, Sub 348 (5-8-81)
R-29, Sub 349 (11-2-81)
R-29, Sub 351 (10-13-81)
R-29, Sub 352 (6-11-81)
R-29, Sub 353 (5-27-81)
R-29, Subs 355 and 356 (6-11-81)
R-29, Sub 357 (5-29-81)
R-29, Sub 363 (10-16-81)

R-29, Sub 366 (10-16-81)
R-29, Sub 368 (10-19-81)
R-29, Sub 369 (10-20-81)
R-29, Sub 370 (10-20-81)
R-29, Sub 371 (10-16-81)
R-29, Sub 373 (10-20-81)
R-29, Sub 374 (11-25-81)
R-29, Sub 376 (11-2-81)
R-29, Sub 378 (11-6-81)
R-29, Sub 380 (11-25-81)
R-29, Sub 381 (12-31-81)
R-29, Sub 382 (12-3-81)
R-29, Sub 383 (12-31-81)
R-29, Sub 388 (12-31-81)
R-29, Sub 389 (12-31-81)

F. Miscellaneous
R-9, Sub 3 (6-29-81) Alexander Railroad Company (Granting Petition to Remove Depot Building at Hiddenite)
R-71, Sub 26 (3-18-81) Seaboard Coast Line Railroad Company (Granting Application to Replace Mobile Van with Radio-Equipped Automobile - Jacksonville Mobile Agency)

Southern Railway Company
R-29, Sub 347 (4-21-81) (Allowing Request for Relief from Filing Annual Reports)
R-29, Sub 372 (12-14-81) (Allowing Withdrawal of Petition)

VIII. TELEPHONE

A. Complaints
P-31, Sub 111 (8-25-81) Carter, Lillie V. vs. Lexington Telephone Company
P-7, Sub 659 (11-3-81) Hopkins, Grover P. vs. Carolina Telephone & Telegraph Company
P-126, Sub 3 (2-4-81) Johnston County Health Department vs. Coastal Carolina Communications, Inc.
P-55, Sub 791 (6-10-81) Meyer, Theodore vs. Southern Bell Telephone and Telegraph Company
P-19, Sub 183 (7-17-81) NTS Research Corporation vs. General Telephone Company of the Southeast

B. Rates
P-7, Sub 652 (4-16-81) Carolina Telephone and Telegraph Company
P-10, Sub 400 (9-8-81) Central Telephone Company
P-61, Sub 62 (12-9-81) Randolph Telephone Company
P-55, Sub 784 (4-15-81) Southern Bell Telephone and Telegraph Company
P-78, Sub 48; P-58, Sub 121 (12-2-81) Western Carolina Telephone Company and Westco Telephone Company

Western Union Telegraph Company
WU-106 (2-25-81)
WU-108 (8-5-81)
WU-109 (5-13-81)
WU-109 (5-18-81)

C. Securities
P-110, Sub 12 (8-6-81) Anser-Quik Enterprises, Inc.
P-12, Sub 78 (1-19-81) Citizens Telephone Company
P-126, Sub 4 (11-13-81) Coastal Carolina Communications, Inc.

Mid-Carolina Telephone Company
P-118, Sub 20 (5-13-81)
P-118, Sub 23 (9-30-81)
P-118, Sub 24 (11-24-81)

P-61, Sub 63 (11-24-81) Randolph Telephone Company
P-53, Sub 44 (5-13-81) Sandhill Telephone Company
P-58, Sub 119 (3-5-81) Western Carolina Telephone Company

D. Extended Area Service
P-10, Sub 386 (9-14-81) Central Telephone Company and Carolina Telephone and Telegraph Company; Errata (9-16-81)

Central Telephone Company
P-10, Sub 392 (5-27-81)
P-10, Sub 392 (9-14-81)

P-55, Sub 786 (12-3-81) Southern Bell Telephone and Telegraph Company

E. Service Areas
P-110, Sub 13 (11-12-81) Anser-Quik Enterprises, Inc.
P-55, Sub 789; P-118, Sub 19 (6-23-81) Mid-Carolina Telephone Company
P-16, Sub 136 (6-1-81) Concord Telephone Company

F. Tariffs
P-10, Sub 386 (7-8-81) Central Telephone Company and Carolina Telephone and Telegraph Company

Central Telephone Company
P-10, Sub 396 (1-6-81)
P-10, Sub 405 (8-10-81)

General Telephone of the Southeast
P-19, Sub 182 (11-25-81)
P-19, Sub 184 (12-21-81)

Southern Bell Telephone and Telegraph Company
P-55, Sub 788 (3-3-81)
P-55, Sub 793 (7-15-81)
P-55, Sub 795 (12-21-81)

P-78, Sub 47 (6-10-81) Westco Telephone Company
P-58, Sub 117 (6-10-81) Western Carolina Telephone Company
WU-109 (10-8-81) Western Union

G. Miscellaneous
P-75, Sub 24 (4-17-81) Barnardsville Telephone Company and Southern Bell Telephone and Telegraph Company (Closing Docket)
P-10, Sub 392 (9-17-81) Mid-Carolina Telephone Company (Closing Docket)

Central Telephone Company
P-10, Sub 397; P-10, Sub 400 (2-4-81) (Closing Docket No. P-10, Sub 397)
P-10, Sub 403 (3-13-81) (Approval of Customer Calling Features)
P-10, Sub 400 (12-21-81) (Ruling on Exceptions and Reconsideration of Panel Order)

IX. WATER AND SEWER

A. Applications Denied/Dismissed/or Withdrawn
W-201, Sub 22 (1-16-81) Touch and Flow Water System
W-406, Sub 2 (10-26-81) Springdale Water Company

B. Certificates Cancelled
W-510, Sub 5 (2-27-81) H & A Water Services, Inc.
W-323, Sub 3 (12-7-81) Hanover Services, Inc.
W-287, Sub 3 (2-26-81) Howard Hills Water Company, Inc.
W-713, Sub 1 (8-15-81) Jones, James A.
W-62, Sub 2 (10-2-80) Keistler Water Works, Inc.
W-363, Sub 2 (1-27-81) Pierce, Heavner, & Jenkins Builders, Inc.

C. Certificates Granted
W-365, Sub 11 (11-19-81) Bailey's Utilities, Inc.

W-732 (4-22-81); Errata (5-4-81) Brown, E.S.

Carolina Water Service, Inc.
W-354, Sub 17 (10-20-81)
W-354, Sub 18 (12-15-81)

Flat Mountain Estates Water Systems, Inc.
W-726 (4-1-81)
W-726 (4-17-81)

W-725 (2-19-81); Errata (2-20-81) Fox Fire Water System

W-737 (5-14-81) Gaston Builders, Inc.
W-691, Sub 10 (4-22-81) Glendale Water, Inc.
W-369, Sub 6 (8-18-081) Goose Creek Utility Company
W-80, Sub 16 (1-26-81) Hensley Enterprises, Inc.

Huffman, H.C.
W-95, Sub 8 (1-20-81)
W-95, Sub 9 (9-9-81)

W-176, Sub 3 (7-9-81) Lewis Water Company, Inc.

Model Enterprises, Inc.
W-728 (2-16-81)
W-728 (3-3-81)

W-742 (5-26-81) Mount Mitchell Lands, Inc.
W-733 (2-19-81) S M R E Water System
W-314, Sub 19 (9-9-81) Surry Water Company, Inc.
W-741 (4-15-81) Tart's Investment Corporation
W-673, Sub 8 (1-20-81) Tee Utilities, Inc.
W-201, Sub 24 (9-21-81) Touch and Flow Water Systems

W-740 (3-23-81) Viking Utilities Corporation
W-738 (4-14-81) Water Service Company
W-735 (4-7-81) Woods Water Works, Inc.
W-744 (5-14-81) Zemosa Acres

D. Complaints
W-563, Sub 1 (5-12-81) Graber, William E., et al., vs. Steddy Durbin Parris, Jr.
W-43, Sub 15 (12-10-81) Residents of Iris Garden Subdivision vs. Lafayette Water Corporation
W-102, Sub 6 (9-23-81) Melinski, Barbara, et al., vs. Chimney Rock Water Works
W-262, Sub 20 (3-23-81) Miller, William B. et al., vs. Piedmont Construction & Water Company
W-678, Sub 1 (7-14-81) Tulloss, William C., et al., vs Forest Trails Utility, Inc.
W-198, Sub 13 (8-4-81) Willoughby, Gloria, and Phil, vs. Mercer Environmental Corporation

E. Rates
W-336, Sub 1 (10-14-81) Anderson Creek Water Company

Bailey's Utilities, Inc.
W-365, Sub 8 (8-6-81)
W-365, Sub 8 (12-18-81)

W- 641, Sub 1 (11-12-81) B.E. Matthews Construction Company, Inc.

W-169, Sub 18 (4-23-81) Cumberland Water Company

W-439, Sub 2 (2-20-81) East Federal Savings and Loan Association
W-87, Sub 6 (2-10-81) Frances S. Faw Water System of Catawba County
W-77, Sub 5 (10-20-81) Foreman Water Supply
W-691, Sub 9 (5-1-81) Glendale Water, Inc. and Crowsdale Water, Inc.

G.F. Company
W-271, Sub 2 (3-24-81)
W-271, Sub 3 (12-30-81)

Goose Creek Utility Company
W-369, Sub 7 (10-29-81)
W-369, Sub 7 (11-17-81)

W-454, Sub 2 (8-5-81) Glynwood Mobile Home Park

Hare, John E.
W-417, Sub 2 (5-29-81)
W-417, Sub 2 (6-10-81)

W-510, Sub 6 (4-30-81) H & A Water Service, Inc.
W-630, Sub 1 (5-20-81) Harmony Heights Water Company
W-274, Sub 27 (1-22-81) Heater Utilities, Inc.
W-592, Sub 2 (7-9-81) Helms Water Company
W-61, Sub 14 (12-9-81) High Meadows Water & Utilities, Inc.
W-472, Sub 3 (11-12-81) Honeycutt, Wayne M.
W-748 (11-24-81) Ideal Mobile Home Park
W-686, Sub 2 (6-3-81) J & H Water Company, Inc.

W-743 (9-18-81) Jemaca Enterprises, Inc.
W-4, Sub 3 (4-9-81); Errata (4-15-81) Joyceton Water Works, Inc.

Kings Grant Water Company
W-250, Sub 5 (5-8-81)
W-250, Sub 4 (5-27-81)

Lafayette Water Corporation
W-43, Sub 12 (2-3-81)
W-43, Sub 14 (7-21-81)

W-462, Sub 2 (10-7-81) Longleaf, Inc.
W-198, Sub 14 (11-16-81); Errata (11-17-81) Mercer Environmental Corporation
W-576, Sub 2 (4-14-81) Mineral Springs Mountain Water Supply
W-742 (5-29-81) Mount Mitchell Lands, Inc.

Mountain Retreat Association
W-385, Sub 2 (8-27-81)
W-385, Sub 2 (9-1-81)
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W-498, Sub 4 (2-18-81) Norwood Beach Water System

O/A Utility, Inc.
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W-392, Sub 3 (6-5-81)

W-276, Sub 2 (12-9-81) Patterson Water Company
W-363, Sub 3 (12-17-81) Pierce-Heavner Builders, Inc.
W-421, Sub 3 (8-18-81) Ratchford, Lucius L.
W-176, Sub 12 (7-22-81) Scientific Water and Sewage, Inc.
W-657, Sub 1 (11-12-81) Tarlton Real Estate Corporation
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W-515, Sub 1 (4-15-81) Clear Meadow Water, Inc.
W-691, Sub 5 (1-9-81) Glendale Water, Inc.
W-739 (3-12-81) Hart Water Systems, Inc.
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W-348, Sub 3 (3-17-81) Littlefield Water Company, Inc.

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W-720, Sub 4 (7-21-81)

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W-738, Sub 2 (8-5-81)

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W-357, Sub 2 (4-29-81)
W-357, Sub 2 (4-29-81)

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W-274, Sub 30 (11-4-81)

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W-309, Sub 2 (2-23-81) Fairway Shores Water Company
W-729 (3-24-81) Helms Water System
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W-720, Sub 3 (7-21-81) Mid South Water Systems, Inc.

I. Miscellaneous
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W-75, Sub 5 (5-19-81) (Approving Emergency Rates)

W-382, Sub 4 (4-7-81) Avalon Water Systems, Inc. (Cancelling Hearing and Closing Docket)

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W-187, Sub 5 (9-14-81) (Lifting Restraints on Further Well Expenditures)
W-187, Sub 5 (10-7-81) (Approving New Well Construction and Requiring Report)

Sherwood Forest Utility, Inc.
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W-734 (9-2-81) Waverly Mills, Inc. (Granting Suspension of Franchise for Term of One Year)