# SEVENTY-FOURTH REPORT

OF THE

# NORTH CAROLINA

# UTILITIES COMMISSION

# ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1984 THROUGH DECEMBER 31, 1984

# SEVENTY-FOURTH REPORT

## OF THE

# NORTH CAROLINA

# UTILITIES COMMISSION

# ORDERS AND DECISIONS

Issued from

January 1, 1984, through December 31, 1984

Dr. Robert K. Koger, Chairman

Dr. Leigh H. Hammond,* Commissioner

Sarah Lindsay Tate, Commissioner

Edward B. Hipp, Commissioner

A. Hartwell Campbell, Commissioner

Douglas P. Leary,** Commissioner

Ruth E. Cook, Commissioner

Charles E. Branford,*** Commissioner

Hugh A. Crigler,**** 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.

* Dr. Leigh H. Hammond, resigned January 15, 1984
** Douglas P. Leary, resigned June 30, 1984
*** Charles E. Branford, appointed February 6, 1984, to fill the expired term of Dr. Leigh H. Hammond
**** Hugh A. Crigler, appointed July 1, 1984, to fill the unexpired term of Douglas P. Leary

LETTER OF TRANSMITTAL

December 31, 1984

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, 1984, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1984, and ending December 31, 1984.

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

Dr. Robert K. Koger, Chairman

Sarah Lindsay Tate, Commissioner

Edward B. Hipp, Commissioner

A. Hartwell Campbell, Commissioner

Ruth E. Cook, Commissioner

Charles E. Branford, Commissioner

Hugh A. Crigler, Commissioner

Sandra J. Webster, Chief Clerk

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North Carolina Utilities Commission

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DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Revision of Commission's Safety ) ORDER ADOPTING
Rules R8-26 and R9-1 ) REVISED SAFETY RULES

BY THE COMMISSION: The American National Standards Institute (ANSI) has updated its 1981 Edition of the National Electrical Safety Code, said update being ANSI C2.1984. The Commission is of the opinion that, unless significant cause is shown otherwise, the 1984 Edition of the National Electrical Safety Code should be adopted as the safety rules of this Commission for electric and communications utilities under its jurisdiction.

By order issued March 8, 1984, in Docket No. M-100, Sub 89, the Commission published proposed revisions to its Rules R8-26 and R9-1, and specified that unless protests or requests for hearing were received within 30 days after the date of said order, the Commission would determine the matter without public hearing. No comments were received.

IT IS, THEREFORE, ORDERED as follows:

1. That proposed revised Rules R8-26 and R9-1 attached hereto as Appendix A are hereby adopted effective the date of this Order.

2. That the Chief Clerk shall mail a copy of this Order to all regulated electric and telephone companies operating in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of April 1984.

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

APPENDIX A

RULE R8-26. SAFETY RULES AND REGULATIONS - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2.1984, 1984 Edition, is hereby adopted by reference as the electric safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission.

RULE R9-1. SAFETY RULES AND REGULATIONS - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2.1984, 1984 Edition, is hereby adopted by reference as the communication safety rules of this Commission and shall apply to all telephone and telegraph utilities which operate in North Carolina under the jurisdiction of the Commission.

DOCKET NO. M-100, SUB 98

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking for Changes in Commission Rule R2-47 - Discontinuance of Service ) FINAL ORDER REVISING ) RULE R2-47

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, on Tuesday, May 29, 1984, at 2:30 p.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp, A. Hartwell Campbell, Douglas P. Leary, and Charles E. Branford

APPEARANCES:

For the Respondent:

George W. Hanthorn, Attorney at Law, 1500 Jackson, Suite 415 Dallas, Texas 75701
Trailways Lines, Inc., and Trailways Southeastern Lines, Inc.

For the Public Staff:

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

BY THE COMMISSION: In response to a Motion filed in this docket by the Public Staff - North Carolina Utilities Commission, the Commission entered an Order in this docket on March 16, 1984, instituting a rule-making proceeding for the purpose of establishing minimum filing requirements under Commission Rule R2-47 for motor passenger carriers proposing to reduce service over North Carolina routes and to North Carolina points to less than one trip per day excluding Saturdays and Sundays.

This Order invited interested parties to file comments with the Commission on or before May 1, 1984, on the adoption by the Commission of the proposed Rule R2-47 which was attached to said Order and made the Public Staff a party intervenor in this proceeding.

On April 26, 1984, the Commission received comments from Carolina Coach Company, and on May 1, 1984, comments were filed by Trailways Lines, Inc., and Trailways Southeastern Lines, Inc. In these comments, it was noted that the subject carriers requested that certain portions of the proposed Rule R2-47 be revised or deleted.

By Order in this docket dated May 10, 1984, the Commission scheduled oral argument on the comments on May 29, 1984.

The matter came before the Commission on May 29, 1984, as scheduled, and counsel for the aforesaid parties were present and made oral argument.

Based upon consideration of the proposed rule, the comments filed in this matter, the oral argument of the parties on the comments and the record as a whole, the Commission is of the opinion that the proposed Rule R2-47(c)(4)C should be revised to require on a representative sample of the information stated therein and that proposed (c)(7) should be eliminated in its entirety and that said proposed Rule R2-47, including these revisions, should be adopted by the Commission.

IT IS, THEREFORE, ORDERED:

(1) That Rule R2-47 of the Commission's Rules and Regulations be, and is hereby, revised in conformity with Appendix I attached hereto.

(2) That attached hereto as Appendix II are the forms and format to be utilized in furnishing the information set forth in paragraph (c)(5) of Rule R2-47.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of June 1984.

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

APPENDIX I

Rule R2-47. Discontinuance of service. - (a) No common carrier or contract carrier shall abandon or discontinue any service authorized by its certificate or permit without first obtaining written authority from the Commission. The petition for such authority shall be filed with the Commission at least thirty (30) days prior to any discontinuance, unless otherwise authorized by the Commission, and if petitioner is a motor carrier of passengers, shall show in support thereof the information set forth in paragraph (c) herein. The discontinuance or nonuse of a service authorized by a certificate or permit for a period of thirty (30) days or longer without the written consent of the Commission shall be considered good cause for cancellation, seasonal service excepted. Upon receipt of a petition for authority to discontinue or abandon service, the Commission may designate a time and place for hearing on the petition. If petitioner is a motor passenger carrier, it shall give notice to the public of the proposed discontinuance or abandonment of any passenger service by posting notice of the petition and of the time and place of hearing in buses serving such routes and in bus stations or other prominent places along said routes. If no protest is received prior to ten (10) days before the hearing, the Commission may grant the petition without formal hearing.

(b) All interruptions of service, where likely to continue for more than twenty-four hours, shall be reported promptly to the Commission and to the public along the route, with full statement of the cause and its possible duration.

(c) In support of any petition (schedule) proposing to reduce motor passenger carrier service over any North Carolina route or to any North

Carolina point, to a level which is less than one trip per day five days per week excluding Saturdays and Sundays, the proponent carrier shall furnish the data set forth herein below for the latest twelve months available.

(1) A listing of the origin, termination and all intermediate points which will lose the proponent carrier's service.
(2) State whether or not the proponent carrier is the last or only intercity motor carrier of passengers to and from the issue points or over the issue route.
(3) If there exists a reasonable alternative to the proponent carrier's passenger and express services on the issue route and to the issue points, please identify such alternative service and indicate its location relative to the issue route and points.
(4) Calculate and furnish: A. passenger revenues (actual and present level) attributable to that portion of your operations proposed to be abandoned, B. express revenues (actual and present level) attributable to that portion of your operations proposed to be abandoned, C. a representative sample of copies of ticket samples, driver reports, station reports, bus bills, schedule information reports, trend sheets or any source documents which show revenues (by schedule, points or route) determined in items A and B herein in such a manner and in such detail that the Commission can verify the equitableness of the revenue apportionment methodologies as well as independently determine how:
    (a) revenues originating outside the carrier's system going to the issue points were accounted for and attributed to the issue route and points,
    (b) revenues originating at issue points and going beyond points on the carrier's system were attributed to the issue route and points,
    (c) revenues originating outside the issue points but within the carrier's system going to the issue points were accounted for and attributed to said route and points,
    (d) revenues originating at the issue points going to points within the carrier's system but outside the issue route were accounted for and attributed to said routes and points, and
    (e) revenues originating and terminating along the issue route and among the issue points were accounted for.
(5) Furnish fully allocated and variable expenses (accompanied by full explanations of how variable expenses are calculated) attributable to the issue route and points pursuant to forms and in the format as from time to time shall be approved by the Commission.
(6) Furnish:
    A. total system bus miles operated,
    B. total N.C. bus miles operated
    C. scheduled system bus miles operated,
    D. scheduled N.C. bus miles operated,
    E. scheduled N.C. bus miles operated over that portion of the route to be abandoned, and
    F. the number of interstate and intrastate passengers transported over that portion of the N.C. route to be abandoned.

NOTE: Check with Chief Clerk for master copy of Appendix II.

DOCKET NO. M-100, SUB 100

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Commercial and Apartment Conservation Service (CACS) Program - Energy Audits for Eligible Commercial and Apartment Buildings | ) ORDER ADOPTING<br>) ACCOUNTING PRACTICES<br>) AND PROCEDURES UNDER<br>) THE NORTH CAROLINA<br>) CACS PROGRAM |

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, April 10, 1984 at 10:00 a.m.

BEFORE: Commissioner Douglas P. Leary, Presiding, and Commissioners Sarah Lindsay Tate and Charles E. Branford

APPEARANCES:

For The Respondents:

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

F. Kent Burns, Boyce, Mitchell, Burns, and Smith, P.A., P.O. Box 2479, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

Hill Carrow, Attorney, Carolina Power and Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power and Light Company

William Larry Porter, Attorney, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242
For: Duke Power Company

Edgar M. Roach, Hunton and Williams, P.O. Box 109, Raleigh, North Carolina 27602
For: Virginia Electric and Power Company

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

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

BY THE COMMISSION: On October 26, 1983, the Department of Energy (DOE) published a Final Rule (Federal Register, Vol. 48, No. 208) for implementing the Commercial and Apartment Conservation Service (CACS) Program, as required by Title VII of the National Energy Conservation Policy Act (NECPA), as amended by the Energy Security Act (ESA). Title VII of NECPA requies large natural gas and electric utilities to offer energy audits of eligible small commercial buildings and of larger (five or more apartments) centrally heated or cooled apartment buildings. The DOE Final Rule implementing the CACS Program became effective on December 5, 1983. Section 458.310 of the DOE Rule requires this Commission to make certain determinations with respect to how the costs associated with the CACS Program will be treated for accounting purposes. Therefore, the basic issue before the Commission is whether the above-referenced costs should be treated as a current utility operating expense or whether such costs should be charged to the eligible customer who requests an energy audit. If it is determined that some percentage of costs should be charged to the eligible customer requesting an audit, the Commission must further determine a cost schedule for commercial and apartment building audits separately. In making that determination, the DOE Rule requires the Commission to consider, to the extent practicable, the eligible customer's ability to pay and the likely levels of participation in the program which will result from such charge.

On March 8, 1984, the North Carolina Utilities Commission set this matter for hearing. The Order of March 8, 1984, established Carolina Power and Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company (VEPCO), North Carolina Natural Gas Corporation (NCNG), Public Service Company of North Carolina, Inc. (Public Service) and Piedmont Natural Gas Company (Piedmont) as parties to this proceeding. The above denoted parties pre-filed testimony in this matter. Additionally, the Public Staff pre-filed the testimony of Danny P. Evans, Public Utility Financial Analyst.

The matter came on for hearing as scheduled in the Order of March 8, 1984. At the public hearing, the parties stipulated into the record all prefiled testimony. Representatives of the Public Staff and Duke commented on their respective positions concerning cost recovery of any unreimbursed energy audit expenses arising from the implementation of the CACS Program. Public witness Read testified on the proposed program and on his recommendations concerning the appropriate cost recovery of the energy audit expenses related to the CACS Program.

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

## FINDINGS OF FACT

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

2. Each electric or natural gas customer in this State who receives a Commercial and Apartment Conservation Service Program energy audit from a

regulated utility covered by the North Carolina CACS Program Plan should be required to pay a nominal charge. This nominal charge shall be as follows:

1. Apartments - $50.00 per apartment building.

2. Commercial - $50.00 per commercial building.

3. Each utility customer in this State who is eligible to receive a CACS energy audit under the North Carolina CACS Program should receive only one subsidized audit, for each structure studied. Any customer who requests a second or duplicate CACS energy audit under the State CACS Plan should be required to pay in full all of the direct costs associated with providing said duplicate audit, provided, however, that the customer is notified in advance as to the amount of the charge.

4. All amounts expended by each regulated electric and natural gas utility in complying with the requirements of the North Carolina CACS Program, except to the extent recovered through the nominal customer charge referred to in Finding of Fact No. 2 above, should be treated as a current expense of providing utility service and should be charged to all ratepayers of the regulated utility in the same manner as other current operating expenses of providing such utility service. Such operating expenditures, if determined by the Commission to be reasonable in amount, should be recovered by each regulated utility pursuant to G.S. 62-133, rather than by imposition of an annual customer surcharge.

5. If a new owner or tenant of a previously CACS-audited building requests an audit, the covered utility must offer to the new customer the complete results report from the original audit, where applicable and permitted by law. However, the potential for legal problems associated with customer confidentiality and the lack of relevance of old audit information justify allowing covered utilities to perform new audits of buildings previously audited under CACS. Therefore, a covered utility shall perform a new audit, instead of providing the report mentioned above, if the customer requests a new audit after being informed of the costs and availability of both the previous audit report and the new audit. There shall be no direct charge to the customer for a copy of the results report of a previous audit. The direct cost to the customer for an audit of a previously CACS-audited building shall be based on the same schedule as any other building audit under this Plan.

## CONCLUSIONS

Pursuant to the statutorily mandated obligations imposed by the National Energy Conservation Policy Act, as amended by the ESA, this Commission has undertaken an active consideration of those accounting and related issues which it is required to consider pursuant to NECPA and the DOE regulations promulgated thereunder. The Commission strongly believes in the purposes which underlie NECPA, they being to reduce the growth in demand for energy in the United States and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibitng beneficial economic growth. The Commission has reviewed the CACS Program developed for implementation in this State and believes such Plan to be both flexible and entirely responsive to the mandates of NECPA. Therefore, based upon a careful consideration of the

entire record of this docket, the Commission makes the following determinations which shall become a part of the North Carolina State CACS Plan:

1. Each electric or natural gas customer in this State who receives a CACS energy audit from a regulated utility covered by the North Carolina CACS Program Plan will be required to pay a charge in accordance with the following schedule:

1. Apartments - $50.00 per apartment building

2. Commercial - $50.00 per commercial building.

The Commission believes that such a charge will serve to discourage frivolous requests for energy audits which might perhaps be made by those individuals who would not otherwise be inclined to give serious consideration to the results thereof or to take positive action thereon. The Commission is of the opinion that a customer charge, being nominal in nature in relation to the actual costs associated with such an audit, will be acceptable to those indiviudals who are serious about conserving energy. Furthermore, imposition of such a charge will not, in the opinion of this Commission, serve to unduly limit customer participation in the CACS Program. Rather, the Commission believes that the program will be enhanced to the extent that a nominal customer charge may chiefly serve to encourage requests for audits by those individuals who will be most likely to take some positive action upon receipt of the results of said audit. The Commission notes that the evidence in this proceeding indicates that the estimated cost of the CACS energy audits ranges from $125 to $500. Furthermore, the Commission is of the opinion, and therefore concludes, that each utility customer in this State who is eligible to receive a CACS energy audit under the CACS Program Plan should receive only one subsidized audit for each structure studied and that any customer who requests a second or duplicate CACS energy audit under the State CACS Plan should be required to pay in full all of the direct costs associated with providing said duplicate audit, provided, however, that the customer is notified in advance as to the amount of the charge. In this regard, the Commission believes that each regulated electric and natural gas utility subject to the North Carolina CACS Plan should take such reasonable steps and institute such procedures as it deems prudent and necessary to ascertain whether a customer requesting a CACS energy audit has previously received a subsidized CACS audit on the same structure under the State CACS Plan.

2. The amounts expended by each regulated electric and natural gas utility in complying with the requirements of the North Carolina CACS Program, to the extent not recovered through nominal customer audit charges discussed above, should be treated as a current expense of providing utility service which should be charged to all ratepayers of the regulated utility in the same manner as other current operating expenss of providing such utility service.

3. The Public Staff presented testimony concerning the applicability of the CACS program to a new owner or tenant of a previously CACS-audited building. Since the original audit report might contain confidential information, the Public Staff recommended that the Commission allow a utility to conduct a new audit for a subsequent customer. The Public Staff further recommended that customers receiving these audits be charged the same fee as all other customers under the North Carolina CACS Plan. Based on the

foregoing, the Commission concludes that when a new owner or tenant of a previously CACS-audited building requests a new audit, after being informed of the costs and availability of both the previous audit report and the new audit, then the covered utility should perform the requested CACS audit.

IT IS, THEREFORE, ORDERED as follows:

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

2. That the regulated utilities subject to this Order shall charge and collect a fee in accordance with the schedule set forth herein from each customer who receives a CACS audit under the North Carolina CACS Program.

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

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

5. That all amounts expended by the regulated utilities subject to this Order in complying with the requirements of the North Carolina CACS Program in providing CACS energy audits, to the extent not recovered through the nominal customer charges approved herein, shall be treated as a current expense of providing utility service to be charged to all ratepayers of the regulated utility in the same manner as other current operating expenses of providing such utility service.

6. That a covered utility shall perform a new audit, instead of providing the original audit report, when a new owner or tenant of a previously CACS-audited building requests said audit, and has been informed of the costs and availability of both the previous audit report and the new audit.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of April 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 101

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Revision of Rule R1-17(b)(12) of | ) | ORDER RESCINDING |
| the Rules and Regulations of the | ) | COMMISSION RULE |
| North Carolina Utilitiles Commission | ) | R1-17(b)(12) |

BY THE COMMISSION: Since the enactment of the Staggers Rail Act of 1980 this Commission no longer hears and determines railroad intrastate general rate applications.

Commission Rule R1-17(b)(12) governs the contents of applications by Class I railroads for general rate increases in this state.

The Commission is of the opinion that Rule R1-17(b)(12) should be rescinded and deleted from the Commission's Rules and Regulations and that Rule R1-17(b)(13) and (14) be renumbered R1-17(b)(12) and (13) respectively.

A copy of this Order shall be sent to the Michie Publishing Company.

IT IS, THEREFORE, ORDERED as follows:

1. That Chapter 1 of the Commission's Rules and Regulations be amended by deleting therefrom Rule R1-17(b)(12) and by renumbering Rules R1-17(b)(13) and (14) as (12) and (13) respectively.

2. That a copy of this Order be sent to the Michie Company, as follows:

Ms. Diane J. Kyrus
State Agency Publications
The Michie Company
P. O. Box 7587
Charlottesville, Virginia 22906-7587

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of March 1984.

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

DOCKET NO. M-100, SUB 103

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Tariff Revisions for all Electric, Natural Gas, and Telephone Utilities Under the Jurisdiction of the North Carolina Utilities Commission Following Enactment of House Bill 1513 to Enable Individuals to Deduct the Taxes on Certain Utilities' Commodities and Services from Their Federal Income | ) ORDER ESTABLISHING PROCEEDING AND REQUIRING FILING OF REVISED TARIFFS |

BY THE COMMISSION: On July 6, 1984, the General Assembly ratified House Bill 1513 entitled "An Act to Change the State Tax Structure for Commodities and Services Provided by Certain Utilities to Enable Individuals to Deduct Taxes on These Commodities and Services from Their Federal Income." In general, the bill changes the tax structure so that a portion of the 6% gross receipts tax currently included in public utility rates would be replaced by a sales tax. The objective of the bill is to make the necessary changes to the State tax structure to satisfy the requirements of the Internal Revenue Service without altering (1) utility bills to ratepayers, (2) the distribution of gross receipts tax revenues to the various municipalities, or (3) the net State tax revenues. The bill is effective January 1, 1985, and applies to sales of electricity, natural gas, and telephone service on and after that date.

Among the changes effected by the bill are the following:

1. the gross receipts tax rates for electric, natural gas, and telephone utilities is reduced from 6% to 3.22%;

2. the percentage of gross receipts tax revenues from electric, natural gas, and telephone utilities distributed to municipalities is increased from 3% to 3.09%;

3. a 3% sales tax is imposed on commodities and services provided by electric, natural gas, and telephone utilities.

Since the tariffs of all the affected utilities currently reflect a 6% gross receipts tax rate, the Commission has determined that it will be necessary to adjust such tariffs downward to reflect the 3.22% rate. On an across-the-board basis, the reduction would be approximately 2.8725% $1-[(1-.06)/(1-.0322)]$ . Moreover, the sales tax must be shown on the revised tariffs as an addition to the utility bill in order to arrive at the total amount due to the utility from the ratepayer.

The Commission is of the opinion that each affected utility should file, for review and approval, the tariff revisions necessary to recognize the changes prescribed by House Bill 1513 and that such revisions should reflect, as nearly as possible, a 2.8725% reduction in each tariffed rate.

IT IS, THEREFORE, ORDERED as follows:

1. That the electric, natural gas, and telephone utilities subject to the jurisdiction of this Commission shall file proposed revised tariffs reflecting an across-the-board decrease of approximately 2.8725% in each of their respective rates and charges. To the extent that such reductions cannot be reasonably accomplished due to special circumstances (e.g. pay telephone tariffs), each affected utility shall present an alternative proposal or recommendation for the Commission's consideration. Such tariff filings shall also reflect the addition of a 3% sales tax to bills for utility commodities and services. Further, such proposed tariffs shall be filed on or before November 1, 1984, and shall bear an effective date of January 1, 1985; provided, however, that the aforementioned filing date for ALLTEL-Carolina, Inc. and Southern Bell Telephone and Telegraph Company shall be the date established by the Commission subsequent hereto with respect to the filing of revised tariffs to be prescribed in Docket Nos. P-118, Sub 31 and P-55, Sub 834.

2. That the Public Staff is requested to review the proposed revised tariffs and to file comments and recommendations on or before November 20, 1984.

3. That each affected utility in conjunction with the filing of proposed tariffs as required by Ordering Paragraph No. 1 above shall file a proposed customer notice or notices clearly explaining the nature and objective of the instant changes to the Revenue Laws of North Carolina and the effect that such changes will have on customer bills. Further, each affected utility shall file a statement of the plan or procedure it proposes to employ in disseminating such information to its customers.

4. That the Chief Clerk shall mail a copy of this Order to each regulated electric, natural gas, and telephone company operating in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of September 1984.

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

DOCKET NO. M-100, SUB 103

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | |
| Tariff Revisions for all Electric, Natural Gas, and Telephone | ) ORDER |
| Utilities Under the Jurisdiction of the North Carolina Utilities | ) ESTABLISHING |
| Commission Following Enactment of House Bill 1513 to Enable | ) CUSTOMER |
| Individuals to Deduct the Taxes on Certain Utilities Commodities | ) NOTICE |
| and Services from Their Federal Income | ) REQUIREMENTS |

BY THE COMMISSION: On September 28, 1984, the Commission required each affected utility to file a proposed customer notice or notices clearly explaining the nature and objective of the changes to the Revenue laws of North Carolina as contained in House Bill 1513 and the effect that such changes will have on customer bills. Further, each affected utility was required to file a statement of the plan or procedure it proposes to employ in disseminating such information to its customers. After having reviewed said filings the Commission concludes that the Customer Notice attached hereto should be included as a one time bill insert during the billing cycle wherein North Carolina three-percent sales tax first appears on each respective customer's bill.

IT IS, THEREFORE, ORDERED that each electric, natural gas, and telephone utility subject to the jurisdiction of this Commission shall include as a one time bill insert the Customer Notice attached hereto. Such insert shall be included during the billing cycle wherein North Carolina three-percent sales tax first appears on each respective customer's bill.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of December 1984.

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

ATTACHMENT

CUSTOMER NOTICE

YOUR _____ BILL HAS A NEW LISTING THIS MONTH

Beginning this month, a 3% state sales tax is listed on your _____ bill. This listing is a result of legislation enacted by the North Carolina General Assembly and is intended to help you save on your federal income taxes.

THE NEW SALES TAX LISTING WILL CAUSE VERY LITTLE CHANGE IN THE TOTAL AMOUNT OF YOUR MONTHLY BILL. The law provides that approximately one-half of the North Carolina 6% gross receipts tax, previously included in rates, become a sales tax effective January 1, 1985. Our rates have been reduced approximately 3% to reflect the lower gross receipts tax and the fact that sales tax is shown separately.

If you itemize deductions on your federal income tax return, the change in the law is intended to allow you to deduct the sales tax you pay on electric, natural gas and telephone utility services each year, just as you can deduct other state sales taxes.

DOCKET NO. M-100, SUB 103

NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Tariff Revisions for All Electric, Natural Gas, and Telephone Utilities Under the Jurisdiction of the North Carolina Utilities Commission Following Enactment of House Bill 1513 to Enable Individuals to Deduct the Taxes on Certain Utilities' Commodities and Services from their Federal Income | ) | ORDER APPROVING TARIFFS |

BY THE COMMISSION: On September 28, 1984, the Commission required each affected utility to file revised tariffs reflecting the impact of certain changes to the Revenue Laws of North Carolina as contained in House Bill 1513. After having reviewed the revised tariffs filed in this docket and the comments and recommendations submitted by the Public Staff, the Commission concludes that, except for the proposed tariffs filed by Barnardsville and Service Telephone Companies, such revised tariffs should otherwise be approved; provided, however, that the revised tariffs do not indicate that they become effective on billings rendered on and after January 1, 1985. In those instances whereby the revised tariffs indicate that they become effective on billings rendered on and after January 1, 1985, such tariffs are to be further modified in a manner so as to clearly reflect that they become effective on service rendered on and after January 1, 1985. After such modification is accomplished and the tariffs refiled with the Chief Clerk of the Commission said tariffs will be just and reasonable and no further approval shall be required.

The tariffs filed by Service Telephone Company and Barnardsville Telephone Company only reflect reductions in basic local exchange service rates and extension station rates. These two telephone companies should refile their tariffs on or before December 31, 1984, to make reductions in other local service categories as well as reductions in basic and extension station rates.

Furthermore, it is to be clearly understood that no tariff or tariffs contained in such filings shall be construed or interpreted to include three-percent North Carolina Sales Tax.

IT IS, THEREFORE, ORDERED as follows:

1. That, except for the proposed tariffs filed by Barnardsville and Service Telephone Companies, the revised tariffs filed in this docket by the other electric, natural gas, and telephone utilities subject to the jurisdiction of this Commission to reflect the impact of changes to the Revenue Laws of North Carolina as contained in House Bill 1513 are hereby approved; provided, however, that such revised tariffs do not indicate that they become effective on billings rendered on and after January 1, 1985. In those instances whereby the revised tariffs indicate that they become effective on billings rendered on and after January 1, 1985, such tariffs shall be further revised in a manner so as to clearly reflect that they become effective on service rendered on and after January 1, 1985. After such revision is accomplished and the tariffs refiled with the Chief Clerk of the Commission,

such tariffs will be just and reasonable and no further approval shall be required.

2. That Service Telephone Company and Barnardsville Telephone Company shall refile tariffs for Commission approval not later than December 31, 1984, in conformity with the applicable provisions of this Order.

3. That Western Carolina University shall either (a) file appropriate tariffs in this docket for Commission approval not later than Monday, December 31, 1984, or (b) advise the Commission in writing of the Company's legal basis for not filing such revised tariffs by said date.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1984.

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

DOCKET NO. M-100, SUB 104

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Revision of Rules R2-74 and R2-83 of the<br>Commission's Rules and Regulations Relating<br>to the Registration and Identification of<br>Vehicles | )<br>)<br>)<br>)<br>) | ORDER AMENDING RULES<br>R2-74 AND R2-83 |

BY THE COMMISSION: The North Carolina Utilities Commission acting under the power and authority delegated to it for the promulgation of rules and regulations hereby adopts Amendments to its "Rule R2-74. Registration and identification of vehicles." and "Rule R2-83. Vehicle registration and identification required." These Amendments which are set forth in Exhibit A attached hereto revise Rules R2-74 and R2-83 are pursuant to a request by the North Carolina Division of Motor Vehicles and the affect is to delete the requirement that each application for annual reregistration of interstate motor vehicles be accompanied by a list identifying each such vehicle and to substitute October for November as the earliest date such application may be received.

The North Carolina Division of Motor Vehicles has advised that the proposed changes in said Rules will ease the regulatory burden imposed on interstate motor carriers and will assist in maintaining uniformity among the various regulatory jurisdictions and, also, that all affected motor carriers will be notified by a direct mailing.

Therefore, the Commission concludes that its Rules R2-74 and R2-83 should be amended as set forth in the attached Exhibit A.

IT IS, THEREFORE, ORDERED

1. That Exhibit A attached hereto is adopted as an Amendment to Rule R2-74 and Rule R2-83 to become effective the date of this Order.

2. That a copy of this Order shall be directed to the North Carolina Division of Motor Vehicles and published in the next issue of the Commission's Truck Calendar of Hearings.

ISSUED BY ORDER OF THE COMMISSION.
This is the 10th day of October.

NORTH CAROLINA UTILITIES COMMISSION.
(seal) Sharon Credle Miller, Deputy Clerk

EXHIBIT A

Rule R2-74. Registration and identification of vehicles. --(a) On or before the 31st day of January of each calendar year but not earlier than the preceding first day of October, such interstate motor carriers shall apply to this Commission for the issuance of an identification stamp or stamps for the registration and identification of the vehicle or vehicles which it intends to operate within the borders of this State during the ensuing year. Such

application shall be accompanied by a filing fee in the amount of $1.00 for each identification stamp applied for. Applications for annual reregistration of such motor vehicles shall be accompanied by a filing fee in the amount of $1.00 for each identification stamp applied for. The application for the issuance of such identification stamps shall be in the form set forth in Form B appended to and made a part of this Article and such application shall be duly completed and executed by an official of the motor carrier. Provided, that vehicles of such carriers domiciled in another jurisdiction which extends reciprocity to vehicles or carriers domiciled in North Carolina, pursuant to the general reciprocal agreements heretofore or hereafter entered into with the North Carolina Commissioner of Motor Vehicles under Article 1A of Chapter 20 of the General Statutes, shall be exempt from the payment of registration fees required in this subsection to the same extent as such jurisdiction exempts vehicles of carriers domiciled in North Carolina from annual interstate public utilities vehicle registration fees similar to the fee required in this subsection.

(b) On or before the 31st day of January of each calendar year but not earlier than the preceding first day of October, such motor carrier shall apply to the National Association of Regulatory Utility Commissioners or to this Commission for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate within the borders of this State during the ensuing year. Cab cards shall be in the form set forth in Form D appended hereto.

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

(d) The registration and identification of vehicles under the provisions of this Article and the identification stamp evidencing same and the cab card prepared therefor shall become void on the first day of February in the succeeding calendar year unless such registration is terminated prior thereto. North Carolina identification stamps shall bear an expiration date of the first day of February in the succeeding calendar year. See G.S. 62-3001. (NCUC Docket No. M-100, Sub 11, 10/5/67; NCUC Docket No. M-100, Sub 11, 6/15/71; NCUC Docket No. M-100, Sub 44, 10/5/71; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 104, 10/10/84.)

Rule R2-83. Vehicle registration and identification required.--(a) A motor carrier shall not operate a vehicle or engage in driveaway operations within the borders of the State unless and until the vehicle or driveaway operation shall have been registered and identified with the Commission in accordance with the provisions of this Article, and there shall have been a compliance with all other requirements of this Article.

(b) On or before the 31st of January of each calendar year, but not earlier than the preceding first day of October, such motor carrier shall apply to the Commission for the issuance of an identification stamp or stamps, for the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of this State during the ensuing year. The motor carrier may apply for such number of stamps as is sufficient to cover its vehicles or driveaway operations which it anticipates will be placed in operation or conducted during the period for which the stamps are effective. The motor carrier may thereafter file one or more supplemental applications for additional stamps if the need therefor arises or is anticipated.

(c) If the Commission determines that the motor carrier has complied with all applicable provisions of this Article, the Commission shall issue to the motor carrier the number of identification stamps requested.

(d) An identification stamp issued or assigned under the provisions of this Article shall be used for the purpose of registering and identifying a vehicle or driveaway operations as being operated or conducted by a motor carrier, and shall not be used for the purpose of distinguishing between the vehicles operated by the same motor carrier. A motor carrier receiving an identification stamp under the provisions of this Article shall knowingly permit the use of same by any other person or organization.

(e) On or before the 31st day of January of each calendar year, but not earlier than the preceding first day of October such motor carrier shall apply to the National Association of Regulatory Utility Commissioners for the issuance of a sufficient supply of uniform identification cab cards for use in connection with the registration and identification of the vehicle or vehicles which it intends to operate, or driveaway operations which it intends to conduct, within the borders of the State during the ensuing year.

(f) The NARUC shall issue to the motor carrier the number of cab cards requested. A motor carrier receiving a cab card under the provisions of this Article shall not knowingly permit the use of same by any other person or organization. Prior to operating a vehicle, or conducting a driveaway operation, within the borders of the State during the ensuing year, the motor carrier shall place one of such identification stamps on the back of a cab card in the square bearing the name of the State in such a manner that the same cannot be removed without defacing it. The motor carrier shall thereupon duly complete and execute the form of certificate printed on the front of the cab so as to identify itself and such vehicle or driveaway operation and, in the case of a vehicle leased by the motor carrier, such expiration date shall not exceed the expiration date of the lease. The appropriate expiration date shall be entered in the space provided below the certificate. Such expiration date shall be within a period of fifteen months from the date the cab card is executed and shall not be later in time than the expiration date of any identification stamp or number placed on the back thereof.

(g) The registration and identification of a vehicle or driveaway operations under the provisions of this Article and the identification stamp evidencing the same and the cab card prepared therefor shall become void on the first day of February in the succeeding calendar year, unless such registration is terminated prior thereto.

(h) The application for the issuance of such identification stamps shall be in the form set forth in Form B-1 which is attached hereto and made a part of this Article. The application shall be printed on a rectangular card or sheet of paper eleven inches in height and eight and one-half inches in width. The application shall be duly completed and executed by an official of the motor carrier, and shall be accompanied by a filing fee in the amount of $1.00 for each identification stamp applied for. Applications for annual reregistration of such motor vehicles shall be accompanied by a filing fee in the amount of $1.00 for each identification stamp applied for. Provided, that vehicles of such carriers domiciled in another jurisdiction which extends reciprocity to vehicles of carriers domiciled in North Carolina, pursuant to the general reciprocal agreements heretofore or hereafter entered into with the North Carolina Commission of Motor Vehicles under Article 1A of Chapter 20 of the General Statutes, shall be exempt from the payment of registration fees required in this subsection to the same extent as such jurisdiction exempts vehicles of carriers domiciled in North Carolina from annual interstate public

utilities vehicle registration fees similar to the fee required in this subsection.

(i) The application for the issuance of such cab cards shall be duly executed by an official of the motor carrier.

(j) The identification stamp issued under the provisions of this Article by the Commission shall bear its name or symbol and such other distinctive markings or information, if any, as the Commission deems appropriate. In addition, such stamp shall bear an expiration date of the first day of February in the succeeding calendar year. The stamp shall be in the shape of a square and shall not exceed one inch in diameter.

(k) The cab card referred to above shall be in the form set forth in Form D-1 which is attached hereto and made a part of this Article, and shall bear the seal of the NARUC. The cab card shall be printed on a rectangular card eleven inches in height and eight and one-half inches in width.

(l) In the case of a vehicle not used in a driveaway operation, the cab card shall be maintained in the cab of such vehicle for which prepared whenever the vehicle is operated by the carrier identified in the cab card. Such cab card shall not be used for any vehicle except the vehicle for which it was originally prepared. A motor carrier shall not prepare two or more cab cards which are effective for the same vehicle at the same time.

(m) In the case of a driveaway operation, the cab card shall be maintained in the cab of the vehicle furnishing the motor power for the driveaway operation whenever such an operation is conducted by the carrier identified in the cab card.

(n) A cab card shall, upon demand, be presented by the driver to any authorized government personnel for inspection.

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

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

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

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

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

(p)(1) Any erasure, improper alteration, or unauthorized use of a cab card shall render it void.

(2) If a cab card is lost, destroyed, mutilated, or becomes illegible, a new cab card may be prepared and new identification stamps may be issued therefor upon application by the motor carrier and upon payment of the fee prescribed. See G.S. 62-300. (NCUC Docket No. M-100, Sub 21, 9/15/69; NCUC Docket No. M-100, Sub 21, 6/15/71; NCUC Docket No. M-100, Sub 44, 10/5/71; NCUC Docket No. M-100, Sub 54, 4/16/74, 4/24/74; 10/5/71; NCUC Docket No. M-100, Sub 54, 4/16/74, 4/24/74; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 104, 10/10/84.)

DOCKET NO. E-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Determination of Rates for Purchase and Sale of Electricity Between Electric Utilities and Qualifying Cogenerators or Small Power Producers | ORDER ADOPTING RULE (RULE R1-37) |

HEARD IN: Commission Hearing Room, Dobbs Building, N. Salisbury Street, Raleigh, North Carolina, on April 30, 1984

BEFORE: Commissioner Robert K. Koger, Presiding; Commissioners Sarah Lindsay Tate, Edward B. Hipp, A. Hartwell Campbell, Ruth E. Cook, and Charles E. Branford

APPEARANCES: Robert K. Kaylor, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Virginia Electric & Power Company

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

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

Donad S. Ingraham, Moore, Van Allen & Allen, P.O. Box 2058, Raleigh, North Carolina 27611
For: Cogentrix, Inc.

Thomas E. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612
For: Hydro-Energy Association of the Carolinas, Inc.

Randolph Horner, pro se, P.O. Box 3757, Chapel Hill, North Carolina 27515-3757
For: Himself

David H. Permar, Hatch, Little, Bunn, Jones, Few & Berry, Attorney at Law, P.O. Box 527, Raleigh, North Carolina 27602
For: Natural Power, Inc.

William C. Matthews, Womble, Carlyle, Sandridge & Rice, Attorneys at Law, P.O. Box 831, Raleigh, North Carolina 27602
For: R. J. Reynolds Tobacco Company

BY THE COMMISSION: By previous Orders in this docket, the most recent being dated February 14, 1984, the Commission has dealt with the requirements and procedures to be observed with respect to applications for Certificates of Public Convenience and Necessity pursuant to G.S. 62-110.1(a) by cogenerators and small power producers in North Carolina. In order to gain the benefit of public input and in order to more adequately ensure public notice of the application requirements and procedures, the Commission, pursuant to its authority and responsibilities under state and federal law, issued an Order on February 20, 1984, instituting a rule-making proceeding in this docket for the purpose of incorporating the application requirements and procedures into the Rules and Regulations of the North Carolina Utilities Commission. All parties to this docket were invited to file comments and/or a proposed rule, and several parties filed comments by the deadline stated. The Commission held an oral argument at the time and place indicated above for the purpose of giving the parties an opportunity to present their comments to the Commission orally and to respond to the comments filed by the other parties.

On the basis of the comments and other documents filed by the parties participating in this rule-making proceeding and the oral argument presented by the parties, the Commission issued an Order Publishing Proposed Rule on June 27, 1984. That Order set forth the Commission's reasoning for its Proposed Rule R1-37, and that Order is hereby incorporated by reference. That Order gave parties time within which to file comments on the Proposed Rule, and several parties filed comments by the deadline stated. One party, Cogentrix, sent a letter to the Federal Energy Regulatory Commission (FERC) asking for an advisory opinion from FERC's general counsel as to whether this Commission is preempted by federal law from requiring the information set forth in Subsection (b)(2) of the Proposed Rule. The Commission withheld further action on the Proposed Rule while awaiting this advisory opinion. The Commission recently received a copy of the letter from the Office of the General Counsel of FERC to the attorney for Cogentrix. By this letter, the General Counsel concluded that "it would be inappropriate for me to render an opinion on whether the North Carolina Commission is proposing a rule which is consistent with the requirements established by the FERC under section 210 of PURPA since the Commission anticipates that these questions will generally be initiated at the State level." In light of this response, the Commission has decided to proceed with this rule-making proceeding.

The Commission has made a limited number of revisions to the Proposed Rule in response to the comments filed by the parties. Additionally, the Commission has, on its own motion, refined the requirements of Subsection (b)(1)(ii) by requiring foreign corporations to state whether they are domesticated in North Carolina and has refined the scope of Subsection (b)(2) by omitting the phrase "at levelized rates."

The scope of the Rule, as set forth in Section (a), is limited to persons intending to seek the benefits of 16 U.S.C.A. 824a-3 or G.S. 62-156 as a cogenerator or a small power producer by selling electricity to electric suppliers. Persons exempted from certification by the provisions of G.S. 62-110.1(g) are of course exempt from the provisions of the Rule. The Rule's scope includes municipalities and counties. The Commission feels that this is required by use of the term "person" in G.S. 62-110.1(a). The Commission notes that the League of Municipalities and the Association of County Commissioners have filed comments objecting to the inclusion of

municipalities and counties within the scope of the Rule and have requested a formal opinion from the Attorney General. That opinion has not yet been received. If a revision is deemed appropriate as a result of the Attorney General's opinion, such a revision will be dealt with by further order of the Commission. The Commission has also extended the scope of the certification procedure to include the renovation and the reworking of existing but nonoperable facilities, as well as the construction of new facilities. The Commission feels that this is within the meaning of the term "construction" as used in G. S. 62-110.1(a).

The Rule establishes a two-tier application procedure pursuant to which large projects that desire to qualify for long-term contracts will be required to file more detailed information as to their financial and operational reliability. Since long-term options are not required by federal law, the Commission feels that it has the authority to require more detailed information from those seeking the benefits of this option. The public will depend upon cogenerators and small power producers who enter into long-term contracts for a part of the public's supply of electricity. If these contracts provide for levelized rates, substantial over-payments will be made in the early part of the contract term. For these reasons, the Commission feels obligated, as a part of its responsibilities under state and federal law, to consider the operational and financial reliability of larger projects with long-term contracts.

The procedure for the processing of applications is basically that required by G.S. 62-82. The applications will be distributed to other state agencies for their comments.

The Commission has seen fit to impose three conditions upon the certificates issued pursuant to this Rule. Certificates should be subject to revocation should any other necessary license or permit not be obtained and should that fact be brought to the attention of the Commission and should the Commission find that as a result the public convenience and necessity no longer require construction of the project. Secondly, the certificate should be renewed if construction does not begin within five years after the issuance of the certificate. Finally, the Commission reserves the right to review all plans to transfer or assign a certificate before the time construction is completed and to review changes in the information required by Subsection (b)(1) that become known before completion of construction. The Commission will deal with such plans or changes on an individual basis giving due consideration to the importance of the particular plan or change involved.

The Rule attached hereto shall become effective as of the date of the Order. All electric utilities subject to the jurisdiction of this Commission should refine their internal procedures so as to ensure that cogenerators and small power producers comply with the provisions of this Rule and obtain a certificate of public convenience and necessity prior to the time the contract for sale and purchase of electricity is signed. In particular, the utilities shall refine their procedures so as to ensure that cogenerators and small power producers have complied with the provisions of Subsection (b)(2) of this Rule before they enter into a long-term contract with any project with a maximum dependable capacity of 5 megawatts or more for which the application for a certificate was filed after the adoption of this Rule.

IT IS, THEREFORE, ORDERED as follows:

1. That the Rule R1-37, attached hereto, should be, and hereby is, adopted as a rule of this Commission; and

2. That all electric utilities subject to the jurisdiction of this Commission shall refine their internal procedures so as to ensure that cogenerators and small power producers comply with the provisions of this Rule and obtain a certificate of public convenience and necessity prior to the time the contract for sale and purchase of electricity is signed and, in particular, the utilities shall refine their procedures so as to ensure that cogenerators and small power producers have complied with the provisions of Subsection (b)(2) of this Rule before they enter into a long-term contract with any project with a maximum dependable capacity of 5 megawatts or more for which the application for a certificate was filed after the adoption of this Rule.

ISSUED BY ORDER OF THE COMMISSION.
This is the 25th day of October 1984.

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

RULE R1-37. APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY BY QUALIFYING COGENERATOR OR SMALL POWER PRODUCER; PROCEDURE THEREON; REPORTS OF CONSTRUCTION. -

(a) Scope of Rule. - The scope of this rule shall be as follows:

(1) This rule applies to applications for a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) filed by any person seeking the benefits of 16 U.S.C.A. 824a-3 or G.S. 62-156 as a qualifying cogenerator or a qualifying small power producer as defined in 16 U.S.C.A. 796(17) and (18) or as a small power producer as defined in G.S. 62-3(27a), except persons exempt from certification by the provisions of G.S. 62-110.1(g).

(2) For purposes of this rule, the term "person" shall include a municipality as defined in Rules R7-2(c) and R10-2(c), including a county of the State.

(3) The construction of a facility for the generation of electricity shall include not only the building of a new building, structure or generator, but also the renovation or reworking of an existing building, structure or generator in order to enable it to operate as a generating facility.

(4) This rule shall apply to any person within its scope who begins construction of an electric generating facility without first obtaining a certificate of public convenience and necessity. In such circumstances, the application shall include an explanation for the applicant's beginning of construction before the obtaining of the certificate.

(b) The Application. - Applications filed pursuant to this rule shall be as follows:

(1) The application shall contain, among other things, the following information, either embodied in the application or attached thereto as exhibits:

(i) The full and correct name, business address and business telephone number of the applicant;

(ii) A statement of whether the applicant is an individual, a partnership, or a corporation and, if a partnership, the name and business address of each general partner and, if a corporation, the state and date of incorporation and the name and business address of an individual duly authorized to act as corporate agent for the purpose of the application and, if a foreign corporation, whether domesticated in North Carolina;

(iii) The nature of the generating facility, including the type and source of its power or fuel;

(iv) The location of the generating facility set forth in terms of local highways, streets, rivers, streams, or other generally known local landmarks together with a map such as a county road map with the location indicated on the map;

(v) The ownership of the site and, if the owner is other than the applicant, the applicant's interest in the site;

(vi) A description of the buildings, structures and equipment comprising the generating facility and the manner of their operation;

(vii) The projected maximum dependable capacity of the facility in megawatts;

(viii) The projected cost of the facility;

(ix) The projected date on which the facility will come on line;

(x) The applicant's general plan for sale of the electricity to be generated, including the utility to which the applicant plans to sell the electricity, any provisions for wheeling of the electricity, arrangements for firm, non-firm or emergency generation, the service life of the project, and the projected annual sales in kilowatt hours; and

(xi) A complete list of all federal and state licenses, permits and exemptions required for construction and operation of the generating facility and a statement of whether each has been obtained or applied for. A copy of those that have been obtained should be filed with the application; a copy of those that have not been obtained at the time of the

application should be filed with the Commission as soon as they are obtained.

(2) In addition to the information required above, an applicant who desires to enter into a contract for a term of 5 years or more for the sale of electricity and who will have a projected maximum dependable capacity of 5 megawatts or more available for such sale shall include in the application the following information and exhibits:

(i) A statement detailing the experience and expertise of the persons who will develop, design, construct and operate the project to the extent such persons are known at the time of the application;

(ii) Information specifically identifying the extent to which any regulated utility will be involved in the actual operation of the project;

(iii) A statement obtained by the applicant from the electric utility to which the applicant plans to sell the electricity to be generated setting forth an assessment of the impact of such purchased power on the utility's capacity, reserves, generation mix, capacity expansion plan, and avoided costs;

(iv) The most current available balance sheet of the applicant;

(v) The most current available income statement of the applicant.

(vi) An economic feasibility study of the project;

(vii) A statement of the actual financing arrangements entered into in connection with the project to the extent known at the time of the application;

(viii) A detailed explanation of the anticipated kilowatt and kilowatt hour outputs, on-peak and off-peak, for each month of the year;

(ix) A detailed explanation of all energy inputs and outputs, of whatever form, for the project, including the amount of energy and the form of energy to be sold to each purchaser; and

(x) A detailed explanation of arrangements for fuel supply, including the length of time covered by the arrangements, to the extent known at the time of the application.

(3) All applications shall be signed and verified by the applicant or by an individual duly authorized to act on behalf of the applicant for the purpose of the application.

(4) The application and 17 copies shall be filed with the Chief Clerk of the Utilities Commission.

(c) Procedure upon Receipt of Application. - Upon the filing of an application appearing to meet the requirements set forth above, the Commission will process it as follows:

(1) The Commission will issue an order requiring the applicant to publish notice of the application once a week for four successive weeks in a daily newspaper of general circulation in the county where the generating facility is proposed to be constructed and requiring the applicant to mail a copy of the application and the notice, no later than the first date that such notice is published, to the electric utility to which the applicant plans to sell the electricity to be generated. The applicant shall be responsible for filing with the Commission an affidavit of publication and a signed and verified certificate of service to the effect that the application and notice have been mailed to the electric utility to which the applicant plans to sell the electricity to be generated.

(2) The Chief Clerk will deliver 6 copies of the application and the the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.

(3) If a complaint is received within 10 days after the last date of the publication of the notice, the Commission will schedule a public hearing to determine whether a certificate should be awarded and will give reasonable notice of the time and place of the hearing to the applicant and to each complaining party and will require the applicatnt to publish notice of the hearing in the newspaper in which the notice of the application was published. If no complaint is received within the time specified, the Commission may, upon its own initiative, order and schedule a hearing to determine whether a certificate should be awarded and, if the Commission orders a hearing upon its own initiative, it will require notice of the hearing to be published by the applicant in the newspaper in which the notice of the application was published.

(4) If no complaint is received within the time specified and the Commission does not order a hearing upon its own initiative, the Commission will enter an order awarding the certificate.

(d) The Certificate. - Certificates issued pursuant to this Rule shall be subject to the following:

(1) The certificate shall be subject to revocation if any of the other federal or state licenses, permits or exemptions required for construction and operation of the generating facility is not obtained and that fact is brought to the attention of the Commission and the Commission finds that as a result the public convenience and necessity no longer requires, or will require, construction of the facility.

(2) The certificate must be renewed by re-compliance with the requirements set forth in this Rule if the applicant does not begin construction within 5 years after issuance of the certificate. All applicants must submit annual progress reports as required by G.S. 62-110.1(f) until construction is completed.

(3) Until the time construction is completed, all certificate holders must advise the Commission of any plans to transfer or assign the certificate or of any changes in the information set forth in subsection (b)(1) of this Rule, and the Commission will order such proceedings as it deems appropriate to deal with such plans or changes.

(e) Reports of Construction. - All persons exempt from certification by the provisions of G. S. 62-110.1(g) shall file with the Commission a report of the proposed construction of an electric generating facility before beginning construction thereof. Such reports shall include the information set forth in Subsection (b)(1) of this Rule.

DOCKET NO. E-100, SUB 47

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Rulemaking Proceeding to Consider Annual Fuel<br>Adjustments to Electric Rates Pursuant to<br>G.S. 62-133.2 | ) | ORDER RESCINDING<br>COMMISSION RULE<br>R1-36 |

BY THE COMMISSION: On June 17, 1982, the North Carolina General Assembly repealed G.S. 62-134(e) and enacted G.S. 62-133.2, thereby modifying the statutory basis for allowing adjustments to electric rates for changes in the cost of fuel and the fuel component of purchased power.

Both the Public Staff and the North Carolina Textile Manufacturers Association (NCTMA) subsequently filed motions in Docket No. E-100, Sub 44, requesting the Commission to institute a rulemaking to consider such revisions to the Commission's rules as may be needed to conform to G.S. 62-133.2. The Public Staff, in addition, filed proposed rule revisions and asked that they be published for comment.

By Order issued December 22, 1982, the Commission created Docket No. E-100, Sub 47, and instituted the instant proceeding for the purpose of establishing rules and procedures for the implementation of G.S. 62-133.2 regarding fuel charge adjustments for electric utilities. Carolina Power & Light Company (CP&L), Duke Power Company (Duke), and Virginia Electric and Power Company (Vepco) were made party respondents; the NCTMA and other interested parties were invited to intervene; and the Public Staff's intervention was recognized.

A hearing to consider proposed rule revisions and testimony commenced on March 1, 1983.

Commission Rule R1-36 presently pertains to applications for changes in electric rates based solely on changes in the cost of fuel used in the generation or production of electric power filed pursuant to G.S. 62-134(e).

In view of the fact that G.S. 62-134(e) was repealed by the General Assembly of the State of North Carolina effective June 17, 1982, upon enactment of G.S. 62-133.2, the Commission concludes that Commission Rule R1-36 is obsolete and should, therefore, be rescinded.

The Commission will soon enter a further order in this docket publishing for comment proposed rules to implement G.S. 62-133.2.

IT IS, THEREFORE, ORDERED that Commission Rule R1-36 be, and the same is hereby, rescinded.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February 1984.

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

DOCKET NO. E-100, SUB 47

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Rule-Making Proceeding to Consider Annual Fuel Charge Adjustments to Electric Rates Pursuant to G.S. 62-133.2 | ) ORDER ADOPTING<br>) REVISED RULES<br>) |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, beginning March 1, 1983

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

APPEARANCES:

For the Respondents:

Steve C. Griffith, Jr., Senior Vice President and General Counsel, and George W. Ferguson, Jr., Vice President and Deputy General Counsel, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

Richard E. Jones, Vice President and Senior Counsel, and Hill Carrow, Attorney, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Virginia Electric and Power 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.

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Blanton, Whisnant & McMahon, P.A., Attorneys at Law, P.O. Drawer 1269, Morganton, North Carolina 28655
For: Great Lakes Carbon Corporation

M. Travis Payne, Edelstein & Payne, Attorneys at Law, P.O. Box 12607, Raleigh, North Carolna 27605
For: Kudzu Alliance

For the Using and Consuming Public:

Antoinette Wike, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On June 17, 1982, the North Carolina General Assembly repealed G.S. 62-134(e) and enacted G.S. 62-133.2, thereby modifying the statutory basis for allowing adjustments to electric rates for changes in the cost of fuel and the fuel component of purchased power.

Both the Public Staff and the North Carolina Textile Manufacturers Association (NCTMA) filed motions in Docket No. E-100, Sub 44, requesting the Commission to institute a rulemaking to consider such revisions to the Commission's rules as may be needed to conform to G.S. 62-133.2. The Public Staff, in addition, filed proposed rule revisions and asked that they be published for comment.

By Order issued December 22, 1982, the Commission created Docket No. E-100, Sub 47, and instituted the instant proceeding for the purpose of establishing rules and procedures for the implementation of G.S. 62-133.2 regarding fuel charge adjustments for electric utilities. Carolina Power & Light Company (CP&L), Duke Power Company (Duke), and Virginia Electric and Power Company (Vepco) were made party respondents; the NCTMA and other interested parties were invited to intervene; and the Public Staff's intervention was recognized. A hearing to consider proposed rule revisions and testimony was scheduled to begin on March 1, 1983.

Great Lakes Carbon Corporation filed a Petition to Intervene on January 10, 1982, which was allowed by Order of the Commission issued January 19, 1983.

On January 14, 1983, the NCTMA filed a Petition to Intervene and Participate, and by Order dated Janaury 19, 1983, the Commission allowed that Petition.

A Petition to Intervene was filed by Kudzu Alliance on January 17, 1983, and was allowed by Commission Order on January 21, 1983.

The Attorney General's Notice of Intervention filed Janaury 19, 1983, is deemed recognized pursuant to Commission Rule R1-19(e).

The matter came on for hearing as scheduled on March 1, 1983, at which time the Commission heard testimony from one public witness: Jane Sharp, President of the Conservation Council of North Carolina and also the Consumers Council of North Carolina.

The Public Staff presented a panel consisting of two witnesses: Dennis J. Nightingale, Director - Electric Division and William E. Carter, Jr., Assistant Director - Accounting Division. The panel provided a summary of the Public Staff's proposed Revised Rule R1-36 and a description of how the data formats contained in the Public Staff's proposed Revised Rule R8-45 were developed to comport with G.S. 62-133.2.

The witnesses stated that Proposed Rule R1-36 was intended to provide a procedure that would accommodate both annual fuel charge adjustments and general rate cases. They said that the proposed filing requirements in Rule R1-36 reflect the Public Staff's best judgment, based on fuel clause and rate

case experience, of the minimum information necessary to make the determination as to whether or not rates should be adjusted as provided in the statute.

The witnesses also stated that the data formats of Revised Rule R8-45 were developed by first comparing the information required under G.S. 62-133.2(c) with the information already being filed pursuant to various Commission Rules as well as information contained in fuel clause applications under former G.S. 62-134(e), and then selecting one format or combination of formats to apply to all three utilities. For information not already being provided, the Public Staff took a "lowest common denominator" approach to assure that none of the information required by the statute was omitted.

The witnesses pointed out that not all of the informational requirements of their proposals were tied directly to specific provisions of G.S. 62-133.2, notably hour-by-hour information and normalized data. They explained that hourly information in analyzing plant outages and their impact on fuel costs has become more and more important with the passage of time. They also explained that normalized data is important to minimize the impact of generation mix, weather, customer growth, and customer usage on fuel expense.

All three utilities expressed opposition or concern with regard to the Public Staff's proposals for 12-months ending information, hourly data and normalized data. The panel responded that certain information has been provided in past fuel charge proceedings for the 12-months ending, and that it is only a matter of adding the amounts for the current month and deducting the amounts for the same month of the prior year in order to maintain a 12-month total. The witnesses stated, on cross-examination, that the 12-months ending information should be filed every month regardless of whether the utility was seeking a rate adjustment under this statute.

The panel cited the language in G.S. 62-133.2(c)(8) referring to "times of power sales" in support of the hourly data requirement. The witnesses said the Public Staff would review the information on a monthly basis to see what units were down when purchases were made, and that the information would also help them to identify which units are being used as base load units.

The panel also testified that the purpose of requiring normalized data is to compare it to actual test period data and thereby to try to isolate the part of the increase or decrease in fuel costs that was related to changes in fuel prices instead of changes in generation mix, weather, customer usage, and so forth. The Public Staff recommended no specific method for normalization, however, saying only that it should be the same as in the last general rate case and that the Commission would have to be fairly specific in said rate case order.

The Public Staff witnesses stated on cross-examination that, if a utility overcollected its fuel costs in one period because it had better than normal base load plant performance, the Public Staff would not seek to deprive the Company of those additional revenues in ensuing fuel charge proceedings. The witnesses also stated that if it becomes apparent during an ensuing fuel charge proceeding that certain critical generating units are going to be down for refueling, etc., it would be necessary to go back to the general rate case and redo the generation mix in order to account for the known outage. The

Public Staff's philosophy, the panel stated, was that the utilities should have a reasonable opportunity to recover their prudently incurred fuel costs over the long term.

The Public Staff panel agreed with or acquiesced in certain comments and proposals by the utilities. These include: (1) Duke's recommendations that an order be issued within three weeks of the close of a hearing and that a proceeding instituted by an interested party be treated as a complaint proceeding; (2) CP&L's proposal that "back end"--disposal--costs of nuclear fuel as well as cogeneration payments be included in the utility's fuel costs; and (3) Vepco's proposals that information be filed on the 15th day of the second succeeding month, that the weather normalization requirement be waived until weather normalization can be put into effect in a general rate case for Vepco, that filing of the Schedule 5 fuel report in Rule R8-45 be on a station basis for base load units, that the requirement for filing heat rates for nuclear units and capacity factors and equivalent availability factors for combustion turbines in Rule R8-45 be waived, that Schedules 7, 8, and 9 in Rule R8-45 be combined, and that both light oil and heavy oil be reflected on the schedules in Rule R8-45.

Duke presented the testimony and exhibits of William R. Stimart, Vice President - Regulatory Affairs of the Company. Witness Stimart testified that the purpose of G.S. 62-133.2 is to provide an expedited proceeding in which electric utilities can recover actual fuel costs--no more and no less. He also contended that Subsection (c) of the statute requires the submission of annualized data and information, which is entirely different from normalized data.

With regard to proposed Rule R1-36, witness Stimart contended that the test period should not be restricted to ending a given month prior to the application, as proposed by the Public Staff, if other appropriate information is available; that the statute does not fix a 60-day limitation on fuel charge adjustments as proposed by the Public Staff; and that an investigation period of 30 days instead of 45 days is reasonable for the Public Staff.

With regard to Proposed Rule R8-45, witness Stimart contended that the 12-month data proposed by the Public Staff is meaningless except upon the filing of an application under Rule R1-36 and is unduly burdensome, that heat rate and BTU content of coal burned should be omitted from the proposed Schedule 1, that fuel and purchased power expense is not needed by general ledger account on proposed Schedule 2 unless an on-site examination is made of the books and records, that data currently being supplied concerning power transactions should be sufficient instead of the data on proposed Schedules 3 and 4, that data on proposed Schedule 5 would be awkward to provide on a 12-month basis, that the cost of fuel purchased on proposed Schedule 5 cannot be provided on a unit basis, that it is meaningless to provide for a cost on a dollar purchased basis and a cents per MBTU basis as well as on an "as burned" basis, that information on proposed Schedule 6 concerning oil and gas is a minor element of fuel costs for Duke, that information cannot be furnished by mine for affiliated companies as provided on proposed Schedule 7 and should not be required for Martin County as it is not an affiliated company, that the information concerning oil purchases on proposed Schedule 8 is a minimal element of Duke's fuel costs, that information on proposed Schedule 9 concerning quality of coal purchases is presently being supplied but would be of unknown value in a fuel proceeding, that hourly generation per unit as

required on proposed Schedule 10 would be burdensome and unreasonable, that heat rate data on each unit on proposed Schedule 11 is irrelevent and not required by statute, and that capacity factor data for other than base load units on proposed Schedule 11 is meaningful only when proposed Schedule 11 is using Maximum Dependable Capacity (MDC) as opposed to Design Equivalent Rating (DER) or rameplate data.

Witness Stimart stated on cross-examination that Duke proposed a normalized generation mix in its general rate case in Docket No. E-7, Sub 338, because its McGuire 1 unit had come on line at the end of the test period. He also suggested that it would be appropriate to find a fuel factor in a proceeding under G.S. 62-133.2 and let that be the basis for the fuel factor used in a general rate case.

Duke also presented rebuttal testimony of William H. Grigg, Executive Vice President - Finance and Administration, and Austin C. Thies, Executive Vice President - Power Operations, for the Company.

Witness Grigg testified that G.S. 62-133.2 authorizes the Commission to adjust fuel costs for overrecovery or underrecovery of actual fuel costs. He stated that Duke does not seek a guarantee of recovery of its fuel costs but only an opportunity to recover such costs under prudent management. Witness Grigg referred to statutes and rules in other states dealing with overrecovery or underrecovery of electric utilities' actual fuel costs. Witness Grigg further stated that since Janaury 1, 1981, the Company has undercollected its fuel costs by about $56 million.

On cross-examination, witness Grigg stated that some of the jurisdictions in which adjustments are made for overrecovery or underrecovery also provide that utilities may use deferred accounting procedures and that, because of the way fuel costs have been fixed in North Carolina, Duke does not use deferred accounting. Witness Grigg also stated that for 1982 Duke underrecovered its actual fuel expenses by only $4 million. While, in his opinion, the single most important element in G.S. 62-133.2 is the language which says the Commission may consider but is not bound by costs incurred and actually recovered under the rate in effect during the prior period, witness Grigg said that the provision for any fuel cost recovery at all is what makes it potentially a much better statute than the previous one.

Witness Thies described a chart illustrating the heat rate achieved by Duke's fossil steam units from 1970 to 1982. Through 1979, when records for the national average were stopped, Duke's heat rate was about 10% below the average, and the trend showed continued improvement over the last five years. Witness Thies stated that one of Duke's corporate goals is to operate its facilities in the most efficient manner and that its operating people pay no attention to the presence or absence of a fuel clause. Witness Thies also testified, through the use of a chart, that nuclear refueling outages are difficult to spread over an even amount during a particular period because of factors beyond the control of operations people.

On cross-examination, witness Thies agreed that Duke's nuclear capacity factors for 1981 and 1982 were approximately 59% and 45.5%, respectively, while its underrecoveries of fuel expenses for the two years were $52 million and $4 million, respectively. Witness Thies also stated that, on the basis of Duke's long-term operation of its nuclear plants, he would not consider a 60% capacity factor to be an unreasonable expectation of the Company.

Vepco presented a panel consisting of two witnesses, David R. Hostetler, Manager-Rates, and Hodges M. Hastings, Jr., Director - Oil and Coal Contracts, for the Company. Witness Hostetler testified that Vepco had proposed two rules, R1-36 and R8-45, which were modified to conform with G.S. 62-133.2. In addition to objecting to the Public Staff's proposal for "normalized" data, witness Hostetler also contended that the Public Staff's suggested filing requirements go far beyond what is reasonable or necessary, citing numerous manhours needed for compliance. Witness Hastings proposed certain changes to the Public Staff's proposals to which, as noted above, the Public Staff agreed.

On cross-examination, the panel indicated no opposition to the 45-day investigation period proposed by the Public Staff or to the three-week period between a hearing and the Commission Order. The panel also agreed that, based on Vepco's recent operating experience with nuclear units at around a 70% capacity factor, normalizing nuclear generation at the national average of around 60% would benefit the Company.

CP&L presented the testimony and exhibits of David R. Nevil, Manager - Rate Development and Administration in the Company's Rates and Service Practices Department. Witness Nevil presented a review of the Public Staff's proposed rules and data requirements as well as an optional set of rules and data requirements. Witness Nevil stated that his testimony presumed that a utility is entitled to recover, on a current basis, its prudently incurred fuel costs. CP&L's proposal, as described by witness Nevil, includes two alternative methodologies, Case No. 1 and Case No. 2, both involving an "experience factor." Case No. 1 would base fuel costs on actual test year fuel expense adjusted to reflect the effect of adjustments to kWh sales as these affect generation mix. Case No. 2 would use longer term historical operating experience as a means of defining normal operation and proforming generation mix. The "experience factor" in both cases would operate by calculating the difference between estimated fuel costs and actual fuel costs for each of the preceding three years and increasing or decreasing the current estimated base fuel cost by the average precentage difference, on a >/kWh basis, over the three preceding years.

Like witnesses for Vepco and Duke, witness Nevil questioned the reasonableness and necessity of some of the filing requirements contained in the Rules proposed by the Public Staff, including 12-months ending data and hourly generation data. Witness Nevil also suggested some additional filing requirements, such as a 12-month comparison of the fuel revenue/fuel cost relationship and the energy component of economy purchases. CP&L also proposed an NCUC Rule which would include purchased power costs along with fossil fuel costs in the definition of fuel cost, and it would also include nuclear fuel disposal costs and cogeneration payments in said fuel cost.

Kudzu Alliance presented the testimony and exhibits of Wells Eddleman, an independent energy and environmental consultant. Witness Eddleman described the difficulties faced by intervenors in trying to investigate and prepare for hearings on fuel adjustments. Witness Eddleman supported the Public Staff's proposal, with some additions, and recommended that the fuel component of purchased power be strictly defined.

The NCTMA presented the testimony and exhibits of H. Randolph Currin, Jr., President of Currin and Associates, Inc. Witness Currin testified that he had reviewed the Public Staff's proposed Rules R1-36 and R8-45 and found them to be generally complete and well founded. Witness Currin suggested a few additions and clarifications and two totally new provisions, one calling for kWh sales data normalized for weather only and one requiring that a computer-readable magnetic tape version of all data be filed. Witness Currin proposed, too, that any intervenor or consumer initiated decrement proceeding be treated as a complaint action, if the Commission finds no change in rates to be warranted, in order to prevent any party from frivolously using up a utility's opportunity for an application under the statute.

Witness Currin testified on cross-examination that he had no trouble with the concept of an experience factor in general and that he recommended consistency between treatment of fuel in a general rate case and treatment of fuel in a proceeding under G.S. 62-133.2.

The Attorney General presented the testimony and exhibits of Dr. Richard A. Rosen, a Senior Scientist at Energy Systems Research Group. Dr. Rosen stated that the primary reason for adopting a fuel adjustment clause or procedure is the apportionment of risk between the stockholders and ratepayers of the utility with respect to fuel prices and plant performance. Such a procedure, in his view, entails the use of pro forma or normalized generation, especially for base load facilities, which reflects risk sharing considerations. Dr. Rosen's proposals differed from the Public Staff's in several respects. Dr. Rosen recommended two procedures for choosing a pro forma generation mix: (1) a statistical (regression) analysis of the historical operation of base load units, and (2) the performance level claimed for the units when regulatory approval for their construction was sought. With regard to the fuel component of purchased power costs, he suggested the full inclusion of split savings economy power purchases.

On January 18, 1984, Vepco filed additional testimony of Thomas D. Leonard, Manager - Transportation for Vepco, who cautioned against those portions of the proposed information requirements in NCUC Rule R8-45, which would require disclosure of freight rates for transportation of coal. He cited the partial deregulation of rail shipment rates under the Staggers Act of 1980 and ICC requirements that rail transportation rates and charges be kept confidential. He also cautioned that disclosure of F.O.B. mine prices for coal would adversely affect the coal procurement activities of the company by enabling competing coal companies to know what Vepco is already paying for coal from competitor's mines. He stressed that the information as to F.O.B. mine prices of coal and rail freight rates for coal would always be available to the Commission, the Public Staff, and other appropriate intervenors even if such information were not made a formal part of NCUC Rule R8-45.

By letter of January 31, 1984, CP&L fully supported the position taken by Vepco regarding rail freight rates for coal and F.O.B. mine prices for coal, and cited an earlier letter to the FERC from Samuel Behrends, Jr., Vice President for Corporate Regulatory Affairs for CP&L which expressed in detail the company's position on the issues.

By order issued on February 27, 1984, in the present docket, old NCUC Rule R1-36 was rescinded due to its obsolescence.

On March 7, 1984, the Commission issued its Order Publishing Proposed Rules for Comment in this docket in which it made the following findings of fact and conclusions of law:

1. Carolina Power & Light Company, Duke Power Company, and Virginia Electric and Power Company are public utilities duly authorized to engage in the business of developing, generating, transmitting, distributing, and selling electricity in their respective service territories in the State of North Carolina and, as such, are subject to the jurisdiction of this Commission and to the provisions of the Public Utilities Act.

2. CP&L, Duke, and Vepco are lawfully before the Commission by order of December 22, 1982, establishing a rule-making proceeding to consider annual fuel adjustments to electric rates pursuant to G.S. 62-133.2.

3. NCUC Rules R8-45 and R8-46 (a) and (d) should be redesignated as NCUC Rules R8-52 and R8-53, respectively, and they should be revised to reflect the data reasonably required to evaluate the cost of fuel and the prudence of fuel procurement and fuel consumption. Old paragraphs (b) and (c) of old NCUC Rule R8-46 should be rescinded due to their obsolescence.

4. Old NCUC Rule R1-36 has been rescinded due to its obsolescence.

5. A new NCUC Rule R8-54 should be provided in order to govern fuel charge proceedings initiated by the utility.

6. A new NCUC Rule R8-55 should be provided in order to govern annual fuel charge proceedings required by G.S. 62-133.2 where no person requests such proceeding under NCUC Rule R8-54.

7. The Public Staff and other intervenors should initiate fuel charge proceedings for a given utility pursuant to a complaint action filed under G.S. 62-73 and NCUC Rule R1-9, thereby protecting the eligibility of said utility to seek a fuel charge proceeding under NCUC Rule R8-54. G.S. 62-133.2 allows only one fuel charge proceeding within twelve (12) months of the last general rate case order for said utility.

8. The test period utilized for fuel charge adjustment proceedings should end not more than 60 days prior to the date of the application under the proposed new Rule R8-54, nor more than 120 days prior to the hearing date under the proposed new Rule R8-55, in order to minimize the need for updating the test period and the difficulties for all parties resulting from such updating.

9. The test period utilized for the proposed new Rule R8-54 and the proposed new Rule R8-55 should consist of 12 calendar months and should include only those months for which the data required by Rules R8-52 and R8-53 has been filed with the Commission in order to ensure that sufficient information is available to expedite the time required for investigation by the intervenor parties. The Commission may also

consider, but is not bound by, changes in the price of fuel and the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed.

10. The Commission's rules should not specify any particular methodology at the present time for calculating a proposed fuel charge adjustment.

11. G.S. 62-133.2 limits fuel charge adjustments for electric utilities in fuel adjustment proceedings to changes in the cost of fuel and the fuel component of purchased power. Said statute requires the Commission to consider nine separate items of information related to fuel, and it also allows the Commission to consider changes in the price of fuel consumed and the price of fuel in the fuel component of purchased power and other considerations. For the purposes of fuel adjustment proceedings under G.S. 62-133.2, the cost of fuel does not include nuclear fuel waste disposal costs, and the fuel component of purchased power (including purchases from cogenerators and small power producers) does not include any fixed cost components or any variable cost components other than fuel; i.e., the fuel cost component of purchased power includes only the cost of fuel used by the seller in generating the power.

12. The information required by NCUC Rules R8-54 and R8-55 for fuel charge proceedings should be data necessary to support the rates proposed by the applicant (or respondent), and it should include the data necessary to illustrate the change in fuel costs per kWh due to:

(a) any different test period from the last general rate case;
(b) any different unit fuel prices from the last general rate case;
(c) any different generation mix from the last general rate case; and
(d) any different calculation methodology from the last general rate case.

13. The requirement in G.S. 62-133.2 for "times of power sales" does not require hour by hour generation data, nor does it require specifically hour by hour purchase power transactions. Such data would be unduly burdensome and would also be of little use to the Public Staff or other intervenors absent adequate resources for handling and processing such data.

14. The confidentiality of FOB mine costs and of freight costs of coal should be protected to the extent reasonable. Even if such information is not available to the Public Staff and intervenors on a routine basis pursuant to NCUC Rule R8-52, such information is available to said parties on an as-needed basis.

15. The twelve (12) month summaries of data prescribed by NCUC Rule R8-52 should not be unduly burdensome to provide in most instances. However, such summaries would be less useful in analyzing coal and oil purchases, since some of the data related to analysis of coal and oil purchases must be handled with confidentiality and will not be included on the schedules.

16. CP&L's Mayo generating plant and Duke's McGuire generating plant should be designated as base load plants in NCUC Rule R8-53; and CP&L's Roxboro Unit #1 should no longer be designated as a base load unit in NCUC Rule R8-53 due to its small size.

17. All generating units of 500 mW or greater capacity should be included in that portion of NCUC Rule R8-53 requiring certain base load generating plant performance data in order to illustrate whether or not base load generation is adequately represented by the specific generating units designated in NCUC Rule R8-53 as base load units. However, the outage reports prescribed by NCUC Rule R8-53 should continue to be required only for those specific generating units designated as base load units in the rule.

Said Commission Order of March 7, 1984, requested further comments by all parties to the proceeding regarding: (1) proposed new Rules R8-55 and R8-54 and proposed revised Rules R8-53 and R8-52 attached thereto as Appendices A, B, C and D, respectively; (2) the information and formats prescribed by Schedules 1 through 10 attached thereto as Appendix E; and (3) legal ramifications of and the Commission's authority and discretion to act on (a) a fuel charge adjustment proceeding instituted while a general rate case for the same utility is pending, and (b) a general rate case filed while a fuel charge adjustment proceeding for the same utility is pending. Said order also solicited proposed Rules which would reflect the recommendations of the parties regarding said legal ramifications and authority in (a) and (b).

Comments received from the parties ranged from suggested clarifications of certain terminology used or data required to reiteration of previous objections to various features under consideration to new proposals for expansion or modification of the Rules. Of particular note were comments regarding the requirement for "normalized" data in R8-55(b)(1) and R8-54(a)(3); the period of time to be included in the test period under R8-54(b)(1) and R8-54(a)(1); the timing of interventions under R8-55(b)(4 and 5) and R8-54(a)(7 and 8); the need for 12 month summaries of the monthly data in R8-52; and filing of fuel procurement practices reports under R8-52(b). The parties commented on how the Commission should deal with fuel charge adjustment proceedings and general rate cases pending at the same time, but they stated that no rules are needed to deal with the matter.

Based upon the foregoing, the evidence adduced at the hearing, the further comments received from the parties and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Carolina Power & Light Company, Duke Power Company, and Virginia Electric and Power Company are public utilities duly authorized to engage in the business of developing, generating, transmitting, distributing, and selling electricity in their respective service territories in the State of North Carolina and, as such, are subject to the jurisdiction of this Commission and to the provisions of the Public Utilities Act.

2. CP&L, Duke, and Vepco are lawfully before the Commission by order of December 22, 1982, establishing a rule-making proceeding to consider annual fuel adjustments to electric rates pursuant to G.S. 62-133.2.

3. NCUC Rules R8-45 and R8-46(a) and (d) should be redesignated as NCUC Rules R8-52 and R8-53, respectively, and they should be revised to reflect the data reasonably required to evaluate the cost of fuel and the prudence of fuel procurement and fuel consumption. Old paragraphs (b) and (c) of old NCUC Rule R8-46 should be rescinded due to their obsolescence.

4. Old NCUC Rule R1-36 has been rescinded due to its obsolescence.

5. A new NCUC Rule R8-54 should be provided in order to govern fuel charge proceedings initiated by the utility.

6. A new NCUC Rule R8-55 should be provided in order to govern annual fuel charge proceedings required by G.S. 62-133.2 where no person requests such proceeding under NCUC Rule R8-54.

7. The Public Staff and other intervenors should initiate fuel charge proceedings for a given utility pursuant to a complaint action filed under G.S. 62-73 and NCUC Rule R1-9, thereby protecting the eligibility of said utility to seek a fuel charge proceeding under NCUC Rule R8-54. G.S. 62-133.2 allows only one fuel charge proceeding within twelve (12) months of the last general rate case order for said utility.

8. The test period utilized for fuel charge adjustment proceedings should end not more than 90 days prior to the date of the application under new Rule R8-54, nor more than 150 days prior to the hearing date under new Rule R8-55. Such a time table would minimize the need for updating the test period and the difficulties for all parties resulting from such updating, and it would give the utilities a reasonable amount of time to prepare their filings under NCUC Rules R8-55 and R8-54 on a timely basis.

9. The test period utilized for new Rule R8-54 and new Rule R8-55 should consist of 12 calendar months and should include only those months for which the data required by Rules R8-52 and R8-53 has been filed with the Commission in order to ensure that sufficient information is available to expedite the time required for investigation by the intervenor parties. The Commission may also consider, but is not bound by, changes in the price of fuel and the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed.

10. The Commission's rules should not specify any particular methodology at the present time for calculating a proposed fuel charge adjustment, except as specified in G.S. 62-133.2.

11. G.S. 62-133.2 limits fuel charge adjustments for electric utilities in fuel adjustment proceedings to changes in the cost of fuel and the fuel component of purchased power. Said statute requires the Commission to consider nine separate items of information related to fuel, and it also allows the Commission to consider changes in the price of fuel consumed and the price of fuel in the fuel component of purchased power and other considerations. For the purposes of fuel adjustment proceedings under G.S. 62-133.2, the cost of fuel does not include nuclear fuel waste disposal costs, and the fuel component of purchased power (including purchases from cogenerators and small power producers) does not include any fixed cost components or any variable cost components other than fuel; i.e., the fuel cost component of purchased power includes only the cost of fuel used by the seller in generating the power.

12. The information required by NCUC Rules R8-54 and R8-55 for fuel charge proceedings should be data necessary to support the rates proposed by the applicant (or respondent), and it should include the data necessary to illustrate the change in fuel costs per kWh due to:

(a) any different test period from the last general rate case;
(b) any different unit fuel prices from the last general rate case;
(c) any different generation mix from the last general rate case; and
(d) any different calculation methodology from the last general rate case.

13. The requirement in G.S. 62-133.2 for "times of power sales" does not require hour by hour generation data, nor does it require specifically hour by hour purchase power transactions. Such data would be unduly burdensome and would also be of little use to the Public Staff or other intervenors absent adequate resources for handling and processing such data.

14. The confidentiality of source of purchases, FOB mine costs of coal, and of freight costs of coal should be protected to the extent reasonable. Even if such information is not available to the Public Staff and intervenors on a routine basis pursuant to NCUC Rule R8-52, such information is available to said parties on an as-needed basis.

15. The twelve (12) month summaries of data prescribed by NCUC Rule R8-52 would be less useful in analyzing coal and oil purchases, since some of the data related to analysis of coal and oil purchases must be handled with confidentiality and will not be included on the schedules. Nevertheless, the Commission assumes that the data in Schedules 7 and 8 as well as the associated confidential data regarding source of purchases, FOB mine costs of coal, and freight costs of coal will be available to the Public Staff and other intervenors on an as-needed basis in the form of 12 month summaries as well as individual monthly summaries.

16. The twelve (12) month summaries of data prescribed by NCUC Rule R8-52 should not be unduly burdensome to maintain in most instances. However, in order to allow more time for the affected utilities to compile the initial 12 month summaries, the requirement for said 12 month summaries in Schedules 1 through 10 should be suspended for 90 days after the effective date of the Rule. Following the 90 day suspension, each succeeding monthly report should contain a full 12 month summary where specified.

17. An initial Fuel Procurement Practices Report should be filed with the Commission by the affected utilities at an early date, since NCUC Rule R8-52(b) only addresses revisions and status reports on said fuel procurement practices.

18. CP&L's Mayo generating plant and Duke's McGuire generating plant should be designated as base load plants in NCUC Rule R8-53; and CP&L's Roxboro Unit #1 should no longer be designated as a base load unit in NCUC Rule R8-53 due to its small size.

19. All generating units of 500 mW or greater capacity should be included in that portion of NCUC Rule R8-53 requiring certain base load generating plant performance data in order to illustrate whether or not base load

generation is adequately represented by the specific generating units designated in NCUC Rule R8-53 as base load units. However, the outage reports prescribed by NCUC Rule R8-53 should continue to be required only for those specific generating units designated as base load units in the rule.

20. Interventions filed less than 15 days prior to the hearings pursuant to NCUC Rule R8-55(b)(4 and 5) and R8-54(a)(7 and 8) should be limited to good cause shown, and such interventions should be accompanied by direct testimony and exhibits of expert witnesses the intervenors intend to offer at the hearings.

21. The annual public hearing required by Rule R8-55(a)(2) for Vepco must be held by December 5, 1984, which is 12 months after the Commission's last general rate case order for Vepco, unless another general rate case order is issued by that date (which is unlikely since no such rate case is now pending) or unless a fuel charge adjustment hearing pursuant to Rule R8-54 is held by that date. The hearing required by Rule R8-55(a)(2) will be scheduled by separate order issued at least 150 days prior to December 5, 1984.

22. The annual public hearings required by Rule R8-55(a)(2) for Duke and CP&L would be held by September 30, 1984, and December 7, 1984, respectively, which is 12 months after the last general rate case orders for those utilities; however, both Duke & CP&L have new general rate cases pending with the Commission which will likely be decided before those dates. The annual hearings, whenever required, will be scheduled by separate orders issued at least 150 days prior to the dates set for the hearings.

23. Proposed Schedule 10 under NCUC Rule R8-52 should be reduced to a 12 month summary only. The data on proposed Schedule 10 regarding base load plants is already included in the monthly information filed under NCUC Rule R8-53, and need not be repeated except in the context of an overall generation mix. The remaining data in Schedule 10 regarding non-base load plants is needed primarily for detailed evaluations of the overall generation mix covering an extended period of time, and would have little value on a month to month basis.

IT IS, THEREFORE, ORDERED as follows:

1. That new NCUC Rules R8-55, R8-54, R8-53 and R8-52 attached hereto as Appendices A, B, C, and D, respectively, are hereby adopted as the Rules of this Commission.

2. That the information and formats prescribed by Schedules 1 through 10 attached hereto as Appendix E are hereby adopted by the Commission pursuant to paragraph (a)(1) of new NCUC Rule R8-52.

3. That the 12 month summaries contained in Schedules 1 through 10 attached hereto as Appendix E and adopted herein pursuant to NCUC Rule R8-52(a)(1) are hereby suspended for 90 days from the date of this Order, in order to give the affected utilities a reasonable amount of time to compile the data (generated during the previous 12 months) necessary to produce said 12 month summaries.

4. That old NCUC Rules R8-45 and R8-46 are hereby rescinded.

5. That each utility subject to NCUC Rule R8-52(b) shall file an initial Fuel Procurement Practices Report with the Commission in such detail as is specified in said NCUC Rule R8-52(b), and that such Report shall be filed within 60 days after the date of this Order.

6. That for purposes of the Rules adopted herein, the cost of fuel does not include nuclear fuel waste disposal costs, and the fuel component of purchased power (including purchases from cogenerators and small power producers) does not include any fixed cost components or any variable cost components other than fuel; i.e., the fuel component of purchased power includes only the cost of fuel used by the seller in generating the power.

7. That a public hearing pursuant to NCUC Rule R8-55 shall be scheduled by separate Order to be held by December 5, 1984, in order to review changes in the cost of fuel and the fuel component of purchased power for Virginia Electric and Power Company unless a fuel charge adjustment hearing is held by that date pursuant to Rule R8-54.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of May 1984.

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

APPENDIX A

RULE R8-55
ANNUAL HEARINGS TO REVIEW CHANGES IN THE COST OF FUEL

(a) For each utility generating electric power by means of fossil and/or nuclear fuel for the purpose of furnishing North Carolina retail electric service, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.2(b) in order to review changes in the cost of fuel and the fuel component of purchased power for the affected utility.

(1) The required annual hearings prescribed by G.S. 62-133.2(b) may be initiated pursuant to this rule or pursuant to NCUC Rule R8-54.

(2) If no hearing has been held for the purpose of reviewing changes in the cost of fuel and the fuel component of purchased power for a given utility since the last general rate case order for said utility, then the next hearing for such purpose shall be scheduled to fall not more than 12 months after the last general rate case order for said utility, and the Commission shall issue an order scheduling said hearing pursuant to this Rule at least 150 days prior to the date of said hearing.

(3) Only one hearing may be held for the purpose of reviewing changes in the cost of fuel and the fuel component of purchased power for a given utility during the 12 months following the last general rate case order for said utility.

(b) When a required annual hearing prescribed by G.S. 62-133.2(b) is initiated pursuant to this rule instead of NCUC Rule R8-54, the proceeding will be considered by the Commission as follows:

(1) The respondent utility shall file information with the Commission encompassing an historic 12-month test period ending not more than 150 days prior to the hearing, and the 12 months in the test period shall consist of 12 calendar months for which the information required by NCUC Rules R8-52 and R8-53 has been filed with the Commission. Said information shall include the following:

(i) Actual test period kWh sales, fuel related revenues, and fuel related expenses for the utility's total system and for N.C. retail service.

(ii) Test period kWh sales normalized for weather, customer growth and usage. Said normalized kWh sales shall be for the utility's total system and for N.C. retail service. The methodology used for such normalization shall be the same methodology adopted by the Commission, if any, in the utility's last general rate case.

(iii) Adjusted test period kWh generation corresponding to normalized test period kWh usage. The methodology for such adjustment shall be the same methodology adopted by the Commission, if any, in the utility's last general rate case, including adjustment by type of generation; i.e., nuclear, fossil, hydro, pumped storage, purchased power, etc.

(iv) Cost of fuel corresponding to the adjusted test period kWh generation, including a detailed explanation showing how such cost of fuel was derived. The cost of fuel shall be based on: (1) unit fuel prices used by the Commission in the last general rate case; (2) unit fuel prices incurred during the test period; and (3) unit fuel prices proposed by the respondent utility in this proceeding if applicable. Unit fuel prices shall include delivered fuel prices and burned fuel expense rates as appropriate.

(v) Workpapers supporting the calculations, adjustments and normalizations described above.

(2) The respondent utility shall file the information required under this rule, accompanied by workpapers and direct testimony and exhibits of expert witnesses supporting the information filed herein, and any changes in rates proposed by the respondent (if any), at least 60 days prior to the hearing. Nothing in this rule shall be construed to require the respondent utility to propose a change in rates or to utilize any particular methodology to calculate any change in rates proposed by the respondent utility in this proceeding.

(3) The respondent utility shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least 30 days prior to the hearing, notifying the public of thehearing before the Commission pursuant to G.S. 62-133.2(b)and setting forth the time and place of the hearing.

(4) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(5) The Public Staff and other intervenors shall file direct testimony and exhibits of expert witnesses at least 15 days prior to the hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(6) The burden of proof as to the correctness and reasonableness of any charge shall be on the utility.

(7) The hearing will generally be held in the Hearing Room of the Commission at its offices in Raleigh, North Carolina.

(8) If the Commission has not issued an order pursuant to G.S. 62-133.2 within 120 days after the date the respondent utility has filed any proposed changes in its rates and charges in this proceeding based solely on the cost of fuel and the fuel component of purchased power, then said utility may place such proposed changes into effect. If such changes in the rates and charges are finally determined to be excessive, said utility shall refund any excess plus interest to its customers in a manner directed by the Commission.

## APPENDIX B

### RULE R8-54
### APPLICATION FOR CHANGE IN RATES BASED SOLELY ON COST OF FUEL

(a) An application by a public utility for authority to charge a uniform increment or decrement as a rider to its North Carolina retail electric rates based on the difference between the cost of fuel and the fuel component of purchased power used in providing said North Carolina retail electric service and the cost of fuel and the fuel component of purchased power established in its previous general rate case will be considered by the Commission as follows:

(1) The application shall be verified and shall encompass an historic test period consisting of 12 calendar months ending not more than 90 days prior to the date of the application.

(2) The 12 months in the test period utilized in the application shall consist of 12 calendar months for which the information required by NCUC Rules R8-52 and R8-53 has previously been filed with the Commission, and the application need not include said information previously filed with the Commission pursuant to NCUC Rules R8-52 and R8-53 for said months. The applicant shall be prepared to furnish the information previously filed with the Commission pursuant to NCUC Rules R8-52 and R8-53 for the entire 12 months test period to any party to the proceeding promptly upon request.

(3) The application shall contain the following information:

(i) Actual test period kWh sales, fuel related revenues, and fuel related expenses for the utility's total system and for North Carolina retail service.

(ii) Test period kWh sales normalized for weather, customer growth and usage. Said normalized kWh sales shall be for the utlity's total system and for North Carolina retail service. The methodology used for such normalization shall be the same methodology adopted by the Commission, if any, in the utility's last general rate case.

(iii) Adjusted test period kWh generation corresponding to normalized test period kWh usage. The methodology for such adjustment shall be the same methodology adopted by the Commission, if any, in the utility's last general rate case, including adjustment by type of generation; i.e., nuclear, fossil, hydro, pumped storage, purchased power, etc.

(iv) Cost of fuel corresponding to the adjusted test period kWh generation, including a detailed explanation showing how such cost of fuel was derived. The cost of fuel shall be based on: (1) unit fuel prices used by the Commission in the last general rate case; (2) unit fuel prices incurred during the test period; and (3) unit fuel prices proposed by the applicant in this proceeding. Unit fuel prices shall include delivered fuel prices and burned fuel expense rates as appropriate.

(v) Workpapers supporting the calculations, adjustments and normalizations described above.

(4) In addition to the information prescribed elsewhere herein, the application shall contain, as a minimum, workpapers supporting the change in rates proposed by the applicant in this proceeding. Nothing in this rule shall be construed to require the applicant to utilize any particular methodology to calculate the change in rates proposed by the applicant in this proceeding.

(5) The application shall be accompanied by the applicant's direct testimony and exhibits of expert witnesses.

(6) The applicant shall publish a notice for two (2) successive weeks in a newspaper or newspapers having general circulation in its service area, normally beginning at least thirty (30) days prior to the hearing, notifying the public that application has been made to the Commission pursuant to G.S. 62-133.2 and setting forth the time and place for the public hearing.

(7) Persons having an interest in said hearing may file a petition to intervene setting forth such interest at least 15 days prior to the date of the hearing. Petitions to intervene filed less than 15 days prior to the date of the hearing may be allowed in the discretion of the Commission for good cause shown.

(8) The Public Staff and other intervenors shall file proposed initial direct testimony and exhibits of expert witnesses at least 15 days prior to any hearing date. If a petition to intervene is filed less than 15 days prior to the hearing date, it shall be accompanied by any direct testimony and exhibits of expert witnesses the intervenor intends to offer at the hearing.

(9) Public hearings on applications pursuant to G.S. 62-133.2 will generally be held in the Hearing Room of the Commission at its offices in Raleigh, North Carolina.

(10) The Public Staff and other intervenors shall have at least 45 days from the date of application in which to investigate the application.

(11) The burden of proof as to the correctness and reasonableness of any charge shall be on the utility.

(12) If the Commission has not issued an Order pursuant to this rule within 120 days after the date of application, the applicant may place the requested fuel charge adjustment into effect. If the change in rates is finally determined to be excessive, the utility shall refund any excess plus interest to its customers in a manner directed by the Commission.

(b) If a person affected by the North Carolina retail electric rates and charges of a public utility files a petition with the Utilities Commission which raises the issue of the cost of fuel and the fuel component of purchased power of said utility, the Commission shall treat such petition as a complaint and deal with it in accordance with the provisions of G.S. 62-73 and NCUC Rule R1-9. The Commission shall treat such petition as a complaint in order to preserve the right of the affected utility or the Commission to initiate a review of its rates and charges based solely on changes in the cost of fuel and the fuel component of purchased power pursuant to G.S. 62-133.2(b) and NCUC Rule R8-54 or NCUC Rule R8-55 within 12 months after the last general rate case order for said utility. Nothing in this rule shall be construed to prohibit any interested person from seeking a review of the affected utility's rates and charges based solely on changes in the cost of fuel and the fuel component of purchased power.

APPENDIX C

RULE R8-53: MONTHLY BASE LOAD POWER PLANT PERFORMANCE REPORT

(a) On or before the last day of each month, every public utility which uses fossil and/or nuclear fuel in the generation of electric power for providing North Carolina retail electric service shall file a Base Load Power Plant Performance Report for the preceding month for review by the Commission, the Public Staff, and any other interested party.

(b) The monthly Base Load Power Plant Performance Report shall list each outage during the period for each fossil and/or nuclear generating unit designated herein.

(1) The outage information shall include the following:

(i) Generating unit affected by outage;

(ii) Date(s) of each outage;

(iii) Duration of each outage;

(iv) Cause of each outage;

(v) Explanation for cause of outage, if known;

(vi) Remedial action to prevent recurrance of outage, if any; and

(vii) Classification of outage as forced or scheduled.

(2) The outage information shall be provided for each unit at the following generating plants:

(i) Carolina Power & Light Company:
(A) Brunswick
(B) Mayo
(C) Robinson (Unit 2 only)
(D) Roxboro (Units 2, 3, 4 only)

(ii) Duke Power Company:
(A) Belews Creek
(B) McGuire
(C) Oconee

(iii) Virginia Electric and Power Company:
(A) Mt. Storm
(B) North Anna
(C) Surry

(iv) Any subsequent base load generating units added by each affected electric utility.

(c) The monthly Base Load Power Plant Performance Report shall provide summaries of the generation by each fossil and/or nuclear generation unit

designated herein, with one summary for the reporting month and another summary for the 12-month period ending with the reporting month.

(1) The generation summaries shall be provided for each base load generating unit plus each generating unit of 500 MW or greater maximum dependable capacity (MDC) utilizing coal or nuclear fuel.

(2) The generation summaries for each base load generating unit plus each generating unit of 500 MW or greater shall include the following information:

(i) Maximum dependable capacity (MDC) in megawatts (MW);

(ii) Hours in period;

(iii) Total megawatt-hours (MWH) possible in period;

(iv) MWH generated during period;

(v) Capacity factor (as a % of MDC);

(vi) Equivalent availability ((MWH generation possible in period, less MWH generation not available in period) divided by MWH generation possible in period); and

(vii) Output factor (or MWH generated during period divided by hours of generation in period) as a % of MDC.

(3) The generation summaries for each base load generating unit shall include, in addition to the information already listed herein, the following information:

(i) MWH not generated during period due to full scheduled outages (in MWH and as % of total possible generation);

(ii) MWH not generated during period due to partial scheduled outages (in MWH and as % of total possible generation);

(iii) MWH not generated during period due to full forced outages (in MWH and as % of total possible generation);

(iv) MWH not generated during period due to partial forced outages (in MWH and as % of total possible generation);

(v) MWH not generated during period due to economic dispatch (in MWH and as % of total possible generation); and

(vi) Heat rate (in BTU per kWh).

## APPENDIX D

## RULE R8-52: MONTHLY FUEL REPORT

(a) On or before the 15th day of each month, each public utility which uses fossil and/or nuclear fuel in the generation of electric power for providing North Carolina retail electric service shall file a Fuel Report for the second preceding month (i.e., up to 45 days after the end of the month being reported) for review by the Commission, the Public Staff, and any other interested party.

(1) The Monthly Fuel Report shall be filed in such formats as shall from time to time be approved by the Commission, and said reports shall include the following information:

(i) Details of power plant performance and generation;

(ii) Details of fuel costs and purchased power expenses;

(iii) Details of transactions for purchases, sales, and interchanges of power;

(iv) Details of fuel consumption and inventories; and

(v) Analysis of fossil fuel purchases.

(b) Each electric public utility which uses fossil and/or nuclear fuel in the generation of electric power shall file a Fuel Procurement Practices Report for review by the Commission at least once every ten (10) years, plus each time the utility's fuel procurement practices change. The Fuel Procurement Practices Report shall detail:

(1) The process and/or methodology the utility uses to determine its fuel needs;

(2) The process the utility uses to determine from which vendor it shall buy fuel; and

(3) The inventory management practices the utility follows to maintain its fuel inventory.

APPENDIX E

Schedule 1

COMPANY NAME
Summary of Monthly Fuel Report
Month, Year

| Line No. | Item | Amount Current Month | Amount Twelve Months Ended Current Month |
|---|---|---|---|
| 1. | Total fuel and purchased power expenses included in Base Fuel Component. . . . . | | |
| 2. | Less fuel expenses (in line 1) recovered through intersystem sales. . . . . | | |
| 3. | Total fuel expenses (line 1 minus line 2). . . | | |
| 4. | Total system sales . . . . . | MWH | MWH |
| 5. | Total inter-system sales . . . . . | MWH | MWH |
| 6. | Total sales less inter-system sales. . . . . | MWH | MWH |
| 7. | Total fuel expenses in >/kWh sold (line 3/ line 6) . . . . . | | |
| 8. | Current base fuel component (in >/kWh) . . . . | | |
| | Generation mix: | | |
| | Fossil (by primary fuel type): | | |
| 9. | Coal . . . . . | MWH | MWH |
| 10. | Oil. . . . . | MWH | MWH |
| 11. | Gas. . . . . | MWH | MWH |
| 12. | Total fossil . . . . . | MWH | MWH |
| 13. | Nuclear. . . . . | MWH | MWH |
| | Hydro: | | |
| 14. | Conventional . . . . . | MWH | MWH |
| 15. | Pumped storage . . . . . | MWH | MWH |
| 16. | Total hydro. . . . . | MWH | MWH |
| 17. | Total generation . . . . . | MWH | MWH |

Schedule 2

COMPANY NAME
Details of Fuel and Purchased Power Expenses
Month, Year

| Description | Amount Current Month | Amount Twelve Months Ended Current Month |
|---|---|---|
| Fuel expenses included in Base Fuel Component: | | |
| Steam generation - FERC Account 501 (List each Subaccount of Account 501) Total Steam Generation - Account 501. . . | | |
| Nuclear Generation - FERC Account 518 (List each Subaccount of Account 518) Total Nuclear Generation - Account 518. . | | |
| Other Generation - FERC Account 547 (List each Subaccount of 547) Total other Generation - Account 547. . . | | |
| Total fossil and nuclear fuel expenses included in Base Fuel Component. . . . . | | |
| Fuel component of purchased and interchanged power . . . . . | | |
| Total fuel expenses included in Base Fuel Component. . . . . | | |
| Other fuel expenses not included in Base Fuel Component: | | |
| Steam Generation - FERC Account 501 (List each Subaccount of Account 501) Total Steam Generation - Account 501. . . | | |
| Nuclear Generation - FERC Account 518 (List each Subaccount of Account 518) Total Nuclear Generation - Account 518. . | | |
| Other Generation - FERC Account 547 (List each Subaccount of Account 547) Total Other Generation - Account 547. . . | | |
| Nonfuel component of purchased and interchanged power . . . . . | | |
| Total other fuel expenses not included in Base Fuel Component: . . . . . | | |
| Total FERC Account 501 . . . . . | | |
| Total FERC Account 547 . . . . . | | |
| Total FERC Account 518 . . . . . | | |
| Total purchased and interchanged power expenses. . . . . | | |
| Total fuel and purchased power expenses. . . . | | |

Schedule 3
Page 1 of 2

COMPANY NAME
Purchase, Sales, and Interchange Power Transactions
Month, Year

| | Capacity | | Energy | | | Other |
|---|---|---|---|---|---|---|
| | MW | ($) | MWH | Fuel ($) | Non-Fuel ($) | (Describe)($) |
| Purchases | | | | | | |
| (by company by type) | | | | | | |
| . | | | | | | |
| . | | | | | | |
| . | | | | | | |
| Totals | | | | | | |
| Interchanges In | | | | | | |
| (by company by type) | | | | | | |
| . | | | | | | |
| . | | | | | | |
| . | | | | | | |
| Totals | | | | | | |
| Interchanges Out | | | | | | |
| (by company by type) | | | | | | |
| . | | | | | | |
| . | | | | | | |
| . | | | | | | |
| Totals | | | | | | |
| Net Purchases and Interchange Power | | | | | | |

| | Revenues | | |
|---|---|---|---|
| | MWH | Fuel ($) | Non-Fuel ($) |
| Intersystem Sales | | | |
| (by company by type) | | | |
| . | | | |
| . | | | |
| . | | | |
| Totals | | | |

Schedule 3
Page 2 of 2

COMPANY NAME

Purchase, Sales, and Interchange Power Transactions
Twelve Months Ended Month, Year

| | Capacity | | Energy | | | Other |
|---|---|---|---|---|---|---|
| | MW | ($) | MWH | Fuel ($) | Non-Fuel ($) | (Describe)($) |
| Purchases | | | | | | |
| (by company by type) | | | | | | |
| . | | | | | | |
| . | | | | | | |
| . | | | | | | |
| Totals | | | | | | |
| Interchanges In | | | | | | |
| (by company by type) | | | | | | |
| . | | | | | | |
| . | | | | | | |
| . | | | | | | |
| Totals | | | | | | |
| Interchanges Out | | | | | | |
| (by company by type) | | | | | | |
| . | | | | | | |
| . | | | | | | |
| . | | | | | | |
| Totals | | | | | | |
| Net Purchases and Interchange Power | | | | | | |

| | Revenues | | |
|---|---|---|---|
| | MWH | Fuel ($) | Non-Fuel ($) |
| Intersystem Sales | | | |
| (by company by type) | | | |
| . | | | |
| . | | | |
| . | | | |
| Totals | | | |

Schedule 4

COMPANY NAME
Underrecovery/Overrecovery of Fuel Costs
Month, Year

| Line No. | | |
|---|---|---|
| 1. | Base fuel component in N.C. retail rates per approved tariffs | _____> per kWh |
| 2. | Actual fuel costs includable in N.C. retail rates for current reporting month | _____> per kWh |
| 3. | Difference (line 1 minus line 2) | _____> per kWh |
| 4. | N.C. retail kWh sales for current reporting month | _____ kWh |
| 5. | Overrecovery/underrecovery for current reporting month (line 3 times line 4) and for each previous month since date of last change in base fuel component, as shown below. | |
| 6. | Cumulative overrecovery/underrecovery at end of each month since date of last change in base fuel component, as shown below. | |

| Month | Monthly Over/Under Recovery in Line 5 | Cumulative Over/Under Recovery in Line 6 |
|---|---|---|

Schedule 5
Page 1 of 2

COMPANY NAME
Fuel Cost Report
Month, Year

| Line No. | Description | Plant (1) | Plant (2) | Plant (3) | Plant (4) | Plant (5) | Plant (6) | Plant (7) | ... | Total Current Month ( ) | Total 12 Months Ended Current Month ( ) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Station[1/] | | | | | | | | | | |
| | Cost of Fuel Purchased ($) | | | | | | | | | | |
| 2. | Coal | | | | | | | | | | |
| 3. | Oil | | | | | | | | | | |
| 4. | Gas | | | | | | | | | | |
| 5. | Total | | | | | | | | | | |
| | Average Cost of Fuel as Purchased (> per MBTU) | | | | | | | | | | |
| 6. | Coal | | | | | | | | | | |
| 7. | Oil | | | | | | | | | | |
| 8. | Gas | | | | | | | | | | |
| 9. | Weighted average | | | | | | | | | | |
| | Cost of Fuel Burned ($) | | | | | | | | | | |
| 10. | Coal | | | | | | | | | | |
| 11 | Oil | | | | | | | | | | |
| 12. | Gas | | | | | | | | | | |
| 13. | Nuclear | | | | | | | | | | |
| 14. | Total | | | | | | | | | | |

COMPANY NAME
Fuel Cost Report
Month, Year

| Line No. | Description | Plant (1) | Plant (2) | Plant (3) | Plant (4) | Plant (5) | Plant (6) | Plant (7) | ... | Total Current Month ( ) | Total 12 Months Ended Current Month ( ) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Average Cost of Fuel Burned (¢/MBTU) | | | | | | | | | | |
| 15. | Coal | | | | | | | | | | |
| 16. | Oil | | | | | | | | | | |
| 17. | Gas | | | | | | | | | | |
| 18. | Nuclear | | | | | | | | | | |
| 19. | Weighted average | | | | | | | | | | |
| | Average Cost of Fuel Burned (¢ per kWh Generated) | | | | | | | | | | |
| 20. | Coal | | | | | | | | | | |
| 21. | Oil | | | | | | | | | | |
| 22. | Gas | | | | | | | | | | |
| 23. | Nuclear | | | | | | | | | | |
| 24. | Weighted average | | | | | | | | | | |
| | MBTUs Burned | | | | | | | | | | |
| 25. | Coal | | | | | | | | | | |
| 26. | Oil | | | | | | | | | | |
| 27. | Gas | | | | | | | | | | |
| 28. | Nuclear | | | | | | | | | | |
| 29. | Total | | | | | | | | | | |
| | Net Generation (MWH) | | | | | | | | | | |
| 30. | Coal | | | | | | | | | | |
| 31. | Oil | | | | | | | | | | |
| 32. | Gas | | | | | | | | | | |
| 33. | Nuclear | | | | | | | | | | |
| 34. | Total | | | | | | | | | | |



1/ If a separate coal, oil, or gas inventory is maintained for separate groups of units at a particular station or plant, list the requested information for each inventory group.

2/ List heavy oil and light oil separately where applicable.

Schedule 6

COMPANY NAME
Fossil Fuel Consumption and Inventory Report
Month, Year

| Line No. | Description | Plant (1) | Plant (2) | Plant (3) | Plant (4) | Plant (5) | Plant (6) | Plant (7) | ... | Total Current Month ( ) | Total 12 Months Ended Current Month ( ) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | Station[1/] | | | | | | | | | | |
| | Coal Data: | | | | | | | | | | |
| 2. | Tons received during month | | | | | | | | | | |
| 3. | Tons burned during month | | | | | | | | | | |
| 4. | MBTU's burned per ton | | | | | | | | | | |
| | Tons coal on hand: | | | | | | | | | | |
| 5. | Beginning balance | | | | | | | | | | |
| 6. | Ending balance | | | | | | | | | | |
| 7. | Cost of ending inventory ($ per ton) | | | | | | | | | | |
| | Oil Data: | | | | | | | | | | |
| 8. | Gallons received during month | | | | | | | | | | |
| 9. | Gallons burned during month | | | | | | | | | | |
| | Gallons oil on hand: | | | | | | | | | | |
| 10. | Beginning balance | | | | | | | | | | |
| 11. | Ending balance | | | | | | | | | | |
| 12. | Cost of ending inventory ($ per gallon) | | | | | | | | | | |
| | Gas Data: | | | | | | | | | | |
| 13. | MCF received during month | | | | | | | | | | |
| 14. | MCF burned during month | | | | | | | | | | |
| | MCF gas on hand: | | | | | | | | | | |
| 15. | Beginning balance | | | | | | | | | | |
| 16. | Ending balance | | | | | | | | | | |
| 17. | Cost of ending inventory ($ per MCF) | | | | | | | | | | |

[1/] If a separate coal, oil, or gas inventory is maintained for separate groups of units at a particular station or plant, list the requested information for each inventory group.

Schedule 7

COMPANY NAME
Analysis of Cost of Coal Purchases
Month, Year

| Station[1/] | Contract or Spot | Quantity of Coal Delivered In Tons | Total Delivered Cost | Delivered Cost $ Per Ton |
|---|---|---|---|---|

[1/] List the requested information for each station. The additional schedules shall be numbered 7-1, 7-2, 7-3, etc. If a separate coal inventory is maintained for separate groups of units at a particular station or plant, list the requested information for each inventory group.

[3/] Combine Schedule 7 with Schedule 8 and/or Schedule 9 if desired.

Schedule 8

COMPANY NAME
Analysis of Quality of Coal Received
Month, Year

| Station[1/] | Per Cent Moisture | Per Cent Ash | Per Cent Sulfer | BTU Per Pound |
|---|---|---|---|---|

[1/] List the requested information for each station. The additional schedules shall be numbered 8-1, 8-2, 8-3, etc. If a separate coal inventory is maintained for separate groups of units at a particular station or plant, list the requested information for each inventory group.

(Also, Duke Power Company shall present this data for coal purchased from Martin County Coal Company.)

[3/] Combine Schedule 8 with Schedule 7 and/or Schedule 9 if desired.

Schedule 9

COMPANY NAME
Analysis of Cost of Oil Purchases
Month, Year

| Station[1/] | Source of Purchases | Contract Or Spot | Sulfur Content | Gallons Received | Total Delivered Cost ($) | Delivered Cost $/Gallon | Delivered Cost $/MBTU |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| Total | | | | | | | |

[1/] List the requested information separately for each type of oil purchased for each station. Additional schedules shall be numbered 9-1, 9-2, 9-3, etc.

2/

Schedule 10

COMPANY NAME
Power Plant Performance Data
Twelve Months Ending Month, Year

| Name of Plant | Generation (MWH) | Capacity Rating (MW) | Capacity Factor[2] (%) | Equivalent Availability[3] (%) | Operating Availability[4] (%) |
|---|---|---|---|---|---|
| Nuclear plants | | | | | |
| Fossil plants: | | | | | |
| Coal | | | | | |
| Oil[1] | | | | | |
| Gas | | | | | |
| Hydro plants: | | | | | |
| Conventional hydro | | | | | |
| Pumped storage | | | | | |
| Total generation | | | | | |

[1] List light oil and heavy oil separately where applicable.

[2] Base load plants only.

[3] Excluding hydro plants and peaking plants

[4] Hydro plants and peaking plants only.

DOCKET NO. E-100, SUB 48

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | |
|---|---|
| Investigation of Need and Justification for Electric Utility Fuel Charge Adjustments | ) REPORT TO THE GOVERNOR<br>) AND THE UTILITY REVIEW<br>) COMMITTEE OF THE<br>) GENERAL ASSEMBLY |

On June 17, 1982, the North Carolina General Assembly enacted Chapter 1197 of the Session Laws 1981 (Regular Session 1982). This act added G. S. 62-133.2, a statute dealing with fuel charge adjustments for electric utilities, to the General Statutes and directed the Utilities Commission to investigate the present and future need and justification for electric utility fuel charge adjustments as provided for in the act and to report its findings and recommendations to the Governor and the Utility Review Committee of the General Assembly. The present report is submitted pursuant to this directive.

## BACKGROUND

Our prior statute for dealing with fuel adjustment proceedings, G. S. 62-134(e), was repealed and the current statute, G. S. 62-133.2, was enacted on June 17, 1982. For the convenience of the reader, a copy of the present statute is attached as Exhibit A to this Report.

At the time the current statute was enacted, there were pending with the Commission general rate cases for each of the electric utilities affected by the statute. The processing of these rate cases left little time for the Commission to address implementation of G.S. 62-133.2; but, at the same time, the pendency of these cases meant that there was immediate need for a fuel change adjustment proceeding for the utilities.

The Commission, upon studying the new statute, concluded that revisions to the Commission's Rules and Regulations were necessary in order to implement the statute. By Order of December 22, 1982, the Commission created a new docket, No. E-100, Sub 47, and instituted a rulemaking proceeding for the purpose of establishing rules and procedures for the implementation of G. S. 62-133.2. Carolina Power and Light Company (CP&L), Duke Power Company (Duke), and Virginia Electric and Power Company (Vepco) were made party respondents to the proceeding. The Public Staff's intervention was recognized and other interested parties were invited to intervene. A hearing to consider testimony and proposed rules was scheduled to begin on March 1, 1983. Within the month following this Order, the intervention of the Attorney General was recognized and petitions to intervene by Great Lakes Carbon Corporation (Great Lakes), the North Carolina Textile Manufacturers Association, (Textile Manufacturers) and the Kudzu Alliance were allowed.

The rulemaking proceeding came on for hearing as scheduled on March 1, 1983, and the Commission heard testimony from one public witness and from numerous witnesses presented by the parties and intervenors. The hearing lasted until March 4, and produced sharply divided testimony as to interpretation and implementation of G. S. 62-133.2.

During the course of this hearing, the Commission asked that certain information touched upon by the testimony be submitted as late-filed exhibits. After conclusion of the hearing, these exhibits were filed, and they prompted requests for further hearings by the Public Staff, the Textile Manufacturers, and Great Lakes. The Commission felt compelled to grant these requests; however, the Commission was unable to schedule the further hearing at that time since it was involved in an unprecedented number of general rate cases. All three electric utilities affected by G. S. 62-133.2 had new general rate cases pending with the Commission at that time.

The rulemaking proceeding rested in this posture until August, 1983, when the Commission acted on its own initiative to get the proceeding in motion again. The Commission, fearing that a further hearing would cause unnecessary delay, decided that it was more important to conclude the proceeding than to accept the exhibits that had prompted the requests for a further hearing. The Commission issued an Order on August 9, 1983, striking the disputed exhibits from the record, cancelling the further hearing, and establishing a schedule for oral argument and the filing of briefs and proposed orders by the parties. Further motions for extensions of time delayed this schedule; however, oral argument was heard on October 31, 1983, and briefs and proposed orders were submitted by November 16, 1983. The Commission began work on rules to implement G. S. 62-133.2; however, controversy continued and additional written testimony was filed as late as January 18, 1984.

On March 7, 1984, the Commission published an Order making findings of fact and conclusions of law based upon the testimony presented and publishing proposed rules for additional comment by the parties. Comments were filed as required by the Commission. Upon receipt of these comments, the Commission acted on April 30, 1984, to adopt four rules implementing G. S. 62-133.2. A copy of the Order adopting the Rules and of the Rules themselves is attached hereinto as Exhibit B.

The Rules set forth all necessary data to be filed with the Commission and establish the procedure for handling fuel charge adjustment proceedings. The Commission feels that the Rules are entirely adequate and complete to allow implementation of G.S. 62-133.2. No more specific provisions are needed at this point. Greater specificity, if needed, will be developed as we work with the statute and Rules in particular proceedings.

## INVESTIGATION

On November 30, 1983, the Commission instituted an investigation in Docket No. E-100, Sub 48 into the present and future need and justification for electric utility fuel charge adjustments as provided for in G. S. 62-133.2. Recognizing the extensive testimony that had been presented in the rulemaking proceeding, the Commission incorporated that testimony by reference and scheduled new hearings for the purpose of hearing additional testimony and oral argument from all interested parties. These hearings were held on February 7 and 23, 1984.

Three individuals appeared before the Commission as public witnesses to urge the Commission to find that no need or justification exists for electric utility fuel charge adjustments. Among the reasons cited by them are the following: Fuel prices are now relatively stable. The electric utilities in

North Carolina have been filing general rate cases on an annual basis, thus eliminating the need for an annual fuel charge adjustment proceeding. Fuel costs are best dealt with in general rate cases where all factors relating to the utilities' costs, revenues, and performance can be considered, rather than in a fuel charge adjustment proceeding where the issues are more limited. Fuel charge adjustment proceedings may be abused by utilities seeking to pass on to consumers the costs of mismanaged plant performance. Fuel charge adjustment proceedings impose upon the limited resources of the Commission and the Public Staff. Fuel charge adjustment proceedings reduce the utilities' incentive to keep fuel costs down.

The Kudzu Alliance, citing reasons similar to those of the public witnesses, urged the Commission to recommend repeal of G. S. 62-133.2. It further recommended that the Commission's inherent authority to raise or lower electric rates based on fuel costs should be abolished and that rate changes should be allowed only in the context of a general rate case.

The Public Staff conceded that the annual filing of general rate cases has obviated the need for fuel charge adjustment proceedings in recent years. However, the Public Staff, looking forward to a time when general rate cases may be filed less frequently, sees a need for the present statute to remain in place. It feels that alternatives to the present statute, such as a request for emergency rate relief or a complaint proceeding, are not adequate. The Attorney General took the same position as the Public Staff.

Great Lakes argued that some clarification of G. S. 62-133.2 might be in order but that the Commission should recommend no fundamental changes in the statute until it has gained experience in implementing the statute in specific fuel charge adjustment proceedings. The Textile Manfacturers argued that there is no present need for fuel charge adjustments since fuel prices have stabilized and electric utilities have established the pattern of filing general rate cases annually. However, the Textile Manfacturers do not urge repeal of G. S. 62-133.2 since, given the volatility of fuel prices, a need for it may arise in the future.

Three electric utilities participated in the investigation, CP&L, Duke and Vepco. They each argued that there is a need and justification for electric utility fuel charge adjustments. They each pointed out that fuel costs are volatile and are less subject to control than any other operating expense of an electric utility. Further, fuel costs are by far the largest element in an electric utility's operating budget. Thus, even slight variations in fuel costs mean a great deal in terms of dollars. For example, Duke estimated that a five-percent variation in the cost of fuel can affect its total fuel costs by as much as $40,000,000. Fuel costs also fluctuate in relation to the generation mix of an electric utility since nuclear generation is relatively low cost when compared with other fuels. The electric utilities argued that some mechanism must be in place to allow for fluctutation in rates to reflect the fluctuations in fuel costs. They argued that general rate cases alone simply do not provide sufficient flexibility to effect these fluctuations. It was also argued before the Commission that the absence of a fuel cost recovery procedure in North Carolina would increase the risk of our electric utilities compared with those of other states and that this increased risk would ultimately be reflected in a higher rate of return and higher capital costs, which would be borne by North Carolina ratepayers.

Duke responded to the concerns of those who fear that fuel charge adjustment proceedings can be used by a utility to pass on the costs of its own mismanagement by urging the Commission to undertake study of a fuel charge adjustment mechanism that would reward efficient management and penalize inefficient management. It argued that other state commissions are including incentive/penalty provisions in their fuel cost recovery procedures and that North Carolina can incorporate such provisions into G. S. 62-133.2. The other parties participating in the investigation expressed interest in an incentive/penalty fuel charge adjustment mechanism, but voiced caution due to the complexity of devising such a mechanism.

In the course of the rulemaking proceeding and the present investigation, the parties identified certain areas of concern with respect to the present statute. First, the statute requires an annual fuel charge adjustment proceeding for each electric utility affected regardless of whether anyone wants such a proceeding or not. This requirement is different from past practice which has been to hold such proceedings upon application only and it could result in the Commission having to hold unnecessary proceedings. Second, the statute includes only the "fuel component of purchased power" in the fuel charge adjustment proceeding. We have interpreted this phrase in our Rules as including only the cost of fuel used by the seller in generating power purchased by the purchasing utility. We believe this is the only reasonable interpretation of the phrase; however, it is alleged by certain parties that such a narrow definition may, under certain circumstances, discourage a utility from providing power at the lowest cost. A utility often engages in economy purchases when it can purchase power from another at a lower cost than it could generate equivalent power. However, under the present statute, if the utility generates the power itself, it can pass through to the ratepayers almost all of the variable costs associated with the generation, whereas if the utility purchases the power, it can only pass on a smaller figure (only the fuel cost of the seller). Thus, it has been alleged that a utility might be inclined to use its own generating capacity even though it could purchase equivalent power for less. Third, nuclear fuel disposal costs are not included in the proceeding. Nuclear fuel disposal costs consist primarily of payments to the federal government on a cents-per-kwh-generated basis. Since such costs cannot be passed on to ratepayers in a fuel charge adjustment proceeding, there is a small incentive to use non-nuclear generation to meet unanticipated loads even though nuclear generation would be less expensive. These concerns have been voiced by various parties to the Commission. The Commission has not yet conducted a fuel charge adjustment proceeding under G. S. 62-133.2. We believe that actual experience using the statute is necessary before we can be in a position to recommend needed changes, and we do not have any recommendations at this time.

## FINDINGS AND CONCLUSIONS

Based upon its investigation herein, the Commission draws the following findings and conclusions:

1. That there is not as immediate a need or justification for electric utility fuel charge adjustments now as there has been in the past since fuel prices are more stable now and since electric utilities have taken to filing general rate cases on at least an annual basis. Since enactment of G. S. 62-133.2 in June 1982, general rate case orders were issued for CP&L on September 24, 1982 and September 19, 1983. CP&L presently has a general rate

case pending with the Commission which will be decided this fall. General rate case orders were issued for Duke on November 1, 1982 and September 30, 1983. Duke presently has a general rate case pending which will be decided this summer. Vepco had general rate case orders issued on August 26, 1982 and December 5, 1983. Vepco does not have a general rate case pending now, and the Commission will hold a fuel charge adjustment proceeding for Vepco by December 1984.

2. That there remains a need and justification for having an electric utility fuel charge adjustment statute and procedures in place since fuel prices are volatile and could fluctuate in the future and since electric utilities may return to the practice of filing general rate cases less frequently.

3. That, although areas of concern have been identified by the parties, the Commission having had no experience in using G. S. 62-133.2, does not now have any recommendations to offer with respect to possible amendments to the statute.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of May 1984.

NORTH CAROLINA UTILITIES COMMISSION
Robert K. Koger, Chairman
Sarah Lindsay Tate
Edward B. Hipp
A. Hartwell Campbell
Douglas P. Leary
Ruth E. Cook
Charles E. Branford
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A

G.S. 62-133.2. Fuel charge adjustments for electric utilities.

(a) The Commission may allow electric utilities to charge a uniform increment or decrement as a rider to their rates for changes in the cost of fuel and the fuel component of purchased power used in providing their North Carolina customers with electricity from the cost of fuel and the fuel component of purchased power established in their previous general rate case.

(b) For each electric utility engaged in the generation and production of electric power by fossil or nuclear fuels, the Commission shall hold a hearing within 12 months of the last general rate case order and determine whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under base rates established in the last preceding general rate case. Additional hearings shall be held on an annual basis but only one hearing for each such electric utility may be held within 12 months of the last general rate case.

(c) Each electric utility shall submit to the Commission for the hearing verified annualized information and data in such form and detail as the Commission may require for an historic 12-month test period relating to:

(1) Purchased cost of fuel used in each generating facility owned in whole or in part by the utility.
(2) Fuel procurement practices and fuel inventories for each facility.
(3) Burned cost of fuel used in each generating facility.
(4) Plant capacity factor for each generating facility.
(5) Plant availability factor for each generating plant.
(6) Generation mix by types for fuel used.
(7) Sources and fuel cost component of purchased power used.
(8) Recipients of and revenues received for power sales and times of power sales.
(9) Test period kilowatt hour sales for the utility's total system and on the total system separated for North Carolina jurisdictional sales.

(d) The Commission shall provide for notice of a public hearing with reasonable and adequate time for investigation and for all intervenors to prepare for hearing. At the hearing the Commission shall receive evidence from the utility, the public staff, and any intervenor desiring to submit evidence from the utility, the public staff, and any intervenor desiring to submit evidence, and from the public generally. In reaching its decision, the Commission shall consider all evidence required under subsection (c) of this section. The Commission may also consider, but is not bound by, the fuel costs incurred by the utility and the actual recovery under the rate in effect during the test period as well as any and all other competent evidence that may assist the Commission in reaching its decision including changes in the price of fuel consumed and changes in price of the fuel in the fuel component of purchased power occurring within a reasonable time (as determined by the Commission) after the test period is closed. The burden of proof as to the correctness and reasonableness of the charge shall be on the utility. The Commission shall allow only that portion, if any, of a requested fuel adjustment that is based on adjusted and reasonable fuel expenses prudently incurred under efficient management and economic operations. To the extent that the Commission determines that an increment or decrement to the rates of the utility due to changes in the cost of fuel and the fuel cost component of purchased power over or under base fuel costs established in the preceding general rate case is just and reasonable, the Commission shall order that the increment or decrement become effective for all sales of electricity and remain in effect until changed in a subsequent general rate case or annual proceeding under this section.

(e) If the Commission has not issued an order pursuant to this section within 120 days of a utility's submission of annual data under subsection (c) of this section, the utility may place the requested fuel adjustment into effect. If the change in rate is finally determined to be excessive, the utility shall make refund of any excess plus interest to its customers in a manner ordered by the Commission.

(f) Nothing in this section shall relieve the Commission from its duty to consider the reasonableness of fuel expenses in a general rate case and to set rates reflecting reasonable fuel expenses pursuant to G.S. 62-133. (1981 (Reg. Sess., 1982). c. 1197, s. 1.)

Note: For Appendix B, See Docket No. E-100, Sub 47, dated May 1, 1984.

DOCKET NO. G-100, SUB 42

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
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| In the Matter of<br>Rulemaking Relating to the Transportation of Natural Gas Owned by End-Users | ) | ORDER DENYING IMPLEMENTATION OF RULE |

BEFORE THE COMMISSION: On November 17, 1983, the Public Staff, North Carolina Utilities Commission filed a Petition and Motion to Consolidate dockets G-5, Sub 188 and G-100, Sub 42. In its petition and motion to consolidate the Public Staff requested the Commission to institute a formal rulemaking proceeding pursuant to G.S. 62-31 for the purpose of determining under what terms and conditions, if any, the natural gas utility companies in North Carolina will be required to transport natural gas owned by other persons; and further the Public Staff requested the Commission to consolidate this rule-making proceeding for hearing with the proceeding in Docket No. G-5, Sub 188. By Order of November 30, 1983, the Commission set the Public Staff's petition and motion, and Public Service Company of North Carolina's reply thereto, for Oral Arguement.

By Order of January 13, 1984, the Commission denied the Public Staff's motion to consolidate and by Order of January 23, 1984, the Commission instituted a rule-making proceeding for the purpose of determining whether and under what terms and conditions, if any, the public utility gas companies in North Carolina should be required to transport gas not owned by them. In addition, the Order of January 23, 1984, invited the parties to this proceeding to file comments and a proposed rule with the Commission. On or about March 1, 1984, the parties of record filed comments on this matter, and on March 15, 1984, Carolina Utility Customers Association (CUCA), Public Service Company, Lithium Corporation of America, and the Public Staff filed revised comments.

The Commisson has carefully reviewed the comments filed by the parties on this matter. Based on this review, and the Commisson's files, the Commisson concludes that at this time it is appropriate for the natural gas distribution companies operating in the State of North Carolina to transport end-user owned natural gas. Based particularily on the comments filed by Piedmont Natural Gas Company and CUCA, the Commission further concludes that a uniform rule governing the transportation of end-user owned natural gas is inappropriate at this time, and should not be adopted. This conclusion is based largely on the belief of the Commisson that the daily operational decisions related to the actual transportation of end-user gas is best left up to the individual natural gas distribution companies, as long as these decisions are deemed prudent. The Commission's decision not to implement a uniform rule concerning the transportation of end-user owned gas should not be deemed as a signal against this service, in fact, the Commission wishes to make it clear that it encourages, at this time, the transportation of end-user owned natural gas by the natural gas distribution companies operating under this Commission's jurisdiction.

IT IS THEREFORE, ORDERED as follows:

1. That the adoption of a uniform rule concerning the transporation of end-user owned natural gas be, and hereby is, denied.

2. That all North Carolina jurisdictional natural gas distribution companies be, and hereby are, encouraged to transport end-user owned natural gas.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of April 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-100, SUB 43

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Rulemaking Regarding Proposed Revisions to Rule R6-41 Concerning Gas Leaks and Annual Reports | ) | ORDER ADOPTING REVISED RULE R6-41 |

BY THE COMMISSION: By Order entered in this docket on June 13, 1984, the Commission instituted a rule-making proceeding to consider certain revisions to Commission Rule R6-41 regarding gas leaks and annual reports and published for comment proposed revised Rule R6-41, which was attached to said Order as Appendix A. A copy of the above-referenced Commission Order was mailed by the Chief Clerk to the Public Staff, the Attorney General of the State of North Carolina, and each of the regulated natural gas operators in this State. Written comments on the proposed rule revision were to be filed in this docket no later than Tuesday, July 31, 1984.

As of the date of this Order, no comments with respect to proposed revised Rule R6-41 have been filed in this docket by any interested party.

Accordingly, the Commission concludes that good cause exists to adopt the revisions to Rule R6-41 attached hereto as Appendix A effective the date of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That Commission Rule R6-41 be, and the same is hereby, revised in conformity with Appendix A attached hereto effective the date of this Order.

2. That the Chief Clerk shall mail a copy of this Order to each of the regulated natural gas operators in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of August 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

Rule R6-41. Gas Leaks and Annual Reports.

(a) A report of a gas leak shall be considered as an emergency requiring immediate attention.

(b) The reporting rules and requirements regarding transportation of natural gas and other gas by pipeline as adopted in 49 CFR Part 191 in effect on June 4, 1984, and any subsequent amendments thereto, are adopted with the following modifications:

(1) Section 191.3(1)(ii) - Change "$50,000" to "$5,000"
(2) Section 191.9(c) - Delete
(3) Section 191.11(b)(2) - Delete

(c) This rule shall be applicable to all natural gas operators subject to the jurisdiction of the Commission pursuant to G.S. 62-50.

(d) All natural gas operators shall submit two (2) copies of each report called for in Part 191 of Title 49, Code of Federal Regulations, to the Commission. The Chief of the Gas Pipeline Safety Division of the Commission is hereby authorized to transmit one (1) copy of each such required report to the U.S. Department of Transportation, Materials Transportation Bureau, Office of Operation and Enforcement.

DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|---|
| In the Matter of<br>Investigation to Consider the Implementation of a<br>Plan for Intrastate Access Charges for All Telephone<br>Companies Under the Jurisdiction of the North<br>Carolina Utilities Commission | ) | ORDER ESTABLISHING<br>INTRASTATE<br>INTERLATA ACCESS<br>CHARGE TARIFFS |

HEARD IN: The Hearing Room of the Commission, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on March 12, 1984

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp, Sarah Lindsey Tate, A. Hartwell Campbell, Douglas P. Leary, Ruth E. Cook, and Charles E. Branford

APPEARANCES:

For AT&T Communications of the Southern States, Inc.:

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, P.O. Box 1151, Raleigh, North Carolina 27602

Gene V. Coker, General Attorney, and Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30357

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, General Attorney, and J. Lloyd Nault, II, Attorney, Southern Bell Telephone and Telegraph Company, P.O. Box 30188, Charlotte, North Carolina 28230

Robert C. Howison, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company:

Dwight W. Allen, Vice President, General Counsel, and Secretary, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For General Telephone Company of the Southeast:

Joe W. Foster, Attorney, and Wayne L. Goodrum, Associate General Counsel, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27702

For Continental Telephone Company of North Carolina and Mid-Carolina Telephone Company:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., Attorneys at Law, P.O. Box 2479, Raleigh, North Carolina 27602

For Central Telephone Company:

James M. Kimzey, Kimzey, Smith, McMillan & Roten, Attorneys at Law, 506 Wachovia Bank Building, P.O. Box 150, Raleigh, North Carolina 27602

For Citizens Telephone Company:

Thomas R. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612

For the North Carolina Textile Manufacturers Association, Inc.:

Jerry B. Fruitt, Attorney at Law, P.O. Box 2507, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Paul L. Lassiter, Vickie L. Moir, and Antoinette R. Wike, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Jo Anne Sanford, Special Deputy Attorney General, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On April 19, 1983, the North Carolina Utilities Commission (Commission) made Southern Bell and the Independent Telephone Companies under the Commission's jurisdiction parties to this proceeding and requested AT&T to voluntarily participate in this proceeding. The Commission ordered AT&T and Southern Bell to file detailed statements of their intentions for filing an intrastate access charge plan and requested all other jurisdictional companies and interested parties to file comments.

By Order dated July 28, 1983, the Commission determined that the development of a plan for intrastate access charges and the establishment of guidelines and procedures for the implementation of such a plan constituted and should be set as a complaint proceeding. The Commission granted the Public Staff's motion to require the filing of access service tariffs and set the matter for hearing.

Petitions to Intervene were filed by and allowed for the following parties: Combined Network, Inc., the North Carolina Textile Manufacturers Association, Inc., the Carolina-Virginia Telephone Membership Associaton, Inc., Bernice Dill, Ada Hooker, Lula Chambers, Mary Randolph, and Percy White, MCI Telecommunication Corp., GTE Sprint Communications Corporation, and Tarheel Radiotelephone Association.

Hearings were held beginning on October 11, 1983, and testimony and exhibits were received concerning the intrastate access charge plan. Allan K. Price, Harold M. Raffensperger, Robert Hart, Jr., O. Lee Prather, Jr., W. W. Jordan, Don L. Eargle, and R. T. Burns testified for Southern Bell; T. P. Williamson testified for Carolina Telephone and Telegraph Company; R. Chris Harris testified for Central Telephone Company; Phil W. Widenhouse testified

for Concord Telephone Company; Earle A. MacKensie testified for Continental Telephone Company of North Carolina; Joseph W. Wareham testified for General Telephone Company of the Southeast; Harold W. Shaffer testified for Mid-Carolina Telephone Company and Sandhill Telephone Company; a Statement of Position signed by Royster M. Tucker, Jr., was submitted for North State Telephone Company; Lawrence R. Weber, Marion R. McTyre, and James A. Tamplin testified for AT&T Communications; John W. Wilson testified for the Attorney General; and Gene A. Clemmons, Hugh L. Gerringer, and Millard N. Carpenter, III, testified for the Public Staff. An affidavit of Joseph E. Hicks for Service Telephone Company and Barnardsville Telephone Company was copied into the record.

On December 16, 1983, the Commission issued an Order Establishing Interim Operating Procedures effective January 1, 1984, the date of divestiture of the Bell System, and continuing until the implementation of intrastate carrier access charges by the Commission.

On February 9, 1984, the Commission entered an Order Resuming Hearing in this case. Southern Bell and Carolina Telephone Company were ordered to file a plan to account for toll revenues and to collect and distribute carrier access charges equitably to all North Carolina local exchange companies (LECs). The plan was to be based on uniform intrastate toll tariffs, and all LECs were required to file or concur in such plan. In developing the revenue requirement to be recovered through access charges, Southern Bell was directed to use the most current 12-month period adjusted for the toll rate increase approved in Docket No. P-100, Sub 64.

Pursuant to the Commission Order of February 9, 1984, further hearings were held on March 12, 1984. B. A. Rudisill and Allan K. Price testified on behalf of Southern Bell; T. G. Allgood testified on behalf of Carolina Telephone Company; R. Chris Harris testified on behalf of Central Telephone Company; Joseph W. Wareham testified on behalf of General Telephone Company of the Southeast; Cherie A. Lucke testified on behalf of Continental Telephone Company of North Carolina; and Marion R. McTyre and R. E. Fortenberry testified on behalf of AT&T Communications of the Southern States, Inc.

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

## FINDINGS OF FACT

1. The telephone companies which have participated as parties in this docket are subject to the jurisdiction of this Commission. AT&T Communications of the Southern States, Inc. (ATTCOM), has been granted a certificate of public convenience and necessity in Docket No. P-140 to provide interLATA telecommunications services in North Carolina and is subject to the jurisdiction of this Commission.

2. An intrastate access charge tariff for North Carolina should be implemented effective April 3, 1984, pursuant to a plan which does not apply to radio common carriers and which includes no end-user access charges on residential and business customers.

3. The access charge structure proposed by Southern Bell in this proceeding is appropriate at this time, except as modified in this Order.

4. The carrier common line access charge should not be discounted for non-premium access.

5. The $25 WATS surcharge contained in the proposed access charge tariff should be billed to ATTCOM and not to the WATS end-user or customer.

6. Prior to the divestiture of the Bell System, gross receipts tax was paid by Southern Bell and the independent telephone companies on their total intrastate toll revenues. This same level of gross receipts tax will now be paid collectively by ATTCOM on interLATA toll revenues and the local operating companies on intraLATA toll revenues. Thus, the interLATA access revenue requirements calculated herein should not include consideration of gross receipts tax on either interLATA access charges or billing and collection revenues in order to avoid imposition of a double tax on intrastate interLATA toll revenues which would ultimately have to be paid by telephone consumers in North Carolina.

7. The total revenue requirement to be recovered through the proposed access charge tariff and the individual company billing and collection tariffs should be $192,938,000, and the resulting carrier common line access charge should be 5.64¢ per minute.

8. Revenues derived from access charges and all intrastate intraLATA message toll, WATS, private line and toll directory assistance (DA) revenues should be reported monthly to an intrastate pool by Southern Bell and the independent telephone companies. This includes independent to independent private line revenues currently billed under uniform tariffs.

9. Southern Bell shall be administrator of the intrastate pool.

10. Settlements from the pool to average schedule companies should be paid based on existing settlement procedures utilizing the July 1983 tables. Cost companies should share the remaining revenues in the manner presently employed with all cost companies earning the same rate of return. Cost companies should continue to determine their intrastate revenue requirements based on the principles and procedures that currently exist.

11. The subscriber plant factor (SPF) methodology rather than subscriber line usage (SLU) should be used in the future to allocate costs between interLATA access and intraLATA toll service.

12. Revenues derived from billing and collection services rendered by the cost settlement telephone companies to the interexchange carriers should be on a bill and keep basis. Revenues derived from billing and collection services rendered by the average contract telephone companies to the interexchange carriers should be pooled in the intrastate pool established in this proceeding.

13. The billing and collection tariff proposed by Continental Telephone Company of North Carolina is appropriate and should be approved.

14. All companies should file billing and collection tariffs with the Commission.

15. ATTCOM is entering into contractual lease agreements with Southern Bell and the Independents for certain property which will be used to provide intrastate interLATA telecommunciations services. Copies of said contracts should be filed with the Commission.

16. The interLATA access and billing and collection tariffs proposed herein by Southern Bell may apply, by definition, to any party, such as a WATS or private line customer, who subscribes to the services therein. The term "interexchange carrier" should not be construed to include WATS and private line customers unless said customers are certificated public utilities.

17. Implementation of a uniform statewide access charge tariff in North Carolina is appropriate. With regard to the proposed tariff, and after modifications made herein, all local telephone companies should be required to concur therein except for those portions of the tariff regarding billing and collection services which each company may handle separately, and spoken to elsewhere herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is jurisdictional in nature, and is uncontested and uncontroverted in the record.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

As evidenced by the testimony of witnesses representing the local exchange telephone companies, such companies are essentially all in agreement with and can implement the proposed unifrom access charge tariff. ATTCOM has not opposed the general structure of the tariff. The Commission takes notice that the FCC has further delayed the implementation of the interstate access tariff, but notes that nothing prohibits the states from going forward without further delay to implement intrastate access charge tariffs. The Commission concludes that it is in the best interests of telephone subscribers and the telephone industry in North Carolina to resolve some of the current uncertainties in the industry and order implementation of intrastate access charge tariffs without further delay. Furthermore, this decision is entirely consistent with the Order Establishing Interim Operating Procedures heretofore entered in this docket wherein the Commission stated its intent to implement intrastate access charges no later than April 3, 1984, pursuant to a plan which does not apply to radio common carriers and which includes no end-user access charges on residential and business customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The tariff structure presented by Southern Bell witness Price at the latest hearing in this matter was generally concurred in by all telephone company witnesses testifying at said hearing. The most significant problem raised by any party of record concerning the proposed tariffs centers around the proposed surcharges associated with WATS and private lines, spoken to elsewhere herein under Evidence and Conclusions for Finding of Fact No. 5. After a review of the entire record in this matter, the Commission concludes that the proposed tariffs filed by Southern Bell are appropriate, except as noted and modified elsewhere in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is found throughout the entire record in this matter. No evidence or cost justification was put into the record supporting the necessity for discounted non-premium access charge tariffs for any interexchange carriers. Moreover, at the present time, there are no OCC's certificated to operate in the State of North Carolina. Therefore, the Commission concludes that at this time a discounted common line access charge tariff is both inappropriate and improper and should be deleted from Southern Bell's proposed tariff.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Southern Bell's proposed access charge tariff includes a $25.00 surcharge applicable to interLATA WATS and interLATA private line services. The original Southern Bell proposal presented at the March 12, 1984, hearing was intended to place the $25.00 surcharge applicable to interLATA WATS on the individual customer or end-user. However, in its Proposed Order of March 23, 1984, Southern Bell changed its position and asserted that this charge should not be placed on the individual customer, but rather on the interexchange carrier. Southern Bell is supported in this recommendation by Carolina Telephone Company. Southern Bell witness Price testified at the hearing on March 12, 1984, that revenues sufficient to cover the payment of this WATS surcharge are already contained in the interLATA usage revenues of ATTCOM and that the surcharge applicable to private lines should also be paid by ATTCOM as an appropriate means of recovering contributions previously obtained by the local exchange companies from interLATA exchange mileage charges. Consequently, since the $25.00 surcharge is contained within the access revenue requirement, it is not necessary to change existing WATS rate schedules. Therefore, the Commission concludes that Southern Bell's proposed tariff modification to place the surcharge related to WATS and private lines on interexchange carriers is fair and reasonable, and should be approved. This is also consistent with the Commission's previous decision to disallow end-user access charges in North Carolina at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The most significant difference between the interLATA access revenue requirements presented by Southern Bell and ATTCOM in this proceeding is related to the applicability of gross receipts taxes on interLATA access charges and billing and collection revenues. It is the consensus of all parties of record that gross receipts taxes should not be applied to interLATA access charges and that to do so would be unfair and unreasonable to ratepayers in North Carolina. Prior to divestiture, gross receipts taxes were paid to the State of North Carolina by Southern Bell and the independent telephone companies on their total intrastate toll revenues, and likewise, under current application of gross receipt taxes by the North Carolina Department of Revenue, the same level of tax will be paid collectively by ATTCOM on intrastate interLATA toll service revenues and by the telephone operating companies on intrastate intraLATA toll revenues. Notwithstanding this fact, however, under potential gross receipts tax applications, the interLATA toll service rates applicable to, and used to satisfy, ATTCOM's obligation to pay interLATA access charges to the local operating companies may be subject to gross receipts tax, payable by the local operating company. The Commission concludes that such a second tier of gross receipts taxation

would be unfair and unreasonable and would clearly be an inappropriate tax burden created solely by the divestiture of AT&T. Likewise, the Commission concludes that the local operating companies should not be subject to gross receipt taxes on revenues generated by billing and collections services that are paid by ATTCOM out of revenues generated by interLATA toll services subject to gross receipts tax, payable by ATTCOM.

Southern Bell witness Rudisill testified that Southern Bell and ATTCOM are in the process of obtaining a revenue ruling which would alleviate this obvious instance of double taxation. The Commission strongly supports and encourages the efforts of Southern Bell and ATTCOM before the North Carolina Department of Revenue to definitively remove the gross receipts tax burden on interLATA access charge revenues and billing and collection service revenues collected from ATTCOM by the local operating companies. ATTCOM witness McTyre testified that a favorable ruling on this issue is anticipated from the Department of Revenue in the near future.

The Commission recognizes the fact that if the gross receipts tax is assessed on access charge revenues and billing and collection revenues then the same interLATA toll revenues received from the customer will be taxed twice; once as toll revenues to ATTCOM and once as access charges and billing and collection revenues to the local exchange companies. The Commission is of the opinion that the General Assembly never intended such a result when it enacted the gross receipts tax statute. Therefore, the Commission concludes that inclusion of gross receipts tax as a component of interLATA access revenue requirements is inappropriate in this proceeding and should not be considered in developing fair and reasonable interLATA access charges for implementation in the State of North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting the revenue requirement for access charges was presented by Southern Bell's witness Rudisill and ATTCOM's witness McTyre.

Witness Rudisill explained the methodology used to determine the 1983 level of intrastate toll revenues, and the portion of those revenues applicable to interLATA access. The Commission, through its guidelines, directed that the proposal for access charges should be structured and calculated to produce revenues that cover costs to approximately the same extent that applicable rates covered the cost of those services prior to divestiture, and directed that the most recent 12-month period adjusted for toll rate increases approved in Docket No. P-100, Sub 64, be used.

Witness Rudisill first determined the actual intrastate toll revenues billed by the independent companies. Southern Bell's portions of the total billed revenues were identified from the Company's accounting records and, when added to the total independent company billed revenues, the sum equaled $439,661,000 of actual 1983 toll revenues. These revenues were adjusted for the toll rate increase approved in the aforesaid docket. A rate increase factor was calculated and applied to the first nine months of 1983 to reflect the rate increase. In addition, revenue which would have been produced by intrastate toll directory assistance was calculated by multiplying the approved charge by the total number of toll DA messages. The effect on industry intrastate billed revenues had rates established in Docket No. P-100, Sub 64, been in force for the 12 months would have been $23,496,000.

The interLATA access portion of these total revenues for MTS and WATS was determined by utilizing factors from the LATA Access Data System (LADS). The private line percentage was developed by using a data base of all private lines billed as of June 30, 1982. Individual percentages for each category of service were applied to the Southern Bell and independent company revenues and produced an interLATA revenue requirement of $275,193,,000. No substantial testimony was presented challenging this total interLATA amount.

Witness Rudisill testified that he then removed two elements of cost from the total interLATA revenue requirement amount in order to determine the access portion. One is the cost associated with billing and collection, and the other is the network or interexchange piece. He stated that these costs are not access related and should not be recovered through access charges. ATTCOM's witness McTyre disagreed with the billing and collecting total of $8,663,000 and the network piece of $37,158,000 attributable to Southern Bell by witness Rudisill. Witness McTyre contended that Southern Bell's billing and collection total should be $8,883,000 and that the interexchange portion should be $40,500,000. Conversely, witness McTyre did not present amounts different from those presented by witness Rudisill to be used in this proceeding for the Independent Companies' billing and collecting and network revenues.

Witness McTyre also disagreed with the amount shown by witness Rudisill for uncollectible revenue which is deducted from the interLATA access revenue requirement to determine the net interLATA access revenue requirement. Witness Rudisill condended that the proper uncollectible amount is $2,090,000 while witness McTyre contended the proper uncollectible amount to be deducted is $2,752,000.

In its Proposed Order, Southern Bell accepted witness McTyre's recommendations as to the proper level of Southern Bell's billing and collection revenues to be used in this proceeding in determining a fair and reasonable interLATA access charge. The Commission concludes that the adjustment proposed herein by ATTCOM witness McTyre with regard to the level of Southern Bell's billing and collection revenues is appropriate and should be adopted.

The table below summarizes the items and amounts wherein Southern Bell's and AT&T Communications' witnesses disagree:

TABLE A
($000)

| | (a) Southern Bell | (b) Industry | (c) ATTCOM | c-(a+b) Difference |
|---|---|---|---|---|
| Uncollectibles | - | $2,090 | $ 2,752 | $ 662 |
| Nonaccess (Network) | $37,158 | - | 40,500 | 3,342 |
| Total | $37,158 | $2,090 | $43,252 | $4,004 |

The amount of disagreement related to the appropriate amount of uncollectible revenues which should be deducted in determining the proper level of net interLATA billed revenues is $662,000. ATTCOM's witness McTyre

applied a 1% uncollectible figure to the entire $275,193,000 amount representing total interLATA billed revenues. Witness Rudisill applied a 1% uncollectible factor to those revenues retained by the telephone companies but did not apply the 1% factor to the network piece that has been transferred to ATTCOM. Witness Rudisill contended that the network portion represents ATTCOM's portion of the billed revenues and therefore ATTCOM should bear any uncollectibles that result from the network piece. Otherwise, witness Rudisill stated, failure to remove this amount before calculation of the uncollectible deduction would result in an unrealistic assumption that ATTCOM would be guaranteed of recovering 100% of its billed revenues on this network investment. The Commission agrees that the amount of uncollectile deduction used for determining the net access revenue requirement should be calculated without including revenues associated with the interLATA network and thus concludes that witness Rudisill's adjustment for uncollectibles is proper. The Commission further notes that the determination of the reasonable level of uncollectibles to be considered in this proceeding is affected by, and must be consistent with, the methodology used to determine the Southern Bell network revenues allocable to ATTCOM, spoken to below.

The final area of disagreement involves the amount properly allocable to the AT&T/ICO interLATA (network) nonaccess revenues. A comparison of witness Rudisill's and witness McTrye's exhibits shows that witness Rudisill contends the proper amount for Soutnern Bell is $37,158,000, whereas ATTCOM contends that the appropriate amount is $40,500,000, resulting in a difference of $3,342,000. The amount proposed by ATTCOM is supported by testimony of witness Weber in prior hearings in this docket and was presented by witness McTyre in the latest hearings on this matter. Witness McTyre acknowledged that the largest part of this amount, $29,789,000, was based on projected operating expenses other than access charges for the year 1984. This amount along with other expenses and return requirements was deflated by 6% to be representative of a 1983 level.

Southern Bell's amount of $37,158,000 was calculated residually based on a 1982 embedded direct analysis study, wherein the access revenue requirement derived from this study was grown to a 1984 level and then, for purposes of the instant hearing, deflated to a 1983 level since the Commission desired to base access charges on the 1983 revenue and contribution levels.

The Commission has carefully reviewed all the evidence of record concerning this matter. Based on this review, the Commission concludes that the appropriate nonaccess revenue amount to be deducted in determining appropriate interLATA access revenue requirements in this proceeding is $38,829,000.

Based on all the foregoing, and the evidence presented under Evidence and Conclusions for Finding of Fact No. 6, the Commission concludes that the appropriate access charge revenue requirements to be considered in this proceeding is $175,371,000, and results in an appropriate common carrier access charge rate of 5.64> per minute. The Commission further concludes that the appropriate amount to be recovered through the access charge tariff ($175,371,000) and the billing and collection tariffs ($17,567,000) is $192,938,000.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8, 9, AND 10

Southern Bell witness Rudisill presented evidence describing the development of a plan to pool and distribute intraLATA toll revenues and access charge revenues. The preponderance of evidence in this hearing supports the conclusion that Southern Bell should continue to serve as administrator of the pool, particularly since Southern Bell has experienced personnel in place to handle and administer said pool. Witness Rudisill presented a plan whereby revenues derived from the access charges and all intrastate intraLATA message toll, WATS, private line (including independent to independent private line revenues) and toll DA revenues should be reported monthly to one intrastate pool. Settlements from the pool to average schedule companies should be paid based on existing settlement procedures. Witness Rudisill stated that he was currently utilizing the July 1983 settlement tables. Cost companies will share the remaining revenues in the manner presently employed. Cost companies would continue to determine their intrastate revenue requirements based on principles and procedures that currently exist. The Commission concludes that the pooling arrangement presented by Southern Bell at the latter hearing in this matter is appropriate, and consistent with the directives of the Commission Order of February 9, 1984.

The Commission further concludes that Southern Bell, as administrator of the pool, should also comply with the following requirements:

a. Fully inform all pool participants of any planned toll rate or regulation changes at least 60 days in advance of any proposed filing and provide to any pool participant so requesting it, all data upon which the filing is to be based, the anticipated effect of such changes if approved, and any other related data requested by such pool participant.

b. On a quarterly basis, or more often if requested by any pool participant, provide to all pool participants desiring such data: (1) a detailed report by company, including Southern Bell, of all sources of pooled revenues; (2) a detailed report by company, including Southern Bell, of all payments made from the pool including but not limited to a schedule of payments to the standard schedule companies and expense reimbursement payments made to all cost companies; (3) a schedule by company, including Southern Bell, of monthly, quarterly or other settlement period payments for return showing for each company the basis of calculation; and (4) Southern Bell's estimate of the pool settlement ratio for the next four quarters or settlement periods by month.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Historically, jurisdictional allocations have utilized the separations principles outlined in Part 67 of the FCC Rules of Practice. While Part 67, known generally as the Separations Manual, was originally designed for jurisdictional allocations between interstate and intrastate operations, it has also governed the cost allocations between intrastate toll and local service.

Despite earlier directives to the other cost companies, Southern Bell witness Rudisill proposed use in this proceeding of the subscriber line usage (SLU) methodology to allocate nontraffic sensitive costs between interLATA access and intraLATA toll. In contrast, Carolina Telephone Company and the Public Staff recommend use of the subscriber plant factor (SPF) for this allocation, at least until separation procedures can be studied further in conjunction with the present post-divestiture environment. The record shows that the use of the SLU factor tends to allocate a smaller amount of nontraffic sensitive costs to interLATA access, and conversely allocates a greater amount to intraLATA toll service. In contrast, the record shows that use of the SPF factor tends to allocate less cost to the intraLATA toll service, and more costs to interLATA access. After careful review of this matter, the Commission concludes that the SPF factor should be used in the future to allocate costs between interLATA access and intraLATA toll service, particularly until such time as the entire issue of post-divestiture allocation procedures is appropriately reviewed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The telephone companies presenting testimony were generally in agreement that revenues derived by cost companies from billing and collection services should be on a bill and keep basis. With this regard, it was recommended that the companies should not report the billing and collection revenues to the pool found to be reasonable under Evidence and Conclusions for Findings of Fact Nos. 8, 9, and 10. Witness Rudisill also testified that he had recently obtained a procedure for separating an appropriate amount for billing and collection services by the average schedule companies. This procedure is a National Exchange Carrier Association procedure and may be appropriate for intrastate use.

The record is clear that it is appropriate for the cost companies to bill and keep billing and collection revenues, and that said revenues, and associated costs, should not be reported to the intrastate pool established under Evidence and Conclusions for Findings of Fact Nos. 8, 9, and 10 above. The record is much less clear as to whether or not it is reasonable, or operationally possible, to initiate a plan where the standard contract companies bill and keep billing and collection revenues. The Commission concludes that the record is not clear that the billing and collection portion of the standard contract companies' settlements can be reasonably identified, and therefore, concludes that the standard contract companies should continue to pool their billing and collection costs and revenues, consistent with procedures utilized prior to December 31, 1983.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Continental Telephone Company witness Lucke testified that the billing and collection tariff previously proposed in this docket should be adopted by Continental for intrastate interLATA billing and collection services. The Commission finds this proposal to be reasonable and concludes that it should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

In view of the fact that Southern Bell has proposed nonuniform billing and collection tariffs but that no billing and collection tariffs have been

proposed by the other operating telephone companies, except Continental, as spoken to elsewhere herein, the Commission concludes that appropriate billing and collection tariffs should be filed by the other operating telephone companies. Fifteen of the other operating companies propose to use the NECA billing and collection tariff, currently on file with the FCC, for interstate purposes. The Commission concludes that these tariffs should be adopted by the 15 companies for use on an intrastate basis, and that these tariffs should be filed on their behalf by the administrator of the intrastate pool established herein. Further, the Commission concludes that the other telelphone operating companies (Carolina, Central, General, and Concord) should file their own billing and collection tariffs with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding of fact is found throughout the entire record in this matter and is uncontroverted. The Commission concludes that it is proper for copies of all lease agreements entered into between ATTCOM and either Southern Bell or the other telephone operating companies to be filed with the Commission within thirty (30) days of the date of execution of said agreements. The filing of the contracts shall not preclude the Commission or any party from contesting any of the term(s) of said contracts in any subsequent proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

In its proposed access charge tariffs, Southern Bell defines "Interexchange Carriers" under E2 General Regulations and specifically E2.6 Definitions as follows:

> "The term 'Interexchange Carrier(s)' denotes any individual, partnership, corporation, association, or governmental agency, or any other entity, which subscribes to the services offered under this Tariff and is authorized by the North Carolina Public Service Commission by policy statement or certification to provide intrastate telecommunications services for its own use or for the use of its customers."

The Commission concludes that Southern Bell's proposed definition of "interexchange carrier" is overly broad for the reason that it could be construed to include any party, including WATS and private line customers, who subscribes to the services offered under the tariff. Thus, the Commission further finds and concludes that for purposes of the tariffs in question the term "interexchange carrier" should not be construed to include WATS and private line customers unless said customers are certificated public utilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

In its February 9, 1984, Order, the Commission directed that the rates and charges contained in the tariff proposals to be submitted by Southern Bell and Carolina Telephone Company should be set to recover the access revenue requirements of all local exchange carriers. The Commission concludes that implementation of a uniform statewide access tariff is appropriate at this time. The Commission further concludes that each local telephone operating company should make every effort to implement the tariffs, as approved herein,

in order that uniform toll rates may continue. Support for this conclusion is found in the testimony of Southern Bell witness Price. The Commission further concludes that any proposed changes to said tariffs arising in the future should be subject to the same procedures related to proposed tariff revisions presently in effect by this Commission. In regard to billing and collection services, the Commission concludes that these services should be charged at rates agreed upon between the affected parties and that said rates do not necessarily need to be uniform.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell shall refile its proposed access charge tariffs consistent with the modifications thereto set forth in this Order. Five copies of said modified tariffs shall be filed with the Commission to become effective April 3, 1984. Said tariffs shall be designed to recover a total revenue requirement of $175,371,000, including a carrier common line charge of 5.64¢ per minute. Except as hereinafter set forth, all local telephone companies shall concur in said tariffs.

2. That no residential or business end-user intrastate access charges shall be implemented in North Carolina on April 3, 1984.

3. That the $25.00 surcharge tariff proposed herein by Southern Bell shall be billed to the interexchange carrier under special access charges and not to the WATS end-user or customer.

4. That the pooling arrangement discussed herein be, and is hereby, approved. Southern Bell and all independent telephone companies shall report all intrastate-intraLATA message toll, WATS, private line (including independent to independent private line) revenues and interLATA access charge revenues monthly to one intrastate pool. Southern Bell shall serve as administrator of the pool. Settlements shall be paid from the pool to average schedule companies based on existing settlement procedures. Cost companies, including Southern Bell, shall share the remaining revenues in the manner presently employed, with all cost companies earning the same rate of return. Cost companies shall continue to determine their intrastate revenue requirements based on principles and procedures that currently exist. Separation of nontraffic sensitive costs between interLATA access and intraLATA toll shall be made on the basis of the SPF factor methodology.

5. That billing and collection services be, and hereby are, allowed to be renderd to interexchange carriers, and that the telephone operating companies rendering said services be, and hereby are, ordered to file billing and collection tariffs, consistent with the guidelines contained in this Order.

6. That toll settlements cost telephone operating companies be, and hereby are, allowed to bill and keep billing and collection revenues and said revenues should not be reported to the intraLATA pool established in this proceeding.

7. That toll settlements standard contract telephone operating companies be, and hereby are, ordered to pool billing and collection revenues in the intrastate pool established in this proceeding, until such time as appropriate separation of said revenues from the standard contract settlements may be reasonably achieved.

8. That the billing and collection tariff proposed herein by Continental Telephone Company of North Carolina be, and is hereby, approved.

9. That Southern Bell and the independent telephone companies shall not construe the term "interexchange carrier" as set forth in the proposed tariff filing to include WATS or private line customers unless said customers are certificated public utilities. Southern Bell shall refile its tariff consistent with this decretal paragraph and Finding of Fact No. 16 above and the evidence and conclusions set forth in support thereof.

10. That, unless modified herein, the findings of fact and conclusions heretofore set forth by the Commission in the "Order Establishing Interim Operating Procedures" entered in this docket on December 16, 1983, be, and the same are hereby, reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of April 1984.

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

DOCKET NO. P-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Investigation of Long Distance, Directory Assistance, WATS and Interexchange Private Line Rates of All Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission | ) | ORDER GRANTING PARTIAL RATE INCREASE |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 10, 11, and 12, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Sarah Lindsay Tate and Charles E. Branford

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For: The Using and Consuming Public

BY THE COMMISSION: On January 16, 1984, Southern Bell Telephone and Telegraph Company (Southern Bell or Applicant) filed an application with the Commission for authority to adjust its rates and charges for local services, intraLATA directory assistance, installation of WATS and 800 service, and interexchange intraLATA private lines to produce additional annual revenues of $121,337,000. Approximately $1,940,000 of this amount consisted of additional charges resulting from increased operator assistance charges, increased interexchange private line charges, and charges associated with the installation of WATS and 800 service. As part of its filing, the Applicant requested immediate interim rate relief of $21,825,825 to cover the impact of the transfer of its customer premises equipment (CPE) to AT&T on January 1, 1984. By Order issued February 7, 1984, the Commission suspended the tariffs filed in connection with the request for interim and permanent rate relief and scheduled oral argument on the matter of interim rates. On February 15, 1984, by further Order, the Commission denied the Company's request for interim rate relief.

The Commission, being of the opinion that the matter constituted a general rate case under G.S. 62-137, issued an Order on March 21, 1984, in Docket Nos. P-55, Sub 834, and P-100, Sub 69, declaring the matter to be a general rate case and setting it for investigation and hearing, establishing the test period as the 12 months ended September 30, 1983, and requiring public notice.

Additionally, the Commission determined that it was in the public interest that the Company's request to adjust its intraLATA directory

assistance charge, its WATS and 800 service nonrecurring charges, and its interexchange intraLATA private line rates be separated from Docket No. P-55, Sub 834, and placed in Docket No. P-100, Sub 69 ("Toll Docket"), for investigation and hearing, with all other telephone companies under the jurisdiction of the Commission being made parties thereto.

On May 17, 1984, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. The Commission by Order dated May 21, 1984, allowed this intervention.

On April 20, 1984, AT&T filed a Motion to expand the issues in this docket to include the way in which outward WATS and 800 service should be provided in

North Carolina. By Order issued June 6, 1984, the Commission denied AT&T's Motion.

The matter came on for hearing as scheduled. Southern Bell offered the testimony of the following witnesses: B.A. Rudisill, District Manager - Bell Independent Relations; Robert C. Hart, Jr., Segment Manager in Service Costs; and Robert L. Savage, Operations Manager, Rates and Service Costs.

Southern Bell witness Rudisill presented testimony that the toll rate changes Southern Bell was proposing in this case for private line services, nonrecurring WATS and 800 service, and toll directory assistance (D.A.) would amount to an increase of approximately $3,461,316 in industry toll revenues after deducting $727,948 resulting from interLATA D.A. repression caused by the proposal to also increase the interLATA D.A. charge from 20¢ to 50¢ per request. It was witness Rudisill's testimony that the toll directory assistance increase, adjusted for repression and including operator savings, would amount to $1,405,099; that the private line revenue increase would amount to $2,839,809; and that the proposed change in WATS nonrecurring charges would decrease revenue by $55,644. Witness Rudisill testified that he spread the toll increase among the cost settlement companies by using each company's percentage of the total interLATA and intraLATA net investment.

Witness Rudisill testified that Southern Bell is proposing to increase the intraLATA toll D.A. charge from 20¢ to 50¢ per D.A. request. Moreover, he stated that it would be necessary to also increase interLATA D.A. charges from 20¢ to 50¢ per request since it is impossible to separate intraLATA from interLATA D.A. calls. Witness Rudisill stated that he calculated the projected increase in D.A. revenues by annualizing intraLATA toll D.A. messages as of September 30, 1983, and then reducing them by 20% for repression. He then subtracted the present "repressed" D.A. settlement from his projected new D.A. revenues to arrive at the increased amounts for intraLATA D.A.

Witness Rudisill testified that Southern Bell is not proposing any increase or decrease in the recurring WATS rate schedule but proposing only to change the inside wiring component of the flat rate nonrecurring installation charge to a "time and materials" charging basis. Witness Rudisill testified that the net effect of the proposed change will be to decrease toll revenues by $55,644.

Witness Rudisill was questioned about his proposal to spread the toll increase of $3,461,316 among the cost settlement companies on the basis of the percentage of each company's intraLATA and interLATA investment to the total intraLATA and interLATA investment. He acknowledged that it might be more equitable to spread the increase based on only intraLATA investment but stated that he did not yet have the ability to determine the intra- and interLATA investment separately. He indicated that the various cost companies are presently working on allocation programs to accomplish this division.

The final area that witness Rudisill discussed was the proper tariff treatment to be given to the intraLATA "toll" portion of foreign exchange (FX) service. Witness Rudisill testified that it is Southern Bell's interpretation that a customer using an FX line is entitled to "free" LATA-wide calling from the open end of the line. In other words, a customer in Charlotte calling over an FX line from Raleigh could terminate his call anywhere in the Raleigh LATA

(e.g., Goldsboro) without incurring a toll charge for the Raleigh to the "toll" terminating point (e.g., Goldsboro) portion of the call. Witness Rudisill stated that this was contrary to prior practice whereby a toll charge would be imposed for calls to points outside the local calling area of the foreign exchange. He indicated that under the current FX tariff the local companies would not get toll revenues but would charge AT&T access fees for the local transport of such calls. He admitted, however, that these access fees would not be nearly equal to the toll amounts the local companies had previously been receiving for these FX calls. In addition, he stated that AT&T would not, at present, be able to pass the access charges along directly to the customers causing such charges. Witness Rudisill agreed that a possible solution to the problem would be to change the tariff language so that the intraLATA toll portion of the FX call from the foreign exchange to some other point within the LATA would be recovered through separate charges (such as MTS rates) rather than through the access charges.

Southern Bell's witness Savage's testimony described the proposed changes for long-distance directory assistance (DA), WATS nonrecurring charges and private line charges. He stated that Southern Bell is proposing to increase the charges for each intraLATA D.A. request from 20¢ to 50¢ contingent upon AT&T's tariff being amended simultaneously to the same level for interLATA D.A. requests since the administration of differing charges for intraLATA and interLATA D.A. is not feasible. According to witness Savage, Southern Bell's most recent resource cost study indicates a cost of 31¢ per D.A. request, down from 32.5¢ as shown in the last toll rate case. Because of its discretionary nature, he stated, the D.A. charges should cover its cost. Further, it should provide a contribution above cost to reflect market value to users and to help keep residential local exchange rates at lower levels than otherwise would be required.

With regard to WATS and 800 service, witness Savage stated that Southern Bell's proposals would eliminate existing nonrecurring charges for premises wiring and replace them with time and materials charges. These changes are necessary, witness Savage contended, since in today's world customers can choose their inside wiring supplier. Otherwise, by charging on the basis of average costs, Southern Bell gets the money-losing jobs while competitive contractors would get the money-winning jobs. According to witness Savage, the results would be to increase average costs over time. A similar change is proposed for intraLATA interexchange private line service.

Witness Savage also stated that Southern Bell's proposals include increases of up to 50% on private line rates to provide an amount of contribution (not to exceed 15%) and/or to ensure that relevant costs are covered. He conceded that the Company did not do an elaborate market type consideration study but rather compared the resultant prices of a local loop, for example.

With regard to TELPAK services, witness Savage stated that Southern Bell proposes prices for TELPAK station terminals at the same level as prices for single channel station terminals. The Company also proposes to obsolete intraLATA TELPAK in this proceeding and to withdraw the offering entirely after two years. Joint offerings of intraLATA and interLATA TELPAK (mixed TELPAK) by Southern Bell and AT&T would be discontinued immediately. Witness Savage contended that discount pricing for TELPAK is inappropriate since TELPAK is not

provided as it was originally envisioned. It has evolved, he said, as single or few channels at a time rather than large groups of channels in the same bank all engineered at the same time. Witness Savage further stated that there are other options, utilizing new technology, available to serve many TELPAK customers.

Witness Savage's testimony also addressed the revenue increases to be realized from the proposed rate changes after recognizing repression and cost savings. These were provided by witness Savage and shown on Rudisill Exhibit 1 - Revised. For Southern Bell they are as follows: Directory Assistance, assuming 20% repression, $377,054; WATS and 800 service nonrecurring charges (time and materials), ($30,626); private lines, assuming 30% repression, $1,563,031; total, $1,909,459.

Witness Hart's testimony described the methods used and the results obtained from his private line cost analysis, which were utilized in the determination of the proposed rates for private line services. His analysis quantified current direct costs, which reflect modern technologies and methods used currently to provide these services. Witness Hart testified on cross-examination that he used a cost of debt and equity that was current at the time he did his study which would amount to an overall cost of capital of 14.7%.

Carolina Telephone and Telegraph Company (Carolina T. & T.) offered the testimony of T. P. Williamson, Vice President - Administration of Carolina T. & T.

With regard to directory assistance charges, witness Williamson testified that Carolina T. & T. supports Southern Bell's proposal to increase directory assistance charges for three reasons: (1) in his opinion the cost of providing toll directory assistance fully supports the requested 50¢ rate; (2) such a service should be priced at least equal to its cost since customers can readily avail themselves of the service in order to facilitate their use of competitive offerings; and (3) the interstate rate is now 50¢ and it is desirable to have uniformity in the toll rate schedules, where possible, in the interest of better customer understanding.

Witness Williamson further testified that Carolina T. & T. supported Southern Bell's WATS/800 service nonrecurring charge proposal because of the new competitive environment.

With respect to Southern Bell's private line rate proposals, witness Williamson indicated that Carolina T. & T. had reservations about such proposals and believed that they required particularly careful consideration. He testified that this concern arises out of the fact that interexchange private line services are a substitute for message toll. If they are overpriced, an economic incentive is provided to key customers to make their own facility arrangements or, in other words, to bypass the network entirely.

With regard to the revenue impact if Southern Bell's proposals are approved, witness Williamson did not accept Southern Bell's estimate of the impact upon Carolina T. & T. He testified that the only correct way to estimate the revenue effect of a toll rate change upon the cost settlement companies is to estimate the impact of that change, along with the impact of

other currently changing conditions, upon the toll settlement ratio. Witness Williamson also recommended that the Commission use whatever toll rate increase is imposed as a result of this proceeding to increase the discounts granted intrastate callers.

Central Telephone Company offered the testimony of R. Chris Harris, Assistant Manager--Regulatory Cost Studies of Central Telephone Company. He testified that Central generally supports the schedule of intraLATA rates proposed by Southern Bell. He stated, however, that Central has a problem with Southern Bell's treatment of usage associated with Feature Group A (FGA). Southern Bell has told Central that FGA, which is the open end of Foreign Exchange (FX) circuits, should have a LATA-wide toll free calling scope from one point of presence in the LATA rather than the traditional interpretation that toll free calling is available only with the local exchange and EAS calling scope of the office where the service is terminated. He stated that this means that, if an interLATA, either interstate or intrastate, circuit is terminated in an end office such as Mocksville, calls to Charlotte, Hickory, or other points outside of Mocksville's local calling scope would not be billed as intraLATA toll calls. The local telephone company, therefore, would not receive toll revenues to offset its intrastate intraLATA costs. In addition, the local telephone company would also lose the applicable business exchange rate for the FGA service that it has historically received. Witness Harris testified that Central knows of no reasons requiring the revision of the present arrangement. He stated that the open end (i.e., dial tone end) of FGA service should have the same calling scope as a business exchange rate in the associated end office exchange, and if the toll calls are made from that line, they should be rated and billed to the FX customer. The toll revenues would then be reported to the pool and the local service business exchange rate would be retained by the local exchange carrier. Witness Harris stated that only a slight change in the tariff language would remedy the problem.

Continental Telephone Company offered the testimony of Benjamin M. Zewig, Financial Analyst, employed by Contel Service Corporation, Eastern Region. Witness Zewig testified that Continental concurs with all rates proposed by Southern Bell in this docket. He stated that any additional revenue which the Company will realize under the proposed rates will be the result of changes in the toll settlement ratio and not the distribution of any anticipated additional revenues. Thus, the $115,280 figure shown on witness Rudisill's exhibit would represent additional revenues to Continental only if the proposed 11.63% settlement ratio is actually achieved. Moreover, witness Zweig contended, even if the toll pool were to achieve an 11.63% settlement ratio, Continental would not earn the return granted in the Company's last general rate case.

General Telephone Company of the Southeast (GenTel) presented the testimony of T.E. Stephens, Revenues and Earning Director. Witness Stephens testified that based on a review of the proposed changes and schedule of rates submitted by Southern Bell, GenTel concurred with Southern Bell's proposal. With regard to the revenue change for GenTel as provided to him by Southern Bell, witness Stephens testified that GenTel found Southern Bell's methodology for allocating the proposed revenue changes to be reasonable. In addition, witness Stephens testified that, based on the information provided by Southern Bell concerning the level of total industry revenue changes that would result if uniform toll rates were maintained statewide, his position was that the new

environment requires that access charges should be more cost based and that if any form of competition is allowed in the state toll markets, then the current arrangement should be replaced by one that separates the interLATA and intraLATA markets utilizing cost based access charges.

AT&T Communications offered the testimony of Robert A. Friedlander, District Manager, Price and Service Management, and Marion R. McTyre, District Manager, Accounting Regulatory.

Witness Friedlander testified that the AT&T services affected by Southern Bell's rate proposals are mainly interLATA directory assistance charges and interLATA channel service charges. He stated that AT&T does not believe uniform interexchange rates are a necessity. Interexchange carriers must have the flexibility, he said, to react to the competitive environment without being constrained by the pricing needs of the local exchange carriers.

With regard to directory assistance requests, witness Friedlander recommended a 70¢ charge to enable AT&T to recoup its appropriate total cost per call. This charge must be the same within a Home Numbering Plan Area (HNPA) since the technology is not available to separate interLATA and intraLATA D.A. calls within a HNPA on a customer-by-customer basis. Moreover, AT&T believes the charge should be 70¢ for all long-distance intrastate calls, thereby allowing local exchange carriers to derive increased contribution to offset access charges. Witness Friedlander stated that if the Commission does not approve a 70¢ D.A. charge, overall access charges should be reduced so the proposed 50¢ charge will cover the costs of providing D.A. service.

With regard to channel services, witness Friedlander testified that the rates proposed by Southern Bell would not produce sufficient revenues to cover AT&T's costs for provision of these services but would improve the revenue/cost relationship. Finally, he concurred in the proposed elimination of mixed TELPAK and obsoleting of TELPAK but stated that AT&T believes the offering should be continued for only 12 months.

In additional testimony, witness Friedlander stated AT&T's belief that Charlotte to Raleigh FX service is an interLATA type service and that the revenues for a toll call from Raleigh to Goldsboro should go to AT&T which would help offset some of the access charges on that end. He further stated that his opinion as to the interLATA nature of the call applied only when the call was from Charlotte to Goldsboro and not when the call was from Goldsboro to Charlotte.

Witness McTyre testified that AT&T Communications experienced a net operating loss (unaudited) on interexchange telecommunications service for the four months ended April 30, 1984. He stated that if Southern Bell's requested toll increases were granted, it would increase AT&T Communications return to only a negative 2.16%. He further testified that AT&T Communications' return would improve to a positive 2.84% if the Commission were to take into account AT&T's leased revenues of $2,342,346 for this period, although he disagreed with the Public Staff's position that these revenues should be included.

Carolina Utility Customers Association, Inc., presented the testimony of Harry M. Venable, Director of Telecommunications Services, Celanese Fibers Operations, Division of Celanese Corporation, Charlotte, North Carolina, and

Louis R. Jones, Telecommunication Analyst, Corporate Communications Department, Burlington Industries, Inc., Greensboro, North Carolina.

Witness Venable testified with regard to the effect Southern Bell's proposed rate changes would have on Celanese telecommunications expenses in its three locations in North Carolina, both local and intraLATA. His Attachment I showed that the Charlotte location would experience a 30% aggregate overall increase, the Salisbury location would experience a 24% aggregate overall increase, and the Shelby location a 50% aggregate overall increase, resulting in a 30% overall increase to Celanese for all three locations. He further testified that his company was considering bypass for one location but did not have plans at this time to go completely off the Southern Bell private line system.

Witness Jones of Burlington Industries testified that in his opinion the value of service received does not merit any increase and that Southern Bell's proposed increases are disproportionate and unreasonable and do not appear to be justified. He presented figures that showed that Burlington's expense for TEXPAK C had gone up 324% since 1981. He further testified that he is totally dissatisfied with the Commission's acquiescence to nonbook cost justification for long-standing private lines and that he questioned the validity of "current" or marginal cost studies.

With regard to bypass, witness Jones testified that it was almost as if Southern Bell was trying to push its private line customers into bypass and that Burlington Industries had brought its study of microwave off the back burner after the 1983 increases were approved. In his opinion, bypass is a real threat in North Carolina.

With regard to the Directory Assistance charge increases, witness Jones testified that he was concerned about the discouraging effect this would have on long-distance business.

The Public Staff offered the testimony of Hugh L. Gerringer, Engineer with the Communications Division. Witness Gerringer recommended that Southern Bell's proposed increase in private line charges, the proposed change to a time and material charge for premises wiring for intraLATA WATS and 800 service, and an increase in the toll D.A. charge from 20¢ to 50¢ all be denied. In support of his position, witness Gerringer showed the magnitude of the increases involved and the reasons why the Public Staff recommends that such increases be denied.

Witness Gerringer testified that Southern Bell is proposing to increase private line rates as follows: (1) increase recurring rates by 28.4%; (2) increase nonrecurring charges by 31.8%; (3) increase monthly rates for Series 1001 and 1002 by 317%; (4) increase rates for series 5000 by 45.4%; (5) increase cross boundary rates by 95.5%, obsolete series 5000 channels and eliminate that offering in two years. Witness Gerringer stated that the Public Staff opposes these private line increases as interexchange private line recurring rates were increased by an average of 33.5% in the last intrastate toll rate case, Docket No. P-100, Sub 64, and nonrecurring charges were increased in that case by an average of 102%. Further increases at this time would impose an excessive burden on private line subscribers. In addition, witness Gerringer testified that the Public Staff considers that interexchange

private line service is subject to bypass at today's rate levels. He stated that further increases of the magnitude proposed will provide additional incentives to bypass telephone company private line services. He testified that the proposals for large increases are particularly disconcerting when it is recognized that many of the proposed rates would provide substantial contribution above Southern Bell's current cost levels.

Witness Gerringer testified that Southern Bell has proposed to eliminate the existing $20.00 nonrecurring charge for all premises wiring items for both intraLATA WATS and 800 service and replace it with time and materials charges. Witness Gerringer stated that the uncertainty, inconvenience, and potentially unfair aspects of the proposed charges outweigh any benefits to be gained by the imposition of time and material charges.

Witness Gerringer further testified that the Public Staff is opposed to Southern Bell's proposal to increase the existing 20¢ charge to 50¢ for each intraLATA D.A. request. He stated that such an increase would not be appropriate as customers are still adjusting to the significant increase in toll D.A. charges that went into effect in late September 1983 and that it would stimulate customer complaints to follow that change with a 150% increase in less than one year's time. He also testified that the FCC recently approved for the first time a tariff permitting AT&T to charge for interstate D.A. requests. He stated that the FCC's approved plan establishes a 50¢ charge per request but allows one free D.A. request for each long-distance call made over AT&T's system up to a maximum of two per month. Witness Gerringer pointed out that North Carolina customers making only a few intrastate toll D.A. requests (three or less per month) are paying more for intrastate toll D.A. requests at the present 20¢ charge than for interstate toll D.A. request at 50¢ because of the free call allowance provision of the FCC's D.A. plan. He testified that Southern Bell's proposal would compound this disparity. He also stated that the proposed increase in D.A. could encourage customers to subscribe to MCI or other competitive interexchange carriers. He believes this would increase the potential for unauthorized intrastate toll calling and a loss of intrastate revenue for Southern Bell and the other local operating companies. Finally, witness Gerringer testified that Southern Bell's proposed increase in D.A. would have little impact on its requested revenue increase.

On cross-examination, witness Gerringer was questioned about AT&T's cost for providing interLATA D.A. versus the amount AT&T is authorized to charge its customers. In this regard, witness Gerringer stated that AT&T has to pay 62¢ per D.A. request to the access pool, whereas AT&T can presently charge its customers only 20¢. Witness Gerringer admitted that there is a 42¢ shortfall per D.A. request but that the Public Staff was aware of this disparity when access charges were established and that other offsetting items were considered in establishing access charges.

On questions from the Commission, witness Gerringer testified that due to the present unsettled environment of the telecommunications industry the present time would not be the proper time to change toll rates. He stated that divestiture is just a little over six months old and that intrastate access charges have only been in effect since April. Moreover, he testified that authorized competition with its threat of bypass is just around the corner. He said that the Public Staff is concerned that an increase in toll rates might cause some detrimental effects that could result in loss of toll revenues to

the companies. The local ratepayers would then be called upon to make up those losses. Witness Gerringer concluded, therefore, that the proposed changes should not be approved.

Based on the foregoing, the evidence adduced at the hearings, and the entire record in this matter, the Commission makes the following

## FINDINGS OF FACT

### FINDING OF FACT NO. 1

Southern Bell, AT&T, and the independent telephone companies made parties to this docket are duly franchised public utilities lawfully incorporated and licensed to do business in North Carolina, are providing telephone services in their respective North Carolina service areas, are subject to the jurisdiction of this Commission, and are lawfully before this Commission to establish rates for interexchange private line and foreign exchange services, nonrecurring WATS and 800 services, and intrastate long-distance directory assistance charges.

### FINDING OF FACT NO. 2

Southern Bell's proposed increases in private line service charges are unreasonable, particularly in view of the large increases granted in the immediately preceding intrastate toll rate case and the potential for bypass by the private line customers, and should be denied.

### FINDING OF FACT NO. 3

Southern Bell's proposal to discontinue new TELPAK offerings and to phase out existing services over the next two years is not in the best interests of the subscribers and therefore should be denied.

### FINDING OF FACT NO. 4

Southern Bell's proposals to implement time and materials charges for premises wiring (installation and maintenance) relating to WATS, 800 service, and private line services should be denied.

### FINDING OF FACT NO. 5

IntraLATA toll charges should be assessed against users of FX service who use an open-end FX number to call numbers which are inside the same LATA but outside the local calling scope of the open-end exchange.

### FINDINGS OF FACT NO. 6

Southern Bell's proposal to increase intrastate toll directory assistance (D.A.) calls from 20¢ to 50¢ and to make this a statewide charge is just and reasonable and should be approved.

### FINDING OF FACT NO. 7

The increases derived from the rate changes herein shall be handled as follows: (a) in the pending rate case of Southern Bell such increased revenues

shall be reflected and (b) increases in revenues generated hereunder for all independent telephone companies are de minimis and may not actually result in an increase in rate of return; therefore, flow through to basic rates shall not be required at this time for those companies.

FINDING OF FACT NO. 8

The estimated annual additional gross end-of-test-period intrastate intraLATA toll revenues and cost savings subject to toll settlements that will be produced for Southern Bell and the independent companies are $377,054 and $300,097, respectively. Included in such estimates are increased revenues related to directory assistance charges which reflect the repression and associated cost savings proposed by Southern Bell. The increased revenues to be derived by Southern Bell from toll rate schedule changes shall be considered in Southern Bell's general rate proceeding currently pending before the Commission. The increased revenues accruing to the independent companies are de minimis and do not justify any offsetting reduction in other intrastate toll or local service rates.

FINDING OF FACT NO. 9

The method used by Southern Bell for allocating the annual additional gross intrastate toll revenues subject to toll settlements resulting from this proceeding among Southern Bell and the independent telephone companies is proper and reasonable and results in additional gross toll revenues of approximately $377,054 and $300,097 for Southern Bell and the independent companies respectively.

FINDING OF FACT NO. 10

The estimated additional gross end-of-test-period intrastate interLATA toll revenues and cost savings that will be produced for AT&T is $4,460,150. Such amount reflects the repression and cost savings advocated by AT&T. AT&T's revenue cost mismatch associated with directory assistance services and the current earnings level of AT&T on its North Carolina intrastate interLATA operations does not warrant or justify any offsetting reduction in other toll service rates or increase in access charges at this time.

CONCLUSIONS

CONCLUSION NO. 1

The evidence herein is essentially procedural in nature, was not contested by the parties, and warrants no additional discussion in this Order.

CONCLUSION NO. 2

The Commission has carefully considered all the evidence in this case and concludes that Southern Bell's request for increases in private line rates must be denied. This conclusion is based on the following considerations: (1) inter-exchange private line recurring rates were increased by an average of 33.5% in the last intrastate toll rate case, Docket No. P-100, Sub 64, and nonrecurring charges were increased in that case by an average of 102%; and (2) further increases at this time would impose an excessive burden on private line

subscribers at a time when interexchange private line service is becoming increasingly subject to bypass. While the Commission recognizes that under-pricing private line services may result in higher local service rates, a greater threat would result from over-pricing those services and forcing large customers to abandon totally the telephone network, and causing even greater increases in local rates. In the Commission's view, Southern Bell's exclusive use of current costs, a rate of return of 14.7% applied to those current costs and an additional element of contribution above costs clearly runs the risk of over-pricing private line channel services. While further rate adjustments for these services may be required in the future, they should be postponed until the impact of bypass and intrastate competition can be more adequately evaluated.

CONCLUSION NO. 3

Southern Bell proposed to increase the prices for TELPAK station terminals associated with intraLATA circuits at the same level as single line channel service station terminals. The Company also proposed that intraLATA TELPAK services be obsoleted in this proceeding but that existing customer and existing service arrangements would continue to be served for a period of two years. Company witness Savage further proposed that the joint provisioning of TELPAK based capacity/sections by Southern Bell and AT&T be discontinued.

The Commission has previously concluded that the increases requested in private line rates must be denied. This decision was based upon the magnitude of the increase allowed in the last toll rate proceeding for private line services and the burden these increases would impose on private line subscribers at a time when interexchange private line service is becoming increasingly subject to bypass. The Commission likewise concludes that the requested increases in TELPAK rates are not appropriate at this time for the same reasons that apply to private line services.

The Commission finds no justification for the Company's request to discontinue TELPAK services for new customers and to phase out existing TELPAK customers and service arrangements over the next two years. The Commission remains unconvinced that obsoleting TELPAK services is in the public interest or even in the long-run best interest of the Company. The Commission likewise finds little merit in discontinuing mixed TELPAX services currently provided on a joint basis by Southern Bell and AT&T at the present time.

CONCLUSION NO. 4

Southern Bell has proposed to charge for installation and maintenance of customer premises wiring on a time and materials basis for WATS, 800 service, and private line service. The Company maintains that deaveraging of the nonrecurring charges is necessary to cover costs. Since customers may now obtain these services from competitive contractors, Southern Bell contends that it loses the money-making jobs and obtains only the most costly jobs where costs exceed the flat rate charge.

While the Commission finds merit in Southern Bell's proposal in this regard, the ultimate result of implementing the proposed plan is perplexing and confusing. Southern Bell has estimated that implementation of the plan will result in decreased revenues of approximately $55,644 for Southern Bell and the independent telephone companies. Although the stated purpose of implementing a

time and materials method of charging is to better cover the cost of providing these services, it would appear based on the evidence of record that Southern Bell will actually experience a revenue loss from the proposed method of charging.

The Commission notes that the tariffs filed by Southern Bell indicate a significantly reduced number of units under the time and materials method of charging as contrasted to a flat rate charge. One could infer from the tariff filing that the Company anticipates losing customers as a result of instituting the time and materials charges. Alternatively, the loss in units may reflect deregulation of inside wiring for complex systems which was mandated in Federal Communication's Order in CC Docket No. 82-681 which became effective June 30, 1984. Either of those scenarios would in the Commission's opinion necessarily result in cost decreases to the Company. No such cost decreases have been reflected. The Commission finds bewildering the fact that no party in the proceeding specifically questioned the validity of the revenue decrease proposed by the Company. Nevertheless, the Commission is unable to accept the validity of the Company's requested decrease in revenue and must therefore reject the proposed time and material charging methodology for WATS, 800 service, and private line service nonrecurring charges at this time.

CONCLUSION NO. 5

Based on the evidence in this Docket and its reading of Feature Group A tariff provisions, the Commission concludes that intraLATA toll charges should apply to toll calls made on an open end FX number to another number within the same LATA but outside the local calling area. The Commission concludes that local transport charges should not be assessed against the interexchange carrier between the toll center at the open end of the FX circuit and the toll center at the terminating end. To conclude otherwise would unreasonably discriminate against local business subscribers served by the same central office as the FX customer. The Commission further concludes that intrastate access tariffs should be modified to clarify these points.

CONCLUSION NO. 6

Southern Bell witnesses Savage and Rudisill, Public Staff witness Gerringer, AT&T witness Friedlander, CUCA witness Jones, and witnesses representing the independent telephone companies presented testimony regarding Southern Bell's proposal to increase the directory assistance charge from 20¢ to 50¢ for each intrastate D.A. request for MTS and WATS. The Company proposed this charge as a concurrence tariff item which would also include AT&T intrastate interLATA directory assistance.

The Commission concludes that the cost of providing each directory assistance call now exceeds the allowed charge of 20¢ per call. Thus, the imposition of a directory assistance charge which covers the cost of the service and makes a contribution benefits the Company's general ratepayer by placing the cost of providing this optional directory assistance service directly upon the person causing the cost. The Commission is also concerned that AT&T's D.A. related access and billing expense paid to Southern Bell and the independent telephone companies is approximately 62¢ per D.A. call which creates a 42¢ shortfall for each call under the current 20¢ charge. The Commission preferred to allow two offsetting intrastate toll calls upon

implementation of the 50¢ D.A. charge. However, the evidence presented in this proceeding reveals that the differentiation and administration of differing charges for intraLATA and interLATA long-distance directory assistance calls are not now technically feasible. The Commission believes that the impact of the increasing D.A. toll charges to 50¢ will be minimal on residential subscribers since the record herein tends to show that, for instance, 87.1% of Southern Bell residential accounts made no toll D.A. calls in November 1983. Therefore, the Commission concludes that it is in the best interest of the local subscribers to grant the requested D.A. toll increase from 20¢ to 50¢ and to require AT&T and the independent telephone companies to concur.

CONCLUSIONS NOS. 7, 8 and 9

Southern Bell witnesses Savage and Rudisill, Public Staff witness Gerringer, and witnesses for the independent companies presented testimony regarding the increased revenues and cost savings to be derived from the proposed rate changes and the impact of such changes on Southern Bell's and the independent companies' operations. The Commission has previously concluded that only an increase in the charge for directory assistance is warranted at this time. The Commission notes that the level of increased revenues and cost savings to be derived from toll rate schedule changes advocated by Southern Bell for directory assistance charges is virtually uncontested. No witness specifically challenged the methodology used by Southern Bell to compute the revenue increase related to this rate schedule change nor the allocation of these revenues between Southern Bell and the independent companies on a percentage investment basis. Certain independent company witnesses did however disagree with the estimated revenue effect of proposed toll rate changes on the cost settlement companies. These witnesses assert that factors other than toll rate changes impact the toll settlement ratio and should be considered. These witnesses failed to identify or quantify any of the changes which should be considered in this case. The Commission thus concludes that the methodology advocated by Southern Bell to compute additional revenues and cost savings to be derived from increased directory assistance charges service is appropriate and that the increased revenues and cost savings associated with the toll rate schedule change approved herein are $377,054 and $300,097 for Southern Bell and the independent companies, respectively. In reaching its decision, the Commission concludes that the repression and cost savings methods employed by the Company are reasonable and proper. Further, the Commission finds that Southern Bell's proposed allocation of increased revenues between Southern Bell and the independent telephone companies is appropriate.

The Commission has carefully considered the impact of the rate schedule change approved herein on Southern Bell and the independent companies specifically with regard to the issue of "flow through." The Commission finds the level of anticipated increase to the individual independent companies to be de minimis and therefore concludes that flow through or offsetting reductions in the local service rates of the independent companies is not justified.

The revenue increase approved herein for Southern Bell likewise in terms of the Company's total revenue requirements are viewed by the Commission to be de minimis. However, due to the fact that Southern Bell has a general rate proceeding currently pending, the Commission finds it appropriate to consider such increases in establishing the Company's local service rates.

CONCLUSION NO. 10

AT&T witnesses Friedlander and McTyre presented testimony concerning the impact of Southern Bell's proposed rate increases on AT&T's operations should uniform rates be maintained for intraLATA and interLATA services. The Commission previously concluded that an increase in D.A. charges is justified and that such charges should be uniform for intraLATA and interLATA services. The additional increase in revenues and cost savings which will accrue to AT&T as a result of the D.A. rate charges approved herein is approximately $4,460,150. This increase reflects the repression and cost savings advocated by AT&T which the Commission finds reasonable.

The Commission has carefully considered the impact of these increased revenues on AT&T's operations. Evidence presented indicates that AT&T's estimated annual D.A. associated access charges amount to approximately $9.2 million while the Company is receiving only about $2.8 million in annual revenues from the present customer charge. Thus the annual revenue to expense shortfall is approximately $6.4 million under current rates and will become $1.9 million under the rates approved herein.

The Commission is also aware that AT&T's financial operating results based upon the limited financial data available at the close of the hearing in this case indicates that AT&T is experiencing negative earnings on its North Carolina intrastate operations. Further, such data indicates that even after consideration of the totality of Southern Bell's rate proposals and leased revenues AT&T would be experiencing only minimal earnings.

Based upon the revenue cost shortfall experienced by AT&T on its directory assistance services and the current earnings level of AT&T, the Commission concludes that no offsetting reduction in other toll service rates or increases in access charges are necessary or reasonable at this time.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell Telephone and Telegraph Company, AT&T, and the independent telephone companies in North Carolina under the Commission's jurisdiction are hereby authorized to adjust the rates and charges applicable to intrastate toll directory assistance as proposed by Southern Bell.

2. That Southern Bell shall file revised access tariffs with the Commission to reflect the Commission's ruling on access provided on Feature Group A FX lines.

3. That within 10 days from the date of this Order, Southern Bell shall file tariffs necessary to reflect the revisions in rates and charges approved in Paragraph 1 and 2. Work papers supporting such proposals should be provided to all parties (formats such as Item 30 of the minimum filing requirements, NCUC Form P-1 are suggested).

4. That the Public Staff and any other party may file written comments concerning Southern Bell's tariff proposals within five (5) days from the date the tariffs are filed with the Commission.

5. That rates, charges, and regulations necessary to implement the changes authorized herein shall be effective upon the issuance of a further order by the Commission.

6. That all rates and charges not herein adjusted remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This is the 31st day of August 1984.

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

DOCUMENT NO. P-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Investigation of Long Distance Directory Assistance, WATS and Interexchange Private Line Rates of All Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission | ) ) ) ) | ORDER SETTING RATES |

BY THE COMMISSION: On August 31, 1984, the Commission issued an Order Granting Partial Rate Increase. In effect, the Order granted authority to Southern Bell Telephone and Telephone Company and AT&T to increase directory assistances charges from 20¢ to 50¢ and required the independent telephone companies to concur. Also, the Commission Order states that intraLATA toll charges should apply to toll calls made on an open end FX number to another number within the same LATA but outside the local calling area. Southern Bell was allowed ten (10) days to file tariffs reflecting the abovementioned decision.

On September 4, 1984, and September 10, 1984, Southern Bell filed revised tariffs accurately reflecting the charges set forth in the August 31, 1984, Order. AT&T filed appropriately revised tariffs on September 5, 1984. The Public Staff notified the Commission that the tariffs are in compliance with the Commission's guidelines.

The Commission is of the opinion that good cause exists to place into effect the rates established in its August 31, 1984, Order.

IT IS, THEREFORE, ORDERED:

1. That the directory assistance service and the Feature Group A switched access service tariffs filed in this docket on September 4 and 10, 1984, by Southern Bell and the tariffs filed on September 5, 1984, by AT&T are hereby approved to become effective at 12:01 a.m., September 24, 1984.

2. That all regulated telephone companies are authorized to place into effect the rates herein approved effective at 12:01 a.m., September 24, 1984.

3. That AT&T shall be responsible for the cost associated with the statewide distribution of the attached Notice to Subscribers. Said Notice of the rate changes herein approved shall be included as a bill insert in the same billing cycle which first reflects the rate change.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of September 1984.

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

NOTICE TO SUBSCRIBERS

Effective October 28, 1984, the long distance directory assistance (DA) charge for request for numbers within North Carolina will be increased from 20¢ to 50¢ per DA request. The increase was authorized by the North Carolina Utilities Commission after months of investigation and hearings in Docket No. P-100, Sub 69.

In addition, the Commission modified the Access Service Tariff as it relates to the provision of interLATA foreign exchange (FX) service. The tariff modification makes it clear that the local calling area of the foreign exchange service is limited to the local calling area of the exchange from which dial tone is furnished.

DOCKET NO. E-2, SUB 494

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Complaint and Petition by Texasgulf Inc., Against Carolina Power and Light Company for Order to Enforce PURPA Contract Rights ) ORDER DENYING COMPLAINT

HEARD IN: The Commission Hearing Room, 430 N. Salisbury Street, Raleigh, North Carolina, on October 1, 1984, at 10:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, and Hugh A. Crigler, Jr.

APPEARANCES:

For the Complainant:

Lucius W. Pullen, Division Counsel, Texasgulf Inc., P.O. Box 30321, Raleigh, North Carolina 27622-0321

For Carolina Power and Light Company:

Robert W. Kaylor, Associate General Counsel, P.O. Box 1551, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 17, 1984, Texasgulf Inc. filed a Complaint and Petition with the Commission asking that Carolina Power and Light Company be ordered to enter into a contract with Texasgulf for the sale and purchase of electricity from Texasgulf's qualifying cogeneration facility "in accordance with terms and conditions similar to those in contracts heretofore entered into, including the requirement that Carolina Power and Light purchase the electricity to be supplied from Petitioner's cogeneration facility under Carolina Power and Light's Rate Schedule CSP-6CA." Attached to the Complaint and Petition were Exhibits A through G.

On September 18, 1984, the Commission issued its Order Serving Complaint and Petition, serving the Complaint and Petition upon Carolina Power and Light Company and directing Carolina Power and Light Company to satisfy the Complainant or file an answer within 20 days.

On September 20, 1984, Carolina Power and Light Company filed its Response of Carolina Power and Light Company with the Commission, setting forth its defenses to the allegations of the Complaint and Petition and asking that the relief sought by Texasgulf be denied and that Carolina Power and Light Company be allowed "to move forward with a contract based on the rate in effect at the time the contract is signed." Attached to the Response were Exhibits A through F.

On September 24, 1984, the Commission entered an Order scheduling oral argument for the time and place indicated above. That Order noted that the parties had requested the right to present oral argument on the exhibits

presented by them but that neither party had requested the right to an evidentiary hearing.

The oral argument came on as scheduled before the Commission. At that time, the parties stipulated that the Commission could enter a decision on the basis of the exhibits presented by the parties plus the Commission's judicial notice of certain of its own records as described by counsel at the oral argument. The parties presented oral argument and the Commission took the proceedings under advisement.

On the basis of the oral argument and stipulated exhibits and records, the Commission enters the following order:

Pursuant to the stipulation of the parties, the Commission finds the facts to be as set forth in the exhibits attached to the Complaint and Petition of Texasgulf and the Response of Carolina Power and Light Company plus its own records judicially noticed. The same are incorporated by reference and will not be set forth herein.

On the basis of the exhibits and records, the Commission concludes that the relief sought by Texasgulf should be denied. The exhibits reveal that Carolina Power and Light Company consistently took the position that it would sign a contract with Texasgulf on the basis of the rate schedule in effect at the time of the signing of the contract. See, e.g., Carolina Power and Light Company Exhibits A, B, and E and Texasgulf Exhibits A and F. This is consistent with the provisions of FERC Regulation 292.304(d)(2) which provides that a qualifying facility shall have the option of a contract with a utility on the basis of avoided cost rates calculated either at the time the contract is signed or at the time of delivery of energy or capacity.

The currently approved avoided cost rate schedule for Carolina Power and Light Company is CSP-7A. See Texasgulf Exhibits C and D. Texasgulf argues, among other points, that CSP-7A was only allowed in effect by Order of the Commission, that CSP-6 represents the last avoided cost rates set by the Commission pursuant to a full hearing, and that Texasgulf anticipated CSP-6 would remain in effect for two years, thus allowing time for contract negotiations. The Commission notes that Rate Schedule CSP-7A was allowed in effect after detailed proceedings before this Commission in which many parties participated. See Docket E-100, Sub 41A. The rationale for the Commission's action is as set forth in its orders in that docket, especially the Order of March 23, 1984, Texasgulf Exhibit C. The Commission finds no grounds for reexamining that action. Texasgulf had notice of those proceedings (see, e.g., Carolina Power and Light Company Exhibits C and F and Texasgulf Exhibit B); however, Texasgulf did not participate in those proceedings. The applicable law makes clear that a rate schedule, once established, should be reviewed at least every two years. Thus, two years is a maximum, not a minimum, time for such rates to remain in effect. Nothing in the law or the regulations of this Commission prevents a more frequent change of rates.

Texasgulf also argues that it is entitled to a contract at CSP-6 because it has an letter of intent from Carolina Power and Light Company. Soon after this Commission allowed Rate Schedule CSP-7A into effect, it issued an order on April 4, 1984, including the following provision:

"In recognition of the expense and effort undertaken by all potential cogenerators and small power producers who had obtained either a certificate of public convenience and necessity from this Commission or a letter of intent from Carolina Power and Light Company as of March 23, 1984, the Commission will permit such potential cogenerators and small power producers to negotiate with Carolina Power and Light Company for a contract rate between Rate Schedule CSP-6 and CSP-7A. Carolina Power and Light Company is reminded of its obligation to negotiate in good faith with such parties, giving consideration to any letter of intent given by it."

The records of the Commission reveal that this provision was ordered on motion of Cogentrix, a potential cogenerator who had obtained a letter of intent from Carolina Power and Light Company specifically citing the CSP-6 rate. The letter of intent from Carolina Power and Light Company to Texasgulf pre-dates March 23, 1984, but it includes no citation of a specific rate schedule. It cites the then currently available options and states, "Future options will be in accordance with tariffs that exist at the time a contract is signed." The Commission concludes that "giving consideration to [this] letter of intent," Texasgulf is not entitled to any rate other than the rate in effect at the time of signing the contract.

IT IS, THEREFORE, ORDERED that the relief sought by the Complaint and Petition filed in this cause by Texasgulf on September 17, 1984, to the effect that the Commission order Carolina Power and Light Company to contract with Texasgulf at the CSP-6 rate schedule should be, and the same hereby is, denied.

ISSUED BY ORDER OF THE COMMISSION.
This is the 9th day of October 1984.

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

DOCKET NO. E-22, SUB 277

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Roanoke Voyages Corridor Commission,<br>Complainant | ) | |
| v. | ) | ORDER |
| Virginia Electric and Power Company,<br>Respondent | ) | |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, August 15, 1984 at 9:30 a.m.

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Edward Hipp and Hugh A. Crigler, Jr.

APPEARANCES:

For the Complainants:

James B. Richmond, Special Deputy Attorney General, and Evelyn M. Coman, Assistant Attorney General, N.C., Department of Justice, P. O. Box 25201, Raleigh, North Carolina 27611
Appearing for Roanoke Voyages Corridor Commission

For the Respondents:

Edward S. Finley, Jr., and Guy T. Tripp, III, Hunton & Williams, P. O. Box 109, Raleigh, North Carolina 27602
Appearing for Virginia Electric and Power Company

BY THE COMMISSION: On May 11, 1984, Roanoke Voyages Corridor Commission (the Corridor Commission) filed a complaint with the North Carolina Utilities Commission asserting that the Corridor Commission has adopted regulations requiring that new electric utility installations along the U.S. Highway 64 and 264 travel corridor through Roanoke Island be placed underground and seeking to obtain a ruling from this Commission "whereby Vepco would be directed to comply with the regulations of the Corridor Commission with respect to new utility installations and to do so at the expense of Vepco."

On June 8, 1984, Vepco filed an answer stating that insufficient information existed to respond to the complaint and requesting that the matter be continued. The Corridor Commission requested a hearing by a filing of July 2, 1984, and this Commission scheduled a hearing for the time and place indicated above. On August 6, 1984, Vepco filed a further answer asking that the relief requested by the Complainant be denied.

A hearing was held as scheduled. The Complainant presented three witnesses: James M. Greenhill, Assistant to the Highway Administrator of the Department of Transportation; John F. Wilson, IV, Chairman of the Corridor Commission; and Norman Brantley, the developer of a proposed motel and restaurant project along U.S. Highway 64 and 264. Respondent presented the

testimony of James T. Earwood, Jr., Vice-President and Division Manager of Vepco's Southern Division.

Based upon the testimony and evidence presented at the hearing, the Commission makes the following:

## FINDINGS OF FACT

1. The Corridor Commission was created by the General Assembly for the purpose of enhancing "the appearance and aesthetic quality of the U.S. Highway 64 and 264 travel corridor through Roanoke Island for the benefit and enjoyment of local citizens and visitors to the historic, education, and cultural attractions on the Island."

2. The General Assembly granted the Corridor Commission authority, among other powers, to establish reasonable standards of appropriateness and provide rules, regulations, and guidelines for "the aboveground and underground location and installation of wires and cables, including poles, conduit and other supporting structures therefor, used for the transmission of electric power . . . which are placed or are to be placed on the right-of-way of the highway or within 50 feet of the right-of-way of the highway." The highway referred to herein (hereinafter referred to as the corridor) is U.S. Highway 64 and 264 on Roanoke Island between the William B. Umstead Memorial Bridge over Croatan Sound and the Washington Baum Bridge over Roanoke Sound.

3. The Corridor Commission has adopted regulations which require that new utility installations for electric power on the corridor be placed underground. New installations include initial installations, replacement of existing facilities with those of a different type or capacity, and replacement of existing facilities at a new location on the corridor.

4. The General Assembly did not provide funds for the underground placement of new utility installations, and the Corridor Commission's regulations do not address the issue of who must pay for underground placement.

5. Vepco is a public utility providing electric power service to Roanoke Island and is subject to the jurisdiction of this Commission.

6. Vepco's usual method for providing electric service is by overhead installations. Vepco has tariffs which have been approved by and are on file with this Commission which deal with underground service. These tariffs, which will be referred to as Tariffs IIA and XXIID, provide that when underground service is requested by a non-residential customer or is required by governmental authority in an area not designated by Vepco as an Underground Distribution Area (which the corridor is not), payment must be provided to Vepco for the difference in cost between overhead and underground placement of the service.

7. Mr. Norman Brantley plans to construct and operate a motel and restaurant project on Roanoke Island along the corridor, a few hundred feet from the Croatan Sound bridge.

8. At present, an overhead line on single wooden poles providing single phase service runs within the corridor from the Shrine Club property near Fort

Raleigh to Croatan Sound. Mr. Brantley's development will require three-phase service, and a three-phase line must be installed within the corridor from the Shrine Club property to the site of Mr. Brantley's development, a distance of approximately 4700 feet.

9. The difference in cost of overhead and underground placement of this 4700 feet of line is approximately $14,000.

10. Mr. Brantley has requested that the service line from the corridor to the point of connection on his property be placed underground and has stated that he is willing to pay for underground placement of this line.

Based upon the above findings of fact, the Commission draws the following:

## CONCLUSIONS OF LAW

1. The General Statutes give this Commission broad authority to regulate the public utilities within this State.

2. It is the policy of this Commission that the cost of enhanced utility service should be borne by the persons who cause the cost to be incurred or enjoy the benefits of the service and not by the utilitiy providing it.

3. Neither the legislation creating the Corridor Commission nor the Corridor Commission's regulations address the issue of who must pay for underground placement, and thus neither is inconsistent with the policy of this Commission.

4. Vepco should not be required to bear the cost of underground placement of new electric utility installations along the corridor.

5. The Corridor Commission, as the body causing the cost of underground placement to be incurred, must assume responsibility for finding the funds to pay for the cost differential.

## DISCUSSION OF EVIDENCE AND CONCLUSIONS

The General Assembly has enacted a comprehensive statutory scheme for the regulation of public utilities in G.S., Chapter 62. It has given this Commission "such general authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties." G.S. 62-30. This broad grant of jurisdiction includes, among other things, the power to make and enforce reasonable and necessary rules and regulations and power to regulate the extension, addition, repair or improvement of existing facilities. Pursuant to its authority, this Commission has approved the terms and conditions for service by Vepco. These terms and conditions include Tariffs IIA and XXIID which provide that when underground service in an area not designated as an Underground Distribution Area is requested by a non-residential customer or is required by governmental authority, payment must be made to Vepco for the deferential in cost between overhead and underground facilities. These tariffs reflect the policy of this Commission that when enhanced service is provided to a customer, those who benefit from the enhanced service should pay the cost of

it. Neither the utility nor the utility's ratepayers should bear this cost. It is clearly within the authority of this Commission to establish this policy and to approve the tariffs of Vepco.

The Commission has had several occasions to voice its policy. From the Outer Banks alone, citizens of Kill Devil Hills, Nag's Head, Duck, and the Currituck Sound area have recently presented inquiries to the Commission regarding underground placement of electric lines as service to those areas has been upgraded. The Commission has consistently taken the position that those who desire underground placement must assume the responsibility for the cost differential.

The General Assembly has authorized the Corridor Commission to establish reasonable standards of appropriateness and rules and regulations for the "aboveground and underground" location and installation of electric lines and supporting structures which are placed or are to be placed within the corridor. It is the Corridor Commission, not the General Assembly, that has ruled that all new electric utility installations be underground. We see no conflict between our policy and the Corridor Commission's regulations. However, the Corridor Commission must address the financial consequences of its regulations.

The Corridor Commission's regulations do not deal with the cost of underground placement. The Corridor Commission, according to its Chairman, has acted on the assumption that the cost will be borne by Vepco and will be passed on to Vepco's ratepayers. We cannot agree. Such a result would be at odds with our policy and Vepco's approved tariffs. The body of the public receiving the benefit of the underground placement of utilities within the corridor does not coincide with the body of Vepco ratepayers. The beneficiaries may be fewer, i.e., the local citizens and businesses of Roanoke Island, or they may be more numerous, i.e, all of the citizens of the State; however, it can not be argued that all Vepco ratepayers and only Vepco ratepayers benefit. To impose this cost on Vepco ratepayers would constitute unjust and unreasonable rates as to them. See G.S. 62-130(a). Further, to require Vepco to bear the cost of underground placement in this instance would unreasonably discriminate against other similarly situated areas that desired underground service and paid for it pursuant to Vepco's tariffs. See G.S. 62-140. Thus, we cannot require Vepco to bear these costs.

The Corridor Commission argues that its requirement of underground placement is a valid exercise of the police power delegated to it by the State and that a utility must bear the cost of complying with the police power of the State. The goal of preserving the historical integrity of Roanoke Island is a worthy one. As the site of the first English settlement in the New World, the Island is, as witness Wilson called it, the "spiritual birthplace of our nation." The settlement's fort, Fort Raleigh, has been declared a national historic site and it is owned by the National Park Service. The replica ship Elizabeth II is maintained by the State at Manteo as a state historic site. The drama The Lost Colony and the Elizabethan Gardens commemorate the settlement. However, the present regulation deals not with these sites but with the highway corridor providing access to the entire Island. The purpose of this regulation is, as stated in the legislation creating the Corridor Commission, to enhance the appearance and aesthetic quality of the corridor for the benefit of local citizens and visitors. This is also a worthy goal, but it

does not follow that Vepco must pay the cost. The Corridor Commission can cite no case or statutory law dictating this result.

In conclusion, neither the law of North Carolina nor the Corridor Commission has specifically addressed the matter of who must pay for regulation such as that adopted herein. The policy of this Commission, as reflected in the approved tariffs of Vepco, does address this matter, and it must prevail. The complaint of the Corridor Commission must be denied insofar as it seeks a order requiring Vepco to comply with its regulations at Vepco's own expense.

We now feel it incumbent upon us to address in more detail the specific fact situation that gave rise to this complaint, Mr. Brantley's plans for construction of a motel and restaurant project along the corridor. Mr. Brantley is entitled to the electric service necessary to carry forward with his business venture, and Vepco is obligated to provide this service. Mr. Brantley has requested that the service line from the corridor to the point of connection on his property be underground and has stated that he is willing to pay for this underground installation. Vepco should put this line underground and Mr. Brantley should pay pursuant to Vepco's Tariff IIA. Mr. Brantley has not requested that Vepco make underground placement of the 4700 feet of line necessary to bring three-phase service from the Shrine Club to the point in the corridor at which his connection takes off, and this section of line does not come within Tariff IIA. Instead, it is the Corridor Commission that requires this section of line to be installed underground.

We full well recognize that the Corridor Commission does not have money on hand to pay Vepco the $14,000 difference in cost. However, it is the body that has adopted the underground placement regulation. It includes local citizens and officials of Roanoke Island and Dare County, and it is the body who can best determine how the funds to pay for such enchanced service can be raised. A number of options present themselves. The Corridor Commission can go the General Assembly and seek taxing authority, as did the residents of Duck when they wanted underground service in their community in order to preserve its unique character. The Corridor Commission can seek funding outright from the General Assembly or from local government. The Corridor Commission may decide that the new businesses along the corridor should pay for the underground extensions necessary to serve them with electricity, and it may decide to impose some sort of fee, akin to a tap-on fee, on these businesses as they develop so that each pays its proportionate share of the cost of the underground extensions. The Corridor Commission may find it appropriate to reexamine its ordinances in any number of ways, but it is the body that must address the funding issue.

Many of the options available to the Corridor Commission will require time to effect. Mr. Brantley does not have the luxury of time if he is to complete his project on schedule. We are sympathetic to the time and financial constraints facing Mr. Brantley. He has received the necessary permits for his project, he has the right to electric service, and he should be able to proceed. A practical solution for the time being is for Mr. Brantley to turn over the $14,000 difference in cost to the Corridor Commission to be transmitted by the Corridor Commission to Vepco to expedite service to Mr. Brantley, subject to this sum being refunded to him when the Corridor Commission achieves its funding or subject to proportionate shares being

refunded to him should the Corridor Commission decide to impose on new customers along this extension something akin to a tap-on fee.

In any event, Vepco is entitled to look to the Corridor Commission, as the body requiring underground placement by administrative ruling, for a solution to the funding issue that will be consistent with Vepco's tariffs and with the policy of this Commission that those who benefit from enhanced service must pay the cost deferential thereof. That responsibility must go hand-in-hand with the Corridor Commission's decision to require underground placement of new utility installations.

IT IS, THEREFORE, ORDERED that the complaint filed with the Commission by the Corridor Commission should be, and the same hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This is the 20th day of September 1984.

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

DOCKET NO. E-7, SUB 338 AND 358

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Duke Power Company - Extra Facilities Charges ) ORDER REVISING
) EXTRA FACILITIES
) CHARGES

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 17, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; Chairman Robert K. Koger and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Douglas P. Leary, and Ruth E. Cook

APPEARANCES:

For Duke Power Company:

Steve C. Griffith, Jr., Senior Vice President and General Counsel, and William Larry Porter, Associate General Counsel, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

Steven F. Bryant, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602

For North Carolina Textile Manufacturers Association, Inc.:

Thomas R. Eller, Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612

BY THE COMMISSION: On November 1, 1982, this Commission entered an Order in Docket E-7, Sub 338, granting a rate increase to Duke Power Company. Ordering Paragraph No. 9 of said Order is as follows:

> That Duke Power Company shall amend its service regulations concerning extra facilities by revising paragraph 11d(5) of Leaf L to read: "The installed cost of extra facilities shall be the original cost of material used, including spare equipment, if any, plus applicable labor, transportation, stores, tax engineering, and general expense, all estimated if not known."

This Order was not appealed. In Duke Power's subsequent General Rate Case, Docket No. E-7, Sub 358, the Public Staff - North Carolina Utilities Commission, through testimony filed on July 27, 1983, called the attention of

the Commission and the parties to the fact that Duke Power Company had not complied with Ordering Clause No. 9, and recommended that it be required to do so.

On August 11, 1983, Duke Power Company filed a responsive pleading to Ordering Clause No. 9, in Docket E-7, Sub 338. This contained a proposed Paragraph 11(d)(11) for Leaf L of the Company's tariff and proposed contract language relating to extra facilities in the Company's electric service agreement.

On August 12, 1983, the Attorney General filed a Motion in Docket No. E-7, Sub 338, and E-7, Sub 358, entitled "Motion to Strike Extra Facilities Charges Filing in Docket E-7, Sub 338, and Compel Said Filing in Docket E-7, Sub 358."

On August 12, 1983, the North Carolina Textile Manufacturers Association, Inc. (NCTMA), filed a Motion in Dockets E-7, Sub 338, and E-7, Sub 358, whereby the Commission was requested to consolidate the Dockets E-7, Subs 338 and 358, for the limited purposes of determining whether Duke Power Company has complied with the previous Order regarding its extra facilities charges and of establishing a service regulation and rate for extra facilities charges which is just, fair, and reasonable.

By Order issued August 15, 1983, in Dockets E-7, Sub 338 and Sub 358, the Commission suspended the proposed tariff and contractural changes concerning extra facilities services and charges and scheduled hearings on the matter for October 24, 1983. Said Order again required Duke Power Company to amend its service regulations and rates in conformity with Ordering Clause No. 9 of the Commission's Order dated November 1, 1982, in Docket No. E-7, Sub 338. The Commission also denied the Motions filed by the Attorney General and NCTMA on August 12, 1983, in Dockets E-7, Sub 338 and Sub 358.

Ordering Clause No. 5 of said Order of August 15, 1983, in Dockets E-7, Sub 338 and Sub 358, provided as follows:

> That Duke Power Company shall amend its service regulations in conformity with decretal paragraph number 9 of the Commission Order dated November 1, 1982, in Docket No. E-7, Sub 338 and shall file said amended service regulations with the Commission not later than fifteen (15) days from the date of this Order.

On August 29, 1983, Duke made its filing pursuant to Ordering Clause No. 5 of said August 15, 1983, Order.

On September 30, 1983, Duke filed the testimony of N. James Covington and M. T. Hatley, Jr. The Public Staff filed the testimony of Timothy J. Carrere on October 14, 1984. The Notice of Intervention of Charles B. Mierek, a developer of hydroelectric power in the Duke Power Company service area, also was filed on October 14, 1983.

By Order issued October 18, 1983, the Commission, on its own motion, rescheduled the hearing date to January 17, 1984. Public notice of the date, time, and place of the hearings was not required to be published by Duke Power Company for the hearing date as originally scheduled or as postponed. However, the parties of interest to Docket E-7, Sub 338, were notified by copies of the respective Orders.

The matter came on for hearing on January 17, 1984, as rescheduled. Duke Power Company offered the testimony and exhibits of N. James Covington, Manager, Industrial Power Department for Duke Power, who testified as to his responsibility in supervising the extra facilities operation of the Company; M. T. Hatley, Jr., Vice President - Rates for Duke Power, who testified about the history of extra facilities and the Company's effort to place the extra facilities charge on the user of the service; and Opie D. Lindsay, Manager of Rate Regulation for Duke Power, who testified that historically extra facilities customers have not paid all costs associated with the extra facilities.

The Public Staff offered the testimony of Timothy J. Carrere, Utilities Engineer in the Electric Division of the Public Staff, who testified as to the Public Staff's views on how to determine a fair and equitable extra facilities charge.

Charles B. Mierek, Intervenor, did not appear and testify. His testimony was attached to the record in the case, but is not a part of the official record of evidence in the case. No public witnesses appeared or intervened.

Upon a careful review and consideration of the entire record as a whole, including the briefs, arguments, and contentions of counsel for the parties, the Commission makes the following

FINDINGS OF FACT

1. The parties to the proceedings in Docket E-7, Sub 338, are properly before the Commission. The Commission has jurisdiction over the retail utility services, rates, and practices of Duke Power Company in the State, and it has jurisdiction to enter an Order affecting the subject matter involved in this proceeding.

2. The sole issue in this proceeding is whether or not Duke's proposed Service Regulations governing Extra Facilities Charges, and the practices by which they are proposed to be applied, are just and reasonable.

3. It is not within the scope of this proceeding to consider and determine whether Duke Power Company's charges for extra facilities services should be increased or decreased, or whether revenue levels associated with extra facilities services are adequate or inadequate.

4. "Extra facilities" are those facilities required by an individual customer of the Company to meet said customer's individual needs, where such facilities are in addition to the facilities generally used in providing standard, or normal, service to the customer classification as a whole.

5. The meeting of reasonable demands of customers for extra facilities services is as much a part of the regulated electric utility's function as is the provision of standard service. The Service Regulations applicable to the provision of electric service, including those affecting Extra Facilities Charges, are as much a part of the regulated electric utility service and rates as the standard, or basic, service and rates of the utility.

6. The charge to be paid by those customers requiring extra facilities must be carefully constructed to avoid subsidization by other customers of a

service which said other customers do not use or benefit from. On the other hand, the charge must be constructed so that the extra facility customers will not be charged more than a just and reasonable price for extra facility service.

7. Individual extra facility charges to individual extra facility customers will vary depending upon the amount of the extra facility investment cost which the utility incurs to provide extra facility service to each customer. The individual extra facility customer must expect to provide the capital service costs, a depreciation allowance, maintenance costs, operating expenses, return, and taxes on the facilities dedicated to him in addition to his standard, or basic, service and rates.

8. The method of computing the charge for extra facilities services is based on the cost of investment in the extra facility multiplied by a Carrying Charge. The result is the monthly Extra Facility Charge made to the customer for extra facilites services provided to him. Only the applicability, method of computing, and administering the cost of investment in the extra facility is involved in this proceeding. Duke's approved "Carrying Charge" of 1.7% per month, or 20.45% per annum, is not at issue in this case.

9. Leaf L of the Company's Service Regulations contains the regulations applicable to extra facilities. With the exception of situations involving interconnection with cogenerators and small power producers under the Public Utility Regulatory Policies Act of 1978, the customer has the option of purchasing the extra facilities for himself.

10. On August 29, 1983, Duke filed a revised paragraph 11(d)(5) of Leaf L which defines the installed cost of extra facilities as the "original cost of materials used," etc. Duke proposes to further define the original cost of materials used as "the prevailing prices as of the time the equipment is installed." The Public Staff proposes to further define the original cost of materials used as "the current price of the equipment at the time it is installed, whether that equipment is new or out of inventory."

11. Duke proposes to add a new paragraph 11(d)(11) of Leaf L which, among other things, further clarifies the definition of the installed cost of extra facilities in the event that an existing extra facility customer requests a modification of such extra facility. The Public Staff proposed the same clarification using different but similar language. Both proposals would specify that the installed cost of extra facilities shall be based on the installed cost of unchanged equipment, plus the installed cost of new additions, less the installed cost of equipment removed. Each proposal would define the installed cost of unchanged equipment or of equipment removed or added as the cost new of such equipment at the time of the modification.

12. The NCTMA proposes that the original cost of materials used be interpreted to mean the actual original cost of each piece of equipment used in a specific extra facility, including modifications, etc. The Attorney General essentially proposes such an interpretation also. All parties concede that Duke does not now account for the original cost of equipment in its inventory on an item by item basis, so that it cannot now identify the original cost of those pieces of equipment utilized for extra facilities versus the original cost of those pieces of equipment utilized for the standard, or basic, service. The NCTMA proposes that Duke be required to

account for the original cost of equipment in such a way that it will be able to identify the actual original cost of equipment utilized for extra facilities, and NCTMA contends that Duke would already be able to identify such actual original cost of equipment utilized for extra facilities if it had kept its books and records in accordance with the Uniform System of Accounts and in compliance with North Carolina Law requiring original cost valuation of utility property for rate-making purposes.

13. Duke proposes to include a requirement in its proposed new paragraph 11 (d)(11) of Leaf L that the installed cost of extra facilities be redetermined once every five years based on the current installed cost new of the materials and labor at the time the installed cost is being redetermined, and that the installed cost of extra facilities be redetermined in the same manner for a given extra facility in the event of a change in the customer using said extra facility (in addition to the five-year redetermination). The other parties oppose such Duke proposal.

14. Duke contends that inflationary increases in O&M expenses for a given extra facility are not properly reflected in the "Carrying Charge" rate applied to the original installed cost of said extra facility. Duke proposes to resolve the problem by redetermining the installed cost of said extra facility every five years, whereas the Public Staff proposes to resolve the problem by redetermining the "Carrying Charge" rate periodically in general rate cases.

CONCLUSIONS

1. The Uniform System of Accounts requires the company to identify the total original cost of all pieces of equipment in inventory. It does not require the company to identify the original cost of a given piece of equipment in inventory separately from every other piece of equipment in inventory. A considerable amount of additional accounting effort and expense would be necessary in order for the company to be able to identify the actual original cost of a given piece of equipment in inventory. Basing the installed cost of extra facilities on the current market price at the time such extra facilities are installed will provide a reasonable alternative to identifying the actual original cost of a given piece of equipment in inventory when such piece of equipment is used for extra facilities.

2. Similar charges for similar utility services would be a reasonable principle to follow where a separate rate or charge for each individual customer cannot easily be determined or administered. However, where a separate charge for each individual customer must be calculated anyway, such as for extra facility charges, then such charge should be based on the actual cost of service to each respective extra facility customer to the extent reasonably possible. Where extra facility customers have been paying for extra facility services for significantly different periods of time, the actual cost of service to each individual customer may be very different.

For example, if customer A has been paying for extra facilities for a significantly longer period of time than customer B, and the extra facilities of customer A are similar to the extra facilities of customer B, the customer A has paid a significantly greater accumulated depreciation on his extra facilities than customer B has. Therefore, the extra facility charge of

customer A should be lower than the extra facility charge of customer B in order to reflect the greater accumulated depreciation (and lower rate base) attributable to customer A.

Basing the installed cost of extra facilities on the current market price at the time each of such extra facilities was installed will recognize the respective lengths of time each extra facility has been in place, and thereby better reflect the relative accumulated depreciation and rate base attributable to each extra facility for purposes of the extra facilities charge.

3. The Commission has concluded that the installed cost of extra facilities should be based on the current market price of each extra facility at the time such extra facility is installed in order to reflect the different ages (and, therefore, the different accumulated depreciation and the different rate base) associated with each respective extra facility. For this reason the Commission must reject the proposal to redetermine the installed cost of extra facilities every five years or when there is a change in customer. For the same reason, the Commission will accept the proposal to redetermine the installed cost of a given extra facility when modification of said extra facility is requested by the customer. Such redetermination should be based on the same criteria as the initial determination of the installed cost of extra facilities.

However, in order to remain consistent with the procedures adopted herein for valuation of a given extra facility when modification of said extra facility is requested by the customer, the Commission must also allow redetermination of the cost of a given extra facility when modification of said extra facility is not requested by the customer, assuming that such modification (repair, replacement, etc.) is necessary to continued furnishing of said extra facility service in a safe and reliable manner. Such a redetermination would ensure, for example, that when a given extra facility wears out, the cost of replacing it would not be borne by the company or by those ratepayers who do not benefit from such replacement.

4. The Commission is of the opinion that the O&M expenses for a given extra facility are not directly related to the installed cost of said extra facility, and that such O&M expenses probably cannot be fairly reflected in a "Carrying Charge" rate which is based on the average O&M expenses for all extra facilities. For example, an older extra facility is likely to have higher O&M expenses than a similar but newer extra facility, although the older extra facility would likely have a lower installed cost than the newer extra facility. The Commission concludes that the Carrying Charges for a given extra facility should be calculated separately from the O&M expenses for said extra facility in order to better reflect the appropriate O&M expenses for said extra facility. The Commission would welcome detailed proposals along such lines, but thus far no one has offered such proposals.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Power Company is hereby required to amend paragraph 11 (d)(5) of Leaf L of its Service Regulations to read:

"The installed cost of extra facilities shall be the original cost of material used, including spare equipment, if any, plus applicable

labor, transportation, stores, tax, engineering, and general expenses, all estimated if not known. The original cost of materials used is the current market price of the equipment at the time the equipment is installed, whether said equipment is new or out of inventory."

2. That Duke Power Company is hereby required to add paragraph 11 (d)(11) to Leaf L of its Service Regulations to read:

"In the event that an existing extra facility must be modified or replaced, whether or not such modification or replacement is requested by the affected extra facility customer, then the installed cost of extra facilities on which the monthly Extra Facilities Charge is based shall be the installed cost of unchanged equipment, plus the installed cost of new additions, less the installed cost of equipment removed. The installed cost of unchanged equipment shall be the same installed cost used for said equipment immediately prior to the modification or replacement. The installed cost of new additions shall be the current market price of said new additions at the time the new additions are installed. The installed cost of equipment removed shall be the same installed cost used for said equipment immediately prior to removal."

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of April 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-7, SUB 338 and 358

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Duke Power Company - Extra Facilities Charges ) ERRATA ORDER

BY THE COMMISSION: It has been made to appear that the Commission Order Revising Extra Facilities Charges of April 17, 1984, in Docket No. E-7, Subs 338 and 358, contains an error in that ordering paragraph 2 of said Order requires specific language to be added as paragraph 11 (d) 11 of Leaf L of Duke's service regulations and the fifth and seventh lines of said paragraph 11 (d) 11 both contain the phrase "unchanged equipment" when such phrase should read "existing equipment".

The Commission is of the opinion that the phrase in the fifth and seventh lines of said paragraph 11 (d) 11 should be changed from "unchanged equipment" to "existing equipment" in order to clarify that the phrase refers to equipment prior to any modifications.

IT IS, THEREFORE, ORDERED as follows:

That the Commission Order Revising Extra Facilities Charges issued April 17, 1984, in Docket No. E-7, Subs 338 and 358, is hereby amended by changing the phrase "unchanged equipment" in the fifth and seventh lines of paragraph 11 (d) 11 of Leaf L of Duke's service regulations as described herein to "existing equipment."

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of May 1984.

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

DOCKET NO. E-2, SUB 457

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Dual-Fuel Rate for Carolina Power & Light Company ) FINAL ORDER ESTABLISHING
) DUAL-FUEL TEST PROGRAM AND
) RULING ON EXCEPTIONS AND MOTION

HEARD IN: Commission Hearing Room, 430 North Salisbury Street, Raleigh, North Carolina, on January 23, 1984, at 11:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, A. Hartwell Campbell, Douglas P. Leary, Ruth E. Cook, and Charles E. Branford

APPEARANCES:

For the Respondents:

Robert W. Kaylor, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

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

For the Intervenors:

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

James M. Daye and F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., Attorneys at Law, P.O. Box 2479, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

For the Using and Consuming Public:

Antoinette R. Wike, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: By Order issued September 16, 1982, in the above-captioned matter, the Commission created a separate docket for consideration of a dual-fuel tariff for Carolina Power & Light Company (CP&L). By Order issued November 16, 1982, in the above-captioned matter, the Commission made Virginia Electric and Power Company (Vepco) a party to the proceeding for the purpose of further consideration of the dual-fuel tariff previously approved for Vepco. The Commission designated CP&L and Vepco as Respondents, and the Public Staff, Public Service Company of North Carolina (Public Service), Piedmont Natural Gas Company (Piedmont), and North Carolina

Natural Gas Company (NCNG) as Intervenors. Public hearings were held during April and May 1983, before Hearing Examiner Sammy R. Kirby. On November 17, 1983, a Recommended Order was issued in the matter.

Exceptions to the Recommended Order were filed with the Commission on December 2, 1983, by NCNG.

A Motion was filed with the Commission on December 2, 1983, by Public Service requesting that the Commission establish a Committee to recommend testing guidelines, format, and reporting requirements for the proposed dual-fuel test program, and also requesting that it be heard on any exceptions filed in the matter.

By Order issued December 8, 1983, the Commission scheduled oral argument on the exceptions by NCNG. By Order of December 21, 1983, the Commission scheduled oral argument on the Motion by Public Service for the same time and place as the oral argument on the exceptions by NCNG. Oral arguments were heard on the issues on January 23, 1984, at the scheduled time and place.

Based upon the oral arguments and the entire record in this matter, the Commission concludes that the Recommended Order issued November 17, 1983, should be modified by clarifying the provisions regarding natural gas service to existing customers, by limiting the availability of the dual-fuel tariffs during the period such rates are being studied, and by creating an advisory committee to monitor the test programs.

IT IS, THEREFORE, ORDERED as follows:

1. That a test program covering three heating seasons shall be initiated to determine (1) the impact of dual-fuel heating systems on the peak demand of electric utilities, (2) the impact of such systems on the peak demand of natural gas utilities, and (3) the appropriate rates for each type of utility service to dual-fuel heating systems.

2. That Vepco's present dual-fuel tariff, Schedule 1-DF, shall be continued as previously approved, except for the limitations hereinafter provided, and that CP&L's proposed dual-fuel tariff test program shall be approved as proposed by CP&L, except for the limitations hereinafter provided.

3. That the dual-fuel tariffs of Vepco and CP&L shall not apply to customers with dual-fuel heating equipment that includes a natural gas backup furnace and that the tariffs shall apply to customers with all other types of backup heating systems.

4. That the dual-fuel tariffs proposed by the natural gas utilities are not approved, that the natural gas utilities shall continue to offer service to all existing residential customers with dual-fuel heating equipment that now includes a natural gas backup furnace, and that in the case of any future installations of dual-fuel heating systems by existing gas heating customers, the continuation and availability of the gas heating rate will be dependent on the outcome of the costing studies ordered herein.

5. That during the test period, Vepco, CP&L, and the natural gas utilities shall each undertake to identify as many as possible of its

customers with dual-fuel heating equipment and shall conduct such customer usage, cost of service, and other studies of all or part of these customers as each deems appropriate; that said studies shall be designed to determine, among other things, the effects of these dual-fuel customers, as opposed to other comparable customers, on the peak demands of the electric and natural gas utilities and to quantify the cost reflected thereby; that during the test period, Vepco and CP&L shall each undertake additional studies of its customers on the dual-fuel tariff in order to determine the extent of the tariff's impact on these customers' choice of dual-fuel heating equipment; and that the results of these studies shall be reported to the Commission no later than May 1986.

6. That all promotional literature prepared by Vepco and CP&L with respect to their dual-fuel tariffs shall specify that the Utilities Commission does not endorse or recommend any type of heating system over another, but instead, urges each homeowner to make an informed decision based upon the homeowner's particular circumstances.

7. That during the period in which these costing studies are being made, the natural gas utilities shall not be required to extend their mains or install service lines to provide natural gas service to residential or commercial customers for the sole purpose of providing backup fuel for such customers' electric heat pumps.

8. That the electric and natural gas utilities are directed to form a committee to be chaired by one of the electric utilities for the purpose of monitoring the proposed test programs, that a member of the Public Staff and a member representing the propane gas association shall be appointed to the committee, and that the committee shall be advisory only.

9. That the availability of the dual-fuel tariffs of Vepco and CP&L shall be limited to not more than 50 customers.

10. That except as modified herein, the Recommended Order heretofore entered in this docket on November 17, 1983, be, and the same is hereby, otherwise affirmed.

11. That except as allowed herein, the exceptions to the Recommended Order filed herein by NCNG on December 2, 1983, be, and the same are hereby, otherwise denied.

12. That except to the extent allowed herein, the motion filed herein by Public Service on December 2, 1983, be, and the same is hereby, otherwise denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of March 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. E-2, SUB 457

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Dual-Fuel Rate for Carolina Power & Light Company ) ORDER AMENDING
) FINAL ORDER

BY THE COMMISSION: By Order issued March 2, 1984, the Commission approved dual-fuel rates for CP&L and Vepco subject to certain limitations, said limitations including the availability of the dual-fuel tariffs to not more than 50 customers for each company and the unavailability of the dual-fuel tariff to customers utilizing a natural gas back-up furnace.

It has now come to the Commission's attention that Vepco had already begun serving more than 50 customers (i.e., approximately 60-70 customers) under its previously approved dual-fuel tariff, that at least one of said customers already had a natural gas back-up furnace, and that several potential customers had already made extensive preparations for taking service from Vepco under the dual-fuel rate and were awaiting final hookup by Vepco.

The Commission is of the opinion that the dual-fuel tariff for Vepco should be limited to the number of customers currently served by Vepco, plus those customers who have made extensive preparations for taking service from Vepco under said rate and are awaiting final hookup by Vepco.

IT IS, THEREFORE, ORDERED as follows:

That the dual-fuel tariff of Vepco is hereby amended in order to limit the availability of said tariff to the customers currently being served under said tariff, plus those customers who have made extensive preparations for taking service from Vepco under said tariff and are awaiting final hookup by Vepco.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of March 1984.

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

DOCKET NO. E-2, SUB 481

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Application by Carolina Power & Light Company<br>for Authority to Adjust and Increase Its Electric<br>Rates and Charges | ) RECOMMENDED ORDER<br>) GRANTING PARTIAL<br>) INCREASE IN RATES<br>) AND CHARGES |

HEARD IN: Superior Courtroom, 5th Floor, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on June 12, 1984

The Wayne Center, Corner of George and Chestnut Streets, Goldsboro, North Carolina, on June 14, 1984

Courtroom 317, Courthouse Annex, Corner of Fourth and Princess Streets, Wilmington, North Carolina, on June 18, 1984

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on July 9, 1984, July 16-20, July 27, July 30 - August 3, and August 6-9, 1984

BEFORE: Commissioner Edward B. Hipp, Presiding, and Commissioners Sarah Lindsay Tate and Ruth E. Cook

APPEARANCES:

For the Applicant:

Richard E. Jones, Vice President & Senior Counsel; Robert W. Kaylor, Associate General Counsel; and Margaret S. Glass, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

Edward M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

Linda Markus Daniels, Walter E. Daniels, P.A., P.O. Box 13039, Research Triangle Park, North Carolina 27709
For: Carolina Power & Light Company

For the Intervenor State Agencies Representing the Using and Consuming Public:

Vickie L. Moir and G. Clark Crampton, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: Public Staff - North Carolina Utilities Commission

Robert Cansler, Assistant Attorney General; Alfred N. Salley, Assistant Attorney General; Steven F. Bryant, Assistant Attorney General; and Angeline M. Maletto, Associate Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Attorney General of the State of North Carolina

For the Other Intervenors:

Thomas R. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612
For: Carolina Utility Customers Association, Inc.

David A. McCormick, Regulatory Law Office, Department of the Army, Nassif Building, Falls Church, Virginia 22041
For: Department of Defense of the United States

John Runkle, Attorney at Law, 307 Granville Road, Chapel Hill, North Carolina 27514
For: Conservation Council of North Carolina

Ralph McDonald and Carson Carmichael, III, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Carolina Industrial Group for Fair Utility Rates - Federal Paper Board Company, Inc.; Huron Chemicals of America, Inc.; LCP Chemicals & Plastics, Inc.; Monsanto Company; Union Carbide Corporation; Clark Equipment Company; Corning Glass Works; Diamond Shamrock Chemical Company; Masonite Corporation; North Carolina Phosphate Corporation; Outboard Marine Corporation; Firestone Tire and Rubber Company; and Weyerhaeuser Company

Wilbur P. Gulley, Gulley and Eakes, Attorneys at Law, P.O. Box 3573, Durham, North Carolina 27702
and
Harriet S. Hopkins, Attorney at Law, 109 North Church Street, Durham, North Carolina 27702
For: Kudzu Alliance

BY THE COMMISSION: On February 21, 1984, Carolina Power & Light Company (Applicant, the Company or CP&L) filed an application with the North Carolina Utilities Commission (NCUC or the Commission) seeking authority to adjust and increase electric rates and charges for its North Carolina retail customers. Said application seeks rates that produce approximately $151,600,000 of additional annual revenues from the Company's North Carolina retail operations, an approximate 12.6% increase in total North Carolina retail rates and charges. The Company requested that such increased rates be allowed to take effect for service rendered on and after March 22, 1984. The principal reasons set forth in the application supporting the requested increase in rates were (1) the need to improve earnings so as to attract capital necessary for plant modifications and expansion; (2) the need to earn the cost of financing capital additions to plant under construction; (3) the recovery of CP&L's investment in cancelled

Harris Unit No. 2; and (4) the increased expense of the overall operation of the Company's system.

In addition to the application, the Company also filed on February 21, 1984, an Undertaking. Corrections to the Undertaking were filed by the Company on March 6, 1984.

This docket was originated by the Company's filing on January 19, 1984, its letter of intent to file an application for an increase in its general rates as is required by Commission Rule R1-17(a). The Company filed a request for waiver of certain Form E-1 requirements on January 25, 1984. On February 8, 1984, the Public Staff filed its response to the Company's waiver request; and on February 15, 1984, the Commission issued an Order Waiving E-1 Filing Requirements.

The Attorney General and the Public Staff filed Notices of Intervention on March 1, 1984, and March 8, 1984, respectively. On March 12, 1984, the Petition of the Secretary of Defense on behalf of the Department of Defense of the United States for Leave to Intervene was filed with the Commission. By Order issued March 14, 1984, the Commission allowed the Department of Defense to intervene.

On March 22, 1984, the Commission issued an Order declaring CP&L's application to be a general rate case pursuant to G.S. 62-137, suspending the Company's proposed rates pursuant to G.S. 62-134 for a period of up to 270 days from the proposed March 22, 1984, effective date, and stating that provision for the scheduling of public hearings and publishing of notice would be by separate Commission Order. By Order issued March 29, 1984, the Commission scheduled public hearings on the application, established the test period to be the 12-month period ended September 30, 1983, and required public notice of the application and hearings.

On April 2, 1984, the Company filed a Motion to Amend Order Scheduling Public Hearings and Requiring Public Notice. On April 4, 1984, the Commission issued an Order Approving Undertaking and Amending Notice to the Public, which approved the Company's revised Undertaking, granted the Company's April 2, 1984, Motion to Amend, changed the location of the public hearing scheduled to be held in Wilmington, and required a revised Notice of Hearing.

Carolina Utility Customers Association, Inc. (CUCA), filed its Petition to Intervene and Protest on April 13, 1984. CUCA was allowed to intervene by Commission Order dated April 19, 1984.

On April 16, 1984, a Petition to Intervene was filed on behalf of the Carolina Industrial Group for Fair Utility Rates, CIGFUR II, consisting of: Federal Paper Board Company, Inc.; Huron Chemicals of America, Inc.; LCP Chemicals and Plastics, Inc.; Monsanto Company; and Union Carbide Corporation. CIGFUR II's intervention was allowed by Commission Order issued on April 19, 1984.

On April 20, 1984, a letter from Robert P. Gruber, Executive Director of the Public Staff, was filed. Mr. Gruber's letter forwarded a letter from an Asheville citizen concerning the location of the Asheville hearing and requested that it be given favorable consideration. On April 20, 1984, the

Commission issued an Order Scheduling Additional Public Hearing, which scheduled an additional public hearing in Asheville and required notice of the additional hearing.

On May 4, 1984, CUCA filed its Motion to Require Production of Documents and Data. The Company filed its response to CUCA's Motion on May 11, 1984, objecting to certain items and requesting until June 7, 1984, to respond to the items requested. The Commission issued an Order on May 11, 1984, ordering that the Company respond to all items not objected to no later than June 1, 1984, and that the Company not be required to respond to the items objected to unless CUCA filed justification and the Commission issued a further order so requiring. On May 15, 1984, CUCA filed its Reply of Carolina Utility Customers Association, Inc., to CP&L's Objections dated May 11, 1984, and Commission Order of same date. The Company filed Carolina Power & Light Company's Comments to CUCA reply on May 21, 1984. The Commission issued its Order Ruling On Discovery Request on May 24, 1984.

CUCA filed a Motion to Require Additional Production of Documents and Data on May 21, 1984. By Order issued May 25, 1984, the Commission required CP&L to respond to CUCA's May 21, 1984, request no later than June 1, 1984.

On May 30, 1984, North Carolina Eastern Power Agency filed a Petition to Intervene. The Conservation Council of North Carolina filed a Petition to Intervene on June 7, 1984. By Commission Order issued on June 12, 1984, the Conservation Council was allowed to intervene.

The Company filed an amendment to the Company's Form E-1 Information Report on June 8, 1984.

On June 28, 1984, Kudzu Alliance filed its Petition for Intervention. Kudzu Alliance was allowed to intervene by Commission Order issued July 2, 1984.

By letter dated and filed July 10, 1984, Commissioner Hipp requested all the parties to file and serve on the other parties the name of the party's witnesses and the order in which they would be called and an estimate of the length of cross-examination for each witness who had prefiled testimony. The Attorney General, CUCA, the Eastern Municipal Power Agency, the Public Staff, CP&L, CIGFUR, and the Department of Defense all filed the information requested by Commissioner Hipp. During the hearings, the Conservation Council of North Carolina provided the requested information and the Public Staff and CP&L revised certain of their estimates.

On July 10, 1984, CIGFUR II filed a Petition to Amend Intervention to include Clark Equipment Company, Corning Glass Works, Diamond Shamrock Chemical Company, Masonite Corporation, North Carolina Phosphate Corporation, Outboard Marine Corporation, the Firestone Tire and Rubber Company, and Weyerhaeuser Company. CIGFUR's Petition to Amend Intervention was granted by Commission Order issued July 12, 1984.

Various other filings and motions were made and Orders entered prior to and during the hearing, all of which are a matter of record. Further, pursuant to various Commission Orders or requests, also of record, various parties were

directed or permitted to file and serve certain exhibits, either during or subsequent to the hearings held in this matter.

Public hearings were held as scheduled by the Commission for the purpose of receiving the testimony of public witnesses. The following persons appeared and testified:

Asheville: Pink Francis, William Beinoff, David Spicer, Fred Sealy, Charles Brookshire, Helen Reed, Gregory T. Neff, Garret Al Derfer, David Huskins, Charles Price, George Ingle, and Carolyn Goodwin.

Goldsboro: Steve Sams, Ronnie Jackson, Berry Franklin Godwin, Margaret Martin, Laura Smith, James D. Barnwell, Ernest Smith, Rachel Jefferson, Ed Harris, Ed Allen, Rev. Willard Carlton, and Doris Petrak.

Wilmington: Oswald Singer, Elaine Johnson, Elias H. Pegram, Jr., Raymond Mager, Bill Haughton, Joseph S. Moorefield, Grace Everette, R. H. Walker, Ronald Sparks, Lou Ellen Vestile, and Larry Vestile.

Raleigh: Virgil Reed, Dr. David O. Weaver, Malcolm Montgomery, Stephen Welgos, Paul Brummitt, Gregg Strickland, Frank Penny, Oline Spence, Eula Mae Davis, Jane R. Montgomery, Jean Smith, Richard E. Giroux, Betsy Levitas, David Drooz, Carolyn Cochran, Larry Martin, James Berry, Joseph R. Overby, Daniel F. Read, Gerald C. Folden, Deb Leonard, Davis Bowen, Dr. Nettie Grove, Elisa Wolper, Slater Newman, Joseph Reinckens, and Jane Sharpe.

On July 16, 1984, the case in chief came on for hearing as ordered for the purpose of presenting the Applicant's evidence. The Applicant presented the testimony and/or exhibits of the following witnesses:

1. Sherwood H. Smith, Jr., President, Chief Executive Officer, and Chairman of the Board of Directors of CP&L;

2. Edward G. Lilly, Jr., Executive Vice President and Chief Financial Officer of CP&L;

3. Dr. James H. Vander Weide, President of Utility Financial Services, Inc., and Adjunct Professor of Finance at the Fuquay School of Business, Duke University;

4. Dr. Robert M. Spann, Principal and Member of the Board of Directors of ICF, Incorporated;

5. M. A. McDuffie, Senior Vice President, Nuclear Generation;

6. Patrick W. Howe, Vice President, Brunswick Nuclear Project;

7. James M. Davis, Jr., Senior Vice President of Operations Support;

8. Steven S. Faucette, Jr., Director of Regulatory Accounting;

9. Paul S. Bradshaw, Vice President - Accounting Department and Controller;

10. David R. Nevil, Manager - Rate Development and Administration in the Rates and Service Practices Department;

11. Joe A. Chapman, Independent Utility Consultant, formerly Supervisor - Rate Support in the Rates and Service Practices Department; and

12. Norris L. Edge, Vice President - Rates and Service Practices Department.

The Intervenor Conservation Council of North Carolina presented the testimony and exhibits of Dr. G. George Reeves, President of Energy Control Systems.

The Intervenor Carolina Industrial Group for Fair Utility Rates presented the testimony and exhibits of Nicholas Phillips, Jr., Consultant, Drazen-Brubaker & Associates, Inc.

The Intervenor Carolina Utility Customers Association, Inc. presented the testimony and exhibits of Dr. Caroline M. Smith, Senior Economist, and Dr. John W. Wilson, Economist and President, J. W. Wilson and Associates, Inc.

The Intervenor Kudzu Alliance presented the testimony and exhibit of Wells Eddleman, Independent Energy and Pollution Control Consultant.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Thomas S. Lam, Engineer with the Electric Division of the Public Staff;

2. Richard N. Smith, Jr., Engineer with the Electric Division of the Public Staff;

3. Michael W. Burnette, Engineer with the Electric Division of the Public Staff;

4. Benjamin R. Turner, Jr., Engineer with the Electric Division of the Public Staff;

5. George E. Dennis, Supervisor of the Water Section of the Accounting Division of the Public Staff;

6. George T. Sessoms, Jr., Public Utilities Financial Analyst with the Economic Research Division of the Public Staff;

7. Hsin-Mei C. Hsu, Director of the Economic Research Division of the Public Staff; and

8. Candace A. Paton, Staff Accountant with the Accounting Division of the Public Staff.

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 now make 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, with 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 test period for purposes of this proceeding is the 12-month period ended September 30, 1983, adjusted for certain known changes based upon circumstances and events occurring up to the time of the close of the hearings in this docket.

4. By its application, CP&L seeks rates to produce jurisdictional revenues of $1,353,776,000 based upon a test year ended September 30, 1983. Revenues under the present North Carolina retail rates, according to the Company, were $1,202,132,000, thereby necessitating an increase of $151,644,000.

5. The overall quality of electric service provided by CP&L to its North Carolina retail customers is adequate.

6. The "summer/winter peak and average" method as discussed herein is the most appropriate method for making jurisdictional allocations and for making fully distributed cost allocations between customer classes in this proceeding. Consequently, each finding of fact appearing in this Order which deals with the overall level of rate base, revenues, and expenses for North Carolina retail service has been determined based upon the summer/winter peak and average cost allocation method.

7. CP&L should be allowed to recover its abandonment loss sustained as the result of the Company's having terminated construction on, and having cancelled and abandoned, its proposed Shearon Harris Nuclear Unit No. 2 on December 21, 1983. Recovery of the Company's investment in its project to construct that unit should be accomplished over a 15-year amortization period. It is neither fair nor reasonable to include any portion of the unamortized balance of that investment in rate base, and no adjustment which would have the effect of allowing the Company to earn a return on the unamortized balance of that investment, or any portion thereof, should be allowed.

8. CP&L should be allowed to continue the recovery of its abandonment losses sustained as the result of the Company, at various times in the past, having terminated construction on, and having cancelled and abandoned, its South River Project, its Brunswick cooling towers project, and its proposed Shearon Harris Nuclear Units Nos. 3 and 4, in the same manner which the Commission determined to be appropriate in the Company's last general rate case, Docket No. E-2, Sub 461. No adjustment should be allowed which would

have the effect of permitting the Company to earn any return on or with respect to the unamortized balance of those abandonment losses, or any portion thereof.

9. A normalized test-period generation mix which reflects a level of nuclear generation associated with a system nuclear capacity factor of approximately 53.4% is both reasonable and appropriate for use in determining the base fuel component of the rates established in this proceeding.

10. The base fuel cost component which is appropriate for use in this proceeding is 1.582¢/kWh excluding gross receipts tax and which reflects a reasonable fuel cost of $316,653,000 for North Carolina retail service.

11. The deferred fuel account established in CP&L's last general rate case should be closed out as of the date new rates go into effect; and if the balance of the account at that time when reduced by the $1,675,945 already effectively refunded is positive, the positive balance should be refunded to CP&L's ratepayers.

12. A $59,985,000 working capital allowance for coal inventory and a $6,150,000 working capital allowance for liquid fuel inventory are appropriate for North Carolina retail service in this proceeding.

13. The reasonable allowance for working capital is $86,830,000.

14. The proper amount of reasonable and prudent expenditures for construction work in progress (CWIP) to allow in rate base pursuant to G.S. 62-133(b)(1) is $692,604,000. Inclusion of this amount of CWIP in rate base is both in the public interest and necessary to the financial stability of CP&L. These expenditures relate entirely to Harris Unit 1.

15. The allowance for funds used during construction accrued on 4.97% of Roxboro No. 4 during the period September 15, 1980, to September 24, 1982, should be excluded from electric plant in service.

16. CP&L's reasonable original cost rate base used and useful in providing service to the public within the State of North Carolina is $2,375,265,000; consisting of electric plant in service of $2,483,116,000, net nuclear fuel of $21,863,000, construction work in progress of $692,604,000, and a working capital allowance of $86,830,000, reduced by accumulated depreciation of $597,182,000 and accumulated deferred income taxes of $311,966,000.

17. Appropriate gross revenues for CP&L for the test year, under present rates and after accounting and pro forma adjustments, are $1,202,132,000.

18. The reasonable level of test year operating revenue deductions for the Company after normalized and pro forma adjustments is $957,729,000. An adjustment to increase operating income by $6,824,000 for one-third of the gain associated with the sale of assets to the North Carolina Eastern Municipal Power Agency is appropriate.

19. The Company should, in its next general rate proceeding, present information to the Commission concerning the Edison Electric Institute (EEI) which will show all direct and indirect contributions to and through EEI from all sources and all expenditures by program and by a system of accounts.

20. The reasonable capital structure to be employed as a basis for setting rates in this proceeding is composed as follows:

| | |
|---|---|
| Long-term debt | 47.5% |
| Preferred stock | 12.5% |
| Common equity | 40.0% |
| Total | 100.0% |

21. The Company's embedded cost of debt and preferred stock are 9.73% and 9.18%, respectively. In view of the Commission's decisions with respect to the level of CWIP allowed in rate base and the reasonable fuel factor adopted in this proceeding, the reasonable rate of return for CP&L to be allowed to earn on its common equity is 15.25%. Using a weighted average for the Company's cost of long-term debt, preferred stock, and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 11.87% 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 services in accordance with the reasonable requirements of its customers, and to compete in the market for capital on terms which are reasonable and fair to its customers and to existing investors.

22. Based upon the foregoing, CP&L should increase its annual level of gross revenues under present rates by $64,339,000. The annual revenue requirement approved herein is $1,266,471,000, which will allow CP&L a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of CP&L's property used and useful in providing service to its customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

23. Residential Schedules RES, R-TOU and R-TOUE should be amended to require the same insulation standards for mobile homes as for conventional homes in order to qualify for the 5% energy conservation discount.

24. The Company should implement a test program for extending water heater load control to 30-39 gallon water heaters.

25. The Company should determine an appropriate billing credit for residential air conditioner load control independent of water heater load control.

26. The Company should consult with the Public Staff to consider a program to test the effectiveness of appliance control for residential time-of-use customers with equipment to interrupt water heaters during on-peak hours.

27. The Residential (RES) rate schedule should be modified to reduce the difference in price between nonsummer usage under 800 kWh per month and nonsummer usage over the first 800 kWh per month.

28. The rate designs, rate schedules, and service rules proposed by the Company, except for the modifications thereto as described herein, are appropriate and should be adopted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence supporting these findings of fact is contained in the Company's verified application, in prior Commission Orders in this docket of which the Commission takes notice, and in G.S. 62-3(23)a.1 and G.S. 62-133. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence supporting these findings of fact is contained in the Company's verified application, the Commission Order issued March 29, 1984, and the testimony and exhibits of the Company witnesses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact concerning the quality of service is found in the testimony of Company witness Smith and in that of the various public witnesses who appeared at the hearings held in Asheville, Wilmington, Goldsboro, and Raleigh. A careful consideration of all such testimony leads the Commission to conclude that the quality of electric service being provided to retail customers in North Carolina by CP&L is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact concerning the proper production cost allocation method consists primarily of the testimony and exhibits of Company witness Chapman, Public Staff witness Turner, CIGFUR II witness Phillips, CUCA witness Wilson, and Kudzu Alliance witness Eddleman.

CP&L provides retail service in two states, as well as wholesale service to certain municipalities and electric membership cooperatives and supplemental service to the Power Agency. For this reason, it is necessary to allocate the cost of service among jurisdictions and among customer classes within each jurisdiction. In this proceeding the Company again has proposed the use of the summer/winter peak and average (SWP&A) method for cost allocation. The SWP&A method allocates approximately 60% of production plant and production-related expenses on the basis of each class's kWh consumption and the remaining 40% on the basis of the average of each class contribution to the summer and winter peak demands. The 60/40 split is determined by the system load factor for the test year. The Commission initially adopted the peak and average method in Docket No. E-2, Sub 391, in which case the Company had proposed a peak and average method using only the summer peak. In Docket No. E-2, Sub 444, the Commission modified the Company's peak and average method by utilization of a combination of the summer and winter peaks.

Public Staff witness Turner agreed with the use of the SWP&A method for the purpose of assigning costs to the North Carolina retail jurisdiction and for allocation to the retail classes. Witness Turner, in Docket Nos. E-2,

Sub 444 and Sub 461, recommended the summer/winter peak and base (SWP&B) method, which allocates 35% of production costs based on kWh consumption and 65% based on demand. He concluded after his investigation in this case that the SWP&A method is the more appropriate method of representing the energy-related component. In his investigation, witness Turner analyzed the minimum load on the CP&L system that must be met by the Company in each hour of the year. Based on his calculations, 46.5% of the Company's investment in production plant is now required to supply the minimum load, and 78.7% will be required in the spring of 1986, when Harris Unit No. 1 has been placed in commercial operation. The midpoint of the range, 62.6%, was approximately the same percentage as that derived from the SWP&A calculation. Based on these findings, witness Turner recommended that the Commission adopt the SWP&A method as the more appropriate method.

CIGFUR witness Phillips proposed to allocate production costs based on the one-hour coincident peak (CP) allocation method. Witness Phillips contended that it is primarily the system peak demand that drives the need for the addition of capacity, and once that capacity is in place, it represents a fixed cost that does not fluctuate with the output of kWh. He contended that the peak and average method is not consistent with respect to allocating fuel costs in that it does not assign the high load factor customers the lower fuel costs associated with the high capital cost units.

Witness Eddleman testified that the most appropriate way to allocate costs is to use the summer/winter coincident peak methodology.

The Commission has concluded in previous rate cases that the cost allocation method used for rate-making purposes should recognize the energy-related portion of fixed costs. Furthermore, the Commission has previously concluded that not all fixed costs represent the cost of meeting system peak demand and that a significant portion of fixed costs represents the cost of producing kWh throughout the year. The Commission continues to be persuaded in this proceeding that the SWP&A method most effectively recognizes the energy-related portion of fixed costs.

The Commission has concluded in previous rate cases that system capacity is not installed to meet a single system peak and that both the summer peak and the winter peak should be recognized in the cost allocation process. The evidence presented in this proceeding continues to persuade the Commission that the summer/winter peak proposed by the Company and the Public Staff is appropriate for use as a part of the cost allocation process. Therefore, the SWP&A method continues to be the most appropriate method for allocation of production facility costs.

CUCA witness Wilson proposed that a normalized test year generation mix be used to develop the Power Agency supplemental energy allocation factor. Witness Wilson testified that since the Power Agency shares ownership in the Company's Brunswick units, the Power Agency's supplemental power needs would be reduced by normalizing Brunswick generation. The Commission is not persuaded that allocation factors utilized in the cost allocation studies should be normalized, and declines to do so in this proceeding. However, this does not preclude the Commission from reconsidering the issue in future proceedings wherein the issue may be discussed more fully.

The final allocation issue regards the development of a cost allocation study using all 8,760 hours in a year. The Order of this Commission in the Company's last case, Docket No. E-2, Sub 461, required the Company to work with the Public Staff in exploring the development of such a study. The Company filed a report containing its conclusions on March 19, 1984, which raised several questions with respect to the problems that would be encountered in performing the study, including an estimated cost of approximately $22,000,000. The Company indicated, however, that it was willing to pursue alternatives to the original study that would be less costly and time-consuming.

Public Staff witness Turner testified that the Company and the Public Staff should be allowed by the Commission to continue to work on the development of an alternative, less costly, 8,760-hour study. He suggested using the PROMOD computer model to develop an alternative study.

The Commission believes that it is useful for the Company and the Public Staff to continue to pursue the development of a study that would provide additional information regarding production costs in different time periods. The Commission therefore directs the Company and the Public Staff to continue in this effort.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 AND 8

Testimony concerning the proper rate-making treatment of the Harris Unit 2 abandonment loss, and also the abandonment losses associated with Harris Units 3 and 4, the Brunswick cooling towers, and the South River project, was presented by Company witnesses Smith, Lilly, Vander Weide, McDuffie, and Bradshaw. Public Staff witness Paton and CUCA witness Wilson also addressed the issue of the appropriate rate-making treatment of these abandonment losses.

On December 21, 1983, CP&L, by action of its Board of Directors, made a decision to cancel the construction of Harris Unit 2. The project was only approximately 4% complete when cancelled. In this proceeding, CP&L has requested that it be allowed to recover the Harris Unit 2 abandonment loss over ten years and that the Company also be allowed to earn a return on or with respect to the portions of the unamortized balance of the loss supported by long-term debt and preferred stock.

Company President Smith, alluding to the recent decisions of this Commission in which no return has been allowed on or with respect to plant abandonment losses, testified in support of the Company's proposal as follows:

> "Timely recovery of this investment is essential to the financial stability of the Company. I cannot agree that exclusion of the unamortized balances of cancelled projects from rate base represents a fair and reasonable allocation of the risks of abandoned projects."

Company witness Lilly suggested that one step which the Commission could take to minimize the risk of a bond downgrade would be to make a commitment to allow the Company to recover both its investment in cancelled plants and the carrying costs related to such cancelled plants.

Company witness Bradshaw contended that, in his opinion, since the investment in Harris Unit 2 and the decision to cancel said nuclear generating

unit were both made for the benefit of CP&L customers, collecting the cost of the investment through rates would be both fair and reasonable. However, other evidence presented by the Company, including the testimony of witness McDuffie and Company President Smith, indicates that the cancellation of Harris Unit 2 was due to a variety of causes and was in the best interests of both the Company and its ratepayers.

Mr. Bradshaw also testified that the Company was requesting a return on the portions of the unamortized balances of Harris Units 2, 3, and 4 and the Brunswick cooling towers abandonment losses supported by long-term debt and preferred stock. In support of that position, he argued as follows:

> "If such costs are not recovered from the ratepayer, the common stockholder not only fails to receive a return on his investment, his return is further reduced by the amount of debt and preferred payments."

Public Staff witness Paton recommended that the Harris Unit 2 abandonment loss be amortized to the cost of service over 15 years and that the Company not be allowed to recover any return on, or with respect to, the unamortized balance of the loss, or any portion thereof. She presented evidence indicating that the Public Staff's proposed treatment of the Harris Unit 2 abandonment loss would result in a nearly equal sharing of the economic costs associated with the abandonment between ratepayers and shareholders when compared on a present value basis. Ms. Paton further testified that counsel for the Public Staff had advised her that it was not legally permissible to allow the Company to recover any carrying costs on the unamortized balances of plant abandonments and that no return should be allowed for that reason. Consequently, she recommended that the Company should not be allowed to recover the long-term debt and preferred stock costs of the remaining unamortized balances of the Harris Units 3 and 4 and Brunswick cooling towers abandonment losses, as sought herein.

In addition to addressing the fairness and legality of her proposed treatment of the Harris Unit 2 abandonment loss, witness Paton pointed out that CP&L's rates already reflect abandonment losses associated with Harris Units 3 and 4, the Brunswick cooling towers, and the South River project, which are currently being amortized as permitted and directed in prior Commission decisions. She also contended that a 15-year amortization period for Harris Unit 2, as opposed to a 10-year amortization, would lessen the impact of the rate increase which would be imposed on ratepayers if Harris Unit 1 begins commercial operations as scheduled in 1986.

Dr. Wilson made several recommendations concerning the appropriate rate-making treatment for the abandonment losses associated with Harris Units 2, 3, and 4 and the Brunswick cooling towers.

Concerning Harris Unit 2, Dr. Wilson proposed a 20-year amortization, stating as follows:

> "A 10-year amortization period would put CP&L in the advantageous, but undeserved, position of recovering the cost of a failed project more than twice as rapidly as would be the case if the project had been completed and actually put into service to ratepayers."

Dr. Wilson, like witness Paton, also opposed allowing the Company to recover long-term debt and preferred stock costs associated with the unamortized balances of plant abandonments, stating that:

> "CP&L's attempt to recover through rates a senior capital return on its numerous abandoned plants clearly violates the 'used and useful' criterion for inclusion of plant in rate base."

Dr. Wilson also addressed two additional abandonment related issues that were not brought up by either the Company or the Public Staff. First, he recommended that the unamortized deferred income taxes resulting from the write-off of Harris Units 2, 3 and 4 and the Brunswick cooling towers be deducted from rate base in this proceeding.

The Commission notes that all parties to this proceeding who made a recommendation on the matter have proposed that the abandonment losses in question be amortized to the cost of service net of tax losses. To also deduct from rate base the deferred taxes resulting from the write-offs would significantly change the relative portion of the costs associated with those losses which would otherwise be borne by the ratepayers and shareholders so as to increase the costs borne by the shareholders. The Commission finds that it would be unjust and unreasonable to place this additional burden on the Company's shareholders.

Dr. Wilson also recommended that the North Carolina contra-AFUDC related to Harris Unit 2 be offset against the first year of the Harris Unit 2 amortization to be included in the cost of service in this proceeding. He testified that the contra-AFUDC related to Harris Unit 2 represents amounts paid in by ratepayers as a result of the inclusion of Harris Unit 2 in rate base. Dr. Wilson contended that there was no justification for a 10-year delay in returning those funds to ratepayers. Additionally, he contended that a one-year flow back would enhance the likelihood that the same ratepayers who paid in the contra-AFUDC would also be the ratepayers who benefited from the flow back.

The Commission does not agree with Dr. Wilson's rationale for his proposed treatment of contra-AFUDC. His contention that the contra-AFUDC paid in by ratepayers should be flowed back to them quickly, if accepted, would give rise to a similar and seemingly equally valid contention by the Company that the monies provided by its investors for the investment in Harris Unit 2 should also be quickly returned to them. The Commission concludes that it would be unjust and unreasonable to place this additional burden on the Company's shareholders.

The remaining issues to be decided in this proceeding regarding the proper rate-making treatment of plant abandonments are: (1) the appropriate amortization period for the Harris Unit 2 abandonment loss and (2) what return, if any, to allow on the unamortized balances of the abandonment losses associated with Harris Units 2, 3, and 4 and the Brunswick cooling towers. (The Commission notes that no return on the South River abandonment loss has been requested in this proceeding.)

The Commission will first discuss the issue of what return, if any, should be allowed on, or with respect to, the unamortized abandonment losses. This

issue has been before the Commission in several prior cases with the result that until the decision of this Commission in Docket No. E-2, Sub 461, there was a lack of uniformity in the Commission's decisions regarding that matter. However, approximately one year ago this Commission, noticing the lack of uniformity, reexamined the issue in CP&L's last general rate case. As a result of the reexamination of the issue in that case, the Commission determined that it was unjust and unreasonable to allow any return to be earned on or with respect to abandonment losses. Since the decision of the Commission in that case, the Commission has consistently adhered to that position in all subsequent cases in which that issue has arisen.

Although technically the Company is not proposing to include the unamortized balances of the subject abandonment losses in rate base, the Company's proposed adjustments to net income so as to recover the long-term debt and preferred stock carrying costs of such unamortized balances are essentially the same as including those balances in rate base. The transfer of these capital costs to the cost of service is nothing more than a superficial change and is merely a thinly disguised attempt to avoid the rather obvious legal problems associated with the more straightforward approach. However, substance must prevail over form. The result produced is the same as including the balances in rate base. The Commission finds and concludes that including the return components in the cost of service as the Company proposes is the same as rate base treatment for the unamortized balances of the abandonment losses.

Based upon a careful consideration of the foregoing, the Commission finds and concludes that it would be unjust and unreasonable to allow any return to be earned by CP&L with respect to its abandonment losses for the reason that an equitable sharing of the economic losses involved as between ratepayers and the Company's shareholders would not result. The Commission has concluded that this treatment provides the most equitable allocation of the loss between the utility and its consumers. This matter will be discussed in more detail hereinafter as a part of the discussion of the appropriate amortization period.

With respect to the appropriate amortization period for the Harris Unit 2 abandonment loss, although the parties to this proceeding disagree regarding what should be the amortization period, they do agree that the Company should be allowed to recover its prudently invested cost in this abandoned project over some period of time. Three different amortization periods were proposed. The Company has proposed a 10-year amortization, the Public Staff and the Attorney General have proposed a 15-year amortization, and CUCA proposed a 20-year amortization.

In CP&L's last two general rate cases, Docket Nos. E-2, Subs 444 and 461, the Commission determined that the Harris Units 3 and 4 abandonment losses should be amortized over 10 years. No alternative amortization period for those abandonment losses has been proposed by any party to this proceeding. Nor has any party proposed an alternative to the amortization periods which this Commission approved in the Company's last general rate case for the South River and Brunswick cooling tower losses. However, the determination of the appropriate amortization period for the Harris Unit 2 abandonment loss must properly be made separate and apart from any previous determinations concerning Harris Units 3 and 4 or, indeed, any other abandonment losses.

The Commission, based upon the evidence presented in this proceeding, must determine an amortization period which will result in a fair and equitable treatment of the abandonment loss to both the ratepayers of CP&L and the Company's shareholders. The Commission finds that it would be unjust and unreasonable to place the entire burden of the costs of the plant abandonment losses on either the Company's shareholders or ratepayers. Therefore, the Commission must determine the treatment that provides the most equitable allocation of the loss between ratepayers and shareholders.

Public Staff witness Paton testified that it is the position of the Public Staff that a 15-year amortization period will provide the most equitable sharing of the total economic costs of the Harris Unit 2 abandonment loss between ratepayers and shareholders. Those total economic costs consist of the actual investment in the project and the foregone return on such investment during the period over which it is recovered. The present value analysis which was presented by witness Paton indicates that the Public Staff's proposed 15-year amortization period, assuming no return on the unamortized balance, will result in an almost equal sharing of the overall costs mentioned as between ratepayers and shareholders. The Commission finds that present value analysis to be highly persuasive of the merits of the Public Staff's proposal. Similarly, the Commission notes that witness Paton presented evidence indicating that adoption of the Company's proposed 10-year amortization period, either with or without a partial return, would result in a disproportionately large amount of the total economic costs of the abandonment being borne by ratepayers. Furthermore, Company witness Bradshaw indicated upon cross-examination that the Company's 10-year amortization proposal was not based upon any analysis of how the loss would be shared by the ratepayers and shareholders. Although it was considered by CP&L, the size of the loss apparently was not a determinative factor in proposing the 10-year amortization. The 20-year amortization period proposed by Dr. Wilson errs in the other direction and is unacceptable because it would result in a disproportionately large portion of the total economic costs of cancellation being borne by the Company's shareholders.

The Commission is persuaded and therefore finds and concludes that the 15-year amortization period proposed herein by the Public Staff and Attorney General for the Harris Unit 2 abandonment loss results in the most equitable sharing of the total economic costs associated with the loss and that such amortization period is appropriate for use in this proceeding. This is especially true in view of the fact that the Company's cost of service already includes $7,652,000 on an annual basis reflecting CP&L's abandonment of Harris Units 3 and 4, South River, and the Brunswick cooling towers, all of which are currently being amortized to the cost of service over a ten year period. In addition, utilization of a 15-year amortization period for Harris Unit 2, rather than the 10-year period proposed herein by CP&L, will also lessen the impact of the future rate increase which will necessarily be imposed upon ratepayers when Harris Unit 1 begins commercial operations in 1986.

The Commission further concludes that the amortization periods which were previously determined to be appropriate in CP&L's last general rate case for Harris Units 3 and 4 and the South River and Brunswick cooling tower projects remain appropriate for use in this proceeding. Of course, the Commission has already determined that no return should be allowed upon or with respect to the unamortized balances of those losses, or any portion thereof.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witnesses Nevil, McDuffie, Howe, and Davis, Public Staff witness Lam, CUCA witness Wilson, and Kudzu witness Eddleman provided evidence regarding the appropriate generation mix and nuclear capacity factors to be used in this proceeding.

The process of determining the reasonable cost of fuel for the Company in this proceeding, in very broad and simple terms, involves three basic steps. First, the reasonable annual level of generation in terms of total number of kilowatt-hours must be determined. The parties appear to be in agreement with respect to the reasonable total annual level of generation to be used. There is some disagreement, however, regarding how much of that total annual level of generation is properly to be attributed to the Power Agency and therefore "backed out." This disagreement arises primarily from differences in methodology. Second, it must be determined what generation mix will provide the annual level of generation determined in the first step, including a determination regarding how much of that annual level of generation will be produced by each of the various types of generating resources of the Company consisting of nuclear, coal, IC (i.e. oil), and hydro. As a part of the generation mix determination, the reasonable level of energy purchases and sales must also be determined. Third, a determination must be made of the reasonable cost to be attributed to each component of the generation mix determined in step 2. Such costs are then multiplied by the number of kWhs produced by each component of the generation mix in order to derive a total annual fuel cost.

The particular generation mix which is used in deriving the reasonable cost of fuel is very important. There are wide variations in the fuel costs which are associated with each of the six components of the Company's generation mix (i.e., nuclear, coal, IC turbine, hydro, purchases, and sales). For example, Company witness Nevil testified that the fuel cost involved in generating a kilowatt hour with oil was approximately 10¢ to 14¢, and that the fuel cost of generating a kilowatt hour with coal was approximately 2¢, whereas the fuel cost of generating a kilowatt hour with nuclear was only approximately 1/2¢. Those cost relationships illustrate that to the extent that more nuclear generation is included in the generation mix which is used to set fuel costs, in lieu of coal generation (costing approximately four times as much), or in lieu of IC generation (costing more than twenty times as much), the impact upon the resulting overall reasonable cost of fuel can be significant. Thus, relatively small differences in the assumed levels of nuclear generation can have a significant impact upon the resulting overall cost of fuel. Furthermore, the level of nuclear generation heavily influences the levels of coal, IC, and purchases in the generation mix because nuclear generation is normally used to generate electricity in preference to other relatively more costly generating resources.

The generation mix which Company witness Nevil used in deriving the Company's proposed base fuel component reflected what was essentially the Company's actual test year level of nuclear generation. The Company's actual test year nuclear generation was 8,883.6 gWh, or 26.18% of the generation mix, and the level of nuclear generation in the Company's "PROMOD Recreated Adjusted" computer-simulated generation mix, which was used by witness Nevil in deriving his recommended base fuel factor of 1.701¢/kWh, was 8,921.0 GWH, or

25.18% of that total generation mix. A comparison of the Company's actual test year generation mix with the computer simulated "PROMOD Recreated Adjusted" generation mix used by witness Nevil indicates that nuclear and hydro generation in the latter reflect the actual test year level of each, whereas the increased overall generation in the latter is reflected, for all practical purposes in increased coal and oil-fired internal combustion ("IC") generation. In short, witness Nevil's proposed generation mix assumes essentially actual test year levels of nuclear and hydro generation, which increases the more expensive coal and IC components of the generation mix.

The other parties to this proceeding who took a position on the matter proposed a "normalized" level of nuclear generation, with resulting decreases in one or more of the relatively more expensive components of the generation mix, such as IC and coal. Witness Lam of the Public Staff proposed a normalized level of nuclear generation associated with a system nuclear capacity factor of 53.4%. Witness Wilson of CUCA proposed a normalized level of nuclear generation associated with a system nuclear capacity factor of 60%. Kudzu witness Eddleman recommended a normalized level of nuclear generation based on the average of 60% and 70% nuclear capacity factors.

The question regarding whether the actual test year level of nuclear generation should be normalized involves whether such nuclear generation is reasonably representative of the level of nuclear generation which it can be reasonably assumed will occur in the near future, and particularly in the upcoming 12-month period. To the extent that the actual test year level of nuclear generation was "abnormal," or not reasonably representative of what should reasonably be expected, then a normalized level must be determined and used. In fact, witness Nevil himself proposed and used an adjustment to the Company's actual test year level of kWh sales in order to normalize for the abnormal weather which occurred during the test year.

The normalization concept is one of the most basic precepts of ratemaking. It is a concept which arises out of the statutory requirement that a test year be used as the basis for a reasonably accurate estimate of what may be anticipated in the near future. Obviously, to the extent that the test year experience reflects an abnormality, such as an abnormally low level of nuclear generation, then it will not result in a reasonably accurate estimate of what may be anticipated in the near future unless an appropriate adjustment is made to "normalize" the abnormality. The Supreme Court of this State has recognized or applied this proposition in numerous decisions. State ex rel. Utilities Commission v. City of Durham, 282 N.C. 308, 193 S.E. 2d 95 (1972); State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 377, 206 S.E. 2d 269 (1974); State ex rel. Utilities Commission v. Vepco, 285 N.C. 398, 206 S.E. 2d 283 (1974); State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976); State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982).

We turn now to the question of whether the evidence in this record establishes that the test year level of nuclear generation is normal in the sense of whether it is reasonably representative of what is likely to occur in the near future, particularly during the period that the rates set in this case are likely to remain in effect.

The evidence establishes that during the test year the Company had an overall system nuclear capacity factor of only approximately 45%. That overall system nuclear capacity factor is a composite of the actual test year capacity factors of the Company's three nuclear generating units appropriately weighted by generating capacity of each of those units. Those were a 15% capacity factor for Brunswick Nuclear Generating Unit No. 1, a 57% capacity factor for Brunswick Nuclear Generating Unit No. 2, and a 67% capacity factor for the Robinson Nuclear Generating Unit No. 2.

Company witness McDuffie testified that as of October 31, 1983, the Robinson Nuclear Unit No. 2 had a lifetime, or cumulative capacity factor of "over 66 percent." His testimony further established that the unit can be expected to operate at significantly higher capacity factors than were experienced during the test year after its return to service in early December 1984, due to the elimination of the adverse impacts caused by the steam generator problems "and other improvements." Specifically, witness McDuffie testified that during the period when the unit comes back on line in early December 1984 until some point in time after the end of October 1985 the Company is expecting the unit to run at an 85% capacity factor.

The actual test year capacity factor of the Brunswick Nuclear Generating Unit No. 1 was only 15%. However, as of the end of 1983 the unit had a lifetime capacity factor of 46.0%. That unit did not operate at all during a period of approximately nine months during the test year due to an extended outage. Company witness Howe indicated that significant and major modifications and improvements were made to the unit during the extended outage which should improve its level of performance. Witness Howe pointed out that for the period from the end of that extended outage, on August 29, 1983, until July 16, 1984, Brunswick Unit 1 had achieved a capacity factor of 73%, which was indicative of the improved performance of the unit due to those modifications and improvements. Witness Howe further testified that Brunswick Unit 1 could be expected to achieve a capacity factor of "on the order of 70%" when the unit is not in an extended outage. On the other hand, witness Howe testified that the Company expected the unit to have a capacity factor of 29% for the period October 1, 1984, through October 1, 1985, which reflects the effects of the Company's present outage schedule for the unit (which contemplates a six-week outage from October 31, 1984, until December 12, 1984, and an extended outage for further improvements and modifications beginning March 31, 1985, and continuing until after October 1, 1985).

The actual test year capacity factor of the Brunswick Nuclear Generating Unit No. 2 was 57%. Witness Howe's testimony indicates that improvements and modifications which have already been made to that unit during the test year and since its end are expected to result in improved performance and improved capacity factors. Witness Howe testified that during the period October 1, 1984, through October 1, 1985, the only scheduled outage for Brunswick Unit 2 was from October 1, 1984, until November 17, 1984, and that the expected capacity factor for that unit for the period during which the rates set in this proceeding are likely to be in effect (October 1, 1984, through September 31, 1985) was 65% after taking into account the scheduled outage period mentioned.

The Commission concludes that the 45% system nuclear capacity factor which was experienced by the Company during the test year was abnormally low and is clearly not reasonably representative of the system nuclear capacity factor

which the Company can reasonably be expected to experience in the near future, including the period during which the rates set in this proceeding are likely to remain in effect. This conclusion is based on the fact that the 45% nuclear capacity factor reflects an abnormal extended outage on Brunswick Unit 1, and reflects the abnormal impact of steam generator related problems on Robinson Unit 2 which are being remedied and should not continue. This conclusion is further supported by the testimony of both Public Staff witness Lam and CUCA witness Wilson, indicating a national average level of performance for nuclear units on the order of a 60% capacity factor.

The testimony of Company witnesses McDuffie and Howe indicates that the Company expects a system nuclear capacity factor of approximately 53.5% for the period October 1, 1984, to October 1, 1985. The Public Staff estimates a system nuclear capacity factor for the same period which is practically the same (53.4%), although it was arrived at using a different set of assumptions. Moreover, witness Nevil testified that historically the Company's system nuclear capacity factor has been in the range of 51%.

Based upon all of the evidence, the Commisson concludes that a normalized generation mix which reflects a system nuclear capacity factor of approximately 53.4% and a level of nuclear generation which is properly associated with that capacity factor are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Nevil, Public Staff witness Lam, CUCA witness Wilson, and Kudzu witness Eddleman provided testimony recommending a base fuel cost component to be included in general rates. The Company recommended a base fuel component of 1.701¢/kWh, whereas the Public Staff recommended 1.582¢/kWh, CUCA recommended 1.510¢/kWh, and Kudzu recommended 1.358¢/kWh.

Company witness Nevil's recommended base fuel cost component was derived by utilizing a computerized production simulation model (PROMOD) to recreate the test year generation mix which would have occurred if the test year were adjusted to reflect: weather normalization, customer growth, one full years operation of Mayo No. 1, additional load portion of NCEMPA, the actual test year capacity factor of each of the Company's nuclear units, the actual test year hydro generation, and the resultant levels of purchased power, coal, and IC turbine generation. June 1984 inventory prices were utilized for coal and oil prices. Witness Nevil then made adjustments to the resultant fuel costs to eliminate nonfuel components from purchased power and sales and nuclear fuel disposal costs. From this resultant figure he subtracted the fuel costs of the portion of the plants owned by the Power Agency and added back in the amount paid to the Power Agency by CP&L for purchase of power from Mayo Unit 1 under a "buy-back" agreement for a final total company fuel cost of $536,341,900, or 1.701¢/kWh after being divided by system adjusted company sales of 31,535,371,230 kWhs. The North Carolina retail portion of the fuel cost is $340,472,000. The 1.701¢ per kWh base fuel cost was based on the actual test year system nuclear capacity factor of approximately 45%.

Public Staff witness Lam's recommended base fuel factor was derived by a methodology which normalizes the capacity factor for each nuclear plant as discussed elsewhere herein, uses a normalized level of hydro generation equal to the median hydro generation as reported in the Company's most recent Power

System Report (FERC Form 12), and prorates the remaining fossil fuel generation and outside purchases and sales in proportion to the actual test year level of each. Witness Lam also computed and backed out the same types of Power Agency and nonfuel costs as did witness Nevil. Witness Lam accepted CP&L's methodology to calculate the impact of the Mayo "buy back" agreement and the savings in energy provided by the Harris-Asheboro and Harris-Fayetteville transmission lines. Using June 1984 burned fuel values, witness Lam computed a total company fuel cost of $498,808,000 ($316,653,000 attributable to the North Carolina retail jurisdiction) which when divided by system adjusted company sales of 31,535,371,000 kWhs produces his recommended base fuel factor of 1.582¢/kWh, excluding gross receipts tax. The 1.582¢ per kWh was based upon a normalized system nuclear capacity factor of approximately 53.4%.

CUCA witness Wilson advocated the adoption of a base fuel component which reflected a minimum 60% capacity factor for all nuclear generating units. Witness Wilson's base fuel component of 1.510¢/kWh utilizes CP&L's estimated June 1984 inventory prices for coal and oil and is based on CP&L's PROMOD computer program.

Kudzu witness Eddleman's recommended base fuel component of 1.358¢ per kWh is calculated utilizing a 65% system nuclear capacity factor.

The Commission is of the opinion that a normalized generation mix is appropriate for use in this proceeding and that such should reflect a level of nuclear generation associated with a reasonable system nuclear capacity factor of approximately 53.4%. Such a method would be similar to the method utilized by the Commission in Docket Nos. E-2, Subs 444 and 461, and E-7, Subs 338 and 373.

Based upon the foregoing and a careful consideration of all of the evidence bearing upon this matter, the Commission concludes that the appropriate fuel factor for use in this proceeding is 1.582¢/kWh, which reflects a reasonable fuel cost of $316,653,000 for North Carolina retail service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is found in the testimony of Company witness Nevil and Public Staff witnesses Lam and Paton.

Company witness Nevil presented Nevil Exhibit No. 6 showing the actual monthly balances through June 1984 and the projected monthly balances through September 1984 for the deferred fuel account established by this Commission in CP&L's last general rate case. This exhibit showed the actual balance through June as $7,675,552 and the projected balance through September as ($4,570,07). He testified that, since the final balance in the deferred account cannot be known until after the Commission issues an Order in this case, the Commission should not take any action relating to the deferred account at this time, but should instead defer the matter until CP&L's next general rate case or fuel charge adjustment proceeding.

Public Staff witness Lam offered testimony as to the monthly balances in the deferred account. On cross-examination, he agreed that the actual balances shown on Nevil Exhibit No. 6 are correct. He testified that the Commission

should examine the deferred account balance at the latest time possible prior to establishing new rates.

Public Staff witness Paton agreed on cross-examination that the Company had made an adjustment to test year O&M expenses which had the effect of refunding to ratepayers the September 1983 per books balance in the deferred account. The amount of this adjustment was $1,675,945. Nevil explained that this adjustment was higher than the actual September 1983 balance shown on Nevil Exhibit No. 6 because the September 1983 per books balance was an estimate. Paton stated that, if the Company is directed to refund the amount in the deferred account, the refund should be reduced by the $1,675,945 figure already effectively refunded.

CUCA took the position, through counsel's cross-examination, that CP&L should be required to refund the actual June 1984 balance of $7,675,552.

The deferred fuel account was originally established by the Commission in its Order Granting Partial Increase in Rates and Charges which was issued on September 19, 1983, in CP&L's last general rate case, Docket No. E-2, Sub 461. The Commission undertook reconsideration of that Order and issued its Order on Reconsideration on December 7, 1983. That Order, in pertinent part, established a new fuel factor, continued the deferred fuel account, and provided for review of the deferred account and refund of overcollections. In this regard, the Commission stated the following:

> "Since minor changes in the normalized test year generation mix and resulting changes in fuel costs can cause overcollection or undercollections of tens of millions of dollars, and in light of CP&L's erratic nuclear operational experience and the absence of Commission rules for implementing G.S. 62-133.2, the panel is reluctant to set a fuel factor without providing some explicit protection for the ratepayers. Therefore, the Commission finds that the 1.677¢ per kWh fuel factor should be considered provisional in the sense that it may be reduced if actual experience demonstrates that it has been set too high, but fixed if actual reasonable fuel costs equal or exceed it. By the Commission taking this approach, CP&L has the burden, and properly so, to maintain its fuel costs at or below the level found to be reasonable therein. If it is unable to do so, it will have the burden of attempting to institute a proceeding under G.S. 62-133.2, even in the absence of Commission rules, to recover its additional reasonable fuel costs. However, the Commission is not willing to place such a burden on CP&L's customers or their representatives. Accordingly, the Commission directs CP&L to establish a deferred fuel expense account and place any net overcollections in it. The Commission will review the Company's actual fuel costs in its next general rate case or in a G.S. 62-133.2 proceeding and will require the Company to refund any overcollections to its customers. The status of this deferred account shall be reported to the Commission no later than one year from the date of this Order or 30 days prior to the beginning of the hearings in CP&L's next general rate case. The status of this account is to be made available to the Public Staff at any time."

The Commission directed that net overcollections be placed in the deferred account and that the Commission review the Company's actual fuel costs in its next general rate case or fuel charge adjustment proceeding and require net overcollections to be refunded. It follows from this language that the Commission intended for the deferred account to be reexamined when a new fuel factor was set and for any net overcollections to be refunded at that time. The testimony herein provides only an estimate as to the balance for September 1984. The relevant balance is the actual balance as of the time new rates go into effect, and this figure cannot be known prior to issuance of the Commission's decision herein. Therefore, CP&L should be, and hereby is, directed to file with the Commission and serve upon all parties to this proceeding a verified report of the balance of the deferred fuel account as of the date that new rates go into effect as a result of the present general rate case. Any party to this proceeding may request a hearing within 10 working days following filing of this report for the purpose of resolving any doubts or questions as to the correct balance of the account as of the date specified. Such a hearing, if requested, will be held before the present panel and will be limited to the accuracy of the report filed by the Company. If as a result of the report or as a result of any hearing that might be requested and held in order to determine the accuracy of the report, it is determined that there is a positive balance in the deferred fuel account, the panel will reduce this balance by the $1,675,945 figure already effectively refunded to CP&L's ratepayers. If there is still a positive balance in the account, this panel will enter an order directing that such positive balance be refunded to the Company's ratepayers. This procedure gives effect to the directions in the Order on Reconsideration.

In its Brief submitted in this case, CP&L argues that the Commission should not deal with the balance in the deferred account past September 1983 since to do so would go beyond the test year in this case. The Company argues that the deferred account should be continued and that all post-September 1983 balances should be dealt with in the future. The Company also argues that since fuel costs vary from month to month, it would be unfair to deal with the deferred account on the basis of less than one full year's experience. As it happens, our present action follows almost exactly one year after the establishment of the deferred account, so the Company's argument for one full year's experience with the deferred account is met.

The Commission has determined that the deferred account should not be continued. A major factor prompting the Commission to establish it in the last general rate case was the absence of Commission rules for implementing G.S. 62-133.2, the statute dealing with fuel charge adjustment proceedings. On May 1, 1984, the Commission issued an Order in Docket No. E-100, Sub 47, adopting rules for implementation of the fuel charge adjustment proceeding statute. With this proceeding now readily available to all parties, the Commission finds no basis for continuing the deferred fuel account and concludes that it should be closed out according to the procedure outlined above. Having decided to close out the account, the practical solution is to proceed to determine the balance at the time new rates go into effect by the procedure outlined above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence bearing on the issue of fuel inventory was presented by Company witnesses Davis and Nevil, Public Staff witness Burnette, and CUCA witness Wilson.

The first part of the fuel stock issue relates to the coal inventory cost. CP&L seeks a working capital allowance of $64,920,775 for the North Carolina retail coal inventory. The Public Staff recommends an allowance of $59,985,479 for the North Carolina retail coal inventory.

Company witness Davis used the "maximum drawdown" methodology in order to derive a coal inventory requirement of 2,129,945 tons, which when multiplied by the June 1984 inventory coal price of $47.86 per ton, results in $101,939,168 total company investment, or $64,920,775 for the North Carolina retail jurisdiction. The 2,129,945-ton inventory used by witness Davis would provide a 77.2-day supply based on the projected 27,598-ton daily burn rate which he used in his maximum drawdown methodology. That projected burn rate was derived by dividing an "adjusted test year" level of coal consumption of 10,073,200 tons by 365 days. He acknowledged on cross-examination that the "adjusted test year" level of coal consumption had been provided to him by Company witness Nevil and was based upon witness Nevil's fuel cost analysis and generation mix. The Company's proposed inventory of 2,129,945 tons would provide an 84-day supply based on the 25,362-ton daily burn rate calculated by Public Staff witness Burnette.

Public Staff witness Burnette recommended a $94,189,724 investment allowance for coal inventory on a systemwide basis and an allowance of $59,985,479 for the North Carolina retail jurisdiction. During cross-examination witness Burnette agreed that the calculation used in computing the daily burn rate should be net of Power Agency. His recommended 1,968,026 tons of coal inventory would provide a 78-day supply based on his recommended 25,362-ton daily burn rate. Witness Burnette calculated a 25,362-ton daily burn rate based on: (1) the normalized coal generation (net of Power Agency) which was utilized by Public Staff witness Lam to calculate his recommended fuel costs in this proceeding, (2) the historical fossil heat rate (net of Power Agency), and (3) the actual heat value of the coal (net of Power Agency) based on data provided by the Company. Witness Burnette's 1,968,026 tons of inventory would provide a 77.2-day supply if the daily burn rate should increase to 25,500 tons per day. Witness Burnette used the same $47.86 per ton inventory value as did witness Davis.

CUCA witness Wilson also recommended a lower average daily burn rate to reflect his estimate of coal-fired generation. He used a 77.2-day supply to compute a 1,861,521-ton inventory, and priced the inventory at $47.14 per ton resulting in a coal inventory valued at $87,752,100 on a systemwide basis.

The primary difference between the Company's recommendation and that of the Public Staff and CUCA is the daily burn rate which should be used. The daily burn rate used by witness Davis is appropriate only if the Company's recommended generation mix is accepted by the Commission. The Commission has adopted the Public Staff's proposed generation mix, upon which witness Burnette's current daily burn rate is based in part. Based upon a

consideration of all of the evidence regarding this matter, the Commission concludes that the working capital allowance of $59,985,479 for coal inventory as recommended by witness Burnette is appropriate for use in this proceeding.

The second part of the fuel stock issue relates to the liquid fuel inventory cost. There was no disagreement between the Company and the Public Staff regarding the amount of the liquid fuel inventory. The disagreement between the Company and CUCA centers on the quantity of liquid fuel that should be included in the fuel stock amount.

Company witness Davis recommended a total liquid fuel inventory cost level of $9,660,505. This figure is comprised of 9,445,477 gallons of No. 2 oil at the June 1984 inventory cost of 85 cents per gallon and 2,365,000 gallons of propane at the June 1984 inventory cost of 69 cents per gallon. Witness Davis based his recommendation on the Company's liquid fuels inventory guidelines which consider availability of fuels by anticipating varying demands for and prices and availabilities of No. 2 oil, natural gas, and propane.

CUCA witness Wilson proposed an 8,554,967-gallon oil inventory and a 647,057-gallon propane inventory based on test year average inventory balances. He priced these inventories at unit values of 85 cents per gallon for oil and 65 cents per gallon for propane. This resulted in a system oil inventory of $7,271,722 and a system propane inventory of $417,337.

The Commission finds the Company's recommendation of $9,660,505 for total liquid fuel cost for the system to be the most appropriate for this proceeding. The North Carolina retail portion of this amount is $6,152,000. This amount, plus the previously discussed appropriate coal stock amount of $59,985,000 and the miscellaneous per book components of the fuel stock account of $(2,000), results in a total North Carolina retail fuel stock of $66,135,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witness Faucette and Public Staff witnesses Dennis, Paton, and Burnette presented testimony and exhibits in regard to the proper working capital allowance. The amount of working capital included in the respective proposed Orders of the Company and the Public Staff is shown in the chart below:

| | (000's Omitted) | | |
|---|---|---|---|
| Item | Company | Public Staff | Difference |
| Investor funds advanced for operations | $17,003 | $14,270 | $(2,733) |
| Materials and supplies | 88,613 | 83,556 | (5,057) |
| Other rate base additions and deductions | (15,788) | (16,269) | (481) |
| Total working capital allowance | $89,828 | $81,557 | $ (8,271) |

In addition, CUCA witness Wilson presented testimony and exhibits on the investor funds advanced for operations component of the working capital allowance. Dr. Wilson's calculations showed $7,382,000 for this segment, a

decrease of $9,621,000 from the Company amount and $6,888,000 less than that of the Public Staff. Also, Dr. Wilson recommended adjustments to the Company's proposed level of materials and supplies. The Company, the Public Staff, and CUCA were the only parties to the proceeding which presented specific recommendations and evidence bearing on the appropriate amount of the working capital allowance.

The first area of disagreement between those parties as to the appropriate amount of working capital is the determination of the investor funds advanced for operations. All three parties determined a different level of investor funds advanced for operations. The different levels proposed by the witnesses for each party resulted in part from the Company's use of a formula method as opposed to the other two parties' use of a lead-lag study. The lead-lag studies presented by the Public Staff and CUCA were based on the study filed by the Company in its initial E-1 data filing. The Public Staff and CUCA adjusted the study filed by the Company to reflect adjustments to certain amounts in the cost of service and to reflect assignment of different lag days to various components of the cost of service. Additionally, incidental collections were deducted from investor funds advanced for operations.

Concerning the Company's use of the formula method in this proceeding to calculate a reasonable level of investor funds advanced for operations, Company witness Faucette testified that, based on the amount of investor funds advanced for operations allowed by the Commission in the Company's last two general rate proceedings as compared to the related per books amounts of operation and maintenance expenses adjusted for the Leslie coal mine loss and Power Agency, a consistent trend is shown in the relationship of investor funds advanced for operations allowed to operation and maintenance expenses allowed. Witness Faucette contended that a reasonable approach to determining investor funds in this proceeding would be to apply the percentage which reflected the relationship which investor funds advanced bore to per books operation and maintenance expenses found appropriate by the Commission in Docket No. E-2, Sub 461, to the test year per books operation and maintenance expenses in this case, after adjusting for the Power Agency and Leslie Coal mine loss. In support of the formula method which he proposed, witness Faucette asserted that it was an easier and less costly method of determining investor funds advanced than was a lead-lag study. However, witness Faucette did not present any evidence regarding the costs of preparing a lead-lag study.

Additionally, witness Faucette testified that if the Commission did not accept the Company's proposed formula methodology, then it should use a full-blown lead-lag study which includes all of the Company's pro forma and end-of-period adjustments.

Both CUCA witness Wilson and Public Staff witness Dennis asserted that the lead-lag study approach to determining investor funds advanced for operations is preferable to using a formula or ratio method, as the Company contended should be done. Witness Wilson testified that there is no basis for the Company's assumption that a constant percentage of adjusted operation and maintenance expenses would reflect the working capital provided by investors from year to year. Witness Dennis testified that a properly prepared lead-lag study is an in-depth analysis which reflects the Company's current reasonable cash working capital needs measuring the lag in collections from the customers

of the cost of providing service and the lag in payments by the Company of the cost of providing said service.

The Commission recognizes that there are at least three methods used to determine the cash working capital requirement for a regulated utility. Those are the balance sheet method, the formula method, and the lead-lag method, with many variations to each of these approaches. The Company's method of determining investor funds in this proceeding is a variation of the formula method. While the Company's proposed formula method may be a simpler and more easily understandable approach than the lead-lag method, the Commission does not believe that this fact alone is justification for a departure from the traditional lead-lag study approach which has been repeatedly used and approved by the Commission over the past several years. Although the Company's formula method is based upon the percentage relationship of investor funds advanced for operations to operation and maintenance expense found appropriate by this Commission in Docket No. E-2, Sub 461, the Commission concludes that there is no reasonable basis to suppose that this percentage relationship accurately reflects or will reflect the actual payment practices of CP&L and its customers in this or future proceedings. In support of this conclusion, the Commission notes that Company witness Faucette agreed under cross-examination that payment practices would change from one time period to another. Therefore, based on all the foregoing and the entire evidence of record, the Commission concludes that since the lead-lag method more clearly identifies the capital required as a result of the customers' and the Company's actual current payment practices and the capital available from sources other than the investor to meet that need, then said method should be used to determine a fair and reasonable level of investor funds advanced for operations, to be used in calculating an appropriate level of working capital to be used in this proceeding.

In regard to the question of using a full-blown lead-lag study instead of a lead-lag study based on a per books cost of service, the Commission has ruled in previous CP&L general rate cases that a lead-lag study based on the per books cost of service, adjusted only for significant changes, represents a reasonable approach to determining investor funds advanced for operations. Accordingly, the Commission reaffirms that position in this proceeding.

The Commission has reviewed the adjustments proposed by Public Staff witness Dennis to the per books cost of service amounts presented in the Company's lead-lag study included in its initial E-1 data filing. The Company presented no evidence in opposition to these adjustments proposed by Public Staff witness Dennis, except to the extent, as spoken to above, that the Company asserted that the lead-lag approach was inappropriate. Therefore, the Commission concludes that the adjustments to the per books cost of service amounts, as presented by the Public Staff, are proper and should be considered in this proceeding.

Similarily, the Commission has reviewed the adjustments made by the Public Staff to the lag days assigned to various components of the cost of service within the lead-lag study. Here again, with but one exception, the Company provided no opposition to said adjustments except to the extent that the Company considered the lead-lag study to be improper. The Company asserted that Public Staff witness Dennis' adjustment to assign the level of revenue lag days to the investment tax credit item of the per books cost of service was inappropriate.

Witness Dennis and witness Wilson testified that it was inappropriate to include an addition to working capital relating to investment tax credits (ITC). Witness Dennis testified that the purpose of the lead-lag study in a general rate case proceeding is to measure the level of investor or customer funds advanced for operations. Witness Dennis further testified that, to the extent that those funds measured through the lead-lag study are supplied by investors, they represent valid additions to rate base upon which the investors are given the opportunity to earn a fair rate of return; however, to the extent that funds are not supplied by investors, they do not qualify as valid additions to rate base. Witness Dennis stated that ITC are not supplied by investors; therefore, the Company's lead-lag study should be adjusted so that CP&L does not receive any working capital allowance relative to ITC and that the assignment of the revenue lag of 39.63 days to ITC would accomplish that result.

The central issue concerning this matter is whether the Internal Revenue Code allows the treatment advanced by the Public Staff or whether it mandates the treatment advocated by the Company. Initially, one should note that the treatment advocated by the Company is the same as that put forth by both the Company and the Public Staff, and accepted by this Commission, in previous general rate case proceedings. Additionally, it should be noted that the evidence is clear that the Public Staff's treatment would effectively nullify any consideration of the Investment Tax Credits in determining an appropriate level of working capital, while the Company's treatment would include consideration of the ITC.

The Company asserts that the position of the Public Staff concerning this matter could be found to be in violation of the Internal Revenue Code, placing the Company in jeopardy of losing millions of dollars in ITC. Clearly the Public Staff and the Company agree that the ITC unamortized balance should not be directly deducted from rate base, as that would be in violation of the Internal Revenue Code and would subject the Company to the loss of the ITC. However, the parties disagree concerning the interpretation of whether or not a reduction to rate base by virtue of a reduction in the working capital allowance, based on the lead-lag methodology, should be considered in the same light as a direct reduction to rate base.

The Commission, in its review of this matter, has taken judicial notice of I.R.S. Regulation 1.46-6(b)(ii) which states in part:

"(ii) In determining whether, or to what extent, a credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, in those cases in which the rate of return is based on the taxpayer's cost of capital, reference shall be made to any accounting treatment that affects the permitted return on investment by treating the credit in any way other than as though it were capital supplied by common shareholders to which a "cost of capital" rate is assigned that is not less than the taxpayer's overall cost of capital rate (determined without regard to the credit)."

Based on the foregoing, and a review of the entire record concerning this matter, the Commission concludes that the Public Staff's adjustment would result in a reduction in rate base, and consequently would be in contradiction to the IRS regulations. Therefore, the Commission concludes that the Public

Staff's adjustment related to the appropriate treatment of Investment Tax Credits in the lead-lag study is improper and should not be adopted. The Commission further concludes that all other adjustments proposed by the Public Staff concerning the assignment of appropriate lag days in the lead-lag study are proper and therefore should be approved.

Based on all the foregoing, the Commission concludes that the appropriate level of investor funds advanced for operations, to be used in establishing fair and reasonable rates in this proceeding, is $18,941,000.

The second area of difference between the Company and the Public Staff with regard to working capital is the proper amount to be included in rate base for materials and supplies. The Company proposed a level of $88,613,000 for this item, while the Public Staff's recommendation would result in a level of $83,556,000. The sole difference between the Company and the Public Staff is attributable to the difference between them with respect to the appropriate amount of working capital allowance for the coal and liquid fuels inventory balances. The chart below illustrates the components of the respective positions of the Company and the Public Staff with respect to materials and supplies.

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Fuel stock inventory: | | | |
| Coal | $64,921 | $59,985 | $(4,936) |
| Other liquid fuels | 6,150 | 6,029 | (121) |
| Plant materials and supplies | 17,542 | 17,542 | - |
| Total materials and supplies | $88,613 | $83,556 | $(5,057) |

Based on the Commission's determination in Finding of Fact No. 12 of this Order, the appropriate working capital allowance for coal and other liquid fuel inventory for use in this proceeding is $59,985,000 and $6,150,000, respectively. Since the level of plant materials and supplies is uncontested in this case, the Commission concludes that the uncontested amount of $17,542,000 is appropriate. The Commission therefore concludes that materials and supplies of $83,677,000 is appropriate for use herein.

The final area of disagreement between the parties as to working capital concerns the proper level of other rate base additions and deductions. The Company recommended a net deduction of $15,788,000, while the Public Staff recommended a net deduction of $16,269,000. The difference of $481,000 relates entirely to the unamortized balance of the gain on the sale of assets to the North Carolina Eastern Municipal Power Agency. Both the Company and the Public Staff agreed that the unamortized balance of the gain on the Power Agency sale should be deducted from rate base. The parties are in disagreement however as to the amount of the unamortized gain. The Commission hereinafter in Evidence and Conclusions for Finding of Fact No. 18 fully discusses this issue. Based upon the conclusions reached therein the Commission finds the Public Staff's proposed adjustment of $481,000 to other rate additions and deductions

inappropriate. The Commission therefore finds other rate base additions and deductions of $15,788,000 reasonable and appropriate for use herein.

In summary, the Commission concludes that a working capital allowance of $86,830,000 is reasonable and proper, consisting of investor funds advanced for operations of $18,941,000, materials and supplies of $83,677,000, and other rate base additions and deductions of $(15,788,000).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact concerning inclusion of construction work in progress (CWIP) in the rate base was presented in testimony and exhibits of Company witnesses Smith, Lilly, Vander Weide, Spann, McDuffie, Bradshaw, and Chapman; Public Staff witness Sessoms; Kudzu Alliance witness Eddleman; CCNC witness Reeves; and CUCA witness Wilson.

In 1977, an amendment to North Carolina G.S. 62-133(b)(1) provided that reasonable and prudent expenditures for CWIP incurred after July 1, 1979, shall be included in rate base. By definition allowing CWIP in the rate base means that the annual cost of money (interest, etc.) borrowed and invested to construct plant facilities are charged to customers on a current basis rather than deferred and added to the cost of the facility at the time the plant is completed. Including CWIP in the rate base does not mean that the customers are investing in the "bricks and mortar" of construction expenditures. On June 17, 1982, North Carolina G.S. 62-133(b)(1) was further amended to provide that reasonable and prudent expenditures for CWIP may be included in the rate base of a public utility to the extent the Commission considers inclusion to be in the public interest and necessary to the financial stability of the utility in question. Since the effective date of the initial amendment to North Carolina G.S. 62-133(b)(1), the Commission has approved the inclusion of a portion of CWIP in CP&L's rate base in five proceedings: NCUC Docket Nos. E-2, Sub 366; E-2, Sub 391; E-2, Sub 416; E-2, Sub 444; and E-2, Sub 461. CP&L is requesting in this proceeding that $695,275,923 of CWIP, all related to Harris Unit No. 1, net of Power Agency ownership, be included in its North Carolina retail rate base. This figure represents approximately 61% of the Company's total North Carolina retail CWIP at March 31, 1984

As the Commission has noted in previous Orders since the 1982 amendment the amount of CWIP in rate base determined to be appropriate results from the application of the following criteria: (1) the expenditure must be reasonable and prudent, (2) the inclusion must be in the public interest, and (3) the inclusion must be necessary to the financial stability of the utility in question.

Company witness McDuffie presented evidence that showed expenditures made for construction of Harris Unit No. 1 to date have been both reasonable and prudent. Witness McDuffie testified that a recent study of construction costs of other utilities showed that the Company's total plant costs are favorable when comparisons are made on a similar basis. Public Staff witness Sessoms testified that he had made no examination of whether CWIP expenditures were reasonable and prudent. Kudzu Alliance witness Eddleman and CCNC witness Reeves alleged that Harris Unit No. 1 is unnecessary and should be cancelled, and that any further expenditures on this unit would not be reasonable. However, evidence presented by Company witness Smith in Item 35 of the Form E-1

Information Report and in previous load forecast hearings shows that Harris Unit No. 1 will be necessary to meet future customer requirements. Therefore, the Commission finds that the expenditures under consideration in this case for Harris Unit No. 1 have been reasonable and prudent.

Several witnesses offered testimony on the public interest criterion. Company witness Spann presented a quantitative study and testimony concluding that the inclusion of the requested amount of CWIP would benefit ratepayers by minimizing the net present value of revenue requirements through the year 2000. Dr. Spann testified that it would be less costly on a present value basis to place CWIP in rate base in order to maintain an A bond rating than not to place CWIP in rate base and have CP&L's bonds downgraded, with a commensurate increase in interest expense and therefore total cost of the plant. Dr. Spann further testified that a ratepayer would have to have an after-tax effective investment rate of over 20% to be able to receive a better present value investment return than from the payment of a return on CWIP in the rate base. Dr. Spann noted that the current rate on tax-free bonds was approximately 10%.

Dr. Spann also testified that inclusion of CWIP in rate base helps to levelize rates and minimize rate shock as new plants go into service. To the extent that carrying charges have been eliminated due to the inclusion of CWIP in the rate base, the total dollars placed into the rate base when Harris Unit No. 1 comes on line and on which customers must pay a return are reduced substantially.

CP&L witness Bradshaw testified that the amount of CWIP CP&L is requesting to have placed in the rate base is the amount which the Company estimated would be eligible for inclusion as of March 31, 1984. Public Staff witness Paton testified that as of March 31, 1984, the actual amount of eligible CWIP related to Harris No. 1 was $692,604,000.

Public Staff witness Sessoms testified that inclusion of CWIP in the rate base could result in lower future rates for ratepayers but that such rates did not mean that the ratepayers as a group would benefit financially from the inclusion of CWIP in the rate base. Witness Sessoms indicated that in order to determine the benefits to ratepayers the opportunity cost of money to ratepayers as a group; must be established i.e., the ability of ratepayers to invest in something with a higher return to them. According to witness Sessoms that cost was "difficult, if not impossible, to measure." Witness Sessoms further testified that the inclusion of CWIP in the rate base was unfair to ratepayers who did not remain in the service area. Witness Sessoms recommended that the amount of CWIP placed in the rate base under these circumstances should be limited to $496,597,912. Contrary to witness Sessoms' assertions, Company witness Spann testified that CP&L had studied its 1983 customer base and determined that 84% of CP&L's residential customers and 87% of its commercial and industrial customers were customers seven years earlier, so that a valid assumption can be made that the vast majority of customers will continue to require CP&L service through the time when Harris Unit No. 1 becomes commercial and would therefore benefit from the then lower rates. The Commission notes further that the current best estimates are that Harris No. 1 will become commercial by March 1986, approximately two years from the effective date of this Order. Hence, the Commission concludes that the intergenerational equity argument lacks significance in this instance and does

not outweigh the benefits to ratepayers derived from inclusion of CWIP in rate base in this proceeding.

Kudzu Alliance witness Eddleman testified that no CWIP should be included in the rate base. The basis of his testimony was his belief that inclusion of CWIP is not cost effective and is in reality a forced loan from consumers to the Company. CCNC witness Reeves also testified that inclusion of CWIP is not in the public interest. The basis of his testimony was his belief that load management and conservation methods can save the same amount of energy as it is currently estimated will be needed to be produced by Harris Unit No. 1 and that these methods are cheaper than completing the plant. Finally, CUCA witness Wilson testified that it was not fair to allow recovery on the plant until it is used and useful. Witness Wilson testified that capitalization of AFUDC matches cost incurrence with provision of service, and in his opinion this was the only method of collecting for plant costs which is truly in the public interest.

The Commission finds that, in determining whether the public interest is served, it is appropriate to consider a number of factors. Although the near-term impact on present ratepayers is certainly an important factor, it is not totally dispositive of the issue. When the public interest is viewed in a broader sense, it becomes clear that for purposes of this proceeding additional CWIP in rate base will serve the public interest despite the fact that rates will be somewhat higher in the near term.

The quantitative evidence presented in this case supports, and the Commission so finds that, inclusion of additional CWIP in rate base will result in lower revenue requirements on a net present value basis through the year 2000. Thus, inclusion in rate base of the additional CWIP approved in this case will serve to provide power to CP&L's customers at the lowest cost over the life of Harris Unit I which is certainly in the public interest. The inclusion in rate base of the CWIP requested by the Company in this proceeding is also in the public interest because: (1) with the inclusion of CWIP rates will increase gradually over the period of construction rather than all at once when the plant goes into service; (2) placing additional CWIP in rate base is a lower cost method of improving CP&L's cash flow, interest coverage, and other key financial indicators than available alternative policies; (3) with CWIP in rate base, ratepayers will receive the accurate pricing signals regarding the cost of electricity necessary to make decisions regarding home insulation, appliances, and other energy-sensitive investments; (4) migration studies have shown that most of the Company's present ratepayers will also be future ratepayers; and (5) assurance of adequate service in the future attracts industry and jobs and bolsters the current economy in the service area by providing jobs and tax revenues for such public needs as schools and highways.

Several witnesses also testified on the financial stability criterion. Company witness Spann provided the following analysis of CP&L's financial position as compared to other A and Baa utilities for the 12-month period ending March 31, 1984:

| Factor | Average A Rated | Average Baa Rated | CP&L | Comments |
|---|---|---|---|---|
| Pretax interest coverage | 2.71 | 2.04 | 2.4 | In between |
| CWIP/net plant | 24.6 | 34.68 | 38.3 | Below Baa |
| AFUDC/net income | 39 | 61.33 | 59.5 | Closer to Baa |
| Common equity | 39 | 36.50 | 40.4 | Better than A |
| Internal generation/ construction expense | 57 | 52.00 | 38.0 | Below Baa |

In summary, witness Spann stated that CP&L looks more like a Baa-rated utility than an A-rated utility. Company witness Lilly provided similar information showing that the Company did not meet minimum criteria for financial stability, as defined by a strong A bond rating and financial indicators commensurate with such a rating. Company witnesses Spann, Lilly, and Vander Weide testified that without inclusion of all eligible CWIP in rate base, the risk of CP&L's bonds being downgraded escalated substantially. A downgrade would have a serious impact on the Company's ability to raise the capital necessary to complete Harris Unit No. 1 at a reasonable cost and would ultimately result in notably higher rates to customers due to the increased financing cost.

Public Staff witness Sessoms provided some figures to support his contention that CP&L's financial statistics were well within the range of an A utility and therefore a bond downgrading was not likely if additional CWIP were not added to the rate base. On cross-examination, however, witness Sessoms admitted that certain of the financial indicators he presented showing CP&L to be within the range of an A-rated utility, also showed CP&L to be closer to or worse than the average BBB/Baa utility. Witness Sessoms stated however that CP&L's financial indicators had improved recently and in his opinion the Company's requested CWIP additions to rate base were not necessary to CP&L's financial stability.

The Public Staff, through its cross-examination of CP&L witness Lilly, attempted to show that the rating of CP&L's bonds was not overly important since CP&L has little financing left to undertake prior to Harris Unit No. 1 coming into service. As explained by the witness, however, by May 1985 CP&L must remarket $272 million worth of pollution control bonds in public offerings, and it anticipates a common stock issue closing in the fall of 1984 in an estimated amount of $70 to $80 million. In addition, the Company's April 1984 financial forecast projected that $134 million must be raised through stock purchase plans in the remainder of 1984 and 1985, and $134 million must be raised through outside financing during 1985. Any earnings contributing to increased internal cash generation which might occur in 1986 would not be available in 1985 to offset these financings. In addition, all of these projections assume that CP&L is able to include all eligible CWIP for Harris Unit No. 1 in the rate base and that the cost to complete the unit does not increase. If these assumptions prove inaccurate, the financing requirements will increase. Moreover, in financing additional requirements arising from the noninclusion of CWIP in rate base, it can be anticipated that CP&L will be required to pay higher than currently expected interest rates on those borrowed funds.

CUCA witness Wilson testified that he had undertaken an analysis that shows inclusion of CWIP is not necessary to CP&L's financial stability. Witness Wilson did not, however, produce that study or its results. Witness Wilson also stated that CP&L does not need any additional CWIP and that the amount of CWIP can be reduced. However, witness Wilson presented no evidence to support the assumption that CP&L's current rates are covering operating expenses, interest, dividend requirements, and substantially all construction expenses, which underlaid his assertion.

The financial stability criterion of the CWIP in rate base issue is perhaps the most crucial and difficult issue which the Commission must determine. The Commission has carefully studied and evaluated all of the evidence presented by each of the parties on this issue. Clearly, the witnesses testifying in this regard do not all agree that the requested additional amount of CWIP in rate base is necessary to the Company's financial stability. However, the Commission must conclude based upon its own review and analysis that the weight of the evidence overwhelmingly indicates that the inclusion of additional CWIP in rate base is crucial to the financial stability of CP&L.

The Commission notes that several of the parties in the proceeding assert that, because certain of CP&L's financial indicators have improved somewhat in recent years and because some of the massive external financing requirements of the Company necessitated by CP&L's construction program have been met, the inclusion of additional amounts of CWIP in rate base are not necessary to the Company's financial stability and, indeed, that the current level of CWIP may even be reduced with no fear of impairing the financial health of the Company. The Commission believes that the following excerpt regarding CP&L from the June 29, 1984, issue of Value Line Investment Survey clearly reflects the fallacy of such assertions:

> "The Harris #1 nuclear plant appears headed for early 1986 operation. CP&L has an 84% interest in the 85%-completed unit. The plant has had no significant construction problems to date. Fuel loading is scheduled for the spring of 1985. Capital outlays for the next two years, chiefly for this facility, are expected to top $1.2 billion. We expect no more than 30% of the required funds for the period to be generated internally. This means probable issues of $250 million in long-term debt and a public offering of three-to-four million shares of common in the current year. We are lowering this utility's financial strength rating from B++ to B+ and the stock's Safety a notch to 3 (Average)."

In the Commission's view CP&L is in a crucial stage of its construction program and the present financial stability of the Company necessitates the inclusion of additional amounts of CWIP in rate base.

It is the finding of this Commission from the evidence presented that the financial stability of CP&L requires the inclusion of an additional amount of CWIP in rate base. It is important to promote investor confidence in CP&L at this time so investors will undertake to finance the final stages of construction of the Harris Plant. An improvement in the Company's financial statistics will not only promote that confidence but also will provide a hedge against any possible regulatory, licensing, or similar delays in completion of

the Harris Plant that would otherwise have an adverse impact on raising the necessary funds. The Commission has determined that inclusion of $692,604,000 of CWIP in rate base represents reasonable and prudent expenditures, is in the public interest, and is necessary for the Company's financial stability. Such amount reflects the actual amount of eligible CWIP associated with Harris Unit No. 1 as of March 31, 1984.

Inclusion of CWIP in rate base is in the public interest and is necessary, if not essential, to the financial stability of CP&L. The Commission does not portend that, should it exclude all or a part of the requested CWIP from rate base, such action would inevitably or immediately result in the collapse of CP&L's financial viability. Hopefully, such an eventuality would not occur. In any case, however, CP&L's financial viability would, nevertheless, be significantly diminished to the significant detriment of CP&L's ratepayers and shareholders.

Many of the factors and much of the evidence presented which the Commission carefully considered and weighed in reaching its decision in this regard have been heretofore presented and discussed. However, there is one additional major factor which the Commission will now more fully develop and discuss that is worthy of further comment. This factor concerns the interrelationship between the inclusion of CWIP in rate base and the concomitant effect that such inclusion has on the Company's cost of capital or more specifically the cost of common equity capital. It is a well-established fundamental principle of finance that the return required by a risk averse investor varies in a positive manner with the perceived risk of the investment. Thus, it seems quite logical since CWIP in rate base effectively reduces risk to investors, that the cost of capital should be based on the inclusion of CWIP in CP&L's cost of service.

The Commission in establishing the cost of common equity capital for use herein has given careful consideration to the positive correlation that exists between risk and return. Accordingly, the Commission has chosen the lower end of the range of reasonable and fair rates of return for CP&L's common equity investors in order to reflect the full effect of all facets of the reduction in risk to CP&L investors occasioned by the inclusion of CWIP in rate base.

Before proceeding to other matters, there is one additional advantageous aspect of the Commission's having included CWIP in the rate base that needs to be discussed. Such additional aspect concerns CP&L's capitalization of Allowance for Funds Used During Construction (AFUDC) related to CWIP not included in the rate base. This additional economic advantage to ratepayers arises because the AFUDC rate utilized by CP&L is based on this Commission's approved rate of return. Since the overall rate of return is lower than it otherwise would be, absent the inclusion of CWIP in the rate base, the AFUDC rate is less, thereby resulting in the capitalization of still less capital cost which serves to further moderate the need for future rate increases while minimizing the current cost of capital.

The propriety of inclusion of CWIP in rate base is a matter which is discretionary to the Commission. As previously noted, however, G.S. 62-133(b)(1) does limit the Commission's authority in this regard. The limitation provides that the Commission may include reasonable and prudent expenditures for CWIP in rate base to the extent the Commission considers such

inclusion in the public interest and necessary to the financial stability of the utility in question. From a purely economic perspective, when based upon the record as noted, the Commission concludes that the inclusion of CWIP in rate base is in the public interest. From a purely social perspective, the propriety of inclusion of CWIP in rate base requires review separate from that based on economic reasoning. Nevertheless, when the social and economic advantages and disadvantages of inclusion of CWIP in rate base are considered in the aggregate, the Commission concludes that the inclusion of CWIP in CP&L's rate base is in the public interest.

Another criterion which the Commission must decide in the affirmative, as previously mentioned, is that the inclusion of CWIP in rate base is "...necessary to the financial stability of the utility in question..." The judgment which must be exercised by the Commission in this regard is, perhaps, a bit more subjective than that required in addressing the question of public interest. At this juncture it is instructive to note that the specific language of the statute employs the terminology "necessary to the financial stability" and not "essential to the financial viability" of the utility in question.

In a recent decision (June 1984) regarding a request by Duke Power Company for a general rate increase in Docket No. E-7, Sub 373, the Commission denied in its entirety Duke's request that CWIP be included in rate base as a result of having concluded that such inclusion was not necessary to the financial stability of Duke Power Company. In the instant proceeding, some may consider the decision of the Commission with regard to the issues of public interest and/or financial stability to be a very close question and one that should be resolved in a manner consistent with the Duke decision. However, each case decided by the Commission must be solely decided on the evidence in that case and the Commission clearly stated its rationale for denying CWIP to Duke as an exercise of its statutory and regulatory authority. The facts and evidence in this case clearly warrant a finding that the CWIP requested herein by CP&L meets the statutory criteria set forth in G.S. 62-133(b) which was not the case in Docket No. E-7, Sub 373.

In conclusion, the Commission wishes to reiterate for reasons heretofore discussed that it believes the evidence in the instance case overwhelmingly supports the Commission's decision to include a level of CWIP of $692,604,000 in rate base. Such inclusion is clearly in the public interest and necessary to the financial stability of CP&L.

The Commission is very much aware that its decision to include the additional CWIP in the rate base accounts for 61% or $39,409,000 of the increase approved herein and that 29% or $692,604,000 of CP&L's total North Carolina retail rate base of $2,375,265,000 is composed of CWIP. Thus, 11% or $139,256,000 of the total revenue CP&L is authorized to collect from its North Carolina retail customers arises from the inclusion of CWIP in rate base. A typical residential customer using 1000 kWh per month will incur a charge of approximately $7.00 per month as a result of the inclusion of CWIP in rate base. However, the Commission is convinced that the overall economic and social costs of the Commission's not having included such CWIP would far exceed the cost of such inclusion. The Commission notes that the Public Staff is in agreement that CWIP of $496,598,000 should be included in the rate base in this proceeding which equates to approximately $99,846,000 in annual revenue

requirements and approximately $5.02 per month for a typical residential customer using 1000 kWh per month. Thus the amount in contention in this case equates to approximately $1.98 per month for a typical residential customer using 1000 kWh per month.

In addition to the CWIP included by the Commission in CP&L's North Carolina retail rate base, the Company currently has an additional investment in CWIP of $450,508,000 applicable to its North Carolina retail operations which is not eligible for inclusion in rate base. Such CWIP places a significant burden on CP&L's financial resources. It is further anticipated that additional expenditures of $558,122,000 will be incurred by the Company on a North Carolina retail basis relative to Harris No. 1 prior to its in-service date. Such expenditures will place additional financial burden upon the Company during the period in which the rates established in this proceeding are in effect.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15 AND 16

Company witnesses Faucette and Bradshaw, Public Staff witnesses Burnette, Sessoms, Dennis, and Paton, and CUCA witness Wilson presented testimony regarding CP&L's reasonable original cost rate base. The following table summarizes the amounts which the Company and the Public Staff contend are the proper levels of original cost rate base to be used in this proceeding. Although not reflected in the table, the CUCA positions will also be discussed hereinafter.

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Electric plant in service | $2,484,159 | $2,483,116 | $ (1,043) |
| Net nuclear fuel | 21,863 | 21,863 | -- |
| Construction work in progress | 695,276 | 496,598 | (198,678) |
| Accumulated depreciation | (598,438) | (598,391) | 47 |
| Accumulated deferred income taxes | (256,661) | (311,371) | (54,710) |
| Allowance for working capital | 89,828 | 81,558 | (8,270) |
| Total original cost rate base | $2,436,027 | $2,173,373 | $(262,654) |

The first area of difference between the Company and the Public Staff concerns the reasonable level of electric plant in service. The $1,043,000 difference in the amounts proposed for electric plant in service by the parties relates solely to an adjustment proposed by Public Staff witness Paton to exclude from rate base allowance for funds used during construction (AFUDC) that was accrued on 4.97% of Roxboro No. 4 during the period September 15, 1980, through September 24, 1982. This adjustment was also proposed by CUCA witness Wilson. Witness Paton testified regarding this issue as follows:

"In Docket No. E-2, Sub 391, the Commission determined that 4.97% of the cost of Roxboro No. 4 should be excluded from rate base while boiler problems were being remedied. During the time that this portion of the plant was excluded from rate base, CP&L transferred that portion to CWIP and accrued AFUDC on it.

In Docket No. E-2, Sub 444 and Sub 461, the Commission ruled that the AFUDC accrued on 4.97% of Roxboro No. 4 (while it was excluded from rate base), should also be excluded from rate base. If the AFUDC is included in rate base, it will negate the Commission's decision in Sub 391 that CP&L should not be allowed to earn a return on 4.97% of Roxboro No. 4 while repairs to the boiler were being made."

The Company, through the testimony of witness Bradshaw, maintains that AFUDC accrued on 4.97% of Roxboro Unit No. 4 during the period September 15, 1980, through September 24, 1982, is properly included in electric plant in service in this proceeding. Company witness Bradshaw testified that he thought the Commission should reconsider the issue because of recent indications that the Federal Energy Regulatory Commission (FERC), having previously raised the issue during an audit, had apparently determined not to oppose the Company's proposed treatment of this issue. In that regard witness Bradshaw testified that in March 1982 the FERC staff issued a preliminary audit report which questioned the propriety of accruing AFUDC on the portion of Roxboro No. 4 excluded from rate base by the Commission in Docket No. E-2, Sub 391. Witness Bradshaw stated, however, that the Company has subsequently received a final audit report from the FERC in September 1983 in which no mention was made of this issue.

The Commission has reviewed the decisions made in this regard in the Company's previous two general rate cases. The Commission concludes that the resolution of this issue as discussed in the Final Orders issued in Docket Nos. E-2, Sub 461, and E-2, Sub 444, was entirely correct and appropriate and should not be reversed. In the Final Order in Docket No. E-2, Sub 444, the Commission concluded the following:

"The Commission concludes that it is neither just nor reasonable to require the ratepayers of the Company to pay capital cost accrued on the Roxboro No. 4 investment during the period the investment was excluded from rate base. In reaching its decision the Commission has considered the context in which the Company undertook to remedy the problems at Roxboro Unit No. 4 and that such remedies may have only been rigorously pursued upon the prompting of the Commission."

The Commission is not persuaded by any evidence presented in this proceeding that its prior determinations of this issue should be altered. Based on the foregoing, the Commission concludes that the $1,043,000 decrease in plant in service proposed by the Public Staff and CUCA is appropriate and that the amount of electric plant in service for use in this proceeding is $2,483,116,000.

The next area of disagreement between the parties concerns the amount of CWIP which should properly be included in rate base. Based on the decision reached herein which is fully discussed in Evidence and Conclusions for Finding of Fact No. 14 of this Order, the Commission concludes that $692,604,000 of

CWIP related to Harris Unit No. 1 is properly included in rate base in this proceeding. In reaching its decision the Commission has determined that CWIP of $692,604,000 is properly included in the rate base in this proceeding since such expenditures were prudently incurred by the Company, and the inclusion of this amount of CWIP is in the public interest and necessary to the financial stability of the Company.

The next area of difference relates to the appropriate amount of accumulated depreciation. The $47,000 difference between the parties concerns the previously discussed issue relating to AFUDC accrued on Roxboro Unit No. 4. The Commission has previously concluded that the adjustment to plant in service proposed by the Public Staff concerning Roxboro No. 4 AFUDC is appropriate. Therefore, the Commission concludes that the corresponding adjustment to accumulated depreciation is also appropriate. The Commission concludes that a further adjustment to decrease accumulated depreciation by $1,209,000 related to nuclear decommissioning expense is warranted. This matter will hereinafter be fully discussed in Evidence and Conclusions for Finding of Fact No. 18. Based on the foregoing, the Commission finds and concludes that the proper level of accumulated depreciation for use in this proceeding is $597,182,000.

The next area of disagreement between the parties concerns the appropriate amount of accumulated deferred income taxes to deduct from rate base. The $54,710,000 adjustment to accumulated deferred income taxes proposed by Public Staff witness Paton concerns deferred taxes related to assets which the Company sold to the North Carolina Eastern Municipal Power Agency. CUCA witness Wilson also proposed this adjustment.

Witness Paton testified that CP&L has received funds through payments made by the Power Agency for tax liabilities of the Company which will not be paid until sometime in the future. Since the Company has the use of the funds until the taxes are actually paid, witness Paton views these deferred income taxes as cost-free capital and has proposed to deduct such amounts from rate base. Witness Paton stated that she did not believe that the North Carolina retail ratepayers should be required to pay a return on funds which were cost-free to the Company. Witness Paton testified that the adjustment which she was proposing was consistent with the adjustment ordered by the Commission in the Company's last general rate case where this same issue was considered. Company witness Bradshaw, upon cross-examination, agreed that the adjustment was consistent with that made by the Commission in that case, but indicated that he continued to disagree with it.

Counsel for the Company in cross-examining witness Paton attempted to elicit that there was no clear authority for the proposition that capital which was provided by a third party (i.e., other than the Company's equity and debt investors or the Company's ratepayers) should be treated as cost-free capital. While G.S. 62-133 is not explicit on this point, the Commission believes that it is reasonably implicit that the "fair return" to which the equity investors are entitled is only with respect to the portion of rate base which is supported by capital which such investors have themselves supplied. To construe the statute otherwise would provide those investors with what amounts to an undeserved windfall. Looking at the other side of the coin, it would clearly be unfair and unreasonable to cause the ratepayers to pay a return to the investors on funds which the investors have not supplied. Decisions of the North Carolina Supreme Court, at a minimum, make it clear that G.S. 62-133

cannot be read literally so as to result in ratepayers being required to pay a return on capital or assets provided or contributed by them, or on their behalf. State ex rel. Utilities Commission v. Vepco, 285 N.C. 398, 206 S.E. 2d 283 (1974); State ex rel. Utilities Commission v. Heater Utilities, Inc., 26 N.C. App. 404, 216 S.E. 2d 487, Aff'd 288 N.C. 457, 219 S.E. 2d 56 (1975). Moreover, in the last cited case the court noted the question regarding capital supplied by a third party (government grant) but explicitly declined to comment on it because the issue had not been presented. The Commission believes that the same type of fairness considerations which the court based its decisions upon in those two cases militate in favor of treating the accumulated deferred income taxes here involved as cost-free capital. In any event, there have been numerous decisions by this Commission in which cost-free capital provided by someone other than the ratepayers has been deducted from rate base. Some of those are as follows:

In Carolina Power & Light Company's general rate case Docket No. E-2, Sub 366, on page 20 of the Final Order issued April 22, 1980, the Commission concluded as follows:

> "...accounts payable - electric plant in service does represent cost free capital and should be deducted in calculating the original cost of CP&L's investment in electric plant."

Likewise, in Carolina Telephone and Telegraph Company's general rate case Docket No. P-7, Sub 624, on page 11 of the Final Order issued April 20, 1979, the Commission concluded as follows:

> "...accounts payable - telephone plant in service is an appropriate deduction in determining original net investment. Accounts payable - telephone plant in service represents creditor supplied capital, which is cost-free to the Company. If those cost-free items of capital are not deducted from rate base, it will have the effect of building into the cost of service a capital cost which does not in fact exist."

In Virginia Electric and Power Company's general rate case, Docket No. E-22, Sub 257, the issue of noninvestor supplied cost-free capital arose again in regard to the proper treatment of a settlement from Westinghouse. The Commission's Final Order in that case, issued on October 27, 1981, resolved that issue by stating as follows:

> "The Commission concludes that the deciding point in this matter is that Vepco has unrestricted use of the settlement proceeds and can use them for any prudent corporate purpose. Indeed, though the proceeds are a result of a court suit involving nondelivery of uranium, the unamortized portion is not strictly assignable to nuclear fuel inventory for rate-making purposes. Therefore, the Commission concludes that the unamortized North Carolina retail portion of the Westinghouse settlement received by Vepco of $6,458,000 should be properly deducted from rate base as cost-free capital."

The Commission agrees with the Public Staff and CUCA regarding this issue and finds as it did in Docket No. E-2, Sub 461, that these deferred taxes

represent cost-free funds to the Company since the funds have been provided to CP&L by the Power Agency rather than by the Company's investors. The Commission concludes that these deferred taxes should be treated as other cost-free capital to the Company and deducted from rate base to prevent the ratepayers from paying a return on capital which has no cost to the Company.

There is one other area of disagreement regarding the proper level of deferred taxes to deduct from rate base which must be resolved. CUCA witness Wilson proposed an additional adjustment to deduct $71,461,400 of deferred taxes related to cancelled plants. Witness Wilson testified regarding this issue as follows:

> "The unamortized deferred income taxes resulting from the write-off of Harris 2, 3 and 4 and the Brunswick cooling towers should be deducted from CP&L's rate base in this case. CP&L has been allowed to deduct the tax basis for its abandoned plants from its taxable income in the year the abandonment took place, thus reducing the actual tax liability in that year. However, the reductions in taxes paid were not reflected as a current reduction in the cost of service for rate-making purposes, but instead are being amortized to reduce the cost of service over the amortization period allowed by the Commission for the abandoned project losses. Ratepayers thus have paid for tax expenses in excess of the Company's actual tax remittances to state and federal goverments. Having been supplied by ratepayers, these deferred taxes should be deducted from CP&L's rate base just as other ratepayer-provided funds are deducted."

The Commission has already discussed the appropriate treatment for the above mentioned abandonments in the Evidence and Conclusions for Findings of Fact Nos. 7 and 8. As indicated there, the Commission has approved a 15-year amortization period for the Harris No. 2 net of tax loss and has denied the Company any return on the unamortized balance. This treatment provides a nearly equal sharing of the costs between ratepayers and shareholders. The important point to note is that the approved amortization is net of taxes. Consequently, if deferred taxes are deducted from rate base as proposed by witness Wilson, the cost sharing analysis as done by witness Paton and adopted by the Commission would be altered, with the result that the shareholders would bear a larger portion of the total economic loss because they would be absorbing the return on a larger adandonment amount. Based on the foregoing and the Commission's previous findings regarding the proper treatment of plant abandonments, the Commission concludes that it would be unjust and unreasonable to deduct from rate base deferred income taxes of $71,461,400 relating to plant abandonment as proposed by CUCA witness Wilson.

The Commission notes that it is necessary to make a further adjustment to accumulated deferred income taxes of $595,000 to reflect adjustments related to nuclear decommissioning costs. This matter will be fully discussed hereinafter in Evidence and Conclusion for Finding of Fact No. 18. Based on the foregoing, the Commission concludes that the proper level of deferred income taxes for use in this proceeding is $311,966,000.

The final area of disagreement between the parties concerns the appropriate allowance for working capital. Based on the Commission's

determination set out in Finding of Fact No. 13 of this Order, the Commission has included in rate base a working capital allowance of $86,830,000.

The Commission concludes, based upon the foregoing and the determinations made in Findings of Fact Nos. 13 and 14, that the appropriate original cost rate base for use in this proceeding is $2,375,265,000 calculated as follows:

(000's Omitted)

| Item | Amount |
|---|---|
| Electric plant in service | $2,483,116 |
| Net nuclear fuel | 21,863 |
| Construction work in progress | 692,604 |
| Accumulated depreciation | (597,182) |
| Accumulated deferred income taxes | (311,966) |
| Allowance for working capital | 86,830 |
| Total original cost rate base | $2,375,265 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Nevil. The Company made five adjustments to test year revenues in order to reflect revenues at an appropriate end-of-period level. The first adjustment was to annualize the rate increase granted to CP&L in Docket No. E-2, Sub 461. The second adjustment increased test year revenues to a level reflecting the number of customers at year end. The third adjustment eliminated the effects of abnormal weather conditions that occurred during the test year. This adjustment applies only to the residential and commercial customer classes. The fourth revenue adjustment was to reflect known increases in 1984 revenues that the Company will receive from the Southeastern Power Administration. The final revenue adjustment proposed by the Company was to annualize test year revenues to include discounts and credits to bills of customers participating in the residential conservation rate and the water heater and air conditioning control programs approved by the Commission in Docket No. E-2, Sub 435. All these adjustments totaled to a $123,044,235 increase in test year revenues. No party to this proceeding proposed an alternative end-of-period level of revenues. The Commission therefore concludes that the adjusted end-of-test-period level of revenues of $1,202,132,000 proposed by the Company is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Bradshaw, Faucette, Nevil, and Chapman, Public Staff witnesses Paton and Lam, and CUCA witness Wilson.

The following schedule sets forth the amounts proposed by the Company and the Public Staff:

(000's Omitted)

| Item | Company | Staff | Difference |
|---|---|---|---|
| Operation and maintenance expenses | $647,150 | $622,726 | $(24,424) |
| Depreciation expense | 93,274 | 93,237 | (37) |
| Taxes other than income | 93,268 | 93,268 | -- |
| Income taxes | 136,409 | 153,398 | 16,989 |
| Interest on customer deposits | 309 | 309 | -- |
| Total operating revenue deductions | $970,410 | $962,938 | $ 7,472 |
| Adjustments to operating income | | | |
| Debt and preferred stock costs associated with unamortized balances of cancelled projects | $(5,099) | -- | $5,099 |
| Amortization of Power Agency gain | 6,824 | 7,305 | 481 |
| Total adjustments to operating income | $1,725 | $7,305 | $5,580 |

As the schedule indicates, the parties are in disagreement on all the items of operating revenue deductions with the exception of taxes other than income and interest on customer deposits. Since the parties are in agreement regarding these issues the Commission finds taxes other than income of $93,268,000 and interest on customer depostis of $309,000 reasonable and appropriate for use herein. The Commission will now analyze the reasons for the items of operating revenue deductions in dispute.

The first difference between the parties is the level of operation and maintenance expenses recommended for use in this proceeding. The following table summarizes the adjustments proposed by the Public Staff which comprise the $24,424,000 difference in the amounts proposed by the Company and Public Staff.

(000's Omitted)

| Item | Amount |
|---|---|
| 1. Harris 2 abandonment loss | $ (5,542) |
| 2. Fuel | (17,603) |
| 3. Variable nonfuel O&M expenses | (683) |
| 4. Officers' salaries | (233) |
| 5. Advertising | (363) |
| 6. Total | $(24,424) |

CUCA witness Wilson also recommended adjustment No. 3 shown above.

The first item of difference relates to the Harris Unit No. 2 abandonment loss. This difference relates entirely to the abandonment loss amortization period. The Company proposed to amortize the loss over a 10-year period

whereas the Public Staff proposed to amortize the loss over a 15-year period. The Commission has previously determined in Finding of Fact No. 7 of this Order that the Harris Unit 2 abandonment loss should be amortized over a 15-year period. Consistent with that decision the Commission finds it appropriate to reduce O&M expenses by $5,542,000 as recommended by Public Staff witness Paton in order to reflect a 15-year amortization period.

The next area of disagreement relates to fuel expense. In Finding of Fact No. 10, the Commission found the proper base cost of fuel to be $.01582 per kWh which results in North Carolina retail fuel expense of $316,653,000. However, there are additional fuel expenses not included in the base cost of fuel which should properly be included in test-period fuel expense in order to properly reflect the Company's cost of providing service. These expenses include nuclear fuel disposal costs and the nonfuel component of electric power purchases and sales.

Nuclear fuel disposal costs (NFDC) are composed of two items, the annual amortization for the Robinson 2 Unit which was originally approved in Docket No. E-2, Sub 297 (Order issued June 29, 1977), and the fee of 1 mill per kWh of nuclear generation. The Commission has previously determined in Finding of Fact No. 10 to adopt the base fuel component proposed by the Public Staff. In deriving the base fuel component, Public Staff witness Lam deducted total Company NFCD based on 1 mill per kWh of nuclear generation in the amount of $9,109,000. Applying the North Carolina retail allocation factor proposed by witness Paton on Paton Exhibit I, Schedule 3-1 (b)(1) to NFDC of $9,109,000 results in $5,780,000 being attributable to the North Carolina retail jurisdiction. NFDC, as shown on Paton Exhibit I, Schedule 3-1 (b)(1), also includes the amortization of NFDC for the Robinson unit of $1,319,000 and $837,000 on a total Company and North Carolina retail jurisdictional basis, respectively. Based on the foregoing, the Commission finds the proper level of North Carolina retail NFDC cost to be $6,617,000.

Likewise, the Commission, having previously determined in Finding of Fact No. 10 to adopt the base fuel component proposed by the Public Staff hereby adopts the Public Staff's proposed levels of the nonfuel component electric purchases and sales. Such amounts were deducted from total fuel expense in calculating the base fuel expense. Thus, the Commission finds the nonfuel component of electric power purchases of $15,208,000 on a total Company basis and purchases of $9,649,000 on a North Carolina retail basis appropriate. The level of the nonfuel component of sales found appropriate herein is $8,720,000 on a total Company basis and $5,533,000 on a North Carolina retail basis.

Based on the foregoing, the Commission concludes that the proper amount of fuel expense for use in this proceeding including NFDC and the nonfuel component of electric power purchases and sales is $327,386,000.

The next item of difference concerns variable nonfuel O&M expenses. The Company calculated an adjusted year-end variable nonfuel O&M expense factor of $.00317 per kWh. The variable nonfuel O&M expense factor was then applied to the Company's adjustments to test year kWh sales for customer growth, weather, and supplemental sales to the Power Agency.

Both Public Staff witness Paton and CUCA witness Wilson took exception to two of the expense items that the Company included in calculating its nonfuel

O&M expense factor. One such item was the Company's proposed amortization of unrecovered nuclear fuel disposal costs (NFDC). Witness Paton testified that this amortization is a fixed amount and will not vary with kWh sales, and further, that exclusion of the amortization of unrecovered nuclear fuel disposal costs is consistent with the Company's exclusion of plant abandonment amortizations in determining the variable nonfuel O&M expense factor.

Company witness Chapman stated, during cross-examination by counsel for the Public Staff, that the NFDC amortization could be handled either as the Company proposed or as the Public Staff and CUCA had recommended. Witness Chapman testified that the actual amount of the amortization that will be recovered through rates is dependent on the number of kWh's that are sold after rates set in this proceeding go into effect. Witness Chapman further indicated that under the Comany's approach a true-up of the recovery of the NFDC amortization would be made at some future time.

The Commission concludes that the exclusion of NFDC amortization in calculating the year-end variable nonfuel O&M expense factor as proposed by the Public Staff and CUCA is appropriate. The level of NFDC amortization has properly been determined and included in test-period O&M expenses contained herein. NFDC amortization is a fixed amount which will not vary with kWh sales and thus the Commission finds no further adjustment to be required.

The second item which Public Staff witness Paton and CUCA witness Wilson contended should be excluded from the Company's calculation of the variable nonfuel O&M expense factor was energy-related wages. The Public Staff and CUCA asserted that, since wages had already been separately adjusted to an end-of-period level, it would be inappropriate to further adjust the energy-related portion of those wages as the Company had done. Witness Paton also testified that her position on this issue was consistent with the Public Staff's position in the last several Duke Power Company rate cases.

During cross-examination, Company witness Chapman testified that he thought that both wage adjustments were necessary. Witness Chapman then went on to describe the Company's end-of-period wage adjustment as follows:

> "...that relates to the actual kWh's generated during the test year. Those are the actual employees and the actual hours worked, that get adjusted to the end of the test year."

The Company annualized the September 1983 wages to arrive at the appropriate end-of-period level of wage expense. To the extent that there is a relationship between wages and customer growth and sales to the Power Agency, wages have thus already been adjusted to reflect the appropriate end-of-period levels. The Company's customer growth adjustment to revenues reflects end-of-period customers. The Company's wage annualization adjustment reflects end-of-period employees and wage rates. Thus, wage expense and customer levels have been appropriately matched. The Company's contention regarding actual kWh's and employees addresses test year wage expense. If test year wages had not been adjusted to an end-of-period level, then it would be appropriate to adjust separately for customer growth. However, that is not the case.

As to the relationship between wage expense and weather, there are flaws in the Company's rationale. In regard to the Company's adjustment to revenues

for weather normalization, Company witness Nevil stated that the adjustment applies only to the residential and commercial customer classes. However, in the Company's variable nonfuel O&M expense adjustment, expenses applicable to all customer classes have been adjusted for weather normalization. More specifically, however, if the Company believed that wages should be adjusted for weather normalization, it could have adjusted the September 1983 wages, but only those applicable to residential and commercial customer classes, so as to match the weather normalization expense adjustment to the revenue adjustment. That the Company did not do. Based upon the foregoing, the Commission concludes that the Public Staff's proposal to exclude energy related wages from the variable nonfuel O&M expense adjustment is reasonable and proper.

Based upon the foregoing discussion, the Commission finds the adjustments to variable nonfuel O&M expenses proposed by the Public Staff and CUCA appropriate for use in this proceeding and thus finds it appropriate to decrease O&M expenses by $683,000.

The next item comprising the difference in O&M expenses concerns officers' salaries. Company witness Paton made an adjustment to exclude 50% of the salaries and deferred compensation of the four Company officers who are members of the Executive Committee of the Board of Directors. Witness Paton testified that she believed it would be both reasonable and proper for the Company's shareholders to support some of the costs associated with the Company officers whose functions are most closely linked with meeting the demands of the common shareholders.

During cross-examination, Company witness Bradshaw testified that he did not see how any officers could separate their duties between stockholders and customers. Witness Bradshaw testified that they work for both parties, and that he thought that they were doing more for customers at this time than for the shareholders.

The Commission has given this general issue much consideration, not only in this proceeding but in several other cases which it has decided over the last two years. The Commission concludes that the Company's common shareholders should bear 50% of the salary and deferred compensation expense of the Company officers whose function is most closely linked with meeting the demands of the common shareholders. The Commission concludes that by requiring the Company's common shareholders to be financially responsible for the upper echelon of the Company's salary structure, then those shareholders, through their control of the membership of the Board of Directors, will be encouraged to maintain a fair and reasonable level of salaries, as well as other expense. The Commission concludes that the $233,000 adjustment to reduce O&M expenses as proposed by the Public Staff is appropriate for setting rates in this proceeding.

The final item of difference concerns an adjustment to decrease advertising expense by $363,000. Public Staff witness Paton removed from O&M expense the cost of certain advertisements which she considered to be "image" advertising. In witness Paton's opinion this advertising was not beneficial to the using and consuming public, nor did it enhance the ability of the public utility to provide efficient and reliable service, as specified in Commission Rule R12-13 (d).

Based upon the foregoing, a careful review of the advertisements in question, which were contained in Paton Exhibit A, and a careful review of Commission Rules R12-12 and R12-13, the Commission finds that the cost of these advertisements does not represent a reasonable operating expense for rate-making purposes. The Commission finds that the advertising in question is "of a type or nature other than that described in subsections (b), (c), or (d) of Rule R12-12" or is "other nonutility advertising" and is thus controlled by the provisions of Commission Rule R12-13(d). That being so, the expense of such advertising is to be considered a reasonable operating expense only to the extent that it is "established" that the advertising is beneficial to the using and consuming public or enhances the ability of the public utility to provide efficient and reliable services. It has not been established to the satisfaction of the Commission that the advertising in question, or any part of it, has met either criterion. The Commission, moreover, is of the opinion that the cost of this particular advertising should in no event be borne by the ratepayers. Therefore, the Commission concludes that O&M expenses should accordingly be reduced by $363,000. In reaching its decision in this regard, the Commission recognizes that advertising expenses of approximately $1.4 million have been treated as reasonable and proper test period operating expenses.

Based upon the foregoing conclusions, the Commission finds operation and maintenance expenses of $622,726,000 to be just and reasonable and appropriate for use in this case.

The next item of operating revenue deductions that the parties disagree on is depreciation expense. The $37,000 difference in depreciation expense relates to AFUDC accrued on Roxboro Unit No. 4 which both the Public Staff and CUCA proposed to exclude from electric plant in service. The Commission found previously in Finding of Fact No. 15 that the adjustment to plant in service for Roxboro No. 4 AFUDC was reasonable and proper. Therefore, the Commission correspondingly finds the related adjustment to depreciation expense is appropriate for use in this proceeding.

One further issue regarding the proper level of depreciation expense must be discussed by the Commission. This issue relates to the level of decommissioning cost to be included in depreciation expense. The methodology used by the Company to adjust for future decommissioning of its nuclear plants utilizes in part CP&L's capital structure, embedded cost of debt and rate of return on common equity. In Findings of Fact Nos. 20 and 21 contained herein the Commission establishes the capital structure, cost rates, and return on equity appropriate for setting rates for CP&L in this proceeding. Since the decisions made by the Commission differ from that proposed by the Company, it is necessary to modify the Company's proposed adjustments for decommissioning costs to reflect the decisions made herein. The Commission therefore finds it appropriate to decrease depreciation and accumulated depreciation by $1,209,000 and to increase deferred income taxes and accumulated deferred income taxes by $595,000.

Based upon the foregoing, the Commission finds the reasonable and proper level of depreciation expense to be $92,028,000.

The next area of difference relates to the appropriate level of state and federal income taxes. The Company proposed $136,409,000 as the proper level of

income tax expense, and the Public Staff proposed $153,398,000. Since the Commission has not accepted all of either the Company's or the Public Staff's components of taxable income, it is necessary to calculate state and federal income taxes based upon the decisions heretofore and herein made by the Commission. Thus, the Commission finds and concludes that income tax expense of $149,398,000 is reasonable and proper.

In summary, the Commission finds operating revenue deductions of $957,729,000 reasonable and proper consisting of operation and maintenance expenses of $622,726,000, depreciation expense of $92,028,000, taxes other than income $93,268,000, income taxes of $149,398,000 and interest on customer deposits of $309,000.

The Company and the Public Staff also disagree with regard to adjustments to operating income. The first item of difference in adjustments to operating income relates to the Company's proposal to include debt and preferred stock costs associated with the Brunswick cooling towers and Harris Nos. 2, 3, and 4 cancelled projects in the cost of service in this proceeding. Consistent with the decision in Findings of Fact Nos. 7 and 8, the Commission finds that the debt and preferred stock costs associated with the unamortized balances of cancelled projects should be excluded from test-period operating revenue deductions.

The final area of disagreement relates to the proper level of amortization of the Power Agency gain. The Company proposed to amortize an amount of $6,824,000 related to one-third of the gain on assets sold to the Power Agency as an adjustment to operating income. Alternatively, the Public Staff proposed to amortize an amount of $7,305,000.

In Docket No. E-2, Sub 461, the Company proposed to flow the gain received as a result of the sale to Power Agency through to ratepayers over a three-year period. The Public Staff recommended flowing the gain through to ratepayers in one year, but did not object to the Company's calculation of the amount of the gain. The Commission approved an adjustment flowing through the gain over three years. The Company made a similar adjustment in this rate case to reflect the second year of the three-year amortization period. As testified to by Company witness Bradshaw in the last CP&L rate case, the Company's calculation of the amount of the after-tax gain included a recognition of the after-tax amount of the Leslie Mine coal sold to Power Agency which had costs in excess of its fair market value (FMV). The amount of the charges attributable to Power Agency for these additional coal costs was based on its ownership interest of 12.94% times the additional coal costs through December 31, 1983.

On cross-examination Company witness Bradshaw testified that the Company has no way to recover these additional coal costs attributable to Power Agency unless they are included in the calculation of the gain. Witness Bradshaw explained that the Leslie coal was sold to Power Agency to generate power in its portion of Roxboro Unit No. 4. Witness Bradshaw further testified that in this jurisdiction the Company has been allowed to pass through to the ratepayer only the FMV of the Leslie coal. When a portion of this coal was sold to Power Agency, however, the Company properly recognized the full production cost of that coal in its book cost and thus deducted the full production cost, including the coal costs above FMV, from the proceeds when calculating the

gain. The Company contends that denial of recovery of Power Agency's ownership portion of the additional coal cost would result in an overstatment of the amount of the gain actually available to reduce the retail ratepayer's cost of service.

Public Staff witness Paton contended that if the gain reflects additional costs of coal sold to Power Agency, the North Carolina retail ratepayers will, in effect, be paying for the difference between the production cost and the FMV of the coal purchased by Power Agency. She further asserted that it is unfair to require the North Carolina retail ratepayers to pay for coal from which they have received no benefit. On cross-examination witness Paton acknowledged that CP&L no doubt took these costs and the ability to offset them by the profit from the sale into account in setting the price for the sale of assets to the Power Agency.

The Commission concludes, based upon the foregoing facts, that it is fair and equitable to exclude the amount related to Power Agency's payment of coal costs in excess of FMV from the after-tax gain. The Commission believes and so concludes that denial of recovery of Power Agency's ownership portion of additional coal cost would result in an overstatement of the gain actually available to reduce the retail ratepayer's cost of service and thus finds the Public Staff's proposed adjustment of $481,000 inappropriate.

Based upon all of the foregoing, the Commission concludes that the appropriate level of total operating revenue deductions for use in this proceeding is $957,729,000 and that an adjustment to operating income of $6,824,000 relating to the gain on the sale of assets to the Power Agency is proper as shown on the schedule that follows.

(000's Omitted)

| Item | Amount |
|---|---|
| Operation and maintenance expenses | $622,726 |
| Depreciation expense | 92,028 |
| Taxes other than income | 93,268 |
| Income taxes | 149,398 |
| Interest on customer deposits | 309 |
| Total operating revenue deductions | $957,729 |
| | |
| Adjustment to operating income | |
| Amortization of Power Agency gain | $ 6,824 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Company witness Bradshaw presented evidence in this proceeding at the request of Commissioner Cook concerning the dues and contributions paid by CP&L to the Edison Electric Institute (EEI). Additionally, the Company presented a generalized listing of the services and functions provided by this organization. Specifically, witness Bradshaw testified that CP&L paid dues of approximately $371,146 on a total company basis to this organization during the test year. Approximately $15,823 of this amount has been categorized by the Company as below the line cost to be borne by the stockholders of CP&L.

The Commission notes that the listing of functions and services provided by this organization was very general in nature and did not itemize cost by function or service provided. The Commission concludes that the information provided in this proceeding was inadequate and that it is appropriate for the Company in its next general rate proceeding to present information which will show all direct and indirect contributions to and through EEI from all sources and all expenditures by program and by a system of accounts which will allow the Commission to specifically determine the appropriateness of the expenditures for rate-making purposes.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20 and 21

Testimony regarding the appropriate capital structure and cost of capital to be used in this proceeding was presented by Company witnesses Lilly and Vander Weide, CUCA witnesses Smith and Wilson, and Public Staff witness Hsu.

Company witness Lilly testified regarding the financial condition of CP&L. Witness Lilly recommended that rates be set in this proceeding based upon a normalized capital structure consisting of 47.5% debt, 12.5% preferred stock, and 40% common equity. Witness Lilly testified that the Company's actual capital structure at September 30, 1983, was 47.03% long-term debt, 12.87% preferred, and 40.10% equity.

CUCA witness Wilson and Public Staff Witness Hsu also testified and recommended that the Company's requested normalized capital structure be employed in this proceeding.

After considering all of the evidence presented by the parties on this issue, the Commission concludes that the appropriate capital structure to be used in this proceeding is as follows:

| Item | Percent |
|---|---|
| Long-term debt | 47.5% |
| Preferred stock | 12.5% |
| Common equity | 40.0% |
| Total | 100.0% |

Witness Lilly offered testimony regarding the appropriate cost rates for long-term debt and preferred stock. With regard to the cost of long-term debt, Company witness Lilly in his prefiled testimony recommended a cost of long-term debt of 10.05%, based on the Company's embedded cost at December 31, 1983, with inclusion of the issuance of $250,000,000 of projected new long-term debt at a projected interest rate of 13.5%. On cross-examination, witness Lilly testified that based upon the actual financing cost, "the corrected figure--or the changed figure" is 9.73%. The updated embedded cost rate of long-term debt is based upon the following issues:

(1) $100 million of First Mortgage Bonds at 13.07% in November 1983.
(2) $100 million of First Mortgage Bonds at 13.51% in April 1984.
(3) $274 million Pollution control Bonds at 8.19% in June and July 1984.

Witness Lilly indicated that the Company issued some Pollution Control Bonds in June and July 1984 and would issue an additional $8 million or $9 million within the next 30 to 50 days. Witness Lilly, however, chose not to update the embedded cost rate of long-term debt. Similarly, he chose not to update his 9.23% preferred cost rate, although he testified that the Company had placed a $50 million issue of preferred stock in the spring of 1984. Witness Lilly stated that because of an increase in the cost of equity, leaving the financing rates as filed "is eminently fair to the consumers." (TR. Vol. 9, pp 32-33).

CUCA witness Wilson used the Company's requested 10.05% long-term debt cost rate and 9.23% preferred stock cost rate.

Public Staff witness Hsu recommended an embedded cost rate of long-term debt of 9.73%, which was also "the corrected figure--or the changed figure" provided by witness Lilly. She also used the actual 9.18% embedded cost for preferred stock.

The Company and the Public Staff did not disagree about the actual embedded cost rates for long-term debt and preferred stock including updates, and CP&L has accepted said cost rates for use in this proceeding. The Commission recognizes that the Company's embedded costs for the senior securities are the actual costs to the Company. Therefore, the Commission concludes that the appropriate embedded costs of long-term debt and preferred stock to be used in this proceeding are 9.73% and 9.18%, respectively.

Company witness Vander Weide stated in his original testimony that the Company's required return on equity was 16.5%. On the witness stand, Dr. Vander Weide updated his cost of equity to 17.7%. However, the Company decided to leave unchanged its requested return on equity of 16.5%.

Company witness Vander Weide conducted two studies consisting of a discounted cash flow (DCF) study and an historical yield spread study in arriving at his recommended cost of equity capital for CP&L. Witness Vander Weide did a DCF analysis only of the Company itself and did not perform such an analysis on any group of comparable companies. Instead of using the commonly known and widely accepted annual version of the DCF model, witness Vander Weide used a quarterly version of the DCF model based on the Company's paying dividends quarterly. As a part of his DCF calculation, witness Vander Weide applied 5% to all the Company's outstanding equity to allow for flotation costs and market pressure.

Witness Vander Weide claimed that the annual DCF model underestimates the cost of equity capital. Witness Vander Weide testified that investors are willing to pay more for a stock that pays dividends quarterly than one that pays dividends at the end of the year. He further stated, "Hence, the price that embodies quarterly recognition of dividends is too high for inclusion in the annual DCF model."

Witness Vander Weide admitted, however, that it is inherent in the determination that he makes from the quarterly version of the DCF model that all stockholders will earn a uniform rate on the reinvestment of quarterly dividends. He admitted that, based on the quarterly model, the Company provides an additional return in addition to what is required by investors. He

also stated that he did not think that additional return is really an extra return and claimed that he is not assuming that the firm pays that extra rate.

Witness Vander Weide reviewed the past growth in CP&L's earnings and dividends per share for the last 5 and 10-year periods. Additionally, witness Vander Weide testified that he had reviewed security analysts' projections of CP&L's future dividends and earnings growth. On the basis of his examination of the past growth rates, his review of analysts' projections, and his knowledge of current economic conditions, witness Vander Weide estimated the Company's future growth rate to be 4.0%. In his original prefiled testimony, Dr. Vander Weide determined from his DCF analysis employing the quarterly model that the Company's cost of equity was 16.5%.

The second method used by Company witness Vander Weide was the spread test method. The spread test method equates investors' current expected return on equity to the sum of current bond yields plus the past differences or spread between the yields on stocks and the yields on bonds. Based upon this method, witness Vander Weide arrived at a cost of equity capital for CP&L of 17.9%. In his original prefiled testimony, Dr. Vander Weide determined that the Company's cost of equity was at least 16.5%.

In updating and summarizing his testimony from the witness stand, Dr. Vander Weide reevaluated his recommended return on equity capital in light of changes in interest rates and the change in CP&L's stock price subsequent to the time his prefiled testimony was prepared. On this basis, witness Vander Weide determined the cost of CP&L's equity to be 17.7%.

CUCA witness Smith testified in her prefiled testimony that investors require a return on CP&L's common equity capital in the range of 13.5% to 14.5%. Allowing 25 basis points for flotation expenses, witness Smith recommended that CP&L be allowed a return on equity of 14.25%. On the stand, witness Smith updated her cost of equity recommendation to 14.50%.

In her prefiled testimony, Dr. Smith determined her recommended return on equity on the basis of a DCF analysis for CP&L and the electric utility industry as a whole. Witness Smith testified that CP&L's dividend yield was 11.1% based upon market price data for the six months ended March 31, 1984, as compared to the industry average dividend yield of 10.6%. Witness Smith stated further that actual historical growth indicators for CP&L were lower than the industry average, ranging between 1.5% to 3.6% for the Company and 2.2% to 4.6% for the industry. Witness Smith derived an estimate of the long-term dividend growth anticipated by investors of 2.2% to 2.6%, which she stated is somewhat higher than CP&L's own experienced growth and below the industry average historical experience. Dr. Smith stated in her prefiled testimony that the recent decline in the Company's common stock price indicates that the current common equity cost might be higher than the 13.3% to 13.7% range derived from her statistical studies. Dr. Smith concluded that CP&L's cost of common equity was 13.5% to 14.5%, and proposed that the midpoint of the range of 14.0% be used. After flotation cost allowance, witness Smith recommended a rate of return on equity of 14.25%, later updated to 14.50%.

In addition, witness Smith presented data concerning the historical earnings of utilities and non regulated companies. According to witness Smith, electric utilities equity earnings have ranged from 11% to 13.9% over the

1974-83 period. Alternatively, witness Smith testified that unregulated companies, which are generally more risky than CP&L and other electric utilities, earned 11.5% on common equity in 1983.

In her summary from the witness stand, Dr. Smith indicated that since the time that her testimony was filed, CP&L's dividend yield had gone up further. She indicated that she thought it would be appropriate to increase the common equity return level. Therefore, witness Smith determined the cost of CP&L's equity to be 14.5%.

Public Staff witness Hsu recommended in her revised testimony that the Company should be granted the opportunity to earn a return on common equity of 15.20% if the Commission approves the Public Staff's fuel factor presented by witness Lam and adopts the Public Staff's recommendation of no additional CWIP in this proceeding presented by witness Sessoms.

Witness Hsu derived her equity cost estimate by applying the DCF model to two overlapping samples of companies which are comparable to CP&L in risk, as well as to CP&L itself. Before she made the DCF analysis, witness Hsu reviewed the current economic outlook in general, and the most recent relationships between bond yields and stock yields. Based on her observation, the volatility of interest rates has increased substantially since late 1979. She concluded that the historical relationship of the cost of equity to the cost of debt is therefore no longer applicable. Witness Hsu concluded that it is more appropriate to estimate the cost of equity directly from the current market.

Based upon a traditional DCF analysis of her two comparable groups, witness Hsu found that a common equity return of approximately 14.7% to 15.9% is expected by investors in the electric utility industry. Witness Hsu also performed a DCF analysis on CP&L itself which produced an equity cost range of from 13.9% to 15.1%. After considering her DCF analysis of the two groups and of CP&L itself, witness Hsu concluded that a recommended return on equity of 15.2% is reasonable.

During cross-examination, witness Hsu stated that her dividend yields for CP&L, Group A companies and Group B companies, were derived by averaging the highest and lowest prices for the six months ended April 30, 1984. In essence, witness Hsu admitted that had she used a different time period's prices, she would have had a different cost rate. However, witness Hsu indicated that she did check the reasonableness of her recommendation by using the most recent six months prices ended June 30, 1984, for CP&L itself only. Her DCF result for CP&L was 15.1% after adjusting for flotation costs, which was within the range of her recommendation. Therefore, witness Hsu concluded that her recommendation is reasonable even using the most recent data.

The determination of the appropriate fair rate of return for CP&L is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on CP&L, 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 interest 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 return for its shareholders, 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 rate of return allowed must not burden ratepayers any more than is absolutely 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 of North Carolina ex rel. Utilities Commission v. Duke Power Company, 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 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 market. 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.

Based upon the foregoing and the entire record in this docket, including evidence related to the base fuel factor and CWIP, the Commission finds and concludes that the fair rate of return that Carolina Power & Light Company should have the opportunity to earn on the original cost of its rate base is 11.87%. Such overall fair rate of return will yield a fair and reasonable return on the Company's common equity capital of 15.25%.

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 such even if it could. Such a guarantee would remove necessary incentives for the Company 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 ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The Commission has previously discussed its findings of fact and conclusions regarding the fair rate of return which CP&L 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 determinations made herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings of fact and the conclusions heretofore and herein made by the Commission.

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
DOCKET NO. E-2, SUB 481
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000's OMITTED)

| Item | Present Rates | Approved Increase | Approved Rates |
|---|---|---|---|
| Operating revenues | $1,202,132 | $64,339 | $1,266,471 |
| Operating revenue deductions | | | |
| Operation and maintenance expenses | 622,726 | | 622,726 |
| Depreciation expense | 92,028 | | 92,028 |
| Taxes other than income | 93,268 | 3,860 | 97,128 |
| Income taxes | 149,398 | 29,780 | 179,178 |
| Interest on customer deposits | 309 | | 309 |
| Total | 957,729 | 33,640 | 991,369 |
| Operating income before adjustment | 244,403 | 30,699 | 275,102 |
| Adjustments to operating income | 6,824 | - | 6,824 |
| Net operating income | $ 251,227 | $30,699 | $ 281,926 |

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
DOCKET NO. E-2, SUB 481
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000'S OMITTED)

| Item | Amount |
|---|---|
| Investment in Electric Plant | |
| Electric plant in service | $2,483,116 |
| Net nuclear fuel | 21,863 |
| Construction work in progress | 692,604 |
| Accumulated depreciation | (597,182) |
| Accumulated deferred income taxes | (311,966) |
| Net investment in electric plant | 2,288,435 |
| Allowance for Working Capital | |
| Investor funds advanced for operations | 18,941 |
| Materials and supplies | 83,677 |
| Other rate base additions and deductions | (15,788) |
| Total | 86,830 |
| Original Cost Rate Base | $2,375,265 |
| Rates of Return | |
| Present | 10.58% |
| Approved | 11.87% |

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
DOCKET NO. E-2, SUB 481
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000'S OMITTED)

| Item | Capitalization Ratio (%) | Original Cost Rate Base | Embedded Cost (%) | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 47.50 | $1,128,251 | 9.73 | $109,779 |
| Preferred stock | 12.50 | 296,908 | 9.18 | 27,256 |
| Common equity | 40.00 | 950,106 | 12.02 | 114,192 |
| Total | 100.00 | $2,375,265 | - | $251,227 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 47.50 | $1,128,251 | 9.73 | $109,779 |
| Preferred stock | 12.50 | 296,908 | 9.18 | 27,256 |
| Common equity | 40.00 | 950,106 | 15.25 | 144,891 |
| Total | 100.00 | $2,375,265 | - | $281,926 |

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 - 26

The evidence for these findings of fact is found in the testimony of Public Staff witness Richard Smith and Company witness Norris Edge.

Insulation Standards for Manufactured Homes

Public Staff witness Richard Smith testified that CP&L's mobile home insulation standard necessary to qualify for the 5% energy conservation discount on residential rate schedules presently permits a 25% greater heat loss than the standard for conventional homes. He cited CP&L testimony in Docket No. E-2, Sub 391, wherein a lower standard for mobile homes was proposed by the Company in 1980 because of the extreme difficulty manufacturers had in meeting the standard established for conventional housing. Witness Smith pointed out that the situation had changed since 1980 and now practically all mobile home manufacturers in North Carolina are meeting the Duke standard and are capable of meeting the similar CP&L standard for conventional housing. Witness Smith further pointed out the desirability of having a single statewide high level energy efficient insulation standard for mobile homes. Witness Smith recommended that CP&L's separate mobile home insulation standard be the

same as its current standard for conventional homes, effective April 1, 1985. Witness Smith further recommended that those mobile homes that are in compliance with CP&L's thermal requirements and are receiving the energy conservation discount should continue to do so. CP&L witness Norris Edge concurred in these recommendations by witness Smith and offered substitute residential rate schedules to implement these changes.

The Commission finds that the lower insulation standards for mobile homes are no longer necessary and concludes that the standards necessary for mobile homes to qualify for the Company's energy conservation discount should be the same as for conventional housing. The Commission also concludes that adequate notice should be given the mobile home manufacturers of this change, that the effective date should be April 1, 1985, and that mobile homes receiving discounts prior to that date should be grandfathered.

Load Control of 30-39 Gallon Water Heaters

Public Staff witness Richard Smith testified that 30- to 39-gallon water heaters constitute a significant portion of the Company's potential controllable load and recommended that the Company test a limited number of water heaters of this size in the load control program. To date, water heater load control has been limited to sizes 40 gallons or larger. Witness Smith noted that the best he can determine is that the Company is concerned that customers with small heaters might run out of hot water and withdraw from the program. Witness Smith furnished the results of a Wake EMC survey in 1983 of water heater load control which indicated that the 253 customers with 30-gallon water heaters registered no more inquiries or complaints than customers with larger heaters and that none withdrew from the program during the year because of an inadequate supply of hot water. The EMC's interruptions averaged as much as 3.3 hours per day. Witness Smith recommended that up to 200 30- to 39-gallons water heaters be tested beginning in January 1985. CP&L witness Edge agreed to conduct a one-year test program controlling 30- to 39-gallon water heaters beginning in January 1985 and to provide the Commission with the results of the test by July 1, 1986.

The Commission finds that extending water heater load control to 30- to 39-gallon water heaters could potentially expand the Company's load control capability and concludes that load control of 30- to 39-gallon water heaters should be tested as proposed.

Load Control of Air Conditioning

Public Staff witness Smith testified that the potential for air conditioning load control could be expanded further if the customers were not required to also accept electric water heater interruptions. Witness Smith furnished data on Duke's interruptible air conditioner customers which showed that in addition to 26,801 customers volunteering for both water heater and air conditioning load control, 6,394, or 24% more, volunteered for air conditioning load control only. Witness Smith proposed that the Company determine the proper billing credit for solely air conditioning control. Company witness Edge testified that a study to determine the economic benefits of providing this service could be completed and the results filed with the Commission by April 1985.

The Commission finds that the load control of air conditioners alone could enhance the Company's conservation and load management efforts and concludes that the Company should make a determination of the proper billing credit for this service and file its findings with the Commission by April 1, 1985.

Timer Control of Water Heaters for TOU Customers

Public Staff witness Richard Smith testified that only one-half of the residential customers on the Company's time-of-use comparative billing program would save compared to their standard rate and proposed that the Company install time control equipment on the customers' water heaters to expand the potential load reduction of the time-of-use rate and improve the customers' savings potential. Witness Smith noted that those customers on R-TOUE without central space heating or air conditioning can by installing a timer on their water heaters reduce on-peak usage from 30% to less than 20%. Witness Smith proposed that the customers be charged for a portion of the time control equipment and its installation. CP&L witness Edge testified that the Company desired additional time to study the Public Staff's proposal and customer charges. He proposed that the Company meet with the Public Staff to assess the areas of concern and provide the Commission with the results of this meeting within 60 days after the date of the Commission Order.

The Commission concludes that appliance control supplied by the Company might improve the effectiveness of the residential time-of-use rates and therefore should be fully explored. The Commission further concludes that the Company should consult further with the Public Staff to consider a program to test the effectiveness of the proposed appliance control for time-of-use customers and report the results of this meeting to the Commission within 60 days after the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 27 - 28

The evidence for these findings regarding rate design is found primarily in the testimony of Company witness Edge and Public Staff witness Turner.

Declining Block in Residential Rates

Public Staff witness Turner recommended a change in the Company's rate design for the Residential Service Schedule, RES-48, to eliminate the 800-kWh block in the Company's residential rate for nonsummer usage. He suggested that the Company offered no proof that the cost of providing service to customers with usage over 800 kWh per month in the nonsummer months is less than that of providing service to customers in the under 800-kWh block in those months. Witness Turner proposed a rate which includes a uniform differential of 0.34 cents per kWh between all summer and nonsummer kWh. The effect of this proposal would be to decrease the seasonal rate differential for kWh consumption over 800 kWh from 1.0 cents to 0.34 cents per kWh, and to add a 0.34 cents per kWh seasonal rate differential for consumption under 800 kWh. Witness Turner further suggested that this recommendation is consistent with the intent of the Public Utility Regulatory Policies Act (PURPA) and with prior Commission Orders to the effect that the declining block rate structure should be eliminated unless there is a cost basis for such rate design.

CP&L witness Edge testified that the Company is in agreement with witness Turner's ultimate goal of combining the two nonsummer billing blocks. Witness Edge disagreed, however, with the method of obtaining that goal. Witness Edge offered an alternate Residential Service Schedule, RES-48A, which establishes a summer/nonsummer rate differential of 0.5 cents per kWh for the zero-to 800-kWh block, while maintaining the 1.0 cents per kWh price differential for greater than 800 kWh in the nonsummer period, as found in the initial proposed Residential Service Schedule, RES-48. Witness Edge stated that the Company planned to achieve the second step in its proposal by filing a Residential Service Schedule that would eliminate the 800-kWh block for nonsummer billing in the next rate case. The Company would, however, maintain its proposed summer/nonsummer price differential. Witness Edge maintains that this "phase-in" of the combination of these two billing blocks will minimize the possibility of an unfair increase to any one customer usage level and prevent a negative impact on the system load factor. Under cross-examination by counsel for CIGFUR II, witness Edge testified that an analysis of class load factors since 1979 shows that while the load factor for the general service class is about the same or increasing, the load factor for the residential class is declining. Witness Edge attributed the drop primarily to a reduction in the nonsummer usage of all-electric customers and contended that it is important not to reduce the summer/nonsummer differential for usage over 800 kWh to prevent further load factor erosion.

The Commission is of the opinion that, in keeping with past Commission Orders and the intent of PURPA, the declining block structure for nonsummer usage should be eliminated. However, the Commission recognizes that a "phase-in" of the combination of the billing blocks, as proposed by the Company, is reasonable. In making this decision, the Commission notes that the Company's proposed alternate Residential Service Schedule, RES-48A, results in a less severe increase for high usage customers during the nonsummer months. The Company is directed to file a residential service schedule which will completely eliminate the 800-kWh block applicable to nonsummer usage in the next rate case.

Basic Customer Charges

The Company proposes to increase the basic customer charge for residential service from $6.75 to $7.35 per month. The Commission is of the opinion that there is merit in setting the basic customer charge for residential service at the $6.85 level in this proceeding and concludes that it should do so.

Relative Revenue Requirement for Each Customer Class

CIGFUR recommends that the rate of return for each customer class be moved closer to the overall North Carolina retail rate of return in determining the appropriate revenue requirement for each customer class. The Commission has generally attempted to establish rates in prior proceedings which would produce rates of return for each customer class that were within 10% of the overall North Carolina retail rate of return, recognizing that such rates of return must necessarily be imprecise due to the imprecision inherent in the cost allocation methodologies underlying the calculation of such rates of return. In this proceeding, all of the customer classes appear to be roughly within the 10% guideline except for the sports field lighting class (Schedule SFLS) and the small general service class (Schedule SGS).

The Commission notes that Schedule SFLS produces a low rate of return even after a 20.9% increase proposed by the Company versus a 12.6% increase proposed overall. Therefore, the Commission concludes that the larger increase proposed for Schedule SFLS relative to the overall increase is appropriate.

The Commission further notes that Schedule SGS produces a high rate of return, even after only a 12.3% increase, and that the same phenomenon has occurred in the Company's other recent rate cases. The Commission is of the opinion that the Company should take positive steps in its next general rate application as necessary to produce rates of return for each rate schedule which is within 10% of the overall North Carolina retail rate of return, particularly with respect to Schedule SGS.

General

In addition to the revisions already discussed, the Company proposed various miscellaneous rate changes, administrative changes, and clarifications in its rate schedules and in its terms and conditions for service which were not opposed by any party. Such changes and clarifications include in part: provisions to reduce the size of the second block in Schedule SGS from 2500 kWh to 2000 kWh in order to flatten the rate blocks of said schedule; provisions to clarify the availability of the LGS and LGS-TOU Schedules; provisions to withdraw the availability of the GLFS Schedule; provisions to add two new high-pressure sodium vapor fixtures (a 5800-lumen enclosed and a 22000-lumen shoebox) to the ALS and SLS Schedules; provisions to increase the customer charges in Rider No. 5 (Seasonal and Intermittent Service) and to clarify the application of monthly credits for such charges; provisions to adjust the revenue credit provided for in Rider No. 15 (Construction Cost Rider) to reflect not only the base cost of fuel but also a portion of variable nonfuel O&M expenses; provisions to withdraw the availability of Rider No. 55 (Customer Generation Service); provisions to modify the Service Regulations to increase the Service Charge, the standard Reconnect Charge, and the Reconnect Charge for other than normal business hours; provisions to increase the charge for underground extensions to individual single-family or duplex residences under Underground Installation Plans R-7A and R-10A, and to clarify the requirements in Plan R7-A regarding developer contributions; provisions to increase monthly minimum charges for Schedules SGS, SGS-TOU, and TSS in order to reflect not only the base cost of fuel but also a portion of variable nonfuel O&M expenses; provisions to add a minimum charge in Schedules RFS, AHS, CSG, and CSE consistent with such provision in Schedule SGS; provisions to increase charges for three-phase service in Schedules SGS, RFS, AHS, CSG, and CSE; and provisions to increase rates in Schedules RFS, AHS, CSG, and CSE by approximately 10% relative to other rate schedules in order to gradually merge said schedules with Schedule SGS over time.

Based on the above, the Commission concludes that the rate design, rate schedules, and terms and conditions for service proposed by the Company should be approved, except as discussed herein.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Power & Light Company shall adjust its electric rates and charges so as to produce an increase in gross annual revenues from its

North Carolina retail operations of $64,339,000, said increase to be effective for service rendered on and after the date of this Order.

2. That within five (5) working days after the date of this Order, Carolina Power & Light Company shall file with the Commission five (5) copies of rate schedules designed to produce the increase in revenues set forth in Decretal Paragraph No. 1 above in accordance with the guidelines set forth in Appendix A attached hereto. Said rate schedules shall be accompanied by a computation showing the level of revenues which said rate schedules will produce by rate schedule, plus a computation showing the overall North Carolina retail rate of return and the rates of return for each rate schedule which will be produced by said revenues.

3. That Carolina Power & Light Company shall prepare cost allocation studies for presentation with its next general rate application which allocate production plant based on: (1) the summer/winter peak and average method; (2) the 12-month CP method; and (3) the summer CP method. The studies shall be included in items 31 and 37, as appropriate, of Form E-1 of the minimum filing requirements for general rate applications.

4. That Carolina Power & Light Company shall continue to work with the Public Staff to study cost effective ways in which to allocate fixed and variable production costs based on the times production units are actually dispatched. The goal of such a study shall be to better define: (1) the changes in costs of production related to hourly or daily time-of-use and to seasonal time-of-use; (2) the changes in costs of production related to load factor; and (3) if feasible, differences in fixed costs and variable costs by rate class.

5. That the thermal requirements for manufactured housing necessary to qualify for the energy conservation discount on residential schedules RES, R-TOU, and R-TOUE shall be the same as the thermal requirements for conventional housing, effective April 1, 1985; except that the thermal requirements for manufactured housing served prior to April 1, 1985, shall remain the same as the current thermal requirements for said manufactured housing.

6. That residential water heater load control under Rider 56 shall be extended to up to 200 water heaters of 30 through 39 gallons capacity for a one-year test period beginning January, 1985, and that the results shall be reported to the Commission by July 1, 1986.

7. That the Company shall furnish to the Commission no later than April 1, 1985, an analysis for determining the potential benefits and the proper credit on the customer's bill for residential air conditioner load control without water heater load control.

8. That the Company shall consult with the Public Staff and make recommendations to the Commission within 60 days after the date of this Order for testing company-installed timers or other equipment to interrupt residential time-of-use customers' water heaters during on-peak hours and for an appropriate charge for this equipment.

9. That Carolina Power & Light Company shall give appropriate notice of the rate increase approved herein. Said notice shall be by bill insert to each of its North Carolina retail customers during the next normal billing cycle following the filing of the rate schedules described in Decretal Paragraph No. 2.

10. That as soon as possible after new rates go into effect as a result of this proceeding, Carolina Power & Light Company shall file with the Commission and serve upon all other parties a verified report of the balance of the deferred fuel account established by the Commission in Docket No. E-2, Sub 461, as of the date such new rates go into effect; that any other party may request a hearing within ten working days after the filing of the report to resolve the accuracy of the report; and that the account will be closed out and the balance, when reduced by the $1,675,945 already effectively refunded, if positive, will be refunded to CP&L's ratepayers as provided by further Order of this panel.

11. That the Company shall present information to the Commission in its next general rate proceeding concerning the Edison Electric Institute which will show all direct and indirect contributions to and through EEI from all sources and all expenditures by program.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of September 1984.

NORTH CAROLINA UTILITIES COMMISSION
(S E A L) Sandra J. Webster, Chief Clerk

Commissioner Tate, dissenting in part
Commissioner Cook, dissenting in part and concurring in part

APPENDIX A
DOCKET NO. E-2, SUB 481

GUIDELINES FOR DESIGN OF RATE SCHEDULES

Step 1: Determine the amount of rate schedule revenues and other revenues, respectively, which are necessary to produce the overall revenue requirement established by the Commission in this proceeding.

Step 2: Decrease the rate schedule revenues proposed by the Company for each rate schedule by the same percentage to produce the total rate schedule revenues determined in Step 1.

Step 3: Reduce the individual prices in a given rate schedule by the same percentage to reflect the decrease in revenue requirement for the rate schedule as determined in Step 2, except as follows:

(a) Set the basic customer charge for residential rate Schedule RES at $6.85.

(b) Individual prices to be decreased in rate schedule RES are those revised prices proposed by the Company as discussed herein.

(c) Decrease prices in the TOD rate schedules in such a manner that they will remain basically revenue neutral with comparable non-TOD rate Schedules considering projected revenue savings for the TOD rates.

(d) Hold miscellaneous service charges and extra charges at the same level proposed by the Company.

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.

DOCKET NO. E-2, SUB 481

COMMISSIONER TATE, DISSENTING IN PART. Regulation must, above all, be fair. I dissent to this Order because the Panel has failed to give fair and consistent treatment to this Company on the issues of the period of amortization of abandoned plant, officers' salaries, and the handling of the deferred fuel account.

The proper rate-making treatment of abandoned plants has been troublesome to this Commission and all other regulatory bodies. There are two preliminary requirements which must be met before any recovery is allowed: (1) the abandoned plant was necessary to meet the projected load when construction was begun and (2) the decision to cancel the plant was reasonable and proper. The Panel agrees that CP&L made prudent decisions both in deciding to build Harris 2 and in deciding to cancel it. Next, it must be decided whether the cost of the abandoned plant should be placed in rate base. This Commission has ruled that under North Carolina law an abandoned plant cannot be placed in rate base because the plant will never be "used and useful." However, investors have advanced funds in a prudently incurred and prudently cancelled endeavor. Therefore, the loss should be amortized to the cost of service over a reasonable period. It is debatable, in my view, whether a return on the debt and preferred stock portions of cancellation costs should be allowed. This Commission has concluded that no return should be allowed to stockholders on any portion of the money advanced by investors, whether equity, preferred or debt. However, this Commission has consistently decided that the reasonable period over which the actual investment is recovered should be 10 years. See our Orders as to Duke's Cherokee Unit Nos. 1, 2 and 3 in Docket No. E-7, Subs 358 and 373; our Orders as to Vepco's Surry Unit Nos. 3 and 4 in Docket No. E-22, Subs 224, 257, 265 and 273; our Orders as to Vepco's North Anna Unit No. 4 in Docket No. E-22, Subs 257, 265 and 273; our Order as to Vepco's North Anna Unit No. 3 in Docket No. E-22, Sub 273; as well as our Order as to CP&L's Harris Unit Nos. 3 and 4 in Docket No. E-2, Sub 461, all of which approved 10-year amortization periods.

In the last Vepco case, Docket No. E-22, Sub 273, (at page 12) the Commission said:

"Utilization of a 10-year amortization period is proper and fair in this proceeding for the reason that such an amortization period,

particularly when considered in conjunction with the Comission's decision as subsequently discussed, to allow Vepco no return on the unamortized balance, will serve to more reasonably and equitably share the burden of such plant cancellations between the Company's shareholders and its present and future ratepayers."

and at page 13:

"Thus, amortization should be allowed. However, on the other hand, the ratepayer must not bear the entire risk of the Company's investment. A middle ground must be found on which the Company bears some of the risk of abandonment and the ratepayer is protected from unreasonably high rates. The losses resulting from cancellations of utility generating plants will inevitably be borne by one or a combination of three groups: the utility investors, the ratepayers, and the income taxpayer. A recent study prepared by the United States Department of Energy indicates that a 10-year amortization of such losses will distribute costs in proportions that the Commission considers fair and equitable, even considering the effects of CWIP in rate base in North Carolina. NUCLEAR PLANT CANCELLATIONS: CAUSES, COSTS, AND CONSEQUENCES, United States Department of Energy, Washington, D. C. (April 1983). The Commission believes this will result in a fair and reasonable treatment of both the utility and its consumers."

And in Duke's most recent case, Docket No. E-7, Sub 373, the Commission at page 36 ruled:

"In determining the appropriate amount of depreciation and amortization expense to be included in the cost of service, the Commission notes that the C.U.C.A. proposed order recommends amortizing the loss associated with Cherokee units 1, 2, and 3 over a fifteen (15) year period. Both the Public Staff and the Company amortized this item over a ten (10) year period, as found to be reasonable by the Commission in Docket No. E-7, Sub 358."

In Docket No. E-7, Sub 358, at page 12, the Commission said:

"The proper ratemaking treatment of abandonment losses related to electric generating plants has been before the Commission in several cases and will continue to arise in future cases. The Commission has, therefore, undertaken to reexamine this important issue in order to develop a more consistent and equitable approach to it. The Commission's ultimate responsibility with respect to ratemaking is to fix rates for the service provided which are fair and reasonable both to the utility and to the consumer. G.S. 62-133(a); State ex rel. Utilities Commission v. Morgan, 277 N.C. 255, 177 S.E. 2d 405 (1970); State ex rel. Utilities Commission v. Area Development, Inc. 257 Inc., 257 N.C. 560, 126 S.E. 2d 325 (1962). (Italics, mine)

"Although the parties to this proceeding may disagree as to the proper amortization period, they generally agree that the Company should be allowed to recover the prudently invested cost of its abandonment losses through amortization over some period of time.

> The Commission, based upon the evidence presented, must determine what is a fair amortization period in order to fairly allocate the loss between the utility and the consumer. With regard to the Cherokee Units 1, 2 and 3, the Commission concludes that utilization of a 10-year amortization period is proper and fair in this proceeding for the reason that such an amortization period, particularly when considered in conjunction with the Commission's decision, as subsequently discussed, to allow Duke no return on the unamortized balance, will serve to more reasonably and equitably share the burden of such plant cancellations between the Company's shareholders and its present and future rate-payers."

Thus both Duke's and Vepco's abandoned plants are being amortized over 10 years, yet this Panel concludes CP&L's Harris No. 2 recovery should be stretched over 15 years. Inconsistent? Yes. Fair? No. All companies should have the same treatment on the same issue, unless there are significant differences. The majority cites no such differences. Neither does the majority cite any difference between this abandonment and the previous Harris abandonments by CP&L, which have been allowed 10-year amortization. It asserts that the present decision must be made "separate and apart" from prior decisions on abandonment losses despite the Commission's recent efforts to develop a "more consistent and equitable approach" to this recurring issue. The majority decision that a 15-year amortization period is "more equitable" contradicts our numerous prior decisions in favor of 10-year amortization without giving any explanation as to why its decision is better.

Similarly, the question of who should pay for officers' salaries should be resolved consistently for all regulated companies. This issue first arose during the recession when the Commission concluded that CP&L had granted inordinately large increases to its officers and the increased salaries should be paid for by CP&L's stockholders, not its ratepayers. Some portion of some officers' salaries were excluded for CP&L, Vepco and Duke in 1982, and for CP&L in 1983. In 1984 cases, all officers' salaries have been included in the cost of service for Vepco and Duke. It is impossible to believe that any utility could operate and provide adequate service without its officers. There is no testimony in this case that CP&L's officers have received excessive increases in the test year, nor that the salaries CP&L pays are out of line with other utilities' salary levels. There is no apparent reason for this Panel's decision to penalize CP&L by disallowing an essential cost of providing utility service. Therefore, I dissent.

Again, based on fairness, I cannot concur with this Panel's handling of the deferred fuel account. I do agree that the previous CP&L Panel decided that the base fuel cost could not be determined with exactitude at the time of the rate case, and therefore set up a deferred fuel account because no interim fuel cost procedure was then in place. Quite reasonably, that Panel decided to place <u>all</u> fuel cost recoveries in a deferred account with final determination to be made at a time when actual fuel costs were known. That decision acknowledged that fuel costs should be recovered but were then unknown, and to protect the ratepayers, any over-collections were to be refunded. (Any under-collections were to be absorbed by the Company, a somewhat one-sided procedure). I agree with this Panel's decision that actual fuel costs in the deferred account should be determined as of the time that the new fuel costs in this docket become effective. I also agree that all over-collections, as of

that time should be refunded to consumers. Where I disagree with the majority is that I believe all past fuel costs should be dealt with at the time new rates go into effect. When CP&L filed its rate case, it estimated that there had been an over-recovery of fuel cost of $1,675,945 as of September 1983, and this amount was deducted from the revenue requested. If the amount in the deferred account is an over-collection at the time new rates become effective, the $1.6 million can be deducted from the amount to be refunded, since this amount has already been credited to cost of service. If, however, there should be an under-collection at the time new rates go into effect (and no one now knows whether that account at that date will be plus or minus) $1.6 million in over-collections will already have been refunded to consumers. This is patently unfair. No refunds should be determined until the time new rates are in effect, and that includes the $1.6 million already credited to ratepayers. This will be a moot issue if an over-collection occurs. In the event that on the determined date an under-collection of actual fuel costs incurred is shown it will not be a moot point, it will be a $1.6 million mistake. The actual amount is unknown, but let us be fair! Since $1.6 million has been deducted in the revenue requested, this same $1.6 million should be included in the total cost of actual fuel costs incurred. To act as the majority has, that is to say that all under-collections plus $1.6 million must be absorbed by the Company, is not in my opinion fair. Aequum et bonum est lex legum.

Sarah Lindsay Tate, Commissioner

CAROLINA POWER & LIGHT COMPANY
DOCKET NO. E-2, SUB 481

COMMISSIONER COOK, DISSENTING IN PART AND CONCURRING IN PART. I strongly dissent from the decision of the Majority in this case to include additional expenditures for construction work in progress (CWIP) in CP&L's rate base in the amount of $196,006,000 related to the construction of Harris Unit No. 1. I further dissent from the rate of return on common equity allowed CP&L by the Majority. The Company's rate base presently includes $496,598,000 of CWIP for Harris No. 1. I would not increase the level of CWIP in this case beyond that amount for the reasons hereinafter stated in this dissenting opinion. Based upon the Majority decision to allow CWIP of $692,604,000, CP&L's allowed rate of return on common equity should be set at 14.7% or less, rather than the 15.25% allowed by the Majority, in order to compensate for the Company's lowered business risk resulting from the inclusion of CWIP in rate base. The Majority decision allowing CP&L a 15.25% rate of return on common equity results in the Company's ratepayers having to pay at least $11 million per year in additional rates. I find that to be totally unjustified.

I note that the Majority decision to include almost 100% of the CWIP requested by CP&L in this case will itself cause the Company's retail ratepayers in North Carolina to immediately begin paying additional rates of $39,410,000 on an annual basis in addition to the annual CWIP revenue requirement of $99,846,000, which is already reflected in rates. Thus, the additional CWIP granted in this proceeding amounts to over 61% of the entire rate increase granted to CP&L by the Majority decision. Furthermore, the Majority decision on CWIP means that a North Carolina retail electric customer using 1,000 Kwh of electricity per month will now pay, on an average basis, approximately $2.00 more, above the $5.00 already included in rates for CWIP,

merely to provide CP&L with a return on construction work in progress. This charge is for a nuclear generating plant which will not begin producing even a single kilowatt-hour of electricity until March 1986, at the earliest. A customer using more electricity will pay proportionately more in rates to support CWIP. In addition, the annual revenue requirement associated with the CWIP allowed by the Majority in this case for Harris Unit No. 1 now amounts to 11% of CP&L's total authorized North Carolina retail revenues of $1,266,471,000. Furthermore, under the Majority decision, CWIP related to Harris Unit No. 1 now makes up over 29% of the Company's entire rate base.

G.S. 62-133(b)(1) is very specific with respect to the regulatory treatment of construction work in progress. The statute states that: "... reasonable and prudent expenditures for construction work in progress ... may be included, to the extent the Commission considers such inclusion in the public interest and necessary to the financial stability of the utility in question ..."

It is my view that the inclusion of additional CWIP in this case is not necessary to the continued financial stability of Carolina Power & Light Company; nor is such inclusion in the public interest. However, the "financial stability" requirement is the one I will focus on.

In applying for a rate increase, the burden of proof rests with the Company to justify its request. In my view, CP&L has not satisfactorily resolved the financial stability question. The Company has not made an argument that I find persuasive in the least to indicate that its financial stability would be affected if additional CWIP were not allowed in this case.

There has been a lot of rhetoric on the Company's part, to be sure, but it has been largely that--rhetoric, and no more! To wit--"CWIP in rate base should not be reserved only for those situations where it becomes necessary to rescue a utility from the brink of financial collapse." (CP&L Brief, p. 17). What a truism! As if anyone were arguing otherwise.

The evidence presented by the Company in making its continued financial stability contingent on the inclusion of CWIP is weak and superficial.

To say, as the Company has done on p. 18 of its Brief, "It is clear from the evidence that the inclusion of the entire amount of eligible Harris Unit No. 1 CWIP is necessary for the Company's financial stability," is preposterous. It is like the "Emperor has no clothes" story. The truth and accuracy of this statement is, in fact, <u>not</u> clear at all and the Company's saying it is, does not make it so.

The Company turns the treatment of CWIP into an Armageddon--include CWIP and all will be well. The Company will maintain its A bond rating, it will complete construction of Harris Unit No. 1 (on time), costs to ratepayers will be lower and there will be smaller increases to rates in the future. Exclude additional CWIP and all will be lost--there will be a weakening of the Company's ability to complete its construction program, resulting in higher costs to ratepayers and larger increases in rates in the future. The evidence presented by the Company does not substantiate these claims. All of this, because CWIP-related revenues of $39,410,000 or approximately 3% would have been denied out of total North Carolina jurisdictional revenues of

$1,266,471,000. The Company's claim truly boggles the mind. It is looking through a glass darkly.

Moreover, in attempting to justify the level of CWIP requested by the Company in this case, CP&L President Smith testified that: "A level of CWIP in rate base sufficient to enable the Company to improve its financial statistics and thereby successfully raise construction capital is essential in view of the level of external funds that will be required by the Company over the next three years." (Tr. Vol. 6, p. 23.) The Majority Order also speaks of its decision on CWIP as serving to improve the Company's financial statistics. However, "improvement of financial statistics" is not the statutory test to be applied in this case. To the contrary, G.S. 62-133(b)(1) specifies that CWIP must be "... necessary to the financial stability of the utility in question ..." which is a far different standard than "necessary to improve the financial statistics of the utility in question." In my opinion, CP&L is currently a financially stable electric utility and will remain so even if additional CWIP is disallowed in this case by the Commission.

Many factors, other than the level of CWIP allowed CP&L, will determine CP&L's level of financial statistics and bond rating, including factors such as management efficiency, cash flow generation, availability and efficiency of existing generating plants, a significant postponement of the in-service date of Harris Unit 1, the reasonableness of the regulatory treatment accorded CP&L by other state and federal regulatory agencies, and many other intangible factors which are entirely beyond the control of this Commission. Even Company witness Spann conceded this point on cross-examination. (Tr. Vol. 11, pp. 164-165).

Company President Smith also testified on cross-examination that CP&L is not on a credit watch list published by any of the credit rating agencies, such as Standard & Poor's or Moody's, indicating a potential for a rating change. (Tr. Vol. 6, p. 118). This further corroborates my opinion that CP&L is in fact financially stable. Were it otherwise, it is certainly a reasonable assumption that the credit-rating agencies would have placed CP&L on their credit watch lists.

On the other hand, the evidence presented by the Public Staff and other intervenors speaks to the "financial stability" factor in clear and compelling terms.

For instance, Public Staff witness Sessoms testified that, based upon his investigation in this case, CP&L presently has an A bond rating and is financially stable. I am in complete agreement with this opinion. Furthermore, Mr. Sessoms testified that he examined several indicators or financial ratios which together should provide a measure of financial stability. Where the information was available, he compared CP&L's ratios to the average ratios of the electric utilities rated A by both Moody's and Standard & Poor's beginning with 1979 through the most current data available. Witness Sessoms also presented a Standard & Poor's chart of target financial criteria which showed ranges for pre-tax interest coverage, debt leverage, and net cash flow/capital outlays for A-rated electric utilities. He presented evidence comparing the Company's ratios for the 12 months ended March 31, 1984 and June 30, 1984 to these three criteria. For the 12 months ended June 30, 1984, CP&L had pre-tax interest coverage, including AFUDC, of 3.1 times compared to the 2.5 - 3.5

times target range; a 50% debt leverage ratio compared to the 45%-55% target range; and a 41% net cash flow/capital outlays ratio compared to the 20%-50% target range. According to this evidence, it is clear that CP&L is at present well within the acceptable levels for an A bond rating with regard to these three criteria in particular.

In addition, Company witness Lilly testified that a financially stable A-rated electric utility should have a strong capital structure comprised of less than 50% long-term debt and at least 40% common equity and a pre-tax interest coverage, excluding AFUDC, in excess of 2.5 times. (Tr. Vol. 9, pp. 15-16). Company witness Vander Weide testified that the interest coverage ratio and the ratio of equity to total capitalization are two of the most often used measures of financial integrity and that CP&L's percent of common equity has been near the electric industry average for at least the last few years. (Tr. Vol. 10, pp. 153-155). In this case, CP&L has been allowed a capital structure for rate-making purposes comprised of 47.5% long-term debt, 12.5% preferred stock, and 40% common equity. Furthermore, for the 12-month period of time ended June 30, 1984, CP&L, in fact, experienced a pre-tax interest coverage, excluding AFUDC, of 2.5 times on a total Company basis. (Tr. Vol. 24, pp. 32, 44-45). Thus in the words of CP&L witness Lilly, the Company has a "strong capital structure." The Company also has sufficient financial strength, at the very least, to produce the minimum pre-tax interest coverage, excluding AFUDC, recommended by Mr. Lilly for a financially stable A-rated electric utility.

Although witness Sessoms testified on cross-examination that certain financial ratios for CP&L were below the average of the A-rated electrics, he further noted that there are other factors to consider. In this regard, witness Sessoms testified that CP&L is well within the range of ratios exhibited by other A-rated electrics. The Company is showing improvement in the financial ratios that use earnings in the calculation and has received recent rate increases in all jurisdictions in which the Company operates. Those rate increases have not been in effect long enough to be reflected in the Company's operations for a full year. CP&L has also experienced this improvement while operating under a rate of return penalty in North Carolina and while undergoing its heaviest year of Harris Unit No. 1 construction expenditures.

Witness Sessoms testified that although CP&L is, in fact, undergoing a large construction program, the Company is nevertheless maintaining adequate levels of internal cash generation so as not to adversely affect the Company's financial stability and that in 1985 and 1986, the Company's construction expenditures will decrease and internal cash generation will improve even further. Mr. Sessoms also testified that the Public Staff's recommended return on rate base produces an approximate 4.01 times pre-tax interest coverage, including AFUDC, or an approximate 3.2 times coverage, excluding AFUDC. Witness Sessoms noted that the 3.2 times coverage is higher than the 3.0 times average of the A-rated utilities for 1983 and higher than the 3.1 times coverage implicit in the Commission's Final Order in Docket No. E-2, Sub 461 on a North Carolina jurisdictional basis. The Majority Order in this case generously provides for a 3.6 times pre-tax interest coverage, excluding AFUDC, for CP&L on a North Carolina jurisdictional basis.

Public Staff witness Hsu supported Mr. Sessoms' recommendations and stated that the inclusion of additional CWIP in rate base is not needed to meet the statutory criterion of G.S. 62-133(b)(1) related to "financial stability."

CUCA witness Wilson stated that his analysis shows that CP&L's current rates are covering operating expenses and interest and dividend requirements and are substantially covering construction expenditure requirements. Dr. Wilson testified that CP&L's present financial circumstances do not warrant the inclusion of additional CWIP in rate base at this time because of the Company's construction program. He stated that he did not believe that even the current amount of CWIP allowed CP&L is necessary to the Company's financial stability.

CUCA witness Smith noted that there are electric utilities which have AA ratings with ratios similar to CP&L and BBB-rated utilities with better ratios in some comparisons. This led Dr. Smith to the belief that these ratios are only an indirect indicator of what the bond rating is going to be. She stated that the ratios would not determine what the Company's bond rating would be, but rather the rating agencies are focusing on the probability of something going wrong with the nuclear construction program. She correctly indicated that it is within the Company's control rather than the Commission's whether or not Harris Unit No. 1 will be successfully completed.

Furthermore, since the Majority apparently believes that CP&L's financial fortunes and additional CWIP are irretrievably bound together--then why grant the Company a 15.25% return on common equity? Since additional CWIP in the amount of $196,006,000 has been included in CP&L's rate base by the Majority, the Company's risk factor has been significantly reduced. Why, then, not allow CP&L a rate of return of 14.7% or less? This seems to be a case of "Heads I win, tails you lose" -- with the Company the winner and the ratepayers the losers. I find this to be considerably less than even-handed regulatory treatment.

In this regard, Public Staff witnesses Sessoms and Hsu testified that the inclusion of CWIP in rate base eliminates one of the major elements of risk to investors of electric utilities and that should the Commission continue to place additional CWIP in rate base for CP&L, which the Majority has done in this case, consideration should be given to the elimination of this risk when setting the allowed return on equity by setting such allowed return at the lower end of the reasonable range. Witness Hsu testified that investors in the electric utility industry expect a common equity return within the range of 14.7% to 15.9% and that for CP&L the reasonable equity return range is from 13.9% to 15.1%. (Tr. Vol. 25, pp. 73, 89).

CUCA witness Wilson also testified that CP&L's allowed rate of return on capital, particularly common equity, should be substantially reduced whenever CWIP is permitted to be included in rate base since a major element of business risk would thereby be eliminated.

In my opinion, the Majority has completely ignored this important consideration in determining CP&L's rate of return, notwithstanding unsupported and unsubstantiated recitations in the Order to the contrary. In this regard, I find it inconceivable that the Majority could seriously maintain, as it has in fact done, that allowance of a rate of return of 15.25% on common equity in this case represents "the lower end of the range of reasonable and fair rates

of return for CP&L's common equity investors," given the fact that such rate of return is even higher than those recommended by Public Staff witness Hsu at 15.2% and CUCA witness Smith at 14.5%. Both witnesses predicated their recommended rates of return upon the disallowance of additional CWIP to CP&L in this proceeding.

I otherwise concur in the remainder of the Majority decision in this case, particularly the decision to amortize the Harris Unit No. 2 abandonment loss over 15 years, rather than 10 years as requested by CP&L. While there is nothing magic per se about either the 10-year or 15-year amortization period, my interest is in seeing that the abandonment costs are shared equitably between ratepayers and stockholders. I view that as a matter of simple fairness. A 15-year amortization period more nearly reflects my position.

In this regard, evidence presented by the Public Staff clearly indicates that a 15-year amortization period will result in a nearly equal sharing of the economic costs associated with the Harris Unit No. 2 abandonment between CP&L's ratepayers and its shareholders when compared on a present value basis. The 10-year amortization period proposed by CP&L for the Harris Unit No. 2 abandonment loss would, in my opinion, result in ratepayers bearing a disproportionately large share of the abandonment costs. Stated on a present value basis, ratepayers would be required to bear 64% of the abandonment costs while CP&L's shareholders would bear only 36% of such costs. (See Paton Exhibit 1, Schedules 3-1(a)(2) and 3-1(a)(4)). I believe a 50-50 sharing of such costs is entirely fair and equitable to both ratepayers and shareholders. By this Majority decision, rates now paid by CP&L customers will be $8 million less on an annual basis than they would have otherwise been had the Commission adopted CP&L's proposed 10-year amortization period for the Harris Unit No. 2 abandonment loss.

In conclusion, I dissent from the Majority position on CWIP because the Company has not met the "financial stability" test to my satisfaction and, therefore, additional CWIP should be excluded. I also dissent from the Majority decision to allow CP&L a rate of return on common equity of 15.25% for the reason that inadequate consideration has been given to the degree to which the Company's risk factor has been reduced by the inclusion of $692,604,000 of CWIP in this proceeding.

September 21, 1984

Ruth E. Cook
Commissioner

DOCKET NO. E-2, SUB 481

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Carolina Power & Light Company<br>for Authority to Adjust and Increase Its<br>Electric Rates and Charges | ) | FINAL ORDER GRANTING<br>PARTIAL INCREASE IN<br>RATES AND CHARGES<br>AND REQUIRING REFUNDS |

HEARD IN: Superior Courtroom, 5th Floor, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on June 12, 1984

The Wayne Center, Corner of George and Chestnut Streets, Goldsboro, North Carolina, on June 14, 1984

Courtroom 317, Courthouse Annex, Corner of Fourth and Princess Streets, Wilmington, North Carolina, on June 18, 1984

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on July 9, 1984, July 16-20, July 27, July 30 - August 3, August 6-9, and November 14 - 15, 1984

BEFORE: Chairman Robert K. Koger, Presiding, and Commissioners Sarah Lindsay Tate, Edward B. Hipp, A. Hartwell Campbell, Ruth E. Cook, Charles E. Branford, and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:

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Linda Markus Daniels, Walter E. Daniels, P.A., P.O. Box 13039, Research Triangle Park, North Carolina 27709
For: Carolina Power & Light Company

For the Intervenor State Agencies Representing the Using and Consuming Public:

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For: Public Staff - North Carolina Utilities Commission

Robert Cansler, Asistant Attorney General; Alfred N. Salley, Assistant Attorney General; Steven F. Bryant, Assistant Attorney

General; and Angeline M. Maletto, Associate Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina, 27602
For: The Attorney General of the State of North Carolina

For the Other Intervenors:

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For: Carolina Utility Customers Association, Inc.

David A. McCormick, Regulatory Law Office, Department of the Army, Nassif Building, Falls Church, Virginia 22041
For: Department of Defense of the United States

John Runkle, Attorney at Law, 307 Granville Road, Chapel Hill, North Carolina 27514
For: Conservation Council of North Carolina

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For: Carolina Industrial Group for Fair Utility Rates - Federal Paper Board Company, Inc.; Huron Chemicals of America, Inc.; LCP Chemicals & Plastics, Inc.; Monsanto Company; Union Carbide Corporation; Clark Equipment Company; Corning Glass Works; Diamond Shamrock Chemical Company; Masonite Corporation; North Carolina Phosphate Corporation; Outboard Marine Corporation; Firestone Tire and Rubber Company; and Weyerhaeuser Company

Wilbur P. Gulley, Gulley and Eakes, Attorneys at Law, P.O. Box 3573, Durham, North Carolina 27702
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For: Kudzu Alliance

BY THE COMMISSION: On February 21, 1984, Carolina Power & Light Company (Applicant, the Company or CP&L) filed an application with the North Carolina Utilities Commission (NCUC or the Commission) seeking authority to adjust and increase electric rates and charges for its North Carolina retail customers. Said application seeks rates that produce approximately $151,600,000 of additional annual revenues from the Company's North Carolina retail operations, an approximate 12.6% increase in total North Carolina retail rates and charges. The Company requested that such increased rates be allowed to take effect for service rendered on and after March 22, 1984. The principal reasons set forth in the application supporting the requested increase in rates were (1) the need to improve earnings so as to attract capital necessary for plant modifications and expansion; (2) the need to earn the cost of financing capital additions to plant under construction; (3) the recovery of CP&L's investment in cancelled Harris Unit No. 2; and (4) the increased expense of the overall operation of the Company's system.

In addition to the application, the Company also filed on February 21, 1984, an Undertaking. Corrections to the Undertaking were filed by the Company on March 6, 1984.

This docket was originated by the Company's filing on January 19, 1984, its letter of intent to file an application for an increase in its general rates as is required by Commission Rule R1-17(a). The Company filed a request for waiver of certain Form E-1 requirements on January 25, 1984. On February 8, 1984, the Public Staff filed its response to the Company's waiver request; and on February 15, 1984, the Commission issued an Order Waiving E-1 Filing Requirements.

The Attorney General and the Public Staff filed Notices of Intervention on March 1, 1984, and March 8, 1984, respectively. On March 12, 1984, the Petition of the Secretary of Defense on behalf of the Department of Defense of the United States for Leave to Intervene was filed with the Commission. By Order issued March 14, 1984, the Commission allowed the Department of Defense to intervene.

On March 22, 1984, the Commission issued an Order declaring CP&L's application to be a general rate case pursuant to G.S. 62-137, suspending the Company's proposed rates pursuant to G.S. 62-134 for a period of up to 270 days from the proposed March 22, 1984, effective date, and stating that provision for the scheduling of public hearings and publishing of notice would be by separate Commission Order. By Order issued March 29, 1984, the Commission scheduled public hearings on the application, established the test period to be the 12-month period ended September 30, 1983, and required public notice of the application and hearings.

On April 2, 1984, the Company filed a Motion to Amend Order Scheduling Public Hearings and Requiring Public Notice. On April 4, 1984, the Commission issued an Order Approving Undertaking and Amending Notice to the Public, which approved the Company's revised Undertaking, granted the Company's April 2, 1984, Motion to Amend, changed the location of the public hearing scheduled to be held in Wilmington, and required a revised Notice of Hearing.

Carolina Utility Customers Association, Inc. (CUCA), filed its Petition to Intervene and Protest on April 13, 1984. CUCA was allowed to intervene by Commission Order dated April 19, 1984.

On April 16, 1984, a Petition to Intervene was filed on behalf of the Carolina Industrial Group for Fair Utility Rates, CIGFUR II, consisting of: Federal Paper Board Company, Inc.; Huron Chemicals of America, Inc.; LCP Chemicals and Plastics, Inc.; Monsanto Company; and Union Carbide Corporation. CIGFUR II's intervention was allowed by Commission Order issued on April 19, 1984.

On April 20, 1984, a letter from Robert P. Gruber, Executive Director of the Public Staff, was filed. Mr. Gruber's letter forwarded a letter from an Asheville citizen concerning the location of the Asheville hearing and requested that it be given favorable consideration. On April 20, 1984, the Commission issued an Order Scheduling Additional Public Hearing, which scheduled an additional public hearing in Asheville and required notice of the additional hearing.

On May 4, 1984, CUCA filed its Motion to Require Production of Documents and Data. The Company filed its response to CUCA's Motion on May 11, 1984, objecting to certain items and requesting until June 7, 1984, to respond to the items requested. The Commission issued an Order on May 11, 1984, ordering that the Company respond to all items not objected to no later than June 1, 1984, and that the Company not be required to respond to the items objected to unless CUCA filed justification and the Commission issued a further order so requiring. On May 15, 1984, CUCA filed its Reply of Carolina Utility Customers Association, Inc., to CP&L's Objections dated May 11, 1984, and Commission Order of same date. The Company filed Carolina Power & Light Company's Comments to CUCA reply on May 21, 1984. The Commission issued its Order Ruling On Discovery Request on May 24, 1984.

CUCA filed a Motion to Require Additional Production of Documents and Data on May 21, 1984. By Order issued May 25, 1984, the Commission required CP&L to respond to CUCA's May 21, 1984, request no later than June 1, 1984.

On May 30, 1984, North Carolina Eastern Power Agency filed a Petition to Intervene. The Conservation Council of North Carolina filed a Petition to Intervene on June 7, 1984. By Commission Order issued on June 12, 1984, the Conservation Council was allowed to intervene.

The Company filed an amendment to the Company's Form E-1 Information Report on June 8, 1984.

On June 28, 1984, Kudzu Alliance filed its Petition for Intervention. Kudzu Alliance was allowed to intervene by Commission Order issued July 2, 1984.

By letter dated and filed July 10, 1984, Commissioner Hipp requested all the parties to file and serve on the other parties the name of the party's witnesses and the order in which they would be called and an estimate of the length of cross-examination for each witness who had prefiled testimony. The Attorney General, CUCA, the Eastern Municipal Power Agency, the Public Staff, CP&L, CIGFUR, and the Department of Defense all filed the information requested by Commissioner Hipp. During the hearings, the Conservation Council of North Carolina provided the requested information and the Public Staff and CP&L revised certain of their estimates.

On July 10, 1984, CIGFUR II filed a Petition to Amend Intervention to include Clark Equipment Company, Corning Glass Works, Diamond Shamrock Chemical Company, Masonite Corporation, North Carolina Phosphate Corporation, Outboard Marine Corporation, the Firestone Tire and Rubber Company, and Weyerhaeuser Company. CIGFUR's Petition to Amend Intervention was granted by Commission Order issued July 12, 1984.

Various other filings and motions were made and Orders entered prior to and during the hearing, all of which are a matter of record. Further, pursuant to various Commission Orders or requests, also of record, various parties were directed or permitted to file and serve certain exhibits, either during or subsequent to the hearings held in this matter.

Public hearings were held as scheduled by the Commission for the purpose of receiving the testimony of public witnesses. The following persons appeared and testified:

Asheville: Pink Francis, William Beinoff, David Spicer, Fred Sealy, Charles Brookshire, Helen Reed, Gregory T. Neff, Garret Al Derfer, David Huskins, Charles Price, George Ingle, and Carolyn Goodwin.

Goldsboro: Steve Sams, Ronnie Jackson, Berry Franklin Godwin, Margaret Martin, Laura Smith, James D. Barnwell, Ernest Smith, Rachel Jefferson, Ed Harris, Ed Allen, Rev. Willard Carlton, and Doris Petrak.

Wilmington: Oswald Singer, Elaine Johnson, Elias H. Pegram, Jr., Raymond Mager, Bill Haughton, Joseph S. Moorefield, Grace Everette, R. H. Walker, Ronald Sparks, Lou Ellen Vestile, and Larry Vestile.

Raleigh: Virgil Reed, Dr. David O. Weaver, Malcolm Montgomery, Stephen Welgos, Paul Brummitt, Gregg Strickland, Frank Penny, Oline Spence, Eula Mae Davis, Jane R. Montgomery, Jean Smith, Richard E. Giroux, Betsy Levitas, David Drooz, Carolyn Cochran, Larry Martin, James Berry, Joseph R. Overby, Daniel F. Read, Gerald C. Folden, Deb Leonard, Davis Bowen, Dr. Nettie Grove, Elisa Wolper, Slater Newman, Joseph Reinckens, and Jane Sharpe.

On July 16, 1984, the case in chief came on for hearing as ordered for the purpose of presenting the Applicant's evidence. The Applicant presented the testimony and/or exhibits of the following witnesses:

1. Sherwood H. Smith, Jr., President, Chief Executive Officer, and Chairman of the Board of Directors of CP&L;

2. Edward G. Lilly, Jr., Executive Vice President and Chief Financial Officer of CP&L;

3. Dr. James H. Vander Weide, President of Utility Financial Services, Inc., and Adjunct Professor of Finance at the Fuquay School of Business, Duke University;

4. Dr. Robert M. Spann, Principal and Member of the Board of Directors of ICF, Incorporated;

5. M. A. McDuffie, Senior Vice President, Nuclear Generation;

6. Patrick W. Howe, Vice President, Brunswick Nuclear Project;

7. James M. Davis, Jr., Senior Vice President of Operations Support;

8. Steven S. Faucette, Jr., Director of Regulatory Accounting;

9. Paul S. Bradshaw, Vice President - Accounting Department and Controller;

10. David R. Nevil, Manager - Rate Development and Administration in the Rates and Service Practices Department;

11. Joe A. Chapman, Independent Utility Consultant, formerly Supervisor - Rate Support in the Rates and Service Practices Department; and

12. Norris L. Edge, Vice President - Rates and Service Practices Department.

The Intervenor Conservation Council of North Carolina presented the testimony and exhibits of Dr. G. George Reeves, President of Energy Control Systems.

The Intervenor Carolina Industrial Group for Fair Utility Rates presented the testimony and exhibits of Nicholas Phillips, Jr., Consultant, Drazen-Brubaker & Associates, Inc.

The Intervenor Carolina Utility Customers Association, Inc. presented the testimony and exhibits of Dr. Caroline M. Smith, Senior Economist, and Dr. John W. Wilson, Economist and President, J. W. Wilson and Associates, Inc.

The Intervenor Kudzu Alliance presented the testimony and exhibit of Wells Eddleman, Independent Energy and Pollution Control Consultant.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Thomas S. Lam, Engineer with the Electric Division of the Public Staff;

2. Richard N. Smith, Jr., Engineer with the Electric Division of the Public Staff;

3. Michael W. Burnette, Engineer with the Electric Division of the Public Staff;

4. Benjamin R. Turner, Jr., Engineer with the Electric Division of the Public Staff;

5. George E. Dennis, Supervisor of the Water Section of the Accounting Division of the Public Staff;

6. George T. Sessoms, Jr., Public Utilities Financial Analyst with the Economic Research Division of the Public Staff;

7. Hsin-Mei C. Hsu, Director of the Economic Research Division of the Public Staff; and

8. Candace A. Paton, Staff Accountant with the Accounting Division of the Public Staff.

On September 21, 1984, the Commission Hearing Panel entered a Recommended Order Granting Partial Increase In Rates and Charges in this docket whereby CP&L was authorized to increase its rates and charges so as to produce additional gross annual revenues from the Company's North Carolina retail operations in the amount of $64,339,000.

On September 26, 1984, CP&L filed interim tariffs pursuant to G.S. 62-135 effective for service rendered on and after September 22, 1984. The tariffs in question were designed to produce an annual revenue increase for CP&L in the amount of $92.4 million from the Company's North Carolina retail ratepayers, subject to an undertaking to refund.

On October 1, 1984, the Carolina Utility Customers Association, Inc. filed certain exceptions to the recommended order pursuant to G.S. 62-60.1(c) and G.S. 62-78.

On October 4, 1984, CP&L filed a motion in this docket whereby the Commission was requested to reopen the record in this proceeding "...(1) for the limited purpose of receiving evidence on the amount of allowance for funds used during construction (AFUDC) accrued subsequent to July 1, 1979 on construction work in progress (CWIP) which occurred prior to July 1, 1979 and which was included in the CWIP the Company seeks to include in rate base in this case and (2) for the further limited purpose of receiving evidence pertaining to the total amount of CWIP on the Company's books as of September 30, 1984, exclusive of any AFUDC accrued since July 1, 1979 on construction expenditures made before July 1, 1979, which would be included in rate base in this case." In support of its motion to reopen record, the Company cited a recent holding of the North Carolina Supreme Court in State of North Carolina ex rel. Utilities Commission v. Conservation Council of North Carolina, _____ N.C. _____ (No. 126A84, October 2, 1984) stating that it is error for the Commission to include CWIP in rate base to the extent it is comprised of allowance for funds used during construction (AFUDC) accrued subsequent to July 1, 1979, on expenditures related to construction work which occurred prior to July 1, 1979.

On October 8, 1984, CP&L, the Public Staff, the Attorney General of the State of North Carolina, and the Kudzu Alliance filed certain exceptions to the recommended order pursuant to G.S. 62-60.1(c) and G.S. 62-78. The Public Staff and Attorney General requested the Commission to schedule oral argument on exceptions pursuant to G.S. 62-78(c).

On October 8, 1984, CUCA filed further exceptions to the recommended order and a reply in opposition to CP&L's motion to reopen record.

On October 10, 1984, the Public Staff filed its response to CP&L's motion to reopen record whereby the Commission was requested to "...reopen the hearings in this docket to determine what portion of the construction work in progress (CWIP) included in rate base by the September 21, 1984, Recommended Order, was illegal because it was AFUDC on pre-July 1, 1979 CWIP."

On October 11, 1984, the Attorney General filed a Reponse to CP&L's motion to reopen record.

On October 15, 1984, the Commission entered an order in this docket scheduling oral argument on exceptions and a further evidentiary hearing beginning Wednesday, November 14, 1984, at 9:30 a.m. in the Commission Hearing Room. In this Order, the Commission concluded that the evidentiary record should be reopened in this case for the following limited purposes as requested by CP&L and in part the Public Staff:

1. To receive evidence concerning the amount of AFUDC accrued subsequent to July 1, 1979, on CWIP which occurred prior to July 1, 1979, and which was included in the level of CWIP ($692,604,000) which CP&L was allowed to include in its rate base pursuant to the recommended order entered in this docket on September 21, 1984.

2. To receive evidence pertaining to the total amount of CWIP on CP&L's books as of September 30, 1984, exclusive of any AFUDC accrued since July 1, 1979, on construction expenditures made before July 1, 1979, which would be eligible for inclusion in the Company's rate base in this case.

Upon call of the matter for further hearing at the appointed time and place, CP&L presented the testimony of Paul S. Bradshaw, Vice-President - Accounting Department and Controller. The Public Staff presented the testimony of George T. Sessoms, Jr., Public Utilities Financial Analyst with the Economic Research Division of the Public Staff. CUCA presented the testimony of Dr. John W. Wilson, Economist and President of J.W. Wilson & Associates, Inc..

Oral argument on exceptions were subsequently offered by counsel for and on behalf of CP&L, the Public Staff, the Attorney General, CUCA and the Carolina Industrial Group for Fair Utility Rates.

Based upon a careful consideration of the entire record in this proceeding, including the testimony and exhibits received in evidence at the hearings and the exceptions to the recommended order and oral argument offered by the parties with respect thereto, the Commission 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, with 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 test period for purposes of this proceeding is the 12-month period ended September 30, 1983, adjusted for certain known changes based upon circumstances and events occurring up to the time of the close of the hearings in this docket.

4. By its application, CP&L seeks rates to produce jurisdictional revenues of $1,353,776,000 based upon a test year ended September 30, 1983. Revenues under the present North Carolina retail rates, according to the Company, were $1,202,132,000, thereby necessitating an increase of $151,644,000.

5. The overall quality of electric service provided by CP&L to its North Carolina retail customers is adequate.

6. The "summer/winter peak and average" method as discussed herein is the most appropriate method for making jurisdictional allocations and for making fully distributed cost allocations between customer classes in this proceeding. Consequently, each finding of fact appearing in this Order which deals with the overall level of rate base, revenues, and expenses for North Carolina retail service has been determined based upon the summer/winter peak and average cost allocation method.

7. CP&L should be allowed to recover its abandonment loss sustained as the result of the Company's having terminated construction on, and having cancelled and abandoned, its proposed Shearon Harris Nuclear Unit No. 2 on December 21, 1983. Recovery of the Company's investment in its project to construct that unit should be accomplished over a 10-year amortization period. It is neither fair nor reasonable to include any portion of the unamortized balance of that investment in rate base, and no adjustment which would have the effect of allowing the Company to earn a return on the unamortized balance of that investment, or any portion thereof, should be allowed.

8. CP&L should be allowed to continue the recovery of its abandonment losses sustained as the result of the Company, at various times in the past, having terminated construction on, and having cancelled and abandoned, its South River Project, its Brunswick cooling towers project, and its proposed Shearon Harris Nuclear Units Nos. 3 and 4, in the same manner which the Commission determined to be appropriate in the Company's last general rate case, Docket No. E-2, Sub 461. No adjustment should be allowed which would have the effect of permitting the Company to earn any return on or with respect to the unamortized balance of those abandonment losses, or any portion thereof.

9. A normalized test-period generation mix which reflects a level of nuclear generation associated with a system nuclear capacity factor of approximately 53.4% is both reasonable and appropriate for use in determining the base fuel component of the rates established in this proceeding.

10. The base fuel cost component which is appropriate for use in this proceeding is 1.582¢/kWh excluding gross receipts tax and which reflects a reasonable fuel cost of $316,653,000 for North Carolina retail service.

11. The deferred fuel account established in CP&L's last general rate case should be closed out as of September 21, 1984, and the balance of the account at that time of approximately $2,560,418 reduced by $173,000 as agreed upon by the parties should be effectively refunded to CP&L's ratepayers by reducing the rate increase found fair herein.

12. A $59,985,000 working capital allowance for coal inventory and a $6,150,000 working capital allowance for liquid fuel inventory are appropriate for North Carolina retail service in this proceeding.

13. The reasonable allowance for working capital is $86,830,000.

14. The proper amount of reasonable and prudent expenditures for construction work in progress (CWIP) to allow in rate base pursuant to G.S.

62-133(b)(1) is $663,167,000. Inclusion of this amount of CWIP in rate base is both in the public interest and necessary to the financial stability of CP&L. These expenditures relate entirely to Harris Unit 1.

15. The allowance for funds used during construction accrued on 4.97% of Roxboro No. 4 during the period September 15, 1980, to September 24, 1982, should be included in electric plant in service.

16. CP&L's reasonable original cost rate base used and useful in providing service to the public within the State of North Carolina is $2,346,824,000; consisting of electric plant in service of $2,484,159,000, net nuclear fuel of $21,863,000, construction work in progress of $663,167,000, and a working capital allowance of $86,830,000, reduced by accumulated depreciation of $597,229,000 and accumulated deferred income taxes of $311,966,000.

17. Appropriate gross revenues for CP&L for the test year, under present rates and after accounting and pro forma adjustments, are $1,202,132,000.

18. The reasonable level of test year operating revenue deductions for the Company after normalized and pro forma adjustments is $961,105,000. An adjustment to increase operating income by $6,824,000 for one-third of the gain associated with the sale of assets to the North Carolina Eastern Municipal Power Agency is appropriate.

19. The Company should, in its next general rate proceeding, present information to the Commission concerning the Edison Electric Institute (EEI) which will show all direct and indirect contributions to and through EEI from all sources and all expenditures by program and by a system of accounts.

20. The reasonable capital structure to be employed as a basis for setting rates in this proceeding is composed as follows:

| | |
|---|---|
| Long-term debt | 47.5% |
| Preferred stock | 12.5% |
| Common equity | 40.0% |
| Total | 100.0% |

21. The Company's embedded cost of debt and preferred stock are 9.73% and 9.18%, respectively. In view of the Commission's decisions with respect to the level of CWIP allowed in rate base and the reasonable fuel factor adopted in this proceeding, the reasonable rate of return for CP&L to be allowed to earn on its common equity is 15.25%. Using a weighted average for the Company's cost of long-term debt, preferred stock, and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 11.87% 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 services in accordance with the reasonable requirements of its customers, and to compete in the market for capital on terms which are reasonable and fair to its customers and to existing investors.

22. Based upon the foregoing, CP&L should increase its annual level of gross revenues under present rates by $64,339,000. The annual revenue

requirement approved herein is $1,266,471,000, which will allow CP&L a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of CP&L's property used and useful in providing service to its customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

23. Residential Schedules RES, R-TOU and R-TOUE should be amended to require the same insulation standards for mobile homes as for conventional homes in order to qualify for the 5% energy conservation discount.

24. The Company should implement a test program for extending water heater load control to 30-39 gallon water heaters.

25. The Company should determine an appropriate billing credit for residential air conditioner load control independent of water heater load control.

26. The Company should consult with the Public Staff to consider a program to test the effectiveness of appliance control for residential time-of-use customers with equipment to interrupt water heaters during on-peak hours.

27. The Residential (RES) rate schedule should be modified to reduce the difference in price between nonsummer usage under 800 kWh per month and nonsummer usage over the first 800 kWh per month.

28. The rate designs, rate schedules, and service rules proposed by the Company, except for the modifications thereto as described herein, are appropriate and should be adopted.

29. CP&L should be required to refund to its North Carolina retail customers all revenues or amounts collected under interim rates and charges since September 22, 1984, pursuant to the Company's undertaking to refund, to the extent said interim rates and charges produced revenue in excess of the level of rates authorized herein, plus interest thereon calculated at the rate of 10% per annum. To the extent that the interim rates and charges placed in effect by CP&L beginning September 22, 1984, exceeded the rates and charges authorized by this Order, said interim rates and charges were unjust and unreasonable.

EIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1 AND 2

The evidence supporting these findings of fact is contained in the Company's verified application, in prior Commission Orders in this docket of which the Commission takes notice, and in G.S. 62-3(23)a.1 and G.S. 62-133. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 3 AND 4

The evidence supporting these findings of fact is contained in the Company's verified application, the Commission Order issed March 29, 1984, and the testimony and exhibits of the Company witnesses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact concerning the quality of service is found in the testimony of Company witness Smith and in that of the various public witnesses who appeared at the hearings held in Asheville, Wilmington, Goldsboro, and Raleigh. A careful consideration of all such testimony leads the Commission to conclude that the quality of electric service being provided to retail customers in North Carolina by CP&L is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact concerning the proper production cost allocation method consists primarily of the testimony and exhibits of Company witness Chapman, Public Staff witness Turner, CIGFUR II witness Phillips, CUCA witness Wilson, and Kudzu Alliance witness Eddleman.

CP&L provides retail service in two states, as well as wholesale service to certain municipalities and electric membership cooperatives and supplemental service to the Power Agency. For this reason, it is necessary to allocate the cost of service among jurisdictions and among customer classes within each jurisdiction. In this proceeding the Company again has proposed the use of the summer/winter peak and average (SWP&A) method for cost allocation. The SWP&A method allocates approximately 60% of production plant and production-related expenses on the basis of each class's kWh consumption and the remaining 40% on the basis of the average of each class contribution to the summer and winter peak demands. The 60/40 split is determined by the system load factor for the test year. The Commission initially adopted the peak and average method in Docket No. E-2, Sub 391, in which case the Company had proposed a peak and average method using only the summer peak. In Docket No. E-2, Sub 444, the Commission modified the Company's peak and average method by utilization of a combination of the summer and winter peaks.

Public Staff witness Turner agreed with the use of the SWP&A method for the purpose of assigning costs to the North Carolina retail jurisdiction and for allocation to the retail classes. Witness Turner, in Docket Nos. E-2, Sub 444 and Sub 461, recommended the summer/winter peak and base (SWP&B) method, which allocates 35% of production costs based on kWh consumption and 65% based on demand. He concluded after his investigation in this case that the SWP&A method is the more appropriate method of representing the energy-related component. In his investigation, witness Turner analyzed the minimum load on the CP&L system that must be met by the Company in each hour of the year. Based on his calculations, 46.5% of the Company's investment in production plant is now required to supply the minimum load, and 78.7% will be required in the spring of 1986, when Harris Unit No. 1 has been placed in commercial operation. The midpoint of the range, 62.6%, was approximately the same percentage as that derived from the SWP&A calculation. Based on these findings, witness Turner recommended that the Commission adopt the SWP&A method as the more appropriate method.

CIGFUR witness Phillips proposed to allocate production costs based on the one-hour coincident peak (CP) allocation method. Witness Phillips contended that it is primarily the system peak demand that drives the need for the addition of capacity, and once that capacity is in place, it represents a fixed cost that does not fluctuate with the output of kWh. He contended that the peak and average method is not consistent with respect to allocating fuel costs in that it does not assign the high load factor customers the lower fuel costs associated with the high capital cost units.

Witness Eddleman testified that the most appropriate way to allocate costs is to use the summer/winter coincident peak methodology.

The Commission has concluded in previous rate cases that the cost allocation method used for rate-making purposes should recognize the energy-related portion of fixed costs. Furthermore, the Commission has previously concluded that not all fixed costs represent the cost of meeting system peak demand and that a significant portion of fixed costs represents the cost of producing kWh throughout the year. The Commission continues to be persuaded in this proceeding that the SWP&A method most effectively recognizes the energy-related portion of fixed costs.

The Commission has concluded in previous rate cases that system capacity is not installed to meet a single system peak and that both the summer peak and the winter peak should be recognized in the cost allocation process. The evidence presented in this proceeding continues to persuade the Commission that the summer/winter peak proposed by the Company and the Public Staff is appropriate for use as a part of the cost allocation process. Therefore, the SWP&A method continues to be the most appropriate method for allocation of production facility costs.

CUCA witness Wilson proposed that a normalized test year generation mix be used to develop the Power Agency supplemental energy allocation factor. Witness Wilson testified that since the Power Agency shares ownership in the Company's Brunswick units, the Power Agency's supplemental power needs would be reduced by normalizing Brunswick generation. The Commission is not persuaded that allocation factors utilized in the cost allocation studies should be normalized, and declines to do so in this proceeding. However, this does not preclude the Commission from reconsidering the issue in future proceedings wherein the issue may be discussed more fully.

The final allocation issue regards the development of a cost allocation study using all 8,760 hours in a year. The Order of this Commission in the Company's last case, Docket No. E-2, Sub 461, required the Company to work with the Public Staff in exploring the development of such a study. The Company filed a report containing its conclusions on March 19, 1984, which raised several questions with respect to the problems that would be encountered in performing the study, including an estimated cost of approximately $22,000,000. The Company indicated, however, that it was willing to pursue alternatives to the original study that would be less costly and time-consuming.

Public Staff witness Turner testified that the Company and the Public Staff should be allowed by the Commission to continue to work on the development of an alternative, less costly, 8,760-hour study. He suggested using the PROMOD computer model to develop an alternative study.

The Commission believes that it is useful for the Company and the Public Staff to continue to pursue the development of a study that would provide additional information regarding production costs in different time periods. The Commission therefore directs the Company and the Public Staff to continue in this effort.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 AND 8

Testimony concerning the proper rate-making treatment of the Harris Unit 2 abandonment loss, and also the abandonment losses associated with Harris Units 3 and 4, the Brunswick cooling towers, and the South River project, was presented by Company witnesses Smith, Lilly, Vander Weide, McDuffie, and Bradshaw. Public Staff witness Paton and CUCA witness Wilson also addressed the issue of the appropriate rate-making treatment of these abandonment losses.

On December 21, 1983, CP&L, by action of its Board of Directors, made a decision to cancel the construction of Harris Unit 2. The project was only approximately 4% complete when cancelled. In this proceeding, CP&L has requested that it be allowed to recover the Harris Unit 2 abandonment loss over ten years and that the Company also be allowed to earn a return on or with respect to the portions of the unamortized balance of the loss supported by long-term debt and preferred stock.

Company President Smith, alluding to the recent decisions of this Commission in which no return has been allowed on or with respect to plant abandonment losses, testified in support of the Company's proposal as follows:

> "Timely recovery of this investment is essential to the financial stability of the Company. I cannot agree that exclusion of the unamortized balances of cancelled projects from rate base represents a fair and reasonable allocation of the risks of abandoned projects."

Company witness Lilly suggested that one step which the Commission could take to minimize the risk of a bond downgrade would be to make a commitment to allow the Company to recover both its investment in cancelled plants and the carrying costs related to such cancelled plants.

Company witness Bradshaw contended that, in his opinion, since the investment in Harris Unit 2 and the decision to cancel said nuclear generating unit were both made for the benefit of CP&L customers, collecting the cost of the investment through rates would be both fair and reasonable. However, other evidence presented by the Company, including the testimony of witness McDuffie and Company President Smith, indicates that the cancellation of Harris Unit 2 was due to a variety of causes and was in the best interests of both the Company and its ratepayers.

Mr. Bradshaw also testified that the Company was requesting a return on the portions of the unamortized balances of Harris Units 2, 3, and 4 and the Brunswick cooling towers abandonment losses supported by long-term debt and preferred stock. In support of that position, he argued as follows:

> "If such costs are not recovered from the ratepayer, the common stockholder not only fails to receive a return on his investment, his

return is further reduced by the amount of debt and preferred payments."

Public Staff witness Paton recommended that the Harris Unit 2 abandonment loss be amortized to the cost of service over 15 years and that the Company not be allowed to recover any return on, or with respect to, the unamortized balance of the loss, or any portion thereof. She presented evidence indicating that the Public Staff's proposed treatment of the Harris Unit 2 abandonment loss would result in a nearly equal sharing of the economic costs associated with the abandonment between ratepayers and shareholders when compared on a present value basis. Ms. Paton further testified that counsel for the Public Staff had advised her that it was not legally permissible to allow the Company to recover any carrying costs on the unamortized balances of plant abandonments and that no return should be allowed for that reason. Consequently, she recommended that the Company should not be allowed to recover the long-term debt and preferred stock costs of the remaining unamortized balances of the Harris Units 3 and 4 and Brunswick cooling towers abandonment losses, as sought herein.

In addition to addressing the fairness and legality of her proposed treatment of the Harris Unit 2 abandonment loss, witness Paton pointed out that CP&L's rates already reflect abandonment losses associated with Harris Units 3 and 4, the Brunswick cooling towers, and the South River project, which are currently being amortized as permitted and directed in prior Commission decisions. She also contended that a 15-year amortization period for Harris Unit 2, as opposed to a 10-year amortization, would lessen the impact of the rate increase which would be imposed on ratepayers if Harris Unit 1 begins commercial operations as scheduled in 1986.

Dr. Wilson made several recommendations concerning the appropriate rate-making treatment for the abandonment losses associated with Harris Units 2, 3, and 4 and the Brunswick cooling towers.

Concerning Harris Unit 2, Dr. Wilson proposed a 20-year amortization, stating as follows:

"A 10-year amortization period would put CP&L in the advantageous, but undeserved, position of recovering the cost of a failed project more than twice as rapidly as would be the case if the project had been completed and actually put into service to ratepayers."

Dr. Wilson, like witness Paton, also opposed allowing the Company to recover long-term debt and preferred stock costs associated with the unamortized balances of plant abandonments, stating that:

"CP&L's attempt to recover through rates a senior capital return on its numerous abandoned plants clearly violates the 'used and useful' criterion for inclusion of plant in rate base."

Dr. Wilson also addressed two additional abandonment related issues that were not brought up by either the Company or the Public Staff. First, he recommended that the unamortized deferred income taxes resulting from the write-off of Harris Units 2, 3 and 4 and the Brunswick cooling towers be deducted from rate base in this proceeding.

The Commission notes that all parties to this proceeding who made a recommendation on the matter have proposed that the abandonment losses in question be amortized to the cost of service net of tax losses. To also deduct from rate base the deferred taxes resulting from the write-offs would significantly change the relative portion of the costs associated with those losses which would otherwise be borne by the ratepayers and shareholders so as to increase the costs borne by the shareholders. The Commission finds that it would be unjust and unreasonable to place this additional burden on the Company's shareholders.

Dr. Wilson also recommended that the North Carolina contra-AFUDC related to Harris Unit 2 be offset against the first year of the Harris Unit 2 amortization to be included in the cost of service in this proceeding. He testified that the contra-AFUDC related to Harris Unit 2 represents amounts paid in by ratepayers as a result of the inclusion of Harris Unit 2 in rate base. Dr. Wilson contended that there was no justification for a 10-year delay in returning those funds to ratepayers. Additionally, he contended that a one-year flow back would enhance the likelihood that the same ratepayers who paid in the contra-AFUDC would also be the ratepayers who benefited from the flow back.

The Commission does not agree with Dr. Wilson's rationale for his proposed treatment of contra-AFUDC. His contention that the contra-AFUDC paid in by ratepayers should be flowed back to them quickly, if accepted, would give rise to a similar and seemingly equally valid contention by the Company that the monies provided by its investors for the investment in Harris Unit 2 should also be quickly returned to them. The Commission concludes that it would be unjust and unreasonable to place this additional burden on the Company's shareholders.

The remaining issues to be decided in this proceeding regarding the proper rate-making treatment of plant abandonments are: (1) the appropriate amortization period for the Harris Unit 2 abandonment loss and (2) what return, if any, to allow on the unamortized balances of the abandonment losses associated with Harris Units 2, 3, and 4 and the Brunswick cooling towers. (The Commission notes that no return on the South River abandonment loss has been requested in this proceeding.)

The Commission will first discuss the issue of what return, if any, should be allowed on, or with respect to, the unamortized abandonment losses. This issue has been before the Commission in several prior cases with the result that until the decision of this Commission in Docket No. E-2, Sub 461, there was a lack of uniformity in the Commission's decisions regarding that matter. However, approximately one year ago this Commission, noticing the lack of uniformity, reexamined the issue in CP&L's last general rate case. As a result of the reexamination of the issue in that case, the Commission determined that it was unjust and unreasonable to allow any return to be earned on or with respect to abandonment losses. Since the decision of the Commission in that case, the Commission has consistently adhered to that position in all subsequent cases in which that issue has arisen.

Although technically the Company is not proposing to include the unamortized balances of the subject abandonment losses in rate base, the Company's proposed adjustments to net income so as to recover the long-term

debt and preferred stock carrying costs of such unamortized balances are essentially the same as including those balances in rate base. The transfer of these capital costs to the cost of service is nothing more than a superficial change and is merely a thinly disguised attempt to avoid the rather obvious legal problems associated with the more straightforward approach. However, substance must prevail over form. The result produced is the same as including the balances in rate base. The Commission finds and concludes that including the return components in the cost of service as the Company proposes is the same as rate base treatment for the unamortized balances of the abandonment losses.

Based upon a careful consideration of the foregoing, the Commission finds and concludes that it would be unjust and unreasonable to allow any return to be earned by CP&L with respect to its abandonment losses for the reason that an equitable sharing of the economic losses involved as between ratepayers and the Company's shareholders would not result. The Commission has concluded that this treatment provides the most equitable allocation of the loss between the utility and its consumers. This matter will be discussed in more detail hereinafter as a part of the discussion of the appropriate amortization period.

With respect to the appropriate amortization period for the Harris Unit 2 abandonment loss, although the parties to this proceeding disagree regarding what should be the amortization period, they do agree that the Company should be allowed to recover its prudently invested cost in this abandoned project over some period of time. Three different amortization periods were proposed. The Company has proposed a 10-year amortization, the Public Staff and the Attorney General have proposed a 15-year amortization, and CUCA proposed a 20-year amortization.

In CP&L's last two general rate cases, Docket Nos. E-2, Subs 444 and 461, the Commission determined that the Harris Units 3 and 4 abandonment losses should be amortized over 10 years. No alternative amortization period for those abandonment losses has been proposed by any party to this proceeding. Nor has any party proposed an alternative to the amortization periods which this Commission approved in the Company's last general rate case for the South River and Brunswick cooling tower losses.

The Commission, based upon the evidence presented in this proceeding, must determine an amortization period for Harris Unit 2 which will result in a fair and equitable treatment of the abandonment loss to both the ratepayers of CP&L and the Company's shareholders. The Commission finds that it would be unjust and unreasonable to place the entire burden of the costs of the plant abandonment losses on either the Company's shareholders or ratepayers. Therefore, the Commission must determine the treatment that provides the most equitable allocation of the loss between ratepayers and shareholders.

The Company proposed to amortize the Harris Unit 2 abandonment losses over a period of ten years. Company witness Bradshaw testified that both the decision to construct Harris Unit 2 and the subsequent decision to cancel it were in the best interest of the Company's customers and that it would be both fair and reasonable to allow recovery of the costs of this investment through rates over a ten year period. Public Staff witness Paton recommended a 15-year amortization period. She testified that use of a 15-year period, together with the disallowance of any return on the unamortized balance, results in an equal

sharing of cost between the ratepayer and the common shareholder and she attempted to demonstrate this through a present value analysis. Additionally, she testified that a 15-year period would lessen the impact on rates, which already include amortization for other abandonment losses. CUCA witness Wilson argued for a 20-year amortization period, reasoning that this period is more representative of the useful life of a nuclear power plant and thus representative of the period over which the Company would have recovered its investment if Harris Unit 2 had been completed and placed in service.

The Commission concludes that the Harris Unit 2 abandonment losses should be amortized over 10 years. We have determined that a 10-year amortization period results in a more reasonable and equitable sharing of costs between the ratepayer and the common shareholder than the other amortization periods recommended. A 15-year or 20-year amortization would result in a disproportionately large portion of the total economic costs of cancellation being borne by the Company's shareholders. We base our decision in part on a study prepared by the United States Department of Energy which indicates that a 10-year amortization of abandonment costs will distribute these costs between the utility's investors and its customers in proportions that this Commission considers fair and equitable. Nuclear Plant Cancellations: Causes, Costs, and Consequences, United States Department of Energy, Washington, D.C. (April 1983). In addition, the use of a 10-year amortization period is consistent with previous decisions of this Commission regarding the amortization of similar property losses of this Company and of other electric utilities operating under our jurisdiction. In Docket Nos. E-2, Sub 444 and Sub 461, the Commission allowed the Company a 10-year amortization period for the abandonment costs of Harris Units 3 and 4, rejecting the Public Staff's recommendation of a 15-year period in Docket No. E-2, Sub 444. In Docket E-7, Sub 358, the Commission allowed Duke Power Company a 10-year amortization period for the Cherokee Units 1, 2, and 3, even though the Public Staff proposed a 12-year period. In Docket Nos. E-22, Sub 224, Sub 257, Sub 265, and Sub 273, the Commission allowed Virginia Electric and Power Company a 10-year amortization period for the costs of Surry Units 3 and 4, and in Docket Nos. E-22, Sub 257, Sub 265, and Sub 273, the Commission allowed Virginia Electric and Power Company a 10-year amortization period for the costs of North Anna Unit 4. Finally, in Docket No. E-22, Sub 273, the Commission allowed Virginia Electric and Power Company a 10-year amortization period for the North Anna Unit 3 abandonment costs, notwithstanding the Public Staff's recommendation of a 12-year period. Thus, the Commission has consistently ordered 10-year amortization periods for property losses such as the abandonment of Harris Unit 2. No party has articulated a sound rationale for treating Harris Unit 2 differently. If the Commission were to order a 15-year or 20-year amortization period in this case, it would send a signal to investors that would materially increase the costs of financing future construction. Thus, the Commission concludes that the amortization period for Harris Unit 2 should be 10 years.

The Commission further concludes that the amortization periods which were previously determined to be appropriate in CP&L's last general rate case for Harris Units 3 and 4 and the South River and Brunswick cooling tower projects remain appropriate for use in this proceeding. Of course, the Commission has already determined that no return should be allowed upon or with respect to the unamortized balances of those losses, or any portion thereof.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witnesses Nevil, McDuffie, Howe, and Davis, Public Staff witness Lam, CUCA witness Wilson, and Kudzu witness Eddleman provided evidence regarding the appropriate generation mix and nuclear capacity factors to be used in this proceeding.

The process of determining the reasonable cost of fuel for the Company in this proceeding, in very broad and simple terms, involves three basic steps. First, the reasonable annual level of generation in terms of total number of kilowatt-hours must be determined. The parties appear to be in agreement with respect to the reasonable total annual level of generation to be used. There is some disagreement, however, regarding how much of that total annual level of generation is properly to be attributed to the Power Agency and therefore "backed out." This disagreement arises primarily from differences in methodology. Second, it must be determined what generation mix will provide the annual level of generation determined in the first step, including a determination regarding how much of that annual level of generation will be produced by each of the various types of generating resources of the Company consisting of nuclear, coal, IC (i.e. oil), and hydro. As a part of the generation mix determination, the reasonable level of energy purchases and sales must also be determined. Third, a determination must be made of the reasonable cost to be attributed to each component of the generation mix determined in step 2. Such costs are then multiplied by the number of kWhs produced by each component of the generation mix in order to derive a total annual fuel cost.

The particular generation mix which is used in deriving the reasonable cost of fuel is very important. There are wide variations in the fuel costs which are associated with each of the six components of the Company's generation mix (i.e., nuclear, coal, IC turbine, hydro, purchases, and sales). For example, Company witness Nevil testified that the fuel cost involved in generating a kilowatt hour with oil was approximately 10¢ to 14¢, and that the fuel cost of generating a kilowatt hour with coal was approximately 2¢, whereas the fuel cost of generating a kilowatt hour with nuclear was only approximately 1/2¢. Those cost relationships illustrate that to the extent that more nuclear generation is included in the generation mix which is used to set fuel costs, in lieu of coal generation (costing approximately four times as much), or in lieu of IC generation (costing more than twenty times as much), the impact upon the resulting overall reasonable cost of fuel can be significant. Thus, relatively small differences in the assumed levels of nuclear generation can have a significant impact upon the resulting overall cost of fuel. Furthermore, the level of nuclear generation heavily influences the levels of coal, IC, and purchases in the generation mix because nuclear generation is normally used to generate electricity in preference to other relatively more costly generating resources.

The generation mix which Company witness Nevil used in deriving the Company's proposed base fuel component reflected what was essentially the Company's actual test year level of nuclear generation. The Company's actual test year nuclear generation was 8,883.6 gWh, or 26.18% of the generation mix, and the level of nuclear generation in the Company's "PROMOD Recreated Adjusted" computer-simulated generation mix, which was used by witness Nevil in deriving his recommended base fuel factor of 1.701¢/kWh, was 8,921.0 GWH, or

25.18% of that total generation mix. A comparison of the Company's actual test year generation mix with the computer simulated "PROMOD Recreated Adjusted" generation mix used by witness Nevil indicates that nuclear and hydro generation in the latter reflect the actual test year level of each, whereas the increased overall generation in the latter is reflected, for all practical purposes in increased coal and oil-fired internal combustion ("IC") generation. In short, witness Nevil's proposed generation mix assumes essentially actual test year levels of nuclear and hydro generation, which increases the more expensive coal and IC components of the generation mix.

The other parties to this proceeding who took a position on the matter proposed a "normalized" level of nuclear generation, with resulting decreases in one or more of the relatively more expensive components of the generation mix, such as IC and coal. Witness Lam of the Public Staff proposed a normalized level of nuclear generation associated with a system nuclear capacity factor of 53.4%. Witness Wilson of CUCA proposed a normalized level of nuclear generation associated with a system nuclear capacity factor of 60%. Kudzu witness Eddleman recommended a normalized level of nuclear generation based on the average of 60% and 70% nuclear capacity factors.

The question regarding whether the actual test year level of nuclear generation should be normalized involves whether such nuclear generation is reasonably representative of the level of nuclear generation which it can be reasonably assumed will occur in the near future, and particularly in the upcoming 12-month period. To the extent that the actual test year level of nuclear generation was "abnormal," or not reasonably representative of what should reasonably be expected, then a normalized level must be determined and used. In fact, witness Nevil himself proposed and used an adjustment to the Company's actual test year level of kWh sales in order to normalize for the abnormal weather which occurred during the test year.

The normalization concept is one of the most basic precepts of ratemaking. It is a concept which arises out of the statutory requirement that a test year be used as the basis for a reasonably accurate estimate of what may be anticipated in the near future. Obviously, to the extent that the test year experience reflects an abnormality, such as an abnormally low level of nuclear generation, then it will not result in a reasonably accurate estimate of what may be anticipated in the near future unless an appropriate adjustment is made to "normalize" the abnormality. The Supreme Court of this State has recognized or applied this proposition in numerous decisions. State ex rel. Utilities Commission v. City of Durham, 282 N.C. 308, 193 S.E. 2d 95 (1972); State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 377, 206 S.E. 2d 269 (1974); State ex rel. Utilities Commission v. Vepco, 285 N.C. 398, 206 S.E. 2d 283 (1974); State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976); State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982).

We turn now to the question of whether the evidence in this record establishes that the test year level of nuclear generation is normal in the sense of whether it is reasonably representative of what is likely to occur in the near future, particularly during the period that the rates set in this case are likely to remain in effect.

The evidence establishes that during the test year the Company had an overall system nuclear capacity factor of only approximately 45%. That overall system nuclear capacity factor is a composite of the actual test year capacity factors of the Company's three nuclear generating units appropriately weighted by generating capacity of each of those units. Those were a 15% capacity factor for Brunswick Nuclear Generating Unit No. 1, a 57% capacity factor for Brunswick Nuclear Generating Unit No. 2, and a 67% capacity factor for the Robinson Nuclear Generating Unit No. 2.

Company witness McDuffie testified that as of October 31, 1983, the Robinson Nuclear Unit No. 2 had a lifetime, or cumulative capacity factor of "over 66 percent." His testimony further established that the unit can be expected to operate at significantly higher capacity factors than were experienced during the test year after its return to service in early December 1984, due to the elimination of the adverse impacts caused by the steam generator problems "and other improvements." Specifically, witness McDuffie testified that during the period when the unit comes back on line in early December 1984 until some point in time after the end of October 1985 the Company is expecting the unit to run at an 85% capacity factor.

The actual test year capacity factor of the Brunswick Nuclear Generating Unit No. 1 was only 15%. However, as of the end of 1983 the unit had a lifetime capacity factor of 46.0%. That unit did not operate at all during a period of approximately nine months during the test year due to an extended outage. Company witness Howe indicated that significant and major modifications and improvements were made to the unit during the extended outage which should improve its level of performance. Witness Howe pointed out that for the period from the end of that extended outage, on August 29, 1983, until July 16, 1984, Brunswick Unit 1 had achieved a capacity factor of 73%, which was indicative of the improved performance of the unit due to those modifications and improvements. Witness Howe further testified that Brunswick Unit 1 could be expected to achieve a capacity factor of "on the order of 70%" when the unit is not in an extended outage. On the other hand, witness Howe testified that the Company expected the unit to have a capacity factor of 29% for the period October 1, 1984, through October 1, 1985, which reflects the effects of the Company's present outage schedule for the unit (which contemplates a six-week outage from October 31, 1984, until December 12, 1984, and an extended outage for further improvements and modifications beginning March 31, 1985, and continuing until after October 1, 1985).

The actual test year capacity factor of the Brunswick Nuclear Generating Unit No. 2 was 57%. Witness Howe's testimony indicates that improvements and modifications which have already been made to that unit during the test year and since its end are expected to result in improved performance and improved capacity factors. Witness Howe testified that during the period October 1, 1984, through October 1, 1985, the only scheduled outage for Brunswick Unit 2 was from October 1, 1984, until November 17, 1984, and that the expected capacity factor for that unit for the period during which the rates set in this proceeding are likely to be in effect (October 1, 1984, through September 31, 1985) was 65% after taking into account the scheduled outage period mentioned.

The Commission concludes that the 45% system nuclear capacity factor which was experienced by the Company during the test year was abnormally low and is clearly not reasonably representative of the system nuclear capacity factor

which the Company can reasonably be expected to experience in the near future, including the period during which the rates set in this proceeding are likely to remain in effect. This conclusion is based on the fact that the 45% nuclear capacity factor reflects an abnormal extended outage on Brunswick Unit 1, and reflects the abnormal impact of steam generator related problems on Robinson Unit 2 which are being remedied and should not continue. This conclusion is further supported by the testimony of both Public Staff witness Lam and CUCA witness Wilson, indicating a national average level of performance for nuclear units on the order of a 60% capacity factor.

The testimony of Company witnesses McDuffie and Howe indicates that the Company expects a system nuclear capacity factor of approximately 53.5% for the period October 1, 1984, to October 1, 1985. The Public Staff estimates a system nuclear capacity factor for the same period which is practically the same (53.4%), although it was arrived at using a different set of assumptions. Moreover, witness Nevil testified that historically the Company's system nuclear capacity factor has been in the range of 51%.

Based upon all of the evidence, the Commisson concludes that a normalized generation mix which reflects a system nuclear capacity factor of approximately 53.4% and a level of nuclear generation which is properly associated with that capacity factor are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Nevil, Public Staff witness Lam, CUCA witness Wilson, and Kudzu witness Eddleman provided testimony recommending a base fuel cost component to be included in general rates. The Company recommended a base fuel component of 1.701¢/kWh, whereas the Public Staff recommended 1.582¢/kWh, CUCA recommended 1.510¢/kWh, and Kudzu recommended 1.358¢/kWh.

Company witness Nevil's recommended base fuel cost component was derived by utilizing a computerized production simulation model (PROMOD) to recreate the test year generation mix which would have occurred if the test year were adjusted to reflect: weather normalization, customer growth, one full years operation of Mayo No. 1, additional load portion of NCEMPA, the actual test year capacity factor of each of the Company's nuclear units, the actual test year hydro generation, and the resultant levels of purchased power, coal, and IC turbine generation. June 1984 inventory prices were utilized for coal and oil prices. Witness Nevil then made adjustments to the resultant fuel costs to eliminate nonfuel components from purchased power and sales and nuclear fuel disposal costs. From this resultant figure he subtracted the fuel costs of the portion of the plants owned by the Power Agency and added back in the amount paid to the Power Agency by CP&L for purchase of power from Mayo Unit 1 under a "buy-back" agreement for a final total company fuel cost of $536,341,900, or 1.701¢/kWh after being divided by system adjusted company sales of 31,535,371,230 kWhs. The North Carolina retail portion of the fuel cost is $340,472,000. The 1.701¢ per kWh base fuel cost was based on the actual test year system nuclear capacity factor of approximately 45%.

Public Staff witness Lam's recommended base fuel factor was derived by a methodology which normalizes the capacity factor for each nuclear plant as discussed elsewhere herein, uses a normalized level of hydro generation equal to the median hydro generation as reported in the Company's most recent Power

System Report (FERC Form 12), and prorates the remaining fossil fuel generation and outside purchases and sales in proportion to the actual test year level of each. Witness Lam also computed and backed out the same types of Power Agency and nonfuel costs as did witness Nevil. Witness Lam accepted CP&L's methodology to calculate the impact of the Mayo "buy back" agreement and the savings in energy provided by the Harris-Asheboro and Harris-Fayetteville transmission lines. Using June 1984 burned fuel values, witness Lam computed a total company fuel cost of $498,808,000 ($316,653,000 attributable to the North Carolina retail jurisdiction) which when divided by system adjusted company sales of 31,535,371,000 kWhs produces his recommended base fuel factor of 1.582¢/kWh, excluding gross receipts tax. The 1.582¢ per kWh was based upon a normalized system nuclear capacity factor of approximately 53.4%.

CUCA witness Wilson advocated the adoption of a base fuel component which reflected a minimum 60% capacity factor for all nuclear generating units. Witness Wilson's base fuel component of 1.510¢/kWh utilizes CP&L's estimated June 1984 inventory prices for coal and oil and is based on CP&L's PROMOD computer program.

Kudzu witness Eddleman's recommended base fuel component of 1.358¢ per kWh is calculated utilizing a 65% system nuclear capacity factor.

The Commission is of the opinion that a normalized generation mix is appropriate for use in this proceeding and that such should reflect a level of nuclear generation associated with a reasonable system nuclear capacity factor of approximately 53.4%. Such a method would be similar to the method utilized by the Commission in Docket Nos. E-2, Subs 444 and 461, and E-7, Subs 338 and 373.

Based upon the foregoing and a careful consideration of all of the evidence bearing upon this matter, the Commission concludes that the appropriate fuel factor for use in this proceeding is 1.582¢/kWh, which reflects a reasonable fuel cost of $316,653,000 for North Carolina retail service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is found in the testimony of Company witness Nevil and Public Staff witnesses Lam and Paton.

Company witness Nevil presented Nevil Exhibit No. 6 showing the actual monthly balances through June 1984 and the projected monthly balances through September 1984 for the deferred fuel account established by this Commission in CP&L's last general rate case. This exhibit showed the actual balance through June as $7,675,552 and the projected balance through September as ($4,570,000). He testified that, since the final balance in the deferred account could not be known until after the time the Commission was to issue an Order in this case, the Commission should not take any action relating to the deferred account prior to the issuance of an Order but should instead defer the matter until CP&L's next general rate case or fuel charge adjustment proceeding.

Public Staff witness Lam offered testimony as to the monthly balances in the deferred account. On cross-examination, he agreed that the actual balances shown on Nevil Exhibit No. 6 are correct. He testified that the Commission

should examine the deferred account balance at the latest time possible prior to establishing new rates.

Public Staff witness Paton agreed on cross-examination that the Company had made an adjustment to test year O&M expenses which had the effect of refunding to ratepayers the September 1983 per books balance in the deferred account. The amount of this adjustment was $1,675,945. Nevil explained that this adjustment was higher than the actual September 1983 balance shown on Nevil Exhibit No. 6 because the September 1983 per books balance was an estimate. Paton stated that, if the Company is directed to refund the amount in the deferred account, the refund should be reduced by the $1,675,945 figure already effectively refunded.

CUCA took the position, through counsel's cross-examination, that CP&L should be required to refund the actual June 1984 balance of $7,675,552.

The deferred fuel account was originally established by the Commission in its Order Granting Partial Increase in Rates and Charges which was issued on September 19, 1983, in CP&L's last general rate case, Docket No. E-2, Sub 461. The Commission undertook reconsideration of that Order and issued its Order on Reconsideration on December 7, 1983. That Order, in pertinent part, established a new fuel factor, continued the deferred fuel account, and provided for review of the deferred account and refund of overcollections. In this regard, the Commission stated the following:

> "Since minor changes in the normalized test year generation mix and resulting changes in fuel costs can cause overcollection or undercollections of tens of millions of dollars, and in light of CP&L's erratic nuclear operational experience and the absence of Commission rules for implementing G.S. 62-133.2, the panel is reluctant to set a fuel factor without providing some explicit protection for the ratepayers. Therefore, the Commission finds that the 1.677¢ per kWh fuel factor should be considered provisional in the sense that it may be reduced if actual experience demonstrates that it has been set too high, but fixed if actual reasonable fuel costs equal or exceed it. By the Commission taking this approach, CP&L has the burden, and properly so, to maintain its fuel costs at or below the level found to be reasonable therein. If it is unable to do so, it will have the burden of attempting to institute a proceeding under G.S. 62-133.2, even in the absence of Commission rules, to recover its additional reasonable fuel costs. However, the Commission is not willing to place such a burden on CP&L's customers or their representatives. Accordingly, the Commission directs CP&L to establish a deferred fuel expense account and place any net overcollections in it. The Commission will review the Company's actual fuel costs in its next general rate case or in a G.S. 62-133.2 proceeding and will require the Company to refund any overcollections to its customers. The status of this deferred account shall be reported to the Commission no later than one year from the date of this Order or 30 days prior to the beginning of the hearings in CP&L's next general rate case. The status of this account is to be made available to the Public Staff at any time."

The Commission directed that net overcollections should be placed in the deferred account and that the Commission would review the Company's actual fuel costs in its next general rate case or fuel charge adjustment proceeding and require net overcollections to be refunded. It follows from this language that the Commission intended for the deferred account to be reexamined when a new fuel factor was set and for any net overcollections to be refunded at that time. The Commission in its September 21, 1984, Recommended Order recognizes that the relevant balance of net overcollections is the actual balance at the time rates were allowed to be effective or as of September 21, 1984, and that the evidence of record only provided an estimate of such amount. The Commission therefore directed CP&L to file with the Commission and serve upon all parties to this proceeding a verified report of the balance of the deferred fuel account as of the date that new rates went into effect as a result of the present general rate case. Further any party to this proceeding was allowed an opportunity to request a hearing within 10 working days following filing of this report for the purpose of resolving any doubts or questions as to the correct balance of the account as of September 21, 1984. It was further specified that if as a result of further hearing it was determined that there was still a positive balance in the account then an order directing that such positive balance be refunded to the Company's ratepayers would be issued.

On November 14, 1984, the Commission held oral argument for the purpose of reconsidering various aspects of the September 21, 1984, Recommended Order. In conjunction with such hearing, Company witness Bradshaw presented evidence to the Commission concerning the status of the deferred fuel account as the time rates became effective in this proceeding. Witness Bradshaw testified that as of September 21, 1984, the deferred fuel account was overcollected by approximately $2,560,418. Witness Bradshaw further specified that such amount less $1,675,945 already effectively refunded the CP&L's customers in the Commission's Recommended Order should be refunded to the ratepayers of CP&L.

In the course of the oral argument the amount of per books deferred fuel account at September 30, 1983, of $1,675,945 which supposedly had already been effectively refunded to customers was questioned by the Public Staff. The Public Staff maintained that the accounting treatment afforded this item of cost resulted in either no refund to the customer or at the most an effective refund of approximately $173,000. After further consideration of this issue the parties agreed that only approximately $173,000 of the deferred fuel account had been effectively refunded to the customers and that an additional $2,387,000 should be utilized to further reduce the increase in gross revenues found fair herein. The Commission therefore finds that it is appropriate to reduce the revenue requirements in this proceeding by approximately $2,387,000 in recognition of the remaining deferred fuel account balance at September 21, 1984. The issue will be further discussed in Evidence and Conclusions for Finding of Fact No. 18.

In its Brief submitted in this case, CP&L argues that the Commission should not deal with the balance in the deferred account past September 1983 since to do so would go beyond the test year in this case. The Company argues that the deferred account should be continued and that all post-September 1983 balances should be dealt with in the future. The Company also argues that since fuel costs vary from month to month, it would be unfair to deal with the deferred account on the basis of less than one full year's experience. As it happens, the Commission's present action follows almost exactly one year after

the establishment of the deferred account, so the Company's argument for one full year's experience with the deferred account is met.

The Commission has determined that the deferred account should not be continued. A major factor prompting the Commission to establish it in the last general rate case was the absence of Commission rules for implementing G.S. 62-133.2, the statute dealing with fuel charge adjustment proceedings. On May 1, 1984, the Commission issued an Order in Docket No. E-100, Sub 47, adopting rules for implementation of the fuel charge adjustment proceeding statute. With this proceeding now readily available to all parties, the Commission finds no basis for continuing the deferred fuel account and concludes that it should be closed out according to the procedure outlined above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence bearing on the issue of fuel inventory was presented by Company witnesses Davis and Nevil, Public Staff witness Burnette, and CUCA witness Wilson.

The first part of the fuel stock issue relates to the coal inventory cost. CP&L seeks a working capital allowance of $64,920,775 for the North Carolina retail coal inventory. The Public Staff recommends an allowance of $59,985,479 for the North Carolina retail coal inventory.

Company witness Davis used the "maximum drawdown" methodology in order to derive a coal inventory requirement of 2,129,945 tons, which when multiplied by the June 1984 inventory coal price of $47.86 per ton, results in $101,939,168 total company investment, or $64,920,775 for the North Carolina retail jurisdiction. The 2,129,945-ton inventory used by witness Davis would provide a 77.2-day supply based on the projected 27,598-ton daily burn rate which he used in his maximum drawdown methodology. That projected burn rate was derived by dividing an "adjusted test year" level of coal consumption of 10,073,200 tons by 365 days. He acknowledged on cross-examination that the "adjusted test year" level of coal consumption had been provided to him by Company witness Nevil and was based upon witness Nevil's fuel cost analysis and generation mix. The Company's proposed inventory of 2,129,945 tons would provide an 84-day supply based on the 25,362-ton daily burn rate calculated by Public Staff witness Burnette.

Public Staff witness Burnette recommended a $94,189,724 investment allowance for coal inventory on a systemwide basis and an allowance of $59,985,479 for the North Carolina retail jurisdiction. During cross-examination witness Burnette agreed that the calculation used in computing the daily burn rate should be net of Power Agency. His recommended 1,968,026 tons of coal inventory would provide a 78-day supply based on his recommended 25,362-ton daily burn rate. Witness Burnette calculated a 25,362-ton daily burn rate based on: (1) the normalized coal generation (net of Power Agency) which was utilized by Public Staff witness Lam to calculate his recommended fuel costs in this proceeding, (2) the historical fossil heat rate (net of Power Agency), and (3) the actual heat value of the coal (net of Power Agency) based on data provided by the Company. Witness Burnette's 1,968,026 tons of inventory would provide a 77.2-day supply if the daily burn rate should increase to 25,500 tons per day. Witness Burnette used the same $47.86 per ton inventory value as did witness Davis.

CUCA witness Wilson also recommended a lower average daily burn rate to reflect his estimate of coal-fired generation. He used a 77.2-day supply to compute a 1,861,521-ton inventory, and priced the inventory at $47.14 per ton resulting in a coal inventory valued at $87,752,100 on a systemwide basis.

The primary difference between the Company's recommendation and that of the Public Staff and CUCA is the daily burn rate which should be used. The daily burn rate used by witness Davis is appropriate only if the Company's recommended generation mix is accepted by the Commission. The Commission has adopted the Public Staff's proposed generation mix, upon which witness Burnette's current daily burn rate is based in part. Based upon a consideration of all of the evidence regarding this matter, the Commission concludes that the working capital allowance of $59,985,479 for coal inventory as recommended by witness Burnette is appropriate for use in this proceeding.

The second part of the fuel stock issue relates to the liquid fuel inventory cost. There was no disagreement between the Company and the Public Staff regarding the amount of the liquid fuel inventory. The disagreement between the Company and CUCA centers on the quantity of liquid fuel that should be included in the fuel stock amount.

Company witness Davis recommended a total liquid fuel inventory cost level of $9,660,505. This figure is comprised of 9,445,477 gallons of No. 2 oil at the June 1984 inventory cost of 85 cents per gallon and 2,365,000 gallons of propane at the June 1984 inventory cost of 69 cents per gallon. Witness Davis based his recommendation on the Company's liquid fuels inventory guidelines which consider availability of fuels by anticipating varying demands for and prices and availabilities of No. 2 oil, natural gas, and propane.

CUCA witness Wilson proposed an 8,554,967-gallon oil inventory and a 647,057-gallon propane inventory based on test year average inventory balances. He priced these inventories at unit values of 85 cents per gallon for oil and 65 cents per gallon for propane. This resulted in a system oil inventory of $7,271,722 and a system propane inventory of $417,337.

The Commission finds the Company's recommendation of $9,660,505 for total liquid fuel cost for the system to be the most appropriate for this proceeding. The North Carolina retail portion of this amount is $6,152,000. This amount, plus the previously discussed appropriate coal stock amount of $59,985,000 and the miscellaneous per book components of the fuel stock account of $(2,000), results in a total North Carolina retail fuel stock of $66,135,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witness Faucette and Public Staff witnesses Dennis, Paton, and Burnette presented testimony and exhibits in regard to the proper working capital allowance. The amount of working capital included in the respective proposed Orders of the Company and the Public Staff is shown in the chart below:

| Item | (000's Omitted) Company | Public Staff | Difference |
|---|---|---|---|
| Investor funds advanced for operations | $17,003 | $14,270 | $(2,733) |
| Materials and supplies | 88,613 | 83,556 | (5,057) |
| Other rate base additions and deductions | (15,788) | (16,269) | (481) |
| Total working capital allowance | $89,828 | $81,557 | $(8,271) |

In addition, CUCA witness Wilson presented testimony and exhibits on the investor funds advanced for operations component of the working capital allowance. Dr. Wilson's calculations showed $7,382,000 for this segment, a decrease of $9,621,000 from the Company amount and $6,888,000 less than that of the Public Staff. Also, Dr. Wilson recommended adjustments to the Company's proposed level of materials and supplies. The Company, the Public Staff, and CUCA were the only parties to the proceeding which presented specific recommendations and evidence bearing on the appropriate amount of the working capital allowance.

The first area of disagreement between those parties as to the appropriate amount of working capital is the determination of the investor funds advanced for operations. All three parties determined a different level of investor funds advanced for operations. The different levels proposed by the witnesses for each party resulted in part from the Company's use of a formula method as opposed to the other two parties' use of a lead-lag study. The lead-lag studies presented by the Public Staff and CUCA were based on the study filed by the Company in its initial E-1 data filing. The Public Staff and CUCA adjusted the study filed by the Company to reflect adjustments to certain amounts in the cost of service and to reflect assignment of different lag days to various components of the cost of service. Additionally, incidental collections were deducted from investor funds advanced for operations.

Concerning the Company's use of the formula method in this proceeding to calculate a reasonable level of investor funds advanced for operations, Company witness Faucette testified that, based on the amount of investor funds advanced for operations allowed by the Commission in the Company's last two general rate proceedings as compared to the related per books amounts of operation and maintenance expenses adjusted for the Leslie coal mine loss and Power Agency, a consistent trend is shown in the relationship of investor funds advanced for operations allowed to operation and maintenance expenses allowed. Witness Faucette contended that a reasonable approach to determining investor funds in this proceeding would be to apply the percentage which reflected the relationship which investor funds advanced bore to per books operation and maintenance expenses found appropriate by the Commission in Docket No. E-2, Sub 461, to the test year per books operation and maintenance expenses in this case, after adjusting for the Power Agency and Leslie Coal mine loss. In support of the formula method which he proposed, witness Faucette asserted that it was an easier and less costly method of determining investor funds advanced than was a lead-lag study. However, witness Faucette did not present any evidence regarding the costs of preparing a lead-lag study.

Additionally, witness Faucette testified that if the Commission did not accept the Company's proposed formula methodology, then it should use a full-blown lead-lag study which includes all of the Company's pro forma and end-of-period adjustments.

Both CUCA witness Wilson and Public Staff witness Dennis asserted that the lead-lag study approach to determining investor funds advanced for operations is preferable to using a formula or ratio method, as the Company contended should be done. Witness Wilson testified that there is no basis for the Company's assumption that a constant percentage of adjusted operation and maintenance expenses would reflect the working capital provided by investors from year to year. Witness Dennis testified that a properly prepared lead-lag study is an in-depth analysis which reflects the Company's current reasonable cash working capital needs measuring the lag in collections from the customers of the cost of providing service and the lag in payments by the Company of the cost of providing said service.

The Commission recognizes that there are at least three methods used to determine the cash working capital requirement for a regulated utility. Those are the balance sheet method, the formula method, and the lead-lag method, with many variations to each of these approaches. The Company's method of determining investor funds in this proceeding is a variation of the formula method. While the Company's proposed formula method may be a simpler and more easily understandable approach than the lead-lag method, the Commission does not believe that this fact alone is justification for a departure from the traditional lead-lag study approach which has been repeatedly used and approved by the Commission over the past several years. Although the Company's formula method is based upon the percentage relationship of investor funds advanced for operations to operation and maintenance expense found appropriate by this Commission in Docket No. E-2, Sub 461, the Commission concludes that there is no reasonable basis to suppose that this percentage relationship accurately reflects or will reflect the actual payment practices of CP&L and its customers in this or future proceedings. In support of this conclusion, the Commission notes that Company witness Faucette agreed under cross-examination that payment practices would change from one time period to another. Therefore, based on all the foregoing and the entire evidence of record, the Commission concludes that since the lead-lag method more clearly identifies the capital required as a result of the customers' and the Company's actual current payment practices and the capital available from sources other than the investor to meet that need, then said method should be used to determine a fair and reasonable level of investor funds advanced for operations, to be used in calculating an appropriate level of working capital to be used in this proceeding.

In regard to the question of using a full-blown lead-lag study instead of a lead-lag study based on a per books cost of service, the Commission has ruled in previous CP&L general rate cases that a lead-lag study based on the per books cost of service, adjusted only for significant changes, represents a reasonable approach to determining investor funds advanced for operations. Accordingly, the Commission reaffirms that position in this proceeding.

The Commission has reviewed the adjustments proposed by Public Staff witness Dennis to the per books cost of service amounts presented in the Company's lead-lag study included in its initial E-1 data filing. The Company presented no evidence in opposition to these adjustments proposed by Public

Staff witness Dennis, except to the extent, as spoken to above, that the Company asserted that the lead-lag approach was inappropriate. Therefore, the Commission concludes that the adjustments to the per books cost of service amounts, as presented by the Public Staff, are proper and should be considered in this proceeding.

Similarily, the Commission has reviewed the adjustments made by the Public Staff to the lag days assigned to various components of the cost of service within the lead-lag study. Here again, with but one exception, the Company provided no opposition to said adjustments except to the extent that the Company considered the lead-lag study to be improper. The Company asserted that Public Staff witness Dennis' adjustment to assign the level of revenue lag days to the investment tax credit item of the per books cost of service was inappropriate.

Witness Dennis and witness Wilson testified that it was inappropriate to include an addition to working capital relating to investment tax credits (ITC). Witness Dennis testified that the purpose of the lead-lag study in a general rate case proceeding is to measure the level of investor or customer funds advanced for operations. Witness Dennis further testified that, to the extent that those funds measured through the lead-lag study are supplied by investors, they represent valid additions to rate base upon which the investors are given the opportunity to earn a fair rate of return; however, to the extent that funds are not supplied by investors, they do not qualify as valid additions to rate base. Witness Dennis stated that ITC are not supplied by investors; therefore, the Company's lead-lag study should be adjusted so that CP&L does not receive any working capital allowance relative to ITC and that the assignment of the revenue lag of 39.63 days to ITC would accomplish that result.

The central issue concerning this matter is whether the Internal Revenue Code allows the treatment advanced by the Public Staff or whether it mandates the treatment advocated by the Company. Initially, one should note that the treatment advocated by the Company is the same as that put forth by both the Company and the Public Staff, and accepted by this Commission, in previous general rate case proceedings. Additionally, it should be noted that the evidence is clear that the Public Staff's treatment would effectively nullify any consideration of the Investment Tax Credits in determining an appropriate level of working capital, while the Company's treatment would include consideration of the ITC.

The Company asserts that the position of the Public Staff concerning this matter could be found to be in violation of the Internal Revenue Code, placing the Company in jeopardy of losing millions of dollars in ITC. Clearly the Public Staff and the Company agree that the ITC unamortized balance should not be directly deducted from rate base, as that would be in violation of the Internal Revenue Code and would subject the Company to the loss of the ITC. However, the parties disagree concerning the interpretation of whether or not a reduction to rate base by virtue of a reduction in the working capital allowance, based on the lead-lag methodology, should be considered in the same light as a direct reduction to rate base.

The Commission, in its review of this matter, has taken judicial notice of I.R.S. Regulation 1.46-6(b)(ii) which states in part:

"(ii) In determining whether, or to what extent, a credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, in those cases in which the rate of return is based on the taxpayer's cost of capital, reference shall be made to any accounting treatment that affects the permitted return on investment by treating the credit in any way other than as though it were capital supplied by common shareholders to which a "cost of capital" rate is assigned that is not less than the taxpayer's overall cost of capital rate (determined without regard to the credit)."

Based on the foregoing, and a review of the entire record concerning this matter, the Commission concludes that the Public Staff's adjustment would result in a reduction in rate base, and consequently would be in contradiction to the IRS regulations. Therefore, the Commission concludes that the Public Staff's adjustment related to the appropriate treatment of Investment Tax Credits in the lead-lag study is improper and should not be adopted. The Commission further concludes that all other adjustments proposed by the Public Staff concerning the assignment of appropriate lag days in the lead-lag study are proper and therefore should be approved.

Based on all the foregoing, the Commission concludes that the appropriate level of investor funds advanced for operations, to be used in establishing fair and reasonable rates in this proceeding, is $18,941,000.

The second area of difference between the Company and the Public Staff with regard to working capital is the proper amount to be included in rate base for materials and supplies. The Company proposed a level of $88,613,000 for this item, while the Public Staff's recommendation would result in a level of $83,556,000. The sole difference between the Company and the Public Staff is attributable to the difference between them with respect to the appropriate amount of working capital allowance for the coal and liquid fuels inventory balances. The chart below illustrates the components of the respective positions of the Company and the Public Staff with respect to materials and supplies.

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Fuel stock inventory: | | | |
| Coal | $64,921 | $59,985 | $(4,936) |
| Other liquid fuels | 6,150 | 6,029 | (121) |
| Plant materials and supplies | 17,542 | 17,542 | - |
| Total materials and supplies | $88,613 | $83,556 | $(5,057) |

Based on the Commission's determination in Finding of Fact No. 12 of this Order, the appropriate working capital allowance for coal and other liquid fuel inventory for use in this proceeding is $59,985,000 and $6,150,000, respectively. Since the level of plant materials and supplies is uncontested in this case, the Commission concludes that the uncontested amount of $17,542,000 is appropriate. The Commission therefore concludes that materials and supplies of $83,677,000 is appropriate for use herein.

. . The final area of disagreement between the parties as to working capital concerns the proper level of other rate base additions and deductions. The Company recommended a net deduction of $15,788,000, while the Public Staff recommended a net deduction of $16,269,000. The difference of $481,000 relates entirely to the unamortized balance of the gain on the sale of assets to the North Carolina Eastern Municipal Power Agency. Both the Company and the Public Staff agreed that the unamortized balance of the gain on the Power Agency sale should be deducted from rate base. The parties are in disagreement however as to the amount of the unamortized gain. The Commission hereinafter in Evidence and Conclusions for Finding of Fact No. 18 fully discusses this issue. Based upon the conclusions reached therein the Commission finds the Public Staff's proposed adjustment of $481,000 to other rate additions and deductions inappropriate. The Commission therefore finds other rate base additions and deductions of $15,788,000 reasonable and appropriate for use herein.

In summary, the Commission concludes that a working capital allowance of $86,830,000 is reasonable and proper, consisting of investor funds advanced for operations of $18,941,000, materials and supplies of $83,677,000, and other rate base additions and deductions of $(15,788,000).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact concerning inclusion of construction work in progress (CWIP) in the rate base was presented in testimony and exhibits of Company witnesses Smith, Lilly, Vander Weide, Spann, McDuffie, Bradshaw, and Chapman; Public Staff witness Sessoms; Kudzu Alliance witness Eddleman; CCNC witness Reeves; and CUCA witness Wilson.

In 1977, an amendment to North Carolina G.S. 62-133(b)(1) provided that reasonable and prudent expenditures for CWIP incurred after July 1, 1979, shall be included in rate base. By definition allowing CWIP in the rate base means that the annual cost of money (interest, etc.) borrowed and invested to construct plant facilities are charged to customers on a current basis rather than deferred and added to the cost of the facility at the time the plant is completed. Including CWIP in the rate base does not mean that the customers are investing in the "bricks and mortar" of construction expenditures. On June 17, 1982, North Carolina G.S. 62-133(b)(1) was further amended to provide that reasonable and prudent expenditures for CWIP may be included in the rate base of a public utility to the extent the Commission considers inclusion to be in the public interest and necessary to the financial stability of the utility in question. Since the effective date of the initial amendment to North Carolina G.S. 62-133(b)(1), the Commission has approved the inclusion of a portion of CWIP in CP&L's rate base in five proceedings: NCUC Docket Nos. E-2, Sub 366; E-2, Sub 391; E-2, Sub 416; E-2, Sub 444; and E-2, Sub 461. CP&L initially requested in this proceeding that $695,275,923 of CWIP, all related to Harris Unit No. 1, net of Power Agency ownership, be included in its North Carolina retail rate base. This figure represents approximately 61% of the Company's total North Carolina retail CWIP at March 31, 1984.

Subsequent to the issuance of the Recommended Order in this proceeding CP&L filed a Motion to Reopen Record for the limited purpose of receiving evidence on the amount of allowance for funds used during construction (AFUDC) accrued subsequent to July 1, 1979 on CWIP which occurred prior to July 1, 1979 and had been included in the CWIP the Company sought to include in rate base in

this case. The Company also requested that the record be reopened for the further limited purpose of receiving evidence pertaining to the total amount of CWIP on the Company's books as of September 30, 1984, exclusive of any AFUDC accrued since July 1, 1979, on construction expenditures before July 1, 1979, which could be included in rate base in this case. In support of its motion CP&L cited a recent holding of the North Carolina Supreme Court in State of North Carolina ex. rel. Utilities Commission v. Conservation Council of North Carolina, _____ NC _____ (No. 126A84, October 2, 1984) which states that it is error for the Commission to include CWIP in rate base to the extent it is comprised of AFUDC accrued subsequently to July 1, 1979, on expenditures related to CWIP which occurred prior to July 1, 1979. The Commission allowed the motion to reopen record for the limited purpose of receiving the following evidence:

1. The amount of AFUDC accrued subsequent to July 1, 1979, on CWIP which occurred prior to July 1, 1979, and which was included in the level of CWIP ($692,604,000) which CP&L was allowed to include in its rate base pursuant to the Recommended Order entered in this docket on September 21, 1984.

2. The total amount of CWIP on CP&L's books as of September 30, 1984, exclusive of any AFUDC accrued since July 1, 1979, on construction expenditures made before July 1, 1979, which would be eligible for inclusion in the Company's rate base in this case.

The Commission's Order determined that such evidence should be presented in a further hearing before the Commission. Pursuant to such order, Company witness Bradshaw testified that the construction expenditures included in rate base in the Recommended Order of $692,604,000 include an amount of $118,847,000 relating to AFUDC accrued subsequent to July 1, 1979, on CWIP which occurred prior to July 1, 1979. Witness Bradshaw further testified that the Company had incurred additional constuction expenditures between March 31, 1984, and September 30, 1984, of $101,549,000 related to Harris Unit No. 1 which were eligible for inclusion in rate base in this proceeding. Such expenditures are exclusive of AFUDC accrued on construction expenditures incurred by the Company prior to July 1, 1979. Thus the Company is requesting that CWIP of $675,306,000 which reflects construction expenditures through September 30, 1984, relating to Harris Unit No. 1 exclusive of construction expenditures incurred prior to July 1, 1979 and exclusive of AFUDC accrued on construction expenditures incurred prior to July 1, 1979 be included in the rate base in this case. The Company maintains that such construction expenditures have been prudently incurred by the Company and that the inclusion of such expenditures in rate base is in the public interest and necessary to CP&L's financial stability.

The Public Staff presented further testimony on the additional evidence to be considered in the matter by George T. Sessoms Jr. Public Staff witness Sessom's testimony dealt specifically with the improved financial indicators of CP&L and with the fact that the Company has revised its projected in service date for completion of Harris Unit No. 1.

CUCA presented the additional testimony of Dr. John W. Wilson concerning the matter. CUCA witness Wilson's additional testimony dealt primarily with the level of CWIP that CP&L had been allowed to include in rate base that is accounted for by AFUDC accrued on pre July 1, 1979 construction expenditures which is not eligible for inclusion in rate base in the case. Witness Wilson

further opposed the inclusion of additional CWIP in rate base requested by the Company of $101,549,000 on the basis that such inclusion violates the matching concept.

The Commission is of the opinion that the amount of CWIP which is eligible for inclusion in rate base in this case is $675,306,000. This level of CWIP represents the construction expenditures related to Harris Unit No. 1 at September 30, 1984, exclusive of construction expenditures incurred by the Company prior to July 1, 1979 and exclusive of AFUDC accrued subsequent to July 1, 1979, on construction expenditures incurred prior to July 1, 1979. Such amount excludes $118,847,000 relating to AFUDC accrued subsequent to July 1, 1979, on CWIP which occurred prior to July 1, 1979, and includes $101,549,000 of additional CWIP expenditures incurred by the Company during the period March 31, 1984, through September 30, 1984. The Commission rejects the assertion that consideration of CWIP expenditures incurred during the period March 31, 1984 through September 30, 1984, violates the matching concept. These construction expenditures represent non-revenue producing plant and thus inclusion of such CWIP in rate base does not in the Commission's opinion in any manner violate the matching concept.

As the Commission has noted in previous Orders since the 1982 amendment the amount of CWIP in rate base determined to be appropriate results from the application of the following criteria: (1) the expenditure must be reasonable and prudent, (2) the inclusion must be in the public interest, and (3) the inclusion must be necessary to the financial stability of the utility in question. Thus, the Commission must determine what portion if any of the eligible CWIP amount of $675,306,000 meets the preceding three criteria and can therefore reasonably be included in rate base in this proceeding.

Company witness McDuffie presented evidence that showed expenditures made for construction of Harris Unit No. 1 to date have been both reasonable and prudent. Witness McDuffie testified that a recent study of construction costs of other utilities showed that the Company's total plant costs are favorable when comparisons are made on a similar basis. Public Staff witness Sessoms testified that he had made no examination of whether CWIP expenditures were reasonable and prudent. Kudzu Alliance witness Eddleman and CCNC witness Reeves alleged that Harris Unit No. 1 is unnecessary and should be cancelled, and that any further expenditures on this unit would not be reasonable. However, evidence presented by Company witness Smith in Item 35 of the Form E-1 Information Report and in previous load forecast hearings shows that Harris Unit No. 1 will be necessary to meet future customer requirements. Therefore, the Commission finds that the expenditures under consideration in this case for Harris Unit No. 1 have been reasonable and prudent.

Several witnesses offered testimony on the public interest criterion. Company witness Spann presented a quantitative study and testimony concluding that the inclusion of the requested amount of CWIP would benefit ratepayers by minimizing the net present value of revenue requirements through the year 2000. Dr. Spann testified that it would be less costly on a present value basis to place CWIP in rate base in order to maintain an A bond rating than not to place CWIP in rate base and have CP&L's bonds downgraded, with a commensurate increase in interest expense and therefore total cost of the plant. Dr. Spann further testified that a ratepayer would have to have an after-tax effective investment rate of over 20% to be able to receive a better present value

investment return than from the payment of a return on CWIP in the rate base. Dr. Spann noted that the current rate on tax-free bonds was approximately 10%.

Dr. Spann also testified that inclusion of CWIP in rate base helps to levelize rates and minimize rate shock as new plants go into service. To the extent that carrying charges have been eliminated due to the inclusion of CWIP in the rate base, the total dollars placed into the rate base when Harris Unit No. 1 comes on line and on which customers must pay a return are reduced substantially.

Public Staff witness Sessoms testified that inclusion of CWIP in the rate base could result in lower future rates for ratepayers but that such rates did not mean that the ratepayers as a group would benefit financially from the inclusion of CWIP in the rate base. Witness Sessoms indicated that in order to determine the benefits to ratepayers the opportunity cost of money to ratepayers as a group; must be established i.e.; the ability of ratepayers to invest in something with a higher return to them. According to witness Sessoms that cost was "difficult, if not impossible, to measure." Witness Sessoms further testified that the inclusion of CWIP in the rate base was unfair to ratepayers who did not remain in the service area. Witness Sessoms recommended that the amount of CWIP placed in the rate base under these circumstances should be limited to $496,597,912. Contrary to witness Sessoms' assertions, Company witness Spann testified that CP&L had studied its 1983 customer base and determined that 84% of CP&L's residential customers and 87% of its commercial and industrial customers were customers seven years earlier, so that a valid assumption can be made that the vast majority of customers will continue to require CP&L service through the time when Harris Unit No. 1 becomes commercial and would therefore benefit from the then lower rates. The Commission notes further that the current best estimates are that Harris No. 1 will become commercial by September 1986, approximately two years from the effective date of this Order. Hence, the Commission concludes that the intergenerational equity argument lacks significance in this instance and does not outweigh the benefits to ratepayers derived from inclusion of CWIP in rate base in this proceeding.

Kudzu Alliance witness Eddleman testified that no CWIP should be included in the rate base. The basis of his testimony was his belief that inclusion of CWIP is not cost effective and is in reality a forced loan from consumers to the Company. CCNC witness Reeves also testified that inclusion of CWIP is not in the public interest. The basis of his testimony was his belief that load management and conservation methods can save the same amount of energy as it is currently estimated will be needed to be produced by Harris Unit No. 1 and that these methods are cheaper than completing the plant. Finally, CUCA witness Wilson testified that it was not fair to allow recovery on the plant until it is used and useful. Witness Wilson testified that capitalization of AFUDC matches cost incurrence with provision of service, and in his opinion this was the only method of collecting for plant costs which is truly in the public interest.

The Commission finds that, in determining whether the public interest is served, it is appropriate to consider a number of factors. Although the near-term impact on present ratepayers is certainly an important factor, it is not totally dispositive of the issue. When the public interest is viewed in a broader sense, it becomes clear that for purposes of this proceeding additional

CWIP in rate base will serve the public interest despite the fact that rates will be somewhat higher in the near term.

The quantitative evidence presented in this case supports, and the Commission so finds that, inclusion of additional CWIP in rate base will result in lower revenue requirements on a net present value basis through the year 2000. Thus, inclusion in rate base of the additional CWIP approved in this case will serve to provide power to CP&L's customers at the lowest cost over the life of Harris Unit I which is certainly in the public interest. The inclusion in rate base of the CWIP requested by the Company in this proceeding is also in the public interest because: (1) with the inclusion of CWIP rates will increase gradually over the period of construction rather than all at once when the plant goes into service; (2) placing additional CWIP in rate base is a lower cost method of improving CP&L's cash flow, interest coverage, and other key financial indicators than available alternative policies; (3) with CWIP in rate base, ratepayers will receive the accurate pricing signals regarding the cost of electricity necessary to make decisions regarding home insulation, appliances, and other energy-sensitive investments; (4) migration studies have shown that most of the Company's present ratepayers will also be future ratepayers; and (5) assurance of adequate service in the future attracts industry and jobs and bolsters the current economy in the service area by providing jobs and tax revenues for such public needs as schools and highways.

Several witnesses also testified on the financial stability criterion. Company witness Spann provided the following analysis of CP&L's financial position as compared to other A and Baa utilities for the 12-month period ending March 31, 1984:

| Factor | Average A Rated | Average Baa Rated | CP&L | Comments |
|---|---|---|---|---|
| Pretax interest coverage | 2.71 | 2.04 | 2.4 | In between |
| CWIP/net plant | 24.6 | 34.68 | 38.3 | Below Baa |
| AFUDC/net income | 39 | 61.33 | 59.5 | Closer to Baa |
| Common equity | 39 | 36.50 | 40.4 | Better than A |
| Internal generation/ construction expense | 57 | 52.00 | 38.0 | Below Baa |

In summary, witness Spann stated that CP&L looks more like a Baa-rated utility than an A-rated utility. Company witness Lilly provided similar information showing that the Company did not meet minimum criteria for financial stability, as defined by a strong A bond rating and financial indicators commensurate with such a rating. Company witnesses Spann, Lilly, and Vander Weide testified that without inclusion of all eligible CWIP in rate base, the risk of CP&L's bonds being downgraded escalated substantially. A downgrade would have a serious impact on the Company's ability to raise the capital necessary to complete Harris Unit No. 1 at a reasonable cost and would ultimately result in notably higher rates to customers due to the increased financing cost.

Public Staff witness Sessoms provided some figures to support his contention that CP&L's financial statistics were well within the range of an A utility and therefore a bond downgrading was not likely if additional CWIP were not added to the rate base. On cross-examination, however, witness Sessoms

admitted that certain of the financial indicators he presented showing CP&L to be within the range of an A-rated utility, also showed CP&L to be closer to or worse than the average BBB/Baa utility. Witness Sessoms stated however that CP&L's financial indicators had improved recently and in his opinion the Company's requested CWIP additions to rate base were not necessary to CP&L's financial stability.

Public Staff witness Sessoms presented additional testimony at the November 14, 1984, hearing concerning the financial stability criterion. The purpose of such testimony as stated by witness Sessoms was to make the Commission aware of the improvements in CP&L's financial indicators since the initial hearings were closed and the change in the projected in-service date for Harris Unit No. 1. Witness Sessoms testified that the updated financial indicators of CP&L reflect improved financial stability and further support the Public Staff's contention that CWIP of only $496,597,912 is necessary to the financial stability of the Company. Witness Sessoms further stated that the change in the projected in service date on Harris Unit No. 1 should be considered as it relates directly to the public interest criterion. The Company presented testimony in response to the testimony of witness Sessoms indicating that the recent improvement in some of CP&L's indicators is the result of a temporary surge in sales. The Company asserts that this surge in sales is perhaps in response to an improvement in the economy in general and cannot be expected to continue on an on going basis in the future. The Company further asserts that CP&L's financial position relative to A and BBB related utilities has remained relatively unchanged.

The Public Staff, through its cross-examination of CP&L witness Lilly, attempted to show that the rating of CP&L's bonds was not overly important since CP&L has little financing left to undertake prior to Harris Unit No. 1 coming into service. As explained by the witness, however, by May 1985 CP&L must remarket $272 million worth of pollution control bonds in public offerings, and it anticipated a common stock issue closing in the fall of 1984 in an estimated amount of $70 to $80 million. In addition, the Company's April 1984 financial forecast projected that $134 million must be raised through stock purchase plans in the remainder of 1984 and 1985, and $134 million must be raised through outside financing during 1985. Any earnings contributing to increased internal cash generation which might occur in 1986 would not be available in 1985 to offset these financings. In addition, all of these projections assume that CP&L is able to include all eligible CWIP for Harris Unit No. 1 in the rate base and that the cost to complete the unit does not increase. If these assumptions prove inaccurate, the financing requirements will increase. Moreover, in financing additional requirements arising from the noninclusion of CWIP in rate base, it can be anticipated that CP&L will be required to pay higher than currently expected interest rates on those borrowed funds.

CUCA witness Wilson testified that he had undertaken an analysis that shows inclusion of CWIP is not necessary to CP&L's financial stability. Witness Wilson did not, however, produce that study or its results. Witness Wilson also stated that CP&L does not need any additional CWIP and that the amount of CWIP can be reduced. However, witness Wilson presented no evidence to support the assumption that CP&L's current rates are covering operating expenses, interest, dividend requirements, and substantially all construction expenses, which underlaid his assertion. In the November 14, 1984, hearing

witness Wilson reasserted his position that CP&L does not need any additional CWIP in rate base.

The financial stability criterion of the CWIP in rate base issue is perhaps the most crucial and difficult issue which the Commission must determine. The Commission has carefully studied and evaluated all of the evidence presented by each of the parties on this issue. Clearly, the witnesses testifying in this regard do not all agree that the requested additional amount of CWIP in rate base is necessary to the Company's financial stability. However, the Commission must conclude based upon its own review and analysis that the weight of the evidence overwhelmingly indicates that the inclusion of additional CWIP in rate base is crucial to the financial stability of CP&L.

The Commission notes that several of the parties in the proceeding assert that, because certain of CP&L's financial indicators have improved somewhat in recent years and because some of the massive external financing requirements of the Company necessitated by CP&L's construction program have been met, the inclusion of additional amounts of CWIP in rate base are not necessary to the Company's financial stability and, indeed, that the current level of CWIP may even be reduced with no fear of impairing the financial health of the Company. The Commission believes that the following excerpt regarding CP&L from the June 29, 1984, issue of Value Line Investment Survey clearly reflects the fallacy of such assertions:

> "The Harris #1 nuclear plant appears headed for early 1986 operation. CP&L has an 84% interest in the 85%-completed unit. The plant has had no significant construction problems to date. Fuel loading is scheduled for the spring of 1985. Capital outlays for the next two years, chiefly for this facility, are expected to top $1.2 billion. We expect no more than 30% of the required funds for the period to be generated internally. This means probable issues of $250 million in long-term debt and a public offering of three-to-four million shares of common in the current year. We are lowering this utility's financial strength rating from B++ to B+ and the stock's Safety a notch to 3 (Average)."

In the Commission's view CP&L is in a crucial stage of its construction program and the present financial stability of the Company necessitates the inclusion of additional amounts of CWIP in rate base.

It is the finding of this Commission from the evidence presented that the financial stability of CP&L requires the inclusion of an additional amount of CWIP in rate base. It is important to promote investor confidence in CP&L at this time so investors will undertake to finance the final stages of construction of the Harris Plant. An improvement in the Company's financial statistics will not only promote that confidence but also will provide a hedge against any possible regulatory, licensing, or similar delays in completion of the Harris Plant that would otherwise have an adverse impact on raising the necessary funds. The Commission has determined that inclusion of $663,167,000 of CWIP in rate base related to the construction of Harris Unit No. 1 represents reasonable and prudent expenditures, is in the public interest, and is necessary for the Company's financial stability.

Inclusion of CWIP in rate base is in the public interest and is necessary, if not essential, to the financial stability of CP&L. The Commission does not portend that, should it exclude all or a part of the requested CWIP from rate base, such action would inevitably or immediately result in the collapse of CP&L's financial viability. Hopefully, such an eventuality would not occur. In any case, however, CP&L's financial viability would, nevertheless, be significantly diminished to the significant detriment of CP&L's ratepayers and shareholders.

Many of the factors and much of the evidence presented which the Commission carefully considered and weighed in reaching its decision in this regard have been heretofore presented and discussed. However, there is one additional major factor which the Commission will now more fully develop and discuss that is worthy of further comment. This factor concerns the interrelationship between the inclusion of CWIP in rate base and the concomitant effect that such inclusion has on the Company's cost of capital or more specifically the cost of common equity capital. It is a well-established fundamental principle of finance that the return required by a risk averse investor varies in a positive manner with the perceived risk of the investment. Thus, it seems quite logical since CWIP in rate base effectively reduces risk to investors, that the cost of capital should be based on the inclusion of CWIP in CP&L's cost of service.

The Commission in establishing the cost of common equity capital for use herein has given careful consideration to the positive correlation that exists between risk and return. Accordingly, the Commission has chosen the lower end of the range of reasonable and fair rates of return for CP&L's common equity investors in order to reflect the full effect of all facets of the reduction in risk to CP&L investors occasioned by the inclusion of CWIP in rate base.

Before proceeding to other matters, there is one additional advantageous aspect of the Commission's having included CWIP in the rate base that needs to be discussed. Such additional aspect concerns CP&L's capitalization of Allowance for Funds Used During Construction (AFUDC) related to CWIP not included in the rate base. This additional economic advantage to ratepayers arises because the AFUDC rate utilized by CP&L is based on this Commission's approved rate of return. Since the overall rate of return is lower than it otherwise would be, absent the inclusion of CWIP in the rate base, the AFUDC rate is less, thereby resulting in the capitalization of still less capital cost which serves to further moderate the need for future rate increases while minimizing the current cost of capital.

The propriety of inclusion of CWIP in rate base is a matter which is discretionary to the Commission. As previously noted, however, G.S. 62-133(b)(1) does limit the Commission's authority in this regard. The limitation provides that the Commission may include reasonable and prudent expenditures for CWIP in rate base to the extent the Commission considers such inclusion in the public interest and necessary to the financial stability of the utility in question. From a purely economic perspective, when based upon the record as noted, the Commission concludes that the inclusion of CWIP in rate base is in the public interest. From a purely social perspective, the propriety of inclusion of CWIP in rate base requires review separate from that based on economic reasoning. Nevertheless, when the social and economic advantages and disadvantages of inclusion of CWIP in rate base are considered

in the aggregate, the Commission concludes that the inclusion of CWIP in CP&L's rate base is in the public interest.

Another criterion which the Commission must decide in the affirmative, as previously mentioned, is that the inclusion of CWIP in rate base is "...necessary to the financial stability of the utility in question..." The judgment which must be exercised by the Commission in this regard is, perhaps, a bit more subjective than that required in addressing the question of public interest. At this juncture it is instructive to note that the specific language of the statute employs the terminology "necessary to the financial stability" and not "essential to the financial viability" of the utility in question.

In a recent decision (June 1984) regarding a request by Duke Power Company for a general rate increase in Docket No. E-7, Sub 373, the Commission denied in its entirety Duke's request that CWIP be included in rate base as a result of having concluded that such inclusion was not necessary to the financial stability of Duke Power Company. In the instant proceeding, some may consider the decision of the Commission with regard to the issues of public interest and/or financial stability to be a very close question and one that should be resolved in a manner consistent with the Duke decision. However, each case decided by the Commission must be solely decided on the evidence in that case and the Commission clearly stated its rationale for denying CWIP to Duke as an exercise of its statutory and regulatory authority. The facts and evidence in this case clearly warrant a finding that the CWIP requested herein by CP&L meets the statutory criteria set forth in G.S. 62-133(b) which was not the case in Docket No. E-7, Sub 373.

In conclusion, the Commission wishes to reiterate for reasons heretofore discussed that it believes the evidence in the instance case overwhelmingly supports the Commission's decision to include a level of CWIP of $663,167,000 in rate base. Such inclusion is clearly in the public interest and necessary to the financial stability of CP&L.

The Commission is very much aware that its decision to include the additional CWIP in the rate base accounts for 52% or $33,491,000 of the increase approved herein and that 28% or $663,167,000 of CP&L's total North Carolina retail rate base of $2,346,824,000 is composed of CWIP. Thus, 10.5% or $133,337,000 of the total revenue CP&L is authorized to collect from its North Carolina retail customers arises from the inclusion of CWIP in rate base. A typical residential customer using 1000 kWh per month will incur a charge of approximately $6.70 per month as a result of the inclusion of CWIP in rate base. However, the Commission is convinced that the overall economic and social costs of the Commission's not having included such CWIP would far exceed the cost of such inclusion. The Commission notes that the Public Staff is in agreement that CWIP of $496,598,000 should be included in the rate base in this proceeding which equates to approximately $99,846,000 in annual revenue requirements and approximately $5.02 per month for a typical residential customer using 1000 kWh per month. The amount in contention in this case or the difference between the Company and Public Staff's position equates to approximately $1.80 per month for a typical residential customer using 1000 kWh per month.

In addition to the CWIP included by the Commission in CP&L's North Carolina retail rate base, the Company currently has an additional investment in CWIP of $607,387,000 applicable to its North Carolina retail operations which is not eligible for inclusion in rate base. Such CWIP places a significant burden on CP&L's financial resources. It is further anticipated that additional expenditures of $600,609,000 will be incurred by the Company on a North Carolina retail basis relative to Harris No. 1 prior to its in-service date. Such expenditures will place additional financial burden upon the Company during the period in which the rates established in this proceeding are in effect.

One further issue regarding CWIP must be discussed by the Commission. The issue relates to the methodology used by the Company to compute the amount of the North Carolina retail contra AFUDC account. The purpose of the North Carolina retail contra AFUDC account is to accumulate funds paid by the North Carolina retail ratepayer to CP&L for the capital cost associated with including CWIP in rate base. CUCA witness Wilson testified that the Company has erroneously failed to compound the contra AFUDC accounts relating to Harris Unit No. 2 and Mayo Unit No. 2 subsequent to October 1982. The Commission is of the opinion that this matter should certainly be investigated and fully explored in CP&L next general rate proceeding. The Commission therefore requests that the Public Staff fully explore this issue and report its findings to the Commission in CP&L's next general rate proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15 AND 16

Company witnesses Faucette and Bradshaw, Public Staff witnesses Burnette, Sessoms, Dennis, and Paton, and CUCA witness Wilson presented testimony regarding CP&L's reasonable original cost rate base. The following table summarizes the amounts which the Company and the Public Staff contend are the proper levels of original cost rate base to be used in this proceeding. Although not reflected in the table, the CUCA positions will also be discussed hereinafter.

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Electric plant in service | $2,484,159 | $2,483,116 | $ (1,043) |
| Net nuclear fuel | 21,863 | 21,863 | -- |
| Construction work in progress | 695,276 | 496,598 | (198,678) |
| Accumulated depreciation | (598,438) | (598,391) | 47 |
| Accumulated deferred income taxes | (256,661) | (311,371) | (54,710) |
| Allowance for working capital | 89,828 | 81,558 | (8,270) |
| Total original cost rate base | $2,436,027 | $2,173,373 | $(262,654) |

The first area of difference between the Company and the Public Staff concerns the reasonable level of electric plant in service. The $1,043,000

difference in the amounts proposed for electric plant in service by the parties relates solely to an adjustment proposed by Public Staff witness Paton to exclude from rate base allowance for funds used during construction (AFUDC) that was accrued on 4.97% of Roxboro No. 4 during the period September 15, 1980, through September 24, 1982. This adjustment was also proposed by CUCA witness Wilson. Witness Paton testified regarding this issue as follows:

> "In Docket No. E-2, Sub 391, the Commission determined that 4.97% of the cost of Roxboro No. 4 should be excluded from rate base while boiler problems were being remedied. During the time that this portion of the plant was excluded from rate base, CP&L transferred that portion to CWIP and accrued AFUDC on it.
>
> In Docket No. E-2, Sub 444 and Sub 461, the Commission ruled that the AFUDC accrued on 4.97% of Roxboro No. 4 (while it was excluded from rate base), should also be excluded from rate base. If the AFUDC is included in rate base, it will negate the Commission's decision in Sub 391 that CP&L should not be allowed to earn a return on 4.97% of Roxboro No. 4 while repairs to the boiler were being made."

The Company, through the testimony of witness Bradshaw, maintains that AFUDC accrued on 4.97% of Roxboro Unit No. 4 during the period September 15, 1980, through September 24, 1982, is properly included in electric plant in service in this proceeding. Company witness Bradshaw testified that he thought the Commission should reconsider the issue because of recent indications that the Federal Energy Regulatory Commission (FERC), having previously raised the issue during an audit, had apparently determined not to oppose the Company's proposed treatment of this issue. In that regard witness Bradshaw testified that in March 1982 the FERC staff issued a preliminary audit report which questioned the propriety of accruing AFUDC on the portion of Roxboro No. 4 excluded from rate base by the Commission in Docket No. E-2, Sub 391. Witness Bradshaw stated, however, that the Company has subsequently received a final audit report from the FERC in September 1983 in which no mention was made of this issue.

The Commission has reviewed the decisions made in this regard in the Company's previous two general rate cases and believes that such decisions were in error particularly in view of the FERC's reversal of its position on this issue. The Commission therefore finds it appropriate to include in rate base investment of $1,043,000 relating to AFUDC accrued on Roxboro Unit No. 4 during the period September 15, 1980 through September 24, 1982.

Based on the foregoing, the Commission concludes that the amount of electric plant in service for use in this proceeding is $2,484,159,000.

The next area of disagreement between the parties concerns the amount of CWIP which should properly be included in rate base. Based on the decision reached herein which is fully discussed in Evidence and Conclusions for Finding of Fact No. 14 of this Order, the Commission concludes that $663,167,000 of CWIP related to Harris Unit No. 1 is properly included in rate base in this proceeding. In reaching its decision the Commission has determined that CWIP of $663,167,000 is properly included in the rate base in this proceeding since such expenditures were prudently incurred by the Company, and the inclusion of

this amount of CWIP is in the public interest and necessary to the financial stability of the Company.

The next area of difference relates to the appropriate amount of accumulated depreciation. The $47,000 difference between the parties concerns the previously discussed issue relating to AFUDC accrued on Roxboro Unit No. 4. The Commission has previously concluded that the adjustment to plant in service proposed by the Public Staff concerning Roxboro No. 4 AFUDC is inappropriate. Therefore, the Commission concludes that the corresponding adjustment to accumulated depreciation is also improper. The Commission concludes that a further adjustment to decrease accumulated depreciation by $1,209,000 related to nuclear decommissioning expense is warranted. This matter will hereinafter be fully discussed in Evidence and Conclusions for Finding of Fact No. 18. Based on the foregoing, the Commission finds and concludes that the proper level of accumulated depreciation for use in this proceeding is $597,229,000.

The next area of disagreement between the parties concerns the appropriate amount of accumulated deferred income taxes to deduct from rate base. The $54,710,000 adjustment to accumulated deferred income taxes proposed by Public Staff witness Paton concerns deferred taxes related to assets which the Company sold to the North Carolina Eastern Municipal Power Agency. CUCA witness Wilson also proposed this adjustment.

Witness Paton testified that CP&L has received funds through payments made by the Power Agency for tax liabilities of the Company which will not be paid until sometime in the future. Since the Company has the use of the funds until the taxes are actually paid, witness Paton views these deferred income taxes as cost-free capital and has proposed to deduct such amounts from rate base. Witness Paton stated that she did not believe that the North Carolina retail ratepayers should be required to pay a return on funds which were cost-free to the Company. Witness Paton testified that the adjustment which she was proposing was consistent with the adjustment ordered by the Commission in the Company's last general rate case where this same issue was considered. Company witness Bradshaw, upon cross-examination, agreed that the adjustment was consistent with that made by the Commission in that case, but indicated that he continued to disagree with it.

Counsel for the Company in cross-examining witness Paton attempted to elicit that there was no clear authority for the proposition that capital which was provided by a third party (i.e., other than the Company's equity and debt investors or the Company's ratepayers) should be treated as cost-free capital. While G.S. 62-133 is not explicit on this point, the Commission believes that it is reasonably implicit that the "fair return" to which the equity investors are entitled is only with respect to the portion of rate base which is supported by capital which such investors have themselves supplied. To construe the statute otherwise would provide those investors with what amounts to an undeserved windfall. Looking at the other side of the coin, it would clearly be unfair and unreasonable to cause the ratepayers to pay a return to the investors on funds which the investors have not supplied. Decisions of the North Carolina Supreme Court, at a minimum, make it clear that G.S. 62-133 cannot be read literally so as to result in ratepayers being required to pay a return on capital or assets provided or contributed by them, or on their behalf. State ex rel. Utilities Commission v. Vepco, 285 N.C. 398, 206 S.E. 2d 283 (1974); State ex rel. Utilities Commission v. Heater Utilities, Inc., 26

N.C. App. 404, 216 S.E. 2d 487, Aff'd 288 N.C. 457, 219 S.E. 2d 56 (1975). Moreover, in the last cited case the court noted the question regarding capital supplied by a third party (government grant) but explicitly declined to comment on it because the issue had not been presented. The Commission believes that the same type of fairness considerations which the court based its decisions upon in those two cases militate in favor of treating the accumulated deferred income taxes here involved as cost-free capital. In any event, there have been numerous decisions by this Commission in which cost-free capital provided by someone other than the ratepayers has been deducted from rate base. Some of those are as follows:

In Carolina Power & Light Company's general rate case Docket No. E-2, Sub 366, on page 20 of the Final Order issued April 22, 1980, the Commission concluded as follows:

> "...accounts payable - electric plant in service does represent cost free capital and should be deducted in calculating the original cost of CP&L's investment in electric plant."

Likewise, in Carolina Telephone and Telegraph Company's general rate case Docket No. P-7, Sub 624, on page 11 of the Final Order issued April 20, 1979, the Commission concluded as follows:

> "...accounts payable - telephone plant in service is an appropriate deduction in determining original net investment. Accounts payable - telephone plant in service represents creditor supplied capital, which is cost-free to the Company. If those cost-free items of capital are not deducted from rate base, it will have the effect of building into the cost of service a capital cost which does not in fact exist."

In Virginia Electric and Power Company's general rate case, Docket No. E-22, Sub 257, the issue of noninvestor supplied cost-free capital arose again in regard to the proper treatment of a settlement from Westinghouse. The Commission's Final Order in that case, issued on October 27, 1981, resolved that issue by stating as follows:

> "The Commission concludes that the deciding point in this matter is that Vepco has unrestricted use of the settlement proceeds and can use them for any prudent corporate purpose. Indeed, though the proceeds are a result of a court suit involving nondelivery of uranium, the unamortized portion is not strictly assignable to nuclear fuel inventory for rate-making purposes. Therefore, the Commission concludes that the unamortized North Carolina retail portion of the Westinghouse settlement received by Vepco of $6,458,000 should be properly deducted from rate base as cost-free capital."

The Commission agrees with the Public Staff and CUCA regarding this issue and finds as it did in Docket No. E-2, Sub 461, that these deferred taxes represent cost-free funds to the Company since the funds have been provided to CP&L by the Power Agency rather than by the Company's investors. The Commission concludes that these deferred taxes should be treated as other

cost-free capital to the Company and deducted from rate base to prevent the ratepayers from paying a return on capital which has no cost to the Company.

There is one other area of disagreement regarding the proper level of deferred taxes to deduct from rate base which must be resolved. CUCA witness Wilson proposed an additional adjustment to deduct $71,461,400 of deferred taxes related to cancelled plants. Witness Wilson testified regarding this issue as follows:

> "The unamortized deferred income taxes resulting from the write-off of Harris 2, 3 and 4 and the Brunswick cooling towers should be deducted from CP&L's rate base in this case. CP&L has been allowed to deduct the tax basis for its abandoned plants from its taxable income in the year the abandonment took place, thus reducing the actual tax liability in that year. However, the reductions in taxes paid were not reflected as a current reduction in the cost of service for rate-making purposes, but instead are being amortized to reduce the cost of service over the amortization period allowed by the Commission for the abandoned project losses. Ratepayers thus have paid for tax expenses in excess of the Company's actual tax remittances to state and federal goverments. Having been supplied by ratepayers, these deferred taxes should be deducted from CP&L's rate base just as other ratepayer-provided funds are deducted."

The Commission has already discussed the appropriate treatment for the above mentioned abandonments in the Evidence and Conclusions for Findings of Fact Nos. 7 and 8. As indicated there, the Commission has approved a 10-year amortization period for the Harris No. 2 net of tax loss and has denied the Company any return on the unamortized balance. This treatment provides an equitable sharing of the costs between ratepayers, shareholders and taxpayers. The important point to note is that the approved amortization is net of taxes. Consequently, if deferred taxes are deducted from rate base as proposed by witness Wilson, the cost sharing analysis adopted by the Commission would be altered, with the result that the shareholders would bear a larger portion of the total economic loss because they would be absorbing the return on a larger adandonment amount. Based on the foregoing and the Commission's previous findings regarding the proper treatment of plant abandonments, the Commission concludes that it would be unjust and unreasonable to deduct from rate base deferred income taxes of $71,461,400 relating to plant abandonment as proposed by CUCA witness Wilson.

The Commission notes that it is necessary to make a further adjustment to accumulated deferred income taxes of $595,000 to reflect adjustments related to nuclear decommissioning costs. This matter will be fully discussed hereinafter in Evidence and Conclusion for Finding of Fact No. 18. Based on the foregoing, the Commission concludes that the proper level of deferred income taxes for use in this proceeding is $311,966,000.

The final area of disagreement between the parties concerns the appropriate allowance for working capital. Based on the Commission's determination set out in Finding of Fact No. 13 of this Order, the Commission has included in rate base a working capital allowance of $86,830,000.

The Commission concludes, based upon the foregoing and the determinations made in Findings of Fact Nos. 13 and 14, that the appropriate original cost rate base for use in this proceeding is $2,346,824,000 calculated as follows:

(000's Omitted)

| Item | Amount |
|---|---|
| Electric plant in service | $2,484,159 |
| Net nuclear fuel | 21,863 |
| Construction work in progress | 663,167 |
| Accumulated depreciation | (597,229) |
| Accumulated deferred income taxes | (311,966) |
| Allowance for working capital | 86,830 |
| Total original cost rate base | $2,346,824 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Nevil. The Company made five adjustments to test year revenues in order to reflect revenues at an appropriate end-of-period level. The first adjustment was to annualize the rate increase granted to CP&L in Docket No. E-2, Sub 461. The second adjustment increased test year revenues to a level reflecting the number of customers at year end. The third adjustment eliminated the effects of abnormal weather conditions that occurred during the test year. This adjustment applies only to the residential and commercial customer classes. The fourth revenue adjustment was to reflect known increases in 1984 revenues that the Company will receive from the Southeastern Power Administration. The final revenue adjustment proposed by the Company was to annualize test year revenues to include discounts and credits to bills of customers participating in the residential conservation rate and the water heater and air conditioning control programs approved by the Commission in Docket No. E-2, Sub 435. All these adjustments totaled to a $123,044,235 increase in test year revenues. No party to this proceeding proposed an alternative end-of-period level of revenues. The Commission therefore concludes that the adjusted end-of-test-period level of revenues of $1,202,132,000 proposed by the Company is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Bradshaw, Faucette, Nevil, and Chapman, Public Staff witnesses Paton and Lam, and CUCA witness Wilson.

The following schedule sets forth the amounts proposed by the Company and the Public Staff:

(000's Omitted)

| Item | Company | Staff | Difference |
|---|---|---|---|
| Operation and maintenance expenses | $647,150 | $622,726 | $(24,424) |
| Depreciation expense | 93,274 | 93,237 | (37) |
| Taxes other than income | 93,268 | 93,268 | -- |
| Income taxes | 136,409 | 153,398 | 16,989 |
| Interest on customer deposits | 309 | 309 | -- |
| Total operating revenue deductions | $970,410 | $962,938 | $ 7,472 |
| Adjustments to operating income | | | |
| Debt and preferred stock costs associated with unamortized balances of cancelled projects | $(5,099) | -- | $5,099 |
| Amortization of Power Agency gain | 6,824 | 7,305 | 481 |
| Total adjustments to operating income | $1,725 | $7,305 | $5,580 |

As the schedule indicates, the parties are in disagreement on all the items of operating revenue deductions with the exception of taxes other than income and interest on customer deposits. Since the parties are in agreement regarding these issues the Commission finds taxes other than income of $93,268,000 and interest on customer depostis of $309,000 reasonable and appropriate for use herein. The Commission will now analyze the reasons for the items of operating revenue deductions in dispute.

The first difference between the parties is the level of operation and maintenance expenses recommended for use in this proceeding. The following table summarizes the adjustments proposed by the Public Staff which comprise the $24,424,000 difference in the amounts proposed by the Company and Public Staff.

(000's Omitted)

| Item | Amount |
|---|---|
| 1. Harris 2 abandonment loss | $ (5,542) |
| 2. Fuel | (17,603) |
| 3. Variable nonfuel O&M expenses | (683) |
| 4. Officers' salaries | (233) |
| 5. Advertising | (363) |
| 6. Total | $(24,424) |

CUCA witness Wilson also recommended adjustment No. 3 shown above.

The first item of difference relates to the Harris Unit No. 2 abandonment loss. This difference relates entirely to the abandonment loss amortization period. The Company proposed to amortize the loss over a 10-year period whereas the Public Staff proposed to amortize the loss over a 15-year period. The Commission has previously determined in Finding of Fact No. 7 of this Order that the Harris Unit 2 abandonment loss should be amortized over a 10-year

period. Consistent with that decision the Commission finds it inappropriate to reduce O&M expenses by $5,542,000 as recommended by the Public Staff.

The next area of disagreement relates to fuel expense. In Finding of Fact No. 10, the Commission found the proper base cost of fuel to be $.01582 per kWh which results in North Carolina retail fuel expense of $316,653,000. However, there are additional fuel expenses not included in the base cost of fuel which should properly be included in test-period fuel expense in order to properly reflect the Company's cost of providing service. These expenses include nuclear fuel disposal costs and the nonfuel component of electric power purchases and sales.

Nuclear fuel disposal costs (NFDC) are composed of two items, the annual amortization for the Robinson 2 Unit which was originally approved in Docket No. E-2, Sub 297 (Order issued June 29, 1977), and the fee of 1 mill per kWh of nuclear generation. The Commission has previously determined in Finding of Fact No. 10 to adopt the base fuel component proposed by the Public Staff. In deriving the base fuel component, Public Staff witness Lam deducted total Company NFCD based on 1 mill per kWh of nuclear generation in the amount of $9,109,000. Applying the North Carolina retail allocation factor proposed by witness Paton on Paton Exhibit I, Schedule 3-1 (b)(1) to NFDC of $9,109,000 results in $5,780,000 being attributable to the North Carolina retail jurisdiction. NFDC, as shown on Paton Exhibit I, Schedule 3-1 (b)(1), also includes the amortization of NFDC for the Robinson unit of $1,319,000 and $837,000 on a total Company and North Carolina retail jurisdictional basis, respectively. Based on the foregoing, the Commission finds the proper level of North Carolina retail NFDC cost to be $6,617,000.

Likewise, the Commission, having previously determined in Finding of Fact No. 10 to adopt the base fuel component proposed by the Public Staff hereby adopts the Public Staff's proposed levels of the nonfuel component electric purchases and sales. Such amounts were deducted from total fuel expense in calculating the base fuel expense. Thus, the Commission finds the nonfuel component of electric power purchases of $15,208,000 on a total Company basis and purchases of $9,649,000 on a North Carolina retail basis appropriate. The level of the nonfuel component of sales found appropriate herein is $8,720,000 on a total Company basis and $5,533,000 on a North Carolina retail basis.

Based on the foregoing, the Commission concludes that the proper amount of fuel expense for use in this proceeding including NFDC and the nonfuel component of electric power purchases and sales is $327,386,000.

A further issue regarding the level of fuel expense must be discussed by the Commission. In Evidence and Conclusion for Finding of Fact No. 11, the Commission discusses the appropriate disposition of the balance in the deferred fuel account at September 21, 1984, which is properly considered in this proceeding. Consistent with the decision reached therein the Commission is decreasing operation and maintenance expenses by $2,244,000 ($2,387,000 less gross receipt taxes of 143,000) to reflect the positive balance remaining in the deferred fuel account at September 21, 1984. This treatment has the impact of reducing the level of gross revenue increase found fair herein and the level of gross revenue requirements found fair herein by $2,387,000.

The next item of difference concerns variable nonfuel O&M expenses. The Company calculated an adjusted year-end variable nonfuel O&M expense factor of $.00317 per kWh. The variable nonfuel O&M expense factor was then applied to the Company's adjustments to test year kWh sales for customer growth, weather, and supplemental sales to the Power Agency.

Both Public Staff witness Paton and CUCA witness Wilson took exception to two of the expense items that the Company included in calculating its nonfuel O&M expense factor. One such item was the Company's proposed amortization of unrecovered nuclear fuel disposal costs (NFDC). Witness Paton testified that this amortization is a fixed amount and will not vary with kWh sales, and further, that exclusion of the amortization of unrecovered nuclear fuel disposal costs is consistent with the Company's exclusion of plant abandonment amortizations in determining the variable nonfuel O&M expense factor.

Company witness Chapman stated, during cross-examination by counsel for the Public Staff, that the NFDC amortization could be handled either as the Company proposed or as the Public Staff and CUCA had recommended. Witness Chapman testified that the actual amount of the amortization that will be recovered through rates is dependent on the number of kWh's that are sold after rates set in this proceeding go into effect. Witness Chapman further indicated that under the Comany's approach a true-up of the recovery of the NFDC amortization would be made at some future time.

The Commission concludes that the exclusion of NFDC amortization in calculating the year-end variable nonfuel O&M expense factor as proposed by the Public Staff and CUCA is appropriate. The level of NFDC amortization has properly been determined and included in test-period O&M expenses contained herein. NFDC amortization is a fixed amount which will not vary with kWh sales and thus the Commission finds no further adjustment to be required.

The second item which Public Staff witness Paton and CUCA witness Wilson contended should be excluded from the Company's calculation of the variable nonfuel O&M expense factor was energy-related wages. The Public Staff and CUCA asserted that, since wages had already been separately adjusted to an end-of-period level, it would be inappropriate to further adjust the energy-related portion of those wages as the Company had done. Witness Paton also testified that her position on this issue was consistent with the Public Staff's position in the last several Duke Power Company rate cases.

During cross-examination, Company witness Chapman testified that he thought that both wage adjustments were necessary. Witness Chapman then went on to describe the Company's end-of-period wage adjustment as follows:

> "...that relates to the actual kWh's generated during the test year. Those are the actual employees and the actual hours worked, that get adjusted to the end of the test year."

The Company annualized the September 1983 wages to arrive at the appropriate end-of-period level of wage expense. To the extent that there is a relationship between wages and customer growth and sales to the Power Agency, wages have thus already been adjusted to reflect the appropriate end-of-period levels. The Company's customer growth adjustment to revenues reflects end-of-period customers. The Company's wage annualization adjustment reflects

end-of-period employees and wage rates. Thus, wage expense and customer levels have been appropriately matched. The Company's contention regarding actual kWh's and employees addresses test year wage expense. If test year wages had not been adjusted to an end-of-period level, then it would be appropriate to adjust separately for customer growth. However, that is not the case.

As to the relationship between wage expense and weather, there are flaws in the Company's rationale. In regard to the Company's adjustment to revenues for weather normalization, Company witness Nevil stated that the adjustment applies only to the residential and commercial customer classes. However, in the Company's variable nonfuel O&M expense adjustment, expenses applicable to all customer classes have been adjusted for weather normalization. More specifically, however, if the Company believed that wages should be adjusted for weather normalization, it could have adjusted the September 1983 wages, but only those applicable to residential and commercial customer classes, so as to match the weather normalization expense adjustment to the revenue adjustment. That the Company did not do. Based upon the foregoing, the Commission concludes that the Public Staff's proposal to exclude energy related wages from the variable nonfuel O&M expense adjustment is reasonable and proper.

Based upon the foregoing discussion, the Commission finds the adjustments to variable nonfuel O&M expenses proposed by the Public Staff and CUCA appropriate for use in this proceeding and thus finds it appropriate to decrease O&M expenses by $683,000.

The next item comprising the difference in O&M expenses concerns officers' salaries. Public Staff witness Paton made an adjustment to exclude 50% of the salaries and deferred compensation of the four Company officers who are members of the Executive Committee of the Board of Directors. Witness Paton testified that she believed it would be both reasonable and proper for the Company's shareholders to support some of the costs associated with the Company officers whose functions are most closely linked with meeting the demands of the common shareholders.

During cross-examination, Company witness Bradshaw testified that he did not see how any officers could separate their duties between stockholders and customers. Witness Bradshaw testified that they work for both parties, and that he thought that they were doing more for customers at this time than for the shareholders.

The Commission has given this general issue much consideration, not only in this proceeding but in several other cases which it has decided over the last two years. The Commission concludes that the Company's common shareholders should bear 50% of the salary and deferred compensation expense of the Company officers whose function is most closely linked with meeting the demands of the common shareholders at least for purposes of this proceeding. The Commission concludes that this issue should be revisited in CP&L's next general rate proceeding for purposes of determining whether continuation of such an adjustment is appropriate. The Commission concludes that the $233,000 adjustment to reduce O&M expenses as proposed by the Public Staff is appropriate for setting rates in this proceeding.

The final item of difference concerns an adjustment to decrease advertising expense by $363,000. Public Staff witness Paton removed from O&M

expense the cost of certain advertisements which she considered to be "image" advertising. In witness Paton's opinion this advertising was not beneficial to the using and consuming public, nor did it enhance the ability of the public utility to provide efficient and reliable service, as specified in Commission Rule R12-13(d).

Based upon the foregoing, a careful review of the advertisements in question, which were contained in Paton Exhibit A, and a careful review of Commission Rules R12-12 and R12-13, the Commission finds that the cost of these advertisements does not represent a reasonable operating expense for rate-making purposes. The Commission finds that the advertising in question is "of a type or nature other than that described in subsections (b), (c), or (d) of Rule R12-12" or is "other nonutility advertising" and is thus controlled by the provisions of Commission Rule R12-13(d). That being so, the expense of such advertising is to be considered a reasonable operating expense only to the extent that it is "established" that the advertising is beneficial to the using and consuming public or enhances the ability of the public utility to provide efficient and reliable services. It has not been established to the satisfaction of the Commission that the advertising in question, or any part of it, has met either criterion. The Commission, moreover, is of the opinion that the cost of this particular advertising should in no event be borne by the ratepayers. Therefore, the Commission concludes that O&M expenses should accordingly be reduced by $363,000. In reaching its decision in this regard, the Commission recognizes that advertising expenses of approximately $1.4 million have been treated as reasonable and proper test period operating expenses.

Based upon the foregoing conclusions, the Commission finds operation and maintenance expenses of $626,024,000 to be just and reasonable and appropriate for use in this case.

The next item of operating revenue deductions that the parties disagree on is depreciation expense. The $37,000 difference in depreciation expense relates to AFUDC accrued on Roxboro Unit No. 4 which both the Public Staff and CUCA proposed to exclude from electric plant in service. The Commission found previously in Finding of Fact No. 15 that the adjustment to plant in service for Roxboro No. 4 AFUDC was unreasonable and improper. Therefore, the Commission correspondingly finds the related adjustment to depreciation expense is inappropriate for use in this proceeding.

One further issue regarding the proper level of depreciation expense must be discussed by the Commission. This issue relates to the level of decommissioning cost to be included in depreciation expense. The methodology used by the Company to adjust for future decommissioning of its nuclear plants utilizes in part CP&L's capital structure, embedded cost of debt and rate of return on common equity. In Findings of Fact Nos. 20 and 21 contained herein the Commission establishes the capital structure, cost rates, and return on equity appropriate for setting rates for CP&L in this proceeding. Since the decisions made by the Commission differ from that proposed by the Company, it is necessary to modify the Company's proposed adjustments for decommissioning costs to reflect the decisions made herein. The Commission therefore finds it appropriate to decrease depreciation and accumulated depreciation by $1,209,000 and to increase deferred income taxes and accumulated deferred income taxes by $595,000.

Based upon the foregoing, the Commission finds the reasonable and proper level of depreciation expense to be $92,065,000.

The next area of difference relates to the appropriate level of state and federal income taxes. The Company proposed $136,409,000 as the proper level of income tax expense, and the Public Staff proposed $153,398,000. Since the Commission has not accepted all of either the Company's or the Public Staff's components of taxable income, it is necessary to calculate state and federal income taxes based upon the decisions heretofore and herein made by the Commission. Thus, the Commission finds and concludes that income tax expense of $149,439,000 is reasonable and proper.

In summary, the Commission finds operating revenue deductions of $961,105,000 reasonable and proper consisting of operation and maintenance expenses of $626,024,000, depreciation expense of $92,065,000, taxes other than income $93,268,000, income taxes of $149,439,000 and interest on customer deposits of $309,000.

The Company and the Public Staff also disagree with regard to adjustments to operating income. The first item of difference in adjustments to operating income relates to the Company's proposal to include debt and preferred stock costs associated with the Brunswick cooling towers and Harris Nos. 2, 3, and 4 cancelled projects in the cost of service in this proceeding. Consistent with the decision in Findings of Fact Nos. 7 and 8, the Commission finds that the debt and preferred stock costs associated with the unamortized balances of cancelled projects should be excluded from test-period operating revenue deductions.

The final area of disagreement relates to the proper level of amortization of the Power Agency gain. The Company proposed to amortize an amount of $6,824,000 related to one-third of the gain on assets sold to the Power Agency as an adjustment to operating income. Alternatively, the Public Staff proposed to amortize an amount of $7,305,000.

In Docket No. E-2, Sub 461, the Company proposed to flow the gain received as a result of the sale to Power Agency through to ratepayers over a three-year period. The Public Staff recommended flowing the gain through to ratepayers in one year, but did not object to the Company's calculation of the amount of the gain. The Commission approved an adjustment flowing through the gain over three years. The Company made a similar adjustment in this rate case to reflect the second year of the three-year amortization period. As testified to by Company witness Bradshaw in the last CP&L rate case, the Company's calculation of the amount of the after-tax gain included a recognition of the after-tax amount of the Leslie Mine coal sold to Power Agency which had costs in excess of its fair market value (FMV). The amount of the charges attributable to Power Agency for these additional coal costs was based on its ownership interest of 12.94% times the additional coal costs through December 31, 1983.

On cross-examination Company witness Bradshaw testified that the Company has no way to recover these additional coal costs attributable to Power Agency unless they are included in the calculation of the gain. Witness Bradshaw explained that the Leslie coal was sold to Power Agency to generate power in its portion of Roxboro Unit No. 4. Witness Bradshaw further testified that in

this jurisdiction the Company has been allowed to pass through to the ratepayer only the FMV of the Leslie coal. When a portion of this coal was sold to Power Agency, however, the Company properly recognized the full production cost of that coal in its book cost and thus deducted the full production cost, including the coal costs above FMV, from the proceeds when calculating the gain. The Company contends that denial of recovery of Power Agency's ownership portion of the additional coal cost would result in an overstatment of the amount of the gain actually available to reduce the retail ratepayer's cost of service.

Public Staff witness Paton contended that if the gain reflects additional costs of coal sold to Power Agency, the North Carolina retail ratepayers will, in effect, be paying for the difference between the production cost and the FMV of the coal purchased by Power Agency. She further asserted that it is unfair to require the North Carolina retail ratepayers to pay for coal from which they have received no benefit. On cross-examination witness Paton acknowledged that CP&L no doubt took these costs and the ability to offset them by the profit from the sale into account in setting the price for the sale of assets to the Power Agency.

The Commission concludes, based upon the foregoing facts, that it is fair and equitable to exclude the amount related to Power Agency's payment of coal costs in excess of FMV from the after-tax gain. The Commission believes and so concludes that denial of recovery of Power Agency's ownership portion of additional coal cost would result in an overstatement of the gain actually available to reduce the retail ratepayer's cost of service and thus finds the Public Staff's proposed adjustment of $481,000 inappropriate.

Based upon all of the foregoing, the Commission concludes that the appropriate level of total operating revenue deductions for use in this proceeding is $961,105,000 and that an adjustment to operating income of $6,824,000 relating to the gain on the sale of assets to the Power Agency is proper as shown on the schedule that follows.

(000's Omitted)

| Item | Amount |
|---|---|
| Operation and maintenance expenses | $626,024 |
| Depreciation expense | 92,065 |
| Taxes other than income | 93,268 |
| Income taxes | 149,439 |
| Interest on customer deposits | 309 |
| Total operating revenue deductions | $961,105 |
| | |
| Adjustment to operating income | |
| Amortization of Power Agency gain | $ 6,824 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Company witness Bradshaw presented evidence in this proceeding at the request of Commissioner Cook concerning the dues and contributions paid by CP&L to the Edison Electric Institute (EEI). Additionally, the Company presented a generalized listing of the services and functions provided by this organization. Specifically, witness Bradshaw testified that CP&L paid dues of approximately $371,146 on a total company basis to this organization during the

test year. Approximately $15,823 of this amount has been categorized by the Company as below the line cost to be borne by the stockholders of CP&L.

The Commission notes that the listing of functions and services provided by this organization was very general in nature and did not itemize cost by function or service provided. The Commission concludes that the information provided in this proceeding was inadequate and that it is appropriate for the Company in its next general rate proceeding to present information which will show all direct and indirect contributions to and through EEI from all sources and all expenditures by program and by a system of accounts which will allow the Commission to specifically determine the appropriateness of the expenditures for rate-making purposes.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20 and 21

Testimony regarding the appropriate capital structure and cost of capital to be used in this proceeding was presented by Company witnesses Lilly and Vander Weide, CUCA witnesses Smith and Wilson, and Public Staff witness Hsu.

Company witness Lilly testified regarding the financial condition of CP&L. Witness Lilly recommended that rates be set in this proceeding based upon a normalized capital structure consisting of 47.5% debt, 12.5% preferred stock, and 40% common equity. Witness Lilly testified that the Company's actual capital structure at September 30, 1983, was 47.03% long-term debt, 12.87% preferred, and 40.10% equity.

CUCA witness Wilson and Public Staff Witness Hsu also testified and recommended that the Company's requested normalized capital structure be employed in this proceeding.

After considering all of the evidence presented by the parties on this issue, the Commission concludes that the appropriate capital structure to be used in this proceeding is as follows:

| Item | Percent |
|---|---|
| Long-term debt | 47.5% |
| Preferred stock | 12.5% |
| Common equity | 40.0% |
| Total | 100.0% |

Witness Lilly offered testimony regarding the appropriate cost rates for long-term debt and preferred stock. With regard to the cost of long-term debt, Company witness Lilly in his prefiled testimony recommended a cost of long-term debt of 10.05%, based on the Company's embedded cost at December 31, 1983, with inclusion of the issuance of $250,000,000 of projected new long-term debt at a projected interest rate of 13.5%. On cross-examination, witness Lilly testified that based upon the actual financing cost, "the corrected figure--or the changed figure" is 9.73%. The updated embedded cost rate of long-term debt is based upon the following issues:

(1) $100 million of First Mortgage Bonds at 13.07% in November 1983.

(2) $100 million of First Mortgage Bonds at 13.51% in April 1984.
(3) $274 million Pollution control Bonds at 8.19% in June and July 1984.

Witness Lilly indicated that the Company issued some Pollution Control Bonds in June and July 1984 and would issue an additional $8 million or $9 million within the next 30 to 50 days. Witness Lilly, however, chose not to update the embedded cost rate of long-term debt. Similarly, he chose not to update his 9.23% preferred cost rate, although he testified that the Company had placed a $50 million issue of preferred stock in the spring of 1984. Witness Lilly stated that because of an increase in the cost of equity, leaving the financing rates as filed "is eminently fair to the consumers." (TR. Vol. 9, pp 32-33).

CUCA witness Wilson used the Company's requested 10.05% long-term debt cost rate and 9.23% preferred stock cost rate.

Public Staff witness Hsu recommended an embedded cost rate of long-term debt of 9.73%, which was also "the corrected figure--or the changed figure" provided by witness Lilly. She also used the actual 9.18% embedded cost for preferred stock.

The Company and the Public Staff did not disagree about the actual embedded cost rates for long-term debt and preferred stock including updates, and CP&L has accepted said cost rates for use in this proceeding. The Commission recognizes that the Company's embedded costs for the senior securities are the actual costs to the Company. Therefore, the Commission concludes that the appropriate embedded costs of long-term debt and preferred stock to be used in this proceeding are 9.73% and 9.18%, respectively.

Company witness Vander Weide stated in his original testimony that the Company's required return on equity was 16.5%. On the witness stand, Dr. Vander Weide updated his cost of equity to 17.7%. However, the Company decided to leave unchanged its requested return on equity of 16.5%.

Company witness Vander Weide conducted two studies consisting of a discounted cash flow (DCF) study and an historical yield spread study in arriving at his recommended cost of equity capital for CP&L. Witness Vander Weide did a DCF analysis only of the Company itself and did not perform such an analysis on any group of comparable companies. Instead of using the commonly known and widely accepted annual version of the DCF model, witness Vander Weide used a quarterly version of the DCF model based on the Company's paying dividends quarterly. As a part of his DCF calculation, witness Vander Weide applied 5% to all the Company's outstanding equity to allow for flotation costs and market pressure.

Witness Vander Weide claimed that the annual DCF model underestimates the cost of equity capital. Witness Vander Weide testified that investors are willing to pay more for a stock that pays dividends quarterly than one that pays dividends at the end of the year. He further stated, "Hence, the price that embodies quarterly recognition of dividends is too high for inclusion in the annual DCF model."

Witness Vander Weide admitted, however, that it is inherent in the determination that he makes from the quarterly version of the DCF model that

all stockholders will earn a uniform rate on the reinvestment of quarterly dividends. He admitted that, based on the quarterly model, the Company provides an additional return in addition to what is required by investors. He also stated that he did not think that additional return is really an extra return and claimed that he is not assuming that the firm pays that extra rate.

Witness Vander Weide reviewed the past growth in CP&L's earnings and dividends per share for the last 5 and 10-year periods. Additionally, witness Vander Weide testified that he had reviewed security analysts' projections of CP&L's future dividends and earnings growth. On the basis of his examination of the past growth rates, his review of analysts' projections, and his knowledge of current economic conditions, witness Vander Weide estimated the Company's future growth rate to be 4.0%. In his original prefiled testimony, Dr. Vander Weide determined from his DCF analysis employing the quarterly model that the Company's cost of equity was 16.5%.

The second method used by Company witness Vander Weide was the spread test method. The spread test method equates investors' current expected return on equity to the sum of current bond yields plus the past differences or spread between the yields on stocks and the yields on bonds. Based upon this method, witness Vander Weide arrived at a cost of equity capital for CP&L of 17.9%. In his original prefiled testimony, Dr. Vander Weide determined that the Company's cost of equity was at least 16.5%.

In updating and summarizing his testimony from the witness stand, Dr. Vander Weide reevaluated his recommended return on equity capital in light of changes in interest rates and the change in CP&L's stock price subsequent to the time his prefiled testimony was prepared. On this basis, witness Vander Weide determined the cost of CP&L's equity to be 17.7%.

CUCA witness Smith testified in her prefiled testimony that investors require a return on CP&L's common equity capital in the range of 13.5% to 14.5%. Allowing 25 basis points for flotation expenses, witness Smith recommended that CP&L be allowed a return on equity of 14.25%. On the stand, witness Smith updated her cost of equity recommendation to 14.50%.

In her prefiled testimony, Dr. Smith determined her recommended return on equity on the basis of a DCF analysis for CP&L and the electric utility industry as a whole. Witness Smith testified that CP&L's dividend yield was 11.1% based upon market price data for the six months ended March 31, 1984, as compared to the industry average dividend yield of 10.6%. Witness Smith stated further that actual historical growth indicators for CP&L were lower than the industry average, ranging between 1.5% to 3.6% for the Company and 2.2% to 4.6% for the industry. Witness Smith derived an estimate of the long-term dividend growth anticipated by investors of 2.2% to 2.6%, which she stated is somewhat higher than CP&L's own experienced growth and below the industry average historical experience. Dr. Smith stated in her prefiled testimony that the recent decline in the Company's common stock price indicates that the current common equity cost might be higher than the 13.3% to 13.7% range derived from her statistical studies. Dr. Smith concluded that CP&L's cost of common equity was 13.5% to 14.5%, and proposed that the midpoint of the range of 14.0% be used. After flotation cost allowance, witness Smith recommended a rate of return on equity of 14.25%, later updated to 14.50%.

In addition, witness Smith presented data concerning the historical earnings of utilities and non regulated companies. According to witness Smith, electric utilities equity earnings have ranged from 11% to 13.9% over the 1974-83 period. Alternatively, witness Smith testified that unregulated companies, which are generally more risky than CP&L and other electric utilities, earned 11.5% on common equity in 1983.

In her summary from the witness stand, Dr. Smith indicated that since the time that her testimony was filed, CP&L's dividend yield had gone up further. She indicated that she thought it would be appropriate to increase the common equity return level. Therefore, witness Smith determined the cost of CP&L's equity to be 14.5%.

Public Staff witness Hsu recommended in her revised testimony that the Company should be granted the opportunity to earn a return on common equity of 15.20% if the Commission approves the Public Staff's fuel factor presented by witness Lam and adopts the Public Staff's recommendation of no additional CWIP in this proceeding presented by witness Sessoms.

Witness Hsu derived her equity cost estimate by applying the DCF model to two overlapping samples of companies which are comparable to CP&L in risk, as well as to CP&L itself. Before she made the DCF analysis, witness Hsu reviewed the current economic outlook in general, and the most recent relationships between bond yields and stock yields. Based on her observation, the volatility of interest rates has increased substantially since late 1979. She concluded that the historical relationship of the cost of equity to the cost of debt is therefore no longer applicable. Witness Hsu concluded that it is more appropriate to estimate the cost of equity directly from the current market.

Based upon a traditional DCF analysis of her two comparable groups, witness Hsu found that a common equity return of approximately 14.7% to 15.9% is expected by investors in the electric utility industry. Witness Hsu also performed a DCF analysis on CP&L itself which produced an equity cost range of from 13.9% to 15.1%. After considering her DCF analysis of the two groups and of CP&L itself, witness Hsu concluded that a recommended return on equity of 15.2% is reasonable.

During cross-examination, witness Hsu stated that her dividend yields for CP&L, Group A companies and Group B companies, were derived by averaging the highest and lowest prices for the six months ended April 30, 1984. In essence, witness Hsu admitted that had she used a different time period's prices, she would have had a different cost rate. However, witness Hsu indicated that she did check the reasonableness of her recommendation by using the most recent six months prices ended June 30, 1984, for CP&L itself only. Her DCF result for CP&L was 15.1% after adjusting for flotation costs, which was within the range of her recommendation. Therefore, witness Hsu concluded that her recommendation is reasonable even using the most recent data.

The determination of the appropriate fair rate of return for CP&L is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on CP&L, 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 interest 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 return for its shareholders, 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 rate of return allowed must not burden ratepayers any more than is absolutely 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 of North Carolina ex rel. Utilities Commission v. Duke Power Company, 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 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 market. 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.

Based upon the foregoing and the entire record in this docket, including evidence related to the base fuel factor and CWIP, the Commission finds and concludes that the fair rate of return that Carolina Power & Light Company should have the opportunity to earn on the original cost of its rate base is 11.87%. Such overall fair rate of return will yield a fair and reasonable return on the Company's common equity capital of 15.25%.

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 such even if it could. Such a guarantee would remove necessary incentives for the Company 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 ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The Commission has previously discussed its findings of fact and conclusions regarding the fair rate of return which CP&L 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 determinations made herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings of fact and the conclusions heretofore and herein made by the Commission.

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
DOCKET NO. E-2, SUB 481
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000's OMITTED)

| Item | Present Rates | Approved Increase | Approved Rates |
|---|---|---|---|
| Operating revenues | $1,202,132 | $64,339 | $1,266,471 |
| Operating revenue deductions | | | |
| Operation and maintenance expenses | 626,024 | | 626,024 |
| Depreciation expense | 92,065 | | 92,065 |
| Taxes other than income | 93,268 | 3,860 | 97,128 |
| Income taxes | 149,439 | 29,780 | 179,219 |
| Interest on customer deposits | 309 | | 309 |
| Total | 961,105 | 33,640 | 994,745 |
| Operating income before adjustment | 241,027 | 30,699 | 271,726 |
| Adjustments to operating income | 6,824 | - | 6,824 |
| Net operating income | $ 247,851 | $30,699 | $ 278,550 |

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
DOCKET NO. E-2, SUB 481
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000'S OMITTED)

| Item | Amount |
|---|---|
| Investment in Electric Plant | |
| Electric plant in service | $2,484,159 |
| Net nuclear fuel | 21,863 |
| Construction work in progress | 663,167 |
| Accumulated depreciation | (597,229) |
| Accumulated deferred income taxes | (311,966) |
| Net investment in electric plant | 2,259,994 |
| Allowance for Working Capital | |
| Investor funds advanced for operations | 18,941 |
| Materials and supplies | 83,677 |
| Other rate base additions and deductions | (15,788) |
| Total | 86,830 |
| Original Cost Rate Base | $2,346,824 |
| | |
| Rates of Return | |
| Present | 10.56% |
| Approved | 11.87% |

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
NORTH CAROLINA RETAIL OPERATIONS
DOCKET NO. E-2, SUB 481
STATEMENT OF CAPITALIZATION AND RELATED COSTS
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000'S OMITTED)

| Item | Capitalization Ratio (%) | Original Cost Rate Base | Embedded Cost (%) | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 47.50 | $1,114,741 | 9.73 | $108,464 |
| Preferred stock | 12.50 | 293,353 | 9.18 | 26,930 |
| Common equity | 40.00 | 938,730 | 11.98 | 112,457 |
| Total | 100.00 | $2,346,824 | - | $247,851 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 47.50 | $1,114,741 | 9.73 | $108,464 |
| Preferred stock | 12.50 | 293,353 | 9.18 | 26,930 |
| Common equity | 40.00 | 938,730 | 15.25 | 143,156 |
| Total | 100.00 | $2,346,824 | - | $278,550 |

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 - 26

The evidence for these findings of fact is found in the testimony of Public Staff witness Richard Smith and Company witness Norris Edge.

Insulation Standards for Manufactured Homes

Public Staff witness Richard Smith testified that CP&L's mobile home insulation standard necessary to qualify for the 5% energy conservation discount on residential rate schedules presently permits a 25% greater heat loss than the standard for conventional homes. He cited CP&L testimony in Docket No. E-2, Sub 391, wherein a lower standard for mobile homes was proposed by the Company in 1980 because of the extreme difficulty manufacturers had in meeting the standard established for conventional housing. Witness Smith pointed out that the situation had changed since 1980 and now practically all mobile home manufacturers in North Carolina are meeting the Duke standard and are capable of meeting the similar CP&L standard for conventional housing. Witness Smith further pointed out the desirability of having a single statewide high level energy efficient insulation standard for mobile homes. Witness Smith recommended that CP&L's separate mobile home insulation standard be the same as its current standard for conventional homes, effective April 1, 1985. Witness Smith further recommended that those mobile homes that are in compliance with CP&L's thermal requirements and are receiving the energy conservation discount should continue to do so. CP&L witness Norris Edge concurred in these recommendations by witness Smith and offered substitute residential rate schedules to implement these changes.

The Commission finds that the lower insulation standards for mobile homes are no longer necessary and concludes that the standards necessary for mobile homes to qualify for the Company's energy conservation discount should be the same as for conventional housing. The Commission also concludes that adequate notice should be given the mobile home manufacturers of this change, that the effective date should be April 1, 1985, and that mobile homes receiving discounts prior to that date should be grandfathered.

Load Control of 30-39 Gallon Water Heaters

Public Staff witness Richard Smith testified that 30- to 39-gallon water heaters constitute a significant portion of the Company's potential controllable load and recommended that the Company test a limited number of water heaters of this size in the load control program. To date, water heater load control has been limited to sizes 40 gallons or larger. Witness Smith noted that the best he can determine is that the Company is concerned that customers with small heaters might run out of hot water and withdraw from the program. Witness Smith furnished the results of a Wake EMC survey in 1983 of water heater load control which indicated that the 253 customers with 30-gallon water heaters registered no more inquiries or complaints than customers with larger heaters and that none withdrew from the program during the year because of an inadequate supply of hot water. The EMC's interruptions averaged as much as 3.3 hours per day. Witness Smith recommended that up to 200 30- to 39-gallons water heaters be tested beginning in January 1985. CP&L witness Edge agreed to conduct a one-year test program controlling 30- to 39-gallon water heaters beginning in January 1985 and to provide the Commission with the results of the test by July 1, 1986.

The Commission finds that extending water heater load control to 30- to 39-gallon water heaters could potentially expand the Company's load control capability and concludes that load control of 30- to 39-gallon water heaters should be tested as proposed.

Load Control of Air Conditioning

Public Staff witness Smith testified that the potential for air conditioning load control could be expanded further if the customers were not required to also accept electric water heater interruptions. Witness Smith furnished data on Duke's interruptible air conditioner customers which showed that in addition to 26,801 customers volunteering for both water heater and air conditioning load control, 6,394, or 24% more, volunteered for air conditioning load control only. Witness Smith proposed that the Company determine the proper billing credit for solely air conditioning control. Company witness Edge testified that a study to determine the economic benefits of providing this service could be completed and the results filed with the Commission by April 1985.

The Commission finds that the load control of air conditioners alone could enhance the Company's conservation and load management efforts and concludes that the Company should make a determination of the proper billing credit for this service and file its findings with the Commission by April 1, 1985.

Timer Control of Water Heaters for TOU Customers

Public Staff witness Richard Smith testified that only one-half of the residential customers on the Company's time-of-use comparative billing program would save compared to their standard rate and proposed that the Company install time control equipment on the customers' water heaters to expand the potential load reduction of the time-of-use rate and improve the customers' savings potential. Witness Smith noted that those customers on R-TOUE without central space heating or air conditioning can by installing a timer on their water heaters reduce on-peak usage from 30% to less than 20%. Witness Smith proposed that the customers be charged for a portion of the time control equipment and its installation. CP&L witness Edge testified that the Company desired additional time to study the Public Staff's proposal and customer charges. He proposed that the Company meet with the Public Staff to assess the areas of concern and provide the Commission with the results of this meeting within 60 days after the date of the Commission Order.

The Commission concludes that appliance control supplied by the Company might improve the effectiveness of the residential time-of-use rates and therefore should be fully explored. The Commission further concludes that the Company should consult further with the Public Staff to consider a program to test the effectiveness of the proposed appliance control for time-of-use customers and report the results of this meeting to the Commission within 60 days after the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 27 - 28

The evidence for these findings regarding rate design is found primarily in the testimony of Company witness Edge and Public Staff witness Turner.

Declining Block in Residential Rates

Public Staff witness Turner recommended a change in the Company's rate design for the Residential Service Schedule, RES-48, to eliminate the 800-kWh block in the Company's residential rate for nonsummer usage. He suggested that the Company offered no proof that the cost of providing service to customers with usage over 800 kWh per month in the nonsummer months is less than that of providing service to customers in the under 800-kWh block in those months. Witness Turner proposed a rate which includes a uniform differential of 0.34 cents per kWh between all summer and nonsummer kWh. The effect of this proposal would be to decrease the seasonal rate differential for kWh consumption over 800 kWh from 1.0 cents to 0.34 cents per kWh, and to add a 0.34 cents per kWh seasonal rate differential for consumption under 800 kWh. Witness Turner further suggested that this recommendation is consistent with the intent of the Public Utility Regulatory Policies Act (PURPA) and with prior Commission Orders to the effect that the declining block rate structure should be eliminated unless there is a cost basis for such rate design.

CP&L witness Edge testified that the Company is in agreement with witness Turner's ultimate goal of combining the two nonsummer billing blocks. Witness Edge disagreed, however, with the method of obtaining that goal. Witness Edge offered an alternate Residential Service Schedule, RES-48A, which establishes a summer/nonsummer rate differential of 0.5 cents per kWh for the zero-to 800-kWh block, while maintaining the 1.0 cents per kWh price differential for greater than 800 kWh in the nonsummer period, as found in the initial proposed Residential Service Schedule, RES-48. Witness Edge stated that the Company planned to achieve the second step in its proposal by filing a Residential Service Schedule that would eliminate the 800-kWh block for nonsummer billing in the next rate case. The Company would, however, maintain its proposed summer/nonsummer price differential. Witness Edge maintains that this "phase-in" of the combination of these two billing blocks will minimize the possibility of an unfair increase to any one customer usage level and prevent a negative impact on the system load factor. Under cross-examination by counsel for CIGFUR II, witness Edge testified that an analysis of class load factors since 1979 shows that while the load factor for the general service class is about the same or increasing, the load factor for the residential class is declining. Witness Edge attributed the drop primarily to a reduction in the nonsummer usage of all-electric customers and contended that it is important not to reduce the summer/nonsummer differential for usage over 800 kWh to prevent further load factor erosion.

The Commission is of the opinion that, in keeping with past Commission Orders and the intent of PURPA, the declining block structure for nonsummer usage should be eliminated. However, the Commission recognizes that a "phase-in" of the combination of the billing blocks, as proposed by the Company, is reasonable. In making this decision, the Commission notes that the Company's proposed alternate Residential Service Schedule, RES-48A, results in a less severe increase for high usage customers during the nonsummer months. The Company is directed to file a residential service schedule which will completely eliminate the 800-kWh block applicable to nonsummer usage in the next rate case.

Basic Customer Charges

The Company proposes to increase the basic customer charge for residential service from $6.75 to $7.35 per month. The Commission is of the opinion that there is merit in setting the basic customer charge for residential service at the $6.85 level in this proceeding and concludes that it should do so.

Relative Revenue Requirement for Each Customer Class

CIGFUR recommends that the rate of return for each customer class be moved closer to the overall North Carolina retail rate of return in determining the appropriate revenue requirement for each customer class. The Commission has generally attempted to establish rates in prior proceedings which would produce rates of return for each customer class that were within 10% of the overall North Carolina retail rate of return, recognizing that such rates of return must necessarily be imprecise due to the imprecision inherent in the cost allocation methodologies underlying the calculation of such rates of return. In this proceeding, all of the customer classes appear to be roughly within the 10% guideline except for the sports field lighting class (Schedule SFLS) and the small general service class (Schedule SGS).

The Commission notes that Schedule SFLS produces a low rate of return even after a 20.9% increase proposed by the Company versus a 12.6% increase proposed overall. Therefore, the Commission concludes that the larger increase proposed for Schedule SFLS relative to the overall increase is appropriate.

The Commission further notes that Schedule SGS produces a high rate of return, even after only a 12.3% increase, and that the same phenomenon has occurred in the Company's other recent rate cases. The Commission is of the opinion that the Company should take positive steps in its next general rate application as necessary to produce rates of return for each rate schedule which is within 10% of the overall North Carolina retail rate of return, particularly with respect to Schedule SGS.

General

In addition to the revisions already discussed, the Company proposed various miscellaneous rate changes, administrative changes, and clarifications in its rate schedules and in its terms and conditions for service which were not opposed by any party. Such changes and clarifications include in part: provisions to reduce the size of the second block in Schedule SGS from 2500 kWh to 2000 kWh in order to flatten the rate blocks of said schedule; provisions to clarify the availability of the LGS and LGS-TOU Schedules; provisions to withdraw the availability of the GLFS Schedule; provisions to add two new high-pressure sodium vapor fixtures (a 5800-lumen enclosed and a 22000-lumen shoebox) to the ALS and SLS Schedules; provisions to increase the customer charges in Rider No. 5 (Seasonal and Intermittent Service) and to clarify the application of monthly credits for such charges; provisions to adjust the revenue credit provided for in Rider No. 15 (Construction Cost Rider) to reflect not only the base cost of fuel but also a portion of variable nonfuel O&M expenses; provisions to withdraw the availability of Rider No. 55 (Customer Generation Service); provisions to modify the Service Regulations to increase the Service Charge, the standard Reconnect Charge, and the Reconnect Charge for other than normal business hours; provisions to increase the charge for

underground extensions to individual single-family or duplex residences under Underground Installation Plans R-7A and R-10A, and to clarify the requirements in Plan R7-A regarding developer contributions; provisions to increase monthly minimum charges for Schedules SGS, SGS-TOU, and TSS in order to reflect not only the base cost of fuel but also a portion of variable nonfuel O&M expenses; provisions to add a minimum charge in Schedules RFS, AHS, CSG, and CSE consistent with such provision in Schedule SGS; provisions to increase charges for three-phase service in Schedules SGS, RFS, AHS, CSG, and CSE; and provisions to increase rates in Schedules RFS, AHS, CSG, and CSE by approximately 10% relative to other rate schedules in order to gradually merge said schedules with Schedule SGS over time.

Based on the above, the Commission concludes that the rate design, rate schedules, and terms and conditions for service proposed by the Company should be approved, except as discussed herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

North Carolina General Statute 62-135 provides in pertinent part, as follows:

> "(a) Notwithstanding an order of suspension of an increase in rates, any public utility except a common carrier may, subject to the provisions of subsections (b), (c) and (d) hereof, put such suspended rate or rates into effect upon the expiration of six months after the date when such rate or rates would have become effective, if not so suspended, by notifying the Commission and its consumers of the its action in making such increase not less than 10 days prior to the day when it shall be placed in effect....
>
> (b) No rate or rates placed in effect pursuant to this section shall result in an increase or more than twenty percent (20%) on any single rate classification of the public utility.
>
> (c) No rate or rates shall be placed in effect pursuant to this section until the public utility has filed with the Commission a bond in a reasonable amount approved by the Commission, with sureties approved by the Commission, or an undertaking approved by the Commission, conditioned upon the refund in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess plus interest from the date that such rates were put into effect, if the rate or rates so put into effect are finally determined to be excessive. The amount of said interest shall be determined pursuant to G.S. 62-130(e).
>
> (d) If the rate or rates so put into effect are finally determined to be excessive, the public utility shall make refund of the excess plus interest to its customers within 30 days after such final determination, and the Commission shall set forth in its final order the terms and conditions for such refund..."

On September 26, 1984, CP&L filed interim tariffs pursuant to G.S. 62-135 effective for service rendered on and after September 22, 1984. Said tariffs

were designed to produce an annual revenue increase for CP&L in the amount of $92.4 million from the Company's North Carolina retail ratepayers, subject to an undertaking to refund.

The undertaking filed in this docket by CP&L on March 6, 1984, provides, in pertinent part, as follows:

> "Carolina Power & Light Company hereby undertakes, promises, and agrees that it will refund to the persons entitled thereto the amounts (with interest thereon at the rate of ten percent (10%) per annum from September 22, 1984), if any, by which rates and charges put into effect pursuant to North Carolina General Statute Section 62-135(a), exceed the amounts which would have been paid under such rates as are finally determined to be just and reasonable.
>
> "Carolina Power & Light Company for itself, its successors and assigns, hereby declares itself financially able to do so, and to be held and firmly bound to its customers and unto the North Carolina Utilities Commission for the performance of the aforesaid undertaking and agreement and for the payment of refunds, together with interest thereon, as described herein to the customers who may be entitled thereto."

Based on the foregoing, the Commission concludes that CP&L should be required to refund to its North Carolina retail customers all revenues or amounts collected under interim rates and charges since September 22, 1984, pursuant to the Company's undertaking to refund, to the extent said interim rates and charges produced revenue in excess of the level of rates authorized herein, plus interest thereon calculated at the rate of 10% per annum. To the extent that the interim rates and charges placed in effect by CP&L beginning September 22, 1984, exceeded the rates and charges authorized by this Order, said interim rates and charges were unjust and unreasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Power & Light Company shall adjust its electric rates and charges so as to produce an increase in gross annual revenues from its North Carolina retail operations of $64,339,000.

2. That within five (5) working days after the date of this Order, Carolina Power & Light Company shall file with the Commission five (5) copies of rate schedules designed to produce the increase in revenues set forth in Decretal Paragraph No. 1 above in accordance with the guidelines set forth in Appendix A attached hereto. Said rate schedules shall be accompanied by a computation showing the level of revenues which said rate schedules will produce by rate schedule, plus a computation showing the overall North Carolina retail rate of return and the rates of return for each rate schedule which will be produced by said revenues.

3. That CP&L is hereby ordered to refund to its North Carolina retail customers all revenues collected under interim rates and charges since September 22, 1984, pursuant to the Company's undertaking to refund, to the extent said interim rates and charges produced revenue in excess of the level of rates prescribed herein, plus interest thereon calculated at the rate of 10%

per annum. Refund calculations shall be made consistent with the Commission findings set forth herein. Further, CP&L shall file for Commission approval concurrent with the filing of rates as required by decretal paragraph number 2 above, the Company's plan for making the refunds required by this Order. The Company shall file 10 copies of the calculation of total amount of refunds due, including 10 copies of all detailed workpapers associated therewith.

4. That Carolina Power & Light Company shall prepare cost allocation studies for presentation with its next general rate application which allocate production plant based on: (1) the summer/winter peak and average method; (2) the 12-month CP method; and (3) the summer CP method. The studies shall be included in items 31 and 37, as appropriate, of Form E-1 of the minimum filing requirements for general rate applications.

5. That Carolina Power & Light Company shall continue to work with the Public Staff to study cost effective ways in which to allocate fixed and variable production costs based on the times production units are actually dispatched. The goal of such a study shall be to better define: (1) the changes in costs of production related to hourly or daily time-of-use and to seasonal time-of-use; (2) the changes in costs of production related to load factor; and (3) if feasible, differences in fixed costs and variable costs by rate class.

6. That the thermal requirements for manufactured housing necessary to qualify for the energy conservation discount on residential schedules RES, R-TOU, and R-TOUE shall be the same as the thermal requirements for conventional housing, effective April 1, 1985; except that the thermal requirements for manufactured housing served prior to April 1, 1985, shall remain the same as the current thermal requirements for said manufactured housing.

7. That residential water heater load control under Rider 56 shall be extended to up to 200 water heaters of 30 through 39 gallons capacity for a one-year test period beginning January, 1985, and that the results shall be reported to the Commission by July 1, 1986.

8. That the Company shall furnish to the Commission no later than April 1, 1985, an analysis for determining the potential benefits and the proper credit on the customer's bill for residential air conditioner load control without water heater load control.

9. That the Company shall consult with the Public Staff and make recommendations to the Commission within 60 days after the date of this Order for testing company-installed timers or other equipment to interrupt residential time-of-use customers' water heaters during on-peak hours and for an appropriate charge for this equipment.

10. That Carolina Power & Light Company shall give appropriate notice of the rate increase approved herein. Said notice shall be by bill insert to each of its North Carolina retail customers during the next normal billing cycle following the filing of the rate schedules described in Decretal Paragraph No. 2.

11. That the Company shall present information to the Commission in its next general rate proceeding concerning the Edison Electric Institute which will show all direct and indirect contributions to and through EEI from all sources and all expenditures by program.

12. That the Public Staff is hereby requested to make a study of the propriety of the methodology currently used by the Company to compute the North Carolina retail contra AFUDC account particularly with regard to the compounding of previous contra AFUDC amounts. The results of such study should be presented to the Commission in CP&L's next general rate proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of November 1984.

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

Commissioner Tate, dissents in part
Commissioner Cook, dissents in part

APPENDIX A
DOCKET NO. E-2, SUB 481
GUIDELINES FOR DESIGN OF RATE SCHEDULES

Step 1: Determine the amount of rate schedule revenues and other revenues, respectively, which are necessary to produce the overall revenue requirement established by the Commission in this proceeding.

Step 2: Decrease the rate schedule revenues proposed by the Company for each rate schedule by the same percentage to produce the total rate schedule revenues determined in Step 1.

Step 3: Reduce the individual prices in a given rate schedule by the same percentage to reflect the decrease in revenue requirement for the rate schedule as determined in Step 2, except as follows:

(a) Set the basic customer charge for residential rate Schedule RES at $6.85.

(b) Individual prices to be decreased in rate schedule RES are those revised prices proposed by the Company as discussed herein.

(c) Decrease prices in the TOD rate schedules in such a manner that they will remain basically revenue neutral with comparable non-TOD rate Schedules considering projected revenue savings for the TOD rates.

(d) Hold miscellaneous service charges and extra charges at the same level proposed by the Company.

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.

CAROLINA POWER & LIGHT COMPANY
DOCKET NO. E-2, SUB 481

COMMISSIONER COOK, DISSENTING IN PART. I strongly dissent from the decision of the Majority in this case to allow Carolina Power & Light Company (CP&L) a general rate increase of $64,339,000. In my opinion, CP&L has not justified such a large rate increase. Based upon the facts of this case, I would allow CP&L a rate increase of no more than $25 million, which is less than 17% of the $151.6 million requested by CP&L. I specifically dissent from the decisions of the Majority in this case with respect to (1) the inclusion of additional expenditures for construction work in progress (CWIP) in CP&L's rate base related to the construction of Harris Unit No. 1, (2) the 15.25% rate of return on common equity allowed CP&L by the Majority, and (3) amortization of the Harris Unit No. 2 abandonment loss over 10 years rather than 15 years. The decisions of the Majority on these 3 issues needlessly inflate the rate increase granted to CP&L by more than $39 million.

The Company's rate base presently includes $496,598,000 of CWIP for Harris No. 1. I would not increase the level of CWIP in this case beyond that amount for the reasons hereinafter stated in this dissenting opinion. Based upon the Majority decision to allow CWIP of $663,167,000, CP&L's allowed rate of return on common equity should be set at 14.7% or less, rather than the 15.25% allowed by the Majority, in order to take into account the Company's lowered business risk resulting from the inclusion of CWIP in rate base. The Majority decision allowing CP&L a 15.25% rate of return on common equity results in the Company's ratepayers having to pay at least $11 million per year in additional rates. I find that to be totally unjustified.

I note that the Majority decision to include over 98% of the CWIP requested by CP&L in this case will itself cause the Company's retail ratepayers in North Carolina to immediately begin paying additional rates of $33,491,000 on an annual basis in addition to the annual CWIP revenue requirement of $99,846,000, which is already reflected in rates. Thus, the additional CWIP granted in this proceeding amounts to over 52% of the entire rate increase granted to CP&L by the Majority decision. Furthermore, the Majority decision on CWIP means that a North Carolina retail electric customer using 1,000 Kwh of electricity per month will now pay, on an average basis, approximately $1.70 more, above the $5.00 already included in rates for CWIP, merely to provide CP&L with a return on construction work in progress. This charge is for a nuclear generating plant which will not begin producing even a single kilowatt-hour of electricity until September 1986, at the earliest. A customer using more electricity will pay proportionately more in rates to support CWIP. In addition, the annual revenue requirement associated with the CWIP allowed by the Majority in this case for Harris Unit No. 1 now amounts to 10.5% of CP&L's total authorized North Carolina retail revenues of $1,266,471,000. Furthermore, under the Majority decision, CWIP related to Harris Unit No. 1 now makes up over 28% of the Company's entire rate base.

G.S. 62-133(b)(1) is very specific with respect to the regulatory treatment of construction work in progress. The statute states that "... reasonable and prudent expenditures for construction work in progress ... may be included, to the extent the Commission considers such inclusion in the

public interest and necessary to the financial stability of the utility in question ...."

It is my view that the inclusion of additional CWIP in this case is not necessary to the continued financial stability of Carolina Power & Light Company; nor is such inclusion in the public interest. However, the "financial stability" requirement is the one I will focus on.

In applying for a rate increase, the burden of proof rests with the Company to justify its request. In my view, CP&L has not satisfactorily resolved the financial stability question. The Company has not made an argument that I find persuasive in the least to indicate that its financial stability would be affected if additional CWIP were not allowed in this case.

There has been a lot of rhetoric on the Company's part, to be sure, but it has been largely that--rhetoric, and no more! To wit--"CWIP in rate base should not be reserved only for those situations where it becomes necessary to rescue a utility from the brink of financial collapse." What a truism! As if anyone were arguing otherwise.

The evidence presented by the Company in making its continued financial stability contingent on the inclusion of CWIP is weak and superficial.

To say, as the Company has done, "It is clear from the evidence that the inclusion of the entire amount of eligible Harris Unit No. 1 CWIP is necessary for the Company's financial stability," is preposterous. It is like the "Emperor has no clothes" story. The truth and accuracy of this statement is, in fact, not clear at all and the Company's saying it is, does not make it so.

The Company turns the treatment of CWIP into an Armageddon--include CWIP and all will be well. The Company will maintain its A bond rating, it will complete construction of Harris Unit No. 1, costs to ratepayers will be lower and there will be smaller increases to rates in the future. Exclude additional CWIP and all will be lost--there will be a weakening of the Company's ability to complete its construction program, resulting in higher costs to ratepayers and larger increases in rates in the future. The evidence presented by the Company does not substantiate these claims. All of this, because CWIP-related revenues of $33,491,000, or approximately 2.6%, would have been denied out of total North Carolina jurisdictional revenues of $1,266,471,000. The Company's claim truly boggles the mind. It is looking through a glass darkly.

Moreover, in attempting to justify the level of CWIP requested by the Company in this case, CP&L President Smith testified that: "A level of CWIP in rate base sufficient to enable the Company to improve its financial statistics and thereby successfully raise construction capital is essential in view of the level of external funds that will be required by the Company over the next three years." The Majority Order also speaks of its decision on CWIP as serving to improve the Company's financial statistics. However, "improvement of financial statistics" is not the statutory test to be applied in this case. To the contrary, G.S. 62-133(b)(1) specifies that CWIP must be "... necessary to the financial stability of the utility in question ..." which is a far different standard than "necessary to improve the financial statistics of the utility in question." In my opinion, CP&L is currently a financially stable

electric utility and will remain so even if additional CWIP had been disallowed in this case by the Commission.

Many factors, other than the level of CWIP allowed CP&L, will determine CP&L's level of financial statistics and bond rating, including factors such as management efficiency, cash flow generation, availability and efficiency of existing generating plants, a significant postponement of the in-service date of Harris Unit 1, the reasonableness of the regulatory treatment accorded CP&L by other state and federal regulatory agencies, and many other intangible factors which are entirely beyond the control of this Commission. Even Company witness Spann conceded this point on cross-examination.

Company President Smith also testified on cross-examination that CP&L is not on a credit watch list published by any of the credit rating agencies, such as Standard & Poor's or Moody's, indicating a potential for a rating change. This further corroborates my opinion that CP&L is in fact financially stable. Were it otherwise, it is certainly a reasonable assumption that the credit-rating agencies would have placed CP&L on their credit watch lists.

On the other hand, the evidence presented by the Public Staff and other intervenors speaks to the "financial stability" factor in clear and compelling terms.

For instance, Public Staff witness Sessoms testified that, based upon his investigation in this case, CP&L presently has an A bond rating and is financially stable. I am in complete agreement with this opinion. Furthermore, Mr. Sessoms testified that he examined several indicators or financial ratios which together should provide a measure of financial stability. Where the information was available, he compared CP&L's ratios to the average ratios of the electric utilities rated A by both Moody's and Standard & Poor's beginning with 1979 through the most current data available. Witness Sessoms also presented a Standard & Poor's chart of target financial criteria which showed ranges for pre-tax interest coverage, debt leverage, and net cash flow/capital outlays for A-rated electric utilities. He presented evidence comparing the Company's ratios for the 12 months ended March 31, 1984 and June 30, 1984 to these three criteria. For the 12 months ended June 30, 1984, CP&L had pre-tax interest coverage, including AFUDC, of 3.1 times compared to the 2.5 - 3.5 times target range; a 50% debt leverage ratio compared to the 45%-55% target range; and a 41% net cash flow/capital outlays ratio compared to the 20%-50% target range. At the further hearing in this case held on November 14, 1984, witness Sessoms testified that CP&L has recently released financial statistics for the 12 months ended September 30, 1984, which show that the financial condition of the Company has continued to improve. For instance, witness Sessoms testified that for the 12 months ended September 30, 1984, CP&L achieved a pre-tax interest coverage including and excluding AFUDC of 3.4 times and 2.8 times, respectively. In addition, witness Sessoms testified that other of CP&L's financial indicators or ratios improved greatly from June 30, 1984 to September 30, 1984, including AFUDC/net income, common equity/total capitalization, and net cash flow/capital outlays. According to this evidence, it is clear that CP&L is at present well within the acceptable levels for an A bond rating with regard to these three criteria in particular.

In addition, Company witness Lilly testified that a financially stable A-rated electric utility should have a strong capital structure comprised of

less than 50% long-term debt and at least 40% common equity and a pre-tax interest coverage, excluding AFUDC, in excess of 2.5 times. Company witness Vander Weide testified that the interest coverage ratio and the ratio of equity to total capitalization are two of the most often used measures of financial integrity and that CP&L's percent of common equity has been near the electric industry average for at least the last few years. In this case, CP&L has been allowed a capital structure for rate-making purposes comprised of 47.5% long-term debt, 12.5% preferred stock, and 40% common equity. Furthermore, for the 12-month period of time ended September 30, 1984, CP&L, in fact, experienced a pre-tax interest coverage, excluding AFUDC, of 2.8 times on a total Company basis. Thus in the words of CP&L witness Lilly, the Company has a "strong capital structure." The Company also has sufficient financial strength, at the very least, to produce more than even the minimum pre-tax interest coverage, excluding AFUDC, recommended by Mr. Lilly for a financially stable A-rated electric utility.

Although witness Sessoms testified on cross-examination that certain financial ratios for CP&L were below the average of the A-rated electrics, he further noted that there are other factors to consider. In this regard, witness Sessoms testified that CP&L is well within the range of ratios exhibited by other A-rated electrics. The Company is showing improvement in the financial ratios that use earnings in the calculation and has received recent rate increases in all jurisdictions in which the Company operates. Those rate increases have not been in effect long enough to be reflected in the Company's operations for a full year. CP&L has also experienced this improvement while operating under a rate of return penalty in North Carolina and while undergoing its heaviest year of Harris Unit No. 1 construction expenditures.

Witness Sessoms testified that although CP&L is, in fact, undergoing a large construction program, the Company is nevertheless maintaining adequate levels of internal cash generation so as not to adversely affect the Company's financial stability and that in 1985 and 1986, the Company's construction expenditures will decrease and internal cash generation will improve even further. Mr. Sessoms also testified that the Public Staff's recommended return on rate base produces an approximate 4.01 times pre-tax interest coverage, including AFUDC, or an approximate 3.2 times coverage, excluding AFUDC. Witness Sessoms noted that the 3.2 times coverage is higher than the 3.0 times average of the A-rated utilities for 1983 and higher than the 3.1 times coverage implicit in the Commission's Final Order in Docket No. E-2, Sub 461 on a North Carolina jurisdictional basis. The Majority Order in this case generously provides for a 3.6 times pre-tax interest coverage, excluding AFUDC, for CP&L on a North Carolina jurisdictional basis.

Public Staff witness Hsu supported Mr. Sessoms' recommendations and stated that the inclusion of additional CWIP in rate base is not needed to meet the statutory criterion of G.S. 62-133(b)(1) related to "financial stability."

CUCA witness Wilson stated that his analysis shows that CP&L's current rates are covering operating expenses and interest and dividend requirements and are substantially covering construction expenditure requirements. Dr. Wilson testified that CP&L's present financial circumstances do not warrant the inclusion of additional CWIP in rate base at this time because of the Company's construction program. He stated that he did not believe that even the current

amount of CWIP allowed CP&L is necessary to the Company's financial stability. At the further hearing held on November 14, 1984, Dr. Wilson testified that CP&L's financial results for the period ended September 30, 1984, have improved substantially. For instance, Dr. Wilson testified that CP&L's net income for the calendar quarter ended September 30, 1984, was $90.7 million, compared with $60.2 million for the same quarter one year ago. CP&L's net income for the twelve month period ended September 30, 1984, was $279.6 million, compared to $235.8 million the prior year. CP&L's earnings per share for the most recent calendar quarter were $1.20, compared with $.80 for the same period one year ago. Thus, Dr. Wilson testified that CP&L's earnings and dividends are already at all-time record levels even without giving effect to the rate increase granted in this case.

CUCA witness Smith noted that there are electric utilities which have AA ratings with ratios similar to CP&L and BBB-rated utilities with better ratios in some comparisons. This led Dr. Smith to the belief that these ratios are only an indirect indicator of what the bond rating is going to be. She stated that the ratios would not determine what the Company's bond rating would be, but rather the rating agencies are focusing on the probability of something going wrong with the nuclear construction program. She indicated that it is within the Company's control rather than the Commission's whether or not Harris Unit No. 1 will be successfully completed. In this regard, I note that CP&L has, in fact, recently announced a 6-month delay with respect to the in-service date of Harris Unit No. 1, from March 1986 to September 1986.

In my opinion, the inclusion of additional CWIP in CP&L's rate base in this case may well have the effect of removing some of the Company's incentive to bring Harris Unit No. 1 on line in the most expeditious manner possible by permitting CP&L to earn a cash return on that plant before it is brought into service. The Commission should ensure that Harris Unit No. 1 will be completed in a timely manner and at a reasonable cost by allowing CP&L to earn a cash return on only that amount of CWIP absolutely necessary to the financial stability of the Company. In this manner, the Commission can serve to protect the public interest with respect to minimizing plant construction delays.

Furthermore, since the Majority apparently believes that CP&L's financial fortunes and additional CWIP are irretrievably bound together--then why grant the Company a 15.25% return on common equity? Since additional CWIP in the amount of $166,569,000 has been included in CP&L's rate base by the Majority, the Company's risk factor has been significantly reduced. Why, then, not allow CP&L a rate of return of 14.7% or less? This seems to be a case of "Heads I win, tails you lose" -- with the Company the winner and the ratepayers the losers. I find this to be considerably less than even-handed regulatory treatment.

In this regard, Public Staff witnesses Sessoms and Hsu testified that the inclusion of CWIP in rate base eliminates one of the major elements of risk to investors of electric utilities and that should the Commission continue to place additional CWIP in rate base for CP&L, which the Majority has done in this case, consideration should be given to the elimination of this risk when setting the allowed return on equity by setting such allowed return at the lower end of the reasonable range. Witness Hsu testified that investors in the electric utility industry expect a common equity return within the range of

14.7% to 15.9% and that for CP&L the reasonable equity return range is from 13.9% to 15.1%.

CUCA witness Wilson also testified that CP&L's allowed rate of return on capital, particularly common equity, should be substantially reduced whenever CWIP is permitted to be included in rate base since a major element of business risk would thereby be eliminated.

In my opinion, the Majority has completely ignored this important consideration in determining CP&L's rate of return, notwithstanding unsupported and unsubstantiated recitations in the Order to the contrary. In this regard, I find it inconceivable that the Majority could seriously maintain, as it has in fact done, that allowance of a rate of return of 15.25% on common equity in this case represents "the lower end of the range of reasonable and fair rates of return for CP&L's common equity investors," given the fact that such rate of return is even higher than those recommended by Public Staff witness Hsu at 15.2% and CUCA witness Smith at 14.5%. Both witnesses predicated their recommended rates of return upon the disallowance of additional CWIP to CP&L in this proceeding.

I further dissent from the decision of the Majority in this case to amortize the Harris Unit No. 2 abandonment loss over 10 years, rather than 15 years as advocated by the Public Staff. While there is nothing magic per se about either the 10-year or 15-year amortization period, my interest is in seeing that the abandonment costs are shared equitably between ratepayers and stockholders. I view that as a matter of simple fairness. A 15-year amortization period more nearly reflects my position.

In this regard, evidence presented by the Public Staff clearly indicates that a 15-year amortization period will result in a nearly equal sharing of the economic costs associated with the Harris Unit No. 2 abandonment between CP&L's ratepayers and its shareholders when compared on a present value basis. The 10-year amortization period proposed by CP&L for the Harris Unit No. 2 abandonment loss would, in my opinion, result in ratepayers bearing a disproportionately large share of the abandonment costs. Stated on a present value basis, ratepayers would be required to bear 64% of the abandonment costs while CP&L's shareholders would bear only 36% of such costs. I believe a 50-50 sharing of such costs is entirely fair and equitable to both ratepayers and shareholders. By the Majority decision, rates now paid by CP&L customers will be $8 million more on an annual basis than they would have otherwise been had the Commission adopted a 15-year amortization period for the Harris Unit No. 2 abandonment loss. Furthermore, CP&L's cost of service already includes $7.65 million on an annual basis reflecting the Company's abandonment of Harris Units 3 and 4, South River, and the Brunswick cooling towers, all of which are currently being amortized to the cost of service over a 10-year period. In addition, utilization of a 15-year amortization period would also serve to lessen the impact of the future rate increases which will necessarily be imposed upon CP&L's ratepayers when Harris Unit No. 1 begins commercial operation.

In conclusion, I dissent from the Majority position on CWIP because the Company has not met the "financial stability" test to my satisfaction and, therefore, additional CWIP should be excluded. I also dissent from the Majority decision to allow CP&L a rate of return on common equity of 15.25%.

Inadequate consideration has been given to the degree to which the Company's risk factor has been reduced by the inclusion of $663,167,000 of CWIP in this proceeding. I further dissent from the decision of the Majority to amortize the Harris Unit No. 2 abandonment loss over 10 years rather than 15 years.

November 20, 1984

Ruth E. Cook
Commissioner

DOCKET NO. E-7, SUB 338 (REVISED RIDER LC)
DOCKET NO. E-7, SUB 381 (SCHEDULE WC)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Filing by Duke Power Company of Revised Rider LC | ) | ORDER |
| | ) | APPROVING REVISED |
| and | ) | RIDER LC AND |
| | ) | SCHEDULE WC |
| Filing by Duke Power Company of Schedule WC | ) | |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 17, 1984

BEFORE: Chairman Robert K. Koger, Presiding, and Commissioners A. Hartwell Campbell and Charles E. Branford

APPEARANCES:

For the Applicant:

William Larry Porter, Associate General Counsel, and Ronald L. Gibson, Senior Attorney, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242

For the Using and Consuming Public:

James D. Little, Staff Attorney, North Carolina Utilities Commission - Public Staff, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On February 27, 1984, Duke Power Company filed a request in Docket No. E-7, Sub 338 seeking permission to implement a new Schedule WC and a revised Rider LC. Schedule WC is designed to offer controlled submetered electric water heating service during off-peak hours to residential customers on Schedules R, RA and RC. Pursuant to the Commission's Order dated November 1, 1982, in Docket No. E-7, Sub 338, Rider LC has been expanded to include provisions for load cycling plus emergency control of electric water heaters and control of air conditioners.

On May 1, 1984, the Commission entered an Order in Docket No. E-7, Sub 338 scheduling a hearing for July 17, 1984 at 9:30 a.m. in the Commission Hearing Room, 617 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The Order was mailed by the Chief Clerk to all parties in Docket No. E-7, Sub 338, and Docket No. E-7, Sub 373, required that Duke prefile its testimony on or before June 25, 1984.

On May 17, 1984, the Public Staff filed a Motion requesting the Commission to establish a separate docket number for Schedule WC. On May 24, 1984, the Commission established Docket No. E-7, Sub 381 for the purpose of considering Duke's proposed Schedule WC while continuing to consider revised Rider LC in

Docket No. E-7, Sub 338. The Order scheduling the hearing on Schedule WC and revised Rider LC entered on May 1, 1984, was affirmed in all other respects.

On June 4, 1984, pursuant to the May 1, 1984, Commission Order, Duke prefiled the testimony of Walter E. Sikes, Manager, Load Analysis, and John N. Freund, Manager of Rate Design.

The Public Staff filed data requests and participated in the hearing of the case. The Public Staff did not present a witness or testimony. The intervention of the Public Staff is deemed recognized pursuant to Rule R1-19(e) of the Commission's Rule and Regulations.

Based on the foregoing, Duke's application for approval of revised Rider LC and Schedule WC, the testimony and exhibits received into evidence at the hearing, and the entire record with regard to this proceeding, the Commission 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 a broad area of central and western North Carolina, with 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 request for approval of revised Rider LC and Schedule WC pursuant to the jurisdiction and authority conferred upon the Commission by the Public Utilities Act.

3. Duke's proposed revised Rider LC responds to the Commission's Order Dated November 1, 1982, in Docket No. E-7, Sub 338 and contributes to Duke's load management program. Schedule WC reflects cost-of-service and also contributes to Duke's load management program. Duke's Rider LC and Schedule WC should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence for these findings of fact is contained in the request for approval of revised Rider LC and Schedule WC, the Commission's files and records regarding this proceeding, the Commission's order setting hearing, and the testimony of Duke witnesses Sikes and Freund. These findings of act are essentially informational, procedural and jurisdictional in nature.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Duke witnesses Sikes and Freund presented testimony and exhibits in support of revised Rider LC and Schedule WC. Witness Sikes testified that Duke, along with the State of North Carolina, recognized that economic growth in North Carolina is healthy and necessary for a prosperous state; that a major contributing factor is a reliable source of electricity for all cusumers; and that in seeking this objective at the least possible cost, Duke has developed its current load management programs.

Witness Sikes testified that the Company reviewed its forecasted loads and generation capacity and concluded that there would be off-peak periods in the late 1980's and 1990's during which the system load would be substantially less than the minimum level of generation capacity in service. This minimum level of generation capacity in service includes the Company's most efficient base load plants which cannot be cycled to follow the changes in daily load. Duke reviewed various options for increasing the system load during the off-peak periods including off-peak heating, off-peak air conditioning, and off-peak water heating. Proposed Schedule WC provides for controlled off-peak submetered service for residential water heating which has availability limited to a minimum of six hours per day.

Witness Sikes testified that the implementation of Schedule WC will not only assist in the reduction of peak demands, but it will also provide for more efficient utilization of existing facilities. Under Schedule WC the load associated with residential electric water heaters will be moved entirely off peak to a period on the daily load curve when the demand on system production is lowest. Therefore, the lower energy cost in Schedule WC reflects the lower costs associated with providing this service.

Witness Freund described the rate design of the proposed Schedule WC and the proposed changes to Rider LC. The proposed Schedule WC will provide for controlled, separately metered, off-peak electric water heating service to residential customers in areas where Duke operates load control devices. All of the electric energy required for a qualified water heating system must be controlled and served through a submeter to the residential customer's master meter which measures concurrent service from Duke on Schedule R, RA or RC. The proposed Schedule WC limits the availability of electric water heating service to at least six off-peak hours out of 24 hours.

Witness Freund's testimony showed that the derivation of the 2.88¢/kWh rate for the Schedule WC service is based on cost of service as determined in Docket No. E-7, Sub 358, and is lower than the rate charged for residential service including conventional water heating. This lower off-peak water heating rate results from the dramatic difference between the load usage characteristics of an off-peak water heater when compared to the average load usage characteristics of a conventional uncontrolled water heater. Assuming that participating WC water heaters would contribute no demand to the system or class peaks, and would also cause a significant shift of energy to the daily off-peak period, no production, transmission, or bulk distribution plant investment is allocated by Duke to the off-peak water heating service. In addition, the rate computation assumes that lower fuel costs would result from the shift of energy usage to off-peak hours where it would be supplied by relatively lower running cost generation. Therefore, the company contends that the Schedule WC rate is cost based, and that its lower charge will encourage participation in the off-peak water heating program. Witness Freund further testified under cross examination that if the more recent cost of service as determined in Docket No. E-7, Sub 373 was utilized, the proposed 2.88¢ per kWh would be reduced to 2.80¢ per kWh. Duke filed Freund exhibit 3 and supporting work papers for the 2.80¢ per kWh rate on July 24, 1984 at the request of the Public Staff.

Witness Freund testified that the proposed change in Rider LC is in response to the Commission's Order dated November 1, 1982, in Docket No. E-7,

Sub 338. As proposed, load controlled customers will continue to have the option of the current credits for water heating and air conditioning load control subject to emergency interruption (Category A) or higher credits on the new option of water heating and air conditioning control subject to both emergency interruption and cycling interruption (Category B). No change has been proposed to the current emergency interruption program either in administration or the credits payable to participants.

The Public Staff, although not presenting any witnesses or testimony, utilized six exhibits in cross-examining witnesses Sikes and Freund. The basic areas encompassed by the Public Staff's cross-examination were the revenue effect of the implementation of Schedule WC, benefits resulting from the implementation of Schedule WC, the basis of the 2.88¢/kWh Schedule WC rate, and the reporting of information concerning progress in implementing Schedule WC and revised Rider LC.

In seeking information on Duke's filing, the Public Staff requested that Duke make a calculation of possible revenue loss if 550,000 residential customers (Duke's goal) subscribed to the WC rate by 1995. In response to the Public Staff's request, Duke calculated that the possible revenue loss would be $45,462,000 in the North Carolina retail jurisdiction. In a subsequent response to a Public Staff Data Request, and on cross-examination of the witnesses at the hearing, Duke indicated that proposed Schedule WC is being implemented in order to reduce the peak load, to release generating capacity to meet the peak load, to avoid the cost of constructing additional generating capacity in the future, and to reduce fuel expenses as well as non-fuel O&M expenses due to less cycling of large units.

Based on the assumption that all Schedule WC customers are placed on the Duke system today, calculations would show a revenue differential between the WC rate and their present rate. Witness Sikes testified that if the Rider WC program is successful, the load shifted from the peak to the off-peak period is projected to provide 210 MW of released generation capacity systemwide by 1995, and that the benefit of this released capacity and avoidance of new construction will be sufficient to outweigh the revenue differential between the WC rate and the present rate for WC customers.

On cross-examination concerning the payback period for an individual customer who uses Schedule WC, witness Sikes testified that as a general rule a typical payback period would be three to four years.

The Public Staff also questioned witness Sikes concerning the Company filing semiannual reports for the next five years if the Commission approved the proposed Schedule WC. The reports would detail the hours that water heaters were controlled, the number of customers on Schedule WC, the amount of water heater capacity of each customer, the number of customers that provide additional storage, and the number of complaints received. Witness Sikes stated that Duke could comply with the filing of such semiannual reports.

In regard to the proposed cycling addition to Rider LC, witness Sikes was questioned as to whether Duke would oppose filing quarterly reports for the next two years indicating the hours that appliances were controlled, the load reduction resulting from control, and the number of customers on the cycling program. The Public Staff also inquired as to Duke's position with respect to

a study on the cost effectiveness of cycling load control and a two-year semiannual report on customer acceptance, customer inconvenience and cost effectiveness on Rider LC. Witness Sikes concurred that Duke would furnish the described reports if requested.

The Company contends that the proposed Schedule WC will make a significant contribution toward Duke's objective of keeping the unit cost of electricity as low as possible for all customers. The Commission recognizes that it will take a number of years for the Company to succeed in modifying the usage pattern of a significant number of residential customers in order to achieve the long range objective of this aspect of the Company's load managment program. The proposed Schedule WC appears to be an appropriate step which should be approved by this Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke's Schedule WC (NC) Residential Water Heating Service, Controlled/Submetered, as filed, with an amended rate of 2.80¢/kWh, is approved and effective on the date of this Order.

2. That Duke's revised Rider LC (NC) Residential Load Control as filed is approved and effective on the date of this Order.

3. That Duke shall file for Schedule WC semiannual reports for five years beginning with the period ending June 30, 1985, indicating the hours that water heaters were controlled, the number of customers on Schedule WC, the amount of water heater capacity of each customer, the number of customers that provide additional storage, and the number of complaints received.

4. That Duke shall file for Rider LC quarterly reports for two years beginning with the period ending December 31, 1984, indicating the hours that appliances were controlled, the load reduction resulting from control, and the number of customers on the cycling program. Additionally, Duke shall begin a study on the cost effectiveness of cycling load control and provide for two years an annual report including comments on customer acceptance and customer inconvenience.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of August 1984.

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

DOCKET NO. E-7, SUB 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>Application by Duke Power Company for<br>Authority to Adjust and Increase Its<br>Electric Rates and Charges | ) ORDER GRANTING PARTIAL<br>) INCREASE IN RATES AND<br>) CHARGES |

HEARD IN: The Council Chambers, City Hall, 101 City Hall Plaza, Durham, North Carolina, on March 20, 1984

Courtroom, McDowell County Courthouse, Marion, North Carolina, on March 21, 1984

The Commissioners' Board Room, Fourth Floor, County Office Building, 720 East Fourth Street, Charlotte, North Carolina, on March 21, 1984

Council Chambers, Second Floor, City Hall, 101 North Main Street, Winston-Salem, North Carolina, on March 21, 1984

Auditorium, Guilford County Social Services Building, 301 North Eugene Street, Greensboro, North Carolina, on March 21, 1984

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 3-6, April 10-13, and April 17, 1984

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Steve C. Griffith, Senior Vice President and General Counsel, George Ferguson, Vice President and Deputy General Counsel, William L. Porter, Associate General Counsel, and Ronald L. Gibson, Senior Attorney, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

Clarence W. Walker, Kennedy, Covington, Lobdell & Hickman, Attorneys at Law, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For the Public Staff:

Paul L. Lassiter, James D. Little, and Michael L. Ball, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, Steven F. Bryant, Assistant Attorney General, and Angeline M. Maletto, Associate Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Thomas R. Eller, Jr., Attorney at Law, P.O. Drawer 27866, Raleigh, North Carolina 27612
For: Carolina Utility Customers Association

William I. Thornton, Jr., City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701
For: City of Durham

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Blanton, Whisnant and McMahon, P.A., Attorneys at Law, P.O. Drawer 1269, Morganton, North Carolina 28655
For: Great Lakes Carbon Corporation

M. Travis Payne, Edelstein & Payne, Attorneys at Law, P.O. Box 12643, Raleigh, North Carolina 27605
For: Kudzu Alliance

Carson Carmichael, III, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Carolina Industrial Group for Fair Utility Rates

BY THE COMMISSION: On November 30, 1983, Duke Power Company (Applicant, Company, or Duke) filed an application with the North Carolina Utilities Commission seeking authority to adjust and increase electric rates and charges for its retail customers in North Carolina. Said application seeks rates that produce approximately $212,816,000 of additional annual revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12 months ended June 30, 1983, an approximate 13.6% increase in total North Carolina retail rates and charges. The Company requested that such increased rates be allowed to take effect for service rendered on and after December 28, 1983. The principal reasons set forth in the application as necessitating the requested increase in rates were: (1) the inclusion in rate base of Unit 2 of the McGuire Nuclear Station as plant in service on a pro forma basis; (2) expenditures for construction work in progress applicable to one-half of the Company's portion of ownership of the Catawba Nuclear Station; (3) increase in the Company's allowed return on common equity; (4) increased operating expenses; and (5) investment in additional plant not reflected in current rates.

In addition, Duke's application requested an interim rate increase of $91 million or 5.38%, effective for service rendered on and after the date of commercial operation of Unit No. 2 at the McGuire Nuclear Station, subject to refund after hearing and pending final order in this docket.

On December 13, 1983, Carolina Industrial Group for Fair Utility Rates (CIGFUR III) filed its Petition to Intervene. By Order dated December 19, 1983, the Commission allowed that request to intervene.

On December 14, 1983, the Public Staff filed a Notice of Intervention and a Motion which asked that Duke's application for an interim rate increase be dismissed and concurred in Duke's request to defer fuel savings attributable to pre-commercial operation of McGuire Unit 2 and to resolve the ultimate disposition of these savings in the general rate proceeding. On December 15, 1983, the Attorney General filed a Motion for Denial of Interim Rates and Denial of Certain Accounting Treatment. On December 19, 1983, Duke filed a Response to Motions of the Public Staff and the Attorney General.

On December 21, 1983, Great Lakes Carbon Corporation filed a Petition to Intervene and Motion with respect to Duke's request for interim rate relief. By Order of December 27, 1983, the Commission allowed the request to intervene.

On December 27, 1983, the Commission issued an Order declaring Duke's application to be a general rate case pursuant to G.S. 62-137, suspending Duke's proposed rates pursuant to G.S. 62-134 for a period of up to 270 days from the proposed effective date of such rates, denying Duke's request for interim rate relief, scheduling public hearings on the application, establishing the test period, and requiring Duke to give public notice of its application and the hearings scheduled by the Commission.

On January 5, 1984, there was filed in this docket with the Commission a Petition to Intervene by Kudzu Alliance. By Order of January 6, 1984, that request to intervene was allowed. On January 31, 1984, there was filed in this docket with the Commission a Petition to Intervene by the North Carolina Municipal Power Agency No. 1. By Order of February 3, 1984, that request to intervene was allowed. On February 2, 1983, Carolina Utility Customers Association, Inc. (C.U.C.A.), filed a Petition to Intervene. By Order of February 6, 1984, C.U.C.A.'s request to intervene was allowed. On March 8, 1984, the City of Durham filed a Petition to Intervene. By Order of March 12, 1984, the request to intervene was allowed.

Both the Public Staff and the Attorney General intervened in the case by either filing a formal petition and/or by appearing at the hearings. The interventions of the Public Staff and the Attorney General are deemed recognized.

Prior to and during the course of the hearings, motions were made and Orders were entered relating thereto, all of which are matters of record. Additionally, pursuant to various Commission Orders or requests, also of record, various parties were directed or permitted to file and serve certain late filed exhibits, either during or subsequent to the hearings held in this matter.

Public hearings were held as scheduled by the Commission for the specific purpose of receiving testimony from public witnesses. The following persons appeared and testified:

Durham - Wayne Campbell, Bob Brinkmeyer, Tommy Bland, Beth Gassertlyon, Elliott Ervine, Manie Geer, W.E. Jarboe, Tom Harris, William A. Stokes,

Ebert L. Pierce, Lorisa Seibel, Paul Luebke, Kenny Foscue, Elisa Wolper, Howard Sherman, A.E. Spears, Jr., Willie C. Lovett, Frieda Kocher, Geoffrey Wychoff, Laura Drey, Laurie Tyler, Elena M. Yott, Ben Edwards, and Ed Norman.

Marion - D.A. Greyson, Charles McGinnis, James M. Duncan, William Salisbury, Hank Taylor, Harley Edwards, Bill Burleson, Sam Glenn, Clyde Pearson, John English, Haskell Davis, Bill Wiseman, David Gibson, William E. Martin, Grady Kelly, Glenn Spaulding, Marleen Buchanan, Myrna Woody, Henry Allison, and Stuart Buchanan.

Greensboro - Charles V. Bettini, Stanley Timblin, Carlyle Wooten, Dorothy Bardolph, Mrs. A.F. Klein, Lula Chambers, H.C. Simpson, and Ada Hooker.

Winston-Salem - Gordon Miller, Henry Drexler, Bob Wienberry, Tommy Griggs, Benny Morgan, Luther Jones, Verdola Keller Watson, Bill Crow, Charles Fichen, Ernest Fruitt, Marshall Tyler, and Terri Alexander.

Charlotte - George R. Morgan, C. Brown Ketner, Landon Wyatt, Jack Baker, Tom Conrad, James Greene, Jr., Thurman Nail, F.M. Luther, Sol Badanna, Kenneth Jordan, Charles A. Hunter, Carolyn Myers, Jess Riley and Melvin Whitley.

Raleigh - Joseph R. Overby.

As previously ordered, the case in chief came on for hearing on April 3, 1984. The Applicant presented the testimony and exhibits of the following witnesses:

1. William S. Lee, Chairman of the Board and Chief Executive Officer of Duke (direct testimony);

2. Dr. Willard T. Carleton, Kenan Professor of Business Administration (direct and rebuttal testimony);

3. William R. Stimart, Vice President, Regulatory Affairs of Duke (direct and rebuttal testimony);

4. M.T. Hatley, Jr., Vice President, Rates of Duke (direct testimony); and

5. Dr. Edward W. Erickson, Professor of Economics and Business, North Carolina State University (rebuttal testimony).

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Benjamin R. Turner, Jr., Engineer with the Electric Division of the Public Staff;

2. Timothy J. Carrere, Engineer with the Electric Division of the Public Staff;

3. Thomas S. Lam, Engineer with the Electric Division of the Public Staff;

4. Michael W. Burnette, Engineer with the Electric Division of the Public Staff;

5. James Hoard, Accountant with the Accounting Division of the Public Staff.

6. John J. Salengo, Accountant with the Accounting Division of the Public Staff;

7. Hsin-Mei C. Hsu, Director, Economic Research Division of the Public Staff;

8. George T. Sessoms, Jr., Economist with the Economic Research Division of the Public Staff.

The Intervenor Kudzu Alliance presented the testimony and exhibits of Wells Eddleman.

The Intervenor Carolina Utility Customers Association presented the testimony and exhibits of Drs. J.W. Wilson and Caroline M. Smith of J.W. Wilson and Associates, Inc., Washington, D.C.

The Intervenor Carolina Industrial Group for Fair Utility Rates presented the testimony and exhibits of Nicholas Phillips, Jr., Consultant with the firm of Drazen-Brubaker and Associates, Inc.

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 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 a broad area of central and western North Carolina, with 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 June 30, 1983, adjusted for certain known changes based upon circumstances and events occurring up to the time of the close of hearings in this docket.

4. By its application, Duke seeks rates designed to produce jurisdictional revenues of $1,773,774,000 based upon a test year ending

June 30, 1983. Revenues under present rates, according to the Company, were $1,560,958,000, thereby necessitating an increase of $212,816,000.

5. The overall quality of electric service provided by Duke to its North Carolina retail customers is adequate.

6. The summer coincident peak method as discussed herein is the only method proposed for determining jurisdictional costs and for making fully distributed cost allocations between customer classes in this proceeding. Consequently, each finding of fact appearing in this Order which deals with the overall level or rate base, revenues, and expenses for North Carolina retail service has been determined based upon the Summer CP cost allocation method.

7. The Catawba-McGuire Reliability Exchange provisions of Duke's Interconnection Agreements with N.C. Municipal Power Agency #1, N.C. Electric Membership Cooperatives, and Saluda River Electric Membership Cooperative should be reflected in fuel expenses and the demand jurisdictional allocation factor. Therefore, each finding of fact determined herein reflects the Catawba-McGuire Reliability Exchange provisions of the Interchange Agreements.

8. A base fuel component of $1.2652¢ per kWh (excluding gross receipts tax) is appropriate for this proceeding, reflecting a reasonable base fuel cost of $380,914,000 for North Carolina retail service.

9. A $79,022,000 working capital allowance for fuel inventory is appropriate for North Carolina retail service in this proceeding, consisting of $75,517,000 for coal inventory and $3,505,000 for fuel oil inventory.

10. The reasonable allowance for working capital is $213,085,000.

11. Duke's request to include $112,538,000 of construction work in progress (CWIP) in the Company's rate base is not necessary to the financial stability of the Company and is not in the public interest in this case.

12. Duke's McGuire nuclear generating unit 2 was declared commercial on March 1, 1984, 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. The Company is entitled to collect rates based upon the inclusion of McGuire Unit 2 in its cost of service.

13. Duke's reasonable original cost rate base used and useful in providing service to the public within the State of North Carolina is $2,950,519,000; consisting of electric plant in service of $4,493,942,000, allowance for working capital of $213,085,000, reduced by accumulated depreciation and amortization of $1,433,735,000, accumulated deferred income taxes of $311,120,000, and operating reserves of $11,653,000.

14. The appropriate gross revenues for Duke for the test year, under present rates and after accounting and pro forma adjustments, are $1,563,290,000.

15. The reasonable level of test year operating revenue deductions for the Company after normalized and pro forma adjustments is $1,273,692,000.

16. The reasonable capital structure to be employed as a basis for setting rates in this proceeding is composed as follows:

| Item | Percent |
|---|---|
| Long-term debt | 45.83% |
| Preferred stock | 12.09% |
| Common equity | 42.08% |
| Total | 100.00% |

17. The Company's proper embedded costs of debt and preferred stock are 9.73% and 8.74%, respectively. The reasonable rate of return for Duke to be allowed the opportunity to earn on its common equity is 15.25%. Using a weighted average for the Company's costs of long-term 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 Duke, 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 customers and existing investors.

18. Based upon the foregoing, Duke should be authorized to increase its annual level of gross revenues under present rates by $130,969,000. The annual revenue requirement approved herein is $1,694,259,000 which will allow Duke a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of Duke's property used and useful in providing service to its customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

19. The rate blocks in all major rate schedules should be flattened.

20. The summer/winter differentials in the residential rate schedules should be maintained at the same percentage differences as contained in the present rates.

21. The separate (Hopkinson type) demand charge in the major nonresidential rate schedules should be increased to the levels proposed by the Company.

22. The time of use rate schedules GT and IT should be made available to all general service and industrial customers having appropriate metering facilities and located at or near transmission facilities and otherwise qualifying, provided such service is offered on the basis that the Company will incur no additional expenses not recovered through its approved rates and charges.

23. The rate designs and rate schedules proposed by the Company, except for the modifications thereto as described herein, are appropriate and should be adopted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence for these findings of fact is contained in the verified application, the Commission's files and records regarding this proceeding, the Commission Order setting hearing and the testimony of Company witness Stimart and Public Staff witness Hoard. These findings of fact are essentially informational, procedural, and jurisdictional in nature and are, for the most part, uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimony of Company witness Lee and the various public witnesses who appeared at the hearings in Marion, Charlotte, Winston-Salem, Greensboro, and Durham. The Commission notes that the record contains little, if any, evidence which would even suggest any problems with respect to the adequacy of Duke's service. A careful consideration of all of the evidence relating to this issue leads the Commission to conclude that the quality of service being provided to retail customers in North Carolina by Duke is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Hatley, Public Staff witness Turner, Carolina Industrial Group for Fair Utility Rates (CIGFUR) witness Phillips, and Kudzu Alliance witness Eddleman presented testimony and evidence regarding the proper cost allocation methodology.

The Company provides retail service in two states as well as wholesale service. For this reason, it is necessary to allocate the cost of service between the several wholesale and retail jurisdictions and between customer classes within each jurisdiction.

Company witness Hatley testified that, consistent with its past practice, the Company proposes to use the summer coincident peak (Summer CP) method for cost allocation in this proceeding. The Summer CP method allocates 100% of production plant (and related expenses) based on jurisdictional and customer class contribution to the system's one-hour peak during the summer. A customer's demand during other peak hours will have no impact on the distribution of production plant (and related expenses) under the Summer CP method.

Public Staff witness Turner testified that, in this proceeding, the Public Staff does not oppose the use of the Summer CP allocation method as proposed by the Company, pending the completion of the 8,760-hour study ordered by the Commission in Docket No. E-7, Sub 358. The 8,760-hour study is an undertaking to allocate both fixed and variable costs of each generating plant to the hours in which said plant is actually operated. The resulting costs would then be used to assign hourly costs to each customer class based on the hourly loads of each class.

Even though the Public Staff did not oppose the Summer CP method in this case, witness Turner did point out that an optimal cost allocation method should take into consideration both the summer and winter peaks and should allocate a portion of production plant and related expenses based on average

demand. Both the summer peak and the winter peak are dominant system peaks, as indicated by Turner Exhibit BRT-2 which shows that the actual winter peak has exceeded the summer peak in nine of the last 10 years on a seasonal basis.

Company witness Hatley stated that the winter peak does not impact costs because it is an artificial peak stimulated by the Company's offering of lower rates to all-electric customers in order to encourage a winter heating load. In contrast to the nature of the winter peak, he characterized the summer peak as an uncontrolled cooling load. Witness Turner stated that, while Duke may have initially encouraged a winter peak by offering all-electric rates, the winter peak now appears to be growing on its own, as illustrated by the growing importance of the winter peak to CP&L, Vepco, and other companies in the southeast region.

Although acceding to the use of the Summer CP method in this case, witness Turner reiterated the Public Staff's position that a portion of production plant should be allocated by average demand (i.e., by kWh). Witness Turner pointed out that if base loaded units, such as nuclear units, were able to operate only for short periods of time, the construction of such units could never be justified. It is, therefore, logical for the allocation method to assign a share of the capital cost for base load units to those customers who create the need for base load capacity.

In the Company's last rate case, the Commission concluded that the controversy surrounding cost allocations might be resolved or greatly alleviated by means of a cost allocation study which assigns both fixed costs and variable costs to each of the 8,760 hours of the year. The Company's interim report regarding said 8,760-hour study indicated that the study would cost $18,000,000 per year while the alternative study of 2,016 hours could cost $600,000. The Commission takes judicial notice of the Public Staff's Response to that interim report, filed on April 18, 1984, in Docket No. E-7, Sub 358, which questions those cost figures.

The Public Staff recommended that the Commission continue the 8,760-hour study in order to determine variations in system costs between on-peak and off-peak periods, system cost differentials between seasons, and the resulting distribution of the fixed investment in production plant. Witness Turner suggested that the high costs (i.e., Duke alleges $18 million per year) of attempting to achieve a 90% statistical accuracy in hourly assignment of costs to all customer classes could be avoided by the hourly assignment of costs to those customer groups which do not require additional meters for load research, such as the large industrial customers. The results of such a modified 8,760-hour study would enhance the present cost-of-service studies by providing support for present rate design features such as time-of-day rates, seasonal differentials, multiple use blocks, and cost differentials by load factor which cannot be obtained from the present cost-of-service studies.

Witness Phillips' testimony supported the Company's Summer CP method, but also indicated that the winter peak was large enough to deserve some recognition in the cost allocation process. Witness Phillips would not recommend proceeding with the 8,760-hour study because of its alleged cost and the lack of desire for such a study by industrial customers. Witness Phillips recommended that, if the study is done, the industrial customers not be forced to pay for it because they do not want it.

Kudzu Alliance witness Eddleman's rebuttal testimony offered criticisms of various cost allocation methods, including the Summer CP method, but did not propose an alternative cost allocation method.

The Commission is of the opinion that it should adopt the Summer CP method for allocating costs in this proceeding. However, in view of the continuing controversy regarding cost allocation methodology, it is further of the opinion that it should require several of the cost allocation methodologies to be utilized by the Company in its next general rate application.

The Commission is also of the opinion that the 8,760-hour study could clarify many of the contentions of the parties regarding the appropriate cost differentials between summer usage and winter usage, and between on-peak usage and off-peak usage. It could also clarify many of the contentions of the parties regarding appropriate cost levels for "tail blocks" in industrial rates, and regarding the distribution of fixed costs for base load plants in such a way as to reflect the fuel savings from such plants.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence with respect to this finding of fact is contained in the testimony of Company witness Stimart, Public Staff witness Hoard, and C.U.C.A. witness Wilson.

Company witness Stimart described the Catawba-McGuire Reliability Exchange provisions of their Interconnection Agreements, with the Catawba buyers in his rebuttal testimony as follows:

> "The reliability exchange provisions of the contract provide that the joint owners will share the total generation from both the McGuire and Catawba Nuclear Generating Stations. That is, the joint owners are contractually entitled to generation from the McGuire Station when the Catawba Station is not operating. Similarly, the Company is contractually entitled to generation from the Catawba Station when the McGuire Station is not operating. This arrangement fairly spreads the impact of nuclear outages between the Company and the joint owners, thereby reducing risk."

The reliability exchange provisions of the contracts' effects on the two major items, fuel expenses and the demand jurisdictional allocation factor, have been reflected in both the Company and the Public Staff presentations in this proceeding. This exchange, at the present time, results in a transfer of McGuire generated energy at its energy cost to the Catawba buyers without any significant demand costs. This impacts the North Carolina retail ratepayers by requiring them to pay for McGuire capacity which does not directly serve them at this time.

The Intervenors, primarily C.U.C.A. and Great Lakes Carbon, contend that, since Duke has included in the test period in this case all capital and operating costs for the two (2) McGuire Units as charges to be paid by the North Carolina retail customers, but during that time had effectively dedicated 429 mW of the McGuire capacity to serve the Power Agency for nonjurisdictional purposes and will continue to do so indefinitely, the test year capital and operating costs for McGuire Units Nos. 1 and 2 must be adjusted through

reallocation so as to remove such capital costs and operating expenses from attribution to North Carolina retail customers for rate-making purposes in this jurisdiction. The witness for C.U.C.A., Dr. John W. Wilson, testified as follows:

> "Under the Company's allocation procedure, North Carolina retail customers would be required to make current payments fully supporting that portion of McGuire plant costs that are devoted to Power Agency service. Duke's cost of service study treats the Power Agency as making no contribution for that capacity. Also, under Duke's cost allocation procedure, energy provided to the Power Agency obtains a revenue offset equal to only McGuire nuclear running costs rather than Duke's higher overall system fuel costs. In order to rectify this situation, Duke's test year jurisdictional retail cost allocation should be adjusted so as to spare retail ratepayers that portion of the generation plant allocation and power production costs that are obviously attributable service that is being provided to the Power Agency."

Dr. Wilson testified that if his position on this matter was adopted, then Duke's test period gross jurisdictional revenue requirement would be decreased by approximately $35,788,000.

The Commission concludes that it is proper to reflect the Catawba-McGuire Reliability Exchange provisions of Duke's contracts for the purchase and sale of the Catawba plants to the North Carolina Municipal Power Agency No. 1, North Carolina Electric Membership Cooperative, and Saluda River Membership Cooperative in this proceeding in the manner proposed by the Company and accepted by the Public Staff. In support of this conclusion it is observed that the reliability exchange is embodied in contracts which have been approved by this Commission. These contracts should be either accepted or rejected in their entirety. Undesirable features of the contracts cannot be isolated and removed without changing the overall intent and effects of the contracts. If the Commission were to not reflect the reliability exchange features of the contracts, it would be inappropriate for the Commission to reflect the benefits associated with the sale. Among these benefits are the reliability exchange from the Catawba buyers ownership interests in Catawba to Duke's ratepayers, the reduced cost of building Catawba due to the municipal and EMC financing advantages, and the current low embedded cost of Duke's debt compared to what it would have been had Duke been required to sell bonds. Finally, it is observed that additional benefits associated with Catawba Unit No. 1 will begin accruing to Duke's North Carolina retail ratepayers in the late summer or early fall of 1984. Nuclear fuel is now scheduled to be loaded into Catawba Unit No. 1 in July of this year. During the pre-commercial testing of the Catawba Unit, which will commence shortly after fuel loading, it is very likely that substantial fuel savings will occur. Such savings will be placed in a deferred account and subsequently amortized as a reduction to the cost of service. As previously stated, it is anticipated that these savings will begin to accrue in late summer or early fall of 1984. Ratepayers should begin receiving the benefit of this deferred reduction in fuel cost in the summer or early fall of 1985.

Consistent with the foregoing, all findings of fact contained within this Order, relating to fuel expense and demand allocation factors, reflect the

effect of the Catawba-McGuire Reliability Exchange provisions of Duke's Interconnection Agreements with the various Catawba buyers as proposed by the Company and as concurred in by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Stimart, Public Staff witness Lam, C.U.C.A. witness Wilson, and Kudzu witness Eddleman presented testimony and exhibits regarding the fuel component to be included in base rates in this proceeding. The recommended fuel component ranges from witness Eddleman's low of 1.19¢ kWh (with McGuire No. 2) to witness Stimart's 1.2780¢/kWh.

On November 30, 1983, witness Stimart prefiled his fuel pro forma calculation resulting in a fuel component of 1.2732¢/kWh (excluding gross receipts tax). The basic generation assumptions utilized were as follows: (1) Oconee 1, 2, and 3 and McGuire 1 would operate at a 62% capacity factor and McGuire 2 would operate at an annualized 60% capacity factor; (2) median conventional hydro generation; (3) three-year (1980-1982) average pumped storage and combustion turbine generation; (4) September 1983 fuel values; and (5) only the fuel portion of power transactions included in fuel cost.

On March 27, 1984, Public Staff witness Lam prefiled a base fuel computation of 1.2441¢/kWh (excluding gross receipts tax). Witness Lam's basic generation and fuel cost assumptions were as follows: (1) acceptance of Duke's prefiled nuclear capacity factor figures because they were extremely close to those of the North American Reliability Council (NERC); (2) Duke's most recent historical median conventional hydro generation; (3) seven-year pumped storage generation was adjusted due to pumped storage stream flow generation included in historical median conventional hydro generation; (4) two-year average (1982-1983) combustion turbine generation; (5) remaining fossil and purchase transactions were prorated according to actual test period generation ratios; (6) January 1984 fuel values; and (7) reclassification of the amortization of natural gas connections as other O&M.

On March 27, 1984, C.U.C.A. witness Wilson prefiled testimony which addressed what he considered to be an unrealistically high level of combustion turbine generation included by Duke in arriving at its fuel factor. Dr. Wilson computed a base fuel factor of 1.2723¢/kWh based on the average combustion turbine and Marshall plant generation for 1982 and 1983.

Witness Stimart subsequently testified that the price of new nuclear fuel going into Oconee 3 and McGuire 1 should be rolled into the embedded cost of fuel in all reactors for a burn cost of 4.83 mills/kWh. Witness Lam agreed during cross-examination that the roll-in of the new nuclear fuel would be correct because the nuclear units are scheduled to be in service before the close of the hearing. For coal pricing, witness Stimart recommended that the average composite weighted coal contract prices as of April 1, 1984, of $47.92/ton be utilized instead of the actual January 1984 inventory value of $47.41/ton used by witness Lam. Witness Lam pointed out that the prices recommended by witness Stimart are for future coal deliveries and thus do not reflect the lower price of coal already in inventory.

The Public Staff subsequently recommended in its proposed order a base fuel component of 1.2652¢ per kWh, which incorporates the 0.483¢ per kWh nuclear fuel cost proposed by the Company.

The Commission is of the opinion that the uncertainties associated with the appropriate unit price of coal, the appropriate generation mix, and the appropriate total kWh to be generated should be borne in mind when adopting a normalized base fuel component for this proceeding. Generally, the Public Staff and the Company are in agreement that the normalized nuclear capacity factor should be 62% for McGuire Unit 1 and Oconee Units 1, 2, and 3, and it should be 60% for McGuire Unit 2. They also are in agreement on the unit price of nuclear fuel and on line losses associated with total generation. The Public Staff's position appears to be more reasonable regarding normalized pumped storage generation, and the Company has conceded that it does not plan to use combustion turbine generation.

The Commission concludes that the appropriate normalized base fuel component for this proceeding is 1.2652¢ per kWh (excluding gross receipts tax), which results in a base fuel cost of $380,914,000.

In evaluating the 1.2652¢ per kWh base fuel component adopted herein, the Commission has carefully considered each element in the generation mix, including generation by nuclear fuel, fossil fuels and hydro, and including intersystem purchases and sales. The contribution by each element of the generation mix which was utilized to produce the 1.2652¢ per kWh base fuel component is judged to be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence bearing on the appropriate level of fuel inventory was presented by Company witness Stimart and Public Staff witness Burnette. Duke included in its working capital allowance the amount of $81,692,000 for coal inventory and $3,505,000 for fuel oil inventory. In contrast, the Public Staff included in its working capital allowance the amount of $75,517,000 for coal inventory and $3,505,000 for fuel oil inventory.

Since the Public Staff and the Company agree on the appropriate inventory level of fuel oil to be used in this proceeding, the Commission concludes that the amount of $3,505,000 represents a proper allowance for fuel oil inventory in this proceeding. However, a difference arises between the Public Staff and the Company on the issue of working capital allowance for coal inventory.

Witness Stimart proposed a $141,603,000 investment allowance for coal inventory on a systemwide bases, or $81,692,000 for the N.C. retail jurisdiction. Witness Stimart based his proposal on a 3,040,000-ton inventory, which is the same level inventory utilized in the Company's previous rate case. The 3,040,000-ton inventory would provide an 80-day supply based on the 38,000-ton daily burn rate used in the last rate case. He acknowledged on cross-examination that the Company was now in the process of reassessing what its daily coal requirements should be on an ongoing basis in light of the expected operating characteristics of the system with McGuire Unit 2 in service. The 3,040,000 tons would provide a 101-day supply based on the 30,000-ton daily burn rate calculated by the Public Staff.

Witness Burnette recommended a $130,900,000 investment allowance for coal inventory on a systemwide basis, or $75,517,000 for the N.C. retail jurisdiction. His recommended 2,800,000-ton coal inventory would provide a 93-day supply based on a 30,000-ton daily burn rate. Witness Burnette calculated the 30,000-ton daily burn rate based on the normalized coal generation utilized by the Public Staff to calculate fuel costs in this proceeding, plus the historical fossil heat rate and the actual heat value of the coal used by the Company. The 2,800,000 tons would provide an 80-day supply if the daily burn rate should increase to 35,000 tons per day. The Company did not cross-examine witness Burnette or offer rebuttal testimony regarding the Public Staff's recommended coal inventory.

Given the changes in the Company's generating system that have occurred since the Company's last general rate case, the procedure used by the Public Staff appears to be a more reliable indicator of Duke's coal inventory needs since it is based on actual recent historical data. The Commission, therefore, concludes that a working capital allowance of $75,517,000 for coal inventory and $3,505,000 for fuel oil inventory is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Stimart and Public Staff witness Salengo presented testimony and exhibits in regard to the proper total working capital allowance. The amount of total working capital proposed by these witnesses is set forth in the following table:

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Required bank balances | $ 908 | $ 908 | - |
| Materials and supplies inventory: | | | |
| Coal | 81,692 | 75,517 | 6,175 |
| Oil | 3,505 | 3,505 | - |
| Other | 59,605 | 59,605 | - |
| Investor funds advanced for operations | 111,515 | 50,513 | 61,002 |
| Customer deposits | (5,511) | (5,511) | - |
| Miscellaneous deferred debits and credits | 3,518 | 4,254 | (736) |
| Total working capital allowance | $255,232 | $188,791 | $66,441 |

In addition to the testimony of the Public Staff and the Company, C.U.C.A. witness Wilson presented testimony and exhibits on the investor funds advanced for operations component of the working capital allowance.

Since the Company and the Public Staff agree in regard to the proposed amounts for required bank balances, oil stock inventory, other materials and supplies inventory, and customer deposits, the Commission concludes that the appropriate levels are: required bank balances - $908,000; oil stock inventory

- $3,505,000; other materials and supplies inventory - $59,605,000; and customer deposits - ($5,511,000).

The first item of difference is coal inventory which the Commission has previously determined to be properly set at $75,517,000 under Evidence and Conclusions No. 9.

The next area of disagreement between the witnesses involves the proper level of investor funds advanced for operations. All three parties determined a different level of investor funds advanced for operations. The different levels proposed by the witnesses for each party resulted from the use of different dollar amounts assigned to various components of cost of service and the assignment of different lag days to various components of cost of service. The Commission will first discuss the differences resulting from the use of different dollar amounts assigned to various components of the cost of service.

The Company, the Public Staff, and the C.U.C.A. witnesses all used an adjusted per books cost of service level in computing investor funds advanced for operations. Even though all witnesses used an adjusted per books cost of service, there were four basic differences in this area. The differences are as follows:

(1) Company witness Stimart used a 60% capacity factor in calculating the fuel cost savings resulting from displacing fossil generation with McGuire No. 2's less costly nuclear generation. Public Staff witness Salengo recognized McGuire No. 2's commercial operation by reassigning the total per books fuel costs in accordance with the Public Staff's proposed generation mix while keeping constant the per books total fuel cost amount. Mr. Salengo also disaggregated the Company's nuclear fuel costs to assign a lag period other than zero to a portion of the Nuclear Fuel disposal costs (NFDC) which had been contracted for disposal with the U.S. Department of Energy effective beginning April 7, 1983. Witness Wilson adopted the Company's approach with respect to the fuel cost savings, but also recognized a lag period on the contracted part of the NFDC.

(2) Public Staff witness Salengo removed the accrued costs associated with the cleanup of Three Mile Island (TMI) from the Company's other O & M expenses.

(3) Witness Stimart utilized per books income taxes in determining proper working capital requirements generated by the lead/lag study. The per books income taxes included a negative current provision resulting from the Company's abandonment of the Cherokee project. Witness Salengo recalculated income taxes by excluding the effects of the Cherokee loss, thereby reclassifying deferred taxes related to the abandonment of the Cherokee project as current taxes, and applying additional generated investment tax credits against Federal income taxes. Witness Wilson also recalculated income taxes by excluding the effects of the Cherokee abandonment loss.

(4) The Company, the Public Staff, and the C.U.C.A. witnesses differed on the amount to be included as income available for common equity. These differences in amounts are related to the manner of treatment of the fuel costs, accrued TMI clean-up costs, and income taxes.

The Commission has carefully reviewed the adjustment made to per books fuel expense by the parties, in determining the appropriate amount of investor funds advanced from operations to be included in working capital in this proceeding. The record is clear that the Company, the Public Staff, and C.U.C.A adjusted the per books fuel amount to reflect the commercial operation of McGuire Unit No. 2. The difference between the parties concerning this matter is in the methodology used to reflect the commercialzation of McGuire 2. In making adjustments to per books amounts used in a lead-lag study, much care must be taken to consider the total effect of the adjustment throughout the study. Based on the foregoing, the Commission concludes that the Company's methodology used in adjusting the per books fuel for lead-lag study purposes is appropriate for use in this proceeding.

Based upon the Order in Docket No. E-7, Sub 358, and based upon the Commission's decisions related to the TMI clean-up costs included elsewhere herein in this Order, the Commission concludes that the TMI costs should be excluded from the cost of service for consideration in the lead-lag study.

The Public Staff and C.U.C.A.'s adjustments to per books income taxes result in a lower deferred income tax amount than that currently experienced by Duke on its books.

The Commission believes that due care should be taken when adjusting per books income taxes for lead-lag purposes, particularly since the income tax function often operates independently of the rate-making function. Certainly, there are always many items considered in the per books income taxes calculation, that are treated differently, due to either conceptional or timing difference, for rate-making purposes. This lack of continuity and concise interrelationship leads the Commission to conclude that the Company's use of per books income taxes in the lead-lag study is appropriate.

The final cost of service component on which the witnesses disagree concerns income available for common equity. The differences in the amount of income available for common equity recommended by the witnesses results from the various adjustments to the per books cost of service amounts recommended by each witness. These differences have been discussed above. Since the Commission has not accepted the position proposed by any party in its entirety, the Commission concludes that the proper amount of income available for common equity is that derived from and consistent with the Commission's decisions discussed above.

The Commission will now itemize and discuss the following differences in the lead or lag days assigned to various items of cost of service:

(1) Witness Stimart assigned 24.28 days' lag to fuel cost, excluding nuclear, while witness Salengo assigned 25.01 days' lag to this item.

(2) Witness Stimart assigned a zero lag to the total amount of nuclear fuel expense, whereas witness Salengo disaggregated nuclear fuel expense and assigned 76.38 days' lag to the portion of NFDC contracted with the Department of Energy, while assigning a zero lag to the remaining components of nuclear fuel expense. C.U.C.A. witness Wilson also assigned 76.38 days' lag to the contracted NFDC.

(3) Witness Stimart assigned 12.25 days' lag to wages and benefits, whereas witness Salengo disaggregated wages and employee benefits and assigned lags of 13.64 and 69.18 days, respectively, to these items.

(4) A difference in the lag period assigned to other O & M expenses resulted from Public Staff witness Salengo's recalculation of this item after removal of the TMI clean-up accrual costs.

(5) Company witness Stimart assigned a zero lag to the negative current provision for Federal income taxes while Public Staff witness Salengo and C.U.C.A. witness Wilson assigned 59.55 days' lag to their recalculated current Federal income taxes.

(6) Witness Stimart assigned a zero lag to interest on long-term debt and preferred dividends, whereas witness Salengo assigned 83.34 days' and 45.63 days' lag, respectively, to these cost of capital items. Witness Wilson disaggregated income available for common equity into common stock dividends and retained earnings, assigning 45.62 days' lag to the former and maintaining a zero lag for the latter. Additionally, witness Wilson assigned 83.34 days' and 45.62 days' lag to interest on long-term debt and preferred dividends, respectively.

With respect to the 25.01 days' lag assigned to fuel expense excluding nuclear, witness Salengo testified that review of a two-month sample of coal deliveries during November 1982 and March 1983 of the test year disclosed that a change in payment practices had taken place since the Company's study period which was December 1981 and May 1982. Witness Salengo further testified that the increase in the coal lag was 0.73 days and that a further review of coal deliveries during November 1983 confirmed the increase in lag days. Based on the evidence presented by the witnesses, the Commission concludes that the methodology employed by witness Salengo is proper and that a lag of 25.01 days for fuel, other than nuclear, is appropriate for use herein in this proceeding.

The second item of difference between the parties concerning the appropriate lag days is related to lag days assigned to NFDC. Public Staff witness Salengo testified that he had assigned a lag of 76.38 days to certain nuclear fuel disposal costs, as a result of a contract with the U.S. Department of Energy (DOE). Witness Salengo testified that under terms of the contract, Duke is required to make quarterly payments, due on the last business day of the month following the end of each calendar quarter, to DOE for NFDC related to nuclear generation subsequent to April 7, 1983. Witness Salengo applied this 76.38 days' lag only to the contracted portion of NFDC. C.U.C.A. witness Wilson took a position essentially the same as that of the Public Staff. Company witness Stimart assigned zero lag days to this item of the Company's cost of service.

Based upon evidence presented by the witnesses, the Commission concludes that the assignment of a lag of 76.38 days to that portion of Nuclear Fuel Disposal Costs related to the contractual payment to the Department of Energy is appropriate.

The third area of difference between the lag days used by the parties concerns the appropriate number of lag days to assign the Banked Vacation and Incentive Benefits components of employee benefits. Witness Salengo proposed

that a 182.5-day lag be assigned to these items, while the Company proposed the assignment of zero lag days. In regard to Banked Vacation, witness Salengo testified that under the plan eligible employees agree to refrain from using vacation days over a mandatory two-week minimum. He testified that these excess days are certified at year-end, and shortly thereafter, Company stock is issued to them in value equivalent to the wages they would have received for those days. With respect to the Incentive Benefits Program, he testified that employees receive common stock in reward for their success in attaining certain standards or goals. Witness Salengo justified his proposed lag day assignment for these employee benefits by testifying as follows:

> "the costs of these employee benefits are collected in rates over the year as the employees provide services to the Company. In one case, the employees will have already been reimbursed for their excess vacation days through wages, and they will also receive an amount in stock that is above the level of their normal annual wages. This extra amount is earned ratably over the year. In the second program, the attainment of goals is also considered to have taken place throughout the year. In both cases, I have concluded that the service periods are 365 days and that the lag assignment should be 182.5 days. Finally, this adjustment should be recognized because the revenue lag already reflects the fact that these items of costs are being recovered from ratepayers on average every 43.40 days. Therefore, the employee benefits lag should be adjusted to reflect the fact that the Company has use of these funds for 182.5 days on average before disbursement is made for the purchase of common stock."

Company witness Stimart testified in his rebuttal testimony that the expenses of these programs were "due to the employee and paid by the equity investor at the time service is rendered since the employee earns these benefits as he works (i.e., as service is rendered)." C.U.C.A. took no position on this issue.

Based upon the evidence of record in this matter, the Commission concludes that the Company has use of these funds over the year preceding disbursement for the purchase of common stock. The Commission further concludes that these benefits are earned ratably over the year since these funds are being collected from ratepayers on average every 43.40 days. The Commission concludes, therefore, that the 182.5 days' lag assigned these items by the Public Staff is appropriate.

The fourth area of difference in lag day assignments involves the appropriate lag days to assign other O & M expenses. This difference in lag day assignments results from witness Salengo's removal of Three Mile Island clean-up costs from Other O & M expenses. Since the Commission has previously concluded that the removal of Three Mile Island clean-up expenses from the cost of service is proper, the Commission also concludes that witness Salengo's proposed lag of 26.23 days is proper for other O & M expenses.

The fifth item of difference between the lag days assigned by the parties concerns the lag assigned current Federal income taxes. The Company assigned a zero lag to this item while the Public Staff and C.U.C.A. assigned 59.55 days. From the testimony given, it is apparent that all parties agree that given a

positive current provision for Federal income taxes, the appropriate lag to assign would be 59.55 days and that the difference occurred in this proceeding because the Company proposed a negative per books amount for current Federal income taxes.

Consistent with and in conjunction with the Commission's decision to adopt the per books current Federal income tax amount presented by the Company to be included in the lead-lag analysis in this proceeding, the Commission concludes that the appropriate lag to be assigned current Federal income taxes in this proceeding is zero.

The sixth item of difference between the lag days used by the parties concerns the appropriate lags to assign interest on long-term debt, preferred stock dividends, and common stock dividends. The Company continued, as in previous proceedings, to propose that these items be treated as though both debtholders and shareholders have an immediate claim to a portion of the revenue dollars as they are received by the Company.

Public Staff witness Salengo testified that the Company actually pays the cost of debt 83.34 days and preferred stock 45.63 days after these costs are incurred in rendering service. C.U.C.A. witness Wilson expanded the Public Staff position to include a lag of 45.63 days on common stock dividends.

Consistent with previous Orders concerning the appropriateness of assigning lag days to interest and preferred dividends, the Commission concludes that the Company has the use of funds collected from customers for a period of time before rendering these funds to the debt and preferred stockholders. Accordingly, the Commission concludes that the assignment of lag days to interest and preferred dividends of 83.34 days and 45.63 days, respectively, is proper for use herein.

With respect to common stock dividends, the Commission concludes, consistent with prior rulings that, for purposes of this proceeding, the appropriate lag days to assign is zero.

Based on all the foregoing, the Commission concludes that the appropriate level of investor funds advanced from operations to be used in setting rates in this proceeding is $74,807,000.

Consistent with his removal of the clean-up costs associated with Three Mile Island discussed previously, Public Staff witness Salengo also removed from the miscellaneous deferred debits and credits portion of the working capital allowance a deferred credit related to the North Carolina retail portion of these costs. The effect of this adjustment is to add back $736,000 to the Company's rate base. The Commission finds the adjustment appropriate and is consistent with the Commission's treatment of this item in the lead-lag study.

In summary, the Commission finds that appropriate allowance for working capital for use in this proceeding is $213,085,000 as enumerated in the following chart:

(000's Omitted)

| Item | Amount |
|---|---|
| Required bank balances | $ 908 |
| Materials and supplies inventory: | |
| Coal | 75,517 |
| Oil | 3,505 |
| Other | 59,605 |
| Investor funds advanced for operations | 74,807 |
| Customer Deposits | (5,511) |
| Miscellaneous deferred debits and credits | 4,254 |
| Total working capital allowance | $213,085 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witnesses Lee and Stimart, C.U.C.A. witness Wilson, and Public Staff witness Sessoms testified on the issue of whether Duke should be allowed to include any of its requested $112,538,000 of construction work in progress (CWIP) in rate base.

Duke witnesses Lee and Stimart testified that the $112,538,000 of CWIP consists of $107,486,000 of CWIP relating to the Catawba Nuclear Station and $5,052,000 of CWIP relating to the Oconee Rad Waste Facility. Witnesses Lee and Stimart testified that this level of CWIP should be included in Duke's rate base as it would improve the Company's quality of earnings and cash flow and that it would help avoid "rate shock" in the future.

Public Staff witness Sessoms cited North Carolina G.S. 62-133(b)(1) which requires that three determinations must be made before CWIP is allowable in rate base. These criteria are: (1) CWIP expenditures must be reasonable and prudent; (2) CWIP inclusion must be "in the public interest"; and (3) CWIP inclusion must be "necessary to the financial stability of the utility in question."

It was witness Sessoms' position that the public interest is served only when CWIP inclusion is necessary to the financial stability of the utility. Therefore, witness Sessoms proceeded to determine the financial stability of Duke. First, he reviewed the double-A bond ratings of Duke and concluded from the definition of those ratings that neither of the major rating agencies were skeptical of Duke's credit worthiness or financial stability. Second, witness Sessoms examined several financial ratios and compared the ratios of Duke to those of the single-A and double-A electric companies during the period 1978-1983 where data was available. From these ratios, it was apparent that Duke's construction program has been relatively large in the past, but has now slowed, and thus the ratios show improvement. Third, witness Sessoms considered the future construction program of Duke. From the Company's Financial Forecast 1984-1986, witness Sessoms pointed out that the construction budget in these three years is less than any three previous years since 1978; furthermore, the Company's cash-earning rate base will increase with the addition of McGuire Unit 2. The Financial Forecast 1984-1986 also shows Duke projects that it will internally generate 88%-94% of its capital requirements. Witness Sessoms also cited the 3.99 times pre-tax interest coverage produced by the Public Staff's recommended rate of return and considered it quite adequate.

Based on his analysis of Duke's financial stability, Public Staff witness Sessoms concluded that the inclusion of CWIP was not necessary in this case.

Dr. Wilson recommended that no CWIP be included in Duke's rate base primarily because there are no financial circumstances requiring it as called for by North Carolina statute. In his opinion, Duke is very stable financially and is also doing very well in terms of internal financing. Dr. Wilson pointed out that Duke had achieved the Company's goal of 3.5 times interest coverage, had generated 83% of its construction needs internally as opposed to Duke's goal of 50%, was earning 14.8%, and had double-A rated bonds as evidence of financial stability. Concerning the public interest criterion, Dr. Wilson testified that the inclusion of CWIP would be an unjustified transfer of income from the Company's ratepayers to the Company's stockholders, that it would not be related to service currently being rendered, and that it would be a subsidization of future ratepayers by current ratepayers.

Based upon a careful consideration of the entire record in this proceeding, the Commission concludes that the $112,538,000 of CWIP proposed herein by Duke for inclusion in the Company's rate base is not necessary to the financial stability of the Company. The Commission, in making this determination, notes several points of evidence in the record. Duke has overachieved its goal of internal financing and has achieved its goal of 3.5 times interest coverage. In addition, the Company continues to maintain a double-A bond rating. In making the decision, the Commission is also cognizant of the increase in revenue requirements which may be caused by a large addition to rate base. However, the increase in revenue requirements which may be precipitated when Catawba Unit 1 is placed in rate base should be less than the increase in revenue requirements caused by the addition of McGuire Unit 2. This is due to the fact that the Company only holds a 25% interest in Catawba at the present time.

It is the policy of this State to assure for the public that an adequate and reliable supply of electricity is and will be available. Based upon the evidence in this case, the Commission concludes that this public policy can be accomplished and the financial stability of Duke can also be maintained without the inclusion of any CWIP in the Company's rate base and that to include the level of CWIP requested herein by Duke would, therefore, not be in the public interest.

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

Company witness Stimart, Public Staff witness Hoard and C.U.C.A. witness Wilson offered testimony regarding Duke's reasonable original cost rate base. The following chart summarizes the amounts which the Company and the Public Staff contend are the proper levels of original cost rate base to be used in this proceeding.

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Electric plant in service | $ 4,494,628 | $ 4,493,942 | $ (686) |
| Accumulated depreciation and amortization | (1,437,025) | (1,451,703) | (14,678) |
| Construction work in progress | 112,538 | - | (112,538) |
| Allowance for working capital | 255,232 | 188,791 | (66,441) |
| Accumulated deferred income taxes | (311,120) | (319,049) | (7,929) |
| Operating reserves | (11,196) | (11,653) | (457) |
| Total original cost rate base | $ 3,103,057 | $ 2,900,328 | $(202,729) |

The first area of difference between the Company and the Public Staff concerns the reasonable level of electric plant in service. The $686,000 difference relates entirely to an adjustment by Public Staff witness Hoard to remove from rate base a portion of the temporary construction buildings at the Catawba Plant Construction site. Witness Hoard explained this adjustment in his testimony as follows:

> "I recommend removal of 75% of the Catawba plant site temporary construction office buildings from rate base in recognition of the Company's sale of 75% of the Catawba plant. Since Duke owns only 25% of the Catawba plant, the ratepayers will benefit from only that portion of the construction of Catawba. Consequently, it would be unfair to require ratepayers to pay a return on temporary construction office buildings which do not correlate to production plant built for their benefit. By including 25% of the temporary construction office buildings in rate base, I am recognizing that the Company is entitled to earn a return on the buildings, even though they are construction related, as long as AFUDC is not also accrued on them."

The Company did not offer any testimony on this adjustment.

Based on the foregoing, the Commission concludes that the Public Staff's adjustment to electric plant in service for the Catawba plant site temporary construction buildings is appropriate because Duke's retail ratepayers should not be required to pay a return on buildings which do not relate to production plant built for their benefit. Consequently, the Commission has reduced electric plant in service by $686,000 for this item.

C.U.C.A. witness Wilson recommended that Duke's electric plant in service be increased for the McGuire No. 2 deferred capital costs. The Commission, based on its discussion concerning the proper level of depreciation and

amortization expense in the Evidence and Conclusions for Finding of Fact No. 15, finds witness Wilson's adjustment to be inappropriate.

Based on the foregoing, the Commission finds that the reasonable level of electric plant in service for use herein is $4,493,942,000.

The next area of difference between the Company and the Public Staff concerns the proper level of accumulated depreciation and amortization. The $14,678,000 difference is comprised of the following three items:

| | | |
|---|---|---|
| (1) | Per books accumulated depreciation associated with temporary construction buildings. . . . . | $ 249,000 |
| (2) | Accumulated nuclear fuel disposal costs remitted to the Federal Government . . . . . | 3,040,000 |
| (3) | The first year's nuclear fuel burn associated with McGuire No. 2 nuclear fuel. . | (17,967,000) |
| | Total | $(14,678,000) |

Based on the Commission's previous determination concerning Public Staff witness Hoard's adjustment to electric plant in service for temporary construction buildings at the Catawba plant site, the Commission finds the related adjustment to accumulated depreciation and amortization to be proper.

The $3,040,000 difference for accumulated nuclear fuel disposal costs relates to the Public Staff's adjustment to the investor funds advanced for operations calculation for the number of lag days associated with nuclear fuel disposal costs. Public Staff witness Hoard explained this adjustment in his testimony as follows:

> "Since Public Staff Witness Salengo has applied a lag of 76.38 days to this item in his investor funds calculation, it would be improper for me to also deduct this item from rate base. Therefore, as calculated on Hoard Exhibit I, Schedule 2-1(c), I have removed from accumulated depreciation the accumulated NFDC for the April 7, 1983 to June 30, 1983 period which has been remitted to the DOE. By removing this amount of accumulated NFDC, I have excluded from end of period accumulated depreciation the portion of accumulated NFDC which the Company is, on a quarterly basis, remitting to the Federal Government."

Based on the Commission's previous finding concerning the proper lag days to assign nuclear fuel disposal costs in the investor funds advanced for operations calculation, the Commission finds the Public Staff's adjustment to accumulated depreciation and amortization for accumulated nuclear fuel disposal costs proper.

Public Staff witness Hoard also made an adjustment to increase accumulated depreciation and amortization by $17,967,000 for the first year's nuclear fuel burn associated with McGuire No. 2 nuclear fuel. Public Staff witness Hoard testified that since the nuclear fuel burn related to McGuire No. 2 had been

included in the cost of service it would be proper to make the corollary adjustment to the rate base. Witness Hoard further testified that since ratepayers are required to pay in rates to cover nuclear fuel burn not yet incurred by the Company, ratepayers should get the benefit of the additional nuclear fuel amortization in determining the end-of-period rate base.

Company witness Stimart testified that this adjustment results in an abnormally low nuclear fuel investment included in cost of service. He stated that Duke is in a continuing and predictable situation of replacing the nuclear fuel just as it replaces the coal used at its fossil plants. The McGuire units are on an annual refueling cycle and the Oconee units are on a 15-18-month refueling cycle.

Mr. Stimart testified that the Company refueled Oconee 1 and 2 during the last half of 1983. These refuelings, even when offset by the fuel burnup subsequent to June 30, 1983, result in increasing Duke's net investment for nuclear fuel from $89,544,000 for North Carolina retail at the end of the test period to $116,212,000 for North Carolina retail at December 31, 1983. In addition, witness Stimart testified that the 13-month average net investment in nuclear fuel per books was $105,689,000 for North Carolina retail for the period ended June 30, 1983. This amount exceeds Duke's actual end-of-test-period balance by approximately the amount of the Public Staff's proposed adjustment.

Based on the foregoing the Commission concludes that the proposed Public Staff adjustment to the Company's investment in nuclear fuel is inappropriate.

Consistent with his adjustment to electric plant in service for McGuire No. 2 deferred capital costs, C.U.C.A. witness Wilson has increased accumulated depreciation. The Commission, for the same reasons expressed in the electric plant in service section of this finding, finds C.U.C.A.'s adjustment to accumulated depreciation for McGuire No. 2 deferred capital costs inappropriate.

Based on the foregoing, the Commission finds that the reasonable level of accumulated depreciation and amortization to be used herein is $1,433,735,000.

The next two areas of difference concern the proper levels to include in rate base for construction work in progress and the allowance for working capital. Based on the Commission's conclusions in Evidence and Conclusions Nos. 10 and 11, the Commission has included no construction work in progress and $213,085,000 for the allowance for working capital in orginal cost rate base.

The parties differ as to the appropriate level of accumulated deferred income taxes. Company witness Stimart included the per books balance at the end of the test year, whereas Public Staff witness Hoard adjusted the per books amount for accumulated deferred taxes due to tax and book depreciation differences related to McGuire No. 2 and its nuclear fuel. C.U.C.A. witness Wilson also adjusted accumulated deferred income taxes for McGuire No. 2 book and tax depreciation differences based upon reasoning similar to that of the Public Staff.

The Public Staff's adjustment to accumulated deferred income taxes reflects the Public Staff's annualization of post-in-service-date deferred taxes related to McGuire Unit 2 investment including nuclear fuel. In support of this adjustment, Public Staff witness Hoard cites a specific section of the IRS Regulations (1.167(1)-(h)(6)(ii)) and concludes that since both depreciation expense and accumulated depreciation have been adjusted to reflect a full year's impact of McGuire Unit 2 in service, accumulated deferred taxes must also be created on a pro forma basis.

Witness Stimart testified that this issue involves interpretation of very technical rules and regulations of the IRS. The Internal Revenue Code provides that tax normalization must be made in compliance with specific requirements contained in the Code or the Company would be in jeopardy of losing all benefits associated with accelerated depreciation.

The Company's filing was based on actual deferred taxes as of the end of the historic June 30, 1983, test year. Section 1.167(1)-1(h)6 of the IRS Regulations shows that the permitted treatment of tax normalization depends on the type of test period being used by the regulatory agency in the rate-making process. The test periods are: (1) historical test period, (2) combination of a historical and future test period, and (3) fully future test period. The intent of the regulation is illustrated by three examples. Witness Stimart concluded that Example 1 applied in determining the treatment of tax normalization when a historic test period is used by the regulatory agency having jurisdiction. Example 1 clearly requires the use of the end-of-test-period balance in the deferred tax account, which the Company included in its filing. Witness Stimart contended that North Carolina rate-making statute (G.S. 62-133) authorizes only a historic test period even though G.S. 62-133(c) authorizes a utility to update for actual changes in costs, revenues, and investment "up to the time hearing is closed." Witness Stimart concluded that Example 2 applies only when a combination historical and future test period is used by the regulatory agency.

Examples 1 and 2 are based on the assumption that the proposed rates will go into effect at the beginning of 1975, the day after the end of the test period in the examples. The item of utility investment involved in the examples is placed into service at the same time. Example 2 allows for a reduction in rate base of the average amount of accumulated deferred income taxes which is contemplated to be recovered in rates the first year. In other words, the reducion of rate base is contemporaneous with the recovery of the deferred taxes in rates. Witness Stimart concluded that, if the Public Staff adjustment is allowed, the rate base in this case will be reduced several months before the deferred taxes begin to be recovered in rates, which is earlier than allowed by the regulations. Witness Stimart further concluded that this would jeopardize the Company's ability to utilize any and all of the tax benefits of accelerated depreciation.

The Commission agrees with the views and concerns expressed by the Company. The Commission therefore rejects the position taken by the Public Staff and C.U.C.A. in this regard.

The last area of contention is the proper level of operating reserves. C.U.C.A. witness Wilson recommended an adjustment to increase the reserves by $724,000 on a total Company basis or $457,000 as allocated to North Carolina

retail related to an anticipated breeder reactor payment. Witness Wilson testified that since no payment had been made by Duke to date, the operating reserves should be increased. Company witness Stimart did not contest this adjustment, and the Public Staff accepted this adjustment in its Proposed Order.

Based on the foregoing, the Commission finds it appropriate to increase operating reserves by $457,000 to $11,653,000.

The Commission notes that the evidence in this proceeding regarding the inclusion in rate base of the McGuire Nuclear Station Unit 2 is uncontroverted. Witness Lee testified that the unit, representing an investment of $1.1 billion, was declared commercial on March 1, 1984, and that operation of the unit was going well. McGuire Unit 2 had actually generated 3,459,759 mWh through March 13, 1984, for use on the Duke system. The unit achieved 100% power level on February 6, 1984, and had a 91% availability that month leading to commercial operation at the end of the month. Witness Lee testified that without McGuire Unit 2, Duke would not have had adequate generating capacity available to meet this last summer's peak of 11,554 mW which occurred on August 23, 1983. In summarizing the benefits resulting from the operation of McGuire No. 2 to date, witness Lee testified that:

(1) McGuire Unit 2 will enhance the Company's ability to provide adequate and efficient electric service to the Duke service territory and, in fact, has already proved to be a valuable addition to Duke's generating capability.

(2) Duke customers will receive the benefits of lower fuel costs through replacement of higher cost fossil generation with nuclear generation.

(3) McGuire No. 2 is by far the nation's lowest cost nuclear unit being placed into service in the 1983-84 time frame. Additionally, its cost per kilowatt is lower than the average cost per kilowatt of the 15 coal-fired units placed into service in the same time frame and is expected to be among the lowest cost producers of electricity of all plants of any type built in this time frame.

Based on the foregoing, the Commission has included McGuire No. 2 in the Company's rate base for determining fair and reasonable rates in this proceeding.

Accordingly, the Commission concludes that the appropriate North Carolina retail original cost rate base for use herein is $2,950,519 calculated as follows:

(000's Omitted)

| | |
|---|---|
| Electric plant in service | $ 4,493,942 |
| Accumulated depreciation | (1,433,735) |
| Allowance for working capital | 213,085 |
| Accumulated deferred taxes | (311,120) |
| Operating reserves | (11,653) |
| Total original cost rate base | $ 2,950,519 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Company witness Stimart, Public Staff witnesses Hoard and Carrere, and C.U.C.A. witness Wilson offered testimony on the proper level of operating revenues. The $3,965,000 difference between the Company's $1,560,958,000 amount and the Public Staff's $1,564,923,000 amount is comprised of (1) fees, in the amount of $146,000, received by Duke from its Catawba plant buyers for fuel procurement services and (2) $3,819,000 additional revenues attributable to customer growth as recommended by Public Staff witness Carrere.

Public Staff witness Hoard explained his adjustment for the fees from the Catawba buyers as follows:

> "I have increased electric operating revenue by $146,000 for fees collected by Duke Power from the buyers of portions of the Catawba plants. Pursuant to Duke's Operating and Fuel Agreements with the buyers, Duke is receiving fees for services rendered in connection with the procurement of nuclear fuel for the Catawba plant. The Company has recorded these fees 'below the line' in Account 421.50. I recommend that these fees be brought 'above the line' and included in electric operating revenue."

The Commission notes that it has found in Evidence and Conclusions for Finding of Fact No. 7 that it is proper to reflect the Catawba-McGuire Reliability Exchange provisions of the contracts with the Catawba buyers in this proceeding. Since ratepayers are required to bear the detrimental aspects of the contracts, it is only fair that they receive the benefits of the contracts. The Company did not contest witness Hoard concerning these fees. Consequently, the Commission has included the $146,000 of fees received by Duke from the Catawba buyers in operating revenues.

The other item of difference between the Company and Public Staff concerning the appropriate level of operating revenues is related to the Public Staff's adjustment for customer growth. Company witness Stimart increased revenues by $10,706,000 based on 178,832,701 additional kWh sales due to customer growth, as compared to Public Staff witness Carrere who recommended a $14,525,000 adjustment to operating revenues based on 274,635,038 additional kWh sales and 161,265 additional billings due to customer growth. The net operating revenue difference between the parties due to their different customer growth adjustments is $3,819,000.

In developing the customer growth adjustment for this proceeding, Company witness Stimart utilized the actual customers at the end of the test year, whereas Public Staff witness Carrere utilized regression analysis based on actual historical data for a three-year period ending December 31, 1983, to determine a normalized end-of-period level of customers. Witness Stimart did not adjust industrial sales for growth, whereas Public Staff witness Carrere applied his methodology to all rate classes.

The Company questioned the validity of the Public Staff's adjustment in two respects. First, although the end-of-period level of customers was normalized by means of regression analysis, the data points used in the regression analysis to determine the slope of the curve representing normalized customer growth included data points extending six months beyond the end of the

test year. Second, the use of average kWh per customer for the industrial class may unduly bias the total growth in kWh resulting from the growth in number of customers because the average kWh per customer is derived from data that includes some high-usage industrial customers. The actual growth in number of customers during the period might not include the same ratio of such high-use industrial customers as is contained in the kWh per customer data utilized in the calculations.

The Commission is of the opinion that the regression analysis methodology used by the Public Staff is the appropriate method to use in most instances for determining a normalized end-of-period level of customers by rate schedule. The method gives equal weight to all historical data and removes the month-to-month variability inherent in using actual customer levels at the end of the test period. Specifically, the Commission does not find the inclusion in the regression analysis of data points from after the end of the test year to be inappropriate, because such data is used merely to verify the normalized end-of-period level of customers. In addition, the Commission finds it appropriate to use average kWh sales per customer in customer growth calculations to the extent that such average kWh sales per customer do not unduly bias the calculations.

C.U.C.A. witness Wilson recommended an adjustment to increase Duke's operating revenues by $22,789,000 to normalize industrial electric sales. Witness Wilson testified that, in addition to the Company's weather normalization and customer growth adjustments, it is proper to adjust test year kWh sales figures to reflect normal industrial sales volume. Witness Wilson contended that Duke's industrial power sales for a portion of the test year, the last six months of 1982, were abnormally depressed.

Witness Wilson developed his adjustment by calculating the actual compound growth rate in Duke's North Carolina industrial kWh sales during the July-to-December period in each year since 1980. He then applied the two-year compounded growth rate to July-December 1980 sales to arrive at his normalized July-December 1982 industrial kWh sales. The kWh sales adjustment was priced out at the test year average ¢/kWh for industrial sales to arrive at his $22,789,000 increase in revenues.

The Commission is of the opinion that if it is appropriate to adjust industrial kWh sales to reflect abnormally depressed economic conditions during the test year, then that variable should be isolated in such a way that it excludes the effects of growth in number of customers and abnormal weather.

The Commission concludes that the uncertainties regarding the appropriate kWh adjustment for industrial sales, considering the problems associated with the methodologies used by the Public Staff and by C.U.C.A., should be reflected in the overall adjustment allowed herein for customer growth. Therefore, the Commission concludes that an adjustment to revenues of $12,892,000, based on adjustments to kWh sales of 236,241,000 kWh, and to customer billings of 161,025 in order to reflect customer growth would be appropriate for this proceeding.

Therefore, the Commission determines that the appropriate adjusted level of test year kWh sales to use in this proceeding is 30,107,017,000. As the

record shows, and based upon the conclusions above, this adjusted kWh sales level is comprised as follows:

| Item | kWh Sales |
|---|---|
| 1. Test year per books kWh sales | 29,529,090,000 |
| 2. Weather normalization adjustment | 341,686,000 |
| 3. Customer growth adjustment | 236,241,000 |
| 4. Adjusted test year kWh sales | 30,107,017,000 |

Based on the foregoing, the Commission finds that the proper level of operating revenues under present rates for use in this proceeding is $1,563,290,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Stimart, Public Staff witnesses Hoard, Lam, and Carrere, C.U.C.A. witness Wilson, and Kudzu Alliance witness Eddleman. The following chart sets forth the amounts presented by the Company and Public Staff in their respective proposed orders:

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| O & M expenses | | | |
| -Fuel used in electric generation | $ 407,988 | $ 405,354 | $(2,634) |
| -Purchased power and net interchange | (2,667) | (2,667) | - |
| -Other O & M expenses | 360,535 | 356,402 | (4,133) |
| Depreciation and amortization | 173,345 | 171,129 | (2,216) |
| Taxes other than | 131,697 | 131,927 | 230 |
| Interest on customer deposits | 426 | 426 | - |
| Income taxes | 211,389 | 219,489 | 8,100 |
| Amortization of ITC | (6,824) | (7,660) | (836) |
| Total operating revenue deductions | $1,275,889 | $1,274,400 | $(1,489) |

The Company and the Public Staff are in agreement regarding the levels of purchased power and net interchange and interest on customer deposits. Also, with the exception of allocation factor differences due to the Catawba-McGuire Reliability Exchange, none of the intervenor parties contested these amounts. Based on the foregoing and the Commission's determination concerning the reliability exchange in the Evidence and Conclusions for Finding of Fact No. 7, the Commission finds purchased power and net interchange of $(2,667,000) and interest on customer deposits of $426,000 appropriate for use in determining the Company's appropriate cost of service in this proceeding.

The area of disagreement concerning the appropriate level of fuel used in electric generation has been discussed under Evidence and Conclusions for Finding of Fact No. 8. Consistent with the Commission's decision concerning the appropriate fuel factor to be used in this proceeding of 1.2652¢ per kWh, and consistent with the Commission decision concerning the appropriate level of kWh's generated by customer growth to be used in this proceeding, the Commission concludes that the proper level of base fuel expense to be used in this proceeding is $380,914,000. Both the Public Staff and the Company included $1,793,000 of fuel cost for excess over average retail line loss and $22,161,000 of nuclear fuel disposal costs in their respective calculations of total fuel used in electric generation. The Commission concludes that these amounts are appropriate, and when added to the base fuel amount of $380,914,000 yields the proper level of total fuel used in electric generation of $404,868,000.

The next area of disagreement relates to other O & M expenses. The $4,133,000 difference between the Company and the Public Staff is reconciled as follows:

(000's Omitted)

| Item | Amount |
|---|---|
| Other O & M expenses per Company | $360,535 |
| Public Staff adjustments: | |
| TMI cleanup expenses | (768) |
| Lobbying expenses | (69) |
| Reversal of Company's growth adjustment | (2,780) |
| Public Staff employee growth adjustment | 383 |
| Public Staff customer growth adjustment | 1,528 |
| Amortization of natural gas connections | 59 |
| Reversal of Company's post-test year inflation adjustment | (171) |
| Additional inflation adjustment proposed by Company in Stimart supplemental testimony | (2,315) |
| Other O & M expenses per Public Staff | $356,402 |

The first item of difference relates to the cleanup costs associated with Three Mile Island. Public Staff witness Hoard testified that the Company included $768,000 in its North Carolina retail O & M expenses for TMI cleanup expenses. Company witness Lee testified under cross-examination by the Public Staff that the Company's voluntary pledge for the TMI cleanup had not actually been paid by the Company.

The Commission notes that the TMI cleanup costs accrual was disallowed by this Commission in the Company's last rate case proceeding, Docket No. E-7, Sub 358, based on the uncertainty concerning the amount, timing, and the actual incurrence of the expenses. It is apparent from the evidence in this docket, that no events have occurred which change the circumstances regarding this expense.

Public Staff witness Hoard went beyond the uncertainty surrounding the expenditure and addressed the broader issue of whether the expense should be considered a proper operating expense for rate-making purposes. Witness Hoard

presented the following three additional reasons for disallowance of the TMI cleanup expenses as a proper operating expense for rate-making purposes:

(1) the unfairness of charging North Carolina retail ratepayers for an accident which occurred in another jurisdiction,

(2) that Duke's ratepayers are already required to pay over $15 million annually for nuclear property and replacement power insurance premiums begun since the TMI accident, and

(3) the numerous TMI-related modifications which have been made to Duke's nuclear plants.

The Company did not contest witness Hoard's assertions, but rather, through Company witness Lee's testimony on cross-examination, advanced their position concerning the research and knowledge benefits to be attained through the cleanup of the facility.

The Commission has fully reviewed the arguments of the various parties to this proceeding and has thus concluded that the amounts accrued by Duke for the possible cleanup costs associated with the TMI accident are not properly includable in test-period operating expenses. In arriving at its conclusion, the Commission notes that the circumstances surrounding the amount, timing, and incurrence of the TMI cleanup costs are no more certain now than they were in the last docket. The Commission further concludes that the Company should be encouraged to contribute to the cleanup of TMI through charges to its stockholders.

The next item of difference concerns an adjustment of $69,000 to eliminate from operating revenue deductions wages, salaries, and other employee expenses relating to lobbying activities. The adjustment proposed by Public Staff witness Hoard relates specifically to the salary and other employee expenses of John Hicks, a registered lobbyist for the Company. The Company presented testimony that Mr. Hicks is a member of the Company's Executive Committee, involved in the daily operations of Duke. Based on the foregoing, the Commission finds that the appropriate adjustment for this item is $34,000.

The next three items of difference between the Company and Public Staff are interrelated. The Company proposed an adjustment of $2,780,000 to increase nonproduction operation and maintenance (O&M) expenses for test-period growth in expenses other than inflation and wage increases. The Public Staff proposed the reversal of the Company's expense growth adjustment and the addition of more cost specific adjustments for employee growth and customer growth.

The Company O&M expense growth adjustment is based on the average annual increase in O&M expenses, excluding inflation, during the 1975-1981 period. The Company increased its test year per books nonproduction O&M expenses by one-half of the annual increase factor in determining its $2,780,000 adjustment. Using this methodology, the Company has applied a growth factor to its other O & M expenses which does not consider the specific cost items which would change due to increased kWh sales, customers, and employees. The Public Staff methodology does take these specific cost items into consideration.

Instead of accepting the Company's expense growth adjustment, the Public Staff proposed an adjustment to O & M expenses to reflect customer growth and an adjustment to wages and benefits of $383,000 to reflect the end-of-period level of employees. The Public Staff's adjustment to O & M expenses for customer growth consists of two parts, an adjustment to energy-related expenses (excluding fuel) and an adjustment to customer-related expenses.

The Public Staff's energy-related expense factor calculation utilizes energy-related production expenses in addition to fuel and also includes an allowance for administrative and general expenses applicable to those energy-related production expenses. The Public Staff calculated total energy-related expenses per kWh to be 1.5109¢/kWh (including fuel of 1.3734¢/kWh).

Since fuel used in generation expenses found proper elsewhere herein incorporates the adjusted level of kWh sales found proper in Evidence and Conclusions for Finding of Fact No. 14, it is appropriate to utilize only the nonfuel portion of the energy-related expense factor. The nonfuel energy-related expense factor of .1375¢/kWh, which the Commission finds appropriate for use herein in this proceeding, when multiplied by the proper 577,927,000 North Carolina Retail kWh sales adjustment to per book sales results in an increase in nonfuel O&M expenses of $794,000.

The Public Staff's customer-related expense factor calculation utilizes certain customer-related distribution O&M expenses, customer accounts expenses, customer service, and information expenses, and an allowance for customer-related administrative and general expenses. The Public Staff calculated total customer-related expenses per bill to be $4.224. Based on the adjustment to billings of 161,025 found reasonable in the Evidence and Conclusions for Finding of Fact No. 14, the factor of $4.224 which the Commission finds to be appropriate herein in this proceeding, results in an adjustment to customer-related expenses of $680,170.

The O&M expenses other than fuel, energy-related expenses, and customer-related expenses which the Public Staff has not adjusted are predominantly demand-related production expenses, demand-related transmission and distribution expenses, plus other administrative and general expenses. The Public Staff has omitted demand-related expenses from its adjustments to O&M expenses because although additional KWh usage does cause additional kW demand on the system, only energy-related expenses should vary in proportion to the kWh used. The Commission concludes this methodology is appropriate.

Consistant with the acceptance of the Public Staff's methodology of adjusting for customer growth, an spoken to above, the Commission concludes that the Company's growth adjustment should be rejected. In addition, the Commission concludes that it is also appropriate to adjust other O & M expenses by $383,000 to reflect an end-of-period level of employees, as proposed by the Public Staff.

The next item of difference concerns a $59,000 increase in the Company's nonfuel O&M expenses recommended by Public Staff witness Lam. This adjustment is due to witness Lam's reclassification of the amortization of natural gas connections from fuel to nonfuel O & M expenses. The $59,000 amount was included by Company witness Stimart in his fuel factor, whereas it was not

included in Public Staff witness Lam's fuel factor. Based on the Commission's determinations concerning the appropriate fuel factor under Evidence and Conclusions for Finding of Fact No. 8, the Commission finds it proper to increase nonfuel O&M expenses by $59,000 related to the amortization of natural gas connections.

The last two items of difference concern the Company's adjustments for inflation. In its original filing, the Company made an adjustment to increase other O&M expenses by $5,975,000 in order to provide for forecasted annual inflation occurring after the test year. In his supplemental testimony and exhibits, filed March 7, 1984, Company witness Stimart reflected wage increases occurring after the test year of 5,409,000 with a corollary offset to the original inflation adjustment. An additional $395,000 for general taxes related to the wage increases after the test year were reflected in Company witness Stimart's Revised Exhibits also with a direct offset to the inflation adjustment. Company witness Stimart's Revised Exhibits included the following three adjustments:

(000's Omitted)

| Item | Amount |
|---|---|
| 1. Adjustment to other O & M expenses for wage increases occurring subsequent to the test year | $5,409 |
| 2. Adjustment to general taxes related to wage increases occurring subsequent to the test year | 395 |
| 3. Residual provision for inflation occurring subsequent to the test year | 171 |
| Total | $5,975 |

The Public Staff included $5,409,000 for wage increases after the test year in other O&M expenses and the related $395,000 of general taxes in the taxes other than account. Witness Hoard recommended, however, that the $171,000 residual inflation adjustment be eliminated from operating revenue deductions since there were no specific items of cost supporting the adjustment.

In its Proposed Order, the Company included $2,315,000 of additional expenses in the cost of service presented herein in this proceeding. This amount was included by the Company due to further inflation.

The Commission has considered the evidence in the record concerning the Company's adjustments to the cost of service for inflation and does not believe that it is appropriate to make a specific adjustment to increase the test year cost of service in order to compensate for the so-called effect of attrition beyond that reflected in the accounting and pro forma adjustments which the Commission has adopted for use herein. The Commission finds it proper to include the wage increases occurring subsequent to the test year in other O&M expenses, and the Commission finds it approprite to reflect the related general taxes in the taxes other than classification of operating revenue deductions. Based on the foregoing, the Commission has reduced the Company's

other Operating and Maintenance expenses by the $171,000 and $2,315,000 adjustments for inflation presented by the Company.

Based on all the foregoing, the Commission concludes that the appropriate level of Other Operating and Maintenance expenses is $356,383,000.

The difference between the level of depreciation and amortization expense proposed by the Public Staff and the Company relates to proper treatment to be afforded the losses associated with the Eastover properties.

Company witnesses Stimart and Lee proposed a sharing of the loss between ratepayers and stockholders on the basis that the Eastover investment was made solely for the protection and benefit of its customers.

Public Staff witness Hoard and C.U.C.A. witness Wilson recommended disallowance of the Eastover loss amortization from the cost of service. Witness Hoard based his recommendation on the rate-making treatment accorded certain gains realized by Duke in the past, and on the experienced cost level of the coal produced by the Eastover mine when it was under the control of the Company.

C.U.C.A. witness Wilson supported his recommendation concerning this matter with his interpretation of the intent of the Commission Order in Docket No. E-7, Sub 338, on the Eastover coal pricing issue. Witness Wilson argued that the Company has converted the loss from an annual expense item to an annual amortization of a capital asset write-off by selling the property at a market value that reflects the Commission's coal price determination. Witness Wilson stated that the Eastover loss amortization should be rejected for precisely the same reasons that supported the Commission's excess cost disallowance in Docket No. E-7, Sub 338.

Company witness Lee stated that the Company was seeking to recover only a portion of the total loss associated with Eastover. The Company is not requesting to recover the carrying costs associated with the unamortized balance of the Eastover loss. Witness Lee referenced his testimony in Docket No. E-7, Sub 338, in which he said that if any part of the Eastover coal production costs were disallowed, it would have to be sold based on the fact that the mines were not bought for the shareholders but solely to pin down guaranteed fuel supply for the ratepayers. Further, witness Lee testified that since the mines were sold at distressed prices the new owners have agreed to long-term contracts with Duke at prices lower than Duke's other long-term contracts, thereby benefiting the ratepayers. Witness Lee did not quantify this assertion.

The Commission has reviewed the matter of the Eastover loss amortization and concludes that the Company's position on his matter should be denied, without prejudice. Therefore, the Commission has reduced the Company's depreciation and amortization expense by $2,216,000 to eliminate the loss on the sale of the Eastover properties.

Another issue regarding depreciation and amortization concerns the proper treatment of the McGuire No. 2 deferred costs. These costs are comprised of (1) pre-commercial McGuire No. 2 fuel savings, (2) fuel savings from the commercial operation date to rate order date in this proceeding, (3) nonfuel

operating expenses from the commercial operation date to order date, and (4) the net of tax imputed return from the commercial operation date to order date.

Company witness Stimart and Public Staff witness Hoard netted all four items in arriving at a $2,135,000 reduction in depreciation and amortization expense. C.U.C.A. witness Wilson recommended that items 1, 2, and 3 above be netted and flowed through as a reduction in depreciation and amortization expense and that item 4 be capitalized. Witness Wilson also excluded depreciation expense from item 3, operating expenses.

The Commission finds it appropriate to net all four items as presented by Company witness Stimart and Public Staff witness Hoard to arrive at a $2,135,000 reduction in per books depreciation expense. In arriving at its decision, the Commission considered the proper treatment to be accorded the previously enumerated four items. It is the Commission's opinion that all four of the McGuire No. 2 deferred cost items should be given the same treatment and that it is in the best interest of both ratepayers and the Company to flow through the net reduction to ratepayers in one year.

In determining the appropriate amount of depreciation and amortization expense to be included in the cost of service, the Commission notes that the C.U.C.A. proposed order recommends amortizing the loss associated with Cherokee units 1, 2, and 3 over a fifteen (15) year period. Both the Public Staff and the Company amortized this item over a ten (10) year period, as found to be reasonable by the Commission in Docket No. E-7, Sub 358. Since this item was investigated and discussed at length in Docket No. E-7, Sub 358, and since no evidence was presented into the record in this proceeding that would support change in the decision reached concerning this item in Docket No. E-7, Sub 358, the Commission concludes that the C.U.C.A. position on this matter is improper.

Based on the foregoing, the Commission concludes that the proper level of depreciation and amortization expense for use herein is $171,129,000.

"Taxes other than" is the next area of difference between the Company and Public Staff. The 230,000 difference is due solely to the Public Staff's greater level of operating revenues. Since the Commission has adopted a different operating revenue level from that supported by any of the parties of record, the Commission concludes that based on the operating revenue level found to be proper herein, the appropriate level of "taxes other than" is $131,829,000.

The Commission will now discuss the parties' positions concerning the proper amount to include for the amortization of investment tax credit (ITC). Company witness Stimart included the test year per books ITC amortization of $(6,824,000), whereas Public Staff witness Hoard included (7,660,000), or a difference of $836,000. Witness Hoard adjusted the per books amount to reflect the first year's ITC amortization for credits taken by the Company on its tax return related to McGuire No. 2. Witness Hoard explained the $836,000 adjustment in his testimony as follows:

> "Consistent with my other adjustments to reflect the first year's McGuire No. 2 commercial operation effects on fuel expenses, operation and maintenance expenses, depreciation and income taxes, I

recommend an adjustment to the amortization of investment tax credits. As presented on Schedule 3-1(a)(1), the adjustment I recommend is based on the amortization of McGuire No. 2 investment tax credits utilized, over the plant's 30 year operating life. Since the Company begins investment tax credit amortization concurrent with the commercial operation of major plants, my adjustment is consistent with the Company's investment tax credit amortization procedures."

C.U.C.A. witness Wilson recommended, in addition to the McGuire No. 2 ITC amortization adjustment, that the calendar year 1983 ITC amortization be reflected in the cost of service rather than the actual June 30, 1983, test year ITC amortization. Witness Wilson contended that since Duke does not begin amortizing ITC, other than that generated from major plants, until the year it is utilized on the tax return, the Company's actual test year ITC amortization is unrepresentative.

Several references were made during the hearings to the section of the Internal Revenue Code which addresses the ratable flowback of the investment tax credit. The Commission does not believe that the Public Staff's ITC amortization adjustment is in violation of the ratable flowback provision of the Code since the Public Staff has reflected only the McGuire No. 2 ITC amortization which will be amortized over the coming year. The Commission does, however, believe C.U.C.A. witness Wilson's recommended adjustment for the excess of calendar year 1983 ITC amortization over the actual test year amortization could be in violation of the Code. Based on the foregoing, the Commission has determined the appropriate level to include for the amortization of investment tax credits is $(7,660,000), comprised of the $(6,824,000) per books amortization and $(836,000) McGuire No. 2 ITC amortization.

Since the Commission has not adopted all of the components of taxable income proposed by any party, it has made its own calculation of income tax expense of $219,384,000 and concludes that this is the proper amount to include in determining the cost of service in this proceeding.

Based on the entire record in this proceeding, the Commission concludes that the proper level of operating revenue deductions for use herein under present rates is $1,273,692,000 calculated as follows:

(000's Omitted)

| Item | Amount |
|---|---|
| Fuel used in generation | $ 404,868 |
| Purchased power and net interchange | (2,667) |
| Other operation and maintenance expense | 356,383 |
| Depreciation and amortization | 171,129 |
| Taxes other than | 131,829 |
| Interest on customer deposits | 426 |
| Income taxes | 219,384 |
| Amortization of investment tax credit | (7,660) |
| Total operating revenue deductions | $1,273,692 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence relating to this finding of fact was presented in the testimony and exhibits of Company witnesses Lee, Carleton, and Stimart, Public Staff witness Hsu, and C.U.C.A. witness Smith. In its application, the Company utilized its actual per book capital structure as of June 30, 1983, consisting of 45.83% long-term debt, 12.09% preferred stock, and 42.08% common equity. C.U.C.A. witness Smith adopted the same capitalization ratios. However, Public Staff witness Hsu utilized a hypothetical capital structure consisting of 47% long-term debt, 12% preferred stock, and 41% common equity. Ms. Hsu acknowledged in her prefiled testimony that the Company's actual equity ratio had in fact increased to 43% as of December 31, 1983. Witness Hsu's rationale for utilizing a hypothetical capital structure was the 1983 estimated average equity ratio for 99 utilities. More significant, however, is a comparison of Duke's equity ratio to that of 14 other companies Ms. Hsu deemed to be of comparable risk to Duke. The companies were chosen by Ms. Hsu as being of comparable risk to Duke based on safety ranking, beta, bond rating, and stock rating. The 1982 actual average equity ratio for these 15 companies (including Duke) was 43.9%. The estimated 1983 average equity ratio for the 15 companies is 45.27%. Thus, the equity ratio proposed herein by the Company is below that of comparable electric utilities.

Duke contends that the Public Staff's common equity component of 41% would make it unlikely that the Company could earn even the return on common equity recommended by the Staff.

The Public Staff has presented no compelling justification for its failure to adopt and recommend the Company's actual capital structure. It is the Company's position that the actual capital structure which existed at the end of the test period is clearly within the range of reasonableness and is compatible with the Company's financial objectives and that its common equity component in the future will be maintained at least at the level which existed at the end of the test period.

Therefore, the Commission concludes that the Company's proposed common equity ratio is reasonable and that the appropriate capital structure for use in this proceeding is as follows:

| | Percent of Total |
|---|---|
| Long-term debt | 45.83% |
| Preferred stock | 12.09% |
| Common equity | 42.08% |
| | 100.00% |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding of fact is contained in the direct testimony of Company witness Carleton, C.U.C.A. witness Smith, Public Staff witness Hsu, and the rebuttal testimony of Company witnesses Carleton and Erickson.

There was no disagreement concerning the costs of long-term debt and preferred stock to be used in this proceeding. The costs are 9.73% for long-term debt and 8.74% for preferred stock, calculated as of June 30, 1983.

Therefore, the Commission concludes that the appropriate embedded costs of debt and preferred stock are 9.73% and 8.74%, respectively.

The Company and the Intervenors, however, disagree with respect to the appropriate rate of return on equity for Duke. The rates proposed by the Company in its application were designed to yield a rate of return of 16.5% on common equity. C.U.C.A. witness Smith recommended that Duke receive a return of 12.75% on its common equity capital, after adjustment to reflect the Commission's previous treatment of the gain attributable to the debt-equity swap. Public Staff witness Hsu recommended that the Company should earn a 14.35% rate of return on common equity.

Dr. Willard T. Carleton presented testimony for the Company relating to the cost of equity capital for Duke and his recommended rate of return on common equity. Dr. Carleton is an economist and professor of finance, and holds the William R. Kenan, Jr., Chair in the School of Business Administration at the University of North Carolina.

Dr. Carleton relied principally on the discounted cash flow (DCF) method of estimating the cost of equity and deriving his recommendation of a fair rate of return on equity for Duke Power Company. This method is based on the notion that the price an investor in utility common stock will pay for the stock will generate a current dividend yield which, when added to the investor's expected long-term growth in that utility's dividends, will equal the investor's cost of common equity for that utility. Dr. Carleton predicated his final rate of return conclusions on three separate estimating procedures: (1) Risk Premium Study, (2) Standard DCF Approach, and (3) Interest Rate Plus Risk Premium.

The results of Dr. Carleton's cost of equity estimates are as follows:

| Procedure | Indicated Cost of Equity | |
|---|---|---|
| | Range | Midpoint |
| 1. Risk Premium Study | .1697-.1750 | .1723 |
| 2. Standard DCF Approach | .1529-.1697 | .1602 |
| 3. Interest Rate Plus Risk Premium | .1770-.2030 | .1900 |

Dr. Carleton concluded that Duke's cost of equity capital is in the range of 16.31% to 16.93%, and that the fair rate of return, making allowances for financing costs, is in the range of 16.5% to 17.0%. Dr. Carleton testified that the cost of equity capital has increased by about 60 basis points since the Company filed its application in November 1983. Dr. Carleton attributed this increase in the cost of capital to the increased risk associated with utilities constructing nuclear generating plants, and the increase in long-term interest rates.

Dr. Caroline M. Smith testified on the issue of fair rate of return for C.U.C.A. Dr. Smith based her conclusions as to the fair rate of return on equity primarily on the discounted cash flow model, using a regression and correlation analysis on the historical growth rate of 90 electric utilities, including Duke, to derive her estimate of investor growth expectations. Dr. Smith checked the results of her discounted cash flow approach by an examination of the return of "comparable" companies in 1982 and 1983.

Dr. Smith derived a current dividend yield of 10.4%, using the "indicated" dividend, which is the dividend for the last quarter of 1983, annualized, and the average of the high and low sale prices over the six months ended December 1983. Using her correlation and regression analysis, witness Smith examined 30 historical growth rates in relation to the dividend yields of the 90 utilities (10 each in dividends, earnings, and book value) and concluded that the "single most important indicator of growth" to use as a proxy for investor long-term dividend growth expectation is the three-year growth in book value and that the best combination indicator is an average of the three-year book value growth and seven-year earnings growth. Dr. Smith also examined the result of all 30 growth rates, weighted by their respective correlation coefficients. Based on her statistical models, the growth indicators for the industry as a whole are 1.2%, 1.8%, and 3.5%, under the single best growth rate, the two most important growth rates, and all 30 growth rates, respectively. Dr. Smith then derived an algebraic formula to arrive at what she asserted was the risk differential between Duke on the one hand and the average of her 90-utility group on the other hand. Applying this formula, Dr. Smith concluded that investors expect long-term dividend growth rates of 2.2%, 2.8%, and 4.2% for Duke, based on a single best growth rate, two most important growth rates combination, and all 30 growth rates, respectively. Thus, Dr. Smith suggested growth expectations in the 2.7% to 3.7% range. Combined with Duke Power Company's current dividend yield of 9.8%, and also taking into account the debt-equity swap, Dr. Smith recommended a 12.75% equity return.

Public Staff witness Hsu testified that the Company should be granted the opportunity to earn a return on common equity of 14.35%. Witness Hsu derived her equity cost estimate by applying the DCF model to two overlapping samples of companies which are comparable in risk to Duke as well as to Duke itself. Before witness Hsu made a DCF analysis, she also reviewed the current economic outlook in general, and the most recent relationships between bond yields and stock yields. Based on her observation, the volatility of interest rates has increased substantially since late 1979. Therefore, the long-term historical relationships of the cost of equity to the cost of debt is no longer applicable. Witness Hsu concluded that it is more appropriate to estimate the cost of equity directly from the current market.

Based on a DCF analysis of two comparable groups, Ms. Hsu found a common equity return of approximately 13.5% to 15.0% is expected by investors in the electric utility industry. With respect to the market data pertaining to Duke Power Company, Public Staff witness Hsu concluded that a rate of return of 14.35% is reasonable. As Ms. Hsu stated on the stand, she made no adjustment on her cost of equity recommendation in order to allow the Company to reach a certain level of market to book ratio. Based on witness Hsu's past studies as well as her current market to book ratio study, witness Hsu concluded that there is no significant relationship between market to book ratio and earned rate of return.

Dr. Carleton testified on rebuttal that witness Hsu's cost of equity capital estimate was too low because she understated both the dividend yields and expected growth rates and that witness Hsu's use of average stock prices for the 13-week period ending December 31, 1983, was out of date, resulting in a lower yield. Dr. Carleton testified that the use of more recent stock prices would increase Duke's yield from the calculated 9.3% to 9.83%, an increase of more than 50 basis points.

Dr. Edward W. Erickson, Professor of Economics at North Carolina State University, testified in rebuttal to Dr. Smith's regression and correlation methodology. Dr. Erickson testified that he reviewed the economic, statistical, and algebraic logic of Dr. Smith's model in this case as he has done in prior Duke rate cases; that he replicated Dr. Smith's results using her own data for the 90 companies; that Dr. Smith's model in this docket continues to omit risk variables and therefore contains the same error in statistical logic which invalidated her approach in Docket No. E-7, Sub 358; and that Dr. Smith ignores a statistically significant risk variable produced by her model which displays a positive relationship with dividend yield which contradicts fundamental DCF reasoning. Dr. Erickson also concluded that the invalid statistical results produced by Dr. Smith's model are overwhelmingly driven by the statistical constant and that in Dr. Smith's model there is very little opportunity for individual company characteristics to influence the outcome for an individual company's estimated cost of equity.

The determination of the appropriate fair rate of return for Duke Power Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on Duke, 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 interest 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 return for its shareholders, 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 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 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 market. The Commission must use its impartial judgment to ensure that all the parties involved are treated fairly and equitably.

Based upon the foregoing and the entire record in this docket, including evidence related to the debt-equity swap, the Commission finds and concludes that the fair rate of return that Duke Power Company should have the

opportunity to earn on the original cost of its rate base is 11.93%. Such overall fair rate of return will yield a fair and reasonable return on common equity capital of 15.25%.

The Commission cannot guarantee that Duke Power 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 achieve the utmost in operational and managerial efficiency. The Commission believes, and thus concludes, that the level of return approved herein will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The Commission has previously discussed its findings of fact and conclusions regarding the fair rate of return which Duke Power 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 determinations made herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings of fact and the conclusions heretofore and herein made by the Commission.

SCHEDULE I
DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 373
Statement of Operating Income
Twelve Months Ended June 30, 1983
(000's)

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenue | | | |
| Net operating revenue | $1,563,290 | $130,969 | $1,694,259 |
| Operating Revenue Deduction | | | |
| Fuel used in generation | 404,868 | - | 404,868 |
| Purchased power and net interchange | (2,667) | - | (2,667) |
| Other operating and maintenance | 356,383 | - | 356,383 |
| Depreciation and amortization | 171,129 | - | 171,129 |
| Taxes other than | 131,829 | 7,858 | 139,687 |
| Interest on customer deposits | 426 | - | 426 |
| Income taxes | 219,384 | 60,620 | 280,004 |
| Investment tax credit amortization | (7,660) | - | (7,660) |
| Total operating revenue deductions | 1,273,692 | 68,478 | 1,342,170 |
| Net Operating Income for Return | $ 289,598 | $ 62,491 | $ 352,089 |

SCHEDULE II
Duke Power Company
North Carolina Retail Operations
Docket No. E-7, Sub 373
Schedule of Rate Base and Rate of Return
Twelve Months Ended June 30, 1983
(000's Omitted)

| Item | Approved Rates |
|---|---|
| Investment in electric plant | $4,493,942 |
| Less: Accumulated depreciation | (1,433,735) |
| Accumulated deferred income taxes | (311,120) |
| Operating reserves | (11,653) |
| Net investment in electric plant | 2,737,434 |
| Allowance for working capital | 213,085 |
| Net original cost rate base | $2,950,519 |
| Rate of Return: | |
| Present | 9.82% |
| Approved | 11.93% |

SCHEDULE III
DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 373
Statement of Capitalization and Related Costs
Twelve Months Ended June 30, 1983
(000's Omitted)

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | | Present Rates | | |
| Long-term debt | 45.83 | 1,352,223 | 9.73 | 131,571 |
| Preferred stock | 12.09 | 356,718 | 8.74 | 31,177 |
| Common equity | 42.08 | 1,241,578 | 10.22 | 126,850 |
| Total | 100.00 | 2,950,519 | | 289,598 |
| | | Approval Rates | | |
| Long-term debt | 45.83 | 1,352,223 | 9.73 | 131,571 |
| Preferred stock | 12.09 | 356,718 | 8.74 | 31,177 |
| Common equity | 42.08 | 1,241,578 | 15.25 | 189,341 |
| Total | 100.00 | 2,950,519 | | 352,089 |

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 19 - 23

Company witness Hatley, Public Staff witness Turner, CIGFUR witness Phillips, and Kudzu witness Eddleman presented testimony and evidence regarding rate design.

Traffic Signals

The Commission observes that the cost allocation studies filed by the Company in this proceeding show rates of return for the traffic signal rate Schedule TS which are low regardless of the cost allocation methodology used, and the cost allocation studies filed in the previous general rate case in Docket No. E-7, Sub 358, showed the same thing. Therefore, the Commission concludes that the rates proposed by the Company for Schedule TS should be adopted regardless of the increase granted overall.

Basic Customer Charges

The Company proposed in this proceeding to increase its basic customer charges for all major rate schedules by the same percentage as the other rate blocks, including a proposed increase in the residential customer charge from $5.80 per month to $6.61 per month. The proposed customer charges were unopposed by any party.

The Commission notes that the proposed residential customer charge is still less than the residential customer charge which this Commission has allowed for CP&L and Vepco. The Commission concludes that the residential customer charge and the nonresidential customer charges should be approved at the levels proposed by the Company.

Residential Water Heater Discount

Company witness Hatley presented data in this proceeding which illustrated the cost differential between customer groups in Schedule R (i.e., with and without water heater discounts). The data shows that rates of return are higher for customers with the WH discount (RW) than for customers without the WH discount (R), and that customers with the WH discount have a higher load factor than do customers without the WH discount.

However, Public Staff witness Turner presented data illustrating that customers with the WH discount have a higher appliance saturation than do customers without the WH discount, suggesting that the presence of a qualifying water heater is simply collinear with other appliance usages and that such overall difference in usage is primarily responsible for the difference in rates of return and load factors between customer groups with and without the water heater discount. On cross-examination, witness Hatley could not say how much of the higher rate of return for RW customers was actually due to the qualifying water heater.

Witness Hatley pointed out that the Commission reasoned in its last general rate Order in Docket No. E-7, Sub 358, that when the residential rate blocks are flattened, the difference in rates of return between the RW customers and the R customers should be reduced, and that such difference in rates of return did not in fact occur. However, for such difference in rates

of return to be reduced, it was assumed that there was no actual cost difference between R and RW customers. Obviously there is a cost difference, as pointed out by witness Turner, which cannot be attributed solely to water heaters or to usage solely in the second block of the rate schedules.

The Commission notes that both CP&L and Vepco have eliminated the WH discount from their residential rate schedules for North Carolina retail service. The Commission continues to be persuaded that a WH discount is not as appropriate as it once was and that it should be reduced in this proceeding consistent with the flattening of the rate blocks described herein.

Summer/Winter Differential in Residential Rates

The Company proposes to increase the size of the summer/winter rate differential for all over 1300 kWh in each residential rate schedule while keeping the percentage difference essentially constant.

In the Company's previous general rate proceeding in Docket No. E-7, Sub 338, the Commission concluded that the summer/winter rate differentials should not be increased until such time as it could be determined what size summer/winter differential would be appropriate for each rate block of each rate schedule, and it reduced the summer/winter differential for Schedule R to a level more comparable with Schedules RA and RC.

Public Staff witness Turner recommended that the summer/winter differential continue to be held at the present rate level until a more definitive study of such rate differentials can be made. Company witness Hatley responded that the summer/winter rate differential is intended to encourage residential heating load which would help balance the summer and winter peak loads on the system.

The Commission is of the opinion that, if there is a difference in cost to serve customers during summer versus winter, it would seem more likely to involve differences in generation mix between seasons and the differences in fixed costs and variable costs associated with such differences in generation mix. The Commission is further of the opinion that it would be highly desirable to base a determination of appropriate summer/winter rate differentials on information as to the fixed costs and variable costs incurred by each customer group during each hour of the year (and each season of the year) and that a special study toward that end should be encouraged.

The Commission concludes that the percentage summer/winter rate differentials in the residential rates should not be increased until such time as it can be determined what size summer/winter differential would be appropriate for each rate block of each rate schedule.

Flattening Rate Blocks for Residential Service

The Company proposes to retain three energy blocks in its residential rate schedules. The Commission concluded in previous general rate proceedings that rates should accurately track costs in a manner consistent with the intent of the Public Utility Regulatory Policies Act (PURPA) and that multiple rate blocks and declining block rates should no longer be applied unless it can be

demonstrated that such rate features will track costs more accurately than the simple and straight forward single block rate.

Company witness Hatley contended in the previous general rate proceeding that usage in the first block (i.e., 0 to 350 kWh) represented year-round usage, such as nonair conditioning and nonheating load; that usage in the second block (i.e., 350 kWh to 1300 kWh) included air conditioning and heating load associated with additional demand at the time of the system peak, and therefore it contributed to a lower load factor for the system; and that usage in the third block (i.e., over 1300 kWh) included primarily heating load which was not accompanied by additional demand at the time of the system peak, and therefore it improved the system load factor. He presented the same argument in this proceeding.

Public Staff witness Turner recommended that the rate blocks be reduced to a single block for all usage over 350 kWh per month.

The Commission concluded in the previous general rate proceeding in Docket No. E-7, Sub 358, that the multiple rate blocks should be flattened, and that the cost of service for different customer groups should be studied further to determine the differences in cost of service for different ranges of usage in order to justify continued use of multiple rate blocks.

The Commission concludes that the multiple rate blocks should be flattened in this proceeding in order that the number of blocks may be reduced in future proceedings and that such rate blocks should be flattened in such a manner that no customer will receive a rate increase higher than that proposed by the Company herein.

Merger of Residential Rate Schedules R and RA

The three major residential rate schedules are Schedules R, RA, and RC. Schedule RA is applicable to residential customers having all-electric service, Schedule RC is applicable to customers meeting certain thermal requirements for conservation of energy, and Schedule R is applicable to residential customers who are not eligible for Schedules RA and RC.

Schedule RA has been closed to new customers since 1979, and all new residential customers must choose between Schedule R and Schedule RC. The Company merged a former Schedule RW into Schedule R in a previous proceeding (although merged Schedule R still contains a discount for qualifying water heaters). The Company has not yet proposed merging Schedule RA into Schedule R, and the Commission has not determined that they should be merged.

Flattening Rate Blocks for Nonresidential Service

The Company proposes to retain declining block rates within each section (i.e., three sections, or load factor ranges, per rate schedule) of its major nonresidential rate schedules. The Commission has concluded that multiple rate blocks and declining block rates should be eliminated where it cannot be demonstrated that they are cost justified.

The Commission concludes that the declining block rates for each section of the nonresidential rate schedules should be flattened in this proceeding in

a manner which will ensure that no customer will receive a higher rate increase than that proposed by the Company herein. The Commission also concludes that it should reduce the revenue requirement for each section of a given nonresidential rate schedule by the same percentage in order to preserve the current average rate for each load factor range until such time as it can be determined what cost differential would be appropriate for each section of each rate schedule.

Hopkinson Type Nonresidential Rates

In previous general rate proceedings, the Company has indicated that its long-range goals for rate design included placing more emphasis on the separate demand charge (i.e., the Hopkinson type demand charge) in order to enhance customer understanding of demand and to make customers more demand conscious. As discussed in previous general rate decisions involving the Company, the Commission is of the opinion that Hopkinson type rate designs might be beneficial in that they greatly simplify the rates, and they give stronger and clearer price signals to encourage conservation of demand.

In the previous general rate proceeding in Docket No. E-7, Sub 358, the Company was directed to file a program outlining specific steps, timetables, etc., associated with the Company's long term goal of implementing Hopkinson type rate designs. The summary report filed by the Company on March 28, 1984, contained an implementation plan listing steps for developing load research data and designing rates in accordance with such data during the next 12 months. The Commission will await with interest the development of such Hopkinson type rates.

In this proceeding, the Company proposes to increase the separate demand charge in the major nonresidential rate schedules by the same overall percentage as the other rate blocks. On the other hand, C.U.C.A. recommends increasing the separate demand charge by a greater percentage than the other rate blocks. The Commission concludes that the separate demand charge in the major nonresidential rate schedules should be held to the levels proposed by the Company in this proceeding in order to ensure that no customer will receive a greater rate increase than that proposed by the Company.

Demand Ratchets

Both C.U.C.A. and CIGFUR raised objections to Duke's 100% demand ratchet applicable to nonresidential billing demand because they contend that it defeats customer load control devices and is discriminatory. They recommended an 80% demand ratchet applicable to the billing demand during the four (4) summer months only.

The Commission has observed in a number of general rate cases involving Carolina Power & Light Company and Virginia Electric and Power Comany that demand ratchets are a less efficient peak load pricing device than Time-of-Use (TOU) rates, and that TOU rates would be a reasonable alternative to demand ratchets. The Commission is of the opinion it should take steps to encourage the expanded use of TOU rates rather than restrict the demand ratchets in this proceeding.

Time-of-Use Rates

The Intervenors, C.U.C.A. and CIGFUR, joined by the Public Staff, contend that all unnecessary barriers to the voluntary participation of customers in Duke's Time-of-Use (TOU) rate schedules should be removed. Duke's witness Hatley conceded on cross-examination that the eligibility requirements limiting participation in GT and IT rate schedules to those randomly selected and located on lines having power line carrier facilities no longer were justifiable. Witness Hatley in fact said the Company for some years had been planning to give such rates broader applicability. Duke's general service and industrial time-of-use rates were instituted on an experimental basis some seven years ago. At that time there was a problem with respect to installing proper metering facilities. Random selection of volunteers was deemed to be a fair procedure under the circumstances. The rates have now become a part of Duke's permanent rate structure. Problems of metering have been reduced or eliminated. The Commission can find no substantive reason that permanent time-of-use rates should be effectively allowed on the basis of a lottery, i.e., by random selection. The Commission therefore holds that all General Service and Industrial customers having appropriate metering facilities and located at or near transmission facilities, desiring service under rate Schedules GT or IT, and otherwise qualifying, shall be allowed access to such schedules from and after the date of this Order, provided such service is offered on the basis that Duke will incur no additional expenses not recovered through its approved rates and charges. Duke should notify each such eligible customer of this ruling and explain the options available to the customers.

General

Duke proposes to adjust the revenue requirement for non-residential customers by approximately $1.5 million to offset losses anticipated due to increased use of TOU Schedules GT and IT. C.U.C.A. has raised objections to such adjustment.

The Commission has consistently required that TOU rates be "revenue neutral," such that the total revenue requirement will remain the same if all customers are on TOU rates or if all customers are on conventional non-TOU rates. Therefore, when TOU rates are voluntary, customers who use TOU rates will naturally be those who will pay less under the TOU rates than they would otherwise, and a revenue adjustment is required to keep the Company whole. For this reason, the Commission denies the objections of C.U.C.A. on the issue.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Power Company be, and is hereby, allowed to adjust its electric rates and charges so as to produce, based upon the adjusted test year level of operations, an increase in annual gross revenues of $130,969,000 from its North Carolina retail operations. Said increase shall be effective for service rendered on and after the date of this Order.

2. That within five working days after the date of this Order, Duke Power Company shall file with this Commission rate schedules designed to produce the increase in revenues set forth in Decretal Paragraph No. 1 above in accordance with the guidelines set forth in Appendix A attached hereto. Said rate schedules shall be accompanied by a computation showing the level of revenues

which said rate schedules will produce by rate schedule, plus a computation showing the overall North Carolina retail rate of return and the rate of return for each rate schedule which will be produced by said revenues.

3. That Duke Power Company shall prepare cost allocation studies for presentation with its next general rate application which allocate production plant based on the following methodologies: (1) summer/winter peak and average; (2) summer/winter peak and base; (3) summer/winter coincident peak; (4) summer coincident peak; and (5) average of 12 monthly peaks. Both jurisdictional and fully distributed cost allocation studies shall be made using each method, and the studies shall be included in items 31 and 37, respectively, of Form E-1 (as established in Docket No. M-100, Subs 58 and 64) of the minimum filing requirements for general rate applications.

4. That Duke Power Company shall prepare a study for presentation to the Commission with its next general rate application (or within 90 days after the date of this Order, if sooner) which will provide fixed costs and variable costs of production incurred during each hour of the year and which will provide information regarding the usage during each hour of the year by the nonresidential customers. Such study shall be based on the guidelines set forth in Appendix B attached hereto.

5. That Duke Power Company shall make voluntary time-of-use rate Schedules GT and IT available to all general service and industrial customers having appropriate metering facilities and located at or near transmission facilities and otherwise qualifying, provided such service is offered on the basis that the Company will incur no additional expenses not recovered through its approved rates and charges.

6. That Duke Power Company shall give appropriate notice of the rate increase approved herein by mailing a copy of the notice attached hereto as Appendix C to each of its North Carolina retail customers during the next normal billing cycle following the filing of the rate schedules described in Decretal Paragraph No. 2.

7. That any motions heretofore filed in this proceeding and not previously ruled upon are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of June 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A
DOCKET NO. E-7, SUB 373
GUIDELINES FOR DESIGN OF RATE SCHEDULES

Step 1: Determine the amount of rate schedule revenues and other revenues, respectively, which are necessary to produce the overall revenue requirement established by the Commission in this proceeding.

Step 2: Increase the rate schedule revenues produced by the present rates for each rate schedule by the same percentage to produce the total rate schedule revenues determined in Step 1, except as follows:

(a) Hold rates and rate schedule revenues for traffic lighting Schedule TS at levels proposed by the Company.

(b) Increase rate schedule revenues for outdoor lighting Schedules T, T2 and T2X by the same percentage determined in Step 2, except do not increase said revenues above the levels proposed by the Company.

Step 3: Increase the individual prices in a given rate schedule by the same percentage to reflect the increase in revenue requirement for the rate schedule as determined in Step 2, except as follows:

(a) Increase the customer charge for residential rate Schedules R, RA, and RC to $6.61.

(b) Maintain the same percentage differential between summer and winter rates as is contained in the present rate levels of the third block of residential rate Schedules R, RA, and RC, respectively.

(c) Increase the first block only (i.e., 0 kWh to 350 kWh) of residential rate Schedules R, RA, and RC as necessary to achieve the increase in revenue requirement for each rate schedule, respectively, except do not increase the first block by a greater percentage than the percentage determined in Step 2 (or above the level determined for the second block in Step 3e).

(d) If the increase in revenue requirement is not achieved for residential rate Schedules R, RA, and RC although the first block is increased to the levels determined in step 3c, then hold the first block at the levels determined in step 3c and also increase the third block (i.e., over 1300 kWh summer and winter) as necessary to achieve the revenue requirement for each rate schedule, respectively; except do not increase the third block above the levels proposed by the Company for said block (or above the levels determined for the second block in step 3e) and do not neglect to maintain the same percentage differential between summer and winter rates as determined in Step 3b.

(e) If the increase in revenue requirement is not achieved for residential rates Schedules R, RA, and RC although the first block is increased to the levels determined in step 3c and the third block is increased to the levels determined in step 3d, then hold the first block at the levels determined in step 3c, also hold the third block at the levels determined in step 3d, and also increase the second block (i.e., 350 kWh to 1300 kWh) as necessary to achieve the revenue requirement for each rate schedule, respectively; except hold the regular rate of the second block of Schedule R at the 6.23¢ per kWh present rate level while increasing only the WH discount rate (i.e., 5.85¢ per kWh at present rate level) in the second block of Schedule R.

(f) Increase the customer charge for nonresidential rate Schedules G, GA, GB, I, and IP to the levels proposed by the Company.

(g) Increase the separate demand charge per kW for nonresidential rate Schedules G, GA, I, and IP to the levels proposed by the Company.

(h) Increase the revenue requirement for each section (i.e., three sections, or load factor ranges, per rate schedule) for nonresidential rate Schedules G, GA, GB, I, and IP by the same percentage in order to maintain the present ratio of revenue recovery between sections.

(i) Increase the third block only (i.e. over 90,000 kWh) of the first section (i.e., first 125 kWh per kW) of Schedule G as necessary to achieve the increase in revenue requirement for said first section, except do not increase the third block above the level proposed by the Company for said block (or above the level determined for the second block in step 3j).

(j) If the increase in revenue requirement is not achieved for the first section of Schedule G although the third block is increased to the level determined in step 3i, then hold the third block at the level determined in step 3i and also increase the second block (i.e., 3,000 kWh to 90,000 kWh) as necessary to achieve the increase in revenue requirement for the first section of Schedule G; except do not increase the second block above the level proposed by the Company for said block (or above the level determined for the first block in step 3k).

(k) If the increase in revenue requirement is not achieved for the first section of Schedule G although the third block is increased to the level determined in step 3i and the second block is increased to the level determined in step 3j, then hold the third block and the second block at the levels determined in steps 3i and 3j, respectively, and also increase the first block (i.e., 0 kWh to 3,000 kWh) as necessary to achieve the increase in revenue requirement for the first section of Schedule G.

(l) Increase the revenue requirement for each section (i.e., three sections per rate schedule) of nonresidential rate Schedules G, GA, GB, I, and IP in the same manner as described for the first section of Schedule G in order to flatten the rate blocks in each section.

(m) Increase prices in the TOD rate schedules in such a manner that they will remain basically revenue neutral with comparable non-TOD rate schedules, considering projected revenue savings for the TOD rates.

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.

Appendix B
Docket No. E-7, Sub 373

1. Determine "typical" operating data and "typical" cost data for each generating unit and block of purchased power for the current year as follows.

(1-1) Compile normalized "typical" operating data for each generating unit as shown below:

| Name of Generating Unit | Maximum Dependable Capacity (kW) | Total Annual Generation (kWh) | Capacity Factor (%) Note A | Equivalent Availability Factor (%) Note B |
|---|---|---|---|---|

Note A: Include capacity factor for base load units only.
Note B: If equivalent availability cannot be provided, include operating availability instead.

(a) Explain how the normalized "typical" operating data was determined for each generating unit.

(1-2) Compile normalized "typical" cost data (in current year dollars) for each generating unit as shown below:

| Name of Generating Unit | Fixed Annual Costs | | | Variable Annual Costs | |
|---|---|---|---|---|---|
| | Cost of Capital | Annual Depreciation | Other Costs | Fuel | Non Fuel |

(a) Explain how the normalized "typical" cost data was determined for each generating unit.

(1-3) Compile normalized "typical" operating data and "typical" cost data (in current year dollars) for each block of purchased power as shown below:

| Type of Purchased Power | Total kWh Purchased | Total Energy Charges | | Total Demand Charges | Total Other Charges |
|---|---|---|---|---|---|
| | | Fuel | Non Fuel | | |

(a) Explain how the normalized "typical" operating data and cost data was determined for each block of purchased power.

(1-4) Compile a system load curve representing the normalized "typical" kWh production requirement as follows:

(a) Utilizing the normalized "typical" hourly loads used in the Company's production cost simulation model to represent the shape of the system load curve (i.e., 8760 hours representing a typical year, or 2016 hours representing a typical week for each month of the year, or etc.), develop

a system load curve corresponding to the specific system kW peak demand and kWh sales forecasted for the current year.

(1) For the total hourly loads, show:

(i) Total kWh sales
(ii) Maximum hourly load in kW
(iii) Load factor

(2) Include an explanation and sample calculations show the typical hourly loads used in the Company's production cost simulation model are adjusted to simulate the shape of the system load curve corresponding to the specific system kW peak demand and kWh sales forecasted for the current year.

(b) Adjust the system load curve developed in paragraph (a) above to reflect the difference between the total kWh sales requirement and the total kWh production requirement.

(1) For the total hourly loads, show:

(i) Total kWh production
(ii) Maximum hourly load in kW (iii) Load factor

(2) Include an explanation and sample calculations showing how the hourly loads in the system load curve developed in paragraph (a) above are adjusted to reflect the difference between the total kWh sales requirement and the total kWh production requirement.

(1-5) Simulate the dispatch of those generating units and blocks of purchased power necessary to supply the total kWh production requirement in paragraph (1-4)(b) above as follows:

(a) Dispatch the various generating units and blocks of purchased power in the order of their variable costs.

(b) Dispatch the kWh generated by a given generating unit for use in a pumped storage hydro facility as a separate block of power from the other kWh generated by said given unit.

(c) Dispatch each given generating unit and block of purchased power as a source of power having a uniform level of kW demand (i.e., each dispatched block of power shall form a "layer" of uniform depth under the system load curve).

(d) The uniform level of kW demand for a given generating unit shall not exceed: (1) the unit's maximum dependable kW capacity or (2) the unit's average "available" kW capacity; i.e., average "available" capacity =

$$= \frac{\text{total kWh generated}}{\text{8760 hours x equivalent availability factor}}$$

(1-6) Compile the unit operating data and the unit cost data (in current year dollars) for those generating units and blocks of purchased power dispatched in paragraph (1-5) above as follows:

| Name of Generating Unit Note A | Type of Purchased Power Note A | Dispatched kWh Note B | Dispatched kW | Total Fixed Cost per kWh Dispatched Note B | Total Variable Cost per kWh Dispatched Note B |
|---|---|---|---|---|---|

Note A: List the generating units and blocks of purchased power in the chronological order of dispatch utilized in paragraph (1-5).

Note B: Exclude the kWh generated by a given generating unit for use at a pumped storage hydro facility from the other kWh generated by said given unit. Include the cost of the kWh generated by the given unit for use at a pumped storage hydro facility as a part of the cost of the pumped storage hydro unit.

(1-7) Compile the cost of generation and purchased power during each adjusted typical hourly load based on: (1) the unit cost per kWh data determined in paragraph (1-6) above times (2) the kWh production by the respective generating unit or block of purchased power during the given hour, as follows:

| Month of Year | Day of Week | Hour of Day | Total Cost of Production Fixed | Total Cost of Production Variable | Total kWh of Production | Average Cost per kWh of Production Fixed | Average Cost per kWh of Production Variable |
|---|---|---|---|---|---|---|---|

(1-8) Compile the cost of generation and purchased power determined for each hourly load in paragraph (1-7) into groups of hours as follows:

| Groups of Hours | Total Cost of Production | Total kWh of Production | Average Cost per kWh of Production |
|---|---|---|---|
| 4 Summer months: | | | |
| On-peak hours | | | |
| Off-peak hours | | | |
| 4 Intermediate months: | | | |
| On-peak hours | | | |
| Off-peak hours | | | |
| 4 Winter months: | | | |
| On-peak hours | | | |
| Off-peak hours | | | |

(a) Explain which hours are designated as on-peak hours and as off-peak hours in each group of hours.

2. Determine the "typical" operating data and "typical" cost data for each generating unit and block of purchased power for the year 1989 (i.e., five years after the current year) in the same manner described for the current year in paragraphs (1-1) through (1-3). Then compile the cost of generation and purchased power for each hourly load and for each group of hours for the year 1989 in the same manner described for the current year in paragraphs (1-4) through (1-8).

3. Determine the statistical confidence level which results if the load survey data currently on hand is utilized to predict the loads during each of the groups of hours described in paragraph (1-8) above for each of the following classes of nonresidential customers.

| Customer Class | Group of Hours | Confidence Level (%) |
|---|---|---|
| Industrial (textile only): | | |
| Greater than 3,000 kWh per bill: | | |
| Less than 3,000 kWh per bill: | | |
| Industrial (nontextile only): | | |
| Greater than 3,000 kWh per bill: | | |
| Less than 3,000 kWh per bill: | | |
| General Service (textile only): | | |
| Greater than 3,000 kWh per bill: | | |
| Less than 3,000 kWh per bill: | | |
| General Service (nontextile only): | | |
| Greater than 3,000 kWh per bill: | | |
| Less than 3,000 kWh per bill: | | |

4. It is anticipated that the calculations and data presented in accordance with paragraphs 1 through 3 above will be reviewed by the Commission in order to determine the appropriate steps to be taken for continuation of the study and that any additional steps determined to be appropriate will be set out by further order of the Commission.

APPENDIX C
DOCKET NO. E-7, SUB 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Duke Power Company for | ) | |
| Authority to Adjust and Increase Its | ) | NOTICE TO CUSTOMERS |
| Electric Rates and Charges | ) | |

The North Carolina Utilities Commission on June 13, 1984, after several months of investigation and following three weeks of hearings held throughout the State, denied Duke's request for an increase of $212.8 million over rates currently in effect while approving an increase of $131.0 million. The

Company's application for rate relief was filed with the Commission on November 30, 1983. The overall rate increase allowed by the Commission equates to an increase of 8.4% over rates now in effect as compared to an increase of 13.6% which would have resulted had the Company's full rate increase request been approved.

The Commission estimates that the bill of a typical residential customer using 1,000 kWh per month and presently paying approximately $62.48 per month will increase to approximately $66.72 per month. However, the percentage increase will vary for different levels of usage in order to reflect more uniform rates per kWh for all levels of usage.

In allowing the 8.4% increase, the Commission found that the approved rates would provide Duke, under efficient management, an opportunity to earn an approximate 11.93% rate of return on the original cost of its property. In its application, Duke had sought rates which would allow it to earn a rate of return of 12.46%.

Among the more controversial issues addressed by the Commission in its Order was the propriety of inclusion of construction work in progress (CWIP) in the rate base; the appropriate rate-making treatment to be accorded Duke losses associated with the sale of its wholly owned affiliate Eastover Mining Company; and costs associated with the cleanup of the 1979 nuclear accident at Three Mile Island. The Commission denied, in its entirety, Duke's request that $112.5 million of CWIP be included in rate base. The Commission denied, in its entirety, Duke's request that it be permitted to recover approximately $11 million in net losses over a five-year period associated with its affiliated Eastover coal mining operations, and the Commission denied, in its entirety, Duke's request that its ratepayers be required to contribute to the cleanup of Three Mile Island.

The increase granted was due principally to the inclusion in rate base of Duke's McGuire Unit No. 2 and the impact of general inflation on Duke's costs since its last general rate increase which became effective on September 30, 1983. Duke's McGuire facility is a nuclear power generating station located near Charlotte, North Carolina.

In the area of rate design, the Commission directed that additional steps be taken toward more uniform rates per kWh for all levels of usage within each rate schedule and that steps be taken to improve customer participation in the Company's time-of-use rates for nonresidential service.

The rate increase is effective for service rendered on and after June 13, 1984.

ELECTRICITY - RATES

DOCKET NO. E-7, SUB 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Duke Power Company for Authority to ) ORDER AMENDING RATE
Adjust and Increase Its Electric Rates and Charges ) DESIGN GUIDELINES

BY THE COMMISSION. It has been made to appear that the Guidelines for Design of Rate Schedules attached as Appendix A to the Commission Order of June 13, 1984, in the above-captioned matter is in error to the extent that such guidelines will result in a negative water heater discount whereas the Commission anticipated that such guidelines would result in a positive, although reduced, water heater discount in Rate Schedule R as discussed in said Order.

It has also been made to appear that paragraph or step 3(m) of said Guidelines for Design of Rate Schedules needs further clarification as to the exact intent of said paragraph.

IT IS, THEREFORE, ORDERED as follows:

1. That step 3(e) of the Guidelines for Design of Rate Schedules attached as Appendix A to the Commission Order of June 13, 1984, in the above-captioned matter is hereby amended to read:

Step 3:
(e) If the increase in revenue requirement is not achieved for residential Rate Schedules R, RA, and RC although the first block is increased to the levels determined in step 3c and the third block is increased to the levels determined in step 3d, then hold the first block at the levels determined in step 3c and also hold the third block at the levels determined in step 3d, and also increase the second block (i.e., 350 to 1300 kWh) as necessary to achieve the revenue requirement for each rate schedule, respectively; except maintain the regular rate of the second block of Schedule R (i.e., 6.23¢ per kWh at present rate level) at 0.12¢ per kWh higher than the WH discount rate (i.e., 5.85¢ per kWh at present rate level) in the second block of Schedule R.

2. That step 3(m) of the Guidelines for Design of Rate Schedules attached as Appendix A to the Commission Order of June 13, 1984, in the above-captioned matter is hereby amended to read:

Step 3:
(m) Increase prices in the TOD rate schedules and the comparable non-TOD rate schedules in such a manner that they will remain basically revenue neutral as proposed by the Company in its application, considering projected revenue savings for the TOD rates.

ISSUED BY ORDER OF THE COMMISSION
This the 15th day of June 1984

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

DOCKET NO. E-7, SUB 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Duke Power Company<br>for Authority to Adjust Its Electric<br>Rates and Charges | ) | ORDER ON RECONSIDERATION<br>REGARDING NON-RESIDENTIAL<br>TIME OF USE RATES AND RATE<br>DESIGN |

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury St., Raleigh, North Carolina on Tuesday, August 28, 1984, beginning at 1:30 p.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Steve C. Griffith, Senior Vice President and General Counsel, William Larry Porter, Associate General Counsel, and Ronald L. Gibson, Senior Attorney, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Blanton, Whisnant & McMahon, P.A., Attorneys at Law, P.O. Drawer 1269, Morganton, North Carolina 28655
For: Great Lakes Carbon Corporation

Carson Carmichael, III, and Ralph McDonald, Bailey, Dixon, Wooten, McDonald, & Foutain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Carolina Industrial Group for Fair Utility Rates

Thomas R. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612
For: Carolina Utility Customers Association, Inc.

BY THE COMMISSION: On June 13, 1984, the Commission entered its Order in this docket whereby Duke Power Company was granted a general rate increase of $130,969,000. Decretal paragraph 5 of said Order requires:

> That Duke Power Company shall make voluntary time of use rate schedules GT and IT available to all general service and industrial customers having appropriate metering facilities and located at or near transmission facilities and otherwise qualifying, provided such service is offered on the basis that the Company will incur no additional expenses not recovered through its approved rates and charges.

The Commission's Guidelines for Design of Rate Schedules, attached to the June 13, 1984, Order as Appendix A, requires in Step 3, Paragraph (m) that the Company:

> Increase prices in the TOU rate schedules and the comparable non-TOU rate schedules in such a manner that they will remain basically revenue neutral as proposed by the Company in its application, considering projected revenue savings for the TOU rates.

The Commissions Order of June 13, 1984, states in Finding of Fact No. 19 that:

> The rate blocks of all major rate schedules should be flattened.

The Guidelines for Design of Rate Schedules attached as Appendix A to the Order of June 13, 1984, requires in Step 3, paragraph (L) that the Company:

> Increase the revenue requirement for each section (i.e., three sections per rate schedule) of nonresidential rate schedules G, GA, GB, I and IP in the same manner as described for the first section of schedule G in order to flatten the rate blocks in each section.

On June 14, 1983, the Company filed its Motion for Reconsideration pursuant to G.S. 62-80 and NCUC Rule R1-7(5) requesting that the Commission reconsider decretal paragraph 5 and the related findings and conclusions and guidelines for rate design. The Company contended in its motion that there was not sufficient time to comply with decretal paragraph 5, that there was no evidence in the record to support the Commission's decision with respect to immediate availability to time of use (TOU) rates, and that the Commission should hold further hearings regarding the issue if it desired to pursue the matter.

On June 15, 1984, the Commission entered its Order Regarding Motion for Reconsideration Filed by Duke Power Company, which held in abeyance decretal paragraph 5 until all parties to the proceeding had an opportunity to file written responses to the Company's Motion.

On June 20, 1984, the Carolina Utility Customers Association, Inc. (CUCA) filed a Response to Duke's Motion opposing the temporary stay of decretal paragraph 5, contending that there was ample evidence in the record to support decretal paragraph 5.

On June 25, 1984, Intervenor Carolina Industrial Group for Fair Utility Rates (CIGFUR III) filed a Response to Duke's motion contending that TOU rates should be made available on a voluntary basis; and that Duke should be given a period of time to develop a plan for immediate availability, since reallocation

of the revenue shortfall caused by the abrupt shifting of customers to TOU rates could possibly adversely affect other general service and industrial customers.

On June 29, 1984, the Company filed a reply to the Intervenors' responses to its motion stating that the rates approved by the Commission in its June 15, 1984, Order Approving Tariffs do not provide for the recovery of the revenue shortfall that would be incurred by making TOU rates available to all customers; that should decretal paragraph 5 remain in effect and TOU rates by made immediately available to all elegible customers, the rates approved on June 15, 1984, in this docket would have to be redesigned to a higher level in order to account for the revenue shortfall that would be incurred due to additional customers shifting to the time-of-use rates; and that the Commission should schedule further hearings on the matter of the availability of TOU rates.

On July 3, 1984, the Commission entered its Order Scheduling Hearing on Reconsideration which established a schedule for prefiling testimony and set the matter of availability of TOU rates for additional hearings beginning on August 28, 1984.

On July 12, 1984, CUCA filed its objections to the proceedings established by the Commission. CUCA objected to the Commission's approval on June 15, 1984, of TOU schedules which were inconsistent with the immediate availability provisions of decretal paragraph 5 of the June 13, 1984, Order; objected to the temporary stay of decretal paragraph 5; objected to the July 3 Order scheduling additional hearings; and objected to any consideration of revenue reallocation resulting from increased availability of TOU rates.

On July 13, 1984, CIGFUR III filed its Motion for Reconsideration which contends that flattening of the industrial rate blocks as required by the Order of June 13, 1984, was not supported by the evidence and resulted in a discriminatory pricing structure because of the disproportionate rate increases for large industrial customers.

On July 20, 1984, the Company filed its Response In Support of Motion for Reconsideration by CIGFUR III supporting CIGFUR's Motion and urging the Commission to consider the CIGFUR Motion in conjuction with reconsideration of the availability of TOU rates. The Company contended that the flattening of the rate blocks increased the desire of Schedule G and I customers to shift to TOU rates.

On July 26, 1984, the Commission entered its Order Scheduling Oral Argument on Motions for Reconsideration whereby it scheduled oral arguement on the CIGFUR III motion of July 13, 1984, and on the Duke response of July 20, 1984, immediately prior to the hearing on Duke's motion of June 14, 1984.

On July 26, 1984, CUCA filed its Response to Motion for Reconsideration by CIGFUR III dated July 13, 1984, and to Response of Duke Power Company In Support of Motion for Reconsideration dated July 20, 1984. The CUCA response requested the Commission to rescind flattening of the rate blocks as recommended by CIGFUR III; to dissolve the stay of decretal paragraph 5 of the Order of June 13, 1984; to cancel all further evidentiary hearings in the docket; and to make its rulings on these matters prior to August 13, 1984.

On July 30, 1984, Duke prefiled the testimony of Donald H. Denton, Jr. On August 20, 1984, CUCA prefiled the testimony and exhibits of Dr. John W. Wilson. On August 22, 1984, CIGFUR prefiled the testimony and exhibits of Nicholas Phillips, Jr. On August 29, 1984, the Public Staff filed the affidavit of Benjamin R. Turner, Jr.

The oral argument and the evidentiary hearing were held on August 28, 1984, at the scheduled time and place.

At the oral argument, the Public Staff contended that the hearing should be limited to the availability of TOU rates, and that testimony should not be taken on the rate design issues on the grounds that the Commission's Order of July 3, 1984 scheduling hearing on reconsideration of the TOU rates did not specify that such reconsideration would also include the rate design of industrial and commercial rates. The Public Staff contended that it was prejudiced by the taking of testimony regarding industrial and commercial rate design at the hearing when no prior notice had been given by the Commission that such testimony would be taken. The Company and the Intervenors argued that the testimony regarding commercial and industrial rate design had been prefiled in the same manner that the testimony regarding availability of TOU rates was prefiled, and that such prefiling gave the Public Staff adequate opportunity to review the testimony and prepare cross-examination or rebuttal. Following oral argument, the Commission determined that it should hold evidentiary hearings encompassing both the availability of TOU rates and the design of commercial and industrial rates in order to avoid duplicative testimony and further proceedings. In this regard, the Commission offered the Public Staff the opportunity to present additional evidence on the rate design issues at this hearing or at a continued hearing, if desired. The Public Staff participated in the hearing and offered the affidavit of Benjamin R. Turner as its evidence on the rate design issues.

The Commission has fully complied with the provisions of G.S. 62-80 in this proceeding, having given notice and opportunity to be heard to all of the parties of record affected by the motions for reconsideration at issue herein.

At the evidentiary hearing, the Company offered the testimony of Donald H. Denton, Jr., Senior Vice President for Marketing and Rates at Duke Power Company. Intervenor CUCA offered the testimony of Dr. J. W. Wilson, President of J. W. Wilson and Associates, Washington, D.C. Intervenor CIGFUR III offered the testimony of Nicholas Phillips, Jr., a consultant with Drazen-Brubaker and Associates of St. Louis, Missouri, and Randy Michael, the Chairman of CIGFUR and Manager of Regulatory Affairs and Electricity Supply with Air Products Company, a member of CIGFUR. John Rotondo, a Senior Rate Analyst with National Utility Service, New York, New York, testified on behalf of Spanco Industries located in Greensboro, North Carolina. The Public Staff introduced in evidence the affidavit of Benjamin R. Turner, Jr., Engineer in the Electric Division of the Public Staff.

Based upon a careful consideration of the testimony and exhibits presented during the course of the entire hearings in this docket and the oral argument offered by counsel, the Commission, upon reconsideration, makes the following

## FINDINGS OF FACT

1. Flattening of the rate blocks in non-residential rate schedules G, GA, GB, I and IP should be rescinded for purposes of this proceeding.

2. The separate demand charge in non-residential rate schedules G, GA, GB, I and IP should be reduced for purposes of this proceeding to a level which produces the same percentage increase over the prior rates as the other rate blocks.

3. The first 3000 kWh block of the first 125 kWh per kW in non-residential rate schedules G, GA, GB, I and IP should be increased only one half as much as the remaining rate blocks for purposes of this proceeding.

4. Time of use schedules GT and IT should not be made immediately available to all general service and industrial customers being served from the transmission facilities of the Company, but should be implemented at the time of Duke's next general rate case.

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

The average increase allowed by the Commission in this docket was approximately 8.4%, although the average increase for schedules G, GA, GB, I and IP was approximately 8.9% due to the lesser increases for the outdoor lighting schedules. Furthermore, the rate flattening specified for schedules G, GA, GB, I and IP resulted in larger than average increases for large customers and smaller than average increases for small customers. The percentage increases were applied to all customers regardless of load factor but the larger than average increases to large customers tended to affect more high load factor customers than low load factor customers. The Company also contended that the higher than average increases to its large industrial customers resulted in rates which are noncompetitive with rates for similar service in many southeastern States.

Upon reconsideration pursuant to G.S. 62-80, the Commission is now of the opinion that for purposes of this proceeding the rate increase should be prospectively applied essentially across the board for the non-residential rate schedules. In order the accomplish this, the separate demand charge must be reduced to a level which produces the same percentage increase over the prior rates as the other rate blocks (except for the customer charge and the first 3000 kWh block of the first 125 kWh per kW).

Since the difference between the first 3000 kWh block and the next 81,000 kWh block of the first 125 kWh per kW of nonresidential rate schedules G, GA, GB, I and IP is already high in comparison to the level of the respective separate demand charges, the Commission is of the opinion that for purposes of this proceeding the first 3,000 kWh block should be increased only one half as much in percentage as the remaining energy blocks.

The Commission is further of the opinion the the basic customer charge should remain at the present levels.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The rates established in the Order issued June 13, 1984, in this docket were based on rates being available to a limited number of additional customers during 1984, resulting in a $1.5 million revenue reallocation. The immediate availability of TOU rates to all transmission customers is now alleged to result in an additional $16.7 million per year revenue shortfall unless such revenue is included in the present rates. The $16.7 million figure is based on the assumption that all eligible customers would be transferred to TOU rates immediately and would be served under such TOU rates for 12 months prior to a new rate case. The assumptions are alleged to result in a $12 million revenue shortfall if the rate increase is applied uniformly across the board instead of in the manner specified in the Order of June 13, 1984. Upon reconsideration, the Commission concludes that for purposes of this proceeding it is appropriate to allow Duke to continue to phase in the TOU rates in the manner the Company has been following until such time as it files its next general rate case, and that the Company should be required to make the necessary revenue reallocations in its next general rate case in order to make such TOU rates available to all transmission level customers.

FURTHER CONCLUSIONS

It is clear that this Order on Reconsideration 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). State of North Carolina ex rel. Utilities Commission v. Public Service Company, 59 N.C. App. 448 (1982). To the contrary, this Order on reconsideration merely constitutes an exercise by the Commission of its statutorily mandated duty to fix just and reasonable rates in North Carolina. G.S. 62-130. The Commission has fully complied with all of the notice and procedural requirements specified by G.S. 62-80 and the Public Utilities Act.

IT IS, THEREFORE, ORDERED as follows:

1. That within five days after the date of this Order, Duke Power Company shall file with this Commission revised rate schedules G, GA, GB, I and IP designed to produce the same revenue for each respective rate schedule which is now being produced under the current rate schedules established pursuant to the Order of June 13, 1984, in this docket. Said revised rate schedules G, GA, GB, I and IP shall be designed in accordance with the guidelines set forth in Appendix A attached hereto, and shall be accompanied by a computation showing the level of revenues which said rate schedules will produce by rate schedule.

2. That said revised rate schedules G, GA, GB, I and IP shall be designed to become effective for service rendered on and after October 23, 1984.

3. That Duke Power Company shall give appropriate notice of revised rate schedules G, GA, GB, I and IP approved herein by mailing or otherwise delivering a copy of the notice attached hereto as Appendix B and a copy of the applicable rate schedule to each of the North Carolina retail customers

affected by said revised rate schedules not later than October 23, 1984, the effective date of said rate schedules.

4. That Decretal Paragraph No. 5 of the "Order Granting Partial Increase In Rates and Charges" heretofore entered in this docket on June 13, 1984, be, and the same is hereby, rescinded. Duke shall continue to phase in the availability of TOU rate schedules GT and IT in the same manner the Company has been following until such time as it files its next general rate case. The Company shall make the necessary revenue reallocations in its next general rate case in order to make such TOU rates available to all transmission level customers.

5. That, except as amended and modified herein, the "Order Granting Partial Rate Increase In Rates and Charges" heretofore entered in this docket on June 13, 1984, shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of October 1984.

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

APPENDIX A
DOCKET NO. E-7, SUB 373

GUIDELINES FOR DESIGN OF RATE SCHEDULES G, GA, GB, I AND IP

Step 1. Determine the revenues produced by the current rates for each rate schedule respectively pursuant to the Order of June 13, 1984, in this docket.

Step 2. Determine the individual prices which were in effect for each respective rate schedule prior to the Order of June 13, 1984, in this docket.

Step 3. Increase the individual prices determined in Step 2 for each respective rate schedule by the same percentage in order to produce the revenues determined in Step 1 for the respective rate schedule, except as follows:

(a) Maintain the basic customer charge for each respective rate schedule at the current levels established pursuant to the Order of June 13, 1984, in this docket.

(b) Increase the individual price determined in Step 2 for the first block (i.e., 0 to 3,000 kWh) of the first section (i.e., 0 to 125 kWh per kW) of each respective rate schedule by only one half of the percentage applied to each of the other individual prices in the respective rate schedule.

Step 4. Round off individual prices to the extent necessary for administrative efficiency, provided said rounded off prices do not produce revenues which exceed those determined in Step 1.

Appendix B
Docket No. E-7, Sub 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Duke Power Company | ) | NOTICE TO NON-RESIDENTIAL |
| for Authority to Adjust its Electric | ) | CUSTOMERS OF |
| Rates and Charges | ) | NEW RATES |

On June 13, 1984, the North Carolina Utilities Commission granted Duke Power Company a general rate increase of $131.0 million per year for its North Carolina retail electric service. The rate increase produced an 8.4% overall increase above the rates previously in effect.

However, the rate increase was not applied evenly or "across the board" to each customer in order to flatten rate blocks as part of a program to recognize conservation.

Many concerns have since been expressed regarding the revised rate design of non-residential rate schedules G, GA, GB, I and IP. Therefore the Commission held additional hearings on the matter during August, 1984, and has reconsidered its Order of June 13, 1984, in this docket to the extent that it applied to the design of non-residential rate schedules G, GA, GB, I and IP. The Commission is now of the opinion that for purposes of this proceeding the rate increase applicable to rate schedules G, GA, GB, I and IP pursuant to the Order of June 13, 1984, in this docket should be applied "across the board", except for the basic customer charge and the first 3,000 kWh usage per month.

The Commission's Order of June 13, 1984, in this proceeding also required Duke Power Company to make its Time of Use (TOU) rate schedules GT and IT available immediately to those elegible customers served directly from the Company's transmission facilities (i.e., generally the largest customers). Following the additional public hearings on the matter, the Commission is now of the opinion that said TOU rate schedules GT and IT should be made available to elegible customers on the same gradual basis utilized prior to the Order of June 13, 1984, in this docket until such time is the matter can be dealt with more fully in the Company's next general rate case (anticipated in 1985).

In view of the foregoing, the Commission issued an Order On Reconsideration Regarding Non-Residential Time of Use Rates and Rate Design on October 8, 1984, directing Duke Power Company to implement new rates for rate schedules G, GA, GB, I and IP. Said rates will result in a further rate increase for some non-residential customers and a rate decrease for other non-residential customers in such a manner that the new rates for each customer will be increased by approximately the same overall percentage above those rates in effect prior to the Order of June 13, 1984, (except for the basic customer charge and the first 3,000 kWh usage per month). The new rates will become effective for service rendered beginning on and after October 23, 1984.

DOCKET NO. E-13, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Application of Nantahala Power and Light Company for Authority to Adjust and Increase Its Electric Rates and Charges | ORDER DENYING EXCEPTIONS AND MOTIONS FOR RECONSIDERATION AND FURTHER HEARING AND REAFFIRMING "ORDER GRANTING PARTIAL RATE INCREASE" |

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, March 9, 1984, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, A. Hartwell Campbell, Douglas P. Leary, and Ruth E. Cook

APPEARANCES:

For Nantahala Power and Light Company:

Robert C. Howison, Jr., and Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602

For Aluminum Company of America and Tapoco, Inc.:

Ronald D. Jones and David R. Poe, LeBoeuf, Lamb, Leiby and McRae, Attorneys at Law, 336 Fayetteville Street, 7th Floor, Raleigh, North Carolina 27602

For the Attorney General:

Richard L. Griffin, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Public Staff:

James D. Little, Chief Counsel, Public Staff - North Carolina Utilities Commission, P. O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

William Crisp and Robert F. Page, Crisp, Davis, Schwentker and Page, Attorneys at Law, P. O. Box 751, Raleigh, North Carolina 27602

For: Counties of Cherokee, Graham, Jackson, Macon and Swain; Towns of Andrews, Bryson City, Dillsboro, Robbinsville and Sylva; Tribal Council of Eastern Band of Cherokee Indians; and Henry J. Truett, Howard Paton, Veronica Nicholas, O. W. Hooper, Jr., and Alvin E. Smith

David H. Permar, Hatch, Little, Bunn, Jones, Few and Berry, Attorneys at Law, P. O. Box 527, Raleigh, North Carolina 27608
For: Jackson Paper Manufacturing Company

BY THE COMMISSION: On November 29, 1983, and December 22, 1983, the Commission entered Orders in this docket respectively entitled "Notice of Decision and Order" and "Order Granting Partial Rate Increase" whereby Nantahala Power and Light Company (Nantahala) was granted authority to increase its rates and charges to the Company's retail customers in North Carolina by $1,335,857 on an annual basis effective November 29, 1984.

On January 19, 1984, counsel for and on behalf of Jackson Paper Manufacturing Company, an Intervenor herein, filed exceptions and notice of appeal with respect to the "Order Granting Partial Rate Increase" pursuant to G.S. 62-90 and also a motion for reconsideration and further hearing pursuant to G.S. 62-80 and G.S. 62-90(c).

On January 23, 1984, the Commission entered an Order in this docket whereby all parties to the proceeding were granted an extension of time to and including Wednesday, January 25, 1984, to file exceptions to the above-referenced Order of the Commission.

On January 25, 1984, the Attorney General; the Public Staff; the Counties of Cherokee, Graham, Jackson, Macon and Swain; the Towns of Andrews, Bryson City, Dillsboro, Robbinsville, and Sylva; the Tribal Council of the Eastern Band of Cherokee Indians; and Henry J. Truett, Howard Patton, Veronica Nicholas, O. W. Hooper, Jr., and Alvin E. Smith (Intervenors) filed exceptions, notice of appeal and a motion for further hearing and oral argument on exceptions pursuant to G.S. 62-80 and G.S. 62-90(c).

On February 6, 1984, Aluminum Company of America (Alcoa) and Tapoco, Inc., filed a joint response in opposition to the above-referenced motion of the Intervenors for further hearing and oral argument.

On February 8, 1984, Alcoa and Nantahala filed a Stipulation in this docket for consideration and approval by the Commission.

On February 10, 1984, Nantahala filed its response in opposition to the Intervenors' exceptions and motions for reconsideration and further hearing.

On February 20, 1984, the Intervenors filed a motion in this docket entitled "Motion to Hold in Abeyance" and on February 24, 1984, Nantahala filed its reply in opposition to said motion.

On February 29, 1984, Alcoa and Tapoco filed a joint response in opposition to the Intervenors' "Motion to Hold in Abeyance."

By Order dated March 1, 1984, the Commission scheduled an oral argument for Wednesday, March 7, 1984, to consider the following matters:

(a) Motion for reconsideration filed on January 19, 1984, by Jackson Paper Manufacturing Company;

(b) Exceptions and motion for reconsideration, further hearing and oral argument filed on January 25, 1984, by the Intervenors;

(c) Stipulation filed on February 8, 1984, by Alcoa and Nantahala; and

(d) "Motion to Hold in Abeyance" filed on February 20, 1984, by the Intervenors.

On March 2, 1984, Alcoa filed a pleading in this docket entitled "Alcoa's Supplement to and Statement in Support of Stipulation."

On March 5, 1984, the Commission entered an Order rescheduling the oral argument in this matter for Friday, March 9, 1984.

On March 22, 1984, counsel for Alcoa filed a letter in this docket dated March 21, 1984, wherein it was stated that Alcoa "...will forego approval and consummation of the stock transfer now being considered in Docket No. E-13, Sub 51, as a condition of the Stipulation of refund liability in the Sub 29 and Sub 35 dockets."

By letter dated March 27, 1984, which this Commission will treat as a motion, counsel for and on behalf of the Intervenors requested the Commission to either disregard Alcoa's letter filed herein on March 22, 1984, in its entirety or "...strike or disregard all portions of such letter which appear between paragraph one and the signature thereof."

Based upon careful consideration of the "Order Granting Partial Rate Increase" entered in this docket on December 22, 1983, the various motions and pleadings pending before the Commission herein, the oral argument of the parties on said motions before the full Commission on Friday, March 9, 1984, and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all of the findings of fact, conclusions and decretal paragraphs set forth and contained in the "Order Granting Partial Rate Increase" are fully supported by the record, that said Order should be reaffirmed by the Commission, and that the exceptions, and motions for reconsideration and further hearing filed herein by the Intervenors should be overruled and denied. The Commission further concludes that the "Motion to Hold in Abeyance" filed herein by the Intervenors on February 20, 1984, should also be denied.

With respect to the Stipulation filed herein by Alcoa and Tapoco on February 8, 1984, the supplement to said Stipulation and statement in support thereof filed by Alcoa on March 2, 1984, and the further letter filed in this proceeding by Alcoa on March 22, 1984, the Commission concludes that said pleadings should be disregarded in their entirety and that the Stipulation should not be approved in this docket. Furthermore, in ruling upon the various motions filed herein by the Intervenors, the Commission has completely disregarded and given no weight whatsoever to the Stipulation and the other pleadings associated with said Stipulation which have been filed herein by

Alcoa and Tapoco. In this regard, the Commission concludes that it is appropriate to grant the motion to disregard and strike Alcoa's letter filed herein on March 22, 1984, set forth by the Intervenors in their letter dated March 27, 1984, which has been filed herein and treated by the Commission as a motion.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions and motion for reconsideration and further hearing filed herein by Jackson Paper Manufacturing Company on January 19, 1984, be, and the same are hereby, denied.

2. That the exceptions and motion for reconsideration and further hearing filed herein on January 25, 1984, by the Intervenors be, and the same are hereby, denied.

3. That the "Motion to Hold in Abeyance" filed herein by the Intervenors on February 20, 1984, be, and the same is hereby, denied.

4. That the Stipulation and "Alcoa's Supplement to and Statement in Support of Stipulation" filed herein by Alcoa and Tapoco on February 8, 1984, and March 2, 1984, respectively, are not approved by the Commission and have been disregarded in ruling upon the motions filed herein by the Intervenors.

5. That the motion to disregard and strike set forth by the Intervenors in their letter filed herein and dated March 27, 1984, be, and the same is hereby, granted as it pertains to the letter filed in this docket on March 22, 1984, by Alcoa.

6. That the "Order Granting Partial Rate Increase" heretofore entered in this docket on December 22, 1983, be, and the same is hereby, reaffirmed.

ISSUED BY ORDER OF THE COMMISSON.
This the 12th day of April 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioners Tate and Leary dissenting.
Commissioner Branford did not participate.

DOCKET NO. E-13, SUB 44

COMMISSIONERS TATE & LEARY DISSENTING. It is with some trepidation that we have concluded we must dissent from a panel order. Normally, we are loath to second-guess a panel of Commissioners who have heard the evidence in a case and are, therefore, better equipped to come to a conclusion concerning the facts and the laws governing that case. However, there is nothing normal about the Alcoa - Nantahala - Tapoco situation. The history of the formation and name changes, reorganizations, Fontana Agreements (both Old and New), Apportionment Agreements, the exchanges of land and of hydro-electric facilities and the various arrangements for the purchase, sale and/or exchange of power between TVA, Alcoa, Tapoco and Nantahala are tortuous in the extreme and far too voluminous to be catalogued here. We have spent more hours in this Commission either studying Nantahala history and exhibits, reading briefs

and legal cases and hearing evidence in two rate cases, innumerable oral arguments, as well as a proceeding to sell the stock of Nantahala, than in cases of any other single utility regardless of its size. It is because of our familiarity with the history and the facts and the knowledge acquired from our participation in other proceedings that we feel compelled to dissent from an Order of a panel of this Commission.

Stripped of the legal niceties and the voluminous explanations, rationalizations, and obfuscations that have filled hundreds of pages of testimony in Docket Nos. E-13, Sub 29 Remanded, E-13, Sub 35, E-13, Sub 44 and related proceedings, there are certain clear findings of fact which have been made by this Commission on at least two occasions and definitive statements that have been made in Order of the North Carolina Court of Appeals in Utils. Comm. v. Edmisten, 40 NC App. 109 (1979) and the North Carolina Supreme Court Order in Utils. Comm. V. Edmisten 299 N.C. 432 (1980). Also the Commission's Orders in Docket No. E-13, Sub 29 (remanded) and E-13, Sub 35 have been unheld by the North Carolina Court of Appeals. (State of North Carolina, et al, v. Nantahala Power & Light Co., et.al., No. 822100C1034, (December 6, 1983); State of North Carolina et al., v. Nantahala Power and Light Company, et al. No. 82100C1289 (February 21, 1984))

There are certain incontrovertible conclusions which result from a distillation of all three cases:

1. There is one electric system composed of the dams, transmission and distribution lines of Nantahala and Tapoco, owned by one parent, Alcoa. It is so clear that this is one system that visitors to the Fontana Dam will find a large map on the walls of the visitors' center outlining in large letters "Alcoa System".

2. Throughout the agonized history of this corporation and its subsidiaries (whatever they happen to be called at various times) there has been one owner - manipulator and two (at least) owned manipulatees or puppets. That was so in the beginning and remains so today. Quod ab initio non valet in tractu temporis non convalescet.

3. As a result of 1 and 2 above, the retail ratepayers of Nantahala Power and Light Company have been systematically deprived of the advantage of the cheaper power produced by the "Alcoa System's" hydro-electric facilities. Through seven long years of litigation, both in the Federal and State Courts, the lower rates found fair and reasonable by this Commission have never gone into effect and the ratepayers in Nantahala territory have never received their just due in rates or refunds. Quod per recordum probatum, non debet esse negatum.

Throughout all of these cases and oral arguments and litigations, there has periodically been raised a red flag - bankruptcy! Our first awareness of the hoisting of this red flag was at the first oral argument following the remand of the Sub 29 case to the Commission from the Supreme Court of North Carolina. That argument was held on July 11, 1980, when counsel for Nantahala said:

"...what we deem to be most important, and that is the absolute question of survival, survival; ability to live, of Nantahala Power & Light Company...." (p. 41 of Transcript of E-13, Sub 29 - Oral Argument)

or referring to the refunds:

"We haven't got that cash in the bank, but we have got the property and when we paint the black picture about what could happen if you suddenly put the screws to us and say, we don't care about the ratepayers, we don't care about the people in Southwestern North Carolina who want electricity to see at night or to heat water or to run the machines in their factories or the lathes in their little woodworking shops; we don't care about any of them; we want money." (p. 65, Tr.)

or again:

"Before you come down and say, quote, "close your doors, Nantahala, to give these people some money now and let them sleep in the heat tonight and in the dark because there is no air-conditioning and no electricity, or next winter in the cold..." (p.66, Tr.)

HORROR OF HORRORS! Surely it would never be possible for a responsible regulatory body to take actions that would lead to the disastrous results so dramatically described by Nantahala's attorneys.

Aligned with the red flag of horror, was painted a plaintive almost pitiful picture of a small struggling corporation, composed of a few dedicated hard-working and bewildered employees, who were struggling to keep their heads above the water while besieged by a mighty malevolent regulatory body who was determined to bring about the eminent destruction of their company. HOGWASH!

These have been the pictures verbally painted, and painted flamboyantly, not to say luridly, for all to hear. This is the fiction that has been placed before us so vividly that it has taken on the semblance of a drama. Now let us return to reality.

1. Since 1971, Nantahala has continued to collect rates from its ratepayers which sufficiently cover all of its costs and while those rates have been found to be excessive by the Commission and the Courts, nonetheless Nantahala's ratepayers have continued to pay them.

2. The refunds that were ordered by this Commission in E-13, Sub 29 and Sub 35, were ordered to be paid by Nantahala, to the extent that it was able to do so, and by Alcoa. If the Commission's Orders are upheld by the Supreme Court of North Carolina, as they have been by the North Carolina Court of Appeals, it is likely that again the refunds will be ordered to be paid by both Nantahala and Alcoa. In written documents filed with the Commission, Alcoa has conceded that Nantahala is only able to pay two million dollars worth of refunds and that in the event the Commission's Orders are upheld, the rest of the obligation to refund will become Alcoa's

3. Even in the event that Alcoa was found not to be liable for making the refunds, and Nantahala was ordered to do so, this Commission has an obligation to see that any utility continue to provide adequate service to its customers. Even in the cases where small water companies with only twenty customers have gotten into financial difficulties, this Commission has acted promptly to assure that there would be adequate maintenance of the system and continued service to all customers.

So we see the spectre of no heat, no light, and no power "to run the machines in their factories or the lathes in their little woodworking shops" bears more resemblance to an old melodrama than it does to the facts of this case and of regulation in general. Having been bombarded by this hyperbole in innumerable hearings, it has gradually lost its effect to shock or even to worry us. There will be no loss of service to Nantahala's customers.

Now to the second red flag or perhaps more properly, red herring. The employees of Nantahala, good, hard-working, industrious mountain people will lose their jobs and be taken over by some non-caring, out-of-State giant corporation who will not maintain the level of service that present Nantahala employees provide their customers. This is stated, or sometimes implied, although at present Nantahala Power and Light Company is owned by a Fortune 500 Company whose headquarters are in Pittsburgh, Pennsylvania. The board of directors of Nantahala are appointed by Alcoa; its chief executive is chosen by Alcoa. Even if the ownership of Nantahala were transferred to an out-of-State "carpet-bagger", could it be much worse than the present situation? Alcoa has stated on numerous occasions that it intends to make no more investment in Nantahala Power and Light Company. Alcoa will not provide its subsidiary with any "comfort letter" to any financial institution which would enable Nantahala to undertake the needed renovation of its electric facilities and extension of its lines. It is Alcoa's overweening desire to retain the bulk of the hydro-electric power generated by the "Alcoa System" for its smelting operations in Tennessee. Therefore, Nantahala is presently owned, not only by an out-of-State indifference corporation, but far worse, by an out-of-State corporation whose interests are antithetical to those of its subsidiary Nantahala and to Nantahala's obligation to serve its customers in Western North Carolina. The red flags and/or red herrings are nothing more than "sound and fury signifying nothing".

The majority fails to understand a fundamental fact in determining that Nantahala Power and Light is a "stand alone" electric utility and should be treated independently of Tapoco in this proceeding. The fact is that a purchase power agreement between Nantahala Power and Light and TVA has not changed what the Commission and the Courts decided in the previous two cases (E-13, Sub 29 and E-13, Sub 35). These cases found that: (1) The Nantahala and Tapoco electric facilities constitute a single, integrated electric system and (2) for purpose of setting rates the Nantahala and Tapoco systems should be treated as one entity with respect to all matters affecting the determination of Nantahala's reasonable cost of service applicable to its North Carolina operations and (3) the roll-in methodology was the most appropriate for use in making jurisdictional cost and service allocations.

In its opinion, Utilities Commission v. Edmisten, 299 N.C. 432, the Supreme Court concluded that the Nantahala-Tapoco electrical system is a single system:

"In light of the foregoing, we cannot agree with the Commission that the evidence is insufficient to warrant the treatment of Nantahala and Tapoco as a single system for rate making purposes. The 'roll-in' device, or technique, for rate making computation seems especially appropriate in a case such as this where one physically integrated system interconnected in such a way that all power available to the system can be used to enhance its overall reliability and supply its requirements as a whole, is presided over by two corporate entities (See, e.g., Central Kansas Power Co. v. State Corporation Commission, 221 Kan. 505, 561 P. 2d 779 (1977)). This is especially true when both corporate entities are wholly owned by a parent corporation which benefits from the power generated by the system. This device does nothing more than recognize that the two corporate entities ought, for rate making accounting purposes, be treated as the one electrical power producing and distribution system which, in fact, they are. If the then unlawful preferences are indeed accorded to Alcoa to the detriment of Nantahala's customers because of the separate corporate structures and the intercorporate apportionment agreements, this rate making device would seem to eliminate them..."

The Court in that opinion recognized that the separate corporate structure of Alcoa, Nantahala Power and Light and Tapoco and the intercorporate apportionment agreements were inequitable to retail customers, only because both Nantahala and Tapoco ought, for rate-making accounting purposes, be treated as one electrical system. The Fontana and apportionment agreements, were only mechanisms in a power supply arrangement that allocated the total hydro resources of the Alcoa system to Alcoa's private use and to the public load of Nantahala Power and Light. The Commission found this arrangement to conceal benefits that should have been flowing to the public load; that unlawful preferences were indeed accorded to Alcoa to the detriment of Nantahala's customers.

Principally, the only change that has occurred since E-13, Sub 35 that the majority relies on for their "stand alone" decision is the new purchase power contract. But, again, this is only a mechanism to allocate hydro resources of the total Alcoa electric system to Alcoa's private use and the public load of Nantahala. Because one allocation mechanism, albeit an inequitable one, has been replaced with another does not in itself mean that equity has prevailed. On its face the new interconnection purchase power agreement with TVA appears to be a good contract until the real test of allocation of power resources is applied.

Alcoa has not put the interest of the public load on an equal basis with its own interest in aluminum production with respect to the hydro-electric resources of Tapoco as well as Nantahala Power and Light. Alcoa is attempting to isolate Nantahala Power and Light and its public load and retain the hydro-electric resources of Tapoco solely for its aluminum operation in Tennessee. The following data represents the hydro capabilities on the Alcoa system:

| | |
|---|---|
| Dependable capacity for NP&L 11 projects | 85.4 MW |
| Dependable capacity for Tapoco projects | 302.8 MW |
| Less Reserves at 3% | 11.3 MW |
| New firm capacity available to meet the load | 376.9 MW |

Under the new purchase power contract Nantahala Power and Light is allocated 22.7% of the hydro resources, which also are the smaller and more expensive developments, while Alcoa took, through its other subsidiary Tapoco, generation from the larger and less expensive projects. This is just another episode in this history of discriminatory treatment of the public load of Alcoa which could have been stopped by this Commission through the use of the roll-in methodology in this proceeding.

The preceding facts and conclusions are those we have come to after long and hard study. The facts have not changed insofar as the interrelationship of Alcoa, Tapoco and Nantahala are concerned. We, therefore, find it exceedingly difficult to accept the fact that a "roll-in" of all the power producers in the Nantahala system is not still an appropriate rate-making device to protect Nantahala's ratepayers from exessive rates. The effect of a simple change in the power supply agreements with TVA does not in any way alter the interrelationship of the three corporations in the "Alcoa System". The full Commission has already taken a stand that Nantahala receives less power than it deserves by bringing a 202B Action at the Federal Energy Regulatory Commission. We find it inconsistent that the Commission can on the one hand pursue a fairer distribution of the Alcoa System power to Nantahala at the Federal Energy Regulatory Commission and at the same time deny the roll-in device which allocates a fairer share of the power of the Alcoa System to Nantahala in a North Carolina jurisdictional rate case.

Sarah Lindsay Tate, Commissioner
Douglas P. Leary, Commissioner

DOCKET NO. E-34, SUB 23

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application by New River Light and Power | ) | ORDER GRANTING |
| Company for Authority to Adjust and | ) | INCREASE IN RATES |
| Increase Its Electric Rates and Charges | ) | AND CHARGES |

HEARD IN: Watauga County Courthouse, West King Street, Boone, North Carolina, on November 15, 1984, and the Commission Hearing Room No. 217, Dobbs Building, Raleigh, North Carolina on December 4, 1984.

BEFORE: Commissioner Ruth E. Cook, Presiding; Commissioners Robert K. Koger, and Hugh A. Crigler, Jr., (Wilson B. Partin, Jr. - Hearing Examiner in Boone, North Carolina)

APPEARANCES:

For the Applicant:

James M. Deal, Jr., Attorney at Law, P.O. Box 311, Boone, North Carolina 28607
For: New River Light and Power Company

For the Intervenor:

Theodore C. Brown, Jr., 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 July 18, 1984, New River Light and Power Company (New River, the Applicant, or the Company) filed an Application with the North Carolina Utilities Commission seeking authority to adjust and increase its rates and charges for electric service to retail customers in North Carolina.

By Order issued on August 8, 1984, 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, 1983, and required the Company to give notice to its customers of the proposed rate increase and the hearing.

On October 19, 1984, the Commission issued an Order setting a hearing for Raleigh, North Carolina on December 4, 1984, for the purpose of receiving expert testimony to be offered by the Company, the Public Staff, and any other intervenors. The hearing scheduled in Boone, North Carolina for November 14, 1984, to receive the testimony of public witnesses was rescheduled for November 15, 1984, due to scheduling conflicts with the Commission, and a Hearing Examiner was ordered to preside.

The matter came on for hearing as ordered on November 15, 1984, before the Commission Hearing Examiner, for the purpose of hearing testimony from the Company's customers. No public witnesses appeared or offered testimony at the hearing.

On November 21, 1984, the Commission in response to a motion filed by the Public Staff on November 16, 1984, ordered the Applicant to file any new data, information relating to a change of position or numbers, supplemental data, updated figures, and revenues or expenses relating to the test period or thereafter, on or before November 26, 1984, which would influence the hearing.

The matter came on for hearing as ordered on December 4, 1984, at 9:30 a.m., for the purpose of presenting evidence. The intervention of the Public Staff was recognized pursuant to Commission Rule R1-19(e). There were no other Intervenors in this proceeding.

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) Terry Edwards, Internal Auditor 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) George T. Sessoms, Jr., Public Utilities Financial Analyst, Public Staff Economic Research Division; (2) Benjamin R. Turner, an engineer in the Electric Division of the Public Staff; and (3) Wendolyn M. Comes, Staff Accountant, Accounting Division of the Public Staff.

All parties to the proceeding were provided an opportunity to file proposed orders with the Commission. They were required to be filed on or before December 17, 1984.

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 filed in 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 Appalachian State University, governed by the Board of Director's of the Endowment Fund 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. New River is lawfully before the Commission seeking an increase in its basic rates and charges for retail electric service pursuant to Chapter 62 of the General Statutes of North Carolina.

4. The test period for purposes of this proceeding is the 12-month period ended December 31, 1983, adjusted for certain changes based upon circumstances and events occurring up to the time of the close of the hearing in this docket.

5. The quality of retail electric service which the Company is furnishing to customers in its service area in and around Boone, North Carolina, is satisfactory.

6. New River Light and Power Company's reasonable original cost rate base used and useful in providing service to its customers is $7,149,406; consisting of electric plant in service of $6,003,624, power supply investment (capital credits) of $2,201,936, and a working capital allowance of $186,125, reduced by accumulated depreciation of $1,242,279.

7. New River sought rates to produce jurisdictional revenues of $7,621,337 based upon a test year ending December 31, 1983. Revenues under present rates, according to the Company, were $7,364,021, thereby necessitating an increase of $257,316.

8. It is appropriate to reflect the effects of House Bill 1513, which becomes effective on January 1, 1985, as it affects New River and its customers in this proceeding.

9. The reasonable level of test year operating revenue deductions for the Company after end-of-period, accounting, and pro forma adjustments is $6,602,474.

10. New River Light and Power Company shall discuss with the Public Staff its requirements for outside consulting services in its next general rate case proceeding prior to obtaining such services.

11. The Company shall prospectively account for salvage value in accordance with National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts guidelines.

12. In future proceedings before this Commission, interest income earned on undeliverable refunds shall be treated as operating revenue.

13. The overall rate of return which the Company should be allowed to earn on the original cost rate base is 13.81%. This overall rate of return is derived by granting a 14.35% cost of equity on an equity ratio of 91.93% and a 7.65% cost of debt on a debt ratio of 8.07%.

14. Based on the foregoing, New River should increase its annual level of gross revenues under present rates by $233,247. The annual revenue requirement approved herein is $7,597,268, which will allow New River a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of New River Light and Power Company's property used and useful in providing service to its customers and its reasonable test year operating revenues and expenses adjusted for the effects of House Bill 1513 as previously set forth in these findings of fact.

15. The Schedule of Rates attached hereto as Appendix A of this Order is found to be just and reasonable and such Schedule should be used by the Company to generate the level of revenues found to be appropriate in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence for these findings is contained in the verified Application, Chapter 62 of the General Statutes of North Carolina, the Commission's files and records regarding this proceeding, the Commission's Orders pursuant to this hearing, the testimony and exhibits of Company witnesses Trivette, Cohn, and Austin, and the testimony and exhibits of Public Staff witnesses Comes and Turner. 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 prior to the close of the hearing 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, 1983, 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. 5

The evidence for this finding is to be found in the testimony of Company witness Austin and in consideration of a rebuttable assumption 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 this 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 the Company is providing adequate and satisfactory service to retail electric customers in its service area in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Austin and Public Staff witness Comes presented testimony regarding New River's reasonable original cost rate base. Under cross examination by the Public Staff, Company witness Austin accepted the figures of the Public Staff regarding original cost rate base. Further, witness Austin testified that although there were operating expense differences between the parties that would affect the working capital allowance included in rate base, the increase in working capital would be so small that he did not recommend a change in rate base. The following table summarizes the amounts which the Company and the Public Staff have agreed upon for use in this proceeding.

| Item | Amount |
|---|---|
| Electric plant in service | $6,003,624 |
| Accumulated depreciation | (1,242,279) |
| Power supply investment (capital credits) | 2,201,936 |
| Allowance for working capital | 184,590 |
| Original cost rate base | $7,147,871 |

Based on the foregoing, and the evidence and conclusions discussed in Finding of Fact No. 9 wherein the Commission concludes that the appropriate level of operation and maintenance expense is $569,237, the Commission finds that the appropriate original cost rate base for use herein is $7,149,406.

The difference of $1,535 ($7,149,406 minus $7,147,871) between the Commission's rate base and the parties' rate base results from the Commission's adjustment to increase working capital of $1,535 (1/8 of $12,275) to reflect the increase in the level of operation and maintenance expenses for rate case expenses and employee overtime expenses. The Commission agrees with the parties' levels of electric plant in service, accumulated depreciation, and power supply investments and finds that the allowance for working capital of $186,125 is appropriate rather than the proposed amount of $184,590.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

In his prefiled testimony, Company witness Austin proposed total operating revenues of $7,143,994 under present rates. Public Staff witness Comes adjusted the Company's total operating revenue by including revenues of $802 from the sale of surplus property and further increased revenues by $219,225 for a customer growth adjustment as determined by Public Staff witness Turner yielding an adjusted total operating revenue level of $7,364,021 under present rates.

The Company did not object to either of these adjustments to total operating revenues by the Public Staff. The Commission concludes that the customer growth adjustment to revenue 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 of $174,293 which is subsequently allowed herein and discussed in the Evidence and Conclusions for Finding of Fact No. 9. The Commission also agrees with the Public Staff's inclusion of income from the sale of surplus property in other electric revenue which is an above the line operating revenue account.

The Commission concludes, based upon the foregoing, that total operating revenue for the test year under present rates of $7,364,021 is appropriate for use herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding was presented at the hearing by Company witness Austin and Public Staff witness Comes. Company witness Austin discussed House Bill 1513 as having the following effects on the Company's operations: (1) Blue Ridge Electric Membership Corporation (BREMCO), the Company's supplier, will reduce its tariffs effective January 1, 1985, to

reflect the revised gross receipts tax by dividing its present rates by 1.06; (2) the Company's tariffs effective January 1, 1985, will include a 3.22% franchise tax which the Company will be responsible for submitting to the North Carolina Department of Revenue on a quarterly basis; and (3) also effective January 1, 1985, New River customers will be charged a 3% North Carolina sales tax to be shown separately on their bill. The Company will be responsible for submitting sales tax collections to the North Carolina Department of Revenue quarterly. Witness Comes agreed with witness Austin that House Bill 1513 would have these above mentioned effects on New River. The Company and the Public Staff agreed prior to the hearing and testified accordingly before the Commission that House Bill 1513 should be applied to the test year operations in order to determine the effects of the Bill on the current level of operating expenses. The impact on present operating expenses of House Bill 1513 according to witnesses Austin and Comes would be that purchase power cost would be decreased by $336,373 ($5,942,596 - ($5,942,596 divided by 1.06)) and gross receipts tax would be increased by $236,719 ($7,351,508 times 3.22%).

The Commission takes judicial notice here of House Bill 1513 entitled "An Act to Change the State Tax Structure for Commodities and Services Provided By Certain Utilities to Enable Individuals to Deduct the Taxes on These Commodities and Services From Their Federal Income." The effective date of the bill is January 1, 1985.

In view of the date of this Order, the effective date of the bill and its applicability to New River, the Commission finds it proper to reflect herein the effects of House Bill 1513. Further, the Commission agrees with the joint proposal of the Company and the Public Staff as to what the actual adjustments should be to reflect the effect of House Bill 1513 on present rates, i.e. purchase power costs shall be reduced by $336,373 and gross receipts tax shall be increased $236,719.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is found in the supplemental testimony and exhibits of Company witness Austin and the testimony and exhibits of Public Staff witness Comes.

Company witness Austin accepted most of the Public Staff's operating revenue deduction adjustments. The differences between the parties, excluding the effects of House Bill 1513, as addressed in Austin Public Staff Cross Examination Exhibit 2 are presented below.

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Purchased power | $5,942,596 | $5,942,596 | $ - |
| Operation and maintenance | 569,237 | 556,962 | 12,275 |
| Depreciation expense | 187,021 | 187,021 | - |
| Miscellaneous expense | 3,274 | 3,274 | - |
| Total operating revenue deductions | $6,702,128 | $6,689,853 | $12,275 |

The $12,275 difference in operation and maintenance expense reflects the two remaining areas of difference between the Company and the Public Staff. The items of difference are rate case expense and payroll expense; in the amounts of $7,958 and $4,317 respectively.

The first item of difference concerns the appropriate level of rate case expense to be amortized. As described in Evidence and Conclusions for Finding of Fact No. 10, the Company increased its original estimate of rate case expense from $5,760 to $37,593 resulting in a $7,958 increase in the amortized expense from $1,440 to $9,398, which reflects a four year amortization period. Public Staff witness Comes agreed with the Company's adjustment to reflect the revised estimates for the amortization during cross-examination by the Company. Based on the foregoing, the Commission finds it appropriate to reflect the additional $7,958 of rate case expense amortization in operation and maintenance expenses. The Commission believes, as discussed further in Evidence and Conclusions for Finding of Fact No. 10, that in future general rate case proceedings, prior to obtaining outside consulting services, the Company should seek the assistance of the Public Staff in determining its requirements for outside consulting services.

The $4,317 payroll expense difference is due to the parties' different positions concerning overtime pay and related FICA and retirement expenses. The Company's position regarding overtime pay was that overtime wages were a legitimate expense that could be expected to be recurring and are a normal part of operations for an electric utility. Witness Austin testified that, regardless of the staff level, overtime will occur to meet the need to provide continuity of service, and to correct outages occurring after normal working hours. Furthermore, witness Austin testified that even though the Company has just recently added a new employee (lineman trainee) it will still be necessary for the Company to incur overtime. In discussing the duties of the lineman trainee, witness Austin pointed out that this employee would not be able to handle live conductors until after two years of training.

Public Staff witness Comes testified that the justification for her position of including the expense of an employee added after the end of the test year (lineman trainee) was that due to the shortage of employees the existing employees were required to work overtime. Witness Comes also testified that the addition of the new employee would eliminate the need to work overtime in the future. The position taken by witness Comes was that either the additional salary for the new employee or the overtime expense should be included in test year operation and maintenance expense but not both. Witness Comes testified on re-direct that with the inclusion of the salary of the new employee test year expenses were at a representative level.

Based on the foregoing, the Commission finds that the overtime expense adjustment of $4,317 requested by the Company is necessary and appropriate in light of witness Austin's testimony that even with the new employee it will still be necessary for the Company to incur overtime. Further, the Commission concludes that the Company's requested overtime expense is a part of the Company's normal operations and finds that the proper level of operation and maintenance expense for use in this proceeding is $569,237.

During the hearing the effect of House Bill 1513 on New River was addressed by both the Company and the Public Staff. Company witness Austin

testified that the Company's supplier of electric power would adjust its rates effective January 1, 1985, by dividing the current purchased power rates by 1.06. Witness Austin further testified that New River would be subject to a 3.22% franchise tax on electric sales and miscellaneous service revenues.

Public Staff witness Comes provided adjusted test year figures for purchased power cost and gross receipts tax based on these changes. She testified that the adjusted purchased power cost would be reduced by $336,373 to $5,606,223. She testified that this revised purchased power cost amount was derived by dividing the adjusted test year purchased power cost of $5,942,596 by 1.06. Witness Comes further testified that the 3.22% gross receipts tax rate on electric sales revenue of $7,299,057 and miscellaneous service revenue of $52,451 results in $236,719 of gross receipts taxes for which New River would be responsible for under House Bill 1513. She pointed out that prior to House Bill 1513 New River paid gross receipts taxes only indirectly through the payment of purchased power costs to BREMCO at a rate of 6%. Effective January 1, 1985, New River will begin directly paying gross receipts taxes on all of its electric sales revenues and miscellaneous service revenues at a rate of 3.22%. The previously described adjustments to purchased power costs and gross receipts taxes are reflective of this tax change.

The Commission notes here its previous conclusions in Evidence and Conclusions for Finding of Fact No. 8 to reflect the effects of House Bill 1513 herein. Based on the foregoing, the Commission finds it appropriate to reduce purchased power expense by $336,373 and to increase gross receipts taxes by $236,719 to reflect House Bill 1513.

Based on the foregoing, the Commission finds and concludes that the reasonable level of test year operating revenue deductions for the purposes of this proceeding is $6,602,474. This figure is composed of the following items:

| Item | Amount |
|---|---|
| Purchased power | $5,606,223 |
| Operation and maintenance expense | 569,237 |
| Depreciation expense | 187,021 |
| Miscellaneous expense | 3,274 |
| Gross receipts tax | 236,719 |
| Total operating revenue deductions | $6,602,474 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence bearing on the issue of engineering costs was presented by Company witness Austin. Under cross-examination, witness Austin testified to the fact that New River had used the services of Southeastern Consulting Engineers, Inc., for the past twenty-three years, and that no other consulting companies had been contacted regarding work on this rate case and no other bids had been received. Witness Austin did comment to the fact that the Company was like other State agencies and does solicit bids for other services.

Considering the fact that the engineering and consulting fees increased from the prefiled amount of $2,310 to that of $31,236 entered into the record in supplemental testimony of witness Austin; and that this information was

unaudited due to the hand delivery of the data request the afternoon preceeding the hearing; the Commission is of the opinion that New River should consult with the Public Staff prior to filing its next general rate case in order to discuss the use of outside consulting services for assisting in rate case preparation, including a discussion of the scope of such work and the cost of obtaining outside services to do such work. The purpose of such discussions is to give the Public Staff an opportunity to evaluate the use of outside consulting services in order to insure that the ratepayers will not bear any undue burden for excessive rate case expenses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Public Staff witness Comes presented testimony regarding the treatment of income from the sale of surplus property. Witness Comes testified that this income comes about when New River sells scrap from retired utility plant to other companies, which is not useable by the Company. Further, witness Comes testified that the Company has been treating this income as non operating revenue. Witness Comes pointed out that the NARUC Uniform System of Accounts requires that the salvage value of retirement units be credited to the accumulated provision for depreciation applicable to such property and recommended that in the future the Company follow such treatment. The Company did not dispute the Public Staff's recommendation regarding the prospective treatment of income from the sale of surplus property.

Based on the foregoing and the Commission Rule R8-27 which adopts the NARUC Uniform System of Accounts for electric utilities, the Commission finds that the guidelines of the NARUC Uniform System of Accounts relating to the accounting treatment for the salvage value of retirement property are appropriate and New River should adhere to these guidelines in the future.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding was presented by Public Staff witness Comes. According to witness Comes, the Company began depositing undeliverable refunds in an interest bearing account in March 1984, after the end of the test year. Witness Comes recommended that the interest earned on these undeliverable refunds should be accounted for above the line in an operating revenue account. Such treatment, according to witness Comes, would allow the ratepayers to receive the benefit of any income generated by these funds resulting from past overcharges by New River to its ratepayers. The Company did not dispute witness Comes' recommendation.

Based on the foregoing, the Commission finds that in future rate case proceedings interest income earned on undeliverable customer refunds shall be treated as operating revenue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Two witnesses testified as to the appropriate capitalization structure, embedded cost of debt and rate of return on common equity for New River. The Company presented the testimony and exhibits of witness Austin and the Public Staff presented the testimony and exhibits of witness Sessoms.

In his original pre-filed testimony, witness Austin recommended that the Commission allow the Company to earn a rate of return of 14.6% on common equity and an embedded cost of debt of 5.89%. Witness Austin further recommended that the Commission establish the revenue requirements of the Company in this proceeding using the actual capital structure of the Company at the end of the test year which consisted of 6.64% debt and 93.36% equity.

Public Staff witness Sessoms recommended the Commission grant the Company a 14.6% rate of return on common equity and a 7.65% cost of debt. Witness Sessoms further recommended that a hypothetical capital structure consisting of 12.5% debt and 87.5% common equity be used by the Commission to establish the revenue requirements for New River. The 14.6% return on common equity recommended by witness Sessoms was contingent upon the acceptance of the Public Staff's proposed capital structure. Witness Sessoms stated that a rate of return on equity of 14.25% would be appropriate for the Company based upon the Company's proposed capital structure which consists of 6.64% debt and 93.36% common equity. It was witness Sessoms opinion that the equity ratio requested by the Company of over 93% was much too conservative based upon a comparison of the business and financial risk of the Company to other electric utilities. Witness Sessoms testified that an analysis of the publicly-traded electric utilities common equity ratios indicated that such ratios were in the range of 32%-54% with a median common equity ratio of 41%. Witness Sessoms further stated that in comparison to these electric utilities, New River had less business risk. On cross-examination, witness Sessoms recognized that the equity ratio of New River had decreased from the 98.14% equity ratio established in the Company's last general rate proceeding.

In supplemental testimony, Company witness Austin objected to the use of a capital structure other than the actual capital structure of the Company. Witness Austin further increased the embedded cost of debt to 7.65% to reflect the Company's debt restructuring which occurred subsequent to the end of the test year. However, he did not think it appropriate to use the latest known capital structure of 91.93% equity and 8.07% debt from which the 7.65% cost of debt was derived unless other items such as rate base were also updated. Witness Austin stated that it was the policy of the Company to finance with debt to obtain major capital investments.

The Commission has carefully considered the recommendations of the Company and Public Staff regarding the appropriate capitalization structure, embedded cost of debt, and return on common equity for New River. The Commission believes that the latest known capital structure of 8.07% debt and 91.93% common equity is the most appropriate capital structure to use in establishing rates for the Company in this proceeding. The approved capital structure reflects a debt restructuring of the Company which occurred subsequent to the end of the test year and is thus more reflective of the on-going capital structure anticipated for the Company in the future. In the Commission's opinion the use of the latest known capital structure does not violate the matching concept in this instance and does not necessitate further adjustments to revenues, expenses or rate base.

The Commission further concurs with the embedded cost of debt recommended by both the Company and Public Staff of 7.65%. Consistent with the capital structure found fair herein for the Company, the Commission finds a 14.35% return on equity just and reasonable for New River. The decisions reached by

the Commission in this regard result in an overall rate of return for New River of 13.81%.

In the Commission's opinion the overall rate of return of 13.81% approved herein is adequate and affords the Company a fair opportunity to earn a reasonable return for the Endowment Fund while providing satisfactory and economical service to the ratepayers. The Commission requests New River to actively seek to reduce its common equity ratio where practical and feasible in order to capture the benefits of financial leverage for the ratepayers of the Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which New River 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 determinations made 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
NEW RIVER LIGHT AND POWER COMPANY
Docket No. E-34, Sub 23
Statement of Operating Income
For The Twelve Months Ended December 31, 1983

| Item | Present Rates | Approved Increase | Approved Rates |
|---|---|---|---|
| Operating Revenue | | | |
| Total electric sales | $7,299,057 | $233,247 | $7,532,304 |
| Miscellaneous revenue | 52,451 | | 52,451 |
| Rent from electric property | 11,651 | | 11,651 |
| Other electric revenue | 862 | | 862 |
| Total operating revenues | 7,364,021 | 233,247 | 7,597,268 |
| Operating Revenue Deductions | | | |
| Purchased power | 5,606,223 | | 5,606,223 |
| Operations and maintenance | 569,237 | | 569,237 |
| Depreciation expense | 187,021 | | 187,021 |
| Gross receipts tax | 236,719 | 7,511 | 244,230 |
| Miscellaneous expense | 3,274 | | 3,274 |
| Total operating expenses | 6,602,474 | 7,511 | 6,609,985 |
| Net Operating Income for Return | $ 761,547 | $225,736 | $ 987,283 |

SCHEDULE II
NEW RIVER LIGHT AND POWER COMPANY
Docket No. E-34, Sub 23
Statement of Rate Base and Rate of Return
Twelve Months Ended December 31, 1983

| Item | Present Rates | Approved Rates |
|---|---|---|
| Investment In Plant | | |
| Electric plant in service | $6,003,624 | $6,003,624 |
| Accumulated depreciation | (1,242,279) | (1,242,279) |
| Net investment in plant | 4,761,345 | 4,761,345 |
| Power Supply Investment | 2,201,936 | 2,201,936 |
| Allowance For Working Capital | | |
| Cash allowance | 71,155 | 71,155 |
| Materials and supplies | 188,718 | 188,718 |
| Prepaid expenses | 2,914 | 2,914 |
| Customer deposits | (76,662) | (76,662) |
| Total working capital | 186,125 | 186,125 |
| Original Cost Rate Base | $7,149,406 | $7,149,406 |
| Rate of Return | 10.65% | 13.81% |

SCHEDULE III
NEW RIVER LIGHT AND POWER COMPANY
Docket No. E-34, Sub 23
Statement of Capitalization and Related Costs
Twelve Months Ended December 31, 1983

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates | | | |
| Long-term debt | 8.07% | $ 576,957 | 7.65% | $ 44,137 |
| Common equity | 91.93% | 6,572,449 | 10.92% | 717,410 |
| Total | 100.00% | $7,149,406 | - | $761,547 |
| | Approved Rates | | | |
| Long-term debt | 8.07% | $ 576,957 | 7.65% | $ 44,137 |
| Common equity | 91.93% | 6,572,449 | 14.35% | 943,146 |
| Total | 100.00% | $7,149,406 | - | $987,283 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence relating to cost-of-service allocations and rate design is contained in the testimony of Company witness Cohn and Public Staff witness Turner.

Witness Cohn testified that he prepared rates which would improve the Company's cost recovery and would preserve the equity of cost between customer classes. He stated that proposed revenues were determined by preparing a bill frequency distribution for each rate class from the master file, with consumption data derived from the entire customer population instead of from sampling.

Witness Cohn stated that demand charges were the primary controlling factor in deriving the proposed rates. In the commercial rates proposed by witness Cohn, the demand charge was increased while the energy charge was reduced in order to limit the net increase to approximately 6%. In the industrial rate, which is a load factor rate, the increase has been made in the first 125 hours' use block, which also has the effect of increasing the demand charge.

Witness Turner concurred with the rate design proposed by witness Cohn except that he proposed an increase in the residential basic customer charge of $3.00 to a charge of $3.50 per month. In addition, based on the results of his cost-of-service study, he recommended that the percentage increase not be applied equally to all classes. Witness Turner recommended a lesser increase for the commercial class in order to bring this class' rate of return, to the extent possible, within ±10% of the overall rate of return.

The Commission is aware that the basic customer cost is believed to significantly exceed $3.50 per month per customer, and that the $3.50 basic customer charge would be closer to cost based rates than the present rates.

The cost-of-service study made by witness Turner shows that under present rates the rates of return for all classes are outside the ±10% band. Witness Turner concluded based on these results that an across-the-board increase of approximately 6% as proposed by the Company was inappropriate. To compensate, he recommended that the level of revenues proposed for the commercial class be reduced by the difference between the Company's proposed level of revenues and that proposed by the Public Staff. Witness Turner further recommended that the other rate schedules be increased as proposed by the Company.

On cross-examination, witness Cohn stated that he had not made a cost-of-service study for this rate case but had relied on the cost-ofservice study made by the Public Staff in the Company's last rate case, Docket No. E-34, Sub 14. Witness Cohn further stated that the cost-of-service study made by witness Turner in this case was appropriate and that without such a study one was not able to determine whether or not rates of return by customer class were within the Commission's design guideline of ±10% of the overall rate of return.

Based on the foregoing, the Commission concludes that the basic customer charge for residential service should be increased to $3.50 per month from $3.00 per month and that the revenue requirement proposed for the commercial

class should be reduced by the difference between the revenues proposed by the Company and the revenues approved herein.

The Commission further concludes with respect to the effect of the recently enacted Franchise Tax (House Bill 1513), previously discussed in the Evidence and Conclusions for Findings of Fact Nos. 8 and 9, that all energy charges for which an increase was proposed shall be reduced to account for the effect of the gross receipts tax charge on net revenue.

IT IS, THEREFORE, ORDERED as follows:

1. That New River Light and Power Company is hereby allowed to adjust and increase its rates and charges so as to produce annual revenues from operations, including miscellaneous and other revenues, of $7,597,268. This level of operating revenues includes an approved increase in annual rates and charges of $233,247.

2. That the rates proposed by New River are in excess of those which are just and reasonable and are hereby disapproved and denied.

3. That the Company shall file, not later than ten days 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. 15 described herein.

4. That, unless suspended by further Order of the Commission, such revised tariffs shall be effective for all service rendered on and after January 1, 1985.

5. That New River shall notify its customers of the increased rates approved herein and the recent enactment by the North Carolina Legislature of the Franchise Tax (House Bill 1513) which affects all customers by appropriate bill insert shown in Appendix B in each customers next regular billing cycle. The issuance of this customer notice (Appendix B) relieves the Company from the requirements of the December 10, 1984, Commission Order in Docket No. M-100, Sub 103, establishing customer notice requirements for explaining changes contained in House Bill 1513.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of December 1984.

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

APPENDIX A
DOCKET NO. E-34, SUB 23
NEW RIVER LIGHT AND POWER COMPANY RETAIL RATES

| | |
|---|---|
| Schedule R | |
| Customer Charge per bill | $ 3.50 |
| Energy Charge per kWh | $ 0.05827 |
| Schedule G for Commercial Use | |
| (usage less than 3,000 kWh/month) | |
| Customer Charge per bill | $ 7.00 |
| Energy Charge per kWh | $ 0.05232 |
| Schedule GL for Large Commercial Use | |
| (Monthly usage over 3,000 kWh) | |
| Customer Charge per bill | $ 7.00 |
| Demand Charge per kW | $ 2.95 |
| Energy Charge per kWh | $ 0.04035 |
| Schedule I for Industrial Use | |
| Customer Charge per bill | $13.00 |
| Energy Charge per kWh | |
| First 125 kWh per kW | $ 0.05846 |
| Next 275 kWh per kW | $ 0.04785 |
| Over 400 kWh per kW | $ 0.04579 |
| Schedule A for Appalachian State University | |
| Customer Charge per bill | $13.00 |
| Energy Charge per kWh | $ 0.05678 |
| Security Lights | |
| Flat Charge per lamp per bill | $ 6.43 |

APPENDIX B
NOTICE TO CUSTOMERS

The North Carolina Utilities Commission issued an Order on December 21, 1984 allowing New River Light & Power Company to increase its rates and charges so as to produce an annual increase in revenues of $233,247 or 3.2%. The Company had requested an annual increase in revenues of $257,316 or 3.5%.

Public hearings were held in Boone on November 15, 1984, for the purpose of hearing testimony from the Company's customers and in Raleigh, North Carolina, on December 4, 1984, for the purpose of receiving expert testimony on the matter. After consideration of the evidence presented in the case, the Commission determined that an annual increase of $233,247 is just and reasonable at this time and should be approved.

Beginning this month, a 3% state sales tax is listed on your electric bill. This listing is a result of legislation enacted by the North Carolina General Assembly and is intended to help you save on your federal income taxes.

The new sales tax listing will cause little change in the total amount of your monthly bill. The law provides that approximately one-half of the North Carolina 6% gross receipts tax, previously included in rates, become a sales tax effective January 1, 1985. New River does not currently pay gross receipts tax directly since it is a state agency. However, the Company does pay gross receipts tax indirectly through its purchased power cost. Under the new law, rates have been reduced to reflect the lower gross receipts tax paid on purchased power and the fact that sales tax is shown separately. The net result of the reduction in purchased power cost and the increased revenue requirements of the Company results in an increase of approximately 3.2% in your rates.

If you itemize deductions on your federal income tax return, the change in the law is intended to allow you to deduct the sales tax you pay on electric, natural gas, and telephone utility services each year, just as you can deduct other state sales taxes.

The Commission's approved rates reflect a reallocation of charges to the different rate classes of New River based upon a cost of service study performed by the Public Staff. New River did not oppose the approved rate structuring. A comparison of a typical bill under present rates and after the approved increase is shown below:

| Rate Class | Consumption Kwh per month | Company's Present Rates | Commission Approved Rates | Approved Rates with 3% Sales Tax |
|---|---|---|---|---|
| Residential | 500 | $ 31.08 | $ 32.64 | $ 33.62 |
| | 1000 | $ 59.16 | $ 61.77 | $.63.62 |
| General Commercial | 500 | $ 32.17 | $ 33.16 | $ 34.15 |
| | 2500 | $132.83 | $137.80 | $141.93 |

The approved rate schedule changes will become effective on service rendered on and after January 1, 1985 and are subject to purchase power adjustments.

DOCKET NO. E-22, SUB 273

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Virginia Electric and Power Company ) RECOMMENDED ORDER
for Authority to Increase Its Rates and Charges ) ON RECONSIDERATION
) REDUCING RATES

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Friday, February 24, 1984, at 10:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Edward B. Hipp and Ruth E. Cook

APPEARANCES:

For Virginia Electric and Power Company:

Guy T. Tripp, III, Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212

Edward S. Finley, Jr. and Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

For the Public Staff:

Antoinette R. Wike and Gisele L. Rankin, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Dobbs Building, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

Steven F. Bryant, Assistant Attorney General, N.C. Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Jerry B. Fruitt, Attorney at Law, P.O. Box 2507, Raleigh, North Carolina 27602
For: North Carolina Textile Manufacturers Association, Inc. (NCTMA)

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Abbott Laboratories, Inc., Schlage Lock Company, Weyerhauser Company, Champion International Corporation, and Consolidated Diesel (CIGFUR I).

BY THE COMMISSION HEARING PANEL: On December 5, 1983, the Commission entered an "Order Granting Partial Increase In Rates" in this docket whereby Virginia Electric and Power Company (Vepco) was granted an increase in gross annual revenues of $18,340,000 from its North Carolina retail opertions.

On January 4, 1984, the Public Staff and the North Carolina Textile Manufacturers Association, Inc. (NCTMA), filed motions for reconsideration and oral argument in this docket. On January 6, 1984, the Attorney General filed motion for reconsideration and oral argument.

On January 27, 1984, Virginia Electric and Power Company filed its response in opposition to the above referenced motions for reconsideration.

Oral argument was held on this matter on February 24, 1984. The Commission's treatment of the following issues were presented for reconsideration at the oral argument held on February 24, 1984:

1. Inclusion of $18,850,000 of construction work in progress (CWIP) in Vepco's rate base.

2. Determination that Vepco's fair and reasonable return on equity is 15.25%.

3. Exclusion of consideration of investment tax credit amortization after the approved increase in net income.

4. Determination that the summer-winter peak and average cost allocation is the most appropriate method of allocating costs between jurisdictions and classes of customers.

The Commission has carefully reviewed the entire record in this docket concerning the issues presented in the motions for reconsideration and at the oral argument of February 24, 1984, and concludes that the findings of fact in the Order of December 5, 1983, as they relate to Vepco's allowed return on equity, inclusion of CWIP in rate base, and the use of the summer-winter peak and average cost allocation methodology for distributing costs between jurisdictions and classes of customers, are appropriate, are fully supported by the evidence of record, and should not be reconsidered.

As to the question of the appropriate rate-making treatment to be afforded unrealized investment tax credits when determining the proper level of the gross revenue requirements needed to afford Vepco with a fair and reasonable opportunity to achieve its approved overall cost of capital, the Commission concludes that this matter should be reconsidered pursuant to G.S. 62-80 in order to allow the Commission to amend its Order of December 5, 1983. 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 Vepco and all of the other parties of record affected by the motions for reconsideration at issue herein.

In its application, and subsequent amended financial filings that were entered into evidence in this proceeding, the Company reduced its gross revenue requirements under requested rates by the amortization of additional investment tax credits that would be realized due to the increase in taxable income under the requested rates. The Public Staff accepted this adjustment,

though they adjusted the amount of the amortization to reflect the lower level of gross revenues required under the Public Staff's recommended rate increase. In its Order of December 5, 1983, the Commission disallowed this adjustment.

After again reviewing the record on this matter, the Commission concludes that the methodology advocated by the Company, and agreed to by the Public Staff, is reasonable and should be adopted. The Commission's decision to reconsider this issue, coupled with the Commission's consistent reflection in the tax calculation of the unamortized investment tax credit associated with the interest component of the Company's capital structure, will in fact serve to reduce the rates presently charged by Vepco to its retail customers in North Carolina by $308,000 on an annual basis. Such rate adjustment is certainly not arbitrary or capricious and is based upon the evidence in this case. The Commission further notes that the rate reduction ordered herein will reduce Vepco's authorized operating revenues of $118,665,000 by only .26%, while still providing the Company with a fair and reasonable opportunity to achieve its authorized rate of return on common equity of 15.25%.

Furthermore, it is clear that the rate reduction ordered herein 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, this Order on reconsideration merely constitutes an exercise by the Commission of its statutorily mandated duty to fix just and reasonable rates in North Carolina. G.S. 62-130.

Therefore, based on the foregoing, the Commission concludes that the annual gross revenue increase allowed in the Order of December 5, 1983, should be reduced by $308,000, to reflect the Commission's acceptance of the methodology adopted by both the Company and the Public Staff in this proceeding, wherein the investment tax credit amortization is adjusted to reflect the increase in gross revenues under approved rates, and to reflect the Commission's consistent treatment of the unamortized investment tax credits in determining the appropriate level of income taxes. Hence, the Commission concludes that the appropriate gross revenue increase to be afforded Vepco in this proceeding, in order that Vepco may be given a fair and reasonable opportunity to earn its cost of capital, is $18,032,000. This level is $308,000 less than the $18,340,000 increase approved in the December 5, 1983 Order.

The following schedules present the findings of the Commission as to 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.

SCHEDULE I
VIRGINIA ELECTRIC AND POWER COMPANY
North Carolina Retail Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended June 30, 1982
(Adjusted for Known Changes Occurring Subsequent to the End of the Test Year)
(000"s Omitted)

| | Present Rates | Approved Increase | After Approved Rates |
|---|---|---|---|
| Operating Revenues: | | | |
| Operating revenues | $100,633 | $18,032 | $118,665 |
| Operating Revenue Deductions: | | | |
| Operation and maintenance expenses | 53,754 | 45 | 53,799 |
| Depreciation | 9,484 | | 9,484 |
| Amortization of property losses | 3,215 | | 3,215 |
| Gain or loss on disposition of property | (3) | | (3) |
| Taxes other than income | 8,974 | 1,080 | 10,054 |
| State and Federal income taxes | 8,365 | 8,481 | 16,846 |
| Investment tax credit amortization | (587) | (303) | (890) |
| Interest on customer deposits | 47 | | 47 |
| Commitment fees | 69 | | 69 |
| Gain on Bath County sale | (59) | | (59) |
| Total operating revenue deductions | 83,259 | 9,303 | 92,562 |
| Net operating income | $ 17,374 | $ 8,729 | $ 26,103 |

SCHEDULE II
VIRGINIA ELECTRIC AND POWER COMPANY
North Carolina Retail Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended June 30, 1982
(Adjusted for Known Changes Occurring Subsequent to the End of the Test Year)
(000's Omitted)

| Item | Amount |
|---|---|
| Investment in Electric Plant: | |
| Gross electric plant in service, including nuclear fuel | $293,579 |
| Deduct: Accumulated provision for depreciation | (72,115) |
| Amortization of nuclear fuel assemblies, front-end costs | (7,566) |
| Construction Work in Progress | 18,850 |
| Plant investment less acumulated depreciation and amortization | 232,748 |
| Deduct: Cost-free capital | (14,330) |
| Total net investment in electric plant before working capital allowance | 218,418 |
| Working capital and deferred debits and credits | 15,156 |
| Original cost rate base | $233,574 |

SCHEDULE III
VIRGINIA ELECTRIC AND POWER COMPANY
North Carolina Retail Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS

Twelve Months Ended June 30, 1982

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 53.22 | $124,308 | 9.09 | 11,300 |
| Preferred stock | 10.96 | 25,600 | 8.51 | 2,179 |
| Other paid-in capital | .38 | 887 | | -0- |
| Common equity | 35.44 | 82,779 | 4.71 | 3,895 |
| Total | 100.00 | $233,574 | | $17,374 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 53.22 | $124,308 | 9.09 | $11,300 |
| Preferred stock | 10.96 | 25,600 | 8.51 | 2,179 |
| Other paid-in capital | .38 | 887 | | -0- |
| Common equity | 35.44 | 82,779 | 15.25 | $12,624 |
| Total | 100.00 | $233,574 | | $26,103 |

Based on the foregoing conclusions that Vepco's present rates, based on the Commission's Order of December 5, 1983, should be reduced, the Commission concludes that Vepco should file revised tariffs within 5 working days from the date of this Order reflecting the decrease in annual gross revenues of $308,000, found to be appropriate herein.

IT IS, THEREFORE, ORDERED as follows:

1. That Virginia Electric and Power Company be, and hereby is, ordered to reduce its rates and charges in order to reflect a decrease in annual gross revenue of $308,000, effective for service rendered on or after the effective date of this Order.

2. That Virginia Electric and Power Company be, and hereby is, ordered to file revised tariffs within 5 working days from the date of this Order reflecting the annual gross revenue decrease ordered in decretal paragraph 1 above.

3. That the Public Staff - North Carolina Utilities Commission and all other interested parties of record may file comments on the revised tariffs filed pursuant to decretal paragraph 2 above within five working days of said filing.

4. That the Commission shall issue a further Order approving the revised tariffs filed pursuant to decretal paragraph 2 above.

5. That, except as modified herein, the Commission Order heretofore entered in this docket on December 5, 1983, shall remain in full force and effect.

6. That, except as granted herein, the motions for reconsideration filed in this docket by the Public Staff, NCTMA, and the Attorney General be, and are hereby, otherwise denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of March 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

(SEAL)

Commissioner Tate, dissenting in part.

DOCKET NO. E-22, SUB 273

TATE, COMMISSIONER, Dissenting.

I respectfully dissent from the majority decision in this Reconsideration Order because I agree with the unanimous decision reached by this same Panel on December 5, 1983.

This Commisson has consistently treated Job Development Investment Tax Credit (JDITC) for all utilities in the same way. Even in the last two Vepco rate cases the Commission agreed it was improper to calculate a hypothetical tax credit as a reduction to the test year cost of service.

The problem, as simply as I can put it, is this. During the test year, Vepco did not have enough income to allow it to take advantage of JDITC. The purpose of using a test year is to allow the Commission to arrive at an annual level of revenues and expenses that will be representative in the time frame that the rates will be in effect. The "matching concept" in ratemaking requires (quite logically) that test year revenue should be properly matched with test year cost incurred in the production of said revenue. It is this fundamental matching principle that the majority now elects to disregard. While it is entirely possible that following the rate increase granted Vepco in this case, Vepco will be able to use JDITC in the future, However, I find it improper and unfair to choose just this one aspects of the increase. To be consistent, the majority should have recognized that increased income from the rate case would also result in increased rate base and an increased common equity ratio which would cause an increase in Vepco's required revenue.

Clearly, adjustments to the test year have to stop somewhere. In my view, the stopping point must be one that has fairly adjusted both sides of the ledge for the accounting adjustment made. Here only the credit was adjusted to reduce the revenue without the concommitant debits which would have required an increase in revenue--an unfair stopping point

Also, the majority has departed from the treatment given this accounting adjustment in all other cases. Ubi damna ratio, ibi eadem lex; et de similibus idem est judicium. No explanation or justification for this

departure from previous treatment is given by the majority order. I must conclude that the unspoken reason is the approximately 18> monthly reduction to Vepco's customers. A departure from sound accounting and ratemaking principles and precedent should have a sounder basis than that.

Sarah Lindsay Tate
Commissioner

DOCKET NO. E-22, SUB 278

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Proceeding to Consider Annual Fuel Charge Adjustment for Virginia Electric and Power Company Pursuant to G.S. 62-133.2 | ) ) ) | ORDER APPROVING FUEL CHARGE RATE REDUCTION |

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on November 20, 1984

BEFORE: Commissioners Edward B. Hipp (Presiding), A. Hartwell Campbell, and Ruth E. Cook

APPEARANCES:

For the Applicant:

William D. Johnson, Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

Guy T. Tripp III, Hunton & Williams, Attorneys at Law, P.O. Box 1535, Richmond, Virginia 23212
For: Virginia Electric and Power Company

For the Public Staff:

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

For Carolina Utility Customers Association, Inc:

Thomas R. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612

BY THE COMMISSION: G.S. 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuels within 12 months after the last general rate case Order for each such utility for the purpose of determining whether an increment or decrement rider is required in order to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under the base fuel rate established in the last general rate case. NCUC Rule R8-55 requires the Commission to issue an Order scheduling hearing at least 150 days prior to the date set for the hearing. The last general rate case Order for Virginia Electric and Power Company (Vepco or Company) was issued by the Commission on December 5, 1983. There has been no review of Vepco's fuel costs since that case, and therefore the present annual fuel charge adjustment proceeding is being held pursuant to G.S. 62-133.2.

By Order issued June 29, 1984, the Commission scheduled an annual fuel charge adjustment proceeding for Vepco for Tuesday, November 27, 1984, for the purpose of determining whether an increment or decrement rider is required in order to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under the base fuel rate established for Vepco in its last general rate case. Said Order required Vepco to file the information specified by NCUC Rule R8-55(b)(1) and the change in rates, if any, to be proposed by the Company at least 60 days prior to the hearing scheduled therein.

By Order issued August 7, 1984, the Commission rescheduled the hearing for Tuesday, November 20, 1984. Public notice of the rescheduled hearing was given as specified in the Orders.

On September 21, 1984, Vepco prefiled the testimony and exhibits of H. M. Wilson, Jr., M. S. Bolton, Jr., L. W. Ellis, and S. A. Hall III, plus the information and workpapers specified by NCUC Rule R8-55(b)(1).

On October 31, 1984, the Public Staff prefiled the testimony and exhibits of Dennis J. Nightingale.

On November 1, 1984, Vepco prefiled the supplemental testimony and exhibits of H. M. Wilson, Jr., M. S. Bolton, Jr., L. W. Ellis, and S. A. Hall III.

On November 2, 1984, Carolina Utility Customers Association, Inc. (C.U.C.A.), filed a petition to intervene and protest. The petition was allowed by Commission Order dated November 6, 1984.

On November 19, 1984, Guy T. Tripp, III, filed a motion to appear in the proceeding as an out-of-state attorney, and said motion was allowed by order from the bench at the time of the hearing.

The matter came on for hearing at the scheduled time and place. Vepco presented the testimony and exhibits of the following witnesses: H. M. Wilson, Jr., Manager - Rate Development for Vepco; M. S. Bolton, Jr., Director of General Accounting Services in the Accounting and Control Department, Vepco; Larry W. Ellis, Manager - Power Supply for Vepco; and S. A. Hall III, Director - Rate Application for Vepco.

The Public Staff presented the testimony and exhibits of Dennis J. Nightingale, Director of the Electric Division of the Public Staff.

No public witnesses appeared at the hearing.

Based upon a careful consideration of the entire record in this proceeding, including the testimony and exhibits received into evidence at the hearings, the Commission now makes the following

## FINDINGS OF FACT

1. Virginia Electric and Power Company is duly organized as a public utility company under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. 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. The Company has its principal offices and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding is the 12-month period of time ended September 30, 1984.

3. The base fuel component which is appropriate for use in this proceeding is 1.472¢ per kWh excluding gross receipts tax, resulting in a decrement of 0.069¢ per kWh excluding gross receipts tax from the 1.541¢ per kWh base fuel component previously established in the general rate proceeding in Docket No. E-22, Sub 273. Said 1.472¢ per kWh base fuel component reflects a nuclear capacity factor of 65.4% for the 12-month test period ended September 30, 1984.

4. The fuel charge reduction approved in this proceeding will result in a reduction in charges to Vepco's retail electric customers in North Carolina of approximately $1.4 million on an annual basis. Such reduction is just and reasonable and is based upon adjusted and reasonable fuel expenses prudently incurred by Vepco under efficient management and economic operations. Vepco's total North Carolina retail fuel related expenses during the 12-month test year ended September 30, 1984, were $27,240,824.

5. It is appropriate for the 0.069¢ per kWh decrement fuel charge adjustment to be applied to bills rendered in the Company's December 1984 billing cycle, as proposed by Vepco, in order to minimize the record keeping and administrative expense involved in otherwise prorating the customer bills.

6. It is appropriate to revise Vepco's individual retail rate schedules in order to reflect the fuel charge adjustment approved in this proceeding, to insert language on each rate schedule as necessary to show the amount of such fuel charge adjustment, and to establish a separate rider containing the fuel charge adjustment, as proposed by Vepco in this proceeding.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon a careful consideration of the entire record in this proceeding and the foregoing findings of fact, the Commission concludes that it is appropriate to approve a fuel charge adjustment for Vepco pursuant to G.S. 62-133.2 effective for bills rendered during the Company's December 1984 billing cycle resulting in a uniform decrement to base retail rates of 0.069¢ per kWh excluding gross receipts tax. This uniform decrement reflects actual changes experienced by the Company with respect to its cost of fuel and the fuel component of purchased power during the 12-month test period ended September 30, 1984. In making this determination, the Commission has carefully considered all of the evidence required by G.S. 62-133.2(c) related to changes in the cost of fuel and the fuel component of purchased power. The fuel charge adjustment approved in this proceeding for Vepco is based on adjusted and reasonable fuel expenses prudently incurred by the Company under efficient management and economic operations. Such fuel charge decrement shall remain in effect until changed by the Commission in a subsequent general rate case for

Vepco pursuant to G.S. 62-133 or annual fuel proceeding for the Company pursuant to G.S. 62-133.2.

The Public Staff and C.U.C.A. generally supported the methodology proposed by Vepco for applying the fuel charge adjustment, and did not oppose the amount of such fuel charge adjustment. Accordingly, the Commission is of the opinion that the fuel charge adjustment proposed herein by the Company is just and reasonable and should be approved and that Vepco should be required to notify its customers of said approval in a timely manner.

IT IS, THEREFORE, ORDERED as follows:

1. That effective for bills rendered during the Company's December 1984 billing cycle, Vepco shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.069¢ per kWh decrement excluding gross receipts tax.

2. That Vepco shall file appropriate rate schedules and riders with the Commission as proposed in this proceeding in order to implement the fuel charge adjustment approved herein not later than 10 days from the date of this Order.

3. That Vepco shall notify its North Carolina retail customers of the fuel charge decrement approved in this proceeding by means of a bill insert to be included with customer bills beginning with bills rendered during the billing month of December 1984.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of November 1984.

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

DOCKET NO. E-22, SUB 278

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Proceeding to Consider Annual Fuel Charge Adjustment for Virginia Electric & Power Company Pursuant to G.S. 62-133.2 | ) ORDER APPROVING<br>) RATE SCHEDULES<br>) AND RIDERS |

BY THE PANEL HIPP, CAMPBELL AND COOK: On November 30, 1984, Virginia Electric and Power Company filed for approval rate schedules and riders designed to implement the fuel charge adjustment approved by the Commission's "Order Approving Fuel Charge Rate Reduction", dated November 21, 1984. The rate schedules and riders have been reviewed by the Commission and are found to be in compliance with the Commission Order.

IT IS, THEREFORE, ORDERED that the rate schedules and riders filed herein on November 30, 1984, are hereby approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of December 1984.

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

DOCKET NO. E-13, SUB 51

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | | |
| Application of Aluminum Company of America | ) | |
| To Convey its Stock Interest in Nantahala | ) | RECOMMENDED ORDER |
| Power & Light Company | ) | DEFERRING FINAL RULING |

HEARD IN: Superior Courtroom, Swain County Administrative and Courthouse Building, Mitchell Street, Bryson City, North Carolina, on October 25, 1983

Courtroom B, 4th Floor, Macon County Courthouse, 5 West Main Street, Franklin, North Carolina, on October 26 and 27, 1983

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, November 1, 2, 8, 9, 10, 22, and 23, 1983; December 12 and 13, 1983; and March 13-14, 1984

BEFORE: Commissioners Sarah Lindsay Tate, Presiding; and Commissioners Douglas P. Leary and A. Hartwell Campbell (Commissioner Leary did not participate in the decision in this case.

APPEARANCES:

For the Applicant Aluminum Company of America:

Ronald D. Jones, David R. Poe, Dennis P. Harkawik and Samuel Behrends, IV, LeBouef, Lamb, Leiby and McRae, Attorneys at Law, 336 Fayetteville Street, Raleigh, North Carolina 27602

For Nantco, Inc., and Nantahala Power and Light Company:

Robert C. Howison, Jr., Edward S. Finley, Jr., Darla B. Tarletz and Julius A. Rousseau, III, Hunton & Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602
Carolina 27602

For the Nantahala Power and Light Company Employees Association, Inc.:

Orville Coward, Jr. and Roger L. Dillard, Jr., Coward, Coward, Dillard and Caper, P.A., Attorneys at Law, 9 West Main Street, Franklin, North Carolina 28734

For the Attorney General:

Richard L. Griffin, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Public Staff:

James D. Little and Thomas K. Austin, Staff Attorneys, Public Staff -- North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

For the Intervenors:

Robert F. Page, Crisp, Davis, Schwentker & Page, Attorneys at Law, P.O. Box 751, Raleigh, North Carolina 27602
For: Counties of Cherokee, Graham, and Swain; Towns of Andrews, Andrews, Bryson City, Dillsboro, Robbinsville and Sylva; Tribal Council of the Eastern Band of Cherokee Indians; N.C. Electric Membership Corporation; Haywood Electric Membership Corporation; Henry J. Truett, Howard Patton, Veronica Nicholas, O.W. Hooper, Jr., Alvin E. Smith, and Larry Lynn Bailey

P. Daniel Bruner, Speigel & McDiarmid, Attorneys at Law, 2600 Virginia Ave., N.W., Washington, D.C. 20037
For: Town of Highlands, North Carolina

For Jackson Paper Manufacturing Company, Inc.:

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

TATE, PRESIDING, AND CAMPBELL: This proceeding was commenced on February 1, 1983, with the filing of an application by Aluminum Company of American (Alcoa) for approval to sell all of its common stock in Nantahala Power and Light Company to a group of Nantahala employees. Supplements to the original application were filed with the Commission on February 28, March 17, March 25, July 6, and September 30, 1983.

Notices of Intervention were filed with the Commission on February 7, 1983, by the Public Staff of the North Carolina Utilities Commission and by the Attorney General of North Carolina.

On February 14, 1983, a resolution adopted by the Town of Franklin Board of Aldermen was filed with the Commission. A motion to consolidate this matter with pending Docket No. E-13, Sub 44 and to join Tapoco as a party or, in the subordinate alternative, to join Nantahala as a party was filed with the Commission on February 16, 1983, by the Attorney General of North Carolina. Subsequently, the Attorney General moved to withdraw, without prejudice to renew, his motions to consolidate this matter with Docket No. E-13, Sub 44 and to join Tapoco as a party.

A Petition to Intervene and Motion to Reject or, in the alternative, Motion for Hearing was filed with the Commission on February 22, 1983, by the Town of Highlands. On February 28, 1983, an Order allowing intervention but reserving ruling on the other motions was issued by the Commission.

On March 1, 1983, Nantahala filed its response to the February 16, 1983, Motion of the Attorney General to join Nantahala as a party.

On March 4, 1983, Alcoa filed its Response to the Petition filed on February 22 by the Town of Highlands.

On March 16, 1983, the Commission issued an Order instituting an investigation of the application, scheduling public hearing, and requiring public notice. On April 22, 1983, and April 29, 1983, Orders were issued by the Commission changing the time and place of the public hearings.

A Petition to Intervene was filed with the Commission on March 25, 1983, by Jackson Paper Manufacturing Company. Such petition was allowed by appropriate Order of the Commission. Renewal of an earlier Motion for Joinder of Nantahala as a party and Motion for Oral Argument was filed with the Commission on June 8, 1983, by the Attorney General, and Nantahala filed its response thereto on July 14, 1983.

A motion to join Nantco, Inc., (Nantco) and the Trustees of the Employee Stock Ownership Plan (ESOP) as parties was filed with the Commission by the Attorney General on July 5, 1983.

On July 7, 1983, the Town of Highlands, North Carolina, filed a Motion for Joinder of Nantco as a party. On July 15, 1983, Alcoa filed its Response to the Motion of the Attorney General to join Nantco, Inc.

On July 25, 1983, the Commission issued an Order allowing Motions in this docket to join Nantahala, Nantco, Inc. and the Trustees of the ESOP as parties.

On September 20, 1983, Intervenors' Motion to Compel Discovery was filed with the Commission. Alcoa's Reply to Intervenors' Motion to Compel was filed with the Commission on September 28, 1983.

A Statement of Clarification by the Town of Highlands to Intervenors' Motion to Compel Discovery was filed with the Commission on September 26, 1983.

On October 4, 1983, a Petition for Leave to Intervene and Motion to Reject or Dismiss was filed with the Commission by the Counties of Graham and Swain, North Carolina; and the Towns of Andrews, Bryson City and Robbinsville, North Carolina; Henry J. Truett, Howard Patton, Veronica Nicholas, O.W. Hooper, Jr., Alvin E. Smith, and Larry Lynn Bailey (the western North Carolina Counties, Towns and Individuals), Haywood Electric Membership Corporation and the North Carolina Electric Membership Corporation (the EMCs). Upon oral motion by counsel for Alcoa and Tapoco, Inc. for an extension of time to file a pleading in response to the foregoing petition and motion, the Commission issued an Order on October 13, 1983, allowing an extension of time to and including October 17 (later extended to October 19) within which to file a pleading and response. On October 19, 1983, Alcoa filed its Response.

A conference on discovery matters was held on Wednesday, October 12, 1983, at which time Wilson B. Partin, Jr., a member of the Commission's legal staff, was present and presided; and on October 19, 1983, as a result of that conference, a Protective Order and Order Approving Agreement in Interrogatories Conference was issued by the Commission.

A Motion of Nantco, Inc. for extension of time to and including October 17, 1983, within which to file its Response to Intervenors' interrogatories was

filed with the Commission on October 6, 1983, and an Order allowing the requested extension of time was issued October 12, 1983.

A Motion for Extension of Time for Prefiling Testimony of Intervenor Witness David A. Springs was filed with the Commission on October 10, 1983, by the Joint Intervenors. This Motion was subsequently allowed.

On October 17, 1983, a Petition to Intervene and Motion was filed with the Commission by the NP&L Employees' Association, Inc.

On October 19, 1983, Alcoa filed a Motion to Defer Hearings on Application, Motion to Strike Prefiled Testimony of David A. Springs or, in the alternative, Motion for Further Deferral of Substantive Hearings.

On October 21, 1983, Intervenors filed their response to Alcoa's Motion to Continue Substantive Hearings and to Strike the Testimony of Witness Springs.

On October 21, 1983, a Motion to Defer Hearings on Application, Motion to Strike Prefiled Testimony of David A. Springs, or in the alternative, Motion for Further Deferral of Substantive Hearings was filed by Nantahala.

An Order denying the Motion to Defer Hearings was issued by the Commission on October 21, 1983, which order also deferred ruling upon the Motion to Strike the prefiled testimony of witness David A. Springs or, in the alternative, Motion for Further Deferral of Substantive Hearings.

On October 24, 1983, the Commission issued an Order granting the Petitions to Intervene of the western North Carolina counties, towns and individuals, the EMCs and the NP&L Employees Association, Inc.

An amended Petition for Leave to Intervene and Reply to Alcoa's Response to Intervenors' Motion was filed with the Commission on October 25, 1983, by the western North Carolina counties, et al. An Order allowing the Motion to Intervene was issued on October 27, 1983.

The Town of Highlands filed its Reply to Motion to Strike Testimony of David A. Springs and Prehearing Statement of Position on October 31, 1983.

On February 8, 1984, Nantahala-Nantco counsel, by letter, filed a stipulation executed by Nantahala and Alcoa which divided between them the refund obligations imposed by prior Commission orders in Docket Nos. E-13, Subs 29 and 35. On March 21, 1984, Alcoa's counsel, by letter, confirmed statements made during the hearings that paragraph 3(b) of the stipulation had been removed and that approval of the sale in this proceeding is not necessary to approval of the stipulation.

Other administrative, procedural and discovery pleadings and orders appear of record in the Commission's official files.

The proceeding came on for hearing as scheduled on October 25, 1983. A number of public witnesses testified. Some testified favorably to the sale and some in opposition to it. The public witnesses testifying were: Gary Smith, Lane Speich, Marie Leatherwood, Earl Robinson, Joe Afonso, John E. Boring, Jim Warren, Barry Hipps, Tom Underwood, William Keck, Yvonne Richmond, Jim Cooper,

Dan McCoy, Paul Teasdale, Larry Davis, Oscar Ledford, Ronald Winecoff, Wayne Faulkner, Steven Blalock, Siler Slagle, James Cunningham, Carey W. Cabe, Vance Millsaps, Richard Conley, Keith Dodge, Will Berdit, Frank Rodgers, O.W. Hooper, Jr., Dorothy Cox, James L. Harris, Richard Conely, Sr., Woodrow Reeves, Robert Siler, Steve Philo, Howard Patton, Verlon Swafford, Vance Fouts, Larry Cloer, Sarah F. Frady, Rufus Morgan, Jr., George Barrett, Dick Wittekind, Roger Gilliam, Charles Jamison, Clyde M. Kinsland, Veronica Nicholas, Robert Fouts, Marty Kimsey, Ronald Shipley, James P. Clouse, Robin Skelly, and Vance Alan Sanders.

Upon conclusion of the testimony of the public witnesses, the witnesses of the parties testified in Raleigh. The substance of their testimony is summarized as follows:

For Alcoa: Bruce Barstow, Vice President for Public Relations and Advertising for Alcoa, testified concerning Alcoa's reasons for desiring to sell the Nantahala stock and his opinion that the sale would be in the public interest.

For Nantahala and Nantco: (1) John H. Morris, a Vice President of Kelso & Co., Inc., an investment banking firm specializing in the purchase of companies through Employee Stock Ownership Plans using funds borrowed from a third source to obtain the purchase money (a leveraged buy-out), testified as to the structure of the buy-out plan, including the annual sources of revenue for the buyer (Nantco) and the employees (ESOP), the voting and stock ownership techniques of the ESOP, the capital needs of Nantahala, and the rate of return required for Nantahala to supply annual funds necessary for capital expansion, revenues necessary over time to successfully complete the acquisition debt pay-off and the terms upon which a financial institution would lend the original buy-out funds; (2) Joseph F. Brennan, President of Associated Utility Services, Inc., testified as to Nantahala's capital structure, capital structure ratios, prospective earnings of Nantahala and rates of return, financial requirements for access to the capital market, and his opinion as to the requisites for Nantahala's access to the capital markets if the sale were consummated; and (3) N. Edward Tucker, Jr., Vice President of Finance and Treasurer of Nantahala and Vice President and Treasurer of Nantco, testified with regard to the negotiations between the parties concerning the purchase-sale, the structure of the purchase-sale arrangement, and the effect of the sale upon Nantahala, its employees and its customers.

For the Intervenors: David A. Springs, consulting engineer in charge of power supply planning and power system planning for Southern Engineering Co. of Georgia, testified concerning the history of development of hydroelectric power by Alcoa in western North Carolina, the creation of Nantahala, the various contracts impacting upon Nantahala, the electric systems of Nantahala and Tapoco, Nantahala's and Tapoco's operating history as a single public utility company, and his opinion and recommendation that the proposed sale is not justified by the public convenience and necessity.

For Alcoa in Rebuttal: (1) David I. Toof, a manager in the Washington office of the Ernest & Whinney Utility Group, testified in rebuttal to Mr. Springs with regard to his treatment of Nantahala and Tapoco as a single electric public utility system and the use of the roll-in methodology; (2) William W. Lindsay, a principal of Pfeffer, Lindsay and Associates, testified in rebuttal

to Mr. Springs and reviewed the new contract arrangements between TVA and Nantahala and TVA and Tapoco as they related to the proposed stock sale.

For Nantahala-Nantco in Rebuttal: (1) Dale Keith, project manager in the management services division of Black and Veatch, testified in rebuttal to Mr. Springs with regard to his treatment of Nantahala and Tapoco as a single utility system, and the fairness of the several contracts between Nantahala and others; (2) Bruce A. Ainsworth, project civil engineer in the power division of Black and Veatch, testified in rebuttal to Mr. Springs' treatment of headwater benefits and operation of Nantahala's facilities as part of a combined system with TVA's Fontana project and Tapoco's projects; (3) N. Edward Tucker, a previous witness, testified in rebuttal to Mr. Springs concerning the initial development of Nantahala, the New Fontana Agreement, and Nantahala's new agreement with TVA.

For Nantahala, as supplemental testimony: N. Edward Tucker, a previous witness, testified concerning the status of Nantco's attempt to obtain a lender to provide acquisition financing and of Nantahala's attempt to obtain outside capital for construction and capital projects.

## FINDINGS OF FACT

1. Nantahala Power & Light Co. ("Nantahala") is a public utility company duly organized under the laws of the State of North Carolina and subject to the jurisdiction of this Commission. Nantahala holds a public utility franchise to furnish electric power to approximately 40,000 customers in the southwestern part of North Carolina under rates and services regulated by this Commission.

2. Aluminum Company of America ("Alcoa") is the owner of 100% of the issued and outstanding common stock of Nantahala. Alcoa is, itself, a public utility in North Carolina and is subject to the jurisdiction of this Commission.

3. In Docket Nos. E-13, Subs 29 and 35, the Commission found and determined that Nantahala had collected excessive rates from its retail customers and ordered that Nantahala make certain revenue refunds to its retail customers and provided that to the extent Nantahala was financially unable to make the refunds, Alcoa shall make the refunds that Nantahala was unable to make. These dockets are now pending on appeal in the Supreme Court of North Carolina.

4. The amount of refunds in both dockets now totals approximately $40 million.

5. Nantahala has averred that it is financially unable to pay, if finally ordered to do so, any significant portion of the refund obligation imposed in Docket Nos. E-13, Subs 29 and 35.

6. The proposed stipulation of Alcoa and Nantahala, filed February 8, 1984, concerning refund responsibility cannot be accepted by the Commission, is not in the public interest, and must be rejected.

7. The application of Alcoa to transfer 100% of its stock interest in Nantahala should not be finally approved until such time as Docket Nos. E-13,

Subs 29 and 35, have been finally adjudicated by the Courts and the Commission and the respective refund obligations of Nantahala and Alcoa have been ultimately determined.

8. Alcoa has expressed its desire for many years to sell Nantahala, and its efforts to sell Nantahala intensified in 1982.

9. Certain key employees of Nantahala, including its President, have negotiated with Alcoa to purchase the Nantahala common stock on behalf of the employees of the Company.

10. Nantco, Inc. is a North Carolina corporation organized and existing for the sole purpose of purchasing the stock interest of Nantahala from Alcoa for the benefit of the management employees of Nantahala, in part through use of contributions made to an Employee Stock Ownership Plan (ESOP), established under the federal tax laws.

11. Although Nantco will purchase the Nantahala stock, the owner will be the ESOP controlled by Nantahala employees.

12. Until Docket Nos. E-13, Subs 29 and 35, have been finally adjudicated and the refund obligations ultimately determined, the Commission cannot determine if the purchase of Nantahala by its management employees through the ESOP plan will or will not adversely affect Nantahala's quality of service to its customers or the level of rates.

13. There are now pending several proceedings before the Federal Energy Regulatory Commission, involving Nantahala and Tapoco, in which an issue has been presented respecting a direct assignment or sale of power from Tapoco to Nantahala. This Commission is a party to one or more of these proceedings pursuant to federal law authorizing the Commission to seek such direct assignment of power.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Judicial notice is taken of the fact that Nantahala is a North Carolina public utility holding a franchise to furnish electric power in six counties in southwestern North Carolina under rates and services regulated by the Commission. Some of these facts are also set forth in the "Application for Written Approval to Transfer Stock" filed by Alcoa in this matter. This finding was not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Alcoa alleges in its application that it is the owner of 100 percent of the issued and outstanding common stock of Nantahala, consisting of 38,202 shares. No party disputes that fact.

Alcoa is a public utility under the definition contained in G.S. 62-3(23)c. which states:

> "The term 'public utility' shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in

G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility."

G.S. 55-2(9) provides as follows:

"'Parent corporation' means a corporation which is a dominant shareholder, as herein defined. A corporation through which, by virtue of its shareholdings alone, a parent corporation has power to exercise the control which makes the latter a parent corporation is itself a parent corporation. A corporation with respect to which another corporation is a parent corporation is a 'subsidiary corporation.'"

G.S. 55-2(6) provides as follows:

"'Dominant shareholder' means a shareholder of a particular corporation, domestic or foreign, who by virtue of his shareholdings has legal power, either directly or indirectly or through another corporation or series of other corporations, domestic or foreign, to elect a majority of the directors of the said particular corporation."

Nantahala is, without question, a North Carolina public utility. Since Alcoa is the owner of all of Nantahala's common stock, Alcoa is the parent corporation of Nantahala pursuant to G.S. 55-2(9) and the dominant shareholder under G.S. 55-2(6), with the consequence that Alcoa is itself a North Carolina public utility. We take judicial notice of the fact that the Commission has so held on three separate occasions, to wit: Order of October 3, 1980, and Order of September 2, 1981, both in Docket No. E-13, Sub 29; and Order of June 8, 1982, in Docket No. E-13, Sub 35. The North Carolina Court of Appeals has upheld this determination in both dockets. These Orders also established the effect that Alcoa has had on the rates and service of Nantahala. The Commission takes judicial notice of these decisions.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3, 4, 5, 6, AND 7

Scope of the Commission's Authority

N.C.G.S. 62-111(a) provides the authority by which the Commission may approve or disapprove Alcoa's attempt to sell Nantahala stock to Nantco. G.S. 62-111(a) provides as follows:

"No franchise now existing or hereafter issued under the provisions of this Chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that

the above provisions shall not apply to regulate trading in listed securities on recognized markets."

The statute was construed in State v. Carolina Coach Company, 269 N.C. 717, 153 S.E.2d 461, (1967), where this Commission found that there was substantial evidence that a utility's "ability to render service to the public within the limits of its franchise rights will not be adversely affected" by the proposed sale. In that case, the North Carolina Supreme Court upheld the Commission's finding and conclusion that the sale was justified by the public convenience and necessity.

The Commission has applied the Carolina Coach test in sales of all types of utilities. In In the Matter of the Purchase of Mooresville Telephone Company (1967) a Wholly-Owned Subsidiary of Mid-Continent Telephone Corporation, Docket No. P-37, Sub 35 (57 NCUC Reports 526) (1967), the Commission discussed the effect of G.S. 62-111 (and G.S. 62-110) as follows:

> "These sections provide that the Commission shall approve the transfer if justified by the public convenience and necessity. The ownership of applicant by its stockholders is a matter of private property law except to the extent that it is affected by the public interest as a public utility, and unless some cause is shown therefor, the sale or transfer by private individuals which does not affect the rates or service of the public utility should not be enjoined. The Commission's investigation into this application discloses no grounds for denying the application and discloses no way in which the public interest of the consuming and using public in North Carolina will be materially or adversely affected. Based upon the application and the investigation of the Commission, the Commission is of the opinion and so concludes that the public convenience and necessity will not be affected by the transfer and that, therefore, the same meets the test prescribed by G.S. 62-111 hereinabove quoted."

This position was similarly stated in In the Matter of Merger of the Norfolk and Carolina Telephone & Telegraph Co. and the Norfolk and Carolina Telephone & Telegraph Co. of Virginia, Docket No. P-40, Sub 142 (1976).

The Commission concludes that the test to be applied here is whether Nantahala's rates and service to its customers will be adversely affected by the proposed sale.

The Effect of the Sale and the Roll-In Methodology

In their brief and proposed order the Intervenors argue that the proposed sale is not justified by the public convenience and necessity. The Intervenors first contend that approval of the sale could destroy the Tapoco-Nantahala unified, single electric public utility system and impair the Commission's ability to enforce Tapoco's public utility obligations. The Commission's Orders in Docket Nos. E-13, Subs 29 and 35, in effect established Nantahala's rates based upon a rolling together of Nantahala and Tapoco. One finding upon which the Commission relied in implementing the roll-in was that Nantahala and

Tapoco constituted a single, integrated system that can be treated as one system for rate-making purposes.

In Nantahala's most recent rate case, Docket No. E-13, Sub 44, the Commission found that the Nantahala electric system should on a prospective basis be treated independently of Tapoco with respect to all matters affecting the determination of Nantahala's reasonable cost of service applicable to its North Carolina retail operations. The Commission, in support of its decision rejecting a continued application of the roll-in methodology, further found as follows:

> "The 1983 Interconnection Agreement between Nantahala and TVA provides substantial benefits to the Company's retail ratepayers in North Carolina which were not present under the New Fontana Agreement and the 1971 Apportionment Agreement. Changed conditions reflected in the 1983 Interconnection Agreement, which became effective January 1, 1983, include, but are not limited to, the following: Nantahala now dispatches and controls the operation of all of its hydroelectric generating facilities and retains for itself and its customers all of the Company's hydroelectric generation; Nantahala operates and dispatches said system in order to best meet its load requirements and depends upon TVA only for the purchase of its capacity and energy needs above and beyond that which the Company can generate for itself; Nantahala is permitted to utilize, without limitation, and other source of supplemental power which may be available, including the addition of new generating capacity to the Company's system and/or purchases from other suppliers; and Nantahala can sell its excess generation to TVA. Nantahala's North Carolina retail rates should, therefore, be established in this proceeding in recognition of and pursuant to the more favorable terms and benefits of the 1983 Interconnection Agreement. (Order Granting Partial Rate Increase, December 22, 1983, p. 4.).

Consequently, the Commission rejected the roll-in methodology on the basis of changed conditions brought about by the 1983 contractual relationships among Nantahala, Tapoco and TVA. Therefore, in view of the Commission's findings and order in Nantahala's most recent rate case, the Commission is of the opinion that the proposed sale should not be denied merely because the opportunity to apply the roll-in methodology in the future might be jeopardized. The Commission cautions, however, that Docket E-13, Sub 44 is now on appeal and that the roll-in issue has not been finally determined by the Courts.

The Effect of the Sale and the Refunds

In Docket Nos. E-13, Subs 29 and 35, which involve general rate cases for Nantahala, the Commission ordered Nantahala to make certain revenue refunds to its retail customers and provided that to the extent Nantahala was financially unable to make the refunds, Alcoa shall make the refunds that Nantahala was financially unable to make. The amount of refunds in both dockets now totals approximately $40 million. These cases are currently on appeal in the Supreme Court of North Carolina. By various pleadings filed in the Supreme Court, the Court of Appeals, and with this Commission (see, for example, Docket No. E-13, Sub 63), Nantahala has unequivocally averred that it is unable to pay, if

finally ordered to do so, any significant portion of the refunds imposed by Subs 29 and 35.

In this instant proceeding the Intervenors have made the assertion that approval of the sale could jeopardize the payment of refunds ordered in Docket Nos. E-13, Subs 29 and 35. The Commission shares this concern, and for the reasons hereinafter set forth the Commission is of the opinion that approval of the sale should be deferred until the question of the refunds ordered in Subs 29 and 35 has been finally adjudicated by the Courts and by the Commission.

The parties in this proceeding disagreed strenuously over the effect of the proposed sale on the refunds. Both Alcoa and Nantahala/Nantco contend that the status of the outstanding refund obligations should not prevent the sale. In its brief, for example, Nantahala asserts that "the Commission's jurisdiction over Alcoa, if any, arose at the time its orders joining Alcoa in Docket Nos. E-13, Sub 29 (remanded) and E-13, Sub 35 were issued or at the latest, when its Orders imposing refund responsibility upon Alcoa were issued. It is not possible for Alcoa to free itself of its obligations in E-13, Sub 29 (remanded) and E-13, Sub 35 through the sale of its stock." (Nantahala's Brief, pp. 32, 33)

On the other hand the Intervenors argue as follows:

> "If the Commission were to approve the proposed sale, and the sale were then consummated, and the North Carolina Supreme Court were thereafter to remand either of the refund cases to the Commission for a further specification of the refund liability of Nantahala and Alcoa, Alcoa will argue at such remanded hearings that the Commission no longer had any jurisdiction or authority over it, since as a result of the sale, Alcoa would no longer be a North Carolina public utility." (Intervenors' Brief, p. 17)

In support of this argument, the Intervenors offer this scenario: Alcoa has consistently denied any liability for the nearly $40 million in refunds owing in Docket Nos. E-13, Subs 29 and 35, and has repeatedly stated that it will pay only after it has exhausted all of its legal rights. If the sale were approved and, as a result, Alcoa were to cease being a North Carolina public utility subject to the jurisdiction of this Commission under G.S. 62-3(23), Alcoa could take the position that the refunds are only a contingent liability and will not mature to a current liability until after affirmance of the Commission's orders by the North Carolina Supreme Court and remand for further hearings before this Commission to order Alcoa to pay a sum certain. If the appellate courts were to remand these cases to the Commission with instructions to convert the alleged contingent liability of an indefinite amount into a current liability of finite amount, and if the sale has been approved in the meantime, Alcoa could take the position that the Commission has no jurisdiction over Alcoa to enter an order for it to pay a sum certain. Should Alcoa ultimately prevail with such an argument, payment of the refunds might never occur. Millions of dollars in refunds owing to ratepayers would not be paid or, if paid in toto, could only be paid by Nantahala, and not Alcoa. Nantahala would then be bankrupt. (See, Proposed Order of Intervenors, pp. 62-63)

In an apparent effort to resolve uncertainties over the status of the refunds and the respective obligations of Alcoa and Nantahala with respect

thereto, counsel for Nantahala on February 8, 1984, filed in this proceeding a stipulation entered into between Alcoa and Nantahala. It should be noted that this stipulation was offered at a time when the cases ordering refunds were already on appeal to the courts. (The stipulation was also filed in Docket Nos. E-13, Subs 29, 35, 44, and 63.) In this stipulation Alcoa and Nantahala agreed that Nantahala's share of the total wholesale and retail refund liabilities of Nantahala would be limited to $2 million. Paragraph 3 of the stipulation makes the respective obligations of Alcoa and Nantahala conditional upon the occurrence of certain events: the panel Order in Docket No. E-13, Sub 44 becoming final without modification by the Commission; this sale case being approved; Nantahala obtaining commitments from responsible lenders or investors for at least $8 million and Commission approval to issue securities therefor; and a determination by the Commission that Nantahala's maximum total refunds in Docket Nos. Sub 29 (Remanded), Sub 35, and 44, shall not exceed $2 million, less any refunds made by Nantahala in FERC Docket Nos. ER 76-828, EL 78-18, ER 80-574, EL 82-20 and EL 83-29. By letter filed on March 22, 1984, counsel for Alcoa confirmed an earlier statement that Alcoa would forego approval and consummation of the stock transfer now being considered in this docket as a condition of the stipulation of refund liability in the Sub 29 and Sub 35 dockets.

The Commission is of the opinion that the stipulation proferred by Alcoa and Nantahala has a number of deficiencies and that the acceptance of the stipulation by the Commission would not resolve the Commission's obligations and concerns regarding the refunds. Ordinarily, a stipulation in a legal proceeding is an agreement between opposing counsel, and the Intervenors who are the opposing parties in this proceeding have not consented to the stipulation. The Commission is of the opinion that it cannot accept the stipulation in the absence of the agreement of all the parties. Furthermore, the stipulation requires that the Commission approve the panel order in Docket No. E-13, Sub 44. We take judicial notice of the fact that an order has issued from the full Commission in Sub 44 upholding the Panel's order. However, the Intervenors have given notice of appeal in that case. It is unclear from the language of this stipulation whether the condition has been satisfied in these circumstances.

The stipulation, if approved, poses the problem of whether, by freeing Nantahala from having to pay all of the refunds, Alcoa might also be released from any further refund obligation. While the intent of the Subs 29 and 35 refund orders was to declare both Nantahala and Alcoa to be jointly liable for the refund, Alcoa might argue that it has only a secondary obligaton, as guarantor, for Nantahala's primary obligation. In such event, release of Nantahala from any portion of its obligation to pay could operate, concurrently, to release Alcoa. While Alcoa has not argued this posture, Intervenors have pointed out that Alcoa could argue this point in future appellate review. The Commission is accordingly reluctant to approve any document which could be used by Alcoa to escape its refund obligation on a legal technicality.

The stipulation, if approved, would limit Nantahala's refund liability while leaving Alcoa free to contest its liability in the North Carolina and federal courts. Nantahala recently has paid almost $2 million in refunds to its wholesale customers pursuant to a FERC order in FERC Docket Nos. ER76-828 and E178-18. Because the stipulation limits Nantahala's retail refund

liability to $2 million less refunds paid in these FERC proceedings, the result of the approval of the stipulation would be to altogether forgive Nantahala's $40 million retail refund liability to its retail customers with no assurance that Alcoa would ultimately pay anything.

Finally, judicial notice is taken of the fact that the full Commission, by order issued in Docket No. E-13, Sub 44 on April 12, 1984, declined to approve or accept the proposed stipulation. For the foregoing reasons, the Commission concludes that the proposed Alcoa-Nantahala stipulation cannot be accepted herein.

Nantahala's refund obligations in Docket Nos. E-13, Subs 29 and 35, as discussed earlier, are on appeal in the Supreme Court. The appeal ousts the Commission of jurisdiction in these two dockets. "'The basic rule is that two courts cannot have jurisdiction of the same case at the same time, and that on perfecting of appeal the lower court is ousted of its jurisdiction . . .'" Wiggins v. Bunch, 280 NC 106, at 110. The Commission therefore cannot enter orders or accept any stipulation affecting these dockets and, more particularly, the joint refund obligation of Nantahala and Alcoa flowing therefrom. Any attempt to resolve the concerns of the Commission with respect to the refund obligations would be premature and without basis in law if undertaken prior to the resolution by the Supreme Court of the two dockets now on appeal in that Court. Moreover, such premature resolution might well jeopardize the rights of Nantahala's ratepayers to the refunds ordered by this Commission in the two dockets.

In view of the pendency of the appeals in Docket Nos. E-13, Subs 29 and 35 in the Supreme Court, and the legal uncertainties that final approval of the sale would have upon the refund obligations of Nantahala and Alcoa, the Commission is of the opinion that final approval of the sale at this time, with the possible ultimate result that either the refunds will not be paid to the ratepayers or that Nantahala will be rendered insolvent, is contrary to the public convenience and necessity. Approval of the sale without the final adjudication of the refund question could adversely affect the service and the rates of Nantahala and the refunds to Nantahala's customers. In so deciding, the Commission believes that the ratepayers of Nantahala should be afforded the utmost protection with respect to these matters. The Commission notes that Alcoa has provided a "comfort" letter to Wachovia for the loan commitment for the proposed sale. The Commission can give no less protection to those ratepayers of Nantahala who are entitled to the refunds ordered in Subs 29 and 35.

Therefore the Commission issues this order deferring final ruling on the sale until such time as Docket No. E-13, Subs 29 and 35, have been finally adjudicated by the Courts and the Commission and the respective refund obligations of Nantahala and Alcoa have been ultimately determined.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8, 9, 10, 11 AND 12

Nantahala/Nantco witnesses Morris and Tucker were the principal witnesses testifying about the technical aspects of the proposed sale. According to their testimony, Alcoa has desired for many years to sell Nantahala. Alcoa's efforts to sell Nantahala intensified in 1982. (Tr. Vol. 12, p. 47). The Nantahala employees, represented by management, proposed to purchase Nantahala through an

Employee Stock Ownership Plan ("ESOP") that would purchase the Nantahala stock through funds borrowed from an institutional investor and repaid over time from Nantahala retirement plan contributions and dividends. (Tr. Vol. 12, pp 49-51).

Nantahala hired Kelso & Co., Inc. ("Kelso") to determine if such a proposal were feasible. (Tr. Vol. 12, p. 50). Kelso's preliminary analysis indicated that such a transaction was indeed feasible. Alcoa and the Nantahala employees entered into an Initial Agreement dated January 28, 1983, under which a holding company to be formed on behalf of the salaried employees would purchase the Nantahala stock for approximately $11.2 million. (Tr. Vol. 12, p. 55). On March 21, 1983, the Initial Agreement was expanded and modified through execution of a Definitive Agreement between Alcoa and Nantco. The parties have modified and extended the Definitive Agreement through a series of subsequent versions as attempts to iron out details and to obtain a lender and regulatory approval have progressed. (Tr. Vol. 12, pp. 56-57).

Nantco obtained a commitment from Wachovia Bank and Trust Company, N.A. ("Wachovia"), and the Northwestern Bank to lend up to $13 million to enable Nantco to purchase the Nantahala stock. (Tr. Vol. 25, pp. 36, 37). Due to the outstanding refund obligations arising from this Commission's orders in Docket Nos. E-13, Sub 29 (remanded) and E-13, Sub 35, and Nantahala's unallocated share of those refunds, Alcoa agreed to execute a guarantee of Nantco's loan payment to Wachovia. (Tr. Vol. 25, p. 36).

Nature of the Purchaser and the Sale Transaction

Although Nantco will purchase the Nantahala stock, the owner will be the ESOP controlled by Nantahala employees. An ESOP is a qualified employee benefit plan that is designed to satisfy the requirements of the Internal Revenue Code and the Employment Retirement and Income Security Act ("ERISA"). (Tr. Vol. 7, p. 79).

The Nantco loan from Wachovia will have an eight-year term. (Tr. Vol. 29, p. 39). Nantco will be obligated to pay interest at a rate based upon the adjusted certificate of deposit rate plus a graduated premium. (Tr. Vol. 25, p. 38).

Nantco will establish an ESOP for the benefit of the employees of Nantco or any Nantco subsidiary. Nantahala will adopt this ESOP for its salaried employees and will assume sole responsibility for funding the ESOP. (Tr. Vol. 7, p. 81). An Employee Stock Ownership Trust ("ESOT") will be established to administer the ESOP and will hold legal title to the Nantco stock. A trustee will manage the assets of the trust. The Board of Directors of Nantco, elected by the participating Nantahala employees ("Participants"), will name the trustee of the ESOT. (Tr. Vol. 7, pp. 81, 83). At or shortly after closing, the ESOT will purchase from Nantco 100 percent of the outstanding issued shares of Nantco stock and execute in return a note to Nantco. The note will contain a fifteen-year term and an interest rate similar to that of the Nantco note to Wachovia. (Tr. Vol. 7, p. 81). Nantco will retain at least a portion of its authorized shares for future purposes. (Tr. Vol. 8, p. 19). The ESOT will hold the Nantco shares in a suspense account until ESOP contributions from Nantahala are applied to the purchase of those shares, at which time the shares will be released to the account of the individual Participants. The unreleased

shares in the suspense account will not entitle the ESOT trustee to any voting privileges. (Tr. Vol. 7, p. 84-85).

Immediately after establishment of the ESOP, Nantahala will make a small contribution to the ESOP in order to release several shares from the suspense account. These shares will be allocated pro rata based on salary to each Participant's account. The allocated shares will be the only voting shares. Thus, immediately after the transactions occur, the Participants will be able to vote and will elect a board of directors of Nantco. (Tr. Vol. 10, p. 3). This board will appoint the trustee to manage the ESOT. Wachovia has required no voting rights in the ESOT, so the Participants will have complete control in electing the board and, therefore, indirect control over the activities of the trustee named by the board. (Tr. Vol. 26, p. 11). The Nantco board is also authorized to appoint a committee to oversee the administration of the ESOT and the actions of the trustee. (Tr. Vol. 7, p. 83).

The funds generated to enable repayment of the Wachovia loan arise from Nantahala's retirement compensation contributions to the ESOP and from Nantahala's dividends paid to Nantco. Under ERISA, an employer can contribute up to 25 percent of its total amount of compensation to an ESOP. (Tr. Vol. 7 at 87). In calculating the 25 percent, federal tax laws allow an employer to make contributions of .5 percent of its total compensation in 1984, and .75 percent of its total compensation thereafter, to a PAYSOP. (Tr. Vol. 8, p. 61). The amount contributed to the PAYSOP is a tax credit for the employer; the ESOP contributions are fully tax deductible.

To maximize the benefits of both the ESOP and the PAYSOP, Nantahala each year will contribute an amount equalling approximately 25 percent of the compensation of its salaried employees to the ESOP. These contributions will be fully tax deductible. In the first year, Nantco can contribute .5 percent of its total compensation to a PAYSOP and can receive a tax credit therefor. In later years, Nantahala can contribute .75 percent of its total compensation to the PAYSOP, again receiving a tax credit. Nantahala can also make tax deductible contributions to the ESOP in amounts equal to the interest owed by the ESOP to Nantco. (Tr. Vol. 7 at 87-88).

Subsequent to the sale, Nantahala will increase its contributions to cover retirement compensation benefits. However, the witnesses testified that this will not result in any increase in cost of service or higher rates to Nantahala's customers. All contributions to the ESOP are fully tax deductible. ESOP funding required in excess of current retirement contributions will come from funds formerly paid in after-tax dividends. (Tr. Vol. 8 at 61-62). Because the ESOP contribution is fully tax deductible, more cash will exist after the ESOP is created to repay the acquisition debt than existed before the sale. Nantahala can provide more funds to the ESOP than it currently can provide to its Retirement Plan by retaining funds that otherwise would be paid to the government in federal income taxes and by reducing dividend payments to Nantco. Nantahala will still retain funds that otherwise would equal 35 percent of net earnings as a source of internally generated capital. (Tr. Vol. 7, p. 89).

Under the ESOP there will be a cash build-up in Nantco during the first eight years after the transaction closes since Nantco will receive more cash than is necessary to meet the obligations to Wachovia. Much of this cash will

arise from dividends Nantahala will pay Nantco on the Nantahala stock. The funds currently earmarked for cash build-up may be used to make early payments on the principal of the Wachovia debt in order to pay off the debt more quickly, thereby reducing interest payments. However, the ESOP must withhold some cash to fund redemptions of retirees' stock. The transaction is structured so that Nantco will make a balloon payment to Wachovia at the end of the eighth year so as to retire the remaining debt owed to Wachovia at that time. (Tr. Vol. 8 at 27-30).

The Effect of the Purchase and the ESOP Plan

Alcoa offered the testimony of Bruce Barstow, its Vice President for Public Relations and Advertising. Mr. Barstow offered the following reasons why the proposed sale was in the public interest:

> "First, the sale removes any question of Alcoa's influence on Nantahala's contracts, rates or operations. After the sales transaction, Alcoa's sole relationship with Nantahala will be as holder of outstanding Nantahala notes. This single relationship will give Alcoa no role whatever in the running of Nantahala. By selling Alcoa's ownership interest in Nantahala, we believe Nantahala will be better able to obtain rates necessary to raise revenue sufficient for Nantahala's operating and capital requirements. It is our belief that the sale of Nantahala stock is the only clear way out of the regulatory problems that Nantahala has faced and continues to face in North Carolina.
>
> "Second, the proposed sale to the Nantahala ESOP leaves Nantahala free to continue as an independent public utility, with the assurance that its current management will remain intact. Therefore, Nantahala will continue to be managed by personnel expertly acquainted with the operation of Nantahala's facilities.
>
> "Third, the sale retains for Nantahala's ratepayers the benefits of Nantahala's low-cost hydro power supply for western North Carolina. If Nantahala's stock were sold to another utility, say Carolina Power & Light, Duke or TVA, Nantahala's rates would probably increase significantly, because the benefit of Nantahala's hydro power would be dispersed throughout a much larger service area. Therefore, I believe that the proposed sale to the Nantahala management is a favorable alternative for Nantahala's rate payers and is in the public interest." (Tr. Vol. 11, pp. 10, 11).

Approval of the proposed sale would ensure that Nantahala will continue to be operated by the same people who are operating Nantahala now. The management employees of Nantahala, through the ESOP device, will have final control and effective ownership of the Company immediately upon consummation of the transaction. The evidence in this case supports the conclusion that these employees are fully competent to own and operate the Company. Attention is called to the public hearings in Nantahala's service territory, where various customer witnesses testified about the dedication of the Company's employees, their ability to restore service during periods of bad weather over adverse terrain, and their general ability to maintain adequate service in a territory with difficult geography. (Tr. Vol. 5, pp. 14-16, 53-59, 84-88)

The evidence in this proceeding demonstrates that Nantahala has operated satisfactorily as a public utility for many years with the ability to render adequate and reliable service. Approval of the sale to the Company's management employees will ensure the continuity of the Company's service. The overriding purpose of the federal legislation permitting ESOPs is to encourage employee ownership of the companies in which they work. The employees will look to Nantahala as their primary source of livelihood, their security for retirement, as well as their investment. Incentives will exist for the employees as owners to operate Nantahala to produce quality service at reasonable rates that could not exist for any other owner.

The financial structure of the Nantco ESOP plan, which has been described above, was discussed in detail by John H. Morris, Vice President of Kelso and Company, Inc., an investment banking firm specializing in ESOPs and one of the pioneer firms in developing the ESOP concept. (Tr. Vol. 7, pp. 78 - 94). The structure of the Nantco ESOP plan was drawn from the experience of Mr. Morris and Kelso in creating numerous other ESOP plans, including five leveraged plans like the one involved in this case. (Tr. Vol. 7, p. 100). In describing the benefits of the ESOP to the participating Nantahala employees, Mr. Morris testified that the ESOP will provide a retirement program for the employees. He stated: "If the company continues to be successful during the period of employment, the ESOP can provide an increasingly significant retirement benefit. This is an incentive to the employees to make every effort to optimize the company's success." (Tr. Vol. 7, p. 84).

Nothing else appearing, there appears to be no basis for rejecting Nantco as an unsuitable purchaser. The Commission elsewhere in this Order, however, has found and concluded that a final ruling on the proposed sale should be deferred until such time as Docket Nos. E-13, Subs 29 and 35, have been finally adjudicated by the courts and the Commission and the respective refund obligations of Nantahala and Alcoa ultimately determined. In so deciding, the Commission noted that "[a]pproval of the sale without the final adjudication of the refund question could adversely affect the service and the rates of Nantahala and the refunds to Nantahala's customers." The witnesses themselves in this proceeding acknowledged that until the refund question and the obligations of Nantahala and Alcoa for the refunds were finally resolved, the viability of the ESOP plan would remain uncertain. The Commission therefore concludes that, until Docket Nos. E-13, Subs 29 and 35, have been finally adjudicated and the refund obligations ultimately determined, it cannot determine if the purchase of Nantahala by its management employees through the ESOP plan will or will not adversely affect Nantahala's quality of service to its customers or the level of rates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 13

The Commission takes judicial notice of the pendency of several proceedings, i.e., Docket Nos. ER83-774-000, ER83-209-000, ER83-227-000, ER82-829-000, ER83-219-000, and EL83-6, before the Federal Energy Regulatory Commission (FERC), involving Nantahala and Tapoco, in which an issue has been presented respecting a direct assignment or sale of power from Tapoco to Nantahala. Only the FERC has jurisdiction to order a direct power assignment. This Commission is a party to one or more of those proceedings wherein, pursuant to the provisions of 16 U.S.C. 824a.(b), it is authorized by federal law to seek such direct assignment of power. This Commission also instituted a

separate action before the FERC (Docket EL84-2-000), which was dismissed after intervention by this Commission in the previously described proceedings, the FERC stating as grounds for dismissal that the relief sought in the dismissed case was at issue in the other cases. All of the present FERC cases were instituted prior to or essentially concurrent with the initiation of this sales case.

The FERC cases involve allegations on the part of the Intervenors (including representatives of Nantahala's retail and wholesale customers) that Tapoco discriminates in favor of Alcoa, the owner of both Nantahala and Tapoco; the cases seek to rectify the alleged discrimination. Approval of the sale of Nantahala by this Commission prior to completion of the FERC cases could affect those cases to the detriment of the ratepayers. For instance, the approval of the sale of Nantahala by Alcoa might be construed by the FERC as affirmative action which approves of Nantahala as a stand-alone utility which either is not entitled to or is not in need of an assignment of Tapoco power. This Commission should not be a party to regulatory action which would influence the FERC one way or another in its disposition of the current cases pending before it.

The Commission concludes that the sale should not be approved at this time since there exists a real possibility that approval would affect the outcome of the FERC proceeding. The FERC cases should be decided on their own merits.

IT IS, THEREFORE, ORDERED as follows:

1. That the stipulation between Alcoa and Nantahala concerning refund responsibility is not approved for any purpose herein.

2. That final ruling on the application for sale and transfer of all of Alcoa's common stock in Nantahala to Nantco and an employees' ESOP is deferred until Docket Nos. E-13, Subs 29 and 35, have been finally adjudicated by the Courts and the Commission and the respective refund obligations of Nantahala and Alcoa have been ultimately determined.

ISSUED BY ORDER OF THE COMMISSION.
This is the 11th day of September 1984.

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

Docket No. E-2, Sub 493

In the Matter of
Carolina Power & Light Company -- )
Application for Authority to Sell ) ORDER GRANTING AUTHORITY TO SELL LESLIE
Leslie and McInnes Coal Mining ) AND MCINNES COAL MINING COMPANIES
Companies )

BY THE COMMISSION: This cause comes before the Commission upon an application of Carolina Power & Light Company (the Company) filed under date of August 31, 1984, wherein authority of the Commission is sought as follows:

> To sell all the assets of Leslie and McInnes Coal Mining Companies pursuant to the terms and conditions substantially described in the Letter of Intent attached as Exhibit A to the Company's application.

FINDINGS OF FACT

1. The Company's correct name and post office address is Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602; and the names and post office addresses of its attorneys are John T. Bode, Post Office Box 391, Raleigh, North Carolina 27602 and H. Hill Carrow, Post Office Box 1551, Raleigh, North Carolina 27602.

2. 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 generating, transmitting, delivering, and furnishing electricity to the public for compensation.

3. Leslie Coal Mining Company (Leslie) and McInnes Coal Mining Company (McInnes) are wholly owned subsidiaries of the Company, engaged in the operation of coal mines on properties located in Pike County, Kentucky.

4. On March 4, 1974, in Docket No. E-2, Sub 233, and on January 26, 1977, in Docket No. E-2, Sub 302, the Commission issued orders in which it authorized the Company to enter into agreements with Pickands Mather & Company relative to the development and operation of the Leslie and McInnes Mines, respectively, approved the purchase by the Company from time to time of shares of capital stock of Leslie Coal Mining Company and McInnes Coal Mining Company and approved the making of loans, advances, pledges, and guarantees for the benefit of Leslie Coal Mining Company and McInnes Coal Mining Company for the purposes as set forth in the exhibits in the respective dockets. In 1983, as a result of softness in the coal market and determinations of the North Carolina Utilities Commission with respect to pricing of coal produced by Leslie and McInnes and the deferral of losses incurred in the production of such coal, it became apparent to the Company that it could no longer afford to retain the mines.

5. In November 1983 in Docket No. E-2, Sub 474, the Commission authorized the Company to purchase the minority interests held by Pickands Mather in Leslie and McInnes to facilitate the Company's efforts to effect a sale of Leslie and McInnes. CP&L completed the purchase of the minority interest on

November 29, 1983, and for the past nine months has actively sought to sell the mines. Its sales efforts have culminated in the letter of intent from Sidney Coal Company, Inc. (Sidney), to Leslie and McInnes dated August 14, 1984, executed by Leslie and McInnes on August 24, 1984, which was attached to the Company's application as Exhibit A.

6. The letter of intent addresses the basic principles to be included in the purchase agreement and related documents which will provide inter alia the following:

(1) All of the assets of Leslie and McInnes including the mining equipment, the real estate owned in fee, and the sublease of the mineral rights held by Leslie and McInnes will be sold to Sidney, a second tier wholly owned subsidiary of A. T. Massey Coal Company, Inc. (Massey), on October 1, 1984.

(2) Sidney will pay approximately $4,270,000 to Leslie and McInnes. Leslie and McInnes are contingently obligated to guarantee landlord consents to transfer of the mineral leases to Sidney up to a maximum liability of $5,000,000.

(3) Sidney will assume the outstanding financial obligations of Leslie and McInnes for the Leslie Leveraged Lease, the McInnes Term Loan ($57,000,000), and the Citibank Term Loan ($23,000,000). The discounted future rental payments under the Leslie Leveraged Lease total approximately $22,800,000. The Company's guaranties of these financial obligations will remain in place with the Company receiving "hold harmless" indemnities back from Massey or a financially acceptable entity affiliated with Massey.

(4) CP&L will grant to Massey or Road Fork Development Company, Inc. (Road Fork), another Massey subsidiary, an option to purchase all of the stock of Leslie and McInnes.

(5) The Company will receive an option to purchase the entire output of the Leslie and McInnes Mines in excess of 500,000 tons per year at a price not to exceed the average contract price to Sidney's other customers from such mines or the then current Marrowbone contract price for the first 500,000 tons per year purchased by the Company and at market price for all tonnage purchased by the Company in excess of 500,000 tons per year.

(6) Leslie and McInnes will receive a royalty of $.75 per ton on all coal produced at Leslie and McInnes after December 1, 1987, plus an additional royalty of $.60 per ton on coal produced in excess of 500,000 tons per year. Sidney will have an option to purchase these royalties.

(7) The force majeure provisions of the Company's existing coal contracts with Massey, Marrowbone Development Company, et al., and Wolf Creek Coal Company, et al., will be amended to provide that the Company, in the event it is unable to accept coal deliveries pursuant to these contracts as a result of

governmental restrictions prohibiting the use of the coal supplied under the contracts, will be obligated to pay liquidated damages of not more than $3.45 per ton and $3.04 per ton respectively. CP&L has agreed that it will accept shipments pursuant to these contracts that are disrupted by railroad and labor strikes with 30 months after the termination of any such disruption.

7. The business transaction has been structured to eliminate CP&L from ongoing exposures inherent in the coal mining business. CP&L will retain several contingent obligations relating to the funding of retirement, black lung, and other benefits which accrued to the work force at Leslie and McInnes while CP&L was a principal owner thereof. The current estimated cost of such liabilities is approximately $8,000,000.

8. The Company believes that this transaction is in the best interest of the public and of the Company because it will terminate the continuing losses suffered by the Company as a result of its ownership of the mines and strengthen the Company's financial position. The option for the purchase of low sulfur coal from Sidney will maintain the Company's access to the low sulfur coal reserves of Leslie and McInnes in the event additional quantities of low sulfur coal are needed. The Sidney proposal to purchase the assets of Leslie and McInnes is significantly better than any other offer received by the Company.

CONCLUSIONS

From a review and study of the application, its supporting data, and other information in the Commission's files, the Commission is of the opinion and so finds that the transactions herein proposed:

a. Are for a lawful objective and are with the corporate purposes of the Company;
b. Are compatible with the 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 is hereby, authorized, empowered, and permitted under the terms and conditions set forth in the application to enter into an agreement substantially embodying the terms and conditions of the Letter of Intent attached to the application as Exhibit A and the execution and delivery of such other instruments, documents, and agreements as shall be necessary or appropriate in order to effectuate the sale of the assets of Leslie and McInnes Coal Mining Companies.

It is further ordered that Carolina Power & Light Company file a written report with the Commission within 30 days after the consummation of the sale herein approved. The report shall include the detailed accounting journal entries used to record the transaction in the books of record of the Company.

This order shall have no precedential effect for rate-making purposes and the Commission reserves the right to review and consider what effect, if any, this transaction may have on the Company's general rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of September 1984.

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

Docket No. E-7, Sub 388

| In the Matter of | |
|---|---|
| Application of Duke Power Company for Authorization Under North Carolina General Statute 62-161 to Issue and Sell Securities (Pollution Control Financing) | ) ORDER GRANTING ) AUTHORITY FOR ) POLLUTION CONTROL ) FINANCING ARRANGEMENT |

BY THE COMMISSION: On August 21, 1984, Duke Power Company (the Company) filed an application with this Commission for authority to enter into a pollution control financing (the Financing Arrangement) with York County, South Carolina, whereby the Company would borrow the proceeds of the sale of a maximum of $54,000,000 of the County's Annual Tender Pollution Control Revenue Bonds (the Proposed Bonds).

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina, is 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. It is also a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission.

2. The Company proposes to enter into the Financing Arrangement with York County, South Carolina, which contemplates that the County will issue a maximum of $54,000,000 principal amount of the Proposed Bonds, which will be exempt for Federal income tax purposes as tax exempt pollution control bonds. The proceeds of such bonds will be borrowed by the Company for purposes of replacing funds used in financing its owned portion of certain pollution control and solid waste disposal facilities at the Catawba Nuclear Station, which have been substantially completed. It is anticipated that the Proposed Bonds will have a term of a maximum of 30 years (subject to annual tenders) and will carry an estimated initial interest rate of approximately 7-1/2% at issuance. Annually thereafter, the interest rate on the Proposed Bonds will be adjusted to a current market rate on the basis of yield evaluations of a portfolio of issues which carry comparable ratings by either Moody's or Standard & Poor's. At that time, holders of the Proposed Bonds may tender their bonds for repurchase at par through a designated Tender Agent or the holders may retain such bonds at the newly determined interest rate. Any of the Proposed Bonds tendered and repurchased will be remarketed by the Remarketing Agent. At the time of any annual tender the Company may select a fixed rate to apply to the Proposed Bonds until their maturity. The Proposed Bonds will be sold through negotiations with a group of investment bankers to be jointly managed by Merrill Lynch, Pierce, Fenner & Smith Incorporated, Carolina Securities Corporation, First Charlotte Corporation and Interstate

Securities Corporation to act as underwriters for the public offering for cash of the Proposed Bonds. The underwriting commissions are not expected to exceed 2% and any remarketing will be at a negotiated rate currently estimated at .5% to 1%.

3. The Company will issue its First and Refunding Mortgage Bonds (Mortgage Bonds) to the Trustee of the Proposed Bonds as security for such Proposed Bonds. The Mortgage Bonds will carry the same rates of interest and be issued for the same periods as the Proposed Bonds. The Company will pay all expenses incurred in connection with the Financing Arrangement, including such expenses incurred by York County. It is estimated that expenses to be incurred in connection with the Financing Arrangement will total approximately $300,000 in addition to the underwriting commissions mentioned above.

4. The Mortgage Bonds will be created and issued under the Company's First and Refunding Mortgage dated as of December 1, 1927, to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), as Trustee, as heretofore supplemented and as to be further supplemented and amended by a Supplemental Indenture to be executed in connection with their issuance. They will be subject to all of the provisions of the Mortgage, as supplemented, and by virtue of said Mortgage will constitute (together with the Company's outstanding First and Refunding Mortgage Bonds) a first lien on substantially all of the Company's fixed property and franchises.

5. The replacement funds from the Financing Arrangement will be applied and used by the Company for the defeasance of its outstanding $50,000,000 issue of First and Refunding Mortgage Bonds, 14-3/8% Series Due 1987, through a Defeasance Trust established with a major commercial bank. The results of this defeasance will be to reduce costs of service on an annual basis by about $4,800,000 (including interest and capital structure effects), approximately 70% of which will be attributable to the Company's North Carolina customers.

## CONCLUSIONS

Upon review and study of the verified application, its supporting data and other information in the Commission's files, the Commission is of the opinion and so finds, that the Company is a public utility subject to the jurisdiction of this Commission with respect to its rates, service, and securities issues and that the proposed Financing Arrangement is:

a. For a lawful object within the corporate purposes of the Company;

b. Compatible with the public interest;

c. Necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and

d. Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED that Duke Power Company be, and it is hereby, authorized, empowered, and permitted upon the terms and conditions set forth in its application:

1. To enter into the Financing Arrangement with York County, South Carolina, whereby the Company will borrow the proceeds of the sale of a maximum of $54,000,000 principal amount of the Proposed Bonds to be sold through negotiations with a group of investment bankers jointly managed by Merrill Lynch, Pierce, Fenner & Smith Incorporated, Carolina Securities Corporation, First Charlotte Corporation, and Interstate Securities Corporation;

2. To issue as security for the Proposed Bonds a like amount of its Mortgage Bonds carrying the same rates of interest and for the same periods and to execute and deliver a Supplemental Indenture to its First and Refunding Mortgage dated as of December 1, 1927, to Morgan Guaranty Trust Company of New York, as Trustee, in connection with the issuance of the Mortgage Bonds; and

3. To use the net proceeds to be derived from the Financing Arrangement to fund a Defeasance Trust for purposes of defeasing its 14-3/8% Series Mortgage Bonds as set forth in its application.

IT IS FURTHER ORDERED:

1. That the Company file a report with the Commission within thirty (30) days after the Financing Arrangement is consummated containing the particulars of the transaction (including the expenses incurred in connection therewith) and within such time it shall file with the Commission copies of the Loan Agreement entered into by the Company and York County, the Trust Indenture between the County and the Trustee, and the Bond Purchase Agreement between the County and the underwriters, the Defeasance Trust Agreement, as well as the Company's Supplemental Indenture to its First and Refunding Mortgage in the final form in which such documents are executed; and

2. That this proceeding be and the same is continued on the docket of the Commission, without day, for the purpose of receiving the report as hereinabove provided and nothing in this Order shall be construed to deprive this Commission of its regulatory authority under law including the specific authority to review and evaluate the impact of this Financing Arrangement during Duke's next general rate case proceeding before this Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of September 1984.

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

DOCKET NO. E-22, SUB 258
(REMANDED)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Virginia Electric and Power Company for ) ORDER ON
Authority to Adjust Its Electric Rates and Charges Based ) REMAND
Solely Upon Changes in Cost of Fuel )

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on Wednesday, September 5, 1984, at 9:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ruth E. Cook and Charles E. Branford

APPEARANCES:

For Virginia Electric and Power Company:

Guy T. Tripp III and Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

For the Public Staff:

Gisele L. Rankin, Staff Attorney, Public Staff-North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For Carolina Utility Customers Association, Inc.:

Thomas R. Eller, Jr., Attorney at Law, Suite 205 - Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612

BY THE COMMISSION: On February 27, 1981, and March 4, 1981, the Commission entered Orders in this docket whereby Virginia Electric and Power Company ("Vepco" or "Company") was authorized to adjust rates and charges to the Company's retail ratepayers in North Carolina pursuant to G.S. 62-134(e) effective for service rendered on and after February 27, 1981, and for bills rendered beginning with the billing month of April 1, 1981. By these Orders in this docket, Vepco was allowed to recover the fuel component of purchased and interchanged power costs in a fuel clause adjustment proceeding decided by the Commission pursuant to G.S. 62-134(e). The case was thereafter appealed to the North Carolina Court of Appeals by the Public Staff on behalf of the using and consuming public.

Effective June 17, 1982, G.S. 62-134(e) was repealed by the North Carolina General Assembly and G. S. 62-133.2 was enacted pertaining to future fuel charge adjustments for electric utilities.

On August 3, 1982, the North Carolina Court of Appeals filed an opinion in State of North Carolina ex rel. Utilities Commission v. Public Staff, reported at 58 N.C. App. 453, 293 S.E. 2d 888 (1982), wherein the Court reversed the

Commission Orders in this docket and held, in pertinent part, that ". . . the Commission was and is without authority to include or consider the cost of any portion of purchased power or interchange power in determining a fuel adjustment clause proceeding pursuant to N.C.G.S. 62-134(e)."

Vepco then appealed the matter to the North Carolina Supreme Court. On September 7, 1983, the Supreme Court entered an opinion in State of North Carolina ex.rel. Utilities Commission v. Public Staff, 309 N.C. 195, 306 S.E. 2d 345 (1983), wherein it was held that former G.S. 62-134(e) ". . . did not permit recovery for any portion of purchased power costs in a fuel clause proceeding and that the cost of purchased power, if recoverable, was recoverable only in the general rate cases." The Supreme Court further ordered that the cause should be remanded to the Court of Appeals for further remand to the North Carolina Utilities Commission for a hearing in the nature of a general rate case to determine whether, during the period covered by the proceeding which was the subject of such appeal, Vepco was entitled to recover or recoup any of the Company's costs for purchased and interchange power which have not previously been recovered. The Supreme Court further stated, in pertinent part, as follows:

> "The Commission shall hear and consider evidence as to the reasonableness of the utilities' decision to make the purchases and exchanges in question and the reasonableness of the price paid for such purchases or the value of the power exchanged and will allow or disallow such expenses accordingly. If the Commission determines that the purchased power costs already recouped in the fuel clause proceedings were unreasonable or improper, it shall make appropriate adjustments in the rates. If the Commission determines that already recouped purchased power costs were in all respects reasonable and proper, then it need make no such adjustments. It is the intent of this Court that on remand the Commission compare rates actually collected with rates it determines should have been collected in light of its determination as to the reasonableness and propriety of purchased power costs and make such adjustments in current rates as is necessary to true-up any discrepancy." 309 N.C. at pp. 213-214.

By Order entered in this docket on May 30, 1984, the Commission scheduled a hearing on remand in this docket for September 5, 1984; established the test period for use in this proceeding as the four-month period of September - December 1980; established the dates for the filing of testimony; and recognized the Public Staff, the Attorney General of the State of North Carolina, and the North Carolina Textile Manufacturers Association, Inc. as intervenors and formal parties in the remanded docket. In its Order of May 30, 1984, the Commission also set forth the following specific instructions concerning the data and information to be supplied by Vepco and the procedures to be followed in this case on remand:

> "Based upon the Court's remand instructions as set out above and the Commission's consideration of the various filings of the interested parties, the Commission now concludes that it is required to reopen Docket No. E-22, Sub 258 for the purpose of considering evidence as to the reasonableness of Vepco's purchased and interchange power costs . . . in a hearing in the nature of a general rate case. The test period to be used for this purpose is September

through December, 1980. Using actual experience from this test period, Vepco must file testimony and exhibits regarding the circumstances surrounding its decisions to make the purchases and exchanges it made during this time period, including but not limited to plant availability, the performance of its generating plants, i.e., heat rates, and the availability and cost of the fuel it would otherwise have used in its generating plants but for such purchases or changes. The prices paid for purchased power and information with regard to the value of any power exchanged or agreed to be exchanged at a later date also must be provided to the Commission, with full disclosure of affiliated relationships, market prices prevailing during the time period in question, and any other relevant information."

Upon call of the matter for hearing at the appointed time and place, Vepco, the Public Staff, and the Carolina Utility Customers Association, Inc. (C.U.C.A.) were present and represented by counsel. C.U.C.A. was recognized by the Commission as being the successor to the North Carolina Textile Manufacturers Association, Inc. for purposes of participation in this proceeding on remand.

Vepco presented the testimony and exhibits of Gary R. Keesecker, Manager of Electrical Engineering-Transmission and Distribution, and M. S. Bolton, Jr., Director of General Accounting Services. The Public Staff offered the affidavit of Dennis J. Nightingale, Director of the Public Staff Electric Division, pursuant to G.S. 62-68.

Based upon a careful consideration of the foregoing and the entire record in this proceeding on remand, the Commission now makes the following

## FINDINGS OF FACT

1. Virginia Electric and Power Company is duly organized as a public utility company under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. 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. The Company has its principal office and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding on remand is the four-month period of September - December 1980.

3. During the four-month test period of September - December 1980, Vepco operated its own generating units to supply the power needed by its customers so long as the cost of fuel used in those generating units was lower than the total price Vepco would have had to pay for purchased power from other utilities. During the test period, Vepco's generating system consisted of 2,329 megawatts of nuclear capacity, 3,210 megawatts of coal-fired capacity, 3,053 megawatts of oil-fired steam generation capacity, 550 megawatts of oil or gas-fired combustion turbines, and 326 megawatts of hydroelectric capacity. Vepco first used its nuclear and coal-fired capacity plus available hydro generation, its most economical forms of generation, to meet the Company's load. Since oil-fired generation is substantially more expensive than nuclear or coal-fired generation, Vepco was often able to avoid burning expensive oil

during the test period by purchasing power generated by coal-fired units on the systems of other utilities. Vepco entered into no exchange transactions during the test period. Purchased power served to significantly reduce the fuel cost for Vepco's customers during the test period.

4. During the test period, Vepco's power purchase transactions cost $19,594,081 for 712,491,000 Kwh during September 1980, $8,024,039 for 317,310,000 Kwh during October 1980, $16,451,108 for 691,673,000 Kwh during November 19890, and $24,622,113 for 966,014,000 Kwh during December 1980, for a total test period purchase power cost of $68,691,341 for 2,687,488,000 Kwh. The average energy cost to Vepco for this purchased power was 2.56¢ per Kwh. During the same test period, the average fuel costs of Vepco's oil-fired steam units and combusion turbines were 4.45¢ per Kwh and 7.01¢ per Kwh, respectively. Vepco's power purchases resulted in a savings of approximately $54 million to the Company and its customers on a system basis during the test period, assuming the power purchased had otherwise actually been generated by Vepco on its own system by use of available oil-burning steam generating units or combustion turbines.

5. All power purchased by Vepco during the test period was purchased from other utilities not affiliated in any way with Vepco.

6. During the four-month test period, Vepco's coal generating units operated well. The Bremo Station had capacity factors above 90% (except for the time period Unit No. 3 was out of service for turbine repairs). Portsmouth No. 4 experienced capacity factors in the 80% range and the Mt. Storm units had a capacity factor around 65% for the time they were available during the period in question. Based upon the level of performance of Vepco's coal units during the test period, it is extremely unlikely that Vepco could have produced any additional coal-fired power to offset its purchased power. The heat rates of Vepco's generating units had no effect on the Company's decisions to purchase power.

7. Vepco's total cost for purchased power during the test period in the amount of $68,691,341 was reasonable. The Company's purchased power costs were substantially less than the available on-system fuel costs for each month during the four-month test period. Vepco's decision to purchase power and the price paid for such purchased power were reasonable during the test period of September - December 1980. Vepco followed both formal and informal procedures during the test period to ensure that the Company obtained purchased power at the lowest possible cost.

WHEREUPON, the Commission reaches the following

## CONCLUSIONS

Based upon a careful consideration of the entire record in this proceeding on remand and the foregoing FINDINGS OF FACT, the Commission concludes that during the four-month test period of September - December 1980, Vepco's decision to purchase power and the price paid for such purchased power were both reasonable. Vepco operated its own generating units to supply the power needs of its customers during the test period so long as the cost of fuel used in those generating units was lower than the total price the Company would have had to pay for purchased power. Except for small emergency purchases, Vepco

only purchased power during the test period when it was more economical for the Company to purchase such power than to generate such power itself. All purchases were made from other utilities not affiliated in any way with Vepco and at the lowest available cost. Vepco's coal generating units operated well during the test period, making it extremely unlikely that the Company could have produced any additional coal-fired power to offset its purchased power.

In sum, Vepco's purchased power costs during the period of September through December 1980, were in all respects reasonable and proper. Upon remand, the Commission has conducted a hearing in the nature of a general rate case in full and complete compliance with the specific instructions given to the Commission by the North Carolina Supreme Court. Based upon the evidence introduced at said hearing on remand, the Commission concludes that no adjustment with respect to Vepco's purchased power costs for the period September - December 1980, is necessary.

IT IS, THEREFORE, ORDERED that during the period September - December 1980, the decision of Virginia Electric and Power Company to purchase power in the total amount of $68,691,341 and the price paid for such purchased power were in all respects reasonable and proper.

ISSUED BY ORDER OF THE COMMISSION.
This is the 16th day of October 1984.

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

GAS - COMPLAINTS

DOCKET NO. G-5, SUB 188

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|---|
| In the Matter of<br>Robert M. Campbell, Manager, Corporate Services,<br>Lithium Corporation of America, P.O. Box 3925,<br>Gastonia, North Carolina 28052<br>Complainant,<br><br>v.<br><br>Public Service Company of North Carolina, Inc.<br>Respondent | ) | ORDER REQUIRING SERVICE UNDER RATE SCHEDULE 90 AND REQUIRING RATE INVESTIGATION |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 24 and 25, 1984

BEFORE: Commissioner Douglas P. Leary, Presiding, and Commissioners A. Hartwell Campbell and Ruth E. Cook

APPEARANCES:

For the Complainant:

Keith R. McCrea, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004
Appearing for: Lithium Corporation of America

For the Intervenors:

Jerry B. Fruitt, Attorney at Law, P.O. Box 2507, Raleigh, North Carolina 27602
Appearing for: Carolina Utility Customers Association

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
Appearing for: The Using and Consuming Public

For the Respondent:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., P.O. Box 2479, Raleigh, North Carolina 27602
Appearing for: Public Service Company of North Carolina, Inc.

BY THE COMMISSION: On September 14, 1983, Robert M. Campbell, Manager of Corporate Services of Lithium Corporation of America (hereinafter "LCA"), filed a Complaint against Public Service Company of North Carolina, Inc. (hereinafter "Public Service" or "Respondent") protesting against denial of service to it for transportation of gas owned by LCA. The Complaint was served on Public Service on September 23, 1983, and on October 13, 1983, Public Service filed its Answer to the Complaint. LCA filed a Reply to the Answer on October 25, 1983. The Commission, by Order dated November 3, 1983, set the matter for hearing at the time and place set forth above.

Intervention by Carolina Utility Customers Association, Inc. was filed with the Commission and allowed by Orders of the Commission. The Public Staff filed Notice of Intervention.

At the Public Hearing, LCA presented two witnesses: Mr. Robert M. Campbell, Manager of Corporate Services of LCA, and Mr. Aarne Hartikka, a public utility consultant with the firm of Exeter Associates, Inc. LCA also called Mr. Marshall Dickey, Vice President - Gas Supply Services of Public Service, as an adverse witness. Public Service offered the testimony of Mr. Dickey and Mr. C. E. Zeigler, Chairman and President of Public Service, in opposition to the Complaint.

Based on the foregoing, the testimony and exhibits admitted at the hearing and the entire record in this docket, the Commission now makes the following:

## FINDINGS OF FACT

1. LCA is an industrial customer of Public Service, has purchased gas from Public Service under Rate Schedules 65, 70 and 80, and previously has had gas transported by Public Service under Rate Schedule 90.

2. LCA proposes to purchase gas in the field and have it transported to its plant in Bessemer City by Transcontinental Gas Pipe Line Corporation (hereinafter "Transco") and by Public Service. The transporation sought by LCA from Public Service would be rendered under Public Service's currently effective Rate Schedule 90.

3. Public Service provides transportation service to one of its industrial customers under the provisions of Rate Schedule 90. The record shows that Public Service transported gas for this industrial customer most recently during the period from June 1983 through mid-November 1983.

4. Public Service indicated a willingness to provide the transportation service when such service initially was requested by LCA in July 1983. Thereafter, in early September 1983, Public Service advised LCA of its refusal to transport LCA's gas.

5. LCA is entitled to the relief sought in the Complaint and should receive the transportation service of its gas under Rate Schedule 90. Public Service should provide such service to LCA under its Rate Schedule 90.

6. Public Service is a public utility natural gas distribution company subject to the jurisdiction of this Commission and, as such, has an obligation to provide service in accordance with the provisions of its currently effective rate schedules. Providing the service requested by LCA under Rate Schedule 90 is an part of Respondent's obligation as a public utility.

7. The adequacy of cost recovery of the present rate schedule 90 is not clear and should be examined by Public Service.

## CONCLUSIONS OF LAW

In this proceeding LCA seeks an order from the Commission compelling Public Service to provide the requested transportation service under Rate Schedule 90 of Public Service. LCA asserts that Public Service, as a public utility, has

an obligation under an approved rate schedule to provide the type of service described in the rate schedule. The Commission agrees.

Rate Schedule 90 provides in relevant part:

> "This rate schedule is available to any industrial customer who is presently connected to the Company's system, is now purchasing an independent supply of natural gas, has made arrangements to have the gas delivered by Transcontinental Gas Pipe Line Corporation (Transco) to one of the Company's existing delivery points, and has executed a service agreement with the Company which states the total volume and the average daily volume to be delivered in any seasonal period. The seasonal periods shall correspond with Transco's curtailment periods.
>
> The Company will attempt to deliver gas previously transported by Transco for the Customer's account under this rate schedule on a day-to-day basis in accordance with the Customer's requirements and subject to maximum allowable hourly and daily delivery; however, the Company reserves the right to suspend service on any day when, in the Company's sole opinion, its operating conditions are such that this is necessary."

The scope of transportation service which the Respondent has offered by filing the Rate Schedule is clearly defined by the terms and conditions of the tariff. Public Service has undertaken to provide the transportation service described in Rate Schedule 90, has provided it to LCA in the past, and continues to provide it to one of its customers. Moreover, LCA has demonstrated that it comes within the terms of the tariff. Therefore the Commission concludes that LCA is entitled to receive service under the Rate Schedule as it requested and that the Respondent has no basis to deny the requested service to LCA.

Public Service contends that an order granting the relief requested by LCA would necessitate a finding that it is a common carrier. There is no merit to this contention; whether Public Service is common carrier -- or even a contract carrier -- is not in issue in this docket. This Order simply requires Public Service to comply with the terms and conditions of Rate Schedule 90.

Public Service also contends that transportation service under Rate Schedule 90 is not available unless Public Service agrees to provide the service and that such agreement would be evidenced by the execution of a service agreement. This contention also is without merit. The record shows that the service agreement contains nothing not already provided for in the Rate Schedule. Public Service's interpretation of Rate Schedule 90 would invest discretion in the Respondent which is not supported by the plain language of the Schedule. Public Service further contends that the history and background of Rate Schedule 90 make it inapplicable to the relief requested by LCA. Suffice it to say that by its own terms Rate Schedule 90 is not limited to an emergency or curtailment situation; nor did Public Service seek to withdraw or close the Rate Schedule once curtailments eased.

For the foregoing reasons, we conclude that LCA has satisfied its burden of proof and is entitled to the requested relief. Public Service is hereby ordered to cooperate fully with LCA and its plans to transport gas. Such

transportation should commence as soon as LCA finalizes its arrangements and capacity conditions permit.

After a review of the entire record in this manner, and the Commission's files, the Commission further concludes that the adequacy of cost recovery in Respondent's rate schedule 90 is not clear. Therefore, the Commission concludes that the Respondent should make every effort to examine the rate, and to file with the Commission appropriate data within 60 days of the date of this Order supporting the rate's adequacy, or inadequcy, whatever the case may be. Additionally, the Commission concludes that the Respondent should file a revised Rate Schedule 90, if it is determined that the present level of Rate Schedule 90 is inappropriate.

IT IS, THEREFORE, ORDERED as follows:

1. That Public Service is required to provide the transportation service requested by Lithium Corporation of America under the terms and conditions of Rate Schedule 90.

2. That Public Service be, and hereby is, ordered to file within 60 days of this Order, data associated with the adequacy of cost recovery of the present Rate Schedule 90.

3. That Public Service be, and hereby is, ordered to file a new Rate Schedule 90, for Commission's aproval, if it is determined that the level of present Rate Schedule 90 is inappropriate.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of March 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. G-21, SUB 214

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of North Carolina Natural Gas Corporation for Approval of Its Refund Plan.<br>North Carolina Natural Gas Corporation Rate-making Disposition of Refunds and Cash Payments Received by North Carolina Natural Gas Corporation from CF Industries, Inc. Pursuant to January 26, 1983, Settlement Agreement | ) | ORDER APPROVING REFUND PLAN IN PART AND DEFERRING CFI REFUND (COMPENSATION) |

BY THE COMMISSION: On October 11, 1984, North Carolina Natural Gas Corporation (N.C.N.G.) filed a revised application proposing to refund funds which it received from Transco due under the compensation feature incorporated in Transco's Settlement Curtailment Plan covering the one-year period commencing November 16, 1974, in accordance with the Federal Energy Regulatory Commission's order on compensation issued in Transcontinental Gas Pipe Line Corporation Docket Nos. RP72-99 and TC79-6. The dollar amount as proposed to be refunded by N.C.N.G. totals $4,252,376, of which $1,384,616 has been allocated to CF Industries, Inc. (CFI). As part of the N.C.N.G. and CFI Settlement Agreement, all rights to these CFI refunds have been assigned to N.C.N.G. By Order issued May 11, 1984, in Docket No. G-21, Sub 243, the Commission ruled as follows:

> "1. That the CFI settlement proceeds placed in a deferred account subsequent to the close of the hearing in N.C.N.G.'s last general rate proceeding and accrued prior to the Company's next Purchase Gas Adjustment (PGA) proceeding shall be treated as a reduction in the rates of the Company in the next PGA proceeding either as an offset or decrease in the next PGA increase or in the event of a PGA decrease as an addition to the PGA decrement, and
>
> 2. That future CFI settlement proceeds shall be considered in the PGA proceeding immediately following the deferral of such funds and be used to reduce the rates of the Company as a reduction in any PGA increase or in the event of a PGA rate decrease (sic) as an addition to the PGA decrement."

N.C.N.G. appealed that Order to the North Carolina Court of Appeals. In connection with the appeal, N.C.N.G. has petitioned for a Writ of Supersedeas which the court denied. The Public Staff recommends that the $1,384,616 associated with the refund to CFI in this docket be placed in the deferred account for disposition in accordance with the Order quoted above.

The Commission, after review of the application, and upon the recommendation of the Public Staff, is of the opinion and concludes that N.C.N.G.'s application to refund should be approved provided that certain dollars associated with the refund to CFI are placed in the deferred account. A breakdown of the refund dollars is shown in the table below.

| Line No. | Customer Class | Total Refunds Payable | DT Sales | Refund Rate Per DT |
|---|---|---|---|---|
| 1. | Residential | $ 462,951 | 3,551,318 | $.130360 |
| 2. | Commercial | 404,446 | 3,162,600 | .127884 |
| 3. | Industrial | 501,468 | 5,340,490 | .093899 |
| 4. | CFI | 1,384,616 | | |
| 5. | Municipal and Other Direct Industrial | 1,498,895 | | |
| | | $4,252,376 | | |

IT IS, THEREFORE, ORDERED as follows:

1. That N.C.N.G. shall refund $1,368,865 as outlined in its refund plan beginning with its Cycle 10 customers in November 1984.

2. That the $1,384,616 associated with CF Industries, Inc., shall be placed in the deferred account and shall be treated as a reduction in the rates of the Company in the next Purchase Gas Adjustment (PGA) proceeding either as an offset or decrease in the next PGA increase or in the event of a PGA decrease as an addition to the PGA decrement.

3. That the thirty-three (33) direct industrial and municipal customers' refunds ($1,498,895) shall be made by credit to their bills or by check on or about December 7, 1984, when their normal bills are rendered.

4. That N.C.N.G.'s request to deduct its legal expenses of $24,100 from the refunds received is disallowed.

5. That an accounting shall be filed with this Commission showing the refunds and the refund rates made by customer class and individual customer refunds where necessary within forty-five (45) days upon completion of the refunding.

6. That N.C.N.G. shall issue a notice informing its customers of the refund amounts and the rates applicable by customer class in the billing cycle in which the refund is made.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of November 1984.

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

DOCKET NO. G-21, SUB 235
DOCKET NO. G-21, SUB 237

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Natural Gas Corporation ) FINAL
for an Adjustment of Its Rates and Charges ) ORDER

HEARD IN: Auditorium, Willis Building, Greenville, North Carolina, on October 25, 1983; Council Room, City Hall, Fayetteville, North Carolina, on October 26, 1983; Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 27 and 28, 1983; and Room 213, Dobbs Building, Raleigh, North Carolina, on October 31, and November 1 and 2, 1983

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

APPEARANCES:

For the Applicant:

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

For the Public Staff:

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For: The Using and Consuming Public

For the Intervenors:

Ernie K. Murray, Spruill, Lane, Carlton, McCotter & Jolly, Attorneys at Law, P.O. Drawer 353, Rocky Mount, North Carolina 27801, and David R. Straus and John M. Adragna, Spiegel and McDiarmid, Attorneys at Law, 2600 Virginia Avenue, N.W., Suite 312, Washington, D.C. 20037
For: The Cities of Wilson, Rocky Mount, Monroe, and Greenville, North Carolina

Henry S. Manning, Jr., Hunton and Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602
For: Aluminum Company of America

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For: North Carolina Textile Manufacturers Association, Inc.

BY THE COMMISSION: On April 27, 1983, North Carolina Natural Gas Corporation (NCNG, Applicant, or Company) filed an application with the

Commission in Docket No. G-21, Sub 235, for authority to adjust its rates and charges for natural gas service in North Carolina.

By Order dated May 25, 1983, 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 270 days from the effective date of May 27, 1983, set the matter for hearing, declared the test period to be the 12 months ended December 31, 1982, and required the Company to give notice to its customers of the proposed increase and the hearings.

On June 10, 1983, in Docket No. G-21, Sub 237, the Company filed an application for approval of revisions in its Transportation Rate Schedule No. T-1. By Order issued July 12, 1983, the Commission consolidated the matter with Docket No. G-21, Sub 235, for investigation and hearing, suspended the proposed rates for a period of 270 days from the effective date of June 15, 1983, and required that the Company give public notice to its municipal customers and those customers considered as being in NCUC Priorities 2.5-9.

On August 22, 1983, the Cities of Wilson, Rocky Mount, Monroe, and Greenville (Cities) filed a Petition to Intervene in Docket No. G-21, Sub 235. On September 2, 1983, a Petition to Intervene was filed in both dockets on behalf of the North Carolina Textile Manufacturers Association (NCTMA). The Petition of Aluminum Company of America for Leave to Intervene was filed on September 7, 1983. On September 9, 1983, a Motion for Limited Admission to Practice was filed by James N. Horwood, David R. Straus, and John Michael Adragna seeking to represent the Cities in Docket No. G-21, Sub 235. Federal Paper Board Company, Inc., filed a Petition to Intervene in both dockets on September 15, 1983. By Orders of the Commission issued on various dates, all of these petitions and motions were allowed.

On October 6, 1983, the Commission issued an Order in Docket No. G-21, Sub 238 and Sub 235, stating that the Public Staff in its investigation had found that $132,389 of the exploration and development (E&D) refunds had been allocated to C.F. Industries, Inc. (CFI). As a part of the negotiated settlement of liability between CFI and NCNG, CFI had assigned all rights to these refunds to NCNG. The Public Staff's proposal was that the refund plan be amended to require that the refunds allocated to CFI be distributed to NCNG's other customers. In its Order, the Commission requested the parties to the Docket No. G-21, Sub 235, proceeding to offer testimony during said proceeding as to the proper rate-making treatment to be accorded the E&D refunds in question and any future E&D refunds to be paid to CFI and assigned to the Company. The Order further required that the $132,389 be placed in a deferred account pending consideration of the matter in Docket No. G-21, Sub 235.

On December 12, 1983, the Commission issued a Notice of Decision and Order in Docket No. G-21, Subs 235 and 237, granting the Company an annual increase in revenues of $1,117,531, and allowing various other rate schedule changes.

On December 14, 1983, pursuant to the Commission's December 12, 1983, Order, the Company filed proposed rate schedules necessary to implement the annual revenue increased allowed by the Commission. The Commission issued an Order approving the Company's proposed rate schedules on December 19, 1983.

Prior to and during the course of the hearings, motions were made and Orders were entered relating thereto, all of which are a matter of record. Additionally, pursuant to various Commission Orders or requests, also of record, various parties were directed or permitted to file and serve certain late filed exhibits, either during or subsequent to the hearings held in this matter.

The matter came on for hearing at the places and on the dates scheduled in the Order Setting Hearing. Mrs. Margaret Wirth, Chairman of the Greenville Utilities Commission, appeared at the Greenville hearing on October 25, 1983, and offered testimony on the City's behalf. The following public witnesses appeared at the hearing in Fayetteville, North Carolina, on October 26, 1983: Patricia Keller, Mark J. Bullock, John Mobley, Philip Harrington, and Glen Ross.

The case in chief was heard in Raleigh beginning on October 27, 1983. The Applicant presented the testimony and exhibits of the following witnesses:

1. Frank Barragan, Jr., President and Director of NCNG (direct and rebuttal testimony);

2. Calvin B. Wells, Executive Vice President and Director of NCNG (direct and rebuttal testimony);

3. Gerald A. Teele, Vice President - Rates and Budget (direct and rebuttal testimony);

4. Raymond A. Ranson, consultant with Ransom Engineers, P.C. (direct testimony);

5. Jerome C. Weinert, Supervising Appraiser in the Regulated Industries Division, The American Appraisal Company (direct testimony);

6. James H. Vander Weide, Professor of Finance and Associate Dean at the Fuqua School of Business of Duke University (direct and rebuttal testimony); and

7. Eugene W. Meyer, Vice President and Director of Kidder, Peabody & Co., Inc. (direct testimony).

The cities of Wilson, Rocky Mount, Monroe, and Greenville presented the testimony and exhibits of the following witnesses:

1. Fred R. Saffer, Director of the Rate Department of R.W. Beck and Associates, Engineers and Consultants, Orlando, Florida, regional office;

2. Daniel J. Lawton, Supervising Economist, R.W. Beck and Associates; and

3. Robert J. Ori, Supervising Analyst, Rate Department, R.W. Beck and Associates.

Aluminum Company of America presented the testimony of Maynard F. Stickney, Chief Industrial Engineer of its Badin Works.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. R. J. Nery, Director, Natural Gas Division;

2. John T. Garrison, Jr., Engineer, Natural Gas Division;

3. William W. Winters, Supervisor of the Electric Section, Accounting Division;

4. Hsin-Mei C. Hsu, Economist, Economic Research Division; and

5. Elise Cox, Supervisor of the Natural Gas Section, Accounting Division.

Based upon the foregoing, the evidence adduced at the hearing and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. North Carolina Natural Gas Corporation is a corporation organized under the laws of the State of Delaware and authorized to do business in the State of North Carolina and is a franchised public utility providing natural gas service to its customers in North Carolina. The Company is properly before the Commission in this proceeding, pursuant to Chapter 62 of the General Statutes of North Carolina, for a determination of the justness and reasonableness of its rates and charges.

2. The test period for purposes of this general rate case is the 12 months ended December 31, 1982, adjusted for actual changes based on circumstances and events occurring through the close of the hearing, including the inclusion of plant in service and other rate base items at June 30, 1983.

3. The Applicant originally requested an annual increase in operating revenues of $8,373,361. In the update filed on September 21, 1983, the Company sought to show that an increase of $8,577,027 was justified.

4. NCNG is providing adequate gas service to its customers in North Carolina.

5. The reasonable allowance for working capital for the Company is $5,504,533.

6. NCNG's reasonable original cost rate base used and useful in providing service to its customers is $53,273,671. This rate base consists of plant-in-service of $89,141,608 plus a working capital allowance of $5,504,533 less accumulated depreciation of $31,115,023, customer advances for construction of $6,264, accumulated deferred income taxes of $9,718,540 and cost-free capital of $532,643.

7. The refunds and cash payments received through the close of hearings by NCNG pursuant to the January 26, 1983, Settlement Agreement between C.F. Industries, Inc. (CFI), and NCNG in settlement of the obligations of CFI to NCNG under the Service Agreement of November 10, 1967, should be divided so that one-half of such amount goes to reduce the cost of service over a five-year period, the approximate remaining life of the Service Agreement, and one-

half of such amount is retained by the Company as below-the-line income. The remaining $200,000 cash payment due NCNG pursuant to the settlement agreement and any future Transco refunds, curtailment compensation, curtailment tracking rate refunds, E & D refunds and any other future amounts otherwise due and payable to CFI should be placed in a deferred account pending future disposition by the Commission.

8. The appropriate level of revenues associated with completed construction not classified is $109,498. The appropriate level of purchased natural gas costs associated with completed construction not classified is $69,957.

9. NCNG's end-of-period operating revenues for the test period, after engineering and accounting adjustments, are $167,773,665.

10. The depreciation rates proposed by the Company are reasonable and proper with the exception of the rates proposed for Account 367 - Transmission Mains, Account 376 - Distribution Mains, and Account 380 - Services. The appropriate annual depreciation rate for Account 367 - Transmission Mains is 2.74%, for Account 376 - Distribution Mains is 2.40%, and for Account 380 - Services is 3.71%.

11. NCNG's method of calculating per books current deferred income taxes does not reflect the appropriate level of utility income tax expense for reporting purposes.

12. The reasonable level of test year operating revenue deductions for NCNG after accounting, pro forma, and end-of-period adjustments is $161,341,143, which includes an amount of $2,593,159 for actual investment currently consumed through reasonable actual depreciation after annualization to year-end levels.

13. The capital structure for NCNG which is reasonable and proper for use in this proceeding is as follows:

| Item | Ratio |
|---|---|
| Short-term debt | 18% |
| Long-term debt | 27% |
| Common equity | 55% |
| Total | 100% |

14. The proper cost of short-term and long-term debt for use in this proceeding is 11.00% and 9.52%, respectively. The reasonable rate of return for NCNG to be allowed on its common equity is 15.5%. Using a weighted average for the cost of debt and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall just and reasonable rate of return of 13.08% to be applied to the Company's original cost rate base. Such rate of return will enable NCNG, by sound management, to produce a fair return for its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the customers and to existing investors.

15. Based upon the foregoing, NCNG should increase its annual level of gross revenues under present rates by $1,117,531. The annual revenue requirement approved herein is $168,891,196, which will allow NCNG a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of NCNG's property used and useful in providing service to its customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

16. The margin on sales of compressed natural gas (CNG) should be placed into the deferred account for refunding to NCNG's customers and the rate charged for sales of CNG should be subject to prior Commission approval.

17. The curtailment tracking adjustment formula or rate (CTR) heretofore approved for use by NCNG, during a period of serious gas supply shortages is outmoded and therefore should be terminated.

18. An Industrial Sales Tracker (IST) is reasonable and should be included in the rates of NCNG. The IST is applicable to sales volumes and margin for sales to existing customers served under Rate Schedules 4, 5, 6, and S-1 including the negotiated volumes applicable to municipal sales normally made under Rate Schedule RE-1. New customers added after June 30, 1983, are specifically excluded from the IST.

19. The rate design proposed by the Public Staff for NCNG as modified herein is appropriate. The rate schedules and tariffs filed pursuant to the December 12, 1983, Order are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence for these findings of fact is contained in the verified application, the Commission's Order of May 25, 1983, and the original and supplemental testimony and exhibits of Company witness Teele and the testimony and exhibits of Public Staff witness Cox. These findings are informational, procedural, and jurisdictional in nature and are generally uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact consists of the testimony of Company witness Barragan and the public witnesses who appeared at the hearings in Greenville and Fayetteville. The testimony of the public witnesses dealt almost entirely with the level of rates being charged or proposed to be charged by the Company for its services. Based upon careful consideration of the evidence presented, the Commission concludes that the quality of service provided by NCNG to its customers is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding is contained in the testimony and exhibits of Company witness Teele, Cities witness Ori, and Public Staff witness Cox. The following tabular summary shows the amounts presented by the Company and the Public Staff.

| | Company | Public Staff | Difference |
|---|---|---|---|
| Cash - lead-lag Study | $ 264,652 | $ (44,297) | $308,949 |
| Plant materials and operating supplies | 1,050,086 | 1,050,086 | |
| Meter repair parts | 45,072 | 45,072 | |
| Stores expense | 120,995 | 120,995 | |
| Natural gas stored | 4,182,737 | 4,182,737 | |
| Minimum bank balances | 1,205,600 | 559,084 | 646,516 |
| Customer deposits | (829,060) | (829,060) | |
| Working capital allowance | $6,040,082 | $5,084,617 | $955,465 |

As seen in the chart above, the Company and Public Staff are in agreement regarding the appropriate amounts for plant material and supplies, meter repair parts, stores expense, natural gas stored, and customer deposits. Based upon the agreement of the parties regarding these components of working capital, the Commission finds plant materials and operating supplies of $1,050,086, meter repair parts of $45,072, stores expense of $120,995, natural gas stored of $4,182,737, and customer deposits of $829,060 reasonable and proper.

The parties disagree however as to the proper level of cash working capital. There is agreement that the determination of NCNG's cash working capital requirements should be calculated using a lead-lag study approach. The parties do not agree concerning various components of the lead-lag study and as shown in the preceding summary chart the Company and Public Staff recommend differing amounts for cash working capital. Company witness Teele determined that $264,652 should be included in the working capital allowance as investor-supplied funds for operation, while Public Staff witness Cox determined that an amount of $44,297 as customer funds advanced for operations should be deducted from the working capital allowance.

The only significant reason for the difference between the Company's proposed amount of $264,652 and the Public Staff's proposed amount of $(44,297) is that Company witness Teele assigned zero lag days to interest expense whereas Public Staff witness Cox assigned a lag of 51.54 days to interest expense. Municipal Intervenor witness Ori, in addition to reflecting a lag on interest expense at 52.59 days, also took the position that "non-cash" expense items such as the Company's depreciation expense provision and its provision for deferred income taxes, as well as the Company's return on common equity, should be deducted from the revenue base in calculating the net lead or lag in collecting the cost of service. Accordingly, witness Ori arrived at an amount of $692,387 for customer supplied funds after reflecting some of the Municipal Intervenors' proposed adjustments to the Company's pro forma cost of service.

After careful consideration, the Commission concludes that the proper amount for investor supplied funds is $(44,297) as presented by the Public Staff. In reaching its conclusion, the Commission recognizes that there is a lag in the payment of interest to debtholders. Since the Company collects an amount for interest from customers monthly and pays interest only at specified intervals during the year it is clear that the interest is being collected from the customers prior to payment to the debtholders. Therefore, the Commission concludes that the lag on interest payments should properly be used to reduce the working capital requirements of the Company.

The next area of difference in cash working capital concerns noncash items eliminated by Cities witness Ori in the determination of the cash working capital requirement. Witness Ori testified that no cash outlay is required for certain booked expenses and that the inclusion of the noncash expenses is not appropriate for the determination of a working capital requirement. Company witness Teele, through rebuttal testimony, discussed reasons for including certain non-cash expenses in the lead/lag study.

Based on the evidence in the record, the Commission concludes that noncash items in contention should be included in the determination of cash working capital. The Commission concludes that these noncash items are proper expenses of the Company and have been treated as such for rate making purposes. The Commission further concludes that a prorata portion of these noncash expenses is due to the Company on a daily basis. Thus, the Commission concludes that it is entirely appropriate and correct to assign these noncash items zero days lag as proposed by the Company and Public Staff.

The final area of disagreement regarding the working capital allowance concerns minimum bank balances. The Company is proposing to include $1,102,200 for compensating bank balances in the working capital allowance based on projected borrowings. Additionally, the Company recommends that $103,400 relating to managers working funds be included in the working capital allowance of NCNG. Company witness Teele testified that the Company has two lines of credit of $6,000,000 available to it at First Union National Bank and at NCNB for which a 10% compensating bank balance is required and a further $1,000,000 line of credit which is secured by merchandise appliances. Witness Teele stated that the Company had based its proposal regarding minimum bank balances on the Company's budgeted borrowing from such lines of credit. Additionally, the Company's proposed minimum bank balances include approximately $400,000 related to a term loan agreement.

Public Staff witness Cox recommended compensating balance requirements of $559,084 (including $103,400 relating to managers working funds) based upon NCNG's actual borrowings for the 12 months ended June 30, 1983. According to witness Cox the compensating bank balance requirements recommended by the Public Staff were similar to the actual minimum bank balance requirements for the test year ended December 31, 1982.

Company witness Teele testified that the Public Staff in recommending a pro forma capital structure had included a substantial amount of short-term debt in the capital structure with which minimum bank balances were required but had failed to make the corresponding adjustment to recognize the increased minimum bank balances necessarily related to the proformed capital structure.

The Commission, in Evidence and Conclusions for Findings of Fact No. 13 finds a pro forma capital structure consisting of 18% short-term debt appropriate for establishing the revenue requirements of NCNG in this proceeding. The Commission finds it entirely appropriate and proper to adjust minimum bank balances to a level reflective of the capital structure found fair herein. Indeed, the Commission hereinafter concludes that a capital structure consisting of 18% short-term debt is just and reasonable for NCNG, and therefore, finds that the costs associated with maintaining such a capital structure includes not only an interest cost of 11% annually, but also minimum bank balances amounting to 10% of such short-term debt. The Commission, therefore, finds that minimum bank balances relating to short term debt

included in the capital structure herein should properly be included in the determination of NCNG's cost of providing service. Thus, the Commission has included in the working capital allowance found fair herein minimum bank balances related to lines of credit and term loans of $979,000 (including $103,400 of manager's working funds).

In summary, the Commission finds a working capital allowance of $5,504,533 reasonable and proper for inclusion in NCNG's original cost rate base in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence concerning the appropriate rate base is found in the testimony and exhibits of Company witness Teele and Public Staff witnesses Cox and Winters, and the Cities proposed adjustments to the working capital allowance, as discussed in Evidence and Conclusions for Finding of Fact No. 5. The amounts proposed by the Company and Public Staff are shown below:

| | Company | Public Staff | Difference |
|---|---|---|---|
| Plant in service | $ 90,229,190 | $ 89,141,608 | $(1,087,582) |
| Accumulated depreciation | (31,115,023) | (31,115,023) | |
| Net plant | 59,114,167 | 58,026,585 | (1,087,582) |
| Working capital allowance | 6,040,082 | 5,084,617 | (955,465) |
| Accumulated deferred income taxes | (9,718,540) | (9,718,540) | |
| Customer advances for construction | (6,264) | (6,264) | |
| Cost-free capital | (125,377) | (886,148) | (760,771) |
| Original cost rate base | $ 55,304,068 | $ 52,500,250 | $(2,803,818) |

As shown in the chart above, the Company and the Public Staff are in agreement as to the proper amounts of accumulated depreciation, accumulated deferred income taxes, and customer advances for construction. There being no evidence to the contrary, the Commission finds accumulated depreciation of $31,115,023, accumulated deferred income taxes of $9,718,540, and customer advances for construction of $6,264 appropriate for use herein. The Commission will however discuss accumulated deferred income taxes in greater detail hereinafter in Evidence and Conclusions for Finding of Fact No. 11.

The first area of difference between the Company and Public Staff concerns plant in service. The $1,087,582 difference in the amounts proposed by the Company and Public Staff for plant in service relates to the Company's inclusion of a new compressor in rate base and the Company's inclusion of land held for future use in rate base.

With respect to the new compressor, Company witness Teele presented additional direct testimony at the hearing in which he stated that the Company was at that time installing a new 1100 HP Saturn C-167 compressor near the intersection of the Cabarrus, Stanly, and Union County lines. Witness Teele testified that the total costs of the unit and all other facilities of the compressor station will be $1,013,000, and it will be in service during the 1983-84 winter, beginning November 1, 1983. Witness Teele testified that the new compressor represents about 1/7 of the Company's fiscal year 1984 construction budget and would increase the Company's deliverability on peak

days by at least 10,000 Mcf per day. Witness Teele also testified that the compressor was necessary for the Company to deliver all the projected sales volumes that have been included in this case. Company witnesses Barragan and Wells also testified as to the Company's need for this compressor in their earlier testimony. Neither the Public Staff nor the Cities proposed including the compressor in plant in service.

The Commission concludes that the new compressor is not properly includable in plant in service for purposes of this proceeding since the compressor was not used and useful at the close of hearing and therefore did not constitute plant in service at that time. Based upon the testimony of the Company witnesses at the hearing, the Commission concludes that the compressor was under construction at the close of the hearings and therefore is not properly includable in plant in service in this proceeding.

The next difference between the Company and the Public Staff relates to $74,582 associated with property held for future use. The Company proposed including land which was purchased in 1973 for the proposed LNG plant in plant in service in this proceeding. The construction of such plant has been delayed for several years. Public Staff witness Cox testified that she had excluded property held for future use from rate base because it did not meet the criterion of being used and useful in providing natural gas service to the public as prescribed by G.S. 62-133. The Commission agrees that plant held for future use is not used and useful in providing gas utility service to the public and thus concludes that the Public Staff's proposed adjustment to remove property held for future use from rate base is proper.

The next area of difference concerns the allowance for working capital. The Commission has fully discussed the working capital allowance in the Evidence and Conclusions for Finding of Fact No. 5 and finds, therefore, that a working capital of $5,504,533 is appropriate.

The final difference between the Company and the Public Staff concerns the rate-making treatment for the net-of-tax unamortized balance resulting from the CFI settlement. The Public Staff recommends treatment of such amounts as cost-free capital. The Commission will fully discuss this issue hereinafter in the Evidence and Conclusions for Finding of Fact No. 7. Based upon the findings and conclusions contained therein the Commission finds cost-free capital relating to the CFI settlement of $407,266 reasonable and proper.

Based upon the foregoing, the Commission concludes that the appropriate original cost rate base to be used in setting rates for NCNG in this proceeding is $53,273,671, consisting of the following:

| Item | Amount |
|---|---|
| Gas utility plant in service | $89,141,608 |
| Accumulated depreciation | (31,115,023) |
| Net plant in service | 58,026,585 |
| Allowance for working capital | 5,504,533 |
| Accumulated deferred income taxes | (9,718,540) |
| Customer advances for construction | (6,264) |
| Cost-free capital - Transco refund | (125,377) |
| Cost-free capital - Gain on CFI settlement | (407,266) |
| Original cost rate base | $53,273,671 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Barragan, Wells, and Teale; Public Staff witnesses Cox and Garrison; Intervenor Cities witness Saffer; Alcoa witness Dickey, Stickney, and the Commission's record of matters involving CF Industries, Inc. (CFI), and the Company.

NCNG and Farmers Chemical Association, Inc. (CFI's predecessor in interest), entered into a Natural Gas Service Agreement on November 10, 1967, for natural gas service at a fertilizer manufacturing plant at Tunis, North Carolina. The Service Agreement provided, in part, as follows:

> "4.06 Should changes in business conditions make it impractical for Buyer to continue in operation, or to maintain the level of operations required to make use of the gas to be purchased and sold under sections 4.01 and 4.04, Seller upon written notice from Buyer shall attempt to make other disposition of all or part of the excess quantities of gas for the remaining period of the contract, and Buyer shall be relieved of its obligation to take or pay for gas for such periods of time and with respect to such volumes as the Seller is able to make such other disposition. If as a result of such other disposition the special facilities installed for service to Buyer should be idled in whole or in part, Buyer shall pay Seller, in addition to other applicable charges, 1% per month of the original investment allocable to such idled facilities."

The initial contract demand, after the break-in period, was 25,000 Mcf per day. The term of the agreement was 20 years from the initial delivery date, which was to be on or before August 1, 1969. Under the fourth and last amendment to the Service Agreement, dated August 31, 1979, the maximum daily quantity of gas was changed to 27,300 Mcf as of November 1, 1979, and the contract term was fixed from November 1, 1969.

CFI was NCNG's largest customer. However, it began experiencing operating losses at its Tunis, North Carolina, plant in recent years; and on September 20, 1982, CFI notified NCNG that it had terminated its manufacturing operations at the Tunis plant. CFI requested NCNG to dispose of all of the contract quantities of gas under the provisions of Article 4.06 of the Service Agreement and stated that it would be relieved of its obligation to pay for such gas as the Company disposed of. NCNG determined that upon disposition of all the gas, CFI would be relieved of any obligation except payment of 1% per month of the original investment allocable to facilities idled by the disposition, which would amount to about $5,000 per month.

The Company determined that the gas should not be disposed of since it was needed for peak shaving on days of peak demand on the Company's system, the gas was needed for future growth of the Company's industrial base load, no other gas was available on the Transco system on a contract demand basis, and the contract demand charges on this gas were substantially less than the projected cost of the new Trans-Niagra peak storage service which Transco was considering. The Company negotiated a settlement of the contractual matters between it and CFI on January 26, 1983. Among other provisions, the parties entered into a mutual release, CFI delivered to NCNG a nonnegotiable note in the amount of $800,000 payable $200,000 on the last day of each calendar

quarter of 1983, and CFI assigned to NCNG all revenues and refunds from the Exploration and Development programs approved by the Utilities Commission, all Transco refunds for the Transco I, II, and III periods, and all other refunds except the proceeds of a lawsuit by CFI against Transco. CFI also delivered a power of attorney authorizing any refund checks payable to CFI to be endorsed to NCNG. This settlement left the gas that would have otherwise been available to CFI available to NCNG's other customers.

As of the close of hearings in the present case, NCNG had received approximately $1,879,000 from CFI pursuant to the terms of the settlement. This sum includes $1,026,000 in Transco refunds, $56,000 from the CTR, $600,000 on the nonnegotiable note, and $197,000 from Exploration and Development programs. NCNG recorded all of these receipts as below-the-line income to the Company. The proper treatment of the settlement proceeds was first raised by the Public Staff in Docket No. G-21, Sub 238, in which the Public Staff proposed that a E&D refund of $132,389 allocated to CFI, all rights to which CFI has assigned to NCNG in the settlement, be distributed among NCNG's other customers. The Commission ordered NCNG to place the refund in question in a deferred account pending consideration of the issue in the present proceeding.

The Commission must now decide the proper rate-making treatment of the proceeds received by the Company through the close of the hearings pursuant to the settlement with CFI. Additionally, the Commission must consider the future proceeds due under the settlement.

The Company contends that its treatment of the settlement proceeds is proper for the following reasons:

1. The Company delayed the filing for this general rate increase for six months while the CFI matter was being settled and its customers benefited from this six-month delay in seeking a rate increase while it suffered.

2. The Company's customers are benefiting from having an additional 27,300 Mcf of gas per day available on peak days.

3. The customers have saved $3,300,000 in lower peaking costs by having the CFI volumes available.

4. The Company's stockholders assumed substantial risks when the Company entered the CFI contract in 1967.

5. The Company's earnings are declining.

6. The proceeds represent nonrecurring contract damages which should be excluded in setting rates for the future.

7. Inclusion of the settlement proceeds for ratemaking would be retroactive in nature.

The Public Staff contends that the proceeds should be included in the cost of service as revenues since the Company's present customers are bearing the cost relating to CFI and since the settlement proceeds are in lieu of revenues that would have been received by CFI and, thus, should be treated in the same way for rate-making purposes. The Public Staff proposes that the proceeds

received to date less applicable legal fees be amortized to income, net of tax, over a five-year period, which is the approximate remaining life of the CFI contract, and that the net of tax unamortized balance be deducted from rate base. The Public Staff states that all future refunds related to CFI should retain their identity as refunds and flow to all other ratepayers in the dockets in which they occur and that the remaining $200,000 payment due from CFI in December 1983 should be placed in a deferred account pending future disposition by the Commission.

We find some merit in both positions. It does appear, as argued by the Public Staff, that CFI's payments and assignments were made in settlement of and in lieu of the payments required of CFI pursuant to Section 4.06 of the Service Agreement. Had the payments required by this section of the agreement been made by CFI, they would have been included in revenues in the cost of service for rate-making purposes. However, Section 4.06 not only required certain payments from CFI, but also provided a means by which those payments could be reduced. NCNG was obligated to attempt to make other disposition of the gas subject to the Service Agreement and CFI was relieved of its obligation to take or pay for such volumes of the gas as NCNG was able to dispose of, except for a relatively small payment equal to 1% per month of the original investment allocable to facilities idled by the disposition. Thus, had NCNG not attempted to keep the gas for its customers, but had instead disposed of it pursuant to the Service Agreement, CFI would have been obligated to make relatively small payments and these small payments would have been included in the cost of service for rate-making purposes. Instead, NCNG negotiated a settlement of the Service Agreement pursuant to which it receives substantial payment. While some of these payments should be included in the cost of service as substitutes for the payments that CFI would have otherwise made pursuant to the Service Agreement, we cannot believe that it follows that all of the settlement proceeds should be treated in this light.

There is also evidence, as argued by the Public Staff, that NCNG's present customers are bearing certain costs that were formerly paid by CFI. Company witness Wells submitted a late filed exhibit that puts these costs at $934,065, representing $550,368 in demand charges formerly paid by CFI and $383,697 in reduction in CTR credits due to the loss of the volume formerly sold to CFI. Again, we think that this justifies inclusion of some, but not necessarily all, of the settlement proceeds in the cost of service.

NCNG argues that inclusion of the settlement proceeds in the cost of service constitutes retroactive ratemaking. We do not agree. There is no question but that the termination of the contract, the settlement, and the receipt of the proceeds that we deal with herein all occurred during the original or the updated test year. Since the events and transactions at issue occurred during the test year and since the Commission can properly decide the ratemaking treatment of all test-year events, the Commission concludes that inclusion of the CFI settlement proceeds in the cost of service does not constitute retroactive ratemaking. While we reject this Company argument, we find merit in some of the other Company arguments, and for this reason we do not find it appropriate to include all of the settlement proceeds in the cost of service.

The retention of this CFI gas by the Company, as allowed by the settlement, has made an additional 27,300 Mcf of gas per day available to serve other customers during the Company's peak demand. If the Company had been forced to

give up this significant quantity of gas, the only alternative would have been to seek another source of gas which, if available, would have been far more expensive. The late filed exhibit of Company witness Wells calculates the savings to the Company's customers coming from the retention of this CFI contract gas as compared with the cost of providing peaking gas in this amount from the only peaking source presently available, the Trans-Niagra storage service offered by Transco. The exhibit shows an annual cost savings of $3,302,200.

Finding some merit in both the position of the Company and the position of the Public Staff, the Commission determines that the appropriate, just, and reasonable treatment of the settlement proceeds received as of the close of hearings is to divide them in half, with one-half going to reduce the cost of service over a five-year period, the approximate remaining life of the Service Agreement, and one-half being retained by the Company as below-the-line income. The Commission therefore finds it appropriate to increase miscellaneous revenues recommended by the Company by $200,584 and to reduce the Company's recommended rate base by cost-free capital of $407,266.

We have dealt above with the refunds and cash payments received through the close of hearings herein. However, there will be a remaining cash payment of $200,000 to NCNG pursuant to the settlement and there will be future refunds. We must consider the proper procedure to follow in dealing with these proceeds. Since these proceeds apply to a future period, over which we do not have jurisdiction in this rate case, we believe the proper treatment is to order all future proceeds flowing from the settlement to be placed in a deferred account pending disposition by the Commission in the future.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this Finding of Fact is contained in the testimony and exhibits of Public Staff witness Cox. Witness Cox made an adjustment to include in the cost of service operating revenues of $109,498 and purchased gas costs of $69,957 associated with completed construction not classified. Witness Cox indicated in her testimony and exhibits that the amounts of operating revenues and purchased gas costs attributable to completed construction not classified were provided to her by the Company. In its proposed order the Company agreed with the adjustments to operating revenues and purchased cost of gas proposed by the Public Staff. Based upon the agreement of the Company and Public Staff, the Commission concludes that the amounts of operating revenues and purchased gas costs associated with completed construction not classified to be included for setting rates in this proceeding are $109,498 and $69,957, respectively.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Teele, and Public Staff witnesses Garrison and Cox, and Municipal Intervenor witness Lawton.

After the Company's acceptance at the hearing of certain Public Staff adjustments, the following tabulation shows the level of pro forma sales volumes and revenues under present rates presented by the Company and Public Staff:

| | Company | Public Staff |
|---|---|---|
| Total pro forma sales volume - dt | 32,813,340 | 32,941,171 |
| End-of-period revenues from present rates - | | |
| Natural gas sales | $166,757,120 | $169,231,375 |
| Miscellaneous revenues | 193,770 | 568,460 |
| Total operating revenues | $166,950,890 | $169,799,835 |

At the hearings, Company witness Teele accepted the Public Staff's proposed sales volumes with the exception of adjustments for high priority usage. The following is a reconciliation of the Company and Public Staff proposed natural gas sales revenues and sales volumes.

| | Sales Volumes (dt) | Revenues |
|---|---|---|
| Public Staff proposed amounts including completed construction not classified | 32,941,171 | $169,231,375 |
| Adjustments on which the Company and Public Staff disagree: | | |
| Company's exclusion of sales to Caro Knit, Inc. due to the closing of the plant | (9,279) | (46,037) |
| Conservation and usage adjustment (Company 178,048 dt/Public Staff 59,496 dt) | (118,552) | (638,213) |
| Annualized loss associated with negotiated sales | | (1,790,005) |
| Company Proposed Amounts | 32,813,340 | $166,757,120 |

As shown on the chart above the Company and Public Staff disagree on two issues regarding sales volumes. The first item involves sales to Caro Knit Inc., which has closed its plant and is no longer a customers of NCNG. In its proposed order, the Company recommended excluding from end-of-period sales volumes the actual amounts sold to Caro Knit of 9279 dt. The Commission finds it entirely reasonable and proper to exclude from end-of-period sales volumes amounts related to a former customer of the Company which has left NCNG's system.

The next item of difference relates to usage and conservation adjustments proposed by the Company, Public Staff and Cities. Company witness Teele made an adjustment for anticipated conservation which had the effect of reducing sales volumes by 178,048 dt. Public Staff witness Garrison testified that the conservation or usage adjustment should be 59,496 dt, or 118,552 less than Company witness Teele's adjustment. Municipal Intervenor witness Lawton testified that none of the usage adjustment should be allowed. At issue is the question of whether declining customer usage or conservation should be considered by the Commission in determining the end-of-period level of sales volumes and, if so, what the appropriate adjustment should be. The evidence in this case indicates that overall residential and commercial usage is declining. While the long-term trend is declining usage, in the opinion of

the Commission the Company has failed to provide convincing evidence that usage will continue to decline at the same rate in the future as has occurred in the recent past. As several public witnesses testified, the consumer's cost for natural gas has increased dramatically in the past few years. Therefore, it is reasonable to assume that the largest conservation effects have been reflected in the actual customer usage during the test year. This appears to be the case. While the Commission believes that some impact of changes in customer usage should be considered, the adjustment proposed by NCNG is in the Commission's opinion too large. The Commission concludes that the adjustment proposed by the Public Staff adequately adjusts test year sales volumes to an end-of-period level fully reflective of the impact of conservation and usage patterns which have occurred through the close of the hearing. The Commission therefore concludes that actual test year sales volumes should be reduced by 59,496 dt to reflect conservation and declining customer usage as recommended by the Public Staff.

The final difference relates to the negotiated revenue loss to be reflected in end of test operating revenues relating to negotiated sales. The Company's approach was to reflect an annualized revenue amount based on test period sales volumes (with which the Public Staff agreed) times the estimated price that can be realized from these sales. In essence, the Company calculated revenues from negotiated sales on the same basis as any other rate schedule, except that the price was lower reflecting market conditions existing at the end of the updated test year. The Public Staff, on the other hand, priced the negotiated volumes at the Company's regular tariff rates, and then deducted actual losses from negotiations during the 12 months ended June 30, 1983. The Commission believes the Company's method of determining the negotiated sales losses more accurately reflects revenues at a normalized end-of-period level since such losses are determined at the end of the test period rather than the amounts actually recorded for the 12 months period ending June 30, 1983.

Based upon the foregoing discussion the Commission concludes that a sales volume of 32,913,075 dt. (exclusive of witness Cox's adjustment for completed construction not classified) is reasonable for NCNG, and that revenues associated with sales of natural gas of $167,285,835 (excluding $109,498 related to completed construction not classified) are appropriate for use herein.

The Company and Public Staff recommended differing amounts of miscellaneous revenues. The $374,690 difference in the party's recommendations relates solely to alternative treatments of settlement amount received by NCNG from CF Industries, Inc. The Commission fully discusses this issue in Evidence and Conclusions For Finding of Fact No. 7. Consistent with the findings and conclusions contained therein the Commission finds it appropriate to increase the Company's proposed revenues by $200,584.

One further issue regarding miscellaneous revenues must be discussed by the Commission. Both the Company and Public Staff recommended increases in the turn-on and reconnect fees. Consistent with such recommendations both parties proposed adjustments increasing miscellaneous revenues by $16,022 to reflect proposed increases in these fees in revenues under present rates. The Commission discusses turn-on and reconnect fees in Evidence and Conclusions for Finding Fact No. 19. Based upon the conclusions reached therein the Commission has excluded the proposed annual increase in revenues relating to turn-on and reconnection fees from operating revenues for purposes of

establishing the end-of-period level of operating revenues under present rates in this proceeding. The Commission concludes that such increase is properly considered in the rate design of the Company since it reflects revenues associated with proposed rates of the Company rather than present rates. In the Notice of Decision and Order issued December 12, 1983, in this docket the Commission inadvertently and incorrectly included adjustments related to miscellaneous revenues in natural gas sales revenues. The Commission has corrected such adjustments for purposes of this Order and properly treated such amounts as miscellaneous revenues.

For all of the foregoing reasons, the Commission finds and concludes that the proper amount of NCNG's operating revenues after appropriate accounting and pro forma adjustments are $167,773,665 consisting of the following:

| Item | |
|---|---|
| Natural gas sales | $167,285,835 |
| Revenues - completed construction not classified | 109,498 |
| Miscellaneous revenues | 378,332 |
| Total operating revenues | $167,773,665 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding is contained in the testimony and exhibits of Company witnesses Weinert and Teele 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 Weinert. 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.

Company witness Weinert and Public Staff witness Nery agree on the proposed new depreciation rates for all accounts with the exception of Account No. 367 - Transmission Mains, Account No. 376 - Distribution Mains, and Account No. 380 - Services. Depreciation rates are composed of two distinct components. One component is designed to recover the original cost of the investment and the other component is designed to consider the net salvage associated with the investment. With regard to these three accounts in contention, both witnesses agree on the remaining lives for each of the accounts. The witnesses agree that the remaining life for Account 367 - Transmission Mains is 25.18 years, for Account 376 - Distribution Mains is 36.63 years, and for Account 380 - Services is 23.86 years. Therefore, the difference between the conclusions reached by the Company and Public Staff results from the manner in which each determines net salvage expense. Net salvage is gross salvage less cost of removal. For all practical purposes, in this instance since there is little or no actual gross salvage, cost of removal equals net salvage. Since neither witness Weinert nor witness Nery made any adjustment to the Company's book figures for gross salvage on any account, the principal difference is the determination of the reasonable expense for cost of removal.

Company witness Weinert proposed a 2.94% rate for Account 367 - Transmission Mains. Witness Weinert's proposed rate for Transmission Mains includes a proposed increase in the present net salvage component from 10% to

15%. Using the net salvage component proposed by witness Weinert, the book plant balance at September 30, 1982, and a remaining life of 25.18 years, such a rate would provide for $143,423 per year of net salvage expense. Public Staff witness Nery also looked at the activity in this account over the past 10 years and recommended no change in the cost of removal, but rather that the negative net salvage component remain at 10% which would provide $95,615 per year for net salvage expense. As reflected on Nery Exhibit No. 4, based on the rates in effect over the past 10 years as approved by the Commission, which were increased in each depreciation study period, the amount collected over the 1973 through 1982 time period exceeded the cost of removal expense actually incurred by $180,395. Nery Exhibit No. 1 shows that the highest net salvage expense experienced by the Company during the 1977-78 through 1981-82 time period was the $826 experienced in 1979-80. The Commission finds the Public Staff's proposed depreciation rate of 2.74% reasonable which includes a net salvage component of 10%. Based upon the evidence presented by the Public Staff concerning actual retirements of Transmission Mains for the period 1977-1982, the Commission concludes that a net salvage component of 10% is adequate for Account 367 - Transmission Mains.

In determining cost of removal for Accounts Nos. 376 - Distribution Mains and 380 - Services Company, witness Weinert determined the ratio of the cost of removal to the original cost of the property. Based on this analysis, witness Weinert proposed increasing the negative net salvage factor from 25% to 30% for Account 376 and from 50% to 115% for Account 380.

The Commission recognizes that the methodology advocated by the Company to determine cost of removal is influenced by the size of the retirement and since the Company does not have a lower limit on whether an item will be expensed or considered in the cost of removal, the influence of the size of the retirement on the cost of removal determination maybe exaggerated. The Commission also believes that this method assumes that all plant will be retired in the same piecemeal fashion as it has in the past. The Commission further realizes that the lower the original cost the higher the ratio of cost of removal to original cost, if the cost of removal is held constant. As was discussed during the cross-examination of witness Weinert, some of the property held by NCNG was originally the old Tidewater property and could be 100 years old. The Commission realizes the inclusion of such property tends to produce a higher cost of removal ratio. Thus, the Commission concludes that the cost of removal or net salvage advocated by the Company for Accounts 376 and 380 may be overstated .

Alternatively, for Account 376 - Mains Public Staff witness Nery obtained the average footage retired per year for the period 1977-78 through 1981-82. Witness Nery then multiplied that average footage by $.48, the highest average cost of removal per unit experienced during the last five years. In addition, witness Nery made a further upward adjustment to his provision for cost of removal. The rate proposed by witness Nery would generate approximately $11,500 per year for net salvage. Alternatively, using Company witness Weinert's net salvage component, the book balance for September 30, 1982 and a remaining life of 36.63 years, his proposed rate would provide for $210,323 per year of net salvage expense. The Commission has previously discussed its objections to the Company's net salvage proposal for Account 376. The Commission also believes that the Public Staff's proposal, although based perhaps on a more acceptable methodology for this account may rely too heavily on past historical costs. Thus the Commission must make its own determination of the appropriate annual net salvage of the Company for Account 376.

Upon careful consideration of the evidence presented in this regard, the Commission finds a depreciation rate of 2.40% appropriate for Account 376 - Transmission Mains which provides for $109,786 per year net salvage. The Commission believes and so concludes that such a rate more accurately reflects the normalized annual depreciation needs including net salvage of NCNG than those presented by the proposals of the Company or the Public Staff.

For Account 380 - Services, Company witness Weinert recommended a depreciation rate of 7.76%. Witness Weinert again determined the percentage for cost of removal by dividing the cost of removal by the original cost of the property retired. As reflected on Nery Exhibit No. 3, the number of services being retired declined over the 1977-78 through 1981-82 five-year period. Notwithstanding that trend, witness Nery calculated the future cost of removal by determining the average number of services retired over the five-year period (665) and multiplying that by the estimated future cost of removal. The estimated future cost of removal per service used by witness Nery was $72.02, which was arrived at by trending the five-year base period and which exceeded the average cost of removal experienced during any year of the five-year period. Multiplying the average number of services retired by the future cost of removal produced an annual estimated future cost of removal of $47,893. The net salvage component in the depreciation rate proposed by the Company would produce $856,126 per year for cost of removal based on witness Weinert's net salvage component, the plant balance at September 30, 1982, and a remaining life of 23.86 years.

The Commission has previously stated its objections to the Company's proposal regarding net salvage for Account 380 Services. Additionally, the Commission is concerned that the Public Staff's methodology may rely too heavily upon historical costs. Thus the Commission will make it own determination of the appropriate annual net salvage for Account 380.

Upon careful consideration of the evidence presented regarding the appropriate depreciation rate for Account 380 - Services, the Commission finds a rate of 3.71% reasonable which provides for $137,154 annually for net salvage. In the Commission's opinion a depreciation rate of 3.71% for Services more accurately reflects the normalized depreciation needs including net salvage for Account 380 - Services than the proposals of the Company and the Public Staff.

After a careful consideration of all the evidence, the Commission concludes that the rates for Accounts 367 - Transmission Mains, 376 - Distribution Mains and, 380 - Services of 2.74%, 2.40% and 3.71%, respectively, are appropriate and proper. These rates are approved effective October 1, 1983.

EVIDENCE AND CONCLUSIONS FOR FINDING OF NO. 11

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Teele and Public Staff witness Winters. In his original filing, witness Teele testified that he made an adjustment to increase income tax expense by $168,848 in order to amortize over a five-year period unrecorded deferred income tax liabilities related to book and tax timing differences arising from years prior to 1976 when the Company used "flow-through" accounting for all or part of such differences. Witness Teele further testified regarding this issue as follows:

"In the years prior to 1976, some or all of the tax benefits related to accelerate tax deductions were flowed through (i.e., deferred income taxes were not provided for all timing differences.) We have determined that the amount of deferred income tax liability not provided is $844,241. These income taxes will have to be paid in the future, though, as the timing differences to which they relate reverse and cause taxable income to exceed pre-tax accounting (i.e., book) income. We are proposing to amortize the unfunded deferred income tax liabilities over a five-year period in order to increase the Company's accumulated deferred income tax liabilities to the amounts that would have been provided if full normalization accounting had always been used instead of just from 1976 to the present."

In his filing of June 30, 1983, to update the test year, witness Teele changed the amortization period to 20 years, which resulted in income tax expense being increased by $40,488 rather than the $168,848 originally requested. Subsequent to this filing, witness Teele agreed to the amount of an adjustment made by witness Winters of $49,053 related to this subject. At the close of the hearing, the parties were in agreement as to the amount of the adjustment but disagreed as to why the adjustment was necessary. The Commission will now discuss the disagreement.

Public Staff witness Winters took the position that the Company has calculated its current and deferred income taxes incorrectly and that the solution to the problem requires a change in the way the Company makes these calculations. Witness Winters testified in regard to this issue as follows:

"I do not agree that the Company has the same problem addressed by Mr. Teele. FERC Order 144 requires utilitites under the FERC jurisdiction to normalize deferred income taxes on all timing differences including those items which have been previously flowed through to ratepayers. Compliance with this rule would result in a deferred income tax deficiency if some provision were not made to restore to the deferred tax reserve those taxes which were flowed through in prior years. However, since NCNG is not regulated by FERC there is no need to calculate deferred income taxes on items which have been previously flowed through.

I have made a proposal which, if adopted, will result in an appropriate amount of current and deferred income taxes being recorded on the Company's books. My approach corrects the problem and will provide, in the future, the detailed records related to deferred income taxes necessary to allocate them to the proper periods for rate making and financial reporting purposes."

The Commission has carefully reviewed the recommendations of the parties and finds that the Company's method of calculating current and deferred income taxes for book purposes does not reflect the levels of income taxes on which rates are set in this proceeding. The adjustment proposed by the Company approximately compensates for the difference; however, this method does not prospectively provide the detailed records necessary to allocate deferred income taxes to their proper period for accounting and rate-making purposes in a precise manner. The Commission finds that the proposals recommended by the Public Staff do provide this detail is appropriate and concludes that the

following recommendations made by the Public Staff should be implemented by the Company as soon a practicable:

1. The current income tax liability should be calculated so that it can be properly recorded in appropriate utility and nonutility accounts.

2. Deferred income taxes should be calculated and recorded on specific material timing differences, and reversals of timing differences should be made only to the extent that taxes related to the differences are included in the deferred income tax reserve.

3. The remaining balance of deferred income taxes related to specific material basis differences should be identified by source on a first-in first-out basis and reversals should be made over the remaining life of the property giving rise to the deferred tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Teele and Wienart, Cities' witnesses Lawton and Saffer, and Public Staff witnesses Nery, Garrison, Cox, and Winters.

The following table sets forth the various differences as filed between the Company and the Public Staff with respect to operating revenue deductions.

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Cost of gas | $133,965,590 | $133,457,394 | $ (508,196) |
| Operation and maintenance | 9,827,039 | 9,527,494 | (299,545) |
| Depreciation | 3,565,634 | 2,393,065 | (1,172,569) |
| Taxes other than income | 11,086,889 | 11,261,648 | 174,759 |
| Deposits | 66,325 | 66,325 | |
| Revenue income taxes | 3,086,395 | 5,158,266 | 2,071,871 |
| Total operating revenue deductions | $161,597,872 | $161,864,192 | $ 266,320 |

The only item on which the Company and Public Staff agree is interest on customer deposits. Based on the uncontested evidence presented, the Commission finds interest on customer deposits of $66,325 appropriate.

The first item on which the Company and the Public Staff disagree is cost of gas sold. The following is a reconciliation of the cost of gas sold and the associated gas volumes.

| Item | Volumes (dt) | Cost of Gas |
|---|---|---|
| Adjusted amounts recommended by the Public Staff including completed construction not classified | 33,144,538 | $133,457,394 |
| Adjustments on which the Company and Public Staff disagree: | | |
| Company's exclusion of sales to Caro Knit, Inc., due to closing of the plant | (9,279) | (33,998) |
| Conservation and usage adjustment (Company 178,048 dt/Public Staff 59,496 dt) | (118,552) | (434,375) |
| Adjustment to reflect lost and unaccounted for volumes at differing levels | 266,531 | 976,569 |
| Company proposed amounts | $33,283,238 | $133,965,590 |

The first item of difference listed above relates to sales made during the test year by NCNG to a former customer, Caro Knit, Inc. Consistent with previous conclusions reached regarding this issue in Evidence and Conclusions for Finding of Fact No. 9, the Commission finds it appropriate to exclude such volumes from the adjusted cost of gas sold by NCNG. Thus, the Commission finds it appropriate to reduce the Public Staff's proposed cost of gas sold by $33,998.

The next item of difference listed above relates to differing proposals regarding the conservation and usage adjustment. This issue is fully discussed in Evidence and Conclusions for Finding of Fact No. 9. Consistent with conclusions reached therein and for reasons stated therein, the Commission finds the Public Staff's proposed conservation and usage adjustment appropriate.

The final issue relating to cost of gas sold relates to lost and unaccounted for volumes. With respect to the appropriate amount of lost and unaccounted for volumes, the evidence in this proceeding shows that the level of unaccounted for gas varies greatly depending upon whether a year ending in a winter month or a year ending in a summer month is considered. The Company has requested an allowance of 400,000 dt which is a revision of the 2% allowance or 590,459 dt originally requested by the Company. The Public Staff has recommened a level of 133,087 dt for unaccounted for gas, which is the average on a 12-month running basis from January 1980 to June 1983, noting that the actual unaccounted for volumes for the original test period were (225,839) dt and for the update test period were 294,694 dt. The high and low over the period considered by witness Garrison were 368,187 dt and (225,839) dt, respectively. Evidence presented by Company witness Wells concerning lost and unaccounted for volumes over a 13-year period from 1971 to 1983, indicates that the average of the 12 months ending in January or June or any other month remains approximately the same. The high and low over the period analyzed by witness Wells ranges from a high of 1,078,198 dt to a low of (255,389) dt, respectively, with an average for the period of 372,744 dt.

The Commission has carefully analyzed the data presented by the witnesses regarding lost and unaccounted for volumes and recognizes that such data varies widely from month to month. The evidence presented by the Public Staff does seem to indicate that there has been a somewhat downward trend in recent years in lost and unaccounted for volumes when compared to similar amounts for the period 1971 onward. The Commission also recognizes that lost and unaccounted for volumes have increased for months subsequent to the time period considered by witness Garrison. Based upon careful consideration of all of the evidence presented on this issue, the Commission finds lost and unaccounted for volumes of 300,000 dt to be appropriate for establishing the revenue requirements of NCNG in this proceeding. Based upon the preceding discussion, the Commission finds the representative adjusted test period cost of gas sold to be $134,034,965.

The next issue on which the Company and Public Staff disagree is operation and maintenance expense. The $299,545 difference between the parties is itemized below.

| Item | Amount |
|---|---|
| Uncollectible expense | $ 90,772 |
| Advertising expense | 120,396 |
| Deferred compensation | 73,005 |
| Employee benefit expense | 15,372 |
| Total difference | $299,545 |

The first item of difference between the Company and the Public Staff is uncollectibles expense. In its updated filing, the Company presented an amount of $448,110 for uncollectibles based on a five-year average ending December 31, 1982, of the Company's provision for bad debts applied to the end-of-period residential and commercial revenues, together with a three-year amortization for bad debt losses experienced during 1982-83 from two large industrial customers who went bankrupt.

Public Staff witness Cox proposed an adjustment of $153,882 to reduce the test year uncollectibles to $294,228, or $56,888 less than the actual amount the Company recorded on its books for the 12 months ended June 30, 1983. On cross-examination, Company witness Teele testified that he agreed with $63,110 of witness Cox's adjustment, but that he did not agree with $90,772 of her adjustment. Witness Teele testified, that the reasonable level of uncollectibles expense to be used in this proceeding is $385,000 ($448,110 - $63,110) and that the absolute minimum that should be considered is $350,000. Witness Teele testified that he obtained the amounts of $350,000 and $385,000 by updating the ratios used by witness Cox and himself, respectively, to include the Company's fiscal year ended September 30, 1983, and dropping out the fiscal year 1978.

Public Staff witness Cox recommended an amount of $294,228 by applying a five-year average of net write-off to residential and commercial revenues for the years ended September 30, 1982. The five-year average net write-off ratio used by witness Cox was 0.63% of residential and commercial revenues.

Witness Teele testified that updating the five-year averages of the bad debt provision and net write-offs by including the data for 1983 and eliminating the data for 1978 would cause the ratio of the provision the Company recommended to increase from 0.79% to 0.83%, and the ratio of net

write-offs witness Cox recommended to increase from 0.63% to 0.75%. Applying these updated ratios to the end-of-period level of residential and commercial revenues produces an uncollectibles expense of $385,000 and $350,000, respectively.

After careful consideration of the evidence presented on this issue, the Commission finds and concludes that the proper amount of uncollectibles expense is $350,271 with an associated uncollectible rate of .75%. In reaching its conclusion, the Commission believes that the most recent data (i. e., 1983) is more relevant than 1978 data in terms of evaluating the reasonable level of uncollectibles expense. Thus the Commission finds it entirely correct and appropriate to incorporate the more recent data (1983) in determining the appropriate uncollectible expense as recommended by the Company. The Commission finds however that the methodology advocated by the Public Staff of utilizing a ratio of net write-offs to residential and commercial revenues is more accurate and thus more appropriate to use in calculating the uncollectible expense of the Company. Therefore, the Commission finds an uncollectible ratio of .75% and associated uncollectible expenses of $350,271 to be reasonable for purposes of determining the revenue requirements of the Company in this proceeding.

The next adjustment proposed by the Public Staff removes $120,396 of advertising expense from operation and maintenance expenses. Witness Cox testified that she had removed $25,870 related to Gas Appliance Manufacturers Association advertising campaign because she considered that advertising to be related to the promotion of gas appliances. Witness Cox stated that if the advertising is effective, NCNG will sell appliances. The Company took the position that selling new appliances is an indirect means of selling gas. Witness Teele on cross-examination admitted that the Company services as well as sells appliances and that the service business would increase if there were more gas appliances in homes.

Witness Cox removed advertising costs relating to billboard advertising. Witness Cox stated that the thrust of this advertising is the promotion of the Company's image or the sale of appliances. Witness Cox stated on cross-examination that the billboard messages were on a "Gas is Efficient, Gas is Good, NCNG is Good" or else "Happy Holidays from the Gas People of North Carolina Natural Gas" level of communication. Witness Cox testified that she considered this type of advertising to be image advertising. Furthermore, she stated that if the Company's goal was to increase sales of gas, the type of advertising that was removed would be ineffective for that result. Witness Cox stated that she had allowed magazine and newspaper advertising, marketing salaries, and American Gas Association dues of which a portion is used for national advertising to remain in operation and maintenance expenses.

The Company's position is that the total amount of advertising expenses of $186,000 should be allowed in the cost of service. Witness Teele stated that advertising expenses are an ordinary business expense and that advertising discloses to the public that NCNG is the Company to contact for natural gas service.

After careful consideration, the Commission concludes that the Public Staff's proposed adjustment of $120,396 to advertising expenses is not entirely proper and correct. Based upon the evidence presented at the hearing, the Commission remains unconvinced that all of the advertising

expenses excluded from O & M expenses by the Public Staff are indeed image advertising or for the primary purpose of promoting the sales of gas appliances. However, the Commission has been presented with insufficient evidence in this proceeding on an ad-by-ad basis with which to exclude the cost of ads which the Commission considers promotional of gas appliances on image advertising. The Commission therefore concludes based upon the overall weight of the evidence that it is appropriate to reduce the Company's proposed advertising expense by approximately $60,198 for purposes of this proceeding.

The next adjustment proposed by the Public Staff removes $73,005 of deferred compensation for Mr. Barragan from the Company's pension expense. Witness Cox testified that the amount of expense for deferred compensation will no longer be included in NCNG's cost of service after September 30, 1983, and, therefore, was a nonrecurring expense. Company witness Teele on cross-examination acknowledged the amount and the timing of the expense. The Commission concludes that the adjustment proposed by the Public Staff to remove this nonrecurring expense is proper.

The next difference in operations and maintenance expenses concerns employee benefits expenses. On cross-examination, witness Teele stated that the Company agreed with witness Cox's adjustment involving the removal of nonutility and construction allocations of pension and insurance expense with the exception of approximately $15,000. Witness Cox made pro forma adjustments to operating expenses as of December 31, 1982, and annualized them to a June 30, 1983, level. Alternatively, witness Teele made pro forma adjustments to the operating expenses as of June 30, 1983. The difference between the two positions is related to increases in employee related expenses, other than pensions and insurance, which increased after the test year.

The difference, further, bears no relation to any one separate rate item and the Commission is not persuaded that it is relevant given the use of different methodologies. The Commission concludes that the Public Staff's approach seems best to meet the test year concept and, therefore, accepts witness Cox's entire adjustment to employee benefit expense. Based upon the foregoing discussion the Commission finds operation and maintenance expenses of $9,643,735 appropriate for use herein.

The next item of difference in operating revenue deductions concerns depreciation expense. The reasons for the difference in depreciation expense result from different proposed depreciation rates for Accounts 367, 376, and 380 and the inclusion of a new compressor in rate base by the Company. The Commission has fully discussed the depreciation rate issue in the Evidence and Conclusions for Finding of Fact No. 10 wherein the Commission finds depreciation rates for Account 367, 376, and 380 of 2.74%, 2.40% and 3.71% proper. Additionally, in Evidence and Conclusions for Finding of Fact No. 6, the Commission concludes that the compressor is not properly included in rate base at this time. Based upon such findings the Commission concludes that the proper level of depreciation expense is $2,593,159.

The next item of difference relates to other operating taxes. In her supplemental testimony, Public Staff witness Cox agreed to the Company's property tax position; the Commission therefore concludes that the Company's property tax amount of $718,358 is reasonable. At the hearing, witness Teele

agreed with the Public Staff's payroll taxes reduction; therefore, the Commission finds proper the level of payroll taxes to be $362,097. The Public Staff, the Company, and the Cities presented different levels of gross receipts taxes due to their proposal of different levels of end-of-period revenues. Also, witness Teele raised the issue of whether or not gross receipts taxes were payable on late payment charges. The Commission finds that it is appropriate to include gross receipt taxes in operating revenue deductions on late payment charges. Since the level of operating revenues and uncollectible expenses found fair herein by the Commission differ from the proposals of the parties in the proceeding, the Commission will make its own determination of gross receipt taxes. Based upon conclusions reached herein by the Commission regarding operating revenues and uncollectible expense, the Commission concludes that the appropriate level of taxes other than income for use herein is $11,143,744.

Based on the Commission's previous findings relating to NCNG's taxable income, the Commission concludes that the appropriate level of income tax expense is $3,859,215. As was discussed in Finding of Fact No. 11, the Commission has accepted witness Winter's proposal for proper calculation of current and deferred income taxes.

Based on the evidence presented, the Commission concludes that the proper level of operating revenue deductions for use in this proceeding is $161,341,143 which consists of the following:

| Item | Amount |
|---|---|
| Cost of gas | $134,034,965 |
| Operation and maintenance | 9,643,735 |
| Depreciation | 2,593,159 |
| Taxes other than income | 11,143,744 |
| Income taxes | 3,859,215 |
| Interest on customer deposits | 66,325 |
| Total operating revenue deductions | $161,341,143 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Testimony regarding the appropriate capital structure to be used in this proceeding was presented by Company witnesses Wells, Teele, Vander Weide, Meyer, Public Staff witness Hsu, Cities' witness Lawton, and rebuttal testimony of Company witness Vander Weide.

In its original prefiled testimony, the Company used a pro forma capital structure at December 31, 1982. In its prefiled updated testimony, the Company adjusted its pro forma capital structure to June 30, 1983. In its proposed order the Company recommended use of the actual capital structure at September 30, 1983. The Public Staff and the Cities each proposed different hypothetical capital structures.

The capital structures presented by the Company, the Public Staff, and the Cities are as follows:

| | Company | Public Staff | Cities |
|---|---|---|---|
| Long-term debt | 23.17% | 24.54% | 46.00% |
| Short-term debt | 13.47 | 24.46 | 8.00 |
| Common equity | 56.96 | 51.00 | 46.00 |
| Deferred investment tax credits | 6.40 | | |
| Total capitalization | 100.00% | 100.00% | 100.00% |

Company witness Wells testified that the Company's projected new debt will be issued in fiscal year 1984. Company witnesses Wells and Teele both were cross-examined about the Company's actual capital structure at September 30, 1983, and about the Company's use of short-term debt. Both Company witnesses testified that the Company's actual capital structure at September 30, 1983, is as follows ( $ amounts in thousands):

| | Amount | Ratio | Ratio Without Deferred ITC |
|---|---|---|---|
| Long-term debt | $12,042 | 23.17% | 24.75% |
| Short-term debt | 7,000 | 13.47 | 14.39 |
| Common equity | 29,605 | 56.96 | 60.86 |
| Subtotal | 48,647 | 93.60 | 100.00 |
| Deferred investment tax credits | 3,325 | 6.40 | |
| | $51,972 | 100.00% | 100.00% |

With respect on short-term debt, both witness Wells and witness Teele testified that the Company projected it to rise to $14 million during 1984 and that this factor is the major reason the Company will need to issue new long-term debt in 1984. Witness Wells testified that the $14 million would be approaching the limit placed on short-term debt in the Company's Bond Indenture and would also be dangerously close to the upper limit of NCNG's present available credit lines.

Witness Teele testified on cross-examination that the Company would accept a reasonable amount of short-term debt in its capital structure as long as it is applied fairly with respect to the allowed interest rate and if the Company's actual common equity were utilized in that capital structure. He specifically stated he would recommend that an amount of $7,000,000 of short-term debt, the actual amount at September 30, 1983, be used at an interest rate range of 11% - 13%. The lower rate of his range is the current prime rate, and the higher rate is the approximate present rate on <A' rated utility bonds, the rate the Company expects to pay on its projected new issue. Witness Teele testified that the major drawback to using short-term debt in a utility's capital structure for rate-making purposes is the fluctuation in market interest rates, but he did agree that it is reasonable to utilize some short-term debt for NCNG in this proceeding because the Company has used it extensively in the past and expects to do so in the future.

Public Staff witness Hsu testified that the Commission should use a hypothetical capital structure including a 51% common equity ratio to set the Company rates in this proceeding. Witness Hsu's recommendation was based on her study of 16 gas distribution companies' capital structures. After taking the companies' total debt, including short-term and long-term debt, into account, she found that the average gas distribution company in her sample

group carried a 41% equity ratio which was considerably lower than NCNG's actual 68% per book June equity ratio or the actual 60.86% per book September equity ratio.

After considering the increasing competition between the natural gas and oil markets and the Company's past management efficiency, witness Hsu proposed for rate-making purposes a 51% equity ratio, which is about 24% higher than the industry average rate. Witness Hsu testified that she had considered not only the Company's past experience but also the future business environment faced by natural gas distribution companies and has included a high equity component in recognition of these considerations. Once witness Hsu determined the proper equity component, she determined that the rest of the capital requirement should be made up of debt financing as the Company has never in the past issued preferred stock.

Without massive and long-term capital needs in sight, witness Hsu, therefore, recommended the inclusion of $12 million of short-term debt in the debt portion of the Company's capital structure. The $12 million of short-term debt is under the Company's indenture limit and witness Hsu testified that she did not believe that the utilization of such an amount jeopardizes the Company's financial stability.

Witness Hsu noted that an advantage of using short-term debt at this time is that it is cheaper than long-term debt. Although witness Hsu used a cost rate of 11% for the short-term, she stated that the actual short-term cost rate to the Company was even lower at that time due to the bankers' acceptance rate being 100 basis points below 11%, the current prime rate. Witness Hsu noted in her testimony that the average new long-term utility A rated bond cost is approximately 13%.

Cities' witness Lawton also challenged the Company's high estimation of its equity capital requirement, the omission of short-term debt from the capital structure and the lack of convincing proof that a long-term debt issuance is needed. Based on the average debt and equity ratios of his comparable groups, witness Lawton then recommended the following capital structure:

| | |
|---|---|
| Short-term debt | 8% |
| Long-term debt | 46% |
| Equity | 46% |
| TOTAL | 100% |

In his rebuttal testimony, Company witness Vander Weide criticized witness Hsu's and witness Lawton's hypothetical capital structures. Witness Vander Weide stated: "Ms. Hsu and Mr. Lawton employ a hypothetical capital structure for NCNG that is similar to the average capital structure of the other natural gas firms they studied."

The Commission recognizes that the Company has recommended using the actual capital structure of NCNG at September 30, 1983, while the Public Staff and Cities have recommended alternative hypothetical capital structure. The Commission concludes, based upon the evidence presented, that it is reasonable to adopt a hypothetical capital structure for NCNG in this proceeding. The Commission must then determine the appropriate hypothetical capital structure for NCNG.

The Commission having very carefully examined and considered the evidence presented on this issue concludes that the following capital structure is just and reasonable for NCNG in this proceeding and is within the Company's safety range.

| Item | Percent |
|---|---|
| Short-term debt | 18% |
| Long-term debt | 27 |
| Common equity | 55 |
| Total | 100% |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding is contained in the direct testimony of Company witnesses Vander Weide and Meyer, Public Staff witness Hsu, Cities' witness Lawton, and the rebuttal testimony of witness Vander Weide.

With regard to the cost of debt, Company witness Vander Weide in his original prefiled testimony recommended a cost of long-term debt based on the embedded cost at December 31, 1982, with inclusion of a projected new long-term debt issuance of $15,000,000 to which a projected interest rate of 13% was applied. In the Company's updated filing the Company recommended an 11.25% cost of long-term debt due to the Company's reducing its projected long-term debt issuance to $12,000,000. In its proposed order the Company recommended an embedded cost of long-term debt of 9.20% on actual long-term debt outstanding and an 11% cost of short-term debt.

Public Staff witness Hsu recommended an embedded cost of long-term debt at September 30, 1983, of 9.20%. Witness Hsu recommended using the current prime rate of 11% for short-term debt. Witness Hsu then determined that the composite of the 9.20% embedded cost of long-term debt and an interest rate of 11% for short-term debt produced a weighted cost rate for total debt of 10.11%.

The Cities' witness Lawton utilized a 10.02% long-term debt cost rate and an 11.00% short-term debt cost rate.

The parties were basically in agreement that the cost of short-term debt at the time of the hearing was the prime interest rate of 11.00%. Based upon the agreement of the parties, the Commission finds an 11% cost of short-term debt appropriate.

The parties likewise were in agreement as to the embedded cost of currently outstanding long-term debt. The parties differed only as to the portion of the capital structure related to pro forma or hypothetical long-term debt. The Commission has for purposes of this case found that the revenue requirement of the Company should be determined assuming that 27% of NCNG's capital structure is long-term debt. In contrast, the actual portion of NCNG's capital structure at September 30, 1983, is composed only 23.17% long-term debt. The Commission finds and so concludes that a 13% long-term debt rate should be applied to the pro forma or hypothetical portion of long-term debt. Alternatively, an embedded cost of debt of 9.20% should be applied to actual debt outstanding at September 30, 1983. The composite of the cost of hypothetical or pro forma debt of 13% and the embedded cost of long-term debt

actually outstanding at September 30, 1983, of 9.20% results in a weighted cost of debt of 9.52%. The Commission therefore finds a 9.52% cost of long-term appropriate for NCNG in this proceeding.

The final issue on which the Company and the Intervenors disagree is the appropriate rate of return on equity for NCNG. Company witness Vander Weide stated in his original testimony that the required return on equity was between 17.74% and 18%. On the stand, witness Vander Weide updated his cost of equity recommendation range from 17% to 17.5%.

Witness Vander Weide stated that, in his opinion, the Company's financial risk characteristics have improved somewhat in the recent years, but that the Company's business risk characteristics have increased due to deregulation of natural gas prices at the wellhead, an unusually high percentage of industrial customers with the ability to change to number six fuel oil, and the loss of several large customers due to economic conditions during 1982.

Witness Vander Weide used the DCF model and a spread test (risk premium analysis) to determine the cost of equity capital for NCNG. Using the DCF analysis, witness Vander Weide examined the Company itself and a group of 20 comparable companies. Instead of using the commonly known and widely accepted annual version of the DCF model, witness Vander Weide used a quarterly version of the DCF model based on the Company's paying dividends quarterly. The result of using the annual version of the DCF model for NCNG was a recommended equity return of 19.47%. Alternatively, the witness Vander Weide's results using the quarterly version was a recommended equity return of 19.98%. For the comparable group, using the annual and quarterly models, witness Vander Weide obtained cost rates of 17.27% and 17.74%, respectively. Though the Company has not had a public issuance of stock since the Company was begun in the late 1950's, witness Vander Weide built a flotation factor into his two versions of the DCF model, which in turn produced a cost approximately 50 basis points higher than the barebones cost. In prefiled testimony witness Vander Weide chose to use a comparable group result rather than a determination of NCNG's individual cost of equity and concluded that NCNG's cost of equity using the DCF model is at least 17.74%.

In performing the spread test, witness Vander Weide examined the results of a self-conducted study as well as other studies of bond and stock returns. Based on the results of such studies, witness Vander Weide concluded that the risk premium of stocks over bonds was approximately 5.5% to 6.5%. Adding 5% to a 13% expected yield on NCNG's debt issue, witness Vander Weide determined the Company's cost of common equity to be 18%.

Company witness Meyer testified that under the current capital market conditions the Company must earn an 18.3% rate of return on equity in order to maintain a market-to-book ratio of 1.0x.

Public Staff witness Hsu testified that the Company should be granted the opportunity to earn a return on common equity of 14.5%. She derived her equity cost estimate by applying the DCF model to a group of 16 comparable gas distribution companies. Witness Hsu concluded that the cost of equity capital for the comparable companies is between 14.1% and 15.0%. Based on the Company's past performance in terms of pre-tax interest coverage, common equity ratio, and achieved rate of return, witness Hsu concluded that the Company is less risky than the industry average.

While acknowledging the increasing competition between the natural gas and oil markets, witness Hsu also noted that the Public Staff and the Company have both proposed an IST program in this proceeding to protect the margin of the Company's industrial customer load. This new device should significantly reduce the impact of the Company's high industrial load on its business risk. Therefore, witness Hsu concluded that the cost of common equity for NCNG is in the range of 14.1% to 14.5%. Considering the Public Staff's recommended capital structure and its common equity component, witness Hsu recommended that the higher end of her equity return range of 14.5% be granted to the Company.

Cities' witness Lawton also testified on this issue. Witness Lawton concluded that the Company should earn a 14.35% rate of return on common equity. Witness Lawton performed a DCF analysis on two groups of comparable companies and determined equity costs ranges of 14% to 15% for one group and 14.2% to 15% for the other group. Witness Lawton stated that, in view of NCNG's lower risk, he recommended that the lower end of these ranges, 14.2% 14.5%, be considered and recommended the midpoint, 14.35%, as his best estimate of the cost of equity.

Company witness Vander Weide presented rebuttal testimony to Public Staff witness Hsu's cost of equity and Cities' witness Lawton's cost of debt and equity.

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 the 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):

> "Fix such rate of return ... as will enable the public utility by sound management to produce a fair return for its shareholders, 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).

Based upon the foregoing and the entire record in this proceeding, the Commission concludes that an equity return of 15.5% is fair and reasonable.

This, combining the 15.5% equity return with the previously approved capital structure, with an 11.00% cost of short-term debt rate and with a 9.52% cost of long-term debt, the Commission finds and concludes that an overall return to be allowed the Company on the original cost net investment rate base of 13.08% is reasonable.

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. 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 structure, with an 11.00% cost of short-term debt rate and with a 9.52% cost of long-term debt, the Commission finds and concludes that an overall return to be allowed the Company on the original cost net investment rate base of 13.08% is reasonable.

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. 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 adequate natural gas service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Based upon the findings of fact set forth hereinabove, the Commission concludes that the appropriate annual level of revenues which NCNG should be authorized to collect through rates charged for its sales of service based upon the adjusted test year level of operations is $168,891,196. The following charts summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve, based upon the level of revenues approved herein. Such charts, illustrating the Company's gross revenue requirements, incorporate the findings, adjustments, and conclusions herein made by the Commission.

SCHEDULE I

NORTH CAROLINA NATURAL GAS CORPORATION

Docket No. G-21, Sub 235

STATEMENT OF OPERATING INCOME

Twelve Months Ended December 31, 1982

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues: | | | |
| Natural gas sales | $167,285,835 | $1,117,531 | $168,403,366 |
| Revenues - completed construction not classified | 109,498 | - | 109,498 |
| Miscellaneous revenues | 378,332 | - | 378,332 |
| Total operating revenues | 167,773,665 | 1,117,531 | 168,891,196 |
| Operating Revenue Deductions: | | | |
| Cost of gas | 133,965,008 | - | 133,965,008 |
| Cost of gas - completed construction not classified | 69,957 | - | 69,957 |
| Operation and maintenance | 9,643,735 | - | 9,643,735 |
| Depreciation | 2,593,159 | - | 2,593,159 |
| Taxes other than income | 11,143,744 | 67,052 | 11,210,796 |
| Interest on customer deposits | 66,325 | - | 66,325 |
| Income taxes | 3,859,215 | 517,256 | 4,376,471 |
| Total operating revenue deductions | 161,341,143 | 584,308 | 161,925,451 |
| Net operating income | $ 6,432,522 | $ 533,223 | $ 6,965,745 |

SCHEDULE II

NORTH CAROLINA NATURAL GAS CORPORATION

Docket No. G-21, Sub 235

STATEMENT OF RATE BASE AND RATE OF RETURN

Twelve Months Ended December 31, 1982

| Item | Amount |
|---|---|
| Investment in Gas plant | |
| Gas utility plant in service | $89,141,608 |
| Accumulated depreciation | (31,115,023) |
| Net plant in service | 58,026,585 |
| Allowance for working capital | 5,504,533 |
| Accumulated deferred income taxes | (9,718,540) |
| Customer advances for construction | (6,264) |
| Cost-free capital - Transco refund | (125,377) |
| Cost-free capital - Gain on CFI settlement | (407,266) |
| Original cost rate base | $53,273,671 |
| Rate of Return | |
| Present rates | 12.07% |
| Approved rates | 13.08% |

GAS - RATES

SCHEDULE III

NORTH CAROLINA NATURAL GAS CORPORATION

Docket No. G-21, Sub 235

STATEMENT OF CAPITALIZATION AND RELATED COSTS

Twelve Months Ended December 31, 1982

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Short-term debt | 18.00 | $ 9,589,261 | 11.00 | $1,054,819 |
| Long-term debt | 27.00 | 14,383,891 | 9.52 | 1,369,346 |
| Common equity | 55.00 | 29,300,519 | 13.68 | 4,008,357 |
| Total | 100.00 | $ 53,273,671 | - | $6,432,522 |
| | Approved Rates - Original Cost Rate Base | | | |
| Short-term debt | 18.00 | $ 9,589,261 | 11.00 | $1,054,819 |
| Long-term debt | 27.00 | 14,383,891 | 9.52 | 1,369,346 |
| Common equity | 55.00 | 29,300,519 | 15.50 | 4,541,580 |
| Total | 100.00 | $ 53,273,671 | - | $6,965,745 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this Finding of Fact is contained in the testimony of Public Staff witness Garrison. Because the facilities that will be used to generate revenues from sales of CNG are included in the rate base, it is only proper that any revenues received be accorded some treatment for the benefit of NCNG's customers. Since any revenue figure for these sales would be speculative at best, the Commission concludes that the revenues, less the cost of gas, received from these sales should be placed in the deferred account for refunding to NCNG's customers. In addition, the rate charged for such sales should be subject to prior Commission approval.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding is contained in the verified application, the testimony of Company witness Teele and Wells and Public Staff witnesses Garrison and Nery (cross-examination only). The Curtailment Tracking Rate (CTR) has been a part of the Company's rate structure since 1975 when Transco was in an accelerating period of deep curtailment. During the years 1975-1978, the CTR protected the Company's margin during a period of declining sales due to supplier curtailments. Since 1979, while the Company's actual gas supplies and sales have exceeded the 1977 base period level, which has been the basis for the present CTR, the Company has refunded substantial amounts to its customers through a CTR decrement in each of those years.

In the Commission's opinion evidence presented clearly indicates that the natural gas market is now demand constrained rather than supply constrained as it was when the CTR originated in 1975. The Commission concludes, hereinafter, that the Industrial Sales Tracker (1ST) is an appropriate ratemaking mechanism to protect the Company and its customers from volatile swings in industrial sales demand. Accordingly, the Commission concludes that the CTR is no longer needed and is hereby terminated.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence for this finding is found in the testimony of Company witnesses Wells and Teele and Public Staff witness Garrison.

Both the evidence of the Company and the Public Staff reflect that the Company has lost substantial markets and customers because the price of gas for industrial use is in excess of the cost of competitive fuels in some cases. In addition, a substantial part of the Company's remaining large commercial and industrial sales are being made at negotiated rates which are lower than the Company's filed tariff rates which were last adjusted in NCNG's general rate proceeding in 1978. Most of these negotiated sales are to customers using heavy fuel oils. This situation has made it difficult to determine with reasonable accuracy the Company's sales volumes and revenues under both present and proposed rates.

Public Staff witness Garrison presented testimony regarding the propriety of establishing an Industrial Sales Tracker (IST) for NCNG. The purpose of the IST is to stabilize the Company's margins while maintaining as large a sales base as possible. Under the Public Staff's proposal, the Commission

will establish a margin for industrial and large commercial sales with revenues above or below the established margin being tracked through adjustments to the rates of NCNG's other customers.

In supplemental direct testimony, Company witness Wells presented a proposal for an IST which is, in principle, similar to Public Staff witness Garrison's proposed IST. Witness Garrison's proposed IST would include all Rate S-1 customers plus any existing industrial and large commercial customers being served under Rate Schedules 4, 5, and 6.

Public Staff witness Garrison proposed to increase industrial and municipal sales volumes to a level that was 622,520 dt greater than the sales volumes proposed by the Company. Also, witness Garrison proposed to price end-of-period sales volumes under Rate Schedule S-1 (negotiated sales) at a rate of $.19 per dt higher than the rate used by the Company. At the hearings, Company witness Teele agreed to accept those Public Staff adjustments because the Transco November 1, 1983, PGA increase turned out to be only $.055 per dt rather than the $.291 per dt increase contained in Transco's original PGA filing dated September 30, 1983, and because Public Staff witness Garrison's adjustments are reasonable, particularly in light of the implementation of the IST which, as stated, helps to stabilize the Company's margin attributable to industrial sales in a general rate case.

With the implementation of the IST, therefore, the Company and the Public Staff are in agreement as to industrial sales volumes and general rate design with respect to industrial and municipal customers. The Commission concludes that the IST is reasonable and should be adopted as a tariff item by NCNG. The Commission further concludes that the terms of the IST should be similar to those presented by Public Staff witness Garrison, with the following modifications to Exhibit No. JTG-9(R), entitled "Industrial Sales Tracker":

1. In Paragraph 4, the section which reads, "Rate Schedule No. RE-1 shows a rate of $.49711/therm which will be used by the Company for sales which are not negotiated," should be revised to show the rate as "$.49912/therm, because the Commission is making no change in the RE-1 base rate";

2. To add in Paragraph 4, Line 7, after "on RE-1 less" the words "the 6% gross receipts tax and the then current CD-2 commodity cost of gas" and to delete the words "the cost of gas (calculated by multiplying the quantity sold by the test period cost of gas of $0.3898/therm)";

3. To add in Paragraph 7, Line 8, after the word "uniformly" the words "a surcharge"; and

4. In Paragraph 10, Public Staff witness Garrison presents a table of base period monthly margins which he labels as "Including Gross Receipts Tax." The Commission finds that these amounts are improper for purposes of the IST because what these amounts represent, in fact, are margins plus the additional gross receipts taxes in excess of the gross receipts tax applicable to the cost of gas witness Garrison used in designing his proposed rates to recover the Public Staff's proposed cost of service. As an illustration, witness Garrison calculates the Rate 4 Margin as follows:

| | |
|---|---|
| Sales rate | $5.0614 per dt |
| Cost of gas rate | 3.8980[1/] |
| Margin per witness Garrison | $1.1634 per dt |

[1/] CD-2 Commodity Rate $3.664 + .94 = $3.898 with gross receipts tax

The actual margin, after considering that gross receipts taxes are paid by the Company on revenues, not cost of gas, is as follows:

| | | |
|---|---|---|
| Sales rate | | 4.7577 |
| Cost of gas at CD-2 | | |
| Commodity rate | 3.6640 | |
| Actual margin | $1.0937 per dt | |
| Excess margin in witness Garrison's IST amounts ($1.1634 - $1.0937) | $ .0697 per dt | |
| Reconciled as follows: | | |
| Actual gross receipts tax | $ .3037 | |
| Gross receipts tax applicable to cost of gas ($3.898 - $3.664 ) | .2340 | |
| Additional gross receipts tax | $ .0697 | |

While witness Garrison's methodology is acceptable for purposes of designing rates in the manner he has chosen, it is not appropriate to use an inflated margin for purposes of the IST. The effect of the Public Staff's proposed methodology is to treat part of the Company's gross receipts tax expense as if it were margin, which is not the case. To the extent that prices of negotiated sales increase in the future, witness Garrison's base period IST margin would cause NCNG subsequently to underrecover its margin if gross receipts taxes are not fully accounted for in the base period margin determination. This would occur because NCNG would have to pay the higher gross receipts tax to the State but witness Garrison's method would require that the increase in gross receipts also be paid to NCNG's customers as "margin" through the IST. The monthly base period margins are as follows:

| Test Period Month/Year | Per Public Staff Witness Garrison | Per Commission |
|---|---|---|
| 7/82 | $ 1,135,794 | $ 1,067,801 |
| 8/82 | 1,200,949 | 1,129,058 |
| 9/82 | 1,080,266 | 1,015,597 |
| 10/82 | 1,119,573 | 1,052,554 |
| 11/82 | 1,094,208 | 1,028,706 |
| 12/82 | 1,074,625 | 1,010,295 |
| 1/83 | 1,103,755 | 1,037,683 |
| 2/83 | 1,056,487 | 993,248 |
| 3/83 | 1,142,015 | 1,068,207 |
| 4/83 | 1,116,167 | 1,045,521 |
| 5/83 | 1,075,506 | 1,011,124 |
| 6/83 | 1,109,283 | 1,042,878 |
| Total | $13,308,628 | $12,502,672 |

With these modifications, the Commission accepts the IST proposed by witness Garrison.

Both the Public Staff and the Company propose to exclude from the IST any new customers added after June 30, 1983, in order to offer the Company the incentive to add new industrial loads which will benefit the Company and its customers by expanding its sales base while permitting the Company to earn some return on new plant investments it will make to attach new customers to its system. The Cities proposed that the IST be inclusive of new customers added after June 30, 1983. The Commission concludes that it is fair and reasonable to exclude customers added after June 30, 1983, from the IST.

The Commission fully recognizes that the level of sales volumes and the negotiated sales loss provided for in the IST approved herein are based on a normalized level. However, a provision has been made for undercollections or overcollections to be trued-up on an annual basis. Further, the Commission believes and so concludes that the time value of money should be considered in the IST mechanism and thus finds that any such under-or overcollections should carry the overall rate of return found fair herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence for these findings is contained in the testimony and exhibits of Company witness Ransom and Teele, Public Staff witness Garrison, and Municipal Intervenor witness Saffer.

Facilities Charges

The Company and the Public Staff are in agreement regarding the appropriate facilities charge for Rate Schedules 3A and 3B. The Commission therefore finds facilities charges of $50.00 and $100.00 appropriate for Rate Schedules 3A and 3B, respectively. The Company and the Public Staff disagree, however, with regard to the appropriate facilities charges for Rate Schedules 1 and 2. The facilities charges proposed by the Company and the Public Staff for Rate Schedules 1 and 2 are listed below.

| Rate Schedule | Company | Public Staff |
|---|---|---|
| 1 - Residential | | |
| Heat only | $ 7.00 | $4.00 |
| Other | $ 5.00 | $3.00 |
| 2 - Commercial and small industrial | $10.00 | $6.00 |

The Commission finds the facilities charges proposed by the Public Staff reasonable and proper. In the Commission's opinion the level of increase in gross revenues approved herein does not justify an increase in facilities charges of the magnitude proposed by the Company.

Rate Blocks

The Company and the Public Staff also are in disagreement with regard to the proper rate blocks for Rate Schedules 1 and 2. The Company's proposal provides for rate blocks which contain three steps while the Public Staff's

proposal provides for rate blocks of two steps. The Commission finds the Public Staff's proposal in this regard reasonable. The Commission notes that the two-step rate blocks proposed by the Public Staff and approved herein are more representative of those approved by this Commission for other gas companies in the state in recent general rate proceedings than those proposed by the Company.

Rate Schedules 4, 5, 6, and E-1

The Company and the Public Staff are in agreement that the present base tariff rates for NCNG's customers in rate groups 4, 5, 6, and E-1 should remain unchanged. The Commission therefore finds that the rates proposed by the Company and agreed upon by the Public Staff for the aforementioned rate schedules are just and reasonable.

Transportation Rate

The Company proposed an increase in its transportation service rate in Docket No. G-21, Sub 237. The Commission consolidated the matter with the Company's general rate proceeding. The Company and the Public Staff agreed that the proposed rates are just and reasonable. However, the NCTMA opposes the increase in the T-1 rate. The Commission finds that the T-1 rate proposed by the Company is just and reasonable and therefore should be implemented by the Company.

Rate Schedule RE-1

The Company proposed that the RE-1 rate to municipals remain unchanged. Alternatively in accordance with the decrease in revenues proposed by the Public Staff, witness Garrison recommended a decrease in the RE-1 base rate. The Commission finds that the base tariff rate for Rate Schedule RE-1 should remain unchanged as proposed by the Company.

Municipal Intervenor witness Saffer proposed a rate design for the four municipal customers of NCNG in which NCNG's rates to the municipalities would be based on the NCUC priority system on which NCNG's own retail rates are based. While witness Saffer's proposal has some merit, the Commission finds that Cities proposed rate design must be rejected at this time due to the administrative difficulties it could possibly create. The Commission notes that the Company sells gas to each of the municipalities at their city gates; from that point on, NCNG has no control over how and to whom the cities distribute their gas. In order to bill the municipalities under a rate based on end use, NCNG would be dependent on the cities to accurately meter and then report end use to NCNG. The possibilities exist that, without verifiable test period data which only the cities could provide NCNG and this Commission, serious problems for NCNG and the municipalities with respect to billings and revenues could result.

Turn-on and Reconnection Fees

The Company proposed that turn-on and reconnection fees be increased from $15.00 to $25.00 for residential customers and from $25.00 to $30.00 for commercial customers. The Public Staff agreed with the turn-on and reconnection fees proposed by the Company. The Public Staff proposed to

adjust operating revenues under present rates to reflect the annual increase in revenues associated with the turn-on and reconnection fees proposed by the Company.

The Commission concludes that a turn-on and reconnection fee of $20 is appropriate for residential customers and concurs with the Company and the Public Staff that a fee of $30 for commercial customers is proper. The Commission has excluded the proposed annual increase in revenues relating to turn-on and reconnection fees from operating revenues for purposes of establishing the end-of-period level of operating revenues under present rates in this proceeding.

The Commission concludes that such increase is properly considered in the rate design of the Company since it reflects revenues associated with proposed rates of the Company rather than present rates.

Other Rate Design Conclusions

The Commission concludes that it is appropriate for NCNG to file tariffs based upon the revenue requirements and rate design guidelines reflected herein and an adjusted sales volume of 329,130,750 therms (excludes volumes associated with completed construction not classified).

Since no revenues from emergency sales (which are erratic) or transportation revenues have been reflected in cost of service in this proceeding, it is appropriate that any such revenues generated from present customers should be credited to the IST account for the benefit of all other customers. Based on the fact that NCNG's cost of service is being recovered only from sales volumes included in this proceeding and given the protection the IST affords the Company for possible loss of sales in the industrial market, the Commission concludes that such accounting treatment is fair and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Notice of Decision and Order dated December 12, 1983, be and the same is hereby reaffirmed.

2. That the rate schedules and tariffs filed herein on December 14, 1983, by NCNG be, and the same are hereby approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of January 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. B-15, SUB 190

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Carolina Coach Company - Suspension and Investigation of Proposed Increases in Intercity Bus Passenger Fares, Bus Package Service Rates and Intercity Bus Passenger Charter Rates and Charges, Scheduled to Become Effective on July 15, 1984 | ) ) ) ) ) | ORDER APPROVING PARTIAL INCREASE IN RATES AND CHARGES |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on September 18, 1984

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Edward B. Hipp and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:
Joseph W. Eason and Thomas W. Steed, Jr., Moore, Van Allen, Allen, and Thigpen, Attorneys at Law, 200 W. Morgan Street, P.O. Box 26507, Raleigh, North Carolina 27611
For: Carolina Coach 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 14, 1984, the National Bus Traffic Association, Inc. (NBTA), for and on behalf of Carolina Coach Company (Respondent), filed Application No. 68 and tariff filings publishing increased rates and charges proposing to increase North Carolina intrastate intercity bus passenger fares, package express rates and charter coach charges.

By Commission Order dated July 3, 1984, the matter was declared to be a general rate case, the proposed tariff filings were suspended and set for investigation and a public hearing and notice of that hearing was required to be given.

The Application NO. 68 and tariff filings publishing increased rates and charges which were filed on June 14, 1984, to become effective on July 15, 1984, proposed to increase North Carolina intrastate intercity bus passenger fares, package express rates, and charter coach charges as follows:

1. Passenger fares increased by an average of 71.3%, adjusted to nearest "0" or "5."

2. Express rates increased by approximately 28.0%.

3. Charter coach charges increased by approximately 15.2%.

The proposed revisions in bus passenger, express, and charter tariff schedules are published as follows:

1. North Carolina Intrastate Supplement No. 11 to Local Passenger Tariffs, N.C.U.C. No. 127 and N.C.U.C. No. 128 cancelling those Tariffs in their entirely; and new Local Passenger Tariffs, N.C.U.C. No. 135 and N.C.U.C. No. 136, issued by Carolina Coach Company;

2. North Carolina Intrastate Supplement NO. 903 to National Basing Fare Tariff, Being Supplement No. 40 to N.C.U.C. No. 4;

3. North Carolina Intrastate Supplement No. 837 to National Passenger Tariff, Being Supplement No. 37 to N.C.U.C. No. 31;

4. Fourth Revised Page F-5, Bearing Correction NO. 278B, to National Express Tariff, N.C.U.C. No. 243; and

5. Revised Pages to Carolina Charter Coach Tariff, N.C.U.C. No. 199, as follows:

| CORRECTION NO. | PAGE NOS. |
|---|---|
| 257 | Eleventh Revised Pages D-5 and D-6 |

The Commission, being of the opinion that the proposed revisions in bus passenger, express, and charter tariff schedules are matters affecting the public interest, found and concluded that said tariff schedules should be suspended, an investigation should be instituted, and that the matter should be set for public hearing to determine the reasonableness and lawfulness of the tariff proposals. The Order of July 3, 1984, found the former matters and set the hearing on September 18, 1984, at 10:00 a.m., in the Commission Hearing Room, Raleigh, North Carolina.

At the hearing, Carolina presented evidence through Robert E. Brown, Treasurer, Carolina Coach Company; and J.E. Elliott, Traffic Administrator, Carolina Coach Company.

The Public Staff presented testimony of David A. Poole, Staff Accountant for the Public Staff's Transportation Rates Division, through and adopted by Phillip W. Cooke, Rate Specialist for the Public Staff's Transportation Rates Division.

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 Respondent in this proceeding is Carolina Coach Company, hereinafter referred to as Carolina or Respondent.

2. That Carolina is engaged in the intercity transportation of passengers and express shipments for compensation in North Carolina intrastate commerce and is subject to the jurisdiction of this Commission under the Public Utilities Act.

3. That the tariffs submitted on June 14, 1984, in connection with the application, were scheduled to become effective on North Carolina intrastate traffic on July 15, 1984.

4. That the tariffs provided for increases are as follows:

a. Passenger fares increased by an average of 71.3%, adjusted to nearest "0" or "5," which included a 233% increase in the minimum charge of $1.20 to $4.00.

b. Express rates increased by approximately 28.0%.

c. Charter coach charges increased by approximately 15.2%.

5. That the test period in this docket is the 12 months ended December 31, 1983, adjusted for known changes occurring through the close of the hearing in this matter.

6. That the Respondent's proposed N. C. intrastate passenger and express rates and charter coach charges are equal to the rates which Respondent presently charges for the interstate transportation of passengers and express within North Carolina and elsewhere on a single-line basis, and less than the rates Respondent presently charges for comparable interline interstate transportation of passengers and express within North Carolina and elsewhere.

7. That the cost allocation methodology used by Respondent and the Public Staff in this proceeding is consistent with the procedures previously approved by the Commission.

8. North Carolina intrastate issue traffic revenues under the present rates, after pro forma adjustments, total $4,284,753, consisting of passenger revenues of $2,246,447, charter revenues of $799,110, express revenues of $1,239,114, and other revenue of $82.

9. That Application No. 68 proposes to equalize Respondent's North Carolina intrastate rates, fares and charges with the interstate rates presently applicabale to local transportation via the Respondent, and such equalization will result in an increase of total operating revenues of $2,070,134, representing increases in passenger revenues of $1,601,717, charter revenues of $121,465, and express revenues of $346,952.

10. That for the 12 months ended December 31, 1983, after adjustments for known changes, the pro forma intrastate operating ratio of Respondent was 98.4%

11. That Respondent's proposed increases in passenger and charter fares and express charges result in a North Carolina operating ratio of 69.2%.

12. That the Respondent has not furnished data in this proceeding supporting such a dramatic decrease in its operating ratio and the proposed increases in passenger fares and package express rates would be unjust and unreasonable and should not be granted as filed. However, the charter fares are found just and reasonable as filed.

13. That the Public Staff recommends that in the event the Commission finds that Carolina has justified some rate relief, the Public Staff would further recommend that Carolina be granted increases that would yield an operating ratio of approximately 90%, restricted to an across-the-board percentage increase in passenger fares which would not heavily impact any mileage bracket including minimum charges.

14. That the Respondent's fair and reasonable operating ratio on intrastate traffic is 88%.

15. That the Respondent's fair and reasonable operating ratio on intrastate traffic of 88% should be achieved by the following gross revenue increases:

| Item | Amount | % Increase |
|---|---|---|
| a. Passenger | $279,188 | 12.428% |
| b. Express | 153,997 | 12.428% |
| c. Charter | 121,465 | 15.200% |
| Total | $554,650 | 12.945% |

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-5

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 were not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The testimony of witnesses Elliott and Brown establish that the proposed North Carolina intrastate passenger and express rates charged by Respondent equal the rates Respondent presently charges for comparable interstate transportation of passengers and express on local traffic and are less than the rates Respondent presently charges for comparable interstate transportation of passenger and express in interline service. The Public Staff does not dispute these rate differentials.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is uncontradicted in the record and consistent with the Commission Orders in Docket No. B-15, Subs 35 and 38

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

The evidence supporting these findings of fact concerning relevant operating revenues and expenses appears on Exhibits Nos. 1 and 7 to the testimony of Respondent's witness R.E. Brown and is undisputed by the Public Staff.

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

These findings are supported by Respondent witness Brown's Exhibits 1 and 7 and in the testimony adopted by Public Staff witness Cooke.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Any evidence to support a dramatic decrease in the operating ratio of the Respondent in regard to the proposed increases in passenger fares, package express rates, and charter fares has not been presented by the Respondent. When Respondent witness Brown was asked for any cost data to substantiate a minimum fare charge, he was unable to provide said data. There is no data in the record to justify the variance in passenger fare increases by mileage category which was an average of 71.3%. The proposed increases range upwards to 233%, resulting from a $1.20 to $4.00 increase in minimum fare charges. This Commission should not, and therefore will not, grant increases of such magnitude because the Respondent has not presented detailed data, analysis and information which would justify the increase.

The Commission further concludes that the determination of the justness and reasonableness of the fares involved herein cannot be based on a comparison of fares. Respondent supports its proposal because the present intrastate rates must be raised to eliminate any discrimination against and burden on interstate commerce. North Carolina General Statute 62-146(g) states that "... to determine the justness and reasonableness of any rate of any common carrier by motor vehicle ... such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues ..."

It is the statutory mandate of this Commission to establish fair and reasonable rates for the Respondent on jurisdictional issue traffic. It is equally clear and consistent with sound reasoning that the operating results of nonjurisdictional traffic should not be considered. In this proceeding, this Commission considered the Respondent's North Carolina jurisdictional operating results in setting rates that are fair and reasonable to both Carolina and its customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding is contained in the testimony of Public Staff witness Cooke. Additionally, the Commission notes that this recommendation is consistent with prior Commission Orders.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Based upon the Commission's findings and conclusions under Findings of Fact Nos. 10 and 11, the Commission concludes that Respondent's end-of-test-period operating ratio under present rates of 98.4% is not adequate and that the operating ratio after the proposed increase in rates and charges of 69.2% would be unjust and unreasonable.

The determination of the appropriate operating ratio for the Respondent is of great importance and must be made with great care because whatever operating ratio is allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair and reasonable operating ratio must be made by the Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record.

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 Company and the capital markets. The Commission must use its impartial judgment to ensure that all the parties involved are treated fairly and equitably. The Commission therefore concludes that the Company's fair and reasonable operating ratio on which to base rates in this proceeding is 88.0%.

Having concluded that the Respondent's appropriate operating ratio on jurisdictional issue traffic is 88%, the Commission notes further that this operating ratio level is entirely sufficient to meet the operating demands of the Respondent's jurisdictional customers, and to provide an adequate return to the Respondent's investors. There is no evidence to the contrary in the record of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

In order to achieve the 88% operating ratio found to be fair and reasonable, the Commission concludes that the Respondent should be allowed to increase its passenger rates across-the-board by $279,188, increase its express rates by $153,997, and increase its charter rates by $121,465. This level of increases will afford Carolina Coach Company, through efficient management, a fair and reasonable operating ratio of 88%.

IT IS, THEREFORE, ORDERED as follows:

1. That the Respondent be, and the same hereby is, authorized to increase North Carolina intrastate rates and charges across-the-board in the following manner:

| | Item | Amount |
|---|---|---|
| 1. | Passenger Service | $279,188 |
| 2. | Express Service | 153,997 |
| 3. | Charter Service | 121,465 |
| | Total | $554,650 |

2. That the Commission Order of Suspension and Investigation in this proceeding be, and the same hereby is, vacated and set aside.

3. That the Respondent hereby is authorized to publish appropriate tariff schedules providing for the increase set forth in Ordering Paragraph 1 above to become effective on one day's notice to the Commission and the general public.

4. That upon the publications herein authorized having been made, the investigation in this matter be discontinued and the docket closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of October 1984.

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

DOCKET NO. B-69, SUB 139

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of Trailways Southeastern Lines, Inc., for Authority to Increase Passenger Fares by 32.3% | ) ) ) | ORDER APPROVING PARTIAL INCREASE IN RATES AND CHARGES |

HEARD IN: The Commission Hearing Room, Room 617 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, August 7, 1984, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding, and Commissioners A. Hartwell Campbell and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:

Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

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

BY THE COMMISSION: On May 3, 1984, Trailways Southeastern Lines, Inc., through the National Bus Traffic Association filed tariff filings publishing increased rates and charges proposing to increase North Carolina intrastate intercity bus passenger fares. The Commission being of the opinion that the proposed revisions in bus passenger tariff schedules are matters affecting the public interest, determined that the tariff schedules should be suspended and an investigation instituted and the matter set for public hearing to determine the reasonableness and lawfulness of the tariff proposals, and issued an Order to that effect on June 4, 1984.

On June 6, 1984, the Public Staff filed Notice of Intervention, and the case was heard on August 7, 1984.

Witnesses at the hearing were Hoji V. Mody for Trailways Southeastern, who adopted the testimony of Bill Bracken and James K. Saunders who, for various reasons, were unable to testify, and David A. Poole, Staff Accountant, Transportation Rates Division, Public Staff, North Carolina Utilities Commission.

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. Trailways is a common carrier of passengers and express shipments operating in North Carolina intrastate commerce as prescribed by Certificate No. B-69, issued by this Commission.

2. Trailways' present North Carolina intrastate regular route fares are approximately 32.3% below interstate fares for comparable distances. The North Carolina intrastate regular passenger fare increase sought in this proceeding is approximately 32.3%.

3. The actual and present level operating ratios for the issue traffic are 104.46% and 100.96%, respectively, for the test year ended September 30, 1983.

4. The methodology used to assign system operating costs to the issue traffic reasonably states such costs in this proceeding.

5. A 20% increase in issue traffic fares will yield an operating ratio of 89.81%, while also yielding approximately $463,266 in increased issue traffic revenue.

6. A 20% increase in issue traffic fares will result in an operating ratio of 89.81%, which is just and reasonable in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for Finding of Fact No. 1 is found in the Commission's official files and the official scope of operations book.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for Finding of Fact No. 2 is found in the application filed by Trailways on May 3, 1984, and is uncontested by the other parties of record.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The actual and present level operating ratios for Trailways' issue traffic appears in Public Staff witness David A. Poole's Exhibit No. 1. Poole Exhibit 1 reflects operating ratios excluding special bus (charter) service. The Commission concludes that this exclusion is more appropriate when attempting to rule on the justness and reasonableness of a fare increase proposed solely on regular route passenger service. While not adhering totally to the prescribed expense allocation methodology, Poole Exhibit 1 shows expense allocations that more closely adhere to the prescribed expense allocation methodology than does Trailways Schedule No. 5.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Testimony was presented in this proceeding concerning the appropriateness of the currently prescribed expense allocation methodology. Public Staff witness Poole testified that he utilized the expense allocation methodology as prescribed in N.C.U.C. Docket No. B-105, Sub 38, with the exception of a few accounts. Witness Poole further testified that the result of not allocating

those expenses by the prescribed methodology would not be materially different than what a more adherent method would have yielded. The Commission agrees and therefore concludes that the expense allocation methodology used in Poole Exhibit 1 is appropriate for this proceeding. Based on direct examination and cross-examination of Trailways' witness Mody and Public Staff witness Poole, the Commission concludes that, while the expense allocation methodology reasonably states costs in this proceeding, there are certain areas in the methodology that deserve to be studied in more detail to determine a more refined way of allocating certain costs. The Commission therefore concludes that representatives from Trailways, the Public Staff, and any other interested parties should initiate a study of the cost allocation procedures to determine if the same should be refined.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Based on the present level operating ratio shown on Poole Exhibit 1, a simple calculation of a 20% increase results in a projected operating ratio of 89.81% yielding $463,266 in additional issue traffic revenue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The Commission has, in previous dockets, found that an operating ratio of approximately 90% allows Trailways to earn sufficient revenues in North Carolina intrastate commerce while providing safe and efficient service. In this proceeding, Trailways is requesting additional revenues that would result in an operating ratio of approximately 84.23% (see Poole Exhibit 1, column 1). Trailways has not offered any evidence to support its need for earning an additional 5%-6% operating profit. The Commission recognizes that the likelihood of Trailways' actual operating ratio for a 12-month period after the 20% fare increase being approximately 90% is very remote; however, the Commission does not have any way of determining the conditions that would contribute to any operating ratio variance.

The Commission further concludes that the determination of the justness and reasonableness of the fares involved herein cannot be based on a comparison of fares. North Carolina General Statute 62-146(g) states that "...to determine the justness and reasonableness of any rate of any common carrier by motor vehicle... such rates shall be fixed and approved, subject to the provisions of subsection (h) hereof, on the basis of the operating ratios of such carriers, being the ratio of their operating expenses to their operating revenues..." The Commission, therefore, concludes that a 20% increase in issue traffic fares is just and reasonable.

IT IS, THEREFORE, ORDERED that:

1. Trailways be allowed to file tariff changes reflecting a 20% increase in regular route passenger fares.

2. The tariff filings be allowed to become effective on five (5) days' notice.

3. Representatives from Trailways, the Public Staff, and other interested parties initiate a study of the present cost allocation methodology and report within sixty (60) days of the date of this Order to the Commission as to a plan

DOCKET NO. T-2351

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>N & B Equipment, Inc., 204 Pine Street, #3 Rosedale, Washington, North Carolina 27889 - Application For Common Carrier Authority | ) FINAL ORDER<br>) OVERRULING<br>) EXCEPTIONS<br>) AND AFFIRMING<br>) RECOMMENDED<br>) ORDER |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on August 20, 1984, at 2:30 p.m.

BEFORE: Chairman Robert K. Koger, Presiding, and Commissioners Sarah Lindsay Tate, A. Hartwell Campbell, Edward B. Hipp, Ruth A. Cook, Charles E. Branford, and Hugh A. Crigler

APPEARANCES:

For the Applicant:

E. Gregory Stott, Attorney at Law, P.O. Box 131, Raleigh, North Carolina 27602
For: N & B Equipment, Inc.

For the Protestants:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald & Fountain, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Jimmie Robert Council, O'Neal's Trailer Sales, Norman Arlington Spruill, and Harold Wayne Williamson

BY THE COMMISSION: On July 10, 1984, Applicant, N & B Equipment, Inc., filed exceptions to the Recommended Order of Hearing Examiner Johnson which was issued in this docket on June 25, 1984. On July 12, 1984, the Commission issued an Order scheduling the exceptions for oral argument before the full Commission on July 30, 1984, and by Order dated July 20, 1984, oral argument on exceptions was continued until August 20, 1984.

The matter came on for oral argument as scheduled on August 20, 1984. Counsel for the Applicant and Protestant were present and made oral argument.

Based upon a careful consideration of the Recommended Order of June 25, 1984, the oral argument of the parties before the full Commission on August 20, 1984, and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all the findings, conclusions, and ordering paragraphs contained in the Recommended Order of June 25, 1984, are fully supported by the record; that the Recommended Order dated June 25, 1984, should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED:

(1) That each and every exception of the Applicant to the Recommended Order of June 25, 1984, be, and the same are hereby, overruled.

(2) That the Recommended Order of June 25, 1984, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of August 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. T-2229, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Liquid Transporters, Inc., 1292 Fern Valley Road, Post Office Box 32647, Louisville, Kentucky 40233 - Application for Contract Carrier Authority | ) ) ) ) | RECOMMENDED ORDER GRANTING APPLICATION |

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, on June 21, 1984

BEFORE: Barbara Sharpe, Hearing Examiner

APPEARANCES:

For the Applicant:

Kenneth Wooten, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, P.O. Box 2246, Raleigh, North Carolina 27602
For: Liquid Transporters, Inc.

For the Protestant:

Joseph W. Eason, Moore, Van Allen and Allen, Attorneys at Law, P.O. Box 26507, Raleigh, North Carolina 27611
For: Fleet Transport Company, Inc., and Schwerman Trucking Co.

SHARPE, HEARING EXAMINER: By application filed on April 20, 1984, Liquid Transporters, Inc., Applicant (hereinafter referred to as "Liquid"), seeks contract carrier authority to transport:

"Group 21, dry cement, in bulk and in bags, between Castle Hayne, Statesville, and Wilmington on the one hand, and, on the other, all points in North Carolina."

The application was listed in the Commission's Calendar of Hearings dated May 27, 1984, scheduling the hearing for this time and place.

A protest and motion for intervention was filed with the Commission on June 7, 1984, by Protestants, Fleet Transport Company, Inc., and Schwerman Trucking Co. (hereinafter referred to as "Fleet" and "Schwerman," respectively). On June 11, 1984, the Commission issued an Order granting the intervention.

Upon call of the matter for hearing, Applicant and Protestants were present and represented by counsel.

Applicant presented as witnesses in support of its application Bruce H. Kraemer, Vice President of Sales and Marketing of Liquid, and Keith A. Morrison, Vice President of Sales of Dixie Cement Company, Inc.

Protestants offered in opposition to the application the testimony of Danny Summit, Regional Manager of Fleet, and Buddy Thurman, Area Manager, and John Rankin, Sales Representative, of Schwerman.

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 a Kentucky corporation with its principal offices and place of business in Louisville, Kentucky.

2. Applicant is an authorized common and contract carrier operating under a Certificate/Permit issued by this Commission.

3. By this application Liquid proposes to engage in the transportation, as a contract carrier, of Group 21, dry cement, in bulk and in bags, between Castle Hayne, Statesville, and Wilmington on the one hand, and, on the other, all points in North Carolina.

4. Liquid maintains a systemwide fleet of vehicles, including 218 tractors, 26 dry bulk 1050 cu. ft. trailers, and 2 flatbed trailers, of which there are presently located at its terminal in the vicinity of Charlotte, North Carolina, 7 tractors, and 4 dry bulk cement trailers, and at its terminal in Wilmington, North Carolina, 15 tractors, 9 dry bulk cement trailers, and 2 flatbed trailers, such equipment at both terminals being suitable for the transportation of cement.

5. Liquid has substantial assets, which exceed its liabilities, and has the resources with which to acquire additional rolling equipment as necessary to provide adequate and continuing service.

6. Dixie Cement Company (hereinafter referred to as "Dixie"), a major cement company in North Carolina, is familiar with Applicant and its service, supports this application, and has entered into a written transportation contract with Applicant, a copy of which has been introduced in evidence.

7. Dixie has recently acquired the facilities of Ideal Cement Company in North Carolina and has established at Ideal's former locations cement distribution centers at Castle Hayne and Wilmington and a cement distribution center in the vicinity of Statesville.

8. Dixie's customers are primarily ready-mix concrete plants located throughout North Carolina, and Dixie's Statesville facility will serve these plants in North Carolina's middle area between Asheville and Goldsboro, and Dixie's Castle Hayne and Wilmington facilities will serve as a supplier to the Statesville distribution center and the area east of Goldsboro.

9. Dixie has extensive competition in the cement market in North Carolina, and delivery service of its products to its customers is a major factor in keeping it competitive with ready-mix concrete customers, some of whom have only minimal storage facilities for cement. Dixie has a need to

have its deliveries of cement by motor carrier scheduled so as to accommodate the customers' needs at their plants or site storage capacity and needs to have available to it for motor carriage equipment dedicated to meeting the varying and sometimes erratic service needs of its customers.

10. Dixie has been using the services of the Protestant Fleet at its Statesville facility and has found recent deficiencies in the service rendered by Protestant in not having available equipment or being able to meet the demands of Dixie's customers for delivery.

11. Dixie has been using the services of Protestant Schwerman at its Castle Hayne and Wilmington distribution centers, but recently Schwerman has closed its terminal servicing such facilities, removed its equipment to other locations outside North Carolina, and declined to return such equipment to service the shipping needs of Dixie.

12. Liquid, since the withdrawal by Schwerman of equipment serving Castle Hayne and Wilmington and Fleet's removal of equipment from the Statesville area, has been transporting cement to North Carolina destinations under its interstate cement authority upon its position that such shipments by Dixie are of cement brought into North Carolina with the purpose and intent of final delivery to North Carolina destinations and that, as such, the movements are interstate in character.

13. The position of Dixie is that its needs can best be met by a contract carrier, such as offered by the Applicant, who would be able to fit into the varying delivery schedules required by Dixie's customers and would be able to place equipment to the exclusive use and dedicated to rendering of the service to Dixie's shipments and that which would not be also subject to the demands of other members of the shipping public.

14 Protestant Fleet is an experienced carrier holding common carrier authority to transport intrastate shipments of cement, maintaining terminals in Charlotte, North Carolina, and having had equipment stationed in the vicinity of Statesville but at this time has removed that equipment to meet other service demands of other shippers.

15. Protestant Schwerman is an experienced carrier holding common carrier authority to transport intrastate shipments of cement from Castle Hayne and Wilmington and contract carrier authority to transport intrastate shipments of cement from Statesville. For a number of years Schwerman transported intrastate shipments of cement from Castle Hayne and Wilmington for Ideal Cement Company and its customers; but soon after Dixie took over the Ideal facilities in these locations, Schwerman closed its terminal and removed its equipment. Schwerman has not handled intrastate shipments of cement from Statesville under the authority granted in its Docket No. T-1367, Sub 10.

16. Dixie's position is that the service available to it from Protestants as common carriers cannot provide adequately for the anticipated movements of cement from its North Carolina facilities. Other common carriers have not offered service to Dixie or have declined to handle cement shipments from Dixie's facilities.

17. Dixie must have dedicated equipment available and the ability to control the scheduling of shipments to ensure that they arrive on a timely basis to its customers.

WHEREUPON, the Hearing Examiner reaches the following

CONCLUSIONS

This application for a contract carrier permit is governed by G.S. 62-262(i) and N.C.U.C. Rule R2-15(b). The first element for consideration is whether the proposed operations conform with the definition of a contract carrier. Applicant has entered into and filed with this Commission a written transportation contract with the shipper it proposes to serve. A witness representing that shipper has testified that his company has need for unscheduled, exclusive use service of a type not available from existing carriers. The Hearing Examiner therefore concludes that the proposed operations conform with the definition of contract carrier.

The uncontroverted evidence in this docket establishes that Applicant is an authorized carrier in full compliance with this Commission's requirements regarding filing of insurance, rates, a process agent, and an equipment list, maintains a fleet of equipment suitable for transportation of the commodities it proposes to transport, has assets which exceed its liabilities, and is willing and able to procure additional operating equipment as needed. The Hearing Examiner concludes that the Applicant is fit, willing, and able to properly perform the proposed contract carrier service.

There is no evidence that the proposed service will unreasonably impair the efficient public service of carriers operating under certificates or that it will unreasonably impair the use of the highways by the general public.

The Hearing Examiner concludes that the proposed operations to the extent of the operating authority set forth in Exhibit A attached hereto will be consistent with the public interest and policy declared in the Public Utilities Act.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Liquid Transporters, Inc., for contract carrier authority be, and the same is hereby, granted in accordance with Exhibit A attached hereto and made a part hereof.

2. That, to the extent it has not already done so, Liquid Transporters, Inc., shall file with the North Carolina Division of Motor Vehicles, Motor Carrier Safety Regulation Unit, evidence of required insurance, a list of equipment, designation of process agent, and file with the Commission a schedule of minimum rates and charges, contract, and otherwise comply with the Rules and Regulations of the Commission.

3 That unless Liquid Transporters, Inc., complies with the requirements set forth in Ordering Paragraph 2 above and begins operating as herein authorized within thirty (30) days after the effective date of this Order, unless such time is extended by the Commission upon written request for such extension, the operating authority granted herein will cease.

4. That Liquid Transporters, Inc., shall continue to maintain its books and records in such a manner that all of the applicable items of information required in its prescribed Annual Report to the Commission can be used by the Applicant in the preparation of such Annual Report. A copy of the Annual Report form shall be furnished to the Applicant upon request made to the Accounting Division - Public Staff.

5. That this Order shall constitute a permit until a formal permit has been issued and transmitted to the Applicant authorizing the contract carrier transportation described and set forth in Exhibit A attached hereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of September 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. T-2229, SUB 2

LIQUID TRANSPORTERS, INC.
1292 Fern Valley Road
Post Office Box 36247
Louisville, Kentucky 40233

EXHIBIT A

CONTRACT CARRIER AUTHORITY

Transportation of Group 21, dry cement, in bulk and in bags, between Castle Hayne, Statesville, and Wilmington on the one hand, and, on the other, all points in North Carolina.

DOCKET NO. T-2229, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Liquid Transporters, Inc., 1292 Fern Valley Road,<br>Post Office Box 32647, Louisville, Kentucky 40233 -<br>Application for Contract Carrier Authority | ) | FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER |

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, on November 13, 1984, at 3:15 p.m.

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Chairman Robert K. Koger, and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Ruth A. Cook, Charles E. Branford, and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:

Kenneth Wooten, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, P.O. Box 12865, Raleigh, North Carolina 27605-2865
For: Liquid Transporters, Inc.

For the Protestant:

Joseph W. Eason, Moore, Van Allen, Allen & Thigpen, Attorneys at Law, P.O. Box 26507, Raleigh, North Carolina 27611
For: Fleet Transport Company, Inc.

BY THE COMMISSION: On September 28, 1984, Protestant, Fleet Transport Company, Inc., filed exceptions to the Recommended Order of Hearing Examiner Sharpe which was issued in this docket on September 13, 1984. On October 3, 1984, the Commission issued an Order scheduling the exceptions for oral argument before the full Commission on November 13, 1984.

The matter came on for oral argument as scheduled on November 13, 1984, and counsel for the Applicant and Protestant were present and made oral argument.

Based upon a careful consideration of the Recommended Order of September 13, 1984, the oral argument of the parties before the full Commission on November 13, 1984, and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all the findings, conclusions, and ordering paragraphs contained in the Recommended Order of September 13, 1984, are fully supported by the record; that the Recommended Order dated September 13, 1984, should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every exception of the Protestant to the Recommended Order of September 13, 1984, be, and the same are hereby, overruled.

2. That the Recommended Order of September 13, 1984, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of November 1984.

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

DOCKET NO. P-133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Telecommunications Systems, Inc.<br>for a Certificate of Public Convenience and<br>Necessity to Provide Telephone and Radio Common<br>Carrier Services to the General Public, for<br>Compensation, Between Points and Places in the<br>State of North Carolina | ) | ORDER DENYING<br>APPLICATION |

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on March 27 and 28, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Sarah Lindsay Tate and Ruth E. Cook

APPEARANCES:

For the Applicant:

James E. Holshouser, Jr., Brown, Holshouser, Pate & Burke, Attorneys at Law, 175 West New Hampshire Avenue, Southern Pines, North Carolina 28387
and
Mitchell Willoughby, Kneece, Kneece, Willoughby, Ashley & Gibbons, Attorneys at Law, 1430 Blanding Street, Columbia, South Carolina 29201

For the Intervenors:

Gene V. Coker, AT&T Communications, 1200 Peachtree St., N.E., Atlanta, Georgia 30357
and
Michael W. Tye, Attorney, AT&T Communications, P.O. Box 7800. Atlanta, Georgia 30359
FOR: AT&T Communications

Jerry B. Fruitt, Attorney at Law, P.O. Box 2507, Raleigh, North Carolina 27602
FOR: Patterson Answerphone Communications Enterprises, Inc.

James M. Kimzey, Kimzey, Smith, McMillan & Roten, Attorneys at Law, P.O. Box 150, Raleigh, North Carolina 27602
FOR: Central Telephone Company

J.B. Ray, General Attorney, Southern Bell Telephone and Telegraph Company, P.O. Box 30188, Charlotte, North Carolina 28230
and
Lawrence E. Gill, Attorney, 4300 Southern Bell Center, Atlanta, Georgia 30375
FOR: Southern Bell Telephone and Telegraph Company

Dale E. Sporleder, 4100 N. Roxboro Road, Durham, North Carolina 27712
FOR: General Telephone Company of the Southeast

Hugh Stevens, Sanford, Adams, McCullough & Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina 27602
FOR: MCI Telecommunications Corporation

Robert Carl Voight, Senior Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886
FOR: Carolina Telephone and Telegraph Company

Michael L. Ball, 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 proceeding was initiated by Telecommunications Systems, Inc. ("Applicant" or "TSI") on January 22, 1982, by filing an application with the Commission seeking a certificate of public convenience and necessity authorizing it to provide end-to-end intrastate telecommunications services throughout the State of North Carolina. Specifically, TSI requested a certificate of public convenience and necessity with the following language:

> To provide telephone and radio common carrier services to the general public, for compensation, between points and places in the State of North Carolina.

The application was filed pursuant to G.S. 62-110 and 62-3(23).

On May 17, 1983, TSI filed an addendum to its application which consisted of a proposed tariff.

On May 21, 1983, by letter TSI indicated that it desired to defer any hearing on its application until after January 1, 1984.

On January 30, 1984, TSI filed a letter with the Commission requesting that its application be placed on the docket for hearing at the earliest possible date.

On February 9, 1984, the Commission issued an Order Scheduling Hearing on the Application to be held on Tuesday, March 17, 1984. That Order concluded that the Applicant sought a certificate to provide both inter-LATA and intra-LATA telecommunications services on an intrastate basis. The Order also concluded that "a general investigation should be conducted to determine the extent of its authority under relevant statutory and case law to issue certificates of public convenience and necessity for such additional toll services along with the existing toll service available, along with such other issues as may be deemed appropriate." The Order made all regulated telephone companies in North Carolina parties to the proceeding. The companies, the Public Staff, and other interested persons were invited to file testimony and/or legal briefs regarding this matter.

On February 10, 1984, the Public Staff filed a motion requesting that the hearings on TSI's application be postponed until after the North Carolina General Assembly completes its session now scheduled to convene on June 7, 1984, and for the additional reason that the access charge proceedings required additional time of the Public Staff in order to prepare for those important proceedings.

TSI filed its response to the Public Staff's motion on or about February 25, 1984, opposing the request of the Public Staff to delay the hearing.

On March 7, 1984, the Commission issued its Order in this docket entitled "Order Denying Motion to Postpone Hearing." While the Commission denied the Public Staff's request to delay the hearings previously scheduled, it did permit all parties to have additional time in which to prefile their testimony in this proceeding with such time extended until Tuesday, March 20, 1984.

On March 8, 1984, Patterson Anserphone Communications Enterprises, Inc., petitioned the Commission for leave to intervene in this proceeding. Such request was granted by Order of the Commission on March 14, 1984.

On March 15, 1984, MCI Telecommunications Corporation petitioned the Commission for leave to intervene in this proceeding. Such request was granted by Order dated March 22, 1984.

The hearing commenced as scheduled March 27, 1984, in the Commission Hearing Room.

Prior to the presentation of evidence at the hearing, arguments were heard on the motion of Patterson Anserphone to dismiss the application. This motion was joined in by the Public Staff, Carolina Telephone and Southern Bell. After the arguments for this motion, counsel for TSI verbally amended the application and withdrew that portion of TSI's application that requested RCC authority or paging and mobile telephone authority, leaving only that portion of the application that requested landline telecommunications authority. As to the motion to dismiss that remaining portion of the application, the Commission deferred its ruling until after the receipt of evidence and legal briefs.

Following the arguments on the motion to dismiss, evidence was received on the application. Evidence was presented by the Applicant TSI, and by Carolina Telephone Company, General Telephone Company and Central Telephone Company. The Public Staff contended that the issue is a purely legal one and therefore did not present any evidence.

After a review of the evidence here presented and consideration of the entire record in this proceeding, the Commission makes the following:

## FINDINGS OF FACT

1. That Telecommunications Systems, Inc., is a South Carolina corporation certificated by the South Carolina Public Service Commission as a facility based common carrier of telecommunications services in the State of South Carolina. In addition, TSI holds a 214 license from the Federal Communications Commission to provide interstate resell services throughout the contiguious United States, the District of Columbia, Hawaii and Puerto Rico.

2. That TSI seeks a Certificate of Public Convenience and Necessity to provide intrastate telecommunications services in North Carolina on a statewide basis.

3. That TSI originally also sought a Certificate to provide Radio Common Carrier services on a statewide basis, but at the hearing on this matter the Applicant, through counsel, withdrew that portion of its application.

4. That the service offerings proposed by TSI would involve the transmission of messages or communications by telephone where such services would be offered to the public for compensation

5. That if a Certificate were granted, TSI would plan to implement its authority by building a primary microwave route from Charlotte, North Carolina, to Raleigh, North Carolina, with switching centers in Charlotte, Greensboro and Raleigh. Some other areas in North Carolina would be served by secondary microwave routes. The microwave network would be supplemented by the resale of services through leased facilities in other geographical areas of North Carolina. In the interim, while the microwave network was under construction, TSI would begin doing business as a reseller; in the longer term, TSI would hope to reduce its dependance on resale, by expanding its facilities-based network.

6. That current tariffs approved by this Commission and subscribed to by all regulated telephone companies prohibit resale of telecommunications services.

7. That the Commission takes judicial notice of the fact that there are presently telephone companies certificated to provide telephone services within their respective service areas throughout North Carolina and that the utilities have a monopoly to provide telecommunications services within said service areas.

8. That if a Certificate were granted to TSI in accordance with its application herein, TSI would be authorized to provide telecommunications services in competition with the presently certificated telecommunications utilities in North Carolina.

9. That TSI asserts that the granting of its application would be in the public interest because competition is inherently beneficial economically. TSI further asserts that the granting of the Certificate would be in the public interest because TSI would offer innovative and high quality services at a lower cost than that at which comparable services are presently available from the currently certificated telecommunications utilities in North Carolina.

10. That the services that TSI proposes to offer are not substantially different in kind from the telecommunications services presently offered by currently certificated telecommunications utilites.

11. That to the extent that TSI's proposed service offerings (as opposed to to equipment offerings not regulated by this Commission) differ from the service offerings of existing utilities, the differences do not comprise services which the existing utilities would be unable to provide if ordered to do so by this Commission.

12. That there is no contention and no evidence herein that the telecommunications services of any existing utility are inadequate, or that any existing utility would be unable or unwilling to duplicate any of the service offerings proposed by TSI if ordered to do so by this Commission.

WHEREUPON, the Commission reaches the following:

## CONCLUSIONS OF LAW

THE UTILITIES COMMISSION IS WITHOUT AUTHORITY TO GRANT A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IN THE ABSENCE OF A SHOWING THAT EXISTING SERVICE IS INADEQUATE, AND THAT THE EXISTING UTILITY CANNOT OR WILL NOT PROVIDE THE SERVICES IN QUESTION Utilities Commission v. Carolina Telephone and Telegraph Company, 267 N.C. 257 (1966); North Carolina Utilities Commission, Docket Nos. P-134 (Data Utilities) and P-140 (AT&T Communications). (Emphasis Added).

In its Application, Telecommunications Systems, Inc., seeks a Certificate of Public Convenience and Necessity under N.C.G.S. 62-110. In order to establish that the public convenience and necessity requires the issuance of such a Certificate, TSI must prove: (1) that the presently certified utility company is not providing adequate service, and (2) that the presently certified utility company is unable or unwilling to provide the services proposed by the Applicant. The foregoing requirements are set forth in Utilities Commission v. Carolina Telephone and Telegraph Company, 267 N.C. 257 (1966), where the North Carolina Supreme Court stated:

"G.S. 62-262(f) expressly provides as to motor carriers of passengers that no certificate shall be granted to an applicant proposing to serve a route already served by a previously authorized motor carrier unless and until the Commission shall find from the evidence that the service rendered by such previously authorized carrier is inadequate, and the certificate holder has been given reasonable time to remedy the inadequacy. See Utilities Commission vs. Coach Co., supra; Utilities Commission v. Coach Co.., 223 N.C. 119, 63 S.E. 2d 113.

"There is no such express provision as to utilities engaged in the communications field. Nevertheless, the basis for the requirement of a certificate of public convenience and necessity, as a prerequisite to the right to serve, is the adoption, by the General Assembly, of the policy that, nothing else appearing, the public is better served by a regulated monopoly than by competing suppliers of the service. Utilities Commission v. Coach Co., 224 N.C. 390, 3 S.E. 2d 328; Citizens Valley View Co. v. Illinois Commerce Commission, 28 Ill. 2d 294, 192 N.E. 2d 392, Mo., Kan. & Okla. Coach Lines, Inc., v. State, 183 Okla. 3, 80 P. 2d 664. There is, however, inherent in this requirement the concept that, once a certificate is granted which authorizes the holder to render the proposed service within the geographic area in question, a certificate will not be granted to a competitor in the absence of a showing that the utility already in the field is not rendering and cannot or will not render the specific service in question." (Emphasis added.) 267 N.C. at 271.

In this case, the evidence clearly indicates that the services which TSI proposes to offer are similar in nature to the services already offered by the existing telephone utilities. Inasmuch as TSI has made no showing that the existing utilities cannot or will not provide the services in question, the Commission cannot conclude that a certificate should be issued to TSI under the standards enunciated by the North Carolina Supreme Court as set forth above. As to the contention that the phrase "nothing else appearing" in the above-quote passage means that a certificate may be granted on the evidence submitted by TSI, we cannot agree. The emphasized language in the quoted passage is an explicit exposition of the "something else" that must appear in order to support the granting of a certificate for competititve authority. Thus, the phrase "nothing else appearing" cannot be read as a blanket authorization for the granting by this Commission of competitive certificates in this area.

Having found that under the facts of this case competition is not authorized under current North Carolina law, the Commission concludes that the Applicant has failed to carry the burden of proof in this proceeding and that TSI's application to be certificated as a provider of intrastate telecommunications services should, therefore, be denied.

IT IS, THERFORE, ORDERED that the Application by Telecommunications Systems, Inc., for a Certificate of Public Convenience and Necessity be denied.

ISSUED BY ORDER OF THE COMMISSION.
This is the 1st day of June 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. P-55, SUB 776

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Investigation of the Need for Extended Area Service (EAS) Between the Locust Exchange and Exchanges of Norwood, Oakboro, New London, and Badin, Stanly County, North Carolina | ) | ORDER REQUIRING EAS POLL |

HEARD IN: Stanly Room, Stanly County Courthouse, 201 South Second Street, Albemarle, North Carolina, on November 28, 1983, and

Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 29, 1983

BEFORE: Commissioner Douglas P. Leary, Presiding; and Commissioners A. Hartwell Campbell, Sarah Lindsay Tate, Robert K. Koger, Leigh H. Hammond, Edward B. Hipp, Ruth E. Cook, and Hearing Examiner Carolyn D. Johnson

APPEARANCES:

For the Respondents:

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

J. Billie Ray, Southern Bell Telephone and Telegraph Company, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

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

For the Intervenors:

Thomas K. Austin, Staff Attorney, Public Staff - North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On October 2, 1981, the North Carolina Utilities Commission issued an Order requiring implementation of extended area service between Southern Bell's Locust exchange and each of the exchanges of Albemarle, Oakboro, New London, and Badin (all served by Concord Telephone Company) and Norwood (served by Mid-Carolina Telephone Company). The Locust exchange serves customers who reside in both Stanly County and Cabarrus County. While the Stanly County subscribers expressed significant interest in the proposed EAS, the Cabarrus County subscribers expressed little or no interest in the proposed EAS arrangement. Moreover, it was established that it was not economically

feasible to split the exchanges so as to provide the EAS to the Stanly County subscribers and exclude the Cabarrus County subscribers. For these reasons the Commission Order required Southern Bell to implement the EAS and required the Stanly County subscribers to pay increased monthly charges to offset the cost of the EAS but required Southern Bell to exclude Cabarrus County subscribers from paying the increased charges.

Southern Bell appealed the Commission's final Order to the North Carolina Court of Appeals alleging that preferential rates resulted because Cabarrus County residents were not being charged for the EAS but would receive the service. The Public Staff filed with the Court of Appeals a Motion for Remission for further evidence. The motion alleged that newly discovered evidence on the timing of the replacement of the step-by-step telephone equipment at the Locust exchange with an electronic switch would allow the Commission to address the divided interest of the Stanly County residents and the Cabarrus County residents who are all subscribers of the Locust exchange. Southern Bell's response to the Public Staff's motion did not oppose the motion per se, but merely asked the Court to order the Commission to permit further evidence relating to the cost, rates, and the application of such rates to customers at any further hearing. The Commission will not repeat here the detailed consideration of splitting the exchange and the excessive costs which were addressed in hearings in this matter prior to the Commission's issuing an Order on October 2, 1981. This evidence is already in the record on appeal and in the Commission's file. The fact that the installation of an electronic switch in September 1984 at the Locust exchange would make economically feasible the task of splitting the exchange into Stanly County subscribers and Cabarrus County is uncontroverted and requires no further discussion herein.

On March 28, 1983, the Court of Appeals entered the following order, RE: State of North Carolina ex rel. Utilities Commission v. Southern Bell, No. 8210UC661.

"The motion filed in this cause on the 16th day of March 1983, and designated Motion For Remission For Further Evidence is allowed. The Commission will also give due consideration to the matters raised in the response of Southern Bell Telephone and Telegraph Company to said motion."

In compliance with the directive of the North Carolina Court of Appeals, the Commission held hearings in Albemarle and Raleigh to receive the testimony of public witnesses and Company witnesses. Testimony of some of the 25 public witnesses leads this Commission to believe that there may now exist a substantial interest by Locust exchange subscribers in having EAS between Charlotte and between Albemarle, Oakboro, New London, Badin, and Norwood. Additionally, the Commission takes judicial notice of evidence adduced in Docket No. P-55, Sub 803, In the Matter of EAS Between the Southern Bell Exchanges of Locust and Charlotte, North Carolina. Due to the time that has lapsed since filing in 1979 of the petitions in this docket (P-55, Sub 776), the Commission concludes that the Locust exchange subscribers should be polled to determine their current interests. Moreover, a ballot should be prepared including the following choices:

| Extended Area Service | Residence | Business |
|---|---|---|
| Option I 1/ | | |
| Residents of Stanly and Cabarrus Counties can vote on this choice for EAS between the entire Locust exchange and Charlotte only | $0.85 | $1.95 |
| Option II 2/ | | |
| Only residents of Stanly County can vote on this choice for EAS limited to the Stanly County section of the Locust exchange and Albemarle, New London, Badin, Oakboro, and Norwood | $1.56 | $3.90 |
| Option III 3/ | | |
| EAS including Charlotte, Albemarle, Oakboro, New London, Badin, and Norwood | $1.80 | $5.85 |
| Option IV 4/ | | |
| EAS including Charlotte and Albemarle, Oakboro, New London, Badin, and Norwood | $2.41 | $5.85 |

1/ Option I embodies the proposal in Docket No. P-55, Sub 803, and requires a favorable vote from Cabarrus and Stanly County residents or the increase will be more.

2/ Option II limits the calling scope to the exchanges requested in the 1979 Stanly County EAS proposal. The EAS and associated monthly rate increase would apply only to Stanly County residents served by the Locust exchange. Cabarrus County subscribers would be unable to call the involved exchanges without incurring a toll charge. The Commission's decision to exclude residents from Cabarrus County is based on evidence in the record tending to show little or no interest in this EAS arrangement. The evidence supports the aforementioned Option II charges resulting from the omission of Cabarrus County subscribers.

3/ Option III applies if the majority of the Locust exchange subscribers residing in Stanly and Cabarrus Counties vote to call Charlotte, Albemarle, Oakboro, New London, Badin, and Norwood.

4/ Option IV applies if Stanly County residents vote to call Charlotte and Stanly County, and Cabarrus County residents vote only to call Charlotte.

To avoid duplication in the voting process, the choices in Docket No. P-55, Sub 776, should be mailed only to Locust Exchange subscribers residing in Stanly County. Subscribers will be allowed to vote yes or no on each of the three choices. By Commission Order in Docket No. P-55, Sub 803,

issued simultaneously with this docket Cabarrus County subscribers will vote on choices available to them.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell shall conduct an EAS poll of all Stanly County residents receiving service through the Locust Exchange to determine whether or not they desire any of the aforementioned EAS calling arrangements at the indicated monthly rates.

2. That Southern Bell shall file with the Commission for approval a printed letter and ballot as set forth in Appendices A and B on or before January 30, 1984.

3. That the polling shall begin on or before February 6, 1984, and shall end March 6, 1984.

4. That the letter attached as Appendix A and the ballot labeled Appendix B is for polling subscribers residing in Stanly County who are provided service through the Locust exchange. These appendices shall be sent by mailing in envelopes marked "urgent" and a postage-free self-addressed return envelope shall also be included.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of January 1984.

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

DOCKET NO. P-55, Sub 776
APPENDIX A

Dear Stanly County Subscriber:

The North Carolina Court of Appeals directed the North Carolina Utilities Commission to reconsider the matter of Extended Area Service involving subscribers served by our Locust Exchange. Hearings were held in Albemarle and Raleigh on November 28 and 29, 1983, by the Commission. Due to the time that has lapsed since the filing in 1979 of petitions seeking EAS between the Locust Exchange and the Albemarle, Oakboro, New London, Badin, and Norwood Exchanges, the Commission ordered Southern Bell to repoll subscribers to determine their current interest.

Many Locust Exchange subscribers residing in Cabarrus County have requested EAS between the Locust Exchange and Charlotte. For this reason, the Commission has expanded your choices as follows:

EXTENDED AREA SERVICE

| Option I | Residence | Business |
|---|---|---|
| Residents of Stanly and Cabarrus Counties can vote on this choice for EAS between the entire Locust exchange and Charlotte only | $0.85 | $1.95 |
| **Option II** | | |
| Only residents of Stanly County can vote on this choice for EAS limited to the Stanly County section of the Locust exchange and Albemarle, New London, Badin, Oakboro, and Norwood | $1.56 | $3.90 |
| **Option III** | | |
| Residents of Stanly and Cabarrus Counties can vote on this choice for EAS between the Locust exchange and Charlotte, Albemarle, New London, Badin, Oakboro, and Norwood | $1.80 | $4.35 |
| **Option IV** | | |
| EAS including Charlotte, Albemarle, Oakboro, New London, Badin, and Norwood | $2.41 | $5.85 |

You must sign the attached ballot and return it in the enclosed self-addressed postage-free envelope no later than March 6, 1984. Ballots postmarked after midnight March 6, 1984, will not be valid.

YOU MUST VOTE FOR OR AGAINST EACH OF THE THREE CHOICES OR THE BALLOT WILL BE DISQUALIFIED.

The Commission's consideration of the results of the vote will be based on the total number of marked eligible ballots returned on time. Results of the final action will be announced.

Yours very truly,

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
By:_____

DOCKET NO. P-55, SUB 776
APPENDIX B

DESCRIPTION
BALLOT FOR STANLY COUNTY RESIDENTS

THIS BALLOT IS BEING SENT ONLY TO OUR LOCUST EXCHANGE SUBSCRIBERS RESIDING IN STANLY COUNTY. HOWEVER, A SIMILAR BALLOT IS BEING SENT TO SUBSCRIBERS RESIDING IN CABARRUS COUNTY.

YOU MUST VOTE FOR OR AGAINST ON EACH OPTION OR THIS BALLOT WILL BE DISQUALIFIED. YOU MUST RETURN THIS BALLOT IN THE SELF-ADDRESSED POSTAGE-FREE ENVELOPE NO LATER THAN MARCH 6, 1984.

THE PRESENT FLAT MONTHLY RATE FOR LOCUST EXCHANGE IS $10.02 AND $26.26 FOR RESIDENTIAL AND BUSINESS SUBSCRIBERS. AT THE TIME OF THE NEXT SOUTHERN BELL GENERAL RATE CASE SUBSCRIBERS WHO CAN CALL CHARLOTTE WILL THEN PAY THE CHARLOTTE BASE RATE WHICH CURRENTLY IS $12.46 PER MONTH AND $33.03 PER MONTH FOR RESIDENTIAL AND BUSINESS SUBSCRIBERS, RESPECTIVELY, IN LIEU OF THE "INCREASED MONTHLY RATES" REFLECTED ON THIS PAGE.

| | Increased Monthly Rate | | FOR | AGAINST |
|---|---|---|---|---|
| OPTION I | Residence | Business | | |
| EAS between Charlotte only | $0.85 | $1.95 | /__/ | /__/ |

I understand that the majority of Locust exchange subscribers residing in Cabarrus County must also vote for this Option or the increase will be more.

---

OPTION II

| | | | | |
|---|---|---|---|---|
| EAS in Stanly County only (Albemarle, Oakboro, New London, Badin, and Norwood) | $1.56 | $3.90 | /__/ | /__/ |

I understand residents of Cabarrus County are not voting on this Option, so only a majority vote by Stanly County residents is required.

---

OPTION III

| | | | | |
|---|---|---|---|---|
| EAS including Charlotte and Albemarle, Oakboro, New London, Badin, and Norwood | $1.80 | $4.30 | /__/ | /__/ |

I understand that this is the rate that will apply only if the majority of the Locust exchange subscribers residing in both Cabarrus County and Stanly County vote to call all of the exchanges in this Option.

---

OPTION IV

| | | | | |
|---|---|---|---|---|
| EAS including Charlotte and Albemarle, Oakboro, New London, Badin, and Norwood | $2.41 | $5.85 | /__/ | /__/ |

I understand that this is the rate that will apply if the majority of the Cabarrus County residents who are provided service through the Locust exchange vote only to call Charlotte.

SIGNED BY:_____
Stanly County Resident

DOCKET NO. P-55, SUB 776
DOCKET NO. P-55, SUB 803

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

| | | |
|---|---|---|
| Investigation into the Establishment of Extended Area Service Between the Southern Bell Exchange of Locust and Each of the Exchanges of Norwood, Albemarle, Oakboro, New London and Badin | ) | ORDER DIRECTING IMPLEMENTATION OF EXTENDED AREA SERVICE |
| and | ) | |
| Investigation into the Establishment of Extended Area Service Between the Exchanges of Locust and Charlotte | ) | |

BY THE COMMISSION: On October 2, 1981, the North Carolina Utilities Commission issued an Order in Docket No. P-55 Sub 776, requiring implementation of extended area service between Southern Bell's Locust exchange and each of the exchanges of Albemarle, Oakboro, New London, and Badin (all served by Concord Telephone Company) and Norwood (served by Mid-Carolina Telephone Company). The Locust exchange serves customers who reside in both Stanly County and Cabarrus County. Southern Bell appealed the Commisson's final Order to the North Carolina Court of Appeals alleging that preferential rates resulted because Cabarrus County residents were not being charged for the EAS but would receive the service. The Public Staff filed with the Court of Appeals a Motion for Remission for Further Evidence.

On March 28, 1983, the Court of Appeals entered the following order, RE: State of North Carolina ex. rel. Utilities Commission v. Southern Bell, No 8210UC661.

"The motion filed in this cause on the 16th day of March 1983, and designated Motion for Remission for Further Evidence is allowed. The Commission will also give due consideration to the matters raised in the response of Southern Bell Telephone and Telegraph Company to said motion."

In compliance with the directive of the North Carolina Court of Appeals, the Commission held hearings in Docket No. P-55, Sub 776, in Albemarle and Raleigh to receive the testimony of public witnesses and Company witnesses. Testimony of some of the 25 public witnesses led this Commission to believe that a substantial interest exists in having EAS between the Locust exchange and between Charlotte, Albemarle, Oakboro, New London, Badin and Norwood.

Docket No. P-55, Sub 803, was initiated due to the requests of Locust exchange subscribers residing in Midland (Cabarrus County) for Extended Area Service between the Locust exchange and Charlotte exchange of Southern Bell. The Commission held a hearing in the Bethel School in the Midland Community of the Locust exchange on August 29, 1983, for the purpose of allowing subscribers, Southern Bell and the Public Staff to address the following issues: (1) The need for and public interest in the proposed Locust to Charlotte EAS, (2) the appropriate monthly increases in basic local service rates that would apply if EAS were established, (3) whether there should be a poll of the affected subscribers, and (4) all other relevant issues.

Based on the evidence presented in both Docket No. P-55, Sub 776, and Sub 803, the Commisson concluded that due to the time that had lapsed since the filing in 1979 of the petitions in Docket No. P-55, Sub 776, and the evidence adduced in Docket No. P-55, Sub 803, all Locust exchange subscribers should be polled to determine their current interests. On January 20, 1984, the Commission issued Orders which required that the Locust exchange subscribers' ballots include several specific options.

By letter dated March 15, 1984, Southern Bell submitted the polling results. Analysis of the results reveals that of the ballots returned 94.5% of the Cabarrus County subscirbers and 93.7% of the Stanly County subscribers voted for Extended Area Service between the Locust exchange and the Charlotte, Albemarle, Oakboro, New London, Badin and Norwood exchanges.

The Commission is of the opinion that good cause exists to require the involved companies to implement the aforementioned EAS arrangement.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell, Concord and Mid-Carolina are hereby ordered to implement Extended Area Service between Southern Bell's Locust exchange and each of the exchanges of Charlotte (served by Southern Bell), Albemarle, Oakboro, New London and Badin (all served by Concord) and Norwood (served by ALLTEL-Carolina, Inc., formerly Mid-Carolina Telephone Company).

2. That the basic monthly rate increases approved for such service are as follows:

| Company and Exchange | Monthly Rate Increase Residence | Business |
|---|---|---|
| Southern Bell (Locust) | $1.80 | $4.40 |
| ALLTEL-Carolina (Norwood) | .10 | .25 |
| Concord (for each exchange of Albemarle, Oakboro, New London and Badin) | .20 | .40 |

3. That Southern Bell, ALLTEL, and Concord shall report within 30 days of the date of this Order the earliest possible implementation date.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of April 1984.

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

DOCKET NO. P-55, SUB 792

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Investigation into the Establishment of Extended Area Service Among Certain Telephone Exchanges in Buncombe County | ) | ORDER IMPLEMENTING EXTENDED AREA SERVICE |

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Lindsay Tate, Edward B. Hipp, A. Hartwell Campbell, Leigh H. Hammond, Douglas P. Leary, and Ruth E. Cook

APPEARANCES:

For the Respondents:

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

F. Kent Burns, Boyce, Mitchell, Burns and Smith, Attorneys at Law, P.O. Box 2479, Raleigh, North Carolina 27602
For: Continental Telephone Company of North Carolina, Inc.

Phillip J. Smith, Albert Sneed, VanWinkle, Buck, Wall, Starnes and Davis, Attorneys at Law, 18 Church Street, P.O. Box 7376, Asheville, North Carolina 28807
For: Barnardsville Telephone Company

For the Public Staff:

Thomas K. Austin, Staff Attorney, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: Using and Consuming Public

BY THE COMMISSION: This matter was initiated by the filing of a petition bearing approximately 8,600 signatures and entitled "Investigation into the Establishment of Extended Area Service Among Certain Telephone Exchanges in Buncombe County." The Public Staff placed the request on the Commission Staff Conference Agenda on May 26, 1981. The original request for Extended Area Service (EAS) involved three telephone companies: Southern Bell Telephone and Telegraph Company (Southern Bell) serving the exchanges of Asheville, Arden, Black Mountain, Enka, Candler, Fairview, Leicester, and Swannanoa; Continental Telephone Company of North Carolina, Inc. (Continental), serving the Weaverville exchange; and Barnardsville Telephone Company (Barnardsville) serving the Barnardsville exchange. By Order issued on January 21, 1983, the Commission scheduled hearings and required the three companies to give public notice of these hearings to their subscribers.

The Commission's Order required that the basic monthly rate increase to be used for polling should be as follows:

| Company and Exchanges | Monthly Rate Increase Residence | Business |
|---|---|---|
| Southern Bell | | |
| Arden, Black Mountain, Enka-Candler, Fairview, Leicester, Swannanoa | $1.80 | $4.50 |
| Continental | | |
| Weaverville | $0.25 | $0.63 |

On November 18, 1983, and December 12, 1983, Continental Telephone Company and Southern Bell Telephone and Telegraph Company filed the following polling results: The percent of eligible ballots returned voting in favor of the proposed EAS arrangement were as follows: Southern Bell exchanges 48.7%, Weaverville 86.2%, combined 54.2%.

The results of the EAS polls in question were considered by the Commission during the Commission Staff Conference held on Monday, January 9, 1984. Based upon the results of the above-referenced EAS polls, the Public Staff recommended that the Commission authorize and approve the establishment of Buncombe County EAS (excluding Barnardsville). Representatives of Southern Bell and Continental appeared before the Commission in opposition to the Public Staff's recommendation. John Humphrey, President of the Buncombe County Community Development Council, Brenda Humphrey, President of Avery's Creek Community Club, and Winston W. Carter, President of the Smokey Mountain Emergency Traffic Center, appeared before the Commission and spoke in support of the Public Staff's recommendation.

After reviewing all of the testimony, exhibits and the polling results, the Commission makes the following

FINDINGS OF FACT

1. Southern Bell Telephone and Telegraph Company and Continental Telephone Company of North Carolina 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 Buncombe County, North Carolina.

2. The Buncombe County Community Development Council and other Buncombe County residents by letters and petitions bearing approximately 8,600 signatures received here on April 27, 1981, requested that toll-free Extended Area Service (EAS) be established throughout Buncombe County at equalized monthly rates.

3. The original request involves Southern Bell Telephone and Telegraph Company's exchanges of Asheville, Arden, Black Mountain, Enka-Candler, Fairview, Leicester and Swannanoa; Continental Telephone Company of North Carolina's Weaverville exchange and Barnardsville Telephone Company's Barnardsville exchange.

4. Among the aforementioned exchanges, EAS presently exists between the Asheville exchange and each of the other exchanges except the Barnardsville

exchange. EAS exists between the Fairview exchange and each of the exchanges of Arden, Black Mountain and Swannanoa. EAS exists between the Black Mountain and Swannanoa exchanges.

5. Extended Community Calling (ECC) is an optional service offering whereby customers can buy one hour's or one-half hour's worth of calling for a flat fee and additional one-tenth hour increments, also for a flat fee. ECC is presently offered from Asheville to Barnardsville, Barnardsville to Asheville, Arden to Black Mountain and Enka-Candler, Black Mountain to Arden and Enka-Candler to Arden.

6. The Commission held hearings on this EAS proposal in Asheville on April 18 and 19, 1983, in order to specifically address (1) the need for and public interest which subscribers have in the proposed EAS, (2) the geographic areas and exchanges to be included in the proposed EAS, (3) whether or not any proposed pooling arrangement resulting in equalized rate increases is legal, (4) the appropriate monthly increases that subscribers would incur, (5) whether there should be a poll conducted of subscribers, (6) which subscribers should be polled and at which rates and (7) all other relevant issues.

7. On April 18 and 19, 1983, the Commission conducted a hearing in Asheville to hear testimony from the using and consuming public with regard to the requested EAS. Seventeen members of the public testified at the hearing held on April 18, 1983, and 13 members of the public testified on April 19, 1983. All but one supported the request for Extended Area Service. Additionally, on April 19, 1983, the Commission heard the testimony of Robert Friedlander for Southern Bell, Douglas Baker for Continental, Joe Hicks for Barnardsville, and Leslie Sutton for the Public Staff.

8. On August 23, 1983, the Commission issued an "Order Requiring EAS Poll," with Commissioners Leary and Campbell filing written dissents and Commissioners Tate and Cook not voting. The August 23, 1983, Order excluded Barnardsville subscribers from further consideration in this EAS proposal and, therefore, Barnardsville subscribers were not polled. Additionally, the Commission determined that the rates of the Asheville subscribers should not be increased and as a result Asheville subscribers were not polled.

9. On November 18, 1983, and December 12, 1983, Continental Telephone Company and Southern Bell Telephone Company, respectively, filed the results of the poll conducted in Buncombe County (excluding Asheville and Barnardsville). The results of the poll show that 54.2% of eligible ballots returned voted in favor of the proposed EAS.

10. A Significant amount of interest and support for Buncombe Countywide EAS excluding Barnardsville has been expressed by citizens, businesses, institutions and local government officials.

11. Southern Bell and Continental should proceed to implement Buncombe Countywide EAS excluding Barnardsville using the same basic monthly increases that were used for polling.

CONCLUSIONS

The initial proposal for toll-free calling throughout Buncombe County involved three telephone companies, Southern Bell, Continental and Barnardsville. Likewise, the subscribers of the Barnardsville, Arden, Black Mountain, Enka-Candler, Fairview, Leicester, Swannanoa, and Weaverville exchanges were directly involved, primarily in an effort to be able to call each other without incurring a toll charge. It should be recognized that all of the exchanges except Barnardsville already had EAS between the Asheville exchange of Southern Bell. At the hearing on this proposal witness Hicks of Barnardsville Telephone Company and witness Sutton of the Public Staff and three public witnesses presented testimony recommending that Barnardsville subscribers should be excluded from consideration in this docket. The Commission has concluded that Barnardsville subscribers had very little if any interest in being included in the proposed countywide EAS. Based upon consideration of all the evidence, the Commission has excluded the Barnardsville subscribers. Moreover, since Barnardsville was the only involved exchange without EAS between Asheville, the Commissin concludes that Asheville also should be excluded from this docket. Thus, the proposal is now limited to only two telephone companies, Southen Bell serving seven (7) of the involved exchanges and Continental serving the Weaverville exchange.

The Commission has duly considered the appropriate rate increase which would reasonably cover the cost of implementing the proposed EAS while at the same time keeping the customers' monthly increases within reason. The testimony of witness Sutton reveals that should countywide EAS be implemented, all exchanges would have virtually identical calling scopes, that at present there is only a 60-cent differential among the Southern Bell exchanges and that it would be equitable and reasonable to increase every subscriber's rate by the same amount and maintain only the slight differential in their rates. The Commission adopts witness Sutton's position in this matter.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell and Continental shall within 30 days of the issuance of this Order file the earliest date upon which the proposed extended area service can be implemented.

2. That the monthly rate increase for the involved Southern Bell exchanges shall be $1.80 residential and $4.50 business, and for Continental's Weaverville exchange the rate shall be $0.25 residential and $0.63 business.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of February 1984.

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

Chairman Koger and Commissioners Hammond, Hipp and Cook voting yes. Commissioners Tate, Campbell and Leary dissenting.

COMMISSIONER TATE, DISSENTING. In earlier dissents in this docket, Commissioners Campbell and Leary have vigorously objected to the extremely low rates of calling studies which were used to justify customer polling in Buncombe County. Those dissents also discussed the discriminatory omission of Asheville customers from both the poll and costs and the failure to include

any portion of the toll revenues loss in establishing the cost of providing Extended Area Service. I concur with the views of the dissenters, and believe that each of their arguments shows that the majority have "stretched" the rules and abandoned long-standing policy of this Commission throughout the Buncombe County Extended Area Service case.

I dissent from the decision because the majority has chosen to depart from long-standing regulatory principles and North Carolina Utilities Commission practice in this case. In each of the numerous Extended Area Service cases heard by this Commission for many years, the Commission has ordered the telephone company to provide a study showing the cost of providing EAS in each exchange under consideration. The companies have complied by making the studies and providing the exact amount per customer in each exchange that is necessary to implement the provision of this new service. If the Commission decided to order an EAS poll, customers were informed of the cost of providing the additional service and were given an opportunity to accept or reject (1) the added service and (2) the cost of providing it. From the mountains to the sea and from our borders to the North and South, this practice has been uniform and it is a fair one. Ex diuturnitate temporis, omnia praesumuntur solemniter esse acta. What could be fairer than ascertaining the exact cost of providing the service and assessing that cost to the customers who caused the cost to occur?

But this eminently fair method used for years to appropriately charge the cost-causing customer his fair share is now abandoned. Without discussion or explanation, the majority choose another method. (I might add that nowhere in the record is there any rationale or justification for the change - it could be there, is none!) Now in lieu of assessing each customer his fair cost, the majority have decided to pool the costs incurred by all the exchanges and average the costs for each customer. How can one explain to a customer residing in Black Mountain that the monthly cost of providing him with EAS is $.99 but his charge will be $1.08? Why is it that a customer in the Enka-Candler Exchange should (by fairly assessing his cost) be paying $1.14, but he will be billed $1.08? The Order does not explain why. Perhaps the Public Staff who presented this methodology and the Commissioners who voted for it would prefer to explain to residents of Leicester that their fair share should be $6.29, but they will only be charged $1.80. If the method used here is to become a precedent and adopted as our new policy, someone in some case will have to try to justify how averaging is superior to charging the actual cost. In consuetudinibus, non diuturnitas temporis sed soliditas rationis est consideranda.

It is incredible to me that as we are bombarded on all sides by the demand to set cost-based rates, especially in the field of communications where competition is squeezing out subsidies, the North Carolina Utilities Commission has instead abandoned this principle. I lament this departure from what I believe was a fair system. I deplore the discrimination that results from the new system. I dissent.

Sarah Lindsay Tate, Commissioner

Commissioners A. Hartwell Campbell and Douglas P. Leary join in this dissent.

DOCKET NO. P-55, SUB 803

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Investigation into the Establishment of<br>Extended Area Service (EAS) Between the<br>Exchanges of Locust and Charlotte | ) | ORDER REQUIRING<br>EAS POLL |

HEARD IN: Bethel School, Midland, North Carolina, on Monday, August 29, 1983, and Tuesday, August 30, 1983

BEFORE: Chairman Robert K. Koger, Presiding; Commissioners Edward B. Hipp and Ruth E. Cook

APPEARANCES:

For the Company:

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

For the Public Staff:

Antoinette R. Wike, Staff Attorney, 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

BY THE COMMISSION: This matter was initiated by the petition, letters, and telephone requests of Southern Bell Telephone and Telegraph Company (Southern Bell) Locust exchange subscribers residing in Midland (Cabarrus County) who desire to receive extended area service between the Locust and Charlotte exchanges of Southern Bell.

By Order of May 6, 1983, the Commission schedule a hearing in the Bethel School in the Midland Community of the Locust exchange for August 29 and 30, 1983, for the purpose of allowing subscribers, Southern Bell, and the Public Staff to address:

1. The need for and public interest in the proposed Locust to Charlotte EAS;

2. The appropriate monthly increases in basic local service rates that would apply if EAS were established;

3. Whether there should be a poll of the affected subscribers; and

4. All other relevant issues.

Additionally, Southern Bell was required to mail as bill inserts no less than three (3) weeks prior to the hearing a Notice to Subscribers detailing the

above purpose of the hearing and attached as Appendix A to the May 6, 1983, Order.

Subsequently, at the request of the Public Staff, Southern Bell submitted a Locust--Charlotte EAS cost study, a copy of which was filed with the Commission's Chief Clerk. This cost study showed the additional costs and cost savings associated with possible Locust to Charlotte EAS, as well as the revenue requirements needed to recoup such net loss and the associated rate increase. The matter was called for hearing as scheduled. All parties were present and represented by counsel. The Public Staff assisted the 41 public witnesses, all of whom supported the establishment of the proposed EAS. Mr. Robert Friedlander presented testimony on behalf of Southern Bell, and Mr. Leslie C. Sutton stated the position of the Public Staff of the North Carolina Utilities Commission.

Based on the evidence presented in this proceeding, the Commission concludes that a poll of all subscribers receiving service from the Locust exchange should be made. Additionally, the Commission takes judicial notice of evidence adduced in Docket No. P-55, Sub 776, In the Matter of EAS Between the Locust Exchange and each of the Exchanges of Norwood, Albemarle, Oakboro, New London, and Badin, Stanly County, North Carolina.

Inasmuch as both Docket No. P-55, Sub 803, and Docket No. P-55, Sub 776, involve subscribers of the Locust Exchange, the Commission concludes that Cabarrus County subscribers should be polled to determine their current interests. Moreover, a ballot should be prepared including the following choices:

EXTENDED AREA SERVICE

| | Residence | Business |
|---|---|---|
| Option I [1/] | | |
| Residents of Cabarrus County and Stanly County can vote on this choice for EAS between the entire LOCUST EXCHANGE AND CHARLOTTE only | $0.85 | $1.95 |
| Option II [2/] | | |
| Residents of Cabarrus and Stanly Counties can vote for this choice for EAS between the Locust exchange and the Charlotte, Albemarle, New London, Badin, Oakboro, and Norwood exchanges | $1.80 | $4.35 |
| Option III [3/] | | |
| Only residents of Cabarrus County can vote on this choice for EAS between the Locust exchange and the Charlotte exchange | $2.22 | $5.55 |

1/ Option I embodies the proposal in Docket No. P-55, Sub 803, and requires a favorable vote from Cabarrus and Stanly residents.

2/ This option expands the calling scope to include Albemarle, New London, Badin, Oakboro, and Norwood.

3/ Option III can be voted on only by residents of Cabarrus County and they only would be able to call Charlotte without incurring a toll charge.

To avoid duplication in the voting process, the choices in Docket No. P-55, Sub 803, should be mailed only to Locust exchange subscribers residing in Cabarrus County. Subscribers must vote for or against each of the three choices. By Commission Order issued simultaneously with this docket, Stanly County subscribers will vote on EAS choices available to them.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell is hereby ordered to conduct an EAS poll of all Cabarrus County residents receiving service through the Locust Exchange to determine whether or not they desire any of the aforementioned EAS calling arrangements at the indicated monthly rates.

2. That Southern Bell shall file with the Commission for approval a printed letter and ballot as set forth in Appendices A and B on or before January 30, 1984.

3. That the polling dates shall begin on or before February 6, 1984, and shall end March 6, 1984.

4. That the letter attached as Appendix A and the ballot labelled Appendix B is for polling subscribers residing in Cabarrus County who are provided service through the Locust exchange. These appendices shall be sent by mailing in envelopes marked "urgent" and a postage-free self-addressed return envelope shall also be included.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of January 1984.

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

DOCKET NO. P-55, SUB 803
APPENDIX A

Dear Cabarrus County Subscriber:

The North Carolina Court of Appeals directed the North Carolina Utilities Commission to reconsider the matter of Extended Area Service involving subscribers served by our Locust Exchange. Hearings were held in Albemarle and Raleigh on November 28 and 29, 1983, by the Commission. Due to the time that has lapsed since the filing in 1979 of petitions seeking EAS between the Locust Exchange and the Albemarle, Oakboro, New London, Badin, and Norwood Exchanges,

the Commission ordered Southern Bell to repoll subscribers to determine their current interest.

Many Locust Exchange subscribers residing in Cabarrus County have requested EAS between the Locust Exchange and Charlotte in pending Docket No. P-55, Sub 803. For this reason, the Commission has expanded your choices as follows:

| Option I | Residence | Business |
|---|---|---|
| Residents of Cabarrus County and Stanly County can vote on this choice for EAS between the entire LOCUST EXCHANGE AND CHARLOTTE ONLY | $0.85 | $1.95 |
| **Option II** | | |
| Residents of Cabarrus and Stanly Counties can vote for this choice for EAS between the Locust exchange and the Charlotte, Albemarle, Oakboro, New London, Badin, and Norwood exchanges | $1.80 | $4.35 |
| **Option III** | | |
| Only residents of Cabarrus County can vote on this choice for EAS between the Locust exchange and the Charlotte exchange | $2.22 | $5.55 |

You must sign the attached ballot and return it in the enclosed self-addressed postage-free envelope no later than March 6, 1984. Ballots postmarked after midnight March 6, 1984, will not be valid.

YOU MUST VOTE FOR OR AGAINST EACH OF THE THREE CHOICES OR THE BALLOT WILL BE DISQUALIFIED.

The Commission's consideration of the results of the vote will be based on the total number of marked eligible ballots returned on time. Results of the final action will be announced.

Yours very truly,

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
By:_____

DOCKET NO. P-55, SUB 803
APPENDIX B

DESCRIPTION
BALLOT FOR CABARRUS COUNTY RESIDENTS

THIS BALLOT IS BEING SENT ONLY TO OUR LOCUST EXCHANGE SUBSCRIBERS RESIDING IN CABARRUS COUNTY. HOWEVER, A SIMILAR BALLOT IS BEING SENT TO SUBSCRIBERS RESIDING IN STANLY COUNTY.

YOU MUST VOTE FOR OR AGAINST ON EACH OPTION OR THIS BALLOT WILL BE DISQUALIFIED. YOU MUST RETURN THIS BALLOT IN THE SELF-ADDRESSED POSTAGE-FREE ENVELOPE NO LATER THAN MARCH 6, 1984.

THE PRESENT FLAT MONTHLY RATE FOR LOCUST EXCHANGE IS $10.02 AND $26.26 FOR RESIDENTIAL AND BUSINESS SUBSCRIBERS. AT THE TIME OF THE NEXT SOUTHERN BELL GENERAL RATE CASE SUBSCRIBERS WHO CAN CALL CHARLOTTE WILL THEN PAY THE CHARLOTTE BASE RATE WHICH CURRENTLY IS $12.46 PER MONTH AND $33.03 PER MONTH FOR RESIDENTIAL AND BUSINESS SUBSCRIBERS, RESPECTIVELY, IN LIEU OF THE "INCREASED MONTHLY RATES" REFLECTED ON THIS PAGE.

| OPTION I | Increased Monthly Rate Residence | Business | FOR | AGAINST |
|---|---|---|---|---|
| EAS between Charlotte only | $0.85 | $1.95 | /__/ | /__/ |

I understand that the majority of Locust exchange subscribers residing in Cabarrus County must also vote for this Option or the increase will be more.

---

OPTION II

| | | | | |
|---|---|---|---|---|
| EAS including Charlotte and Albemarle, Oakboro, New London, Badin, and Norwood | $1.80 | $4.40 | /__/ | /__/ |

I understand that this is the rate that will apply only if the majority of the Locust exchange subscribers residing in both Cabarrus County and Stanly County vote to call all of the exchanges in this Option.

---

OPTION III

| | | | | |
|---|---|---|---|---|
| EAS between Charlotte by Cabarrus County only | $2.22 | $5.55 | /__/ | /__/ |

I understand that this would be the amount of increase in my monthly charges if Locust exchange subscribers residing in Stanly County do not wish to call Charlotte.

SIGNED BY: _____
Cabarrus County Resident

DOCKET NO. P-55, SUB 826

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation into the Establishment of Rockingham County Extended Area Service (EAS) ) ORDER REQUIRING EAS POLL

HEARD IN: Old Courtroom, Second Floor, Rockingham County Courthouse, Wentworth, North Carolina

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Edward B. Hipp and Charles C. Branford

APPEARANCES:

For the Respondents:

J. Billie Ray, Jr., General Attorney, 1012 Southern National Center, Charlotte, North Carolina 28230

Lawrence E. Gill, Attorney, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

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For: Central Telephone Company

For the Using and Consuming Public:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602

Angeline M. Maletto, Attorney General's Office, Post Office Box 692, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter was originated by petitions, letters, and resolutions submitted by the Rockingham County Development Association and filed with the Commission on July 19, 1983, in support of Rockingham County EAS. The service proposed involved the following new EAS arrangements involving Southern Bell Telephone and Telegraph Company's Reidsville and Ruffin exchanges and Central Telephone Company's Eden, Madison, and Stoneville exchanges:

EAS between Madison and Eden, Ruffin and Reidsville
EAS between Stoneville and Eden, Ruffin and Reidsville

By letter dated and filed with the Chief Clerk on July 25, 1983, Chairman Koger requested that within 150 days Southern Bell Telephone and Telegraph Company (Southern Bell) submit cost studies with backup data for its exchanges and that Central Telephone Company (Central or Central Telephone) submit rate

increase calculations for its exchanges based on its EAS matrix formula. On November 10, 1983, Central Telephone Company filed community of interest studies and rate increase calculations for its exchanges. Southern Bell filed the EAS cost study for its exchanges on December 20, 1983. On January 20, 1984, Southern Bell filed its toll calling study results related to the proposed EAS.

On January 30, 1984, the Commission issued an Order Scheduling Hearing and Requiring Public Notice. On March 8, 1984, Southern Bell filed a Motion to Amend Commission Order and a revised cost study for the Company's exchanges involved in the proposed EAS. In response to Southern Bell's filings, the Public Staff on March 19, 1984, filed a Reply and Motion to Amend Commission's Order. On March 27, 1984, Southern Bell filed its Reply of Southern Bell to Motion of Public Staff to Amend Commission's Order. On March 28, 1984, the Commission issued an Order Amending Commission Order and Public Notice.

Both the Public Staff and the Attorney General intervened in the case by either filing a formal petition and/or by appearing at the hearings. The interventions of the Public Staff and of the Attorney General are deemed recognized.

The public hearing was held at the scheduled time and place. Forty-seven members of the public testified, all of whom supported the proposed Extended Area Service. In addition, Jerry G. Harris testified on behalf of Central, Robert W. Fleming testified on behalf of Southern Bell, and Hugh L. Gerringer testified for the Public Staff.

Based on the foregoing, the evidence presented at the hearing and the entire record in this matter the Commission makes the following

FINDINGS OF FACT

1. Southern Bell and Central Telephone are duly franchised public utilities lawfully incorporated and licensed to do business in North Carolina, are providing telephone service in Rockingham County, North Carolina, and are delegated by their franchises and the North Carolina Public Utilities Act to provide adequate, efficient, and reasonable service to all needing such service in Rockingham County, North Carolina, at just and reasonable rates.

2. A public hearing was held in Wentworth on April 26, 1984, to receive evidence on (1) the subscriber need for and interest in the proposed EAS; (2) the appropriate increases in basic local rates that would be applicable if EAS is established; (3) whether there is sufficient interest to poll the affected subscribers; and (4) all other relevant issues.

3. That significant interest in and support for the proposed Rockingham County EAS was demonstrated at the public hearing.

4. That the appropriate increases in basic local rates to be considered in connection with the proposed EAS arrangement for Central's exchanges shall be based on Central's EAS matrix formula.

5. That the appropriate increases in basic local rates to be considered in connection with the proposed EAS arrangement for Southern Bell's exchanges

shall cover only the 10-year present worth (P.W.) of annual equipment costs which results in those rate increases being de minimis.

6. That only the subscribers in the Madison, Stoneville, and Eden exchanges should be polled to determine whether the proposed Rockingham County EAS should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is found in prior Commission Orders, the record as a whole, and in Chapter 62 of the General Statutes of North Carolina. Finding of Fact No. 1 is essentially procedural and jurisdictional and is uncontested and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

This finding of fact is based on the Commission Orders setting hearing and requiring public notice, the public notice, and the evidence adduced at the April 26, 1984, hearing.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence supporting this finding of fact is found in the testimony of the 47 members of the public who appeared at the April 26, 1984, hearing, all of whom testified in support of the proposed EAS, Central witness Harris, and Southern Bell witness Fleming.

The testimony of the public witnesses evidenced support from a variety of interests: private individuals, businesses, institutions, elected officials, and government agencies within the county. It is noted in particular that those testifying in support of the proposed EAS included the following:

> the Stoneville fire chief, the Stoneville Town Manager, a representative of Alert Cable Television of North Carolina, Inc., President of the Rockingham County Farm Bureau, the Director of Libraries in Rockingham County, a representative of the Madison-Mayodan City Schools, President of the Bethany Community Organization, Chairman of the Rural Planning Committee of Rockingham County, a District Supervisor in the Soil and Water Conservation Service, Executive Director of the Rockingham County Council on Mental Retardation, Inc., a representative of the School Board, the Rockingham County Fire Marshall, a representative of the Boy Scouts of America, the President of Rockingham Community College, the Director of the Economic Development Commission for Rockingham County, a representative of the Reidsville Chamber of Commerce, the Executive Director of the Reidsville Merchants Association, the Administrator at Annie Penn Memorial Hospital, a representative of the Rockingham County Public Health Department, President of the Rockingham County Home Builders Association, a representative of the Salvation Army, the Mayor of Mayodan, the President of the Rockingham County Development Association, a representative of the Madison-Mayodan Chamber of Commerce, a representative of the Eden City Schools, Director of the Council on Aging, Director of the Area Mental Health Program, the Chairman of the County Board of

Commissioners of Rockingham County, the incoming County Manager, a County Commissioner, a representative of the Employment Security Commission and the Tax Supervisor-Collector for Rockingham County.

A number of reasons were cited in support of the proposed EAS including that currently it is a long-distance call for some to phone their children at school, to contact either of the two hospitals both of which are located in the eastern part of the county or their place of work from home and that provision of the proposed EAS will assist service organizations and government agencies in better serving the people and will assist county consolidation and economic development.

David McCombs, Administrator at Annie Penn Memorial Hospital, testified to their concerns regarding the absence of EAS and their reasons for supporting the proposed EAS. Witness McCombs testified, in part:

"The first of those is the quality of care. The diagnosis and treatment and rehabilitation of patients can be greatly aided by a very timely reporting of any results of laboratory or other diagnostic testing, and we think that this reporting to the other parts of the county could be greatly enhanced by the provision of the extended area service as opposed to mailing and other types of communication currently."

Witness McCombs also noted that the current lack of EAS has hampered the hospital's provision of additional services such as their lifeline emergency response program.

Pat Boardman, Executive Director of the Reidsville Merchants Association, speaking on their behalf stated:

"The Greater Reidsville Merchants Association supports the proposal to have countywide toll-free telephone service. Many customers live in the county either east or west in the rural areas and now make long distance telephone calls for many local business transactions. Countywide toll-free telephone service is not only good sense but a definite asset in the growth and development of our County of Rockingham."

Witness Harris presented a toll calling study made in July 1983 and a comparison of that study to a study performed in March 1980. Witness Harris stated, "Even though access lines have increased 7.49% over 1980 the average calls per line has increased only .16%." On cross-examination, witness Harris stated that the 1980 30-day calling study was done in March and that the 1983 study was done in July. Witness Harris admitted that the studies could be affected by seasonal differences and that July is a large vacation month generally. Witness Harris also stated that his "Rockingham County-Community of Interest Calling Study" did not include any traffic over the FX lines or those who avoid a long-distance call by driving to an area where the call will be local.

Witness Fleming stated that based on Southern Bell's calling study, provision of EAS arrangements to Madison and Stoneville are not in the best interest of the Reidsville and Ruffin subscribers. Witness Fleming stated that

"...with the relatively low cost of DDD toll calls today, we believe toll calling meets the needs of the vast majority of Reidsville and Ruffin subscribers who have no day to day or week to week demonstrated calling requirement to Stoneville or Madison."

Based on the testimonies and exhibits presented and the entire record the Commission concludes that significant interest and support have been demonstrated for countywide EAS in Rockingham County.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding is found in the testimony of Central witness Harris and Public Staff witness Gerringer.

Witness Harris testified that the EAS matrix as approved in Docket No. P-10, Sub 415, was used to determine the amount of increase to be added to the existing rates if EAS is approved. Witness Harris testified that the following are the EAS increases: $1.66 for Stoneville residence service, $3.81 for Stoneville business service, $1.81 for Madison residence service, $4.32 for Madison business service, $.47 for Eden residence service, and $1.02 for Eden business service.

Witness Gerringer testified that the Public Staff was not opposing Central's proposed increases because those increases were derived from the application of Central's matrix, which is a Commission approved tariff.

Recognizing that the increases which are proposed by Central for its exchanges are based on the EAS matrix, which was approved in Docket No. P-10, Sub 415, the Commission concludes that those increases are appropriate to be used for polling.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the tesitmony of Southern Bell witness Fleming and Public Staff witness Gerringer.

Witness Fleming testified that the appropriate rates to use if EAS were implemented would be those that would recover the full economic costs of providing the service. Witness Fleming stated, "The full economic costs incurred in providing EAS are for additional equipment, additional circuit facilities, toll and foreign exchange revenue losses, and should recognize operator, comptrollers and administrative savings." The increases in basic local rates recommended by witness Fleming for Southern Bell's exchanges if EAS is approved were $.61 and $.23 for residential subscribers in Reidsville and Ruffin, respectively, and $1.53 and $.58 for business subscribers in Reidsville and Ruffin, respectively. Witness Fleming stated during cross-examination that Southern Bell's two exchanges currently have the same calling scope and the same rates, but that under Southern Bell's proposal if EAS were established for both exchanges they would still have the same calling scope but different rates.

Witness Gerringer testified that the Public Staff's position is that the increases in basic local rates should reflect only the 10-year present worth (P.W.) of annual equipment costs and that the increases for the two exchanges

should be averaged so that each exchange would receive the same rate increase. Witness Gerringer stated that the Public Staff's position concerning the exclusion of net toll revenue loss in determining the rate increases was consistent with the position taken by the Staff in the past on similar EAS matters. Witness Gerringer noted that the inclusion of net toll revenue loss has the effect of charging the subscriber for both the new EAS service and the old toll service which is being discontinued. Witness Gerringer cited a number of EAS matters involving Southern Bell over the past several years in which the Commission has consistently accepted the exclusion of net toll revenue loss in determining the rate increases.

In regard to averaging the increases for the two exchanges, witness Gerringer noted that currently the Reidsville and Ruffin exchanges have the same rates and the same calling scope. Witness Gerringer stated that if the requested EAS were established, the two exchanges would have the same calling scope and that by applying the same rate increases to each exchange, they would each have the same local rate. Witness Gerringer stated that the Public Staff believes applying the same rate increases to both exchanges is fairest and will produce better customer understanding.

Witness Gerringer stated that reflecting only the 10-year P.W. of the annual equipment costs based on Southern Bell's cost study results and averaging the increases for the Reidsville and Ruffin exchanges, the increase in monthly local rates for residence service would be $0.03 and for business service $0.08.

Witness Gerringer noted that the Commission in the Notice of Public Hearing deemed the increases for the Reidsville and Ruffin exchanges excluding toll loss de minimis, with which the Public Staff agrees. Witness Gerringer recommended that since the costs "...associated with establishing the proposed EAS at Reidsville and Ruffin are de minimis, there is no need to increase those rates..."

Consistent with the position the Commission has taken during the past several years in EAS matters, the Commission concludes that net toll revenue loss should be excluded in determining the appropriate increases in basic local rates for the Reidsville and Ruffin exchanges, thereby, resulting in those increases that are de minimis. The Commission agrees with witness Gerringer that the inclusion of that loss in determining the increases would charge the customer for both the new EAS service being implemented and the old toll service being discontinued, which would be both unfair and disadvantageous to the Reidsville and Ruffin subscribers.

While the determination that the rates for the Reidsville and Ruffin exchanges should not be increased makes moot the averaging issue in this case, the Commission feels compelled to note that had the Commission had to decide that issue, the Commission would have required the increases for the two exchanges to be averaged. It would be patently unfair for two exchanges that currently have the same basic local rates and same calling scope prior to the implementation of the proposed EAS, to have the same calling scope after implementation of EAS but different rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is contained in the testimony of the public witnesses, Southern Bell witness Fleming, Central witness Harris, and Public Staff witness Gerringer.

It has been found previously that one of the purposes for the April 26, 1984, public hearing was to determine whether there was significant interest to poll the affected subscribers and that significant interest and support for the proposed EAS were shown at the public hearing. The Commission then concludes that the next step is to determine what subscribers it is appropriate to poll and to require that the poll be made.

In regard to who should be polled, witness Gerringer testified to the Public Staff's recommendation that the subscribers in the Eden, Stoneville, and Madison exchanges should be polled to determine whether the proposed EAS should be approved. Witness Gerringer stated that since the additional costs in regard to establishing the EAS at Reidsville and Ruffin are de minimis, there is no need to increase those rates or poll those subscribers. Witness Gerringer testified that where there are significant local rate increases associated with the proposed EAS, polling is the fairest and most reasonable way to determine the interests of all affected subscribers to the fullest extent possible. Witness Gerringer noted that a poll affords each affected subscriber the opportunity to state his position on the proposed EAS in view of the local rate increase he would have to incur. Witness Gerringer recommended that, as in this case only the Eden, Madison, and Stoneville subscribers would experience significant increases, only the subscribers in those exchanges should be polled.

Witness Fleming testified that Southern Bell saw no need for further proceedings in this matter but that if the Commission decided further proceedings were advisable a poll should be taken of all affected subscribers. As previously noted, witness Fleming recommended the toll loss should be included in determining the appropriate local rate increases. Thus, under Southern Bell's proposal the level of increases experienced by the Reidsville and Ruffin subscribers would not be de minimis.

Witness Harris stated in part:

> "Certainly, if a large enough body of users desires the service, then perhaps it would be fair to impose additional rates on all of the users. However, if only a small segment of the public is seeking to gain an advantage and to lower their rates at the expense of a large majority of users, the Company and Commission have the obligation to consider not only those in favor of this proposal, but all of those people whose rates will go up."

Having previously determined that the toll loss should not be included in determining the amount of the local rate increases and, therefore, those increases applicable to the Reidsville and Ruffin exchanges would be de minimis, the Commission must agree with witness Gerringer that there is no need to increase those rates or poll those subscribers. The Commission further agrees with witness Gerringer that polling the subscribers who will experience significant increases due to the proposed EAS is the fairest and most

reasonable way to determine the interests of all affected subscribers to the fullest extent possible. Therefore, as those subscribers in the Stoneville, Madison, and Eden exchanges will experience significant increases under the proposed EAS, the subscribers in those exchanges should be polled to determine whether the proposed EAS should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That an EAS poll be conducted of the Eden, Stoneville, and Madison subscribers to determine their desire for EAS between Madison and Eden, Ruffin and Reidsville, and for EAS between Stoneville and Eden, Ruffin and Reidsville.

2. That the subscribers in Southern Bell's Reidsville and Ruffin exchanges will experience no increase associated with the EAS if ultimately approved and those subscribers are not to be polled.

3. That the basic monthly rate increases determined by the matrix formula to be used for polling Central's exchanges shall be $1.66 for Stoneville residence service, $3.81 for Stoneville business service, $1.91 for Madison residence service, $4.32 for Madison business service, $.47 for Eden residence service, and $1.02 for Eden business service.

4. That within the ten (10) days from the issuance of this Order, Central shall submit for approval by this Commission polling notices and postcard ballots which emphasize the importance of voting a yes or no on the proposed EAS, determine polling dates, and notify the Commission of the polling dates.

5. Within two weeks from the last day on which subscribers are to return ballots, Central shall file with the Commission the results of the poll.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of June 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. P-118, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Application of ALLTEL Carolina, Inc., for<br>Authority to Adjust Its Rates and Charges<br>Applicable to Intrastate Telephone Service<br>in North Carolina | ) | ORDER GRANTING<br>PARTIAL INCREASE<br>IN RATES AND<br>CHARGES, REQUIRING<br>AUDIT, AND REQUIRING<br>SERVICE IMPROVEMENTS |

HEARD IN: Courtroom, Polk County Courthouse, Columbus, North Carolina, at 10:00 a.m., on October 16, 1984; W. Alexis Hood Meeting Room, Town Hall, Matthews, North Carolina, at 7:00 p.m., on October 16, 1984; Meeting Room, Rural Hall Public Library, Rural Hall, North Carolina, at 1:00 p.m., on October 17, 1984; and the North Carolina Utilities Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on November 6 and 7, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Ruth E. Cook and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., P.O. Box 2479, Raleigh, North Carolina 27602
For: ALLTEL Carolina, Inc.

For the Intervenor:

Paul Lassiter 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: On May 18, 1984, ALLTEL Carolina, Inc. (ALLTEL, Company, or Applicant), filed an application with the Commission for authority to adjust its rates and charges for intrastate telephone service in North Carolina to become effective on services rendered on and after June 18, 1984. The Applicant filed testimony and exhibits along with and in support of its application.

By Order issued June 20, 1984, 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 public hearings. The Order also established the test period for this proceeding as the 12 months ended December 31, 1983.

The public hearing in Columbus, North Carolina, was attended by the public, with the Company and the Public Staff being represented by their attorneys. Five members of the public presented testimony on service and/or

the rate increase. They were: Ruth Morgan, J.W.A. Woody, Allen Safford, Virginia Metcalf, and Elizabeth Covington.

At the public hearing in Matthews, North Carolina, the public witnesses were: James Yandle, Jr., Helen Blair, Thomas Conrade, Francis Gilman, Bonita Stone, and Leon Plummer.

At the public hearing in Rural Hall, North Carolina, two members of the public presented testimony on service and/or the rate increase. They were: Ted Heuttel and Norma Cox.

L. B. Grimshaw appeared as a public witness at the public hearing in Raleigh.

At the hearings held in Raleigh, North Carolina, the Company presented the testimony and exhibits of the following witnesses: Archie A. Thomas, President of ALLTEL Carolina, Inc., who testified as to the Company's operations, service, and capital requirements; Franklin D. Rowan, Regional Controller of ALLTEL Service Corporation, who testified as to the Company's accounting and financial information and revenue requirements; Dr. Robert Weiss, Senior Consultant, Utility Financial Services, Inc., who testified as to the appropriate capitalization and required rate of return of the Company; James L. Shettel, Rates and Tariffs Coordinator of ALLTEL Service Corporation, who testified as to the Company's rate design and tariffs; and Lawrence S. Pomerantz, Vice President - State Regulatory Matters, ALLTEL Service Corporation, who testified as to intercompany and affiliated relationships.

The Public Staff presented the testimony and exhibits of the following witnesses: John T. Garrison, Jr., Engineer with the Communications Division of the Public Staff, who testified as to the Company's intrastate toll revenues; Elizabeth Porter, Staff Accountant of the Public Staff, who testified concerning levels of operating revenues, expenses, and rate base of the Company's intrastate operations; James S. McLawhorn, Engineer - Communications Division of the Public Staff, who testified concerning the adequacy and quality of the Company's service; William J. Willis, Jr., Engineer - Communications Division of the Public Staff, who testified as to end-of-period local service and miscellaneous revenues and the Company's tariff proposals; David T. Bowerman, Financial Analyst, Economic Research Division of the Public Staff, who testified as to the appropriate capital structure, cost of equity, and rate of return for the Company; and Leslie C. Sutton, Engineer, Public Staff, who testified about plant investment and expenses.

Harold Shaffer, Revenue Requirements Manager, ALLTEL Service Corporation, testified on rebuttal for the Company.

Based on the foregoing, the application, the testimony and exhibits received into evidence at the hearings, and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. ALLTEL Carolina, Inc., is a duly franchised public utility providing telephone service to the public in its North Carolina service area subject to the jurisdiction of the Commission as to its rates and service.

2. The test period which is reasonable for use in this proceeding is the 12 months ended December 31, 1983.

3. The increase in rates and charges which ALLTEL initially sought in this proceeding would produce $3,893,897 in additional annual gross revenues for the Company and was ultimately reduced to reflect $2,477,932 additional gross revenues.

4. The overall quality of the service provided by ALLTEL Carolina, Inc., is inadequate; the level of service has declined significantly since the Company's latest rate case, Docket No. P-118, Sub 27.

5. ALLTEL's reasonable original cost rate base is $57,418,945. This consists of telephone plant in service of $92,485,281, materials and supplies of $390,532, working capital of $496,658, Rural Telephone Bank Stock of $858,568 reduced by accumulated depreciation of $27,825,092, deferred income taxes of $8,797,744, customer deposits of $131,524, and pre-1971 investment tax credits of $57,734.

6. ALLTEL's gross revenues for the test year under present rates, after accounting and pro forma adjustments, are $26,046,833.

7. The reasonable level of test year intrastate operating revenue deductions after accounting, pro forma, end-of-period and after-period adjustments is $20,555,963. This amount includes $5,641,903 for investment currently consumed through actual depreciation on an annual basis.

8. The net operating income related to construction completed after the test year to be included in determining net income available for return is $233,931.

9. The capital structure for ALLTEL which is appropriate for use in this proceeding is:

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|---|---|
| Long term debt | 58.00% |
| Preferred stock | 5.50% |
| Common equity | 36.50% |
| Total | 100.00% |

10. The fair rate of return that ALLTEL should have the opportunity to earn on its original cost rate base is 10.79%. The proper embedded cost of long-term debt is 8.76% and of preferred stock is 7.62%. The failure of ALLTEL to provide adequate telephone service compels this Commission to reduce the return on common equity which otherwise would have been deemed fair and reasonable. Thus, instead of allowing a 15.0% return on common equity, the Commission imposes a penalty of .50% and reduces the allowed return on common equity to 14.50%. Even so, such rate of return will allow the Company by sound management to maintain its facilities within the reasonable requirements of its customers and to compete in the market for capital on terms which are reasonable to the customers and to investors.

11. Based on the foregoing, ALLTEL should increase its annual level of gross revenues under present rates by $962,125, to earn the 10.79% 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.

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 $962,125, shall become effective upon the issuance of a further Order by this Commission.

13. ALLTEL Carolina should hire an outside consultant to advise and assist in developing improvements to its accounting system and file copies of the consultant's findings with this Commission. Further, the Company and the Public Staff should review and discuss proper cost allocation procedures for nonutility operations.

14. ALLTEL Carolina should separate construction work in progress into short- and long-term subaccounts as defined in the FCC chart of accounts.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence supporting these findings of fact is contained in the Company's revised application, in prior Commission Orders of which the Commission takes judicial notice, and in the testimony of Company witnesses Thomas and Rowan. These findings are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the quality of service was presented by Company witness Thomas, Public Staff witness McLawhorn, and approximately 12 public witnesses.

Five customers testified at the public hearing held in Columbus. All described one or more service problems which he or she had experienced. One customer complained of the phone going dead when it rains. One customer complained of crosstalk on the line. Three customers complained of both placing and receiving wrong numbers when the correct number was dialed. Two customers complained of frequently reaching recordings on known working numbers. Two customers complained of being cut-off frequently during conversations. One customer complained of static on the lines. Prior to the Raleigh hearing, the Company inspected and/or tested the equipment and service of all these customers who reported service problems.

Company evidence regarding its immediate follow-up investigations of the complaints presented at the Columbus hearing indicated that in all five cases, no trouble was found in any of the equipment serving the five customers' residences.

Six witnesses appeared at the Matthews hearing to offer testimony regarding quality of service. Of these six customers, five reported

experiencing one or more service problems. Three customers complained of their phones ringing at night when no one had called them. One customer complained of not being able to hear conversations if more than one phone was off-hook. Two customers complained of their phones frequently being dead. One customer complained of having to dial numbers repeatedly to complete calls. One customer complained of other people being on his line when he tried to use his phone. One customer complained of his call forwarding feature not working properly and having trouble receiving calls.

Evidence submitted by the Company indicated that the facilities serving the subscribers who complained of service problems at the Matthews hearing were tested by the Company. One customer was found to have a defective dial on one phone, and that phone was replaced. Another customer's cable pair was changed, a voice frequency repeater and loop extender added to his line, and two of his phones were replaced. No other troubles were found.

One witness offered testimony regarding service in Rural Hall. He reported having much static and noise on his line. He complained of the necessity of dialing many times to complete calls, of hearing a ringing sound during conversations, and of having trouble receiving calls from business customers.

Company evidence submitted regarding this customer's testimony indicated that no troubles were found in equipment serving his residence. The phone on his business line was found to have a bad dial and was replaced.

Upon follow-up of the Company's investigation, the Public Staff was able to contact seven of the witnesses who testified complaining of poor service. Of those seven contacted, four were still having problems and were dissatisfied with the Company's response to their complaints.

The Company filed a report on these four customers who were dissatisfied with the Company's initial response. In all four cases, the Company was not able to locate a cause for their problems.

At the Raleigh hearing, one public witness from Pinebluff offered testimony regarding service. He stated that he had problems with cut-offs during conversations and had difficulty placing and receiving calls during and after rainfalls.

Company witness Thomas testified that the Company was continuously striving to provide good telephone service to all areas it served, that the Company's reported trouble index during the test year had been consistently within objectives set by this Commission, and that the operator answer time, directory assistance, and repair service had also remained within the objectives of this Commission. Witness Thomas further testified that community feedback indicated that customers were receiving good service and that the Company was responsive to customer requests for new service and for changes in their existing service. Further, witness Thomas described improvements and efforts by the Company to improve service since the last general rate case. Witness Thomas testified that the Company has installed digital switches at Mooresville, Old Town, King, and Hemby Bridge. It has installed a 400-line, 800-terminal addition to the Rural Hall switch. A fiber optic system is being

installed in the Tryon area which will replace the existing T-carrier and improve transmission quality.

Upon cross-examination, witness Thomas was asked to comment upon the Company's maintenance procedures. He stated that the Company has a periodic maintenance testing program for both step-by-step and crossbar type switches; however, he stated that there is no preventative maintenance in a digital switch. He further stated that the Company makes local, EAS, and long-distance test calls on a monthly basis; and on some unspecified periodic basis, carrier systems are realigned to ensure proper transmission and noise levels. Witness Thomas stated that public pay station tests are made as the need arises and that Company employees are instructed to repair pay stations if they notice a problem with them. He said that the Company made operator answer time tests on a daily basis as long as the Company had a toll center. Directory assistance tests, he stated, are made on a daily basis. Witness Thomas testified that, for repair service answer time and business office answer time, supervisors are instructed to make calls on an ongoing basis; however, there is no set rule, so that the number of calls made and the time frames in which they are made may vary greatly. He stated that the Company meets the Commission's objectives on a companywide basis. He further stated that although the list of weakspots presented in Public Staff witness McLawhorn's testimony had increased over the list presented by Public Staff witness Hugh Hu in the last rate case, the Company's service had not declined. He stated that the Company was meeting the Trouble Report Index, supplied to the Commission and Public Staff, on a companywide basis, even though some exchanges missed the objectives several months. Witness Thomas stated that the Company did not meet the Commission's objective for repeated reports on a companywide basis in 1983 or 1984, and he agreed that the Company did not meet the objective for Out-of-Service Troubles Cleared Within 24 hours in 1983 or 1984. He also stated that the same exchanges seem to be having problems month after month.

During redirect, witness Thomas stated that he did not feel that ALLTEL was being measured by the same standard that the Public Staff uses to evaluate other companies in North Carolina. He specifically cited the last Southern Bell case, Docket No. P-55, Sub 834, and stated that he felt that if the Public Staff investigated all exchanges of ALLTEL, it should do the same for Southern Bell. He pointed out that Southern Bell missed certain Commission objectives, yet was not penalized for quality of service. He stated that 28% of ALLTEL's total troubles are related to telephone sets, and since Southern Bell no longer has sets, they would not have any of these troubles.

During questions from the Panel, witness Thomas stated that the Company does not annualize the number of out-of-service reports received. He stated that they are only kept on a monthly basis. He stated that he would accept as fact that the Commission had more public witnesses complain about service with ALLTEL, which has 70,000 access lines, than for Southern Bell, which has 1.2 million access lines. Witness Thomas stated that he did not know of any telephone companies in North Carolina that have been penalized for poor service other than ALLTEL and Western Carolina.

Public Staff witness McLawhorn testified that his review consisted of field inspections, tests of switching and trunking facilities, measurements of the answer time of operators, directory assistance, repair service, and business office, and an analysis of company-provided statistics relating to the

Company's service. Based on his evaluation of all the test results and service data, witness McLawhorn concluded that the overall quality of service provided by the Company was inadequate. He stated that, since the Company was penalized 0.5% on return on equity due to poor service in its last general rate case and the quality of service had deteriorated significantly since that time, the penalty for inadequate service in this case should not be less than 0.75% on rate of return on equity. With regard to the deterioration of service, witness McLawhorn pointed out that he found a total of 48 weakspots in the Company's service, an increase of 36 over the last case. He stated further that of those 48 weakspots, nine of them were also found to be deficient in the last case.

Upon cross-examination, witness McLawhorn was asked to identify those public witnesses who testified to having poor service at the public hearings and those witnesses whom the Public Staff contacted and was told the service remained unsatisfactory following the Company's investigation. He identified four customers out of seven that the Public Staff contacted prior to the hearing in Raleigh. Witness McLawhorn testified to the fact that the Public Staff tested 30 offices of Southern Bell in its last general rate case while testing all 26 offices of ALLTEL in this case. He stated that on a companywide basis ALLTEL met all of the objectives of the tests which were performed by the Public Staff. He also stated that, when failures occur involving equipment or facilities owned by other companies, it is ALLTEL's responsibility to work with the other companies in alleviating the problem. Witness McLawhorn testified that, if the Company had made DDD test calls from Denton to Lexington as the Public Staff did, they would have discovered that the transmission levels were improperly set regardless of what they had been told by Lexington Telephone Company and should have taken steps to correct the problem. Witness McLawhorn stated that he believed that about 25% of the Company's total trouble reports were related to telephone sets. He further testified that, as Southern Bell no longer has sets, they are now required to meet a stricter standard for total trouble reports than ALLTEL or other companies and that this standard was used in Southern Bell's last case.

During redirect, witness McLawhorn stated that under normal circumstances the Public Staff would check all offices of a company the size of ALLTEL Carolina, Inc.; however, due to time constraints, it would be impossible to check all of Southern Bell's offices. He compared the results of the Public Staff tests of the 30 exchanges of Southern Bell and the 26 exchanges of ALLTEL. He stated that on intraoffice call completion, Southern Bell had one exchange out of 30 to fail the objective, while ALLTEL had five out of 26; on EAS, Southern Bell had one office out of 30 to fail, and ALLTEL had five out of 24 to fail; and on DDD calls, Southern Bell had zero out of 30, and ALLTEL had three out of 26 to fail the objective. Witness McLawhorn once again stated that ALLTEL is not relieved of the responsibility of a problem simply because it was found in the facilities of another company, and he stated that it is ALLTEL's responsibility to see that its customers get good service. He acknowledged that he had taken the same approach in evaluating the Company that Public Staff witness Hu used in the last case.

Based upon the evidence in this proceeding, the Commission finds that the overall quality of service provided by the Company is inadequate. The Commission is greatly concerned about the Company's failure to meet numerous service objectives and the Company's failure to correct many of the problems

that existed in the last case. The Company must continue and increase its efforts to improve service in the problem areas.

Moreover, the Company must conduct follow-up tests and investigations of each service complaint which was addressed by each public witness and within 60 days of the issuance of this Order file a report of these follow-up investigations including what specific tests and actions have been or are being conducted to correct the specific problems. Specific complaints that are not completed or resolved shall be filed as a follow-up each 30 days thereafter until completed.

The Commission holds responsible the parent, ALLTEL Corporation, for the management of its North Carolina subsidiary. The rate of return penalty in this proceeding is slightly less (i.e. .50% versus .75%) than that proposed by the Public Staff due to the fact that ALLTEL Corporation has just recently been established as the corporate entity owning the telephone system currently operating as ALLTEL Carolina, Inc. It is the opinion of this Commission that no similar consideration can justly apply in the future.

As a result of the Commission's concern over the number and nature of complaints from ALLTEL's customers and the maintenance of the rate of return penalty assessed on ALLTEL in this proceeding, the Commission has determined that an audit of ALLTEL's operations pertaining to customer relations and handling of customer service complaints is warranted. The result of this audit will enable the Company to better determine areas of weakness and develop a plan of corrective action in achieving improved customer relations and quality of service and will allow the Commission to objectively evaluate the Company's progress in achieving these goals.

The Commission concludes that this audit should address two primary areas of concern.

The first area deals with the customer's attitute towards the Company, its management, policies, and procedures. This area should be developed using standard sampling and analysis procedures.

The second area addresses the Company's procedures in resolving customer service complaints. Areas of specific emphasis will include, but not be limited to, the following:

1. Timeliness of Company's response,
2. Attitude of Company's employees,
3. The level of management involvement in Company's complaint procedure,
4. Follow-up procedure, and
5. Overall effectiveness of complaint procedure.

The Commission concludes that, in order to secure objectivity of the audit, the audit will be performed by corporate internal auditors or a nonaffiliated organization.

Within 30 days from the issuance of this Order ALLTEL should submit for Commission approval a proposed audit plan which includes the following items:

1. Qualification of entity selected to perform audit,
2. Scope of work to be performed,
3. Detail analysis procedure of data to be used,
4. Time frame necessary to perform audit and analysis, and
5. Implementation of final recommendations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimony of Company witnesses Rowan, Thomas, and Pomerantz and Public Staff witnesses Porter and Sutton. The following chart compares the amounts which the Company and the Public Staff contend should be included in the original cost net investment which is appropriate for use in this proceeding:

| | Company | Public Staff | Difference |
|---|---|---|---|
| Telephone plant in service | $92,897,886 | $92,284,654 | $ (613,232) |
| Construction work in progress | 1,588,631 | -0- | (1,588,631) |
| Depreciation reserve | (27,727,906) | (27,816,846) | (88,940) |
| Average materials & supplies | 390,532 | 390,532 | -0- |
| Allowance for working capital | 501,624 | 496,658 | (4,966) |
| Rural telephone bank stock | 858,568 | 858,568 | -0- |
| Customer deposits | (131,524) | (131,524) | -0- |
| Pre-1971 investment tax credit | (57,734) | (57,734 | -0- |
| Deferred taxes | (8,797,744) | (8,797,744) | -0- |
| Original cost rate base | $59,522,333 | $57,226,564 | $(2,295,769) |

The Company and the Public Staff agreed on the appropriate levels of average materials and supplies, rural telephone bank stock, customer deposits, pre-1971 investment tax credits, and deferred taxes. There being no evidence to the contrary, the Commission finds these amounts to be appropriate.

There are two items of controversy that account for the difference of $613,232 in telephone plant in service. The first of these is the Public Staff adjustment of $200,627 for excess plant. Witness Sutton testified that four of the Company's digital central offices had been built with more than one year's capacity for growth in line cards. Since the Commission in the Company's last general rate case had determined that an appropriate engineering interval should be one year, witness Sutton adjusted plant in service to reflect elimination of line card capacity in excess of one year's estimated growth.

Witness Thomas on behalf of the Company responded that the equipment in question had been ordered and installed before the Commission established any standard on engineering interval for this plant, that there was actually at the time of the hearing less than one year's interval in most of the plant, that the cost of ordering additional line cards later was far greater than the cost of installing those cards initially, and finally that witness Sutton had made no allowance for line card capacity for customers who wanted custom calling features.

The Commission concludes that no adjustment for excess plant should be made on the facts of this case. The Commission believes that when it adopts

new standards they should not be applied retroactively to plant already ordered and installed prior to adoption of the standard. Here it also appears that the capacity in excess of one year was virtually used up before the hearing so that there is now about one year's capacity left in the line cards in question. Further, it appears that the ultimate cost to the ratepayers would have been greater if the Company had attempted to refuse to take the line cards it had ordered and then attempted to purchase those cards at the time they were required to meet the customers' needs. Under these facts, the Commission does not believe it is appropriate or fair to adjust the Company's rate base for excess plant in this proceeding.

The next item resulting in a difference in plant in service presented by the parties concerns the exclusion of excess profits. Public Staff witness Porter testified that it was necessary to closely examine the transactions between ALLTEL and its supply affiliate Buckeye Supply (Buckeye), because of the opportunity for less than arm's-length bargaining transactions. Arm's-length bargaining is a condition existing in a competitive market place where both the buyer and seller attempt to negotiate terms most favorable to their businesses. The affiliated relationship existing between ALLTEL and Buckeye Supply provides the opportunity and incentive for the companies to set transfer prices which will maximize the profits of the combined affiliated operations.

ALLTEL purchased approximately 49% of its total purchases of equipment and supplies from its supply affiliate during the six-year period of 1978 through 1983. As a result, the Commission finds it obligatory to closely examine the transfer prices paid. This is necessary because when a substantial portion of a utility's property is acquired by purchases from affiliated companies, it is the affiliated supplier's prices which, by and large, translate into ALLTEL's rate base valuation. Therefore, without such determination, the situation exists where a utility's rate base may be inflated due to excessive and unreasonable transfer prices.

The prices paid by ALLTEL for purchases from its affiliated company are not greater than those which it would have to pay if it made purchases in the open market and has not been disputed. However, the validity of price comparisons as proof of the reasonableness of transfer prices has been debated by the parties.

Witness Porter testified that she performed a comparable earnings test by which she compared the rate of return on equity earned by Buckeye Supply to the return on equity earned by five electrical wholesale distributors not affiliated with a major customer. The results of this comparable earnings test showed that similar companies operating in an open market earned returns substantially less than the 82.74% equity return earned by Buckeye. The ratio and percentage analysis performed by the Public Staff indicated that this excessive earnings level was achieved due to inherent advantages arising when a supply company deals with affiliated companies comprising a captive and closed market. This analysis showed that, when compared to the independent wholesalers, Buckeye was able to make its sales with fewer operating expenses, smaller accounts receivable, and generally fewer assets.

The existence of a captive market is the primary reason that the supply affiliate of ALLTEL is able to sell its products at prices which compare

favorably with companies operating in the open market and consistently achieves a return on equity greater than those achieved by the independent companies. Since the excessive profits of the supply company are the direct result of the affiliation with the telephone operating companies, the Commission finds 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 Buckeye by ALLTEL included in the rate base is not reasonable and that ALLTEL's rate base includes excess profits which should be removed.

Witness Porter testified that for the test year ended December 31, 1983, the earnings level from sales by Buckeye to ALLTEL should be limited to a 15% return on equity. She noted that while the overall average return of the independents was 9.94% for the five-year period, 1978 through 1982, she recommended that Buckeye be allowed a 15% return to give adequate business incentives. This method of limiting Buckeye's earnings would recognize the economies inherent as a result of the existence of a captive market and have the effect of flowing these economies back to the operating telephone companies which make up that captive market.

The Commission concludes that the Applicant's investment in utility plant in service should be adjusted to exclude "excess profits" surviving in the plant accounts at December 31, 1983, in the amount of $412,605, as determined by the Public Staff. This adjustment is based on the concept of limiting the earnings of the supply affiliate to a reasonable rate of return of 15% as proposed by the Public Staff.

During cross-examination witness Porter was questioned about the depreciation reserve applicable to the excess profits included in plant in service. Witness Porter stated that the depreciation reserve should not be adjusted in this proceeding since the excess profits had never been excluded from rate base for ALLTEL in previous general rate case proceedings. Witness Porter testified that the ratepayers have paid in depreciation expense relative to the excess profits included in plant in service and therefore they should receive the beneift of those dollars. Witness Porter also stated that in future proceedings it would be appropriate to recognize the depreciation expense on the excess profits accumulated from the effective date of the Order in this proceeding forward. The Commission concludes that the depreciation reserve should not be adjusted in this proceeding but finds it will be necessary to recognize the depreciation expense on the excess profits excluded from cost of service in this proceeding prospectively.

The Public Staff eliminated the short-term construction work in progress included by the Company in rate base. Evidence concerning the issue of whether short-term Construction Work in Progress (CWIP) should be allowed in rate base was offered primarily by David T. Bowerman, Public Utilities Financial Analyst of the Public Staff's Economic Research Division.

Witness Bowerman testified that ALLTEL's financial stability will not be affected by excluding short-term CWIP. Witness Bowerman stated that short-term CWIP as a percentage of rate base is quite small, roughly 2.8%. Moreover, the revenue effect of including or excluding short-term CWIP is also very small when compared to ALLTEL's overall revenue requirement. In this regard, present rates, after adjustments, are approximately $26 million, whereas the revenues

applicable to short-term CWIP are only approximately 1% of ALLTEL's net revenues. Witness Bowerman also stated that the time lag between the beginning of construction on new plant and the in-service date is quite short for telephone utilities as compared to electric utilities. In addition, the evidence indicated that ALLTEL's debt coverage ratios are adequate and would not be materially or significantly improved by the inclusion of short-term CWIP.

Based on witness Bowerman's testimony and a careful review of the entire record, the Commission concludes that the inclusion of short-term CWIP in rate base is not necessary for the financial stability of this Company and should be disallowed.

The parties disagree as to the proper level of accumulated depreciation. The Company included in its proposed order an adjustment to accumulated depreciation of $5,941 related to the excess of fair market value over net book excluded from plant in service. During cross-examination Public Staff witness Porter stated that no adjustment should be made to accumulated depreciation as it relates to the excess of fair market value over net book. Witness Porter further stated that, since this adjustment has not been made in prior dockets, the Company has been allowed to recover depreciation expense on the excess cost. Consequently, witness Porter testified that the depreciation which has accumulated has been paid in by the ratepayers and, therefore, they should receive the benefit. After a review of the record, the Commission finds that it is not necessary to decrease accumulated depreciation for this item.

The second item of difference in the depreciation reserve deals with two adjustments discussed by Public Staff witness Porter during cross-examination. The first adjustment relates to the Public Staff's adjustment to plant in service for excess plant. The Commission has denied the excess plant adjustment, as discussed hereinabove, and therefore finds it appropriate to exclude the Public Staff's adjustment to accumulated depreciation related to the excess plant adjustment. The second adjustment to accumulated depreciation relates to the Public Staff's correction for plant retirements that was inadvertently removed in the Public Staff's initial filing. The Commission has reviewed this adjustment and concludes that it is appropriate. Therefore, the Commission concludes that a reasonable level of accumulated depreciation to be used in this proceeding is $27,825,092.

The evidence concerning the reasonable allowance for working capital is contained in the testimony and exhibits of Company witness Rowan and Public Staff witness Porter.

A comparison of the components of working capital presented by the parties is shown below:

| | Company | Public Staff | Difference |
|---|---|---|---|
| Cash (1/12 of oper. expenses) | $936,056 | $931,090 | $4,966 |
| Average prepayments | 79,047 | 79,047 | - |
| Less: Average tax accruals | 513,479 | 513,479 | - |
| Total working capital | $501,624 | $496,658 | |

The only item of difference deals with the proper level of cash working capital. Since this is a direct calculation based on the proper level of operating expenses and the Commission has determined in the Evidence and Conclusions for Finding of Fact No. 7 that the appropriate level of operating expenses excluding depreciation is $11,173,085, the Commission concurs with the Public Staff's level of cash working capital of $931,090 and the total working capital allowance of $496,658.

In summary, the Commission concludes that the proper level of original cost rate base to be included in this proceeding is $57,418,945, consisting of the following:

| Item | Amount |
|---|---|
| Telephone plant in service | $92,485,281 |
| Allowance for working capital | 496,658 |
| Materials and supplies | 390,532 |
| Rural telephone bank stock | 858,568 |
| Less: Depreciation reserve | 27,825,092 |
| Customer deposits | 131,524 |
| Deferred income taxes | 8,797,744 |
| Pre-1971 investment tax credit | 57,734 |
| Original cost rate base | $57,418,945 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence concerning the proper end-of-period level of intrastate operating revenues was presented through the testimony and exhibits of Company witness Rowan and Public Staff witnesses Garrison, Willis, and Porter and the rebuttal testimony and exhibits of Company witness Shaffer. The amount proposed by the parties are shown in the chart below.

| | Company (a) | Public Staff (b) | Difference (c) |
|---|---|---|---|
| Local service revenues | $17,763,338 | $17,763,338 | $ - |
| Toll and access revenues | 7,706,808 | 7,672,237 | (34,571) |
| Miscellaneous revenues | 838,033 | 838,033 | - |
| Uncollectibles | 21,316 | 21,316 | - |
| Total operating revenues | $26,286,863 | $26,252,292 | $(34,571) |

The Company accepted the Public Staff's recommended levels of local service revenues, miscellaneous revenues, and uncollectibles. After appropriate review the Commission finds these amounts to be reasonable and proper.

The Company and the Public Staff differ on the amount of intrastate toll and access revenues. Shown below is a summary of the differences.

| | Company | Public Staff | Difference |
|---|---|---|---|
| Settlement pool | $7,325,099 | $7,571,630 | $246,531 |
| Billing and collection | 448,884 | 448,884 | - |
| InterLATA lease | 186,528 | 186,528 | - |
| Access charge reduction | (237,296) | (243,871) | (6,575) |
| Effect of accounting adjustments | (16,407) | (290,934) | (274,527) |
| Total | $7,706,808 | $7,672,237 | $(34,571) |

As can be seen in the table, the differences between the Company and the Public Staff relate to the revenues due from the settlement pool, the toll effect of accounting adjustments to rate base and operating expenses, and to the proper level of the access charge reduction recently ordered by this Commission in Docket No. P-100, Sub 65. There being no evidence to the contrary, the Commission concludes that the level of billing and collections and interLATA lease revenues as proposed by the parties is appropriate. The difference with respect to the settlement revenues results from different returns used to calculate the revenue requirement for the toll and access revenues in the settlement pool. The Company used a return of 14.9055%, while the Public Staff adopted a return of 15.8%.

Company witness Shaffer testified that he annualized the first eight months of 1984 to obtain the 14.9055% return. Public Staff witness Garrison stated that he arrived at the 15.8% return by annualizing the months of February through August 1984 to obtain a 15.725% annualized return. He then made an adjustment to derive the 15.8% level to account for the fact that the ratios used do not reflect the net revenues received from five of the standard contract companies. Under cross-examination Public Staff witness Garrison testified that he did not use the January 1984 return because it was abnormally low. The Public Staff asserted that because of the limited amount of data in this case, it would be inappropriate to use the January 1984 return in determining the settlement pool return.

The Commission has reviewed this matter closely and concludes that the appropriate settlement ratio to be used in establishing a fair and reasonable level of toll revenues in this proceeding is 14.9055. This return is reflective of all the data available since divestiture. Though the Public Staff maintains that the return from January 1984 is too low to be considered, there is not enough evidence in the record to warrant excluding this month's results, while including all others.

Both parties recommended that toll revenues should be reduced to recognize the Commission Order of November 2, 1984, in Docket No. P-100, Sub 65. That Order required the local exchange companies to reduce the access charges to ATTCOM. The Commission takes judicial notice of the filings made in Docket No. P-100, Sub 65, subsequent to its November 2, 1984, Order and of its November 9, 1984, Order in Docket No. P-55, Sub 834.

The total industry access revenue reduction has been determined to be $10,887,085, and ALLTEL's portion of that is 2.24%, or $243,871. Therefore, the Commission concludes that the appropriate intrastate toll and access revenues before the effects of accounting adjustments is $7,716,640 ($7,325,099 + $448,884 + $186,528 - $243,871).

The $7,716,640 amount must be decreased by $249,862 for the toll revenue effects of the adjustments made herein to the Company's rate base and operating expenses. Since the Commission has not accepted in its entirety the Public Staff's level of rate base and operating expenses, the Commission concludes that, based on the Commission's level of operating expenses and rate base found to be proper elsewhere herein, the proper toll and access revenues after the effects of accounting adjustments are $7,466,778 ($7,716,640 - ($249,862). The Commission notes that gross receipts taxes on intraLATA toll revenues have been considered in determining the toll effects of the accounting adjustments.

Based on all the foregoing, the Commission concludes that the appropriate level of operating revenues to be used in establishing rates in this proceeding is $26,046,833, as shown in the chart below:

| Item | Amount |
|---|---|
| Local service revenues | $17,763,338 |
| Toll service revenues | 7,466,778 |
| Miscellaneous revenues | 838,033 |
| Uncollectibles | (21,316) |
| Total operating revenues | $26,046,833 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence concerning test year operating revenue deductions is found in the testimony and exhibits of Company witnesses Rowan and Shettel and Public Staff witnesses Porter and Sutton. The following chart sets forth the amounts proposed by the Company and the Public Staff.

| | Company | Public Staff | Difference |
|---|---|---|---|
| Maintenance | $5,406,177 | $5,347,171 | $(59,006) |
| Depreciation | 5,668,731 | 5,633,682 | (35,049) |
| Traffic | 574,197 | 574,197 | - |
| Commercial | 1,376,857 | 1,376,857 | - |
| General office | 2,238,965 | 2,238,965 | - |
| Other operating expenses | 1,776,035 | 1,775,453 | (582) |
| Less: Expenses charged to construction | (223,683) | (223,683) | - |
| Interest on customer deposits | 9,891 | 9,891 | - |
| Annualization adjustment | 74,234 | 74,234 | - |
| Taxes other than income | 1,594,868 | 1,601,079 | 6,211 |
| State income tax | 277,225 | 316,779 | 39,554 |
| Federal income tax | 1,640,354 | 1,925,403 | 285,049 |
| Total operating revenue deductions | $20,413,851 | $20,650,028 | $236,177 |

The difference in maintenance expense of $59,006 is comprised of two adjustments. The first adjustment of $6,334 recognizes the excess profits on affiliated transactions charged to maintenance expense during the test year. As discussed in Evidence and Conclusions for Finding of Fact No. 5, the Commission found it proper to remove excess profits included in rate base and

cost of service, and, therefore, the Commission concludes that this adjustment is appropriate. The second adjustment of $52,672 reflects a decrease in maintenance expense resulting from the retirement of old step-by-step switching equipment.

The evidence relating to the maintenance expense adjustment is contained in the testimonies of Public Staff witnesses Porter and Sutton. Witness Sutton stated that, since the Company had replaced higher maintenance cost electro-mechanical switching equipment with lower maintenance cost digital switching equipment, a reduction in maintenance expense should be realized. Further, since the central office replacements occurred in late 1983 and in 1984, he stated that the full effect of the maintenance expense savings is not reflected in the test year data and therefore must be reflected through a pro forma adjustment. During cross-examination witness Porter indicated that, since this reduction in maintenance expense was not included in any other of the Public Staff's adjustments, it was necessary to reflect the adjustment as proposed by witness Sutton.

The Commission agrees that it is appropriate to reduce maintenance expenses to reflect the replacement of the higher maintenance cost electro-mechanical switching equipment with the lower maintenance cost digital switching equipment. Accordingly, the Commission is reducing test year maintenance expense by $52,672.

The second item of difference between the Public Staff and the Company concerns the proper level of depreciation expense. The difference of $35,049 arises due to adjustments to recognize excess profits on affiliated transactions and excess plant. These issues have been addressed elsewhere herein in this Order and, therefore, consistency dictates that the Commission accept the Public Staff's adjustment to depreciation expense for excess profits but deny the adjustment related to excess plant.

The third item of difference is in the proper level of other operating expenses, more specifically in the amount of pension expense. The Company and the Public Staff are in agreement concerning the going level of wage expense. During cross-examination Public Staff witness Porter changed her wage adjustment and associated pension expense and payroll taxes, based on additional data provided by the Company. Witness Porter stated that wages would increase $18,847, pension expense would increase $1,652, and payroll taxes would increaes $1,502. The Company's proposed order incorporates these changes. The Company provided schedules in its proposed order incorporating these revisions; however, the Public Staff revised the pension expense to $1,070 and the payroll tax increase to $973 due to an error in the original calculation. The Commission finds the amounts included by the Public Staff to be reasonable and proper for inclusion in the cost of service in this proceeding.

The difference in other operating taxes of $6,211 is a combination of a decrease in payroll taxes of $529 to reflect the correction spoken to above and an increase in gross receipts tax of $6,740. Consistent with all the foregoing and the Commission's calculation of operating revenues subject to gross receipt taxes, the Commission concludes that the appropriate level of other operating taxes is $1,612,540.

The remaining expense differences relate to the calculation of state and federal income tax expense. These amounts are direct calculations determined by the level of operating revenues and expenses. During cross-examination Company witness Rowan accepted the Public Staff's adjustment to recognize the use of the 8% investment tax credit rather than the 10% credit with a basis reduction as used by the Company. Witness Rowan stated that the Company might continue using the higher credit with pro forma adjustments in future rate cases to recognize the use of the lower credit. The Commission finds the Company should begin using the lower credit on its books for tax years beginning 1984 and prospectively to assure that the ratepayers receive the full benefit of the option which produces the lowest revenue requirement. Since the Commission has not adopted all of the proposed revenues and expenses supported by either party of record, the Commisson concludes that the proper level of income taxes to be used in this proceeding is $2,128,435, based on the Commission's determination of proper revenue and expense levels to be used herein in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of operating revenue deductions under present rates is $20,555,963, as shown in the chart below:

| Item | Amount |
|---|---|
| Maintenance | $5,347,171 |
| Depreciation | 5,641,903 |
| Traffic | 574,197 |
| Commercial | 1,376,857 |
| General office | 2,238,965 |
| Other operating expenses | 1,775,453 |
| Less: Expense charged to construction | (223,683) |
| Interest on customer deposits | 9,891 |
| Annualization adjustment | 74,234 |
| Other operating taxes | 1,612,540 |
| State income tax | 302,918 |
| Federal income tax | 1,825,517 |
| Total operating revenue deductions | $20,555,963 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding is found in the testimony of Company witness Rowan and Public Staff witness Porter. Both the Company and the Public Staff included a net operating income adjustment to recognize the effects of including completed construction work in progress in the rate base. Subsequently, in its proposed order the Company eliminated this adjustment. The Commisson finds it proper to recognize the additional net operating income generated as a result of the completed construction projects. The Commission finds the proper net operating ratio to be 9.97% based on a rate base of $55,072,600 and a net operating income amount of $5,490,870. The Commission also finds it proper to reduce the plant additions related to the completed construction of $2,561,089 by the related depreciation reserve of $161,742 and deferred taxes of $53,002 before applying the net operating income factor of 9.97%. Since the factor is determined by dividing net operating income by rate base, it is proper to recognize the rate base adjustments related to the plant

additions. The Commission therefore concludes the representative amount of additional net operating income to be $233,931.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 AND 10

Two witnesses testified on capital structure, cost of capital, and rate of return. The Company presented the testimony of Dr. Robert Weiss, Senior Consultant with Utility Financial Services, a consulting firm. The Public Staff presented the tesimony of David Bowerman, a Public Utilities Financial Analyst with the Economic Research Division of the Public Staff.

Regarding capital structure, Company witness Weiss recommended the use of ALLTEL actual capital structure and embedded costs. As of September 30, 1984, this capital structure consisted of 53.57% long-term debt, 7.12% short-term debt, 1.38% preferred stock, and 37.93% common equity. The associated cost rates were 9.16% for long-term debt, 12.00% for short-term debt, and 5.75% for preferred stock.

Witness Weiss testified that it is generally proper to use the capital structure of the firm whose rates are being set. Witness Weiss stated that the Company's equity ratio is low in comparison to other telephone companies and that low interest coverage had prevented full use of REA financing. Further, witness Weiss testified that the increasing business risk facing local telephone companies and the uncertainty surrounding the future of REA funding make the higher equity ratios now prevalent in the telephone industry appropriate.

Public Staff witness Bowerman recommended the use of the consolidated capital structure of ALLTEL Corporation, the holding company which is the owner of the equity of ALLTEL. As of June 30, 1984, this capital structure consisted of 58.0% long-term debt, 5.5% preferred stock, and 36.5% equity. The embedded cost rates associated with this capital structure were 8.76% for long-term debt and 7.62% for preferred stock.

Witness Bowerman stated that ALLTEL Corporation is the sole equity owner of ALLTEL and that, in order for ALLTEL to attract or receive additional equity capital, it must receive the additional monies from ALLTEL Corporation and for investors to supply equity capital to ALLTEL, they have to purchase ALLTEL Corporation stock. Witness Bowerman stated that the cost of equity capital for AllTEL and ALLTEL Corporation should be approximately the same due to the companies' similar financial, regulatory, and business risks and that, therefore, the cost of equity capital of ALLTEL Corporation is a good proxy for the cost of equity capital for ALLTEL. Witness Bowerman objected to the use of the Company's recommended capital structure on the grounds that inequities would result if the Commission establishes an overall cost of capital that incorporates a capital structure that has been double leveraged. Finally, witness Bowerman noted that the Commission accepted the use of a consolidated capital strucuture in recent dockets involving ALLTEL (or its predecessor, Mid-Continent) subsidiaries.

Based upon the foregoing, the Commission determines that the capital structure as presented by the Public Staff is appropriate for use in this proceeding. That capital structure, with the associated embedded cost rates, is as follows:

| Item | Percent | Cost Rate |
|---|---|---|
| Long term debt | 58.00% | 8.76% |
| Preferred stock | 5.50% | 7.62% |
| Common Equity | 36.50% | |
| Total | 100.00% | |

As to the issue of the appropriate overall rate of return that the Company should be allowed to earn, witness Weiss recommended a range of 11.81% to 11.91%. His recommendation was based on a cost of equity of 15.75% to 16.00%. In deriving his recommendation, witness Weiss used the cost of equity to a comparable group of publicly traded telephone companies as a proxy for the cost of equity to ALLTEL. This approach was used because ALLTEL's common equity shares are not publicly traded and, consequently, no market information exists which could be used to determine the investor-required return for ALLTEL.

Witness Weiss first estimated the cost of equity to ALLTEL by estimating that the current cost of equity to the S&P 500 was in the range of 17% to 18%. The next step in his analysis was to estimate the current cost of equity to the comparable group of telephone companies by using the Discounted Cash Flow (DCF) model, adjusted to reflect the quarterly payments of dividends. From his DCF study, after the quarterly adjustment manipulation, witness Weiss derived a 15.4% to 15.9% cost of equity estimate. Witness Weiss then advanced his range of the estimated cost of equity from 15.75% to 16.00%.

Witness Bowerman recommended an overall rate of return of 10.88%, based on a cost of equity of 14.75%. Witness Bowerman determined the cost of equity for ALLTEL by employing two methods, the DCF and Capital Asset Pricing Model (CAPM). Witness Bowerman incorporated in these methodologies the market data of ALLTEL Corporation (used as a proxy of ALLTEL) and a comparable risk group (seven independent, publicly traded telephone companies). Witness Bowerman's DCF results ranged from 13.95% to 15.45% for ALLTEL and from 13.80% to 15.90% for a comparable risk group. Next, witness Bowerman estimated the expected return on the market to be 15%, using the S&P 500 as a proxy of the overall market, and then concluded that a company afforded protection by the Commission would have lower risk and would expect a lower return. Consequently, Witness Bowerman's CAPM result was 14.17% for ALLTEL and 14.36% for the comparable risk group.

Based upon the result of witness Bowerman's CAPM and the DCF methodologies, witness Bowerman concluded that the reasonable cost of equity to the Company was in the range of 14.5% to 15.0%. Witness Bowerman made no adjustments for flotation costs due to the Company's forecasted net internal generation of capital exceeding 100% into the year 1987. Thus, the recommended cost of equity that he proposed for ALLTEL in this proceeding was 14.75%

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 interest of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "Fix such rate of return...as will enable the public utility by sound management to produce a fair return 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 adquate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133(b):

> "...supports the inference that that Legislature intended for the Commission to fix rates as low as may be reasonable 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 Company, 258 N.C. 377, 206 S.E. 2d 269 (1974).

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that if ALLTEL's service were adequate, the fair rate of return that it should have the opportunity to earn on the original cost of its rate base is 10.97%. Such fair rate of return would yield a fair return on common equity of approximately 15.00%. However, the Commission has found that the Company's service is inadequate. Thus, instead of allowing a 15.0% return on common equity the Commission imposes a penalty of 0.50% and reduces the allowed return on common equity to 14.50%, which results in an overall rate of return of 10.79%. Said rate of return will allow the Company by sound management to improve the quality of its service and will afford the Company a reasonable opportunity to earn a fair return for its stockholders.

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 ALLTEL Carolina, Inc., 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 determinations made herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and the conclusions heretofore and herein made by the Commission. The Commission notes that said schedules are reflective of the changes necessitated by the General Assembly enactment of House Bill 1513 entitled "An Act to Change the State Tax Structure for Commodities and Services Provided by Certain Utilities to Enable Individuals to Deduct Taxes on These Commodities and Services from Their Federal Income".

SCHEDULE I
ALLTEL CAROLINA, INC.
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
For the Test Year Ended December 31, 1983

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenue | | | |
| Local service | $17,763,338 | $962,125 | $18,725,463 |
| Toll and access | 7,466,778 | - | 7,466,778 |
| Miscellaneous | 838,033 | - | 838,033 |
| Uncollectibles | (21,316) | (1,155) | (22,471) |
| Total operating revenues | $26,046,833 | $960,970 | $27,007,803 |
| Operating Revenue Deduction | | | |
| Maintenance | 5,347,171 | - | 5,347,171 |
| Depreciation | 5,641,903 | - | 5,641,903 |
| Traffic | 574,197 | - | 574,197 |
| Commercial | 1,376,857 | - | 1,376,857 |
| General office | 2,238,965 | - | 2,238,965 |
| Other operating expenses | 1,775,453 | - | 1,775,453 |
| Expenses charged to construction | (223,683) | - | (223,683) |
| Interest on customer deposits | 9,891 | - | 9,891 |
| Annualization adjustment | 74,234 | - | 74,234 |
| Taxes other than income | 1,612,540 | 30,943 | 1,643,483 |
| State and federal income taxes | 2,128,435 | 457,945 | 2,586,380 |
| Total operating revenue deductions | 20,555,963 | 488,888 | 21,044,851 |
| Net operating income | 5,490,870 | 472,082 | 5,962,952 |
| Net operating income adjustment | 233,931 | - | 233,931 |
| Adjustment net operating income | $5,724,801 | 472,082 | $6,196,883 |

SCHEDULE II
ALLTEL CAROLINA, INC.
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended December 31, 1983

| Item | Amount |
|---|---|
| Telephone plant in service | $92,485,281 |
| Materials and supplies | 390,532 |
| Working capital | 496,658 |
| Rural telephone bank stock | 858,568 |
| Less: Depreciation reserve | 27,825,092 |
| Customer deposits | 131,524 |
| Pre-1971 investment tax credits | 57,734 |
| Deferred income tax | 8,797,744 |
| Original cost rate base | $57,418,945 |
| Rates of Return | |
| Present | 9.97% |
| Approved | 10.79% |

SCHEDULE III
ALLTEL CAROLINA, INC.
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended December 31, 1983

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | | Present Rates | | |
| Long-term debt | 58.00% | $33,302,988 | 8.76% | $2,917,342 |
| Preferred stock | 5.50% | 3,158,042 | 7.62% | 240,643 |
| Common equity | 36.50% | 20,957,915 | 12.25% | 2,566,816 |
| Total | 100.00% | $57,418,945 | | $5,724,801 |
| | | Approval Rates | | |
| Long-term debt | 58.00% | $33,302,988 | 8.76% | $2,917,342 |
| Preferred stock | 5.50% | 3,158,042 | 7.62% | 240,643 |
| Common equity | 36.50% | 20,957,915 | 14.50% | $3,038,898 |
| Total | 100.00% | $57,418,945 | | $6,196,883 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Company witness Shettel and Public Staff witness Willis presented testimony concerning ALLTEL's proposed rate structure. In the Proposed Recommended Orders the Public Staff and the Company agreed on the following rate design:

1. The calling scope limit between rate group 7 and 8 should be increased from 215,000 to 235,000 access lines.

2. There should be no increase in service charges.

3. The minimum mileage charge for extension line mileage per one-quarter of an airline mile or fraction thereof should be set at $3.75.

4. The Company's present rotary and touch-tone telephone instrument rates should not be changed.

5. The mobile telephone service rates should be increased from the present $37.50 per month to $56.25 per month.

6. A charge of $.25 for directory assistance inquiries exceeding three calls per month is allowed.

7. The local coin telephone charge should be increased from $.20 to $.25 per call.

8. Rates for operator verification and emergency interrupt service on file for Southern Bell Telephone and Telegraph Company should be implemented by ALLTEL.

9. A late payment charge of 1% on balances in arrears not paid within 25 days from the billing date is approved and should produce approximately $84,000.00 in revenues.

10. The annual increase in revenues allowed herein should be effected through individual categories of service as shown below:

| Category of Service | Annual Revenue Increase |
|---|---|
| Basic local exchange service | $788,572 |
| 1. Directory assistance | 34,500 |
| 2. Verification and busy interrupt | 27,713 |
| 3. Late payment penalty | 84,000 |
| Service connection charges | - |
| Coin telephone service | 21,700 |
| Miscellaneous recurring rates | |
| 1. Off premises mileage | 2,940 |
| 2. Mobile service | 2,700 |
| Local obsolete services | |
| 1. Touch-call equipment | - |
| 2. Station equipment | - |
| Total | $962,125 |

Based upon all of the evidence of record regarding rate design and tariff proposals, the Commission concludes that the aforementioned rate design is appropriate. The Commission notes that charges to the customers will be slightly higher under the tariffs that have not been changed in this general rate case proceeding, due to the establishment of the sales tax under the new gross receipts tax law.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence concerning these issues is found in Public Staff witness Porter's testimony. Witness Porter noted a multitude of problems encountered during her audit involving payroll, plant, construction work in progress, and cost allocations for deregulated operations. Witness Porter recommended that the Commission order the Company to hire outside consultants to advise and assist the Company in improving the accounting system. The Company offered no testimony concerning witness Porter's recommendation to hire consultants.

The Commission finds that a review by an outside consultant is necessary and in the interest of both the Company and the ratepayers. The Commission further concludes that the Company should file copies of the consultant's findings with the Commission.

Witness Porter also recommended that the Company meet with the Public Staff to discuss proper cost allocation procedures for nonutility operations. Witness Rowan stated during cross-examination that he had agreed to meet with the Public Staff to try to develop a mutually agreed to method of cost allocation procedures. The Commission also finds that a review and discussion between the Company and the Public Staff concerning the proper cost allocation procedures for deregulated operations appropriate and reasonable to assure no cross subsidization occurs.

EIVDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Witness Porter testified that ALLTEL has not complied with the FCC chart of accounts requirement that construction work in progress be subdivided into short- and long-term subaccounts though the FCC's rule requiring this subdivision has been in effect since 1978. Witness Porter also testified to the resulting problems and the difficulty she had in determining an amount that she was confident was short-term CWIP. The Company offered no response to witness Porter's recommendation. The Commission concludes that it is appropriate to require the Company to subdivide the account to comply with the FCC chart of accounts.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, ALLTEL Carolina, Inc., be, and hereby is, authorized to increase its local service rates and charges so as to produce additional annual gross revenues of $962,125 from North Carolina subscribers based on test year operations.

2. That the Applicant is hereby called upon to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the revenues approved herein, in accordance with the guidelines established by this Commission in Evidence and Conclusions for Finding of Fact No. 12 and Appendix A, within 10 days from the date of this Order. These proposals and workpapers supporting such proposals shall be provided to the Commission (five copies are required) and the Public Staff (formats such as Item 30 of the minimum filing requirement, N.C.U.C. Form P-1, are suggested). At the time of such filing, the Company shall also file with the Commission a proposed customer notice to inform the customers of ALLTEL Carolina, Inc., of the actions taken herein.

3. That the Public Staff may file written comments concerning the Company's tariffs within five working days of the date on which they are filed with the Commission.

4. That the rates, charges, and regulations necessary to produce the annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs and customer notice filed pursuant to ordering paragraph 2 above.

5. That the Applicant be, and hereby is, ordered to make every fair and reasonable effort to improve the quality of service currently being provided to its subscribers and take appropriate steps to remedy the service problems described herein.

6. That the Chief Clerk shall, by certified mail, serve a copy of this Order on Norman R. Weston, Regional Manager of the Southern Region of ALLTEL Corporation, and that he should advise the Commission of the Company's plan to improve service through updated maintenance procedures within 60 days of the date of this Order.

7. That the Company shall conduct further follow-up investigations, take corrective action regarding the service complaints of each public witness who testified in this case, and shall file its reports of those actions with this Commission within 60 days from the date of this Order.

8. That ALLTEL Corporation shall within 30 days from the issuance of this Order submit for Commission approval a proposed audit plan as more fully described in Evidence and Conclusions For Finding of Fact No. 4.

9. That the Company shall hire an outside consultant to advise and assist in developing improvements to its accounting system. The Company shall file copies of the consultant's findings and recommendations with this Commission.

10. That the Company and the Public Staff review and discuss proper cost allocation procedures for nonutility operations.

11. That the Company implement short- and long-term subaccounts for construction work in progress as defined in the FCC chart of accounts.

12. That the Company begin using the 8% investment tax credit under TEFRA for tax years 1984 and prospectively.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of December 1984.

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

TELEPHONE - RATES

DOCKET NO. P-26, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of Heins Telephone Company for an Adjustment to Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | ) ) ) | NOTICE OF DECISION AND ORDER |

HEARD IN: Superior Courtroom, Lee County Courthouse, 1408 South Horner Boulevard, Sanford, North Carolina, Monday, December 5, 1983, at 7:00 p.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Tuesday, December 6, 1983, and Wednesday, December 7, 1983

BEFORE: Commissioner Douglas P. Leary, Presiding; and Commissioners Sarah Lindsay Tate and Ruth E. Cook

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, Post Office Box 2479, Raleigh, North Carolina 27602

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On July 15, 1983, Heins Telephone Company (Heins, Company, or Applicant) filed an application with this Commission for authority to adjust its rates and charges for telephone service in North Carolina. The requested increase in rates and charges was $1,070,426 in additional annual revenues from intrastate operations when applied to a test period consisting of the 12 months ended December 31, 1982. The Company proposed that the rates and charges become effective for services rendered on and after August 15, 1983.

By Order issued on August 5, 1983, the Commission set the matter for investigation, 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 August 15, 1983, effective date, set hearings to begin on December 5, 1983, declared the test period to be the 12 months ended December 31, 1982, 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 intervention and/or testimonies.

The Commission conducted an out-of-town hearing in Sanford on Monday, December 5, 1983, at 7:00 p.m. for the purpose of receiving testimony from the using and consuming public. Earl A. Womble, Ted Lanier, and Cecil Sewell appeared and testified as public witnesses at this hearing. Public witness

Womble testified as to his opposition to the proposed rate increase and as to a service problem he had experienced. The other two witnesses testified that the Company had provided good service.

The hearings resumed in Raleigh on December 6, 1983, at 10:00 a.m. for the purpose of receiving further testimony of public witnesses and the testimony and cross-examination of the Applicant and the Public Staff. The Company offered the testimony and exhibits of the following witnesses: James E. Heins, President of Heins Telephone Company, who testified as to the Company's operations, growth, new equipment, and need for rate relief; Walter L. Drury, Vice-President - Administration of Heins Telephone Company, who testified concerning the present and proposed rates and charges; L. Stephen Coffield, Comptroller of Heins Telephone Company, who presented the financial information of the Company detailing the revenues, expenses, and investments and the additional revenue requirements; Edward J. Kettler, Special Studies Supervisor in the firm of John Staurulakis, who testified concerning depreciation rates; and James H. Vander Weide, President of Utility Financial Services, Inc., who testified concerning the rate of return, cost of capital, and general financing costs.

The Public Staff offered the testimony and exhibits of the following witnesses: Leslie C. Sutton, Engineer, Communications Division of the Public Staff, who testified concerning the Company's proposed depreciation rates; William J. Willis, Jr., Engineer, Communications Division of the Public Staff, who testified as to end-of-period local and miscellaneous revenues, proposed changes in rates and regulations, and the appropriate distribution of additional revenues required; Hugh L. Gerringer, Engineer, Communications Division of the Public Staff, who testified as to the Company's intrastate toll revenues; George T. Sessoms, Jr., Financial Analyst, Economic Research Division of the Public Staff, who testified concerning the appropriate capital structure, cost of common equity, cost of capital, and rate of return; and Michael C. Maness, Staff Accountant, Accounting Division of the Public Staff, who testified concerning the accounting adjustments, revenues and expenses, and rate base.

Heins Telephone Company offered the rebuttal testimony of the following witnesses: Walter L. Drury testified concerning Heins' expected future toll revenues flowing from the Commission's decision in Docket No. P-100, Sub 64; James H. Vander Weide testified concerning his assessment of the risk premium rate used by Public Staff witness Sessoms; and L. Stephen Coffield testified concerning post-test year changes in the level of investment.

Based on the foregoing, the testimony and exhibits admitted at the hearings, and the entire record in this docket, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant, Heins Telephone Company, is a duly organized North Carolina corporation and a wholly owned subsidiary of The Heins Company. Heins is a public utility engaged in providing telephone service in North Carolina and is subject to the jurisdiction of this Commission. Heins 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. By its application, the Company requested rates designed to produce total annual operating revenues of $7,722,493, based upon a test year ended December 31, 1982. The Company contends that revenues under present rates are $6,652,067, thereby necessitating an increase of $1,070,426 which the Company proposes to achieve through increases in rates for local service.

3. The test period for purposes of this proceeding is the 12 months ended December 31, 1982.

4. The overall quality of service provided by Heins is adequate.

5. The schedule of depreciation rates as shown in Appendix A is reasonable and is approved.

6. Heins' reasonable original cost rate base used and useful in providing telephone service within the State of North Carolina is $13,202,456. This rate base consists of telephone plant in service of $21,248,812 plus Rural Telephone Bank stock of $479,947, and working capital of $281,729, reduced by accumulated depreciation of $7,333,518, accumulated deferred income taxes of $1,460,288, and accumulated pre-1971 investment tax credits of $14,226.

7. The proper level of end-of-period intrastate toll revenues for Heins in this proceeding is $3,223,985 which has been appropriately adjusted to reflect the phasedown of existing CPE from the settlements process and the effect of recognizing that the Company will receive 50% of the toll revenue increase granted in Docket No. P-100, Sub 64. Furthermore, Heins is hereby directed to establish a deferred account and to place in said deferred account any intrastate toll revenues in excess of $100,691 which the Company derives from the toll rate increases granted in Docket No. P-100, Sub 64.

8. Heins' total end-of-period operating revenues (net of uncollectibles) for the test year, under present rates and after accounting and pro forma adjustments, are $6,704,873.

9. The reasonable level of test year operating revenue deductions for Heins after end-of-period and pro forma adjustments is $5,868,030. This amount includes $1,343,689 for investment currently consumed through reasonable actual depreciation on an annual basis.

10. The Company's capital structure which is appropriate for use in this proceeding is as follows:

| Item | Percent |
|---|---|
| Long-term debt | 67.12 |
| Common equity | 32.88 |
| Total | 100.00 |

11. The Company's proper embedded cost of long-term debt is 5.48%, and the overall rate of return to be applied to the Company's original cost rate base is 8.53%. Said amount allows the Company to earn a 14.75% return on its investment supported by common equity. Such rates of return will enable Heins, 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 the investors.

12. The total annual gross revenue requirement for Heins is $7,274,674, an increase of $547,765 over the end-of-period gross revenues under present rates. This increase is required in order for Heins to have a reasonable opportunity to earn the 8.53% 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 period operating revenues and expenses, as previously determined and set forth in these findings of fact.

13. The rates and charges that are to be filed pursuant to this Order in accordance with the conclusions set out herein will produce an increase in annual gross local revenues of $547,765, which will be just and reasonable.

Based upon the findings of fact set forth hereinabove, the Commission concludes that the appropriate annual level of revenues which Heins should be authorized to collect through rates charged for its sales of service based upon the adjusted test year level of operations is $7,274,674. The following charts summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve, based upon the level of revenues approved herein. Such charts, illustrating the Company's gross revenue requirements, incorporate the findings, adjustments, and conclusions herein made by the Commission.

TELEPHONE - RATES

SCHEDULE I
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended December 31, 1982

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues: | | | |
| Local service | $3,060,074 | $547,765 | $3,607,839 |
| Toll service | 3,223,985 | - | 3,223,985 |
| Miscellaneous | 442,850 | - | 442,850 |
| Uncollectibles | (22,036) | (986) | (23,022) |
| Total operating revenues | 6,704,873 | 546,779 | 7,251,652 |
| Operating Revenue Deductions: | | | |
| Operating expenses | 3,608,269 | - | 3,608,269 |
| Depreciation and amortization | 1,343,689 | - | 1,343,689 |
| Operating taxes other than income taxes | 699,155 | 32,807 | 731,962 |
| State income tax | 36,075 | 30,838 | 66,913 |
| Federal income tax | 180,842 | 222,242 | 403,084 |
| Total operating revenue deductions | 5,868,030 | 285,887 | 6,153,917 |
| Imputed net operating income on post-test year plant additions | 28,168 | - | 28,168 |
| Net operating income for return | $ 865,011 | $260,892 | $1,125,903 |

SCHEDULE II
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1982

| Item | Amount |
|---|---|
| Telephone plant in service | $21,248,812 |
| Investment in RTB stock | 479,947 |
| Working capital | 281,729 |
| Depreciation reserve | (7,333,518) |
| Accumulated deferred income taxes | (1,460,288) |
| Pre-1971 investment tax credit | (14,226) |
| Original cost rate base | $13,202,456 |
| Rate of return | |
| Present rates | 6.55% |
| Approved rates | 8.53% |

SCHEDULE III
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1982

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 67.12% | $ 8,861,488 | 5.48% | $485,610 |
| Common equity | 32.88% | 4,340,968 | 8.74% | 379,401 |
| Total | 100.00% | $13,202,456 | - | $865,011 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 67.12% | $ 8,861,488 | 5.48% | $ 485,610 |
| Common equity | 32.88% | 4,340,968 | 14.75% | 640,293 |
| Total | 100.00% | $13,202,456 | - | $1,125,903 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witness Drury and Public Staff witness Willis presented testimony concerning Heins' proposed rate structure.

Witness Drury stated that he had attempted to be conscious of value of service as well as cost of service in developing his proposed rates. Additionally, he indicated that he had developed his rate structure by relying in part upon industry trends and had attempted to use rate designs which have been authorized by the Commission in other telephone company proceedings. It was his contention that the rate structure which he filed would produce stable revenues consistent with the Company's revenue requirement.

Witness Drury filed rate design proposals in basic exchange access charges, service charges, directory listings, key and pushbutton telephone service, auxiliary equipment, mobile telephone service, local private line service and channels, and station equipment. Witness Drury's recommendations included a proposal to unbundle local service rates wherein the Company proposes to remove the telephone instrument from the service offering and to establish a separate charge for each telephone instrument which it provides.

The Public Staff presented specific recommendations on the Company's proposed rate structure through witness Willis. Witness Willis agreed with all of the Company's proposed rates except for basic local service rates and certain applications of the Company's rates.

Witness Willis' testified that the Company's proposal to increase its key trunk multiple from 1.20:1 to 1.5:1 should be allowed with the provision that the application of its key trunk rate be redefined. It is witness Willis' belief that the predominate benefit which may result from the use of a key trunk relates to the rotary line aspect of the service. Witness Willis remarked that other advantages sometimes attributed to the use of key trunks, such as a greater completion rate on outgoing calls, are enabled by the use of busy line light indicators. According to witness Willis, the costs associated with busy line light indicators are recovered through charges for both multibutton instruments and key system common equipment. Thus, it is witness

Willis' recommendation that the key trunk rate be only applicable to access lines which receive rotary line service other than those which qualify for the PBX trunk rate.

In regard to the Company's proposal to unbundle local basic service rates, the Company proposed to charge $1.30 per month for its standard rotary telephone set and $2.05 per month for its standard touch-call telephone set. The Public Staff agreed with these proposals as they are similar to rates which have previously been approved by the Commission for other telephone companies. For the purpose of consistency in the Company's tariffs, witness Willis recommended that the proposed charge of $1.90 per month in tariff Section 20.1.2(b) of the Company for a standard rotary telephone set used in connection with a local private line be reduced to $1.30 per month.

Witness Willis stated that his review of the Company's proposed service charges indicated that they were generally similar to rates approved by the Commission in recent proceedings. Witness Willis cited the minimum proposed cost of a residential connection to be $24.00 and recommended that the Company's proposed rates be approved.

According to witness Willis, the Company proposed extension line mileage charges of $2.00 per month per quarter mile, or fraction thereof, of airline measurement and proposed that its rate for local private lines be set at $1.65 per month per quarter mile, or fraction thereof, of airline measurement. Witness Willis stated that the Public Staff and other companies have on other occasions recognized the physical similarity of these services and have proposed identical rates for the mileage charges applicable to each service. It is witness Willis' recommendation that the mileage charge per quarter mile, or fraction thereof, of airline measurement, for each of these services be set at $2.00 per quarter mile per month. Further, witness Willis recommended that the present minimum charge of $8.00 per circuit for local private line should be kept at $8.00 per circuit rather than $8.80 per circuit as proposed by the Company.

In witness Willis' prefiled testimony, he asserted that the Public Staff and the Company had discussed the inclusion of a tariff provision which would allow the Company to impose a late payment charge to its customers of 1% on balances in arrears not paid within 25 days from the billing date. Witness Willis indicated that it was Heins' intention to file a tariff identical to the one approved for General Telephone Company. Witness Willis recommended that the Commission permit Heins to incorporate a late payment provision into its tariffs identical to those of General Telephone Company and to include its estimate of $5,425 as the level of additional annual revenues derived from this tariff provision.

Witness Willis explained that the Company's current service charges allow its customers some degree of participation in certain work functions and that the Commission has permitted tariff provisions for other companies which allow their subscribers to install and own their own inside wiring and modular jacks. Witness Willis stated that such a tariff provision expands the customers' discretionary powers and allows them to avoid secondary service ordering charges, premises visit charges, inside wiring charges, and jack charges. It is witness Willis' recommendation that Heins should be required to submit tariffs, permitting customers to install and own their own inside wiring and modular jacks, which are identical to those approved for Southern Bell Telephone Company.

The Commission, having carefully considered all the evidence regarding the rate design proposals presented in this proceeding, makes the following conclusions:

## A. KEY TRUNK MULTIPLE CHARGE

The Commission concludes that the key trunk rate should only be applicable to access lines which receive rotary line service (other than those which qualify for the PBX trunk rate) and the multiple of 1.5:1 should exist between the key trunk and business one-party line access exchange rates.

## B. SERVICE CHARGES

The Commission concludes that the service charges shown below are proper and therefore should be implemented by the Company.

SERVICE CONNECTION CHARGES

I. Residential Rates

| | |
|---|---|
| A. Service order | |
| 1. Primary | $19.00 |
| 2. Secondary | 11.00 |
| B. Premises visit, each | 8.00 |
| C. Central office work, each | 5.00 |
| D. Inside wiring, each | 10.00 |
| E. Equipment work, each | 5.00 |

II. Business Rates

| | |
|---|---|
| A. Service order | |
| 1. Primary | $23.00 |
| 2. Secondary | 16.00 |
| B. Premises visit, each | 9.00 |
| C. Central office work, each | 6.00 |
| D. Inside wiring, each | 14.00 |
| E. Equipment work, each | 7.00 |

## C. EXTENSION AND LOCAL PRIVATE LINE MILEAGE CHARGES

Having carefully considered the evidence in this proceeding concerning mileage rates, the Commission concludes that the mileage charges for both extension line mileage and local private line mileage should be set at $2.00 per quarter mile per month. The minimum charge per circuit for a local private line should be kept at the present charge of $8.00 per circuit per month.

## D. STANDARD TELEPHONE SET CHARGES

The Commission finds a monthly telephone set charge of $1.30 for a rotary telephone set and a monthly rate of $2.05 for a touch-call telephone set to be just and reasonable. Further, the Commission finds that the charge for a rotary telephone set used in connection with a local private line should be $1.30 per month.

E. LATE PAYMENT CHARGE

The Commission concludes that a tariff allowing the application of a late payment charge of 1% on balances in arrears not paid within 25 days from the billing date is in accordance with the Commission's Rule R12-9(d) and should be allowed.

F. CUSTOMER PROVIDED INSIDE WIRING

The Commission concludes that a tariff identical to Southern Bell Telephone Company's which allows its subscribers to install and own their inside wiring and modular jacks is in the public interest and should be filed by Heins.

G. OTHER LOCAL SERVICES - RATES AND CHARGES

The Commission concludes that all other rates and charges proposed by the Company not herein prescribed are reasonable and should be approved except for certain basic exchange rates including PBX trunks and key trunks which are interrelated through the application of multiple pricing relationships. These rates shall be determined so as to produce the remaining amount of the increase in annual gross revenues approved herein using the Company's proposed pricing relationships with the provision that the application of the key trunk rate is redefined as approved.

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 exceptions and notice of appeal in this proceeding to run from the date of issuance of such Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Heins Telephone Company, be, and hereby is, authorized to increase its local service rates and charges so as to produce annual gross revenues of $7,274,674 from North Carolina subscribers based on test year operations. Such amount represents an increase of $547,765 above the revenue level that would have resulted from rates currently in effect based on the test year.

2. That the Applicant is hereby called upon to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the revenues approved herein, in accordance with the guidelines established by this Commission in the Evidence and Conclusions for Finding of Fact No. 13, within 10 days from the date of this Order. These proposals and workpapers supporting such proposals shall be provided to the Commission (five copies are required) and the Public Staff (formats such as Item 30 of the minimum filing requirement, N.C.U.C. Form P-1, are suggested).

3. That the Public Staff may file written comments concerning the Company's tariffs within five working days from the date on which they are filed with the Commission.

4. That the rates, charges, and regulations necessary to produce the 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 the depreciation rates set forth in Appendix A shall be made effective by the Applicant beginning January 1, 1984.

ISSUED BY ORDER OF THE COMMISSION.

This the 15th day of February 1984.

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

APPENDIX A

HEINS TELEPHONE COMPANY
DOCKET NO. P-26, Sub 88
DEPRECIATION RATES

| ACCT. NO. | DESCRIPTION | PRESENT RATE % | APPROVED RATE % |
|---|---|---|---|
| 200.3 | Buildings | 2.0 | 2.9 RL |
| 200.4 | COE-Step Switch | 5.0 | 10.4 RL |
| 200.41 | COE-Step (minor) | 20.0 | 20.0 |
| 200.5 | COE-Toll Termination | 8.0 | 9.4 RL |
| 200.51 | COE-Toll Term (minor) | 20.0 | 20.0 |
| 200.6 | COE-Carrier | 5.0 | 13.2 RL |
| 200.61 | COE-Carrier (minor) | 20.0 | 20.0 |
| 200.7 | COE-Microwave Radio | 8.0 | 5.1 RL |
| 200.27 | COE-Digital Switch | 5.0 | 4.8 RL |
| 200.8 | Station App.-Telephone | 6.25 | 8.1 RL |
| 200.9 | Station App.-Sm PBX | 6.25 | 12.7 RL |
| 200.10 | Station App.-Booths | 6.0 | 8.9 RL |
| 200.11 | Station App.-Mobile | 10.0 | 10.0 |
| 200.12 | Sta. Connect-Inside | 10.0 | 10.0 |
| 200.121 | Sta. Connect-Other | 5.0 | 5.0 |
| 200.13 | Large PBX | 6.0 | 24.8 RL |
| 200.14 | Pole Lines | 5.0 | 6.0 |
| 200.15 | Aerial Cable | 4.0 | 5.0 |
| 200.18 | Underground Cable | 3.0 | 3.4 |
| 200.19 | Buried Cable | 4.0 | 4.3 |
| 200.20 | Aerial Wire | 12.0 | 44.6 RL |
| 200.21 | Underground Conduit | 2.0 | 2.3 |
| 200.22 | Furniture, Ofc Eq | 7.0 | 6.3 |
| 200.221 | Furn, Ofc Eq (minor) | 20.0 | 20.0 |
| 200.23 | Vehicles | 13.3 | 12.2 |
| 200.4 | Other Work Equipment | 16.67 | 9.7 |
| 200.241 | Other Work Eq (minor) | 20.0 | 20.0 |
| 200.26 | Radio Dispatch system | 10.0 | 10.0 |

RL = Remaining Life

DOCKET NO. P-26, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Heins Telephone Company, for an<br>Adjustment to Its Rates and Charges Applicable to<br>Intrastate Telephone Service in North Carolina | ) | ORDER SETTING RATES |

BY THE COMMISSION: On February 15, 1984, in Docket No. P-26, Sub 88, the Commission issued a Notice of Decision and Order for Heins Telephone Company (Heins, Applicant, or Company), wherein the Company was allowed to increase its rates and charges to produce additional revenues of $547,765 annually. The Company was called upon to file specific tariffs reflecting changes in rates, charges and regulations necessary to recover the allowed rate increase. Further, upon the Company's filing of said rates, charges, and regulations, the Commission Order allowed five working days for intervenor comment.

On February 20, 1984, pursuant to the Commission Order of February 15, 1984, Heins filed specific tariffs designed to produce approximately $547,765 in additional local service revenues on an annual basis.

On February 21, 1984, the Public Staff filed comments on the rates, charges, and regulations filed by Heins on February 20, 1984. In its comments the Public Staff concludes that the Company's proposed tariffs have been filed in accordance with the conclusions set forth in the Evidence and Conclusions for Finding of Fact No. 13 of the Commission's February 15, 1984, Notice of Decision and Order.

The Commission, having carefully reviewed and considered the tariffs proposed by the Company, concludes that said rates, charges and regulations are proper and should therefore be implemented by the Company. Further, the Commission finds that the customer notice attached hereto, with respect to the approved increase in intrastate rates, is appropriate for inclusion in the customer's first regular billing statement reflecting rates approved herein.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates, charges, and regulations filed by Heins on February 20, 1984, which will produce an increase in annual gross revenues of approximately $547,765 be, and hereby are, approved to be charged and implemented by the Applicant.

2. That the increases in rates and charges as approved herein shall become effective on billings rendered on and after the date of this Order. All other rates, charges, and regulations not herein adjusted remain in full force and effect.

3. That Heins is hereby required to file specific tariffs reflecting changes in rates, charges, and regulations approved herein within five working days of the date of this Order. (Eight copies required.)

4. That the Notice to Customer attached hereto is hereby approved.

5. That Heins shall give notice to its customers of the Commission's action herein by including the approved Notice to Customer as a bill insert in

the customer's first regular billing statement reflecting the rates approved herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February 1984.

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

HEINS TELEPHONE COMPANY
Docket No. P-26, Sub 88
NOTICE TO CUSTOMER

On July 15, 1983, Heins Telephone Company filed an application with the North Carolina Utilities Commission seeking to adjust and increase intrastate local service rates and charges for its North Carolina customers by $1,070,426 or 33.96% annually. After months of investigation and following hearings held in Sanford and Raleigh, North Carolina, addressing Heins' request, the Commission issued an Order on February 15, 1984, reducing Heins' requested increase from 33.96% to 17.90% and reducing the local revenue increase to $547,765.

In allowing these increases, the Commission ruled that the approved rates would provide Heins, under efficient management, an opportunity to earn an 8.53% rate of return on its property. The Commission found that the approved rate increase amounts were the minimum that could be granted and still have the Company maintain adequate service. The increase granted was due principally to the impact of general inflation on the Company's costs since its last general increase which became effective on December 22, 1976, and the Company's additional investment in plant and facilities for the purpose of increasing and improving its service to the public.

The Company proposed to unbundle the telephone set charge from the monthly basic local service rates and requested monthly telephone set rates of $1.30 for the standard rotary dial set and $2.05 for the standard touch-call set. The Commission Order found the monthly telephone set charges proposed by the Company appropriate. Approval of the unbundling of telephone set charges from the basic local service rates allows the customers of Heins to have greater discretion over the charges paid to the Company since it is now possible for customers to purchase their own phones, thereby avoiding the monthly telephone set rental charge.

Heins currently charges a monthly bundled one-party residential basic rate of $6.45 and a monthly bundled one-party business rate of $15.75. The Company had requested rates for the total of the access charge and telephone set charge (one standard rotary dial set) that would necessitate an increase of $3.45 per month for residential customers and $7.05 per month for business customers. The Commission approved a monthly bundled one-party residential basic rate of $7.50 and a monthly bundled one-party business rate of $16.80. These approved rates include a $1.30 per month set rental charge for a standard rotary dial set. Only the access line rate would apply if the customer chooses to furnish his own telephone set: these approved monthly access line charges are $6.20 for residence and $15.50 for business.

In accordance with the Commission Order, a rate of $24.00 was approved for residential installations and a rate of $29.00 for business installations where there has been prior telephone service and the customer participates in the installations of his telephone service. With respect to the cost of a complete telephone installation for a new subscriber, the Commission approved a rate of $47.00 for a residential customer and $59.00 for a business customer. Additionally, the Commission Order approved a tariff whereby the customers of Heins may provide and own their inside wiring and modular jacks.

DOCKET NO. P-26, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of Heins Telephone Company for an Adjustment to Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | ) ) ) | FINAL ORDER GRANTING PARTIAL RATE INCREASE |

HEARD IN: Superior Courtroom, Lee County Courthouse, 1408 South Horner Boulevard, Sanford, North Carolina, Monday, December 5, 1983, at 7:00 p.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Tuesday, December 6, 1983, and Wednesday, December 7, 1983

BEFORE: Commissioner Douglas P. Leary, Presiding; and Commissioners Sarah Lindsay Tate and Ruth E. Cook

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, Post Office Box 2479, Raleigh, North Carolina 27602

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On July 15, 1983, Heins Telephone Company (Heins, Company, or Applicant) filed an application with this Commission for authority to adjust its rates and charges for telephone service in North Carolina. The requested increase in rates and charges was $1,070,426 in additional annual revenues from intrastate operations when applied to a test period consisting of the 12 months ended December 31, 1982. The Company proposed that the rates and charges become effective for services rendered on and after August 15, 1983.

By Order issued on August 5, 1983, the Commission set the matter for investigation, 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 August 15, 1983, effective date, set hearings to begin on December 5, 1983, declared the test period to be the 12 months ended December 31, 1982, 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 intervention and/or testimonies.

The Commission conducted an out-of-town hearing in Sanford on Monday, December 5, 1983, at 7:00 p.m. for the purpose of receiving testimony from the using and consuming public. Earl A. Womble, Ted Lanier, and Cecil Sewell appeared and testified as public witnesses at this hearing. Public witness

Womble testified as to his opposition to the proposed rate increase and as to a service problem he had experienced. The other two witnesses testified that the Company had provided good service.

The hearings resumed in Raleigh on December 6, 1983, at 10:00 a.m. for the purpose of receiving further testimony of public witnesses and the testimony and cross-examination of the Applicant and the Public Staff. The Company offered the testimony and exhibits of the following witnesses: James E. Heins, President of Heins Telephone Company, who testified as to the Company's operations, growth, new equipment, and need for rate relief; Walter L. Drury, Vice-President - Administration of Heins Telephone Company, who testified concerning the present and proposed rates and charges; L. Stephen Coffield, Comptroller of Heins Telephone Company, who presented the financial information of the Company detailing the revenues, expenses, and investments and the additional revenue requirements; Edward J. Kettler, Special Studies Supervisor in the firm of John Staurulakis, who testified concerning depreciation rates; and James H. Vander Weide, President of Utility Financial Services, Inc., who testified concerning the rate of return, cost of capital, and general financing costs.

The Public Staff offered the testimony and exhibits of the following witnesses: Leslie C. Sutton, Engineer, Communications Division of the Public Staff, who testified concerning the Company's proposed depreciation rates; William J. Willis, Jr., Engineer, Communications Division of the Public Staff, who testified as to end-of-period local and miscellaneous revenues, proposed changes in rates and regulations, and the appropriate distribution of additional revenues required; Hugh L. Gerringer, Engineer, Communications Division of the Public Staff, who testified as to the Company's intrastate toll revenues; George T. Sessoms, Jr., Financial Analyst, Economic Research Division of the Public Staff, who testified concerning the appropriate capital structure, cost of common equity, cost of capital, and rate of return; and Michael C. Maness, Staff Accountant, Accounting Division of the Public Staff, who testified concerning the accounting adjustments, revenues and expenses, and rate base.

Heins Telephone Company offered the rebuttal testimony of the following witnesses: Walter L. Drury testified concerning Heins' expected future toll revenues flowing from the Commission's decision in Docket No. P-100, Sub 64; James H. Vander Weide testified concerning his assessment of the risk premium rate used by Public Staff witness Sessoms; and L. Stephen Coffield testified concerning post-test year changes in the level of investment.

On February 15, 1984, the Commission issued a Notice of Decision and Order in this docket which stated that Heins should be allowed an opportunity to earn a rate of return of 8.53% 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, Heins was authorized to adjust its telephone service rates and charges to produce an increase in gross revenues of $547,765 on an annual basis. Heins 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 February 20, 1984, Heins filed its proposed rates, charges, and regulations as required by the Commission. On February 23, 1984, the Commission issued an Order approving rates, charges, and regulations for Heins.

Based on the foregoing, the testimony and exhibits admitted at the hearings, and the entire record in this docket, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Heins Telephone Company, is a duly organized North Carolina corporation and a wholly owned subsidiary of The Heins Company. Heins is a public utility engaged in providing telephone service in North Carolina and is subject to the jurisdiction of this Commission. Heins 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. By its application, the Company requested rates designed to produce total annual operating revenues of $7,722,493, based upon a test year ended December 31, 1982. The Company contends that revenues under present rates are $6,652,067, thereby necessitating an increase of $1,070,426 which the Company proposes to achieve through increases in rates for local service.

3. The test period for purposes of this proceeding is the 12 months ended December 31, 1982.

4. The overall quality of service provided by Heins is adequate.

5. The schedule of depreciation rates as shown in Appendix A is reasonable and is approved.

6. Heins' reasonable original cost rate base used and useful in providing telephone service within the State of North Carolina is $13,202,456. This rate base consists of telephone plant in service of $21,248,812 plus Rural Telephone Bank stock of $479,947, and working capital of $281,729, reduced by accumulated depreciation of $7,333,518, accumulated deferred income taxes of $1,460,288, and accumulated pre-1971 investment tax credits of $14,226.

7. The proper level of end-of-period intrastate toll revenues for Heins in this proceeding is $3,223,985 which has been appropriately adjusted to reflect the phasedown of existing CPE from the settlements process and the effect of recognizing that the Company will receive 50% of the toll revenue increase granted in Docket No. P-100, Sub 64. Furthermore, Heins is hereby directed to establish a deferred account and to place in said deferred account any intrastate toll revenues in excess of $100,690 which the Company derives from the toll rate increases granted in Docket No. P-100, Sub 64.

8. Heins' total end-of-period operating revenues (net of uncollectibles) for the test year, under present rates and after accounting and pro forma adjustments, are $6,704,873.

9. The reasonable level of test year operating revenue deductions for Heins after end-of-period and pro forma adjustments is $5,868,030. This amount includes $1,343,689 for investment currently consumed through reasonable actual depreciation on an annual basis.

10. The Company's capital structure which is appropriate for use in this proceeding is as follows:

| Item | Percent |
|---|---|
| Long-term debt | 67.12 |
| Common equity | 32.88 |
| Total | 100.00 |

11. The Company's proper embedded cost of long-term debt is 5.48%, and the overall rate of return to be applied to the Company's original cost rate base is 8.53%. Said amount allows the Company to earn a 14.75% return on its investment supported by common equity. Such rates of return will enable Heins, 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 the investors.

12. The total annual gross revenue requirement for Heins is $7,274,674, an increase of $547,765 over the end-of-period gross revenues under present rates. This increase is required in order for Heins to have a reasonable opportunity to earn the 8.53% 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 period operating revenues and expenses, as previously determined and set forth in these findings of fact.

13. The rates and charges filed pursuant to the Commission's February 15, 1984, Notice of Decision and Order, and in accordance with the guidelines contained herein, which will produce an increase in annual revenues of $547,765, are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence supporting these findings of fact is contained in the verified application, the Commission's Order Setting Hearing, and the testimonies of Company witnesses Heins and Coffield. These findings of fact are essentially informational, procedural, and jurisdictional in nature and are, for the most part, uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding is found in the testimony of Company witness Heins. Witness Heins testified that the Company is now providing excellent service and has recently made large expenditures to install new central office equipment. This finding is further supported by the fact that only three public witnesses appeared at the hearings to testify, and two of them praised the Company's service and one complained about the service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence relating to capital recovery rates is contained in the testimonies and exhibits of Company witness Kettler and Public Staff witness Sutton. The prefiled testimony in this case indicates agreement between the Company and the Public Staff on all depreciation rate revisions with the exception of the COE-Digital and the Vehicles accounts.

In regard to Account 200.23 - Vehicles, witness Kettler recommended a rate of 12.9% based upon a remaining service life of 5.5 years and a net salvage of 29%. Witness Sutton estimated a remaining service life of 5.8 years and the same net salvage as the Company to arrive at a rate of 12.2%. During the Company's cross-examination of witness Sutton, questions were limited to issues relating to the COE-Digital account. Further, the Company presented rebuttal testimony that addressed the COE-Digital category but ignored the Vehicles account completely. In view of the Company's failure to challenge witness Sutton's proposal for the Vehicles account and due to the lack of testimony to support the difference in opinion of the witnesses which results from rounding to a remaining life of 5.5 years versus 5.8 years, the Commission finds that the appropriate depreciation rate for the Vehicles account is 12.2% based upon a remaining service life of 5.8 years and a net salvage of 29%.

Now turning to the COE-Digital account (Account 200.27), witness Kettler proposed a 7.8% remaining life depreciation rate based upon an 11.5-year remaining life and a depreciation reserve of 10.8%. Witness Sutton proposed a 4.8% remaining life depreciation rate based upon an 18.5-year remaining life and a 10.8% depreciation reserve. Witness Kettler stated that his recommendation for the COE-Digital category was based upon the experiences of the telecommunications industry on a nationwide basis rather than the experiences of telephone companies operating in North Carolina. Further, witness Kettler testified that the only company in North Carolina for which he had examined its physical facilities was Heins Telephone Company.

Witness Kettler stated that he examined the major components of the digital switch to develop his rate. It was determined by witness Kettler that the life of the computer processor was eight to 10 years. He weighted the 11% of the investment in the switch represented by the computer at an estimated life of 8 years, the 5% of the investment represented by the magnetic tape drives at an estimated life of 16 years, and for the remaining 84% of the investment he used an 18-year life. Using this process, witness Kettler arrived at a 13-year service life and an estimated remaining life of 11.5 years. Through this process, he developed a remaining life depreciation rate of 7.8%.

Witness Sutton stated that his recommended service life for the COE-Digital switching equipment was developed after discussions with FCC staff members, North Carolina telephone company depreciation experts, and other Public Staff depreciation experts. Witness Sutton testified that his recommended service life for this category was consistent with the service life recommendations by the Public Staff and prescriptions by the Commission for other telephone companies operating in North Carolina.

Digital switches have not been in service at Heins or elsewhere for a long enough period of time to develop statistical information on the actual lives of these units. Therefore, the Commission concludes that in this proceeding the best estimate as to the proper COE-Digital depreciation rate is that of witness Sutton since his recommendation is based upon detailed discussions with FCC staff members, North Carolina telephone company depreciation experts, and other Public Staff experts. Recommendations developed in this manner reflect nationwide trends in the telecommunications industry and are customized to more properly fit conditions prevailing in North Carolina. Furthermore, witness Sutton's recommendation is consistent with prescriptions by this Commission for other telephone companies under its jurisdiction.

Accordingly, the Commission finds that the appropriate remaining life depreciation rate for COE-Digital is 4.8% based upon a remaining service life of 18.5 years and a net salvage of 0%.

As to the appropriate capital recovery rates for all other classes of property excluding COE-Digital and Vehicles, the Company and the Public Staff were in agreement. Thus the Commission finds that the depreciation rates shown in Appendix A of this Order are reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence concerning the proper intrastate original cost rate base is found in the testimony and exhibits of Company witness Coffield and Public Staff witness Maness. The following chart summarizes the amounts which the Company and the Public Staff contend constitute the proper intrastate original cost rate base to be used in this proceeding.

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Telephone plant in service | $21,287,363 | $20,814,953 | $(472,410) |
| Rural Telephone Bank class B stock | 479,947 | - | (479,947) |
| Working capital allowance | 288,031 | 284,643 | (3,388) |
| Depreciation reserve | (7,398,723) | (7,333,518) | 65,205 |
| Accumulated deferred income taxes | (1,460,288) | (1,460,288) | - |
| Pre-1971 investment tax credit | (14,226) | (14,226) | - |
| Original cost rate base | $13,182,104 | $12,291,564 | $(890,540) |

The Company and the Public Staff are in agreement on the amounts for accumulated deferred income taxes and pre-1971 investment tax credits. There being no evidence to the contrary, the Commission concludes that the amounts presented and shown above for these items are reasonable and proper.

The first item of difference between the Company and the Public Staff is telephone plant in service. This difference of $472,410 consists of the following adjustments made by the Public Staff:

| Item | Amount |
|---|---|
| Elimination of Company adjustment to include CWIP which was actually in service before the hearing of the case | $(433,859) |
| Adjustment for allocation of plant in service to the nonregulated operations | (36,450) |
| Adjustment for allocation of 100% of CPE - related adjustments to intrastate operations | (2,101) |
| Total difference | $(472,410) |

The first adjustment made by the Public Staff with which the Company disagrees is the adjustment to remove from telephone plant in service construction work in progress (CWIP) which was actually in service before the hearing in this case but not yet transferred on the books of the Company to telephone plant in service.

The Company elected not to include any amount for CWIP in its original filing. It did, however, through rebuttal testimony of witness Coffield update its rate base at the hearing to include $540,545 ($433,859 intrastate) of additional plant that was in CWIP at the end of the test year. Witness Coffield stated that $54,553 of this combined balance represented plant actually in service at December 31, 1982, although the accounting entry to transfer it from CWIP had not been made at that time. Witness Coffield also testified that the remainder of the combined balance of $485,992 represented plant placed into service by November 25, 1983. Further, witness Coffield testified that this particular plant (CWIP) was installed primarily for the purpose of improving service, but that it would generate $4,200 per year of additional revenue because it would allow the Company to provide some vertical services such as call waiting and call forwarding that could not be provided without the new equipment. Likewise, witness Coffield testified under cross-examination that he was unable to quantify any cost savings which might result from placing the additional plant into service. Witness Coffield acknowledged the fact that he had not stated to witness Maness his desire to include any of the $540,545 in rate base during witness Maness's field examination. Futhermore, the question of inclusion of this CWIP amount in rate base had not been an issue in the case at any time until witness Coffield gave his rebuttal testimony. Finally, witness Coffield stated that the Company did not make any adjustment to the Company's financial records to transfer the $54,553 to plant in service as of December 31, 1982.

The Public Staff, while accepting the amount, did not include this plant as either CWIP or as telephone plant in service. Public Staff witness Maness testified that he made no effort to determine how much, if any, of this plant was in service prior to the hearing or whether this plant would produce revenue if it were placed into service.

Since the involved plant (CWIP) was actually in service prior to the hearing, the Commission concludes that in this proceeding it is reasonable and appropriate to treat the Company's $433,859 investment in CWIP as post-test year plant additions. Such treatment is recognized pursuant to G.S. 62-133(c) which allows for the inclusion of public utility property used and useful in providing service up to the close of the hearings. In recognizing this change in the Company's investment since the end of the test year, the Commission further finds that there is a need to impute additional net operating income on the post-test year plant additions based upon testimony during cross-examination on rebuttal, wherein witness Coffield agreed that the CWIP in service was producing additional revenues which he quantified to be $4,200 and had the capability to render additional services. Witness Coffield further stated that he was unable to quantify any cost savings which might result from placing the additional plant into service.

The Commission concludes that it is possible that substantial cost savings to the Company could result from this new plant in service and that the level of customers served by the Company could change due to this additional investment. Furthermore, if this investment were placed into plant in service without including all of the associated changes in revenues and expenses it would result in a violation of the test year matching concept. Therefore, the Commission finds that in this proceeding it is appropriate to impute additional net operating income of $28,168 on the post-test year plant additions. Such amount was determined based on the ratio of net operating income to original cost rate base, exclusive of the post-test year plant additions.

The second adjustment of $36,450 results from the difference between the Public Staff's adjustment of $128,788 and the Company's adjustment of $92,338 to allocate a portion of plant in service to Heins Communications, Inc. (HCI), which offers nonregulated services. HCI is a nonregulated subsidiary of The Heins Company, a holding company which also owns 100% of the stock of Heins Telephone Company. HCI is engaged in the business of selling and servicing residential and business communications equipment. Many of the employees of Heins also perform work for HCI. Currently, all of the officers of HCI are also officers of Heins. For these reasons, the Public Staff and the Company allocated some of the expenses and investment on the books of Heins to HCI.

Public Staff witness Maness testified that he allocated $128,788 of the Company's investment in telephone plant in service to HCI. Witness Maness testified that the plant investment accounts he adjusted were Land, Buildings, Office Equipment, and Vehicles and Other Work Equipment, since these facilities support the nonregulated work that is performed by Heins employees for HCI. To calculate this adjustment, witness Maness first calculated a payroll factor of 4.9742% which is the ratio of payroll allocated to HCI after Public Staff adjustments divided by the total annualized payroll which was determined by witness Maness by applying the August 31, 1983, wage rates to the level of employees at the end of the test year. This payroll factor of 4.9742% was then applied to the December 31, 1982, general ledger balances in each of the above-mentioned accounts to determine witness Maness's portion of these accounts which supports the nonregulated work performed by Heins employees. Witness Maness testified that the allocation of plant in service to HCI recognizes the fact that the ratepayers should not be required to pay carrying charges on plant which is not used and useful in providing their telephone service.

During cross-examination, counsel for the Company questioned witness Maness as to the appropriateness of his allocation methodology being that it was the opinion of the Company that witness Maness's method allocated facilities to HCI that are not in any way used by HCI. In response, witness Maness testified that his use of a nonregulated payroll factor which measured the portion of total payroll allocated to HCI was appropriate since he used the total general ledger balances of the particular accounts to apply the factor to. Further witness Maness testified that, if certain assets were excluded from the particular plant balances on the grounds that they specifically did not support nonregulated activity, certain employees would have to be excluded from the calculation of the nonregulated payroll factor, on the grounds that they specifically did not perform nonregulated work. According to witness Maness, this would have the effect of making the nonregulated payroll factor larger, and therefore, as the plant balance available for allocation to HCI grew smaller, the percentage of the plant base allocated to HCI would grow larger. Witness Maness testified that he did not allocate any investment to HCI which does not support nonregulated activity, because the nonregulated payroll factor which he used took into account all of the employees who work for Heins including those who do not perform nonregulated work.

Witness Maness also testified that the rent paid by HCI to Heins Telephone during the test year, in the amount of $5,700, was not adequate to cover the cost of all facilities used by HCI. Witness Maness stated that he felt the rental charge was adequate to cover some of the costs related to the use of the facilities, such as maintenance and security services.

In the Company's original filing, there was no allocation made to reflect the level of plant used by HCI. The Company simply included the actual rental charges of $5,700 to HCI.

In rebuttal testimony, Company witness Coffield presented an exhibit which showed a study performed by the Company to determine the amount of investment to be allocated to HCI. This study took into consideration only those areas which, in the Company's opinion, support nonregulated activities. These areas are the Work Center, the Gordon Street headquarters building, and a building formerly used for data processing which is currently being prepared as a facility to be used only by HCI. Witness Coffield applied various factors to the investment in these areas to determine the amount of investment to be allocated to HCI. The factor applied to the Work Center was based on the test year allocation of payroll to HCI. The Gordon Street factor was determined using both payroll and square footage data. The building which formerly housed data processing was allocated to HCI in total. The final total of telephone plant in service allocated to HCI per Company witness Coffield's rebuttal testimony was $92,338.

Under cross-examination, witness Coffield stated that, if a higher payroll allocation factor were to be used, the allocation of the Work Center investment to HCI would be greater.

Based on the evidence presented by the witnesses, the Commission concludes that an allocation of Heins' facilities to HCI is proper and should be made, in order to reflect the fact that these facilities support nonregulated activity. The issue remaining before the Commission is the determination of the proper allocation methodology and the proper amount of investment to be allocated to HCI. The Commission concludes that plant in service at December 31, 1982, in the amount of $128,788 should be allocated to nonregulated operations, as recommended by Public Staff witness Maness. The Commission recognizes that the allocation methodology set forth by the Company in its rebuttal testimony is a more detailed analysis than that used by the Public Staff, in that it considers only those assets believed by the Company to support HCI work, and uses other factors as well as payroll to allocate those assets to HCI. However, the payroll factors used in the Company's analysis are based on the allocations of payroll to HCI made by the Company during 1982 on a per books basis. As discussed in Evidence and Conclusions for Finding of Fact No. 9, the Commission has accepted the Public Staff's adjustment to allocate payroll to HCI based on the percentage of payroll allocated to HCI during the first eight months of 1983. The use of the proper payroll factor in the Company's analysis would tend to make the allocation greater, thus bringing it closer to the amount recommended by the Public Staff. Since the Public Staff has used its adjusted payroll factor to allocate investment, the Public Staff allocation is more accurate than the Company's in recognizing current actual conditions.

The Commission also recognizes that the Company did not use its study to make per book allocations during the test year, nor to make pro forma adjustments in its original filing. Public Staff witness Maness, faced with this fact as well as time constraints, used a factor based on payroll to make allocations of investment, since the assets of the Company support the work performed by its employees. The Commission concludes that for the purposes of this proceeding, it is reasonable and proper to utilize the payroll factor recommended by Public Staff witness Maness to make allocations of investment to HCI.

Further, the Commission concludes that the $5,700 allocated to HCI by the Company during the test year as "rent" is considered a reasonable charge to HCI for services such as security and maintenance related to the facilities used by HCI. The purpose of removing the assets themselves from rate base is to ensure that the ratepayers are not required to pay a return on investment used for nonregulated activity.

The final difference in plant in service results from the Public Staff's use of a different methodology to allocate plant to HCI which, in turn, effects the level of adjusted total Company amounts which are the basis for making the adjustment to allocate CPE-related adjustments to local operations. Public Staff witness Maness testified that the FCC has ordered that the per books level of investment and expenses related to customer premises equipment be frozen as of December 31, 1982, thus any end-of-period or pro forma adjustments related to CPE must be allocated entirely to local operations. Witness Maness allocated to local operations $21,331 which would have otherwise been allocated to interstate toll operations, and the Company only allocated $19,230, which results in a difference of $2,101.

The Commission concludes that an adjustment should be made to intrastate plant in service to ensure that 100% of the end-of-period and pro forma adjustments related to CPE are allocated to local operations. The Commission recognizes that, to the extent the end-of-period and pro forma adjustment amounts change, the calculation of the amount shifted to local operations will change. However, since the Commission agrees with all the Public Staff adjustments on the allocation of plant in service to HCI, the Commission concludes that the Public Staff's calculation is correct and that $21,331 is the proper amount to be shifted to local operations.

The Commission therefore concludes that the reasonable and proper level of telephone plant in service for use in this proceeding is $21,248,812.

The next item of difference between the Company and the Public Staff is the treatment of Rural Telephone Bank (RTB) class B stock.

The Company contends that the investment in RTB class B stock should be included as an element of original cost rate base, while the Public Staff contends that the interest cost of the debt which supports the stock investment should be included as an operating expense in the determination of net operating income for return.

Company witness Coffield testified that in the Company's opinion it is proper to include the stock in rate base so that it will earn the overall rate of return. Witness Coffield stated that RTB class B stock has in the past been included in rate base by the Commission. Additionally, he testified that in Heins' most recent rate case the Public Staff advocated rate base treatment; he testified further that rate base treatment is also recommended by the National Association of Regulatory Utility Commissioners (NARUC). As further support for his position, witness Coffield testified that RTB class B stock is currently included in the investment base for toll settlement treatment by Southern Bell; however, if the Commission removed the stock from rate base, it would no longer be eligible for inclusion in the toll revenue settlement base.

Public Staff witness Maness testified that the Company obtains RTB class B stock in the course of its RTB debt financing. When the Company obtains a loan from the RTB, it is required to sign a promissory note for 105% of the loan amount desired. Instead of receiving the additional 5% in the form of money, the Company receives the same value in the form of shares of RTB class B stock. This stock is carried as an investment on the Company's financial statements; however, it generates no dividends or other revenues. Witness Maness stated that the Company should be able to obtain through rates the cost of the debt which supports this stock, since the acquisition of the stock is a requirement for RTB debt financing.

Witness Maness stated that, in his opinion, the Company's inclusion of this RTB stock in rate base is incorrect because it assigns a portion of the stock to common equity and, thus, allows it to earn the equity return. According to witness Maness, the method advocated by the Public Staff enables the Company to earn exactly the cost of the stock, which is in effect the cost of the debt which supports it. Witness Maness testified that "unlike most utility investment, the cost of capital supporting this stock is specifically identifiable; it is the interest cost of the debt incurred to purchase each stock issue." Witness Maness removed the stock investment from rate base and included the associated interest cost in the income statement as an operating expense. Further, witness Sessoms excluded the debt which supports RTB class B stock from his calculation of capital structure and the embedded cost of debt, in order to be consistent with the accounting treatment of the stock recommended by Public Staff witness Maness.

The Commission concludes that it is proper for the Company to include the investment in RTB stock of $479,947 in rate base. Such treatment is consistent with the way the Commission has handled RTB class B stock in past cases such as: Ellerbe Telephone Company, Docket No. P-21, Sub 36; Mebane Home Telephone Company, Docket No. P-35, Sub 71; Randolph Telephone Company, Docket No. P-61, Sub 54; and Citizens Telephone Company, Docket No. P-12, Sub 80. Furthermore, this rate base treatment is recommended by NARUC, and presently Southern Bell is including this RTB stock investment in the toll investment upon which Heins' toll settlement is earned. If the Commission were to adopt the position of the Public Staff, such treatment would result in a reduction in the amount of toll revenue which the Company would receive in the future.

The next area of difference is the appropriate working capital allowance. The working capital allowance is comprised of cash working capital, materials and supplies, and average prepayments, less average tax accruals and customer deposits. The only component that the Company and Public Staff differ on is cash working capital. This difference of $3,388 results solely from the witnesses' different levels of operating expenses exclusive of depreciation. In Evidence and Conclusions for Finding of Fact No. 9 hereinafter, the Commission has concluded that the proper level of operating expenses is $3,608,269. Consequently, the Commission finds that the proper cash working capital amount is $300,689 and the total working capital allowance appropriate for use herein is $281,729.

The final item of difference between the Company and the Public Staff is the depreciation reserve. This difference of $65,205 consists of the following adjustments made by the Public Staff:

| Item | Amount |
|---|---|
| Adjustment for allocation of depreciation reserve to nonregulated activity | $ 9,964 |
| Adjustment to end-of-period depreciation expense | |
| Total difference | $65,205 |

The first of these adjustments is the corollary adjustment to the Public Staff's adjustment to allocate plant in service investment to HCI which conducts nonregulated activity. Since the Commission has concluded that the Public Staff's adjustment to allocate plant in service to HCI is proper, the Commission also concludes that the related depreciation reserve adjustment is reasonable and proper.

The final adjustment made to the depreciation reserve by the Public Staff is an adjustment of $55,241 to reflect end-of-period depreciation using the Public Staff's recommended depreciation rates. This amount matches the Public Staff's adjustment to bring depreciation expense to an end-of-period level. As discussed in Evidence and Conclusions for Finding of Fact No. 9, the Commission agrees with the Public Staff adjustment to depreciation of $55,241. Therefore, the Commission concludes that the adjustment of $55,241 made to the depreciation reserve by the Public Staff is reasonable and proper.

The Commission therefore concludes that the proper accumulated depreciation reserve for use in this proceeding is $7,333,518.

In summary, the Commission concludes that the reasonable intrastate original cost rate base for use in this proceeding is $13,202,456, and consists of the following items:

| Item | Amount |
|---|---|
| Telephone plant in service | $21,248,812 |
| Investment in RTB stock | 479,947 |
| Working capital allowance | 281,729 |
| Depreciation reserve | (7,333,518) |
| Accumulated deferred income taxes | (1,460,288) |
| Pre-1971 investment tax credit | (14,226) |
| Original cost rate base | $13,202,456 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witnesses Drury and Coffield and Public Staff witnesses Gerringer and Maness presented testimony and exhibits concerning the representative level of end-of-period gross intrastate toll revenues.

According to the proposed Orders filed by the parties in this proceeding as to the proper level of toll revenues under present rates, the Company finds that the level of toll revenues is $3,134,333, whereas the Public Staff concludes that the amount for toll revenues is $3,313,613, resulting in a $179,280 difference.

Company witness Coffield showed a representative level of gross intrastate toll revenues at December 31, 1982, of $3,107,231 in his filed direct

testimony and exhibits. This amount, which did not include any uncollectible toll revenue contribution, was largely determined by the calculation method used to settle toll revenues with Southern Bell on an actual cost basis. The calculation was made using adjusted end-of-period levels of intrastate toll net investment settlement base and expenses including adjustments related to the phasedown of customer premises equipment (CPE) and an intrastate toll settlement ratio of 11.27%, the actual achieved ratio for the year ending December 31, 1982.

Public Staff witness Gerringer showed a preliminary representative level of gross intrastate toll revenues at December 31, 1982, of $3,155,137 which did not include any uncollectible toll revenue contribution. Witness Gerringer indicated that this amount was determined by a toll settlement calculation like that used by the Company with the major difference being that he used a settlement ratio of 11.36% and adjusted for the phasedown of CPE differently than the Company did. The 11.36% settlement ratio resulted from summing monthly achieved final settlement ratios for a 12-month period - July 1982 through June 1983 - with six months falling on each side of the end of the test period, December 31, 1982.

According to Heins' proposed Order, the Company accepted the 11.36% settlement ratio used by witness Gerringer in his toll settlement calculation and the CPE phasedown adjustments reflected in his calculation. There being no evidence to the contrary, the Commission accepts that the level of toll revenue produced with an 11.36% settlement ratio in the toll settlement calculation with CPE phasedown adjustments is $3,155,137.

The $179,280 difference between the parties with respect to toll revenues results from four adjustments made by the Public Staff which are as follows:

| Item | Amount |
|---|---|
| Adjustment as a result of Docket No. P-100, Sub 64: | |
| A. Toll rate increase from MTS, WATS, and Private Line | $174,867 |
| B. Toll rate increase from Directory Assistance | 26,514 |
| Adjustment as a result of the Public Staff's adjustments to items affecting toll settlement calculation | |
| A. Rate base adjustments | 1,586 |
| B. Operating expense and tax adjustments | (23,687) |
| Total adjustments | $179,280 |

The first two adjustments deal with the Public Staff's inclusion of $201,381 ($174,867 and $26,514) of toll revenues which are the estimated increase in toll revenues for the Company resulting from the latest toll rate changes which became effective September 27, 1983.

Company witness Drury through rebuttal testimony presented the Company's opposition to the inclusion of the revenue impact of the intrastate toll rate case proceeding in Docket No. P-100, Sub 64. Basically, witness Drury had three arguments for objecting to such inclusion of toll revenues. First, witness Drury stated that an increase in intrastate toll rates does not necessarily increase toll revenues to the Company and cited the case of the last intrastate toll rate increase where rates went up and toll revenues to Heins actually decreased. Second, witness Drury testified that the only way Heins gets increased toll revenues is through an increase in the toll

settlement ratio and that for Heins to obtain the revenues of $174,867 attributed to it by the Public Staff the entire toll pool would have to achieve a return of 13.32%. Finally, witness Drury indicated that due to changes in the entire structure of the toll business being considered in Docket P-100, Sub 65, Heins no longer has toll settlement contracts with Southern Bell or ATTCOM and the amount of toll revenue it will receive is simply a matter of speculation. Witness Drury suggested that the Commission should fix local service rates by using end-of-period toll revenues without regard to the increase in toll rates and that, if it achieves a settlement ratio higher than that used in the determination of those revenues, the excess be refunded to customers.

The Commission has recently recognized the difficulties of determining intrastate toll revenues in the cases of Continental Telephone Company, Docket No. P-128, Sub 3, and Mid-Carolina Telephone Company, Docket No. P-118, Sub 27. In those cases the Commission directed that a portion of the increase in toll revenues resulting from the increase in toll rates in Docket No. P-100, Sub 64, be placed into a deferred account to await further Order of the Commission after a hearing to be held within the next year. The Commission considers this procedure to be fair to both Heins and its ratepayers in view of the uncertainties posed by deregulation and significant changes in the telecommunications industry. The Commission concludes that it is reasonable to find that the Company's level of intrastate toll revenues for purposes of this case should only be increased by 50% of the toll revenue increase granted in Docket No. P-100, Sub 64. Furthermore, Heins is hereby directed to establish a deferred account and to place in said deferred account any intrastate toll revenues in excess of $100,690 which the Company derives from the toll rate increases granted in Docket No. P-100, Sub 64. As previously stated in the Commission Order entered in Docket No. P-100, Sub 64, on September 14, 1983, the appropriate rate-making treatment to be accorded to any toll revenues placed in such deferred account will be considered by the Commission in the context of a further hearing to be held this year.

The remaining two differences between the parties are in regard to their positions on rate base, operating expenses, and taxes. Since witness Gerringer calculated his end-of-period toll revenues based upon the expenses and rate base originally proposed by the Company, it is necessary to reflect the toll revenue effects of any adjustments made to both rate base and expense items affecting toll. In Evidence and Conclusions for Findings of Fact Nos. 6, 9, and 10, the Commission has made its own determination as to the proper level of rate base and expenses and thus has made adjustments to bring the expenses and rate base originally proposed by the Company to the levels the Commission has found appropriate. The Commission finds that toll revenues should be increased by $28,388 to reflect its position on rate base which would include the RTB stock investment in the toll settlement base. Further, the Commission has decreased toll revenues by $60,230 to reflect the effects of its position on operating expenses and taxes which does not recognize interest expense on RTB stock as an operating expense.

Based upon the decisions herein, the Commission finds that the appropriate level of end-of-period gross intrastate toll revenues for inclusion in this proceeding is $3,223,985, consisting of revenues from: toll settlement calculation of $3,155,137, plus rate increase from Docket No. P-100, Sub 64, of $100,690, plus toll effect of rate base adjustments of $28,388, less toll effect of expense adjustments of $60,230.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witnesses Drury and Coffield and Public Staff witnesses Gerringer and Willis presented testimony and exhibits concerning the representative level of end-of-period operating revenues. The following schedule represents the position of the parties on this subject:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Local service revenue | $3,060,074 | $3,060,074 | $ - |
| Toll service revenue | 3,134,333 | 3,313,613 | 179,280 |
| Miscellaneous revenue | 442,850 | 442,850 | - |
| Uncollectibles | (22,036) | (22,036) | - |
| Total operating revenues | $6,615,221 | $6,794,501 | $179,280 |

During the course of the hearing, the Company accepted the determinations of the Public Staff as to local service revenue, miscellaneous revenue, and uncollectibles. There now being no dispute between the parties as to those items, the Commission concludes that the figures shown above are reasonable and appropriate for use in this proceeding.

As previously discussed in Evidence and Conclusions for Finding of Fact No. 7, the Commission concludes that the proper end-of-period level of intrastate toll revenue for use in this proceeding is $3,223,985.

In summary, the Commission concludes, based upon the preceding discussion, that the proper end-of-period level of operating revenues for use herein is $6,704,873 and is made up of the following:

| Item | Amount |
|---|---|
| Local service revenue | $3,060,074 |
| Toll service revenue | 3,223,985 |
| Miscellaneous revenue | 442,850 |
| Uncollectibles | (22,036) |
| Total operating revenue | $6,704,873 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence concerning the proper end-of-period level of intrastate operating revenue deductions is found in the testimony and exhibits of Company witness Coffield and Public Staff witness Maness. The following chart compares the amounts which the parties contend should be included in the end-of-period level of operating revenue deductions:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Operating expenses | $3,683,896 | $3,643,237 | $(40,659) |
| Depreciation expense | 1,397,869 | 1,343,689 | (54,180) |
| Operating taxes other than income taxes | 698,644 | 704,533 | 5,889 |
| State income tax | 22,937 | 41,620 | 18,683 |
| Federal income tax | 86,162 | 220,803 | 134,641 |
| Total operating revenue deductions | $5,889,508 | $5,953,882 | $ 64,374 |

The first item of difference between the Company and the Public Staff is operating expenses. The difference of $40,659 consists of the following adjustments made by the Public Staff:

| Item | Amount |
|---|---|
| Adjustment to depreciation charged to maintenance expense | $ (1,071) |
| Inclusion of RTB stock interest expense | 34,968 |
| Adjustment for allocation of expenses to HCI - nonregulated activity | (74,556) |
| Total adjustments | $(40,659) |

The first adjustment made by witness Maness is the adjustment to depreciation charged to maintenance expense of $1,071. The parties determined their depreciation expense using their respective recommended depreciation rates and adjusted plant in service levels reflective of their allocation of investment to HCI, thus the Company and the Public Staff determined their adjustments to depreciation charged to maintenance expense to be $11,492 and $12,563, respectively. As is discussed in the section below relating to depreciation expense, the Commission concludes that it is proper to reduce maintenance expense by an adjustment of $12,563 which is $1,071 more than the Company's adjustment.

The second adjustment made by witness Maness is a $34,968 adjustment to include interest on the debt which supports RTB class B stock in operating expenses. As is discussed in Evidence and Conclusions for Finding of Fact No. 6, the Commission has decided that RTB stock should not be removed from the Company's rate base and, therefore, it follows that operating expense should not be increased by $34,968 as proposed by the Public Staff to include interest on the RTB investment.

The final item of operating expense which is in controversy is the allocation of expenses to HCI in the amount of $74,556. Both the Company and the Public Staff agree that because many of the employees of Heins perform work for HCI and many of Heins' facilities are used for such work, it is necessary to allocate expenses and investment from the regulated business to the nonregulated business.

In regard to expense allocations, witness Maness testified that, while the Company did make allocations of expenses to HCI during the test year based on the level of nonregulated work performed by its employees, in his opinion those allocations were insufficient to recognize the current level of nonregulated activity. Witness Maness pointed out that "dramatic" changes

relating to nonregulated activity have taken place since the end of the test year. He testified that the number of new phones sold by HCI during the first eight months of 1983 had already doubled the total number sold during 1982. Further, witness Maness testified that due to these changes, as well as an increase in HCI administrative work being performed by Heins personnel, the amount and percentage of labor hours and dollars charged to HCI has increased greatly. Witness Maness testified that this known and actual change in the level of nonregulated activity "must be recognized in order to ensure that the ratepayers do not subsidize the nonregulated operations of the Company."

In computing his adjustment, witness Maness testified that he calculated the proper amount of payroll and vehicle expenses to be allocated to HCI by applying a percentage factor to the annualized test year expense in the appropriate expense category. He testified that the percentage factors were determined by calculating the percentage of nonregulated work performed by Heins employees during the first eight months of 1983. Witness Maness pointed out that the 1983 information shows that a much larger percentage of employee work is being performed for HCI than was the case in 1982.

Witness Maness testified that he applied the nonregulated activity percentage to annualized test year payroll and vehicle expenses, resulting in the appropriate amount of expense to be allocated to HCI. From this amount, witness Maness testified that he subtracted the amount already allocated to HCI by the Company during the test year on an annualized basis; this difference resulted in his adjustment to allocate an additional $74,556 of expenses to HCI.

As to the Public Staff's allocation methodology which is based upon the ratio of hours worked on unregulated activities since the test year to total hours worked on all activities and applied to test year expenses, the Company objected to such treatment as it was the Company's opinion that no evidence was presented to establish a correlation between test year expenses and post-test year activities or the post-test year cost of providing those activities.

With regard to general office payroll, witness Maness testified that the allocation differed from his allocation of other expense categories, in that he allocated officers' salaries by another method. He stated that, since those officers of Heins who are also officers of HCI have the final responsibility for HCI's management, their salaries should be allocated on the basis of responsibility rather than time worked. As a measure of responsibility, witness Maness used the relationship of nonregulated revenues to total revenues. Witness Maness also testified that he used this methodology when calculating the amount of expenses already allocated to HCI by the Company, so that essentially no dollar effect is generated by the Public Staff methodology.

Under cross-examination, witness Maness testified that he did not adjust all expenses of the Company for conditions which existed in 1983, but instead reflected only the fact that the portion of expense allocated to HCI had increased as a percentage of total expenses. On the subject of officers' salaries, witness Maness stated under cross-examination that, if the responsibilities of Company officers entail performing work for HCI, the ratepayers should not be forced to subsidize the nonregulated business by paying in rates to cover the wages and salaries for HCI work performed by

those officers. He testified further that, even if the overall salaries of those officers do not change because of the addition of nonregulated activity, it is not reasonable to assume that the Company's officers are paid no salary at all for work they do for HCI.

The Company disagreed with the Public Staff's use of the ratio of revenues generated from deregulated activities as related to total revenues from all activities to allocate officers' salaries. The Company argued that a single sale by an employee of HCI (i.e., an employee not on the payroll of the Applicant) would result in the allocation of more of the Applicant's expenses to HCI and that such a correlation between nonregulated sales and the Applicant's expenses has not been established by the evidence.

The Commission recognizes that the procedures to effectuate the proper allocations of investments and expenses between utility and nonutility operations are a relatively new area of concern. In regard to the allocation of officers' salaries, the Commission concludes that the allocation should reflect the responsibility which those officers bear to manage HCI effectively. Under the present circumstances, the Commission concludes that the Public Staff's use of the ratio of HCI revenues divided by the total of HCI and Heins revenues is a reasonable measure of the officers' responsibility and appropriate for use in this proceeding. However, the Commission wishes to point out that its acceptance of the Public Staff's allocation methodologies in this proceeding will not preclude the Commission from reviewing and possibly accepting other allocation methods in subsequent cases. The Commission encourages the Company to make further study and refinement of its current allocation practices to aid the Commission in its determination of appropriate allocation methodologies in Heins' future rate case proceedings.

Based on the evidence presented, the Commission concludes that the adjustment recommended by the Public Staff of $74,556 to allocate additional operating expenses to HCI is just and reasonable. The Public Staff has presented evidence which indicates that the level of nonregulated activity has increased substantially since the end of the test year. The Commission recognizes that this increased activity must be taken into account in order to prevent subsidization of the nonregulated business by the regulated business. When two companies are as closely related as Heins and HCI, extreme care must be taken to avoid any such subsidization. It would not only place an unfair burden upon the ratepayers, but also provide the nonregulated business with an unfair advantage over its competitors. Finally, the methodology employed by Public Staff witness Maness recognizes that nonregulated activity has increased since the end of the test year. Thus, the Commission concludes that the approach employed by witness Maness is conceptually consistent with the methodologies proposed by the Public Staff and accepted by the Commission in other telephone rate cases.

In summary, the Commission concludes that the reasonable level of operating expenses for use in this proceeding is $3,608,269.

The next item of difference between the Company and the Public Staff is depreciation expense. The difference of $54,180 reflects the differing opinions of the parties as to the level of end-of-period plant and depreciation rates. Since the Commission agrees with the level of plant in service after allocations to HCI and the depreciation rates recommended by the Public Staff, as discussed in Evidence and Conclusions for Findings of Fact

Nos. 6 and 5, respectively, the Commission concludes that the depreciation expense adjustment of $54,180 is proper. Correspondingly, the Commission concludes that the depreciation adjustment of $1,071 charged to maintenance expense is also proper. The Commission concludes that the reasonable level of depreciation expense for use in this proceeding is $1,343,689.

The next item of difference between the Company and the Public Staff is operating taxes other than income taxes. The difference of $5,889 consists of the following Public Staff adjustments:

| Item | Amount |
|---|---|
| Adjustment to end-of-period property taxes | $ (268) |
| Adjustment to end-of-period gross receipts taxes | 10,756 |
| Allocation of payroll taxes to HCI | (4,599) |
| Total adjustments | $ 5,889 |

The first adjustment made by the Public Staff is the adjustment to end-of-period property taxes of $268. Public Staff witness Maness testified that he adjusted property taxes to reflect the current tax rates and the level of plant in service adjusted for plant allocation to HCI recommended by the Public Staff which would mean the property tax level would be $156,078. The Company's level of property tax was $156,346 which was calculated using current tax rates and the Company's adjusted level of plant in service. Since the Commission has agreed with the Public Staff's adjustments to the items included in the property tax base (i.e., plant in service adjusted for plant allocation to HCI), the Commission concludes that the reasonable and proper level of property taxes is $156,078.

The next adjustment made by the Public Staff is the adjustment to gross receipts tax of $10,756. Public Staff witness Maness testified that he adjusted gross receipts tax to take into account the end-of-period levels of revenues recommended by the Public Staff, as well as the end-of-period levels of those items which the Company deducts in arriving at the gross receipts tax base. Under cross-examination, witness Maness testified that the statutory gross receipts tax rate of 6% is not applied to the overall level of operating revenues, because the Company deducts several items from that amount before applying the statutory rate. Witness Maness also testified that, consistent with deductions allowed by the North Carolina Department of Revenue, he deducted uncollectible revenues in determining the gross receipts tax base.

The Company and the Public Staff were in agreement as to the method used to calculate gross receipts tax. The difference in gross receipts tax results from the fact that the level of toll revenue of the Public Staff is $179,280 more than the Company which increases gross receipts tax by $10,756.

As discussed in Evidence and Conclusions for Finding of Fact No. 8, the Commission has set the level of operating revenues at $6,704,873, a decrease of $89,628 over the Public Staff's recommendation. It is necessary, therefore, to exclude 6% of the $89,628 reduction, or $5,378, from operating taxes to recognize the reduction in gross receipts taxes associated with the decrease in revenues. The Commission therefore concludes that the proper level of gross receipts taxes in $389,037.

The final adjustment to operating taxes other than income taxes made by Public Staff witness Maness is the allocation of payroll taxes to HCI. As discussed above, the Commission agrees with the allocation of operating expenses, including the allocation of payroll, to HCI as proposed by witness Maness. Therefore, the Commission concludes that the payroll taxes related to the payroll allocated to HCI should also be allocated, and that witness Maness' adjustment of $4,599 is reasonable and proper.

In summary, the Commission concludes that the proper end-of-period level of operating taxes other than income taxes is $699,155.

The final two items of difference between the Company and the Public Staff are State and Federal income taxes. Since the Commission has not accepted the level of operating revenues and operating revenue deductions proposed by either the Company or the Public Staff, it would not be appropriate to use the State and Federal income taxes proposed by either party. Therefore, the Commission has calculated its own level of State and Federal income taxes based upon the level of revenues and expenses which it has adopted and concludes that the proper levels of State and Federal income tax expense for use in this proceeding are $36,075 and $180,842, respectively.

In summary, the Commission concludes that the proper level of operating revenue deductions for use in this proceeding is $5,868,030 made up of the following:

| Item | Amount |
|---|---|
| Operating expenses | $3,608,269 |
| Depreciation | 1,343,689 |
| Operating taxes other than income taxes | 699,155 |
| State income tax | 36,075 |
| Federal income tax | 180,842 |
| Total operating revenue deductions | $5,868,030 |

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

Two witnesses testified on cost of capital. The Company presented the testimony of Dr. James H. Vander Weide, President of Utility Financial Services, Inc., and the Public Staff presented the testimony of George T. Sessoms, Jr., a Public Utilities Financial Analyst of the Public Staff.

Concerning the capital structure, witness Vander Weide recommended the actual capital structure of Heins Telephone Company at December 31, 1982. This capital structure consisted of 30.52% common equity and 69.48% long-term debt at an embedded cost rate of 5.44%.

Witness Sessoms recommended the actual capital structure of Heins Telephone Company at June 30, 1983, which consisted of 31.99% common equity and 68.01% long-term debt at an embedded cost of 5.47%. However, in conformity with the approach of removing the RTB stock from rate base, he removed the debt supporting the RTB stock from the capital structure and the calculation of the embedded cost of debt. After this adjustment, he recommended rates be set on a capital structure consisting of 33.08% common equity and 66.92% long-term debt at an embedded cost of 5.37%.

During cross-examination of Public Staff witness Sessoms, the Company asked the witness if he would object to using the September 30, 1983, capital structure which would be a more recent structure than that originally proposed by either the Company or the Public Staff. Witness Sessoms stated that he did not object if such capital structure could be established and if it were properly adjusted to remove the debt supporting the RTB stock. According to the Company's proposed Order, the proper capital structure for use in this proceeding is the actual capital structure at September 30, 1983, which consisted of 32.88% common equity and 67.12% long-term debt at an embedded cost of 5.48%.

Consistent with the Commission's decision to include the RTB stock investment in rate base, the Commission finds the following capital structure appropriate for recognition in this proceeding:

| Item | Percent |
|---|---|
| Long-term debt | 67.12% |
| Common equity | 32.88% |
| Total | 100.00% |

The Commission further concludes that the appropriate embedded cost rate for long-term debt is 5.48%.

Concerning the return on common equity, witness Vander Weide recommended 16.50% and witness Sessoms recommended 14.25%.

Witness Vander Weide determined the cost of common equity capital by employing two methods. His first method involved applying the discounted cash flow (DCF) method to a group of eight independent telephone companies whose stock is traded on the New York Stock Exchange as surrogates to Heins to determine the average DCF cost of equity capital since Heins' stock is not publicly traded. Using the results of this method, witness Vander Weide found the cost of equity to Heins to be in the range of 15.33% - 15.79%. Witness Vander Weide's second method involved applying a risk-premium derived by examining the difference between the historical returns on equity and long-term debt. After conducting his own risk premium study and reviewing the results of other studies, he concluded that a 5.0% risk premium added to the yields of Baa public utility bonds with a range of 12.50% - 12.75% supported an expected equity return of 17.50% - 17.75%. From the results of these two methods, witness Vander Weide recommended that the cost of equity to Heins was 16.50%. By combining his December 31, 1982, recommended capital structure and embedded cost rate with his 16.50% recommended cost of equity, the overall cost of capital equaled 8.82%.

Witness Sessoms also determined the cost of common equity capital by employing two methods. His first method involved applying the DCF method to a group of eight independent telephone companies evaluated by Value Line and, in his opinion, of comparable risk. The results of the DCF for the group ranged from 13.1% to 15.1%. The second method he employed was the capital asset pricing model (CAPM). Using the CAPM required witness Sessoms to first determine the expected return on the market portfolio which he represented by using the Standard and Poor's 500. Witness Sessoms concluded that the expected return was equal to 15%. After examining various risk measures, it

became evident to him that the risk of a company in the business of providing local telephone service is lower than the risk to the market as a whole and therefore would require a return of less than 15.0%. This led to a CAPM result for the cost of equity equaling 13.9%. From the results of the DCF and the CAPM, he concluded the cost of equity to Heins is 14.00% to 14.50%. Thus, he recommended 14.25%. By combining his previously recommended capital structure and embedded cost of debt with his 14.25% recommended cost of equity, the overall cost of capital equaled 8.30%.

In rebuttal, witness Vander Weide testified that the risk premium employed in witness Sessoms' use of CAPM was too low in consideration of the findings of the Ibbottson-Sinquefield study of the difference between the historical returns of long-term government bonds and common stocks between 1926 - 1981. Witness Vander Weide disagreed with the use of the last 10 years of the study as a basis for establishing the risk premium. However, witness Vander Weide did acknowledge on cross-examination that over the last 10 years of the study the returns of common stocks have been less volatile than over the entire period of the study, that returns of long-term government bonds have become more volatile than over the entire period of the study, and that the risk premium was less in the last 10 years.

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 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 Company, 285 N.C. 277, 206 S.E. 2d 269 (1974).

The Commission has considered 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.

Based upon the foregoing and the entire record in this docket, the Commission concludes that the fair rate of return that Heins Telephone Company should have the opportunity to earn on its original cost rate base is 8.53%. Such fair rate of return will yield a fair return on common equity of approximately 14.75%.

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 the 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. 12

The Commission has previously discussed its findings and conclusions concerning the fair rate of return which Heins Telephone Company 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. The schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended December 31, 1982

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues: | | | |
| Local service | $3,060,074 | $547,765 | $3,607,839 |
| Toll service | 3,223,985 | - | 3,223,985 |
| Miscellaneous | 442,850 | - | 442,850 |
| Uncollectibles | (22,036) | (986) | (23,022) |
| Total operating revenues | 6,704,873 | 546,779 | 7,251,652 |
| Operating Revenue Deductions: | | | |
| Operating expenses | 3,608,269 | - | 3,608,269 |
| Depreciation and amortization | 1,343,689 | - | 1,343,689 |
| Operating taxes other than income taxes | 699,155 | 32,807 | 731,962 |
| State income tax | 36,075 | 30,838 | 66,913 |
| Federal income tax | 180,842 | 222,242 | 403,084 |
| Total operating revenue deductions | 5,868,030 | 285,887 | 6,153,917 |
| Imputed net operating income on post-test year plant additions | 28,168 | - | 28,168 |
| Net operating income for return | $ 865,011 | $260,892 | $1,125,903 |

SCHEDULE II
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1982

| Item | Amount |
|---|---|
| Telephone plant in service | $21,248,812 |
| Investment in RTB stock | 479,947 |
| Working capital | 281,729 |
| Depreciation reserve | (7,333,518) |
| Accumulated deferred income taxes | (1,460,288) |
| Pre-1971 investment tax credit | (14,226) |
| Original cost rate base | $13,202,456 |
| Rate of return | |
| Present rates | 6.55% |
| Approved rates | 8.53% |

SCHEDULE III
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1982

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 67.12% | $ 8,861,488 | 5.48% | $485,610 |
| Common equity | 32.88% | 4,340,968 | 8.74% | 379,401 |
| Total | 100.00% | $13,202,456 | - | $865,011 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 67.12% | $ 8,861,488 | 5.48% | $ 485,610 |
| Common equity | 32.88% | 4,340,968 | 14.75% | 640,293 |
| Total | 100.00% | $13,202,456 | - | $1,125,903 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witness Drury and Public Staff witness Willis presented testimony concerning Heins' proposed rate structure.

Witness Drury stated that he had attempted to be conscious of value of service as well as cost of service in developing his proposed rates. Additionally, he indicated that he had developed his rate structure by relying in part upon industry trends and had attempted to use rate designs which have been authorized by the Commission in other telephone company proceedings. It was his contention that the rate structure which he filed would produce stable revenues consistent with the Company's revenue requirement.

Witness Drury filed rate design proposals in basic exchange access charges, service charges, directory listings, key and pushbutton telephone service, auxiliary equipment, mobile telephone service, local private line service and channels, and station equipment. Witness Drury's recommendations included a proposal to unbundle local service rates wherein the Company proposes to remove the telephone instrument from the service offering and to establish a separate charge for each telephone instrument which it provides.

The Public Staff presented specific recommendations on the Company's proposed rate structure through witness Willis. Witness Willis agreed with all of the Company's proposed rates except for basic local service rates and certain applications of the Company's rates.

Witness Willis' testified that the Company's proposal to increase its key trunk multiple from 1.20:1 to 1.5:1 should be allowed with the provision that the application of its key trunk rate be redefined. It is witness Willis' belief that the predominate benefit which may result from the use of a key trunk relates to the rotary line aspect of the service. Witness Willis remarked that other advantages sometimes attributed to the use of key trunks, such as a greater completion rate on outgoing calls, are enabled by the use of busy line light indicators. According to witness Willis, the costs associated with busy line light indicators are recovered through charges for both

multibutton instruments and key system common equipment. Thus, it is witness Willis' recommendation that the key trunk rate be only applicable to access lines which receive rotary line service other than those which qualify for the PBX trunk rate.

In regard to the Company's proposal to unbundle local basic service rates, the Company proposed to charge $1.30 per month for its standard rotary telephone set and $2.05 per month for its standard touch-call telephone set. The Public Staff agreed with these proposals as they are similar to rates which have previously been approved by the Commission for other telephone companies. For the purpose of consistency in the Company's tariffs, witness Willis recommended that the proposed charge of $1.90 per month in tariff Section 20.1.2(b) of the Company for a standard rotary telephone set used in connection with a local private line be reduced to $1.30 per month.

Witness Willis stated that his review of the Company's proposed service charges indicated that they were generally similar to rates approved by the Commission in recent proceedings. Witness Willis cited the minimum proposed cost of a residential connection to be $24.00 and recommended that the Company's proposed rates be approved.

According to witness Willis, the Company proposed extension line mileage charges of $2.00 per month per quarter mile, or fraction thereof, of airline measurement and proposed that its rate for local private lines be set at $1.65 per month per quarter mile, or fraction thereof, of airline measurement. Witness Willis stated that the Public Staff and other companies have on other occasions recognized the physical similarity of these services and have proposed identical rates for the mileage charges applicable to each service. It is witness Willis' recommendation that the mileage charge per quarter mile, or fraction thereof, of airline measurement, for each of these services be set at $2.00 per quarter mile per month. Further, witness Willis recommended that the present minimum charge of $8.00 per circuit for local private line should be kept at $8.00 per circuit rather than $8.80 per circuit as proposed by the Company.

In witness Willis' prefiled testimony, he asserted that the Public Staff and the Company had discussed the inclusion of a tariff provision which would allow the Company to impose a late payment charge to its customers of 1% on balances in arrears not paid within 25 days from the billing date. Witness Willis indicated that it was Heins' intention to file a tariff identical to the one approved for General Telephone Company. Witness Willis recommended that the Commission permit Heins to incorporate a late payment provision into its tariffs identical to those of General Telephone Company and to include its estimate of $5,425 as the level of additional annual revenues derived from this tariff provision.

Witness Willis explained that the Company's current service charges allow its customers some degree of participation in certain work functions and that the Commission has permitted tariff provisions for other companies which allow their subscribers to install and own their own inside wiring and modular jacks. Witness Willis stated that such a tariff provision expands the customers' discretionary powers and allows them to avoid secondary service ordering charges, premises visit charges, inside wiring charges, and jack charges. It is witness Willis' recommendation that Heins should be required to submit tariffs, permitting customers to install and own their own inside

wiring and modular jacks, which are identical to those approved for Southern Bell Telephone Company.

The Commission, having carefully considered all the evidence regarding the rate design proposals presented in this proceeding, makes the following conclusions:

A. KEY TRUNK MULTIPLE CHARGE

The Commission concludes that the key trunk rate should only be applicable to access lines which receive rotary line service (other than those which qualify for the PBX trunk rate) and the multiple of 1.5:1 should exist between the key trunk and business one-party line access exchange rates.

B. SERVICE CHARGES

The Commission concludes that the service charges shown below are proper and therefore should be implemented by the Company.

SERVICE CONNECTION CHARGES

| | |
|---|---|
| I. Residential Rates | |
| A. Service order | |
| 1. Primary | $19.00 |
| 2. Secondary | 11.00 |
| B. Premises visit, each | 8.00 |
| C. Central office work, each | 5.00 |
| D. Inside wiring, each | 10.00 |
| E. Equipment work, each | 5.00 |
| II. Business Rates | |
| A. Service order | |
| 1. Primary | $23.00 |
| 2. Secondary | 16.00 |
| B. Premises visit, each | 9.00 |
| C. Central office work, each | 6.00 |
| D. Inside wiring, each | 14.00 |
| E. Equipment work, each | 7.00 |

C. EXTENSION AND LOCAL PRIVATE LINE MILEAGE CHARGES

Having carefully considered the evidence in this proceeding concerning mileage rates, the Commission concludes that the mileage charges for both extension line mileage and local private line mileage should be set at $2.00 per quarter mile per month. The minimum charge per circuit for a local private line should be kept at the present charge of $8.00 per circuit per month.

D. STANDARD TELEPHONE SET CHARGES

The Commission finds a monthly telephone set charge of $1.30 for a rotary telephone set and a monthly rate of $2.05 for a touch-call telephone set to be

just and reasonable. Further, the Commission finds that the charge for a rotary telephone set used in connection with a local private line should be $1.30 per month.

E. LATE PAYMENT CHARGE

The Commission concludes that a tariff allowing the application of a late payment charge of 1% on balances in arrears not paid within 25 days from the billing date is in accordance with the Commission's Rule R12-9(d) and should be allowed.

F. CUSTOMER PROVIDED INSIDE WIRING

The Commission concludes that a tariff identical to that of Southern Bell Telephone Company's which allows its subscribers to install and own their inside wiring and modular jacks is in the public interest and should be filed by Heins.

G. OTHER LOCAL SERVICES - RATES AND CHARGES

The Commission concludes that all other rates and charges proposed by the Company not herein prescribed are reasonable and should be approved except for certain basic exchange rates including PBX trunks and key trunks which are interrelated through the application of multiple pricing relationships. These rates shall be determined so as to produce the remaining amount of the increase in annual gross revenues approved herein using the Company's proposed pricing relationships with the provision that the application of the key trunk rate is redefined as approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Heins Telephone Company, be, and hereby is, authorized to increase its local service rates and charges so as to produce annual gross revenues of $7,274,674 from North Carolina subscribers based on test year operations. Such amount represents an increase of $547,765 above the revenue level that would have resulted from rates currently in effect based on the test year.

2. That the depreciation rates set forth in Appendix A shall be made effective by the Applicant beginning January 1, 1984.

3. That the Notice of Decision and Order of February 15, 1984, and the Order Setting Rates of February 23, 1984, are affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of March 1984.

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

APPENDIX A

HEINS TELEPHONE COMPANY
DOCKET NO. P-26, Sub 88
DEPRECIATION RATES

| ACCT. NO. | DESCRIPTION | PRESENT RATE % | APPROVED RATE % |
|---|---|---|---|
| 200.3 | Buildings | 2.0 | 2.9 RL |
| 200.4 | COE-Step Switch | 5.0 | 10.4 RL |
| 200.41 | COE-Step (minor) | 20.0 | 20.0 |
| 200.5 | COE-Toll Termination | 8.0 | 9.4 RL |
| 200.51 | COE-Toll Term (minor) | 20.0 | 20.0 |
| 200.6 | COE-Carrier | 5.0 | 13.2 RL |
| 200.61 | COE-Carrier (minor) | 20.0 | 20.0 |
| 200.7 | COE-Microwave Radio | 8.0 | 5.1 RL |
| 200.27 | COE-Digital Switch | 5.0 | 4.8 RL |
| 200.8 | Station App.-Telephone | 6.25 | 8.1 RL |
| 200.9 | Station App.-Sm PBX | 6.25 | 12.7 RL |
| 200.10 | Station App.-Booths | 6.0 | 8.9 RL |
| 200.11 | Station App.-Mobile | 10.0 | 10.0 |
| 200.12 | Sta. Connect-Inside | 10.0 | 10.0 |
| 200.121 | Sta. Connect-Other | 5.0 | 5.0 |
| 200.13 | Large PBX | 6.0 | 24.8 RL |
| 200.14 | Pole Lines | 5.0 | 6.0 |
| 200.15 | Aerial Cable | 4.0 | 5.0 |
| 200.18 | Underground Cable | 3.0 | 3.4 |
| 200.19 | Buried Cable | 4.0 | 4.3 |
| 200.20 | Aerial Wire | 12.0 | 44.6 RL |
| 200.21 | Underground Conduit | 2.0 | 2.3 |
| 200.22 | Furniture, Ofc Eq | 7.0 | 6.3 |
| 200.221 | Furn, Ofc Eq (minor) | 20.0 | 20.0 |
| 200.23 | Vehicles | 13.3 | 12.2 |
| 200.4 | Other Work Equipment | 16.67 | 9.7 |
| 200.241 | Other Work Eq (minor) | 20.0 | 20.0 |
| 200.26 | Radio Dispatch system | 10.0 | 10.0 |

RL = Remaining Life

TELEPHONE - RATES

DOCKET NO. P-26, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of Heins Telephone Company for an | ) | SUPPLEMENTAL |
| Adjustment to Its Rates and Charges Applicable to | ) | ORDER |
| Intrastate Telephone Service in North Carolina | ) | |

BY THE COMMISSION: On March 2, 1984, the Commission issued its Final Order Granting Partial Rate Increase for Heins Telephone Company. In regard to this Order the Commission concludes that there is a need for an ordering paragraph as to the establishment of a toll revenue deferred account. The Commission therefore concludes that the Order issued March 2, 1984, should be modified to include an additional ordering paragraph.

IT IS, THEREFORE, ORDERED as follows:

That the March 2, 1984, Order of the Commission shall be modified to include an additional ordering paragraph as follows:

"4. That Heins be, and is hereby, required to establish a deferred account and to place in said deferred account any intrastate toll revenues in excess of $100,690 which the Company derives from the toll rate increases granted in Docket No. P-100, Sub 64, pending further hearing."

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of March 1984.

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

DOCKET NO. P-26, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of Heins Telephone Company for an | ) | ORDER |
| Adjustment to Its Rates and Charges Applicable to | ) | ON |
| Intrastate Telephone Service in North Carolina | ) | RECONSIDERATION |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Monday, April 16, 1984, at 2:30 p.m.

BEFORE: Chairman Robert K. Koger, presiding, and Commissioners Edward B.Hipp, Sarah Lindsay Tate, A. Hartwell Campbell, Douglas P. Leary, Ruth E. Cook, and Charles E. Branford

TELEPHONE - RATES

APPEARANCES:

For Heins Telephone Company:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Attorneys at Law, Post Office Box 2479, Raleigh, North Carolina 27602

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On February 15, 1984, the Commission issued a Panel Order entitled "Notice of Decision and Order" in this docket whereby Heins Telephone Company (Heins or Applicant) was granted an increase in its annual gross revenues of $547,765 from its North Carolina intrastate operations. On March 2, 1984, the Commission issued a "Final Order Granting Partial Rate Increase" which set forth the evidence and conclusions in support of the decisions reached in the February 15, 1984, Commission Order.

On March 15, 1984, Heins filed Exceptions and Notice of Appeal to the Commission Orders and filed a Motion requesting that the Full Commission reconsider and modify its Orders of February 15, 1984 and March 2, 1984, entered in this docket (P-26, Sub 88).

On March 21, 1984, the Public Staff filed Exceptions and Notice of Cross Appeal in this docket.

Oral argument on exceptions was subsequently heard by the Commission on April 16, 1984, with both the Applicant and the Public Staff having been represented by counsel. The treatment of the following issues, as set forth in the Commission Orders issued on February 15, 1984, and March 2, 1984, were presented for reconsideration at the oral argument:

1. Inclusion in the income statement of $28,168 of imputed net operating income on post-test year plant additions;

2. Determination of Heins' fair and reasonable overall rate of return and return on common equity; and

3. Inclusion in the income statement of only 50% of the intrastate toll revenue increase granted to Heins in Docket No P-100, Sub 64.

The Commission has carefully reviewed the entire record in this docket concerning the issues presented in the motions for reconsideration and at the oral argument of April 16, 1984, and concludes that the findings of fact in the Orders of February 15, 1984 and March 2, 1984, as they relate to the imputation of net operating income on post-test year plant additions and the inclusion of 50% of the intrastate toll revenue increase granted to Heins in Docket No. P-100, Sub 64, are appropriate, are fully supported by the evidence of record, and should not be reconsidered.

As to the question of the determination of a fair and reasonable return to be afforded the Company's stockholders and the return that Heins should have

the opportunity to earn on its original cost rate base, the Commission concludes that this matter should be reconsidered pursuant to G.S. 62-80 in order to allow the Commission to amend its Orders of February 15, 1984, and March 2, 1984. 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 Heins and all of the other parties of record affected by the motions for reconsideration at issue herein.

In its application and through the testimony and exhibits of Dr. James H. Vander Weide which were entered into evidence in this proceeding, the Company recommended that the cost of common equity be set at 16.50%. The Public Staff presented the testimony and exhibits of George T. Sessoms, Jr. who testified on the cost of capital and concluded that the cost of common equity for Heins was 14.25%. In its Orders of February 15, 1984, and March 2, 1984, the Commission Panel found the overall fair rate of return to be 8.53% and the fair return on common equity to be 14.75%.

The Commission has considered all of the relevant evidence presented in this matter, 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 own impartial judgment to ensure that all the parties involved are treated fairly and equitably. Based upon reconsideration of the evidence the Commission finds that the Commission Orders issued previously in this docket failed to give appropriate consideration to the Company's size and capital structure which is composed of 67.12% long-term debt and 32.88% common equity. In accordance with this finding, the Commission concludes that the fair rate of return that Heins should have the opportunity to earn on its original cost rate base is 8.69%. Such fair rate of return will yield a fair return on common equity of approximately 15.25%. The gross revenue impact of this decision will increase the rates presently charged by Heins to its customers by $45,571 on an annual basis. Such rate adjustment is certainly not arbitrary or capricious and is based upon the evidence in this case. The Commission further notes that this rate increase ordered herein will increase Heins' authorized operating revenues of $7,251,652 by only .63%.

Furthermore, it is clear that the rate increase ordered herein 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, this Order on reconsideration merely constitutes an exercise by the Commission of its statutorily mandated duty to fix just and reasonable rates in North Carolina. G.S. 62-130.

Therefore, based on the foregoing, the Commission concludes that the annual gross revenue increase allowed in the Orders of February 15, 1984 and March 2, 1984, should be increased by $45,571, to reflect the Commission's decision upon reconsideration.

Hence, the Commission concludes that the appropriate gross revenue increase to be afforded Heins in this proceeding, in order that Heins may be given a fair and reasonable opportunity to earn its cost of capital, is $593,336. This level is $45,571 more than the $547,765 increase approved in the previous Commission Orders issued in this docket.

The following schedules present the findings of the Commission as to the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve after giving effect to the rate of return adjustment as required herein.

SCHEDULE I
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended December 31, 1982

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues: | | | |
| Local service | $3,060,074 | $593,336 | $3,653,410 |
| Toll service | 3,223,985 | - | 3,223,985 |
| Miscellaneous | 442,850 | - | 442,850 |
| Uncollectibles | (22,036) | (1,068) | (23,104) |
| Total operating revenues | 6,704,873 | 592,268 | 7,297,141 |
| Operating Revenue Deductions: | | | |
| Operating expenses | 3,608,269 | - | 3,608,269 |
| Depreciation and amortization | 1,343,689 | - | 1,343,689 |
| Operating taxes other than income taxes | 699,155 | 35,536 | 734,691 |
| State income tax | 36,075 | 33,404 | 69,479 |
| Federal income tax | 180,842 | 240,731 | 421,573 |
| Total operating revenue deductions | 5,868,030 | 309,671 | 6,177,701 |
| Imputed net operating income on post-test year plant additions | 28,168 | - | 28,168 |
| Net operating income for return | $ 865,011 | $282,597 | $1,147,608 |

SCHEDULE II
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1982

| Item | Amount |
|---|---|
| Telephone plant in service | $21,248,812 |
| Investment in RTB stock | 479,947 |
| Working capital | 281,729 |
| Depreciation reserve | (7,333,518) |
| Accumulated deferred income taxes | (1,460,288) |
| Pre-1971 investment tax credit | (14,226) |
| Original cost rate base | $13,202,456 |
| Rate of return | |
| Present rates | 6.55% |
| Approved rates | 8.69% |

SCHEDULE III
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1982

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 67.12% | $ 8,861,488 | 5.48% | $485,610 |
| Common equity | 32.88% | 4,340,968 | 8.74% | 379,401 |
| Total | 100.00% | $13,202,456 | - | $865,011 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 67.12% | $ 8,861,488 | 5.48% | $ 485,610 |
| Common equity | 32.88% | 4,340,968 | 15.25% | 661,998 |
| Total | 100.00% | $13,202,456 | - | $1,147,608 |

Based on the foregoing conclusions that Heins' present rates should be increased over those approved by the prior Commission Order setting rates issued February 23, 1984, the Commission concludes that Heins should file revised tariffs within five working days from the date of this Order reflecting the increase in annual gross revenues of $45,571 found to be appropriate herein. This $45,571 additional approved increase shall be produced by properly adjusting the previously approved rates set for basic exchange rates including PBX trunks and key trunks which are interrelated through the application of multiple pricing relationships. These rates shall be determined using the guidelines established by the Commission in its Notice of Decision and Order issued February 15, 1984.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Heins Telephone Company, be, and hereby is, authorized to increase its local service rates and charges so as to produce annual gross revenues of $7,320,245 from its North Carolina subscribers based on test year operations. Such amount represents an annual increase of $45,571 above the revenue level that would have resulted from rates currently in effect.

2. That the Applicant is hereby called upon to propose specific tariffs reflecting changes in rates, charges and regulations to recover the additional revenue increase approved herein, in accordance with the guidelines established by this Commission in its Notice of Decision and Order issued February 15, 1984, within five working days from the date of this Order. These proposals and work papers supporting such proposals shall be provided to the Commission (five copies are required - formats such as Item 30 of the minimum filing requirement, N.C.U.C. Form P-1 are suggested).

3. That the Public Staff may file written comments concerning the Company's tariffs within five working days from the date on which they are filed with the Commission.

4. That the rates, charges, and regulations necessary to produce the annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs filed pursuant to decretal paragraph 2 above.

5. That the Applicant shall, at the same time as the filing of its rate proposals, file a proposed customer notice informing the customers of Heins Telephone Company of the actions taken herein.

6. That, except as modified herein, the Commission Orders heretofore entered in this docket on February 15, 1984, and March 2, 1984, shall remain in full force and effect.

7. That, except as granted herein, the Exceptions to the Commission Orders filed herein on March 15, 1984, by Heins Telephone Company and on March 21, 1984, by the Public Staff be and are hereby, overruled and denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of May 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. P-26, SUB 88

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of Heins Telephone Company, for an Adjustment to Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | ) ) ) | ORDER SETTING RATES ON RECONSIDERATION |

BY THE COMMISSION: On May 15, 1984, in Docket No. P-26, Sub 88, the Commission issued an Order on Reconsideration for Heins Telephone Company (Heins, Applicant, or Company), wherein the Company was allowed to increase its rates, and charges to produce additional revenues of $45,571 annually. The Company was called upon to file specific tariffs reflecting changes in rates, charges and regulations necessary to recover the allowed rate increase. Further, upon the Company's filing of said rates, charges, and regulations, the Commission Order allowed five working days for intervenor comment.

On May 17, 1984, pursuant to the Commission Order of May 15, 1984, Heins filed specific tariffs designed to produce approximately $45,571 in additional local service revenues on an annual basis.

On May 18, 1984, the Public Staff filed comments on the rates, charges, and regulations filed by Heins on May 17, 1984. In its comments the Public Staff concludes that the Company's proposed tariffs have been filed in accordance with the conclusions set forth in the Commission's May 15, 1984, Order on Reconsideration.

The Commission, having carefully reviewed and considered the tariffs proposed by the Company, concludes that said rates, charges and regulations are proper and should therefore be implemented by the Company. Further, the Commission finds that the customer notice attached hereto, with respect to the approved increase in intrastate rates, is appropriate for inclusion in the customer's first regular billing statement reflecting rates approved herein.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates, charges, and regulations filed by Heins on May 17, 1984, which will produce an increase in annual gross revenues of approximately $45,571 be, and hereby are, approved to be charged and implemented by the Applicant.

2. That the increases in rates and charges as approved herein shall become effective on billings rendered on and after the date of this Order. All other rates, charges, and regulations not herein adjusted remain in full force and effect.

3. That Heins is hereby required to file specific tariffs reflecting changes in rates, charges, and regulations approved herein within five working days of the date of this Order. (Eight copies required.)

4. That the Notice to Customer attached hereto is hereby approved.

5. That Heins shall give notice to its customers of the Commission's action herein by including the approved Notice to Customer as a bill insert in

the customer's first regular billing statement reflecting the rates approved herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of May 1984.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

HEINS TELEPHONE COMPANY
Docket No. P-26, Sub 88
NOTICE TO CUSTOMER

On July 15, 1983, Heins Telephone Company (Heins or Company) filed an application with the North Carolina Utilities Commission seeking to adjust and increase intrastate local service rates and charges for its North Carolina customers by $1,070,426 or 33.96% annually. After months of investigation and following hearings held in Sanford and Raleigh addressing Heins' request, the Commission issued an Order on February 15, 1984, reducing Heins' requested increase from 33.96% to 17.90% and reducing the local revenue increase to $547,765.

In allowing these increases, the Commission ruled that the approved rates would provide Heins, under efficient management, an opportunity to earn an 8.53% rate of return on its property. The Commission found that the approved rate increase amounts were the minimum that could be granted and still have the Company maintain adequate service. The increase granted was due principally to the impact of general inflation on the Company's costs since its last general increase which became effective on December 22, 1976, and the Company's additional investment in plant and facilities for the purpose of increasing and improving its service to the public.

On March 15, 1984, Heins filed Exceptions and Notice of Appeal to the Commission Order and filed a motion requesting that the full Commission reconsider and modify its Order of February 15, 1984, entered in this docket. The Public Staff filed a motion on March 21, 1984, opposing Heins' Exceptions.

Oral argument on Exceptions was subsequently heard on April 16, 1984, with both Heins and the Public Staff having been represented by counsel.

The Commission has carefully reviewed the entire record in this docket. Based upon reconsideration of the relevant evidence presented in this matter, the Commission found that the Commission Orders issued previously in this docket failed to give appropriate consideration to the Company's size and capital structure. In accordance with this finding, the Commission concluded that the fair rate of return that Heins should have the opportunity to earn on its original cost rate base is 8.69%. The gross revenue impact of this decision will increase the rates presently charged to its customers by $45,571 on an annual basis.

Approval has been granted to Heins to increase the access line charges to the following levels: $6.35 for residence and $15.95 for business individual access lines; $9.45 for residential and $23.85 for business rotary line service; and $32.15 for PBX trunks. All other rates presently being charged remain unchanged.

DOCKET NO. P-55, SUB 806

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Southern Bell Telephone and Telegraph Company<br>Tariff Filing to Establish Provisions for<br>Optional Local Measured Service | ) | ORDER IMPLEMENTING<br>EXPERIMENTAL OPTIONAL<br>LOCAL MEASURED SERVICE<br>IN SELECTED AREAS |

BEFORE: Edward B. Hipp, Presiding, Chairman Robert K. Koger, Commissioners A. Hartwell Campbell, Douglas P. Leary, Sarah Lindsay Tate, Ruth E. Cook and Charles Branford

APPEARANCES:

For the Applicant:

Robert C. Howison, Jr., Hunton and Williams, Attorneys at Law, 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, P. O. Box 30188, Charlotte, North Carolina 28207
For: Southern Bell Telephone and Telegraph Company

Gene V. Coker and J. Billie Ray, Jr., Attorneys, Southern Bell Telephone and Telegraph Company, 4300 Southern Bell Center, Atlanta, Georgia
For: Southern Bell Telephone and Telegraph Company

For the Public Staff:

Thomas K. Austin and Paul Lassiter, Staff Attorneys, Public Staff - North Carolina Utlities Commission, P. O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

Robert H. Bennink, Jr., and Steve Bryant, Assistant Attorneys General, North Carolina Department of Justice - Attorney General, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Jerry B. Fruitt, Eller and Fruitt, Attorneys at Law, P. O. Drawer 27866, Raleigh, North Carolina 27612
For: North Carolina Textile Manufacturers Association

Eugene Hafer, Eagles, Hafer & Hall, Attorneys at Law, P. O. Box 2211, Raleigh, North Carolina 27602
For: North Carolina Association of Realtors

Richard M. Klein, Legal Services of North Carolina, P. O. Box 6505, Raleigh, North Carolina 28628
For: Intervenors Lugenia Jackson, et al.

J. Ward Purrington, Attorney at Law, P.O. Box 20243, Raleigh, North Carolina 27619
For: North Carolina Association of Realtors

BY THE COMMISSION: By Order issued February 7, 1980, in Docket No. P-55, Sub 777, the North Carolina Utilities Commission ordered Southern Bell Telephone and Telegraph Company (Southern Bell) to file measured service tariffs for all North Carolina exchanges that were served by Electronic Switching System (ESS) offices. In compliance with the Commission Order, Southern Bell filed measured service tariffs in October of 1981 and September of 1982. This Docket No. P-55, Sub 806 was established for the consideration of the September 1982 filings. Hearings on this matter were heard in Asheville, Greensboro, Charlotte, Wilmington and Raleigh during the period December 1 and 2, 1982, and January 5 and 6, 1983.

On June 3, 1983, the Commission issued an Order Dismissing Proposed Local Measured Service Tariff but recognized "the need for developing viable alternatives and options to the traditional monthly flat pricing structure for telephone subscribers in this state." To this end, the Commission stated that "experimental measured rate offerings should be instituted in the following cities: Charlotte, Raleigh, Asheville, Wilmington, Gastonia, Shelby, Cary, Apex and Forest City." The same Order required Southern Bell to develop, for the nine (9) experimental exchanges, at least three proposals containing the usage elements of number of calls, duration of calls and time of day calls. The Order further stipulated that Southern Bell through coordination with the Public Staff, the Attorney General and other Intervenors should develop and file experimental plans. If the parties were unable to reach agreement on plans, each could file such plans separately.

On June 15, June 30, July 11 and July 28, 1983, Southern Bell met with other interested parties in Raleigh to discuss alternative experimental measured service plans. The parties were unable to agree on a plan or plans during these meetings. Subsequently Southern Bell, the Public Staff and the Attorney General filed proposed plans. The various proposals filed by the aforementioned parties are capsulized herein:

Southern Bell Telephone and Telegraph Company

Southern Bell developed three alternative measured service experimental plans labeled Plan 1, Plan 2 and Plan 3. Rates in the plan description were based on the assumption the Commission would approve the basic exchange rate levels proposed by Southern Bell in Docket No. P-55, Sub 816. However, the Commission's Order in Docket No. P-55, Sub 816 substantially reduced the actual increase allowed Southern Bell. Nevertheless, the Commission considers it more appropriate to recite herein the Southern Bell proposed plans as filed.

Each of the three Southern Bell plans recognizes the usage elements of frequency, duration and time-of-day in its usage charges. Also, Southern Bell proposes to establish three rate groups as follows:

| Rate Group | Exchange Access Lines and PBX Trunks | Exchanges |
|---|---|---|
| A | 0 - 34,000 | Forest City |
| B | 34,001 - 110,000 | Asheville, Gastonia, Shelby, Wilmington |
| C | 110,001 - Up | Apex, Cary, Charlotte, Raleigh |

Southern Bell's Plan 1 proposes to offer a Low Use Service and Standard Measured Service for residential subscribers. The low use service is designed for subscribers who originate few local calls or desire to pay a minimal price for telephone service. Thus, the low use offering has a fixed monthly charge significantly less than the flat rate and includes a $2.00 usage allowance. Southern Bell also proposes to offer residential subscribrs a Standard Measured service which may better suit customers whose local calling approaches the average range. It is priced between the low use and flat rate and has a usage allowance that is significantly above that of low use.

Plan 1 would offer business customers a Standard Measured Service and a Tapered Measured Service. Standard Measured is designed to appeal to business customers who originate an average or less than average number of local calls, while Tapered Measured may appeal to those with higher usage requirements.

With all of the measured options, usage charges of $0.6 for the first minute and $0.2 of each additional minute will apply except that there is a 50% discount for calling at various times of day.

Southern Bell's Plan 2 is more limited in that this alternative features one measured service option for residence customers and one for business customers. The residence option has a fixed monthly charge and usage allowance which fall between those of the Low Use and Standard Measured options of Plan 1 and there is a $4.00 usage allowance in Plan 2.

Business customers can select a measured service option set at a minimal price range with no usage allowance. All originating local calls will be subject to usage charge.

Southern Bell's Plan 3 incorporates the salient features of the optional local measured service plan described by Carolina Telephone and Telegraph Company in its letter filed with this Commission in July 1983.

Specifically, it provides options for residence and business customers which feature fixed monthly charges priced at approximately 60% of flat rate service. Each option contains a $4.00 usage allowance which is designed to allow one four-minute call per day without exceeding allowance. Local usage charges of $.04 per minute will be applied to calls placed between 8:00 a.m. and 11:00 p.m. on weekdays. All other calls would be subject to a fifty percent discount, thus having a $.02 per minute charge.

The Public Staff's Proposal asserts that for an option to be viable and serve the objective of preserving universal service it must be simple and easily understood by subscribers. The Public Staff proposes that a simple message rate (MR) plan be offered concurrently with Southern Bell's OLMS proposal at each location where the experiment is conducted. According to the Public Staff this approach would make it possible to assess the customers' reaction to both plans under identical conditions. The message rate plan would be structured a follows:

(1) A basic monthly line rate which is discounted 40% from the flat rate applicable at a given exchange;

(2) A call allowance of 30 message units per month included in the basic line rate (a message unit is an untimed outgoing call);

(3) A charge of 15> for each message unit in excess of the 30 unit allowance.

The Public Staff proposes to offer the OLMS and MR service only to residential one-party subscribers. Moreover, the Public Staff proposes that the initial experiment sites be limited to the following: Asheville (O'Henry), Forest City, Davidson, Charlotte (Caldwell), Shelby and Wilmington.

The Attorney General's proposal is identical to the Public Staff's proposal.

The Commission having carefully reviewed the evidence in its entirety makes the following

FINDINGS OF FACT

1. That Southern Bell is a public utility providing communications service to its customers in the area it has undertaken to serve and is a duly created and existing corporation authorized to do business in North Carolina.

2. That the economic circumstances prevailing in the country today, as well as the evolving developments affecting the telephone industry make it necessary to explore the feasibility of offering options and alternatives to flat rate pricing for business and residential telephone subscribers in the State.

3. That Southern Bell's proposed Plan 1 should be offered as an alternative-option to flat rate service in Forest City, Shelby, Asheville, Raleigh, Cary, and Apex (Appendix A).

4. That the Public Staff and Attorney General's proposed Message Rate Plan should be offered as an alternative-option to flat rate service in Wilmington, Charlotte, Gastonia, Forest City and Shelby (Appendix B).

CONCLUSIONS

First of all, reference should be made to the number of public witnesses who appeared at the various hearings in this proceeding. The Commission is aware that a substantial number of these persons voiced concern that measured

service would become mandatory sometime in the future for residential subscribers. At the outset, the Commission notes the unequivocable statement of Mr. Alan E. Thomas to the effect that Southern Bell's policy and goal is a commitment to maintain residential flat rate service indefinitely and to continue offering flat rate service for business unless and until marketplace conditions and many other factors show that it should no longer be offered. In addition, it is, of course, this Commission's duty to oversee and investigate the tariff filings of the companies under its jurisdiction, and as stated above, the Commission intends to continue its close scrutiny of how any measured service plan is operating and its impact on the public; nor could any modification or new plan be implemented without the authorization of this Commission. It is our conclusion, therefore, with regard to this aspect of the case that changes in the telecommunications industry resulting from the divestiture of AT&T prompts this Commission to investigate alternatives to flat rate service in order to promote universal telephone service in North Carolina.

Some of the witnesses at the various hearings voiced their concern that Southern Bell's plan would be detrimental to senior citizens and those persons on fixed incomes. Again, we reiterate that flat rate service is still available to those persons--elderly or on low fixed incomes or not--who use their telephones quite a bit each month. On the other hand, the Southern Bell Plan 1 or the Public Staff-Attorney General Message Rate Plan might enable marginal customers, whoever they might be, to continue to afford telephone service as flat rate charges increase due to the unavoidable changes that are taking place in the telecommunications industry nationwide.

Finally, there were public witnesses who voiced concern about the use of the telephone for voluntary and charitable efforts. Again, we must say that should various persons make extensive use of the telephone for charitable or volunteer purposes, flat rate is still available as an option which they may choose to continue. The Commission is mindful of the importance of the telephone for volunteerism and charitable purposes.

For the reasons stated throughout this Order, the Commission is of the opinion that it is in the best interest of telephone subscribers to conduct an investigatory experiment to determine whether there is a need for options to flat rate charges. Further, the Commission concludes that the alternative-options should be offered in specific geographical areas and that Southern Bell's Plan 1 and the Public Staff-Attorney General Message Rate Plan should be offered for comparative purposes.

IT IS, THEREFORE, ORDERED:

1. That Southern Bell's proposed Plan 1 should be offered as an alternative-option to flat rate service in Forest City, Shelby, Asheville, Raleigh, Cary and Apex (Appendix A).

2. That the Public Staff and Attorney General's proposed Message Rate Plan should be offered as an alternative-option to flat rate service in Wilmington, Charlotte, Gastonia, Forest City and Shelby (Appendix B).

3. That the questionnaires shall be filled out on each subscriber who elects to participate in this experiment (Appendix C).

4. That within 30 days from the issuance of this Order Southern Bell shall submit appropriate proposed Notices to affected subscribers for approval by this Commission.

5. That within 30 days from the issuance of this Order Southern Bell shall file with this Commission the dates on which the Notice to Customers will be mailed and the implementation dates for each affected exchange.

6. That within 30 days from the issuance of this Order Southern Bell shall file tariffs reflecting the appropriate measured rates and message rates applicable to the selected exchanges enumerated in this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of March 1984.

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

DOCKET NO. P-55, SUB 834

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of Southern Bell Telephone and Telegraph Company for an Adjustment in its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | ) ) ) ) | ORDER GRANTING PARTIAL INCREASE IN RATES AND CHARGES AND REQUIRING REFUNDS |

HEARD IN: County Office Building, 720 East Fourth Street, Charlotte, North Carolina, on September 10, 1984; Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on September 11, 1984; Guilford County Courthouse, No. 2 Governmental Plaza, Greensboro, North Carolina, on September 11, 1984; Courthouse Annex Building, Third and Princess Streets, Wilmington, North Carolina, on October 1, 1984; and the Hearing Room of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27 and 28, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Sarah Lindsay Tate and Charles E. Branford

APPEARANCES:

For the Applicant:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, Southern National Center, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

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For: Southern Bell Telephone and Telegraph Company

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For: Southern Bell Telephone and Telegraph Company

For the Public Staff:

Paul L. Lassiter, Gisele L. Rankin, and Antoinette R. Wike, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, Steven F. Bryant, Karen E. Long, Robert Cansler, and Philip Telfer,

Assistant Attorneys General, and Angeline M. Maletto, Associate Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
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For the Intervenors:

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For: AT&T Communications of the Southern States, Inc.

Peter Q. Nyce, Jr., and Terry J. Kolp, Attorneys, United States Department of Defense-NSALSA, 5611 Columbia Pike, Falls Church, Virginia 22041
For: The United States Department of Defense and the Federal Executive Agencies

Margot Roten, Staff Attorney, North Carolina Legal Services Resource Center, Inc., P.O. Box 1658, Raleigh, North Carolina 27602
For: Lula Chambers and Fannie Cates Graves

Daniel V. Besse, Staff Attorney, Pamlico Sound Legal Services, Inc., P.O. Box 1167, New Bern, North Carolina 28560
For: Lula Chambers and Fannie Cates Graves

Douglas Scott, Staff Attorney, Central Carolina Legal Services, P.O. Box 3467, Greensboro, North Carolina 27401
For: Lula Chambers and Fannie Cates Graves

Bill Whalen, Staff Attorney, Pisgah Legal Services, Asheville, North Carolina
For: Lula Chambers and Fannie Cates Graves

Louise Ashmore, Staff Attorney, Legal Services of the Blue Ridge, Boone, North Carolina
For: Lula Chambers and Fannie Cates Graves

Kay House, Staff Attorney, Lumbee River Legal Services, Pembroke, North Carolina 28372
For: Lula Chambers and Fannie Cates Graves

BY THE COMMISSION: This matter is before the Commission on the application of Southern Bell Telephone and Telegraph Company (Southern Bell or Company), filed January 16, 1984, for authority to adjust and increase its

rates and charges for local and intraLATA toll service in North Carolina to produce additional annual revenues in the amount of $121,331,007. As part of its filing, the Company requested immediate interim relief amounting to $21,825,825 on an annual basis to cover the impact of the transfer of its customer premises equipment (CPE) to AT&T on January 1, 1984.

On February 3, 1984, the Public Staff moved the Commission to suspend the application pursuant to G.S. 62-134(f) in addition to the 270-day period for the suspension of rates provided for in G.S. 62-134(b) until 30 days after Southern Bell filed actual revenue, expense, and rate base information in the format prescribed by NCUC Rule R1-17 for the three months ended March 31, 1984; to require Southern Bell to file such information for the six months ended June 30, 1984, on or before July 31, 1984; to set the toll portion of the application for hearing no earlier than July 10, 1984; and to set the local exchange portion of the application for hearing no earlier than September 25, 1984. In the subordinate alternative, the Public Staff moved the Commission to require Southern Bell to file actual revenue, expense, and rate base information in the format prescribed by NCUC Rule R1-17 on or before April 30, 1984, for the three months ended March 31, 1984, and on or before July 31, 1984, for the six months ended June 30, 1984, and to set the toll portion of the application for hearing no earlier than July 10, 1984, and the local exchange portion of the application for hearing no earlier than September 11, 1984. The Public Staff's Motion in its second alternative was granted by Order of the Commission issued February 12, 1984.

By Order issued February 7, 1984, the Commission suspended the tariffs filed in connection with the requests for interim and permanent rate relief and scheduled oral argument on the matter of interim rates. On February 15, 1984, by further Order, the Commission denied the Company's request for interim rate relief. The Company's Motion for Reconsideration was denied by Order issued February 28, 1984.

The Commission, being of the opinion that the matter constituted a general rate case under G.S. 62-137, issued an Order on March 21, 1984, in Docket Nos. P-55, Sub 834, and P-100, Sub 69, declaring the matter to be a general rate case and setting it for investigation and hearing, establishing the test period as the 12 months ended September 30, 1983, and requiring public notice of the proceedings. The Commission further concluded that the proposed adjustments in rates and charges for tariffed items concurred in by Southern Bell and the independent telephone companies would affect each of the companies through the industry-wide toll settlements procedure. Accordingly, Southern Bell's request to adjust its intraLATA directory assistance charge, WATS (nonrecurring) charges, interexchange intraLATA private line and foreign exchange (FX) rates were separated from Docket No. P-55, Sub 834, and placed in Docket No. P-100, Sub 69, for investigation and hearing with all other telephone companies, including AT&T, under the Commission's jurisdiction being made parties thereto.

On January 20, 1984, the Attorney General filed Notice of Intervention in this docket on behalf of the using and consuming public.

The Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene on January 24, 1984. AT&T Communications of the Southern States, Inc., filed a petition for leave to intervene on February 13, 1984. The United States Department of Defense and all other Executive Agencies of the United

States filed a petition for leave to intervene on July 2, 1984. The North Carolina Legal Services Resource Center, on behalf of Lula Chambers and Fannie Cates Graves, filed a petition to intervene on August 2, 1984. These petitions to intervene were allowed by Commission Orders issued February 2, February 21, July 5, and August 6, 1984, respectively.

On May 30, 1984, Southern Bell filed a Motion for Leave to Amend Pleadings to propose revised rate levels for the provision of equipment for hearing-impaired customers, to include pages inadvertently omitted from the initial filing with regard to extension and tie line services, and to clarify the original filing by removing WATS time and materials units from the local service portion of the case. By Order issued June 14, 1984, the Commission allowed the motion to amend.

On February 3, 1984, Southern Bell filed a request in Docket No. P-55, Sub 839, for approval of the transfer of certain of its assets to BellSouth Advertising and Publishing Company (BAPCO). The matter was scheduled for hearing on June 5, 1984. Southern Bell filed on May 25, 1984, a Motion to Stipulate Order and Close Docket in which the Intervenors CUCA and the Public Staff concurred. The matter came on for hearing as scheduled, whereupon the Commission issued an Order dated June 6, 1984, approving the transfer of Southern Bell's directory related assets to BAPCO, subject to the stipulations of the parties, and incorporating Docket No. P-55, Sub 839, into the instant docket.

On August 3, 1984, pursuant to G.S. 62-134(e), Southern Bell filed a notice of placing into effect on and after August 16, 1984, increased rates amounting to no more than 20% on any single rate classification, subject to undertaking. By Order issued August 7, 1984, the Commission approved the Company's undertaking to refund.

On August 31, 1984, the Commission issued its Order in Docket No. P-100, Sub 69, authorizing the increase in charges applicable to intrastate toll directory assistance and rejecting the increases in WATS (nonrecurring), intraLATA private line, and FX charges proposed by Southern Bell. The annual increase in revenues to the Company as a result of that decision is approximately $377,054.

Hearings were scheduled and held for the purpose of receiving testimony from public witnesses in Charlotte on September 10, Asheville on September 11, Greensboro on September 11, Raleigh on September 12 and 13, and Wilmington on October 1, 1984. The following persons appeared and testified at these hearings:

Charlotte - Stephen M. Wilfond, Betty Anthony, Jimmie F. Kiser, C.T. White, Theresa M. Wood, Frederick W. Buchta, Geneva Fletcher and David H. Garris.

Asheville - Lucy Kibler, Lillian Keller, Amanda Miller, July Cornett, Elsie Clark, Marie Schultz, Bessie Arnett, Mary Turner, Robert Kilcullen, Margaret Kasseur, Molly Green, Sarah Fain, George Odom, Richard Patzfahl, Wanita Jones, Robbie Thomas, August Webb, Melvin C. Thomason, R. D. Daniels, Ernest Messer, Inez D. Goodman, Art Mandler, E.S. Blakely, and Anthony Sciara.

Greensboro - Lula Chambers, Helen Henry, Fannie Cates Graves, James A. Poole, Sally Comstock, Larry Pittman, and Autumn Miller.

Raleigh - Thomas C. Bray, Jane MacNeela, Ethel Young, Merle Hunter, Ora Douglas, Joseph Reinckens, and Jane Sharpe.

Wilmington - Vertie Bell Fuller, Myrtle Oxendine, and Harry Dorsey.

The matter came on for hearing as scheduled in Raleigh on September 13, 1984.

Southern Bell offered the testimony of the following witnesses: Jere A. Drummond, Vice President responsible for Southern Bell's operations in North Carolina; Dr. James H. Vander Weide, President of Utility Financial Services, Inc., and an Adjunct Professor of Finance at the Fuqua School of Business, Duke University; Robert N. Dean, Assistant Vice President - Revenue Requirements and Treasurer of Southern Bell; J. W. Glass, Operations Manager - Executive Support in the BellSouth Corporation; E. W. Parish, Jr., an employee of BellSouth Services Incorporated; Stephen M. Wilson, Division Staff Manager in the Revenue Requirements Department of Southern Bell; John D. McClellan, a partner in the accounting firm of Deloitte Haskins & Sells; March R. Steele, Operations Manager for BAPCO; Victor E. Jarvis, Assistant Vice President - Finance for BAPCO; Ralph T. Bishop, District Staff Manager in the Company Headquarters Comptrollers Department; Robert C. Hart, Jr., District Staff Manager in Service Costs for Southern Bell; and Robert L. Savage, Division Staff Manager - Rates and Service Costs for Southern Bell. The Company also offered the Affidavit of Richard E. Stark, an employee in the Comptrollers Department of AT&T.

The Public Staff offered the testimony of the following witnesses: Donald E. Daniel, Assistant Director - Accounting Division; John T. Garrison, Jr., Engineer - Communications Division; William J. Willis, Jr., Engineer - Communications Division; Karyl J. Lam, Accountant - Accounting Division; Jocelyn M. Perkerson, Accountant - Accounting Division; Leslie C. Sutton, Engineer - Communications Division; William W. Winters, Supervisor of Communications Section - Accounting Division; and Dr. Ben Johnson, President of Ben Johnson Associates.

AT&T offered the testimony of Lawrence R. Weber, Regional Vice President - External Affairs for AT&T Communications.

CUCA offered the testimony of the following witnesses: Ralph L. Young, Vice President of Buildings and Services for Wix Corporation; Harry M. Venable, Director of Telecommunications Services for Celanese Corporation; Larry D. Brown, Manager of Corporate Telecommunications for Cone Mills Corporation; and Louis R. Jones, Telecommunications Analyst, Corporate Communications Department, Burlington Industries, Inc.

The Attorney General presented the testimony of Dr. John W. Wilson, President of J. W. Wilson and Associates, Inc.

North Carolina Legal Services Resource Center, on behalf of Lula Chambers and Fannie Cates Graves, presented the testimony of Dr. Mark Cooper, President, Citizens Research, and Director of Energy of the Consumer Federation of America.

The Department of Defense presented the testimony of Mark Langsam of the General Services Administration.

Southern Bell offered the rebuttal testimony of Ralph T. Bishop.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Southern Bell Telephone and Telegraph Company, is a public utility duly authorized to do business in North Carolina, is providing telecommunications service in North Carolina, and, as such, is subject to the jurisdiction of this Commission. Southern Bell 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. In its original application, Southern Bell requested rates designed to produce additional gross annual revenues of approximately $121,331,007 based upon a test year ended September 30, 1983. By its revised application, the Company requested rates designed to produce additional annual gross revenues of approximately $95,736,058. The Company's Proposed Order reflects a requested increase of $95,399,000.

3. The test year for purposes of this proceeding is the 12 months ended September 30, 1983, adjusted for certain known changes based upon circumstances and events occurring up to the time of the close of the hearings in this docket.

4. The overall quality of service provided by Southern Bell is adequate.

5. The contract between Southern Bell and BellSouth Advertising and Publishing Company (BAPCO) should not be approved in this proceeding.

6. The reasonable gross revenue contribution received from BAPCO's directory publishing operations is $28,456,000.

7. Refunds from American Telephone & Telegraph Company to Southern Bell of $3,594,001, required by the Federal Communications Commission as a part of the divestiture process, should be flowed through to Southern Bell's customers in this proceeding.

8. The reasonable working capital allowance to be included in the Company's rate base is $9,358,000.

9. The attrition adjustment of $6,703,052 proposed by the Company is unreasonable and unnecessary and should be excluded from the cost of service.

10. The net gain on sale of land of $162,375 should be flowed through to Southern Bell's customers in this proceeding.

11. No construction work in progress should be included in Southern Bell's rate base.

12. Southern Bell's reasonable original cost rate base used and useful in providing service to its customers in North Carolina is $991,752,000. This rate base consists of telephone plant in service of $1,478,944,000 plus a plant acquisition adjustment of $2,985,000, the working capital allowance of $9,358,000 less the depreciation reserve of $311,232,000, customer deposits of $3,692,000, accumulated deferred income taxes of $183,184,000, and unamortized investment tax credits of $1,427,000.

13. Southern Bell's level of end-of-period net operating revenues for the test year under present rates and after accounting, pro forma, and end-of-period adjustments, is $598,534,000

14. The general service and license contract (GS&L) expenses to be included in Southern Bell's cost of service in this proceeding are $9,388,000.

15. The reasonable level of test year operating revenue deductions under present rates for Southern Bell after accounting, pro forma, and end-of-period adjustments is $500,113,000.

16. The Company should be allowed a rate of return on original cost rate base of 12.51%, which is based upon an embedded cost of long-term debt of 9.5% and will allow the Company a reasonable opportunity to earn a return on common equity of 15.0%. The capital structure for Southern Bell which is reasonable and proper for use in this proceeding is as follows:

| Item | Ratio |
|---|---|
| Long-term debt | 45.2% |
| Common equity | 54.8% |
| Total | 100.00% |

17. Based on the foregoing, Southern Bell Telephone and Telegraph Company should be allowed to increase local service revenues by $50,044,000. This increase is required for the Company to have a reasonable opportunity to earn the 12.51% 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.

18. The rates, charges, and regulations to be filed pursuant to this Order in accordance with the guidelines contained herein, which will produce an annual increase in local service revenue of $50,044,000 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 filings and record as a whole. These findings of fact are essentially procedural in nature and the matters which they involve were not contested by the parties. Southern Bell originally filed to increase its rates and charges to produce additional annual revenues of $121,331,007.

Because of divestiture, a number of the items for which the Company requested an increase were based on estimates rather than actual historical data. Southern Bell filed actual data, pursuant to the Commission's

February 12, 1984, Order granting the Public Staff's Motion, for the first six months of 1984. Consequently, Southern Bell's original request was decreased to $95,736,058. The Company's Proposed Order reflects a requested increase of $95,399,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the quality of service was presented by Company witness Drummond, Public Staff witness Sutton, and public witnesses at the public hearings.

There were approximately 49 public witnesses, all of whom testified in opposition to the rate increase. Of the seven public witnesses who testified on the quality of service, two testified favorably and five unfavorably.

Company witness Drummond testified that the overall quality of service provided by the Company was excellent and stated that Southern Bell would continue to provide its subscribers with the high quality communications services they need and deserve.

Public Staff witness Sutton testified that his evaluation of the quality of service was based upon the results of numerous tests made by the Public Staff and on an analysis of the Company's operating statistics. His conclusion regarding the quality of service was reached after a comparison of the test results and operating statistics to the service objectives established by the Commission. As shown in witness Sutton's exhibits, some exchanges failed to meet the Commission's quality of service test objective and for certain months the Company failed to meet the Commission's quality of service operating statistics objectives. Notwithstanding those occurrences, on a companywide basis, Southern Bell generally met the Commission's service objectives; and therefore witness Sutton concluded that the service provided by Southern Bell is adequate.

Based on the foregoing evidence, the Commission concludes that the overall quality of service provided by Southern Bell to its customers in North Carolina is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence for these findings of fact is contained in the testimony of Company witnesses Drummond, Glass, Steele, Bishop, Jarvis, Public Staff witness Perkerson, and Attorney General witness Wilson.

The two major issues regarding directory operations are: (1) whether the contract between Southern Bell and BellSouth Advertising and Publishing Company (BAPCO) should be approved or whether directory operations should remain with Southern Bell; and (2) regardless of whether the contract is approved, what is the proper amount of net revenue contribution to be included in this proceeding in order to determine the Company's fair and reasonable level of gross revenue requirements.

It is important to review the methodology applied to directory revenues in the past by this Commission. Southern Bell for several years has consistently removed directory revenues and costs from its calculation of end-of-period

revenues and costs, while the Public Staff has consistently included them. This Commission has uniformly rejected Southern Bell's attempt to exclude directory revenues and costs and has held that they should be included in the calculation of the Company's North Carolina intrastate jurisdictional revenue requirement. The Commission's decision in this regard was appealed by Southern Bell and was upheld by the North Carolina Supreme Court in State of North Carolina ex rel. Utilities Commission v. Southern Bell, 307 N.C. 541, 299 S.E. 2d 763 (1983).

In the past, the directory revenues and expenses removed by the Company from the calculation of the end-of-period revenues and expenses were simply reversed and none of the parties in the applicable proceedings attempted to establish the contribution from directory operations as a percentage of net directory revenues, which would necessitate using proper allocation factors and establishing proper expense levels. Consequently, the directory operations were considered an integral part of the telephone company and, therefore, precise allocation factors related to said operations were never developed.

In this proceeding, the Commisison has been presented with a contract between Southern Bell and BAPCO, which is a wholly owned subsidiary of BellSouth Corporation, Southern Bell's parent company, providing for 42.5% of net directory revenues to be paid as a publishing fee to Southern Bell. Both Southern Bell and BAPCO represent to this Commission that the 42.5% publising fee will provide the same contribution to revenues for Southern Bell as would have been available from directory operations if BAPCO had not been formed.

As was stated earlier, and as was testified to by witness Perkerson of the Public Staff and witness Wilson for the Attorney General, no previous or current calculation of the contribution from directory operations exists in a format which allows for a statement by the Company that the contribution derived from establishing a publishing fee equal to 42.5% of net directory revenues provides the same contribution as would have existed if BAPCO had not been formed. The problem, as pointed out by these witnesses, lies in the fact that the calculation of the effect of directory operations by the Company in the past and in this proceeding does not provide for any interstate allocation of the expenses subject to allocation.

Attorney General witness Wilson testified that the directory operations should be treated as though they had never left Southern Bell. In discussing his proposed treatment of directory operations, Dr. Wilson cited the following problems with the Company's treatment:

1. Expenses were allocated 100% to intrastate operations when a portion of them should be allocated to interstate operations.

2. The Company's directory study, which was the basis for witness Bishop's expenses, is a fully allocated cost study and includes costs which are already covered in other expenses in the Company's cost of service. Therefore, Dr. Wilson contended that witness Bishop improperly included some of these expenses again as directory expenses.

3. The study includes a mismatch of end-of-period 1983 revenues with some 1984 expense levels. Witness Wilson said that direct directory expenses were capitalized to be matched with revenues over the life of the directory. Dr. Wilson stated that the Company matched some of these future expenses with 1983 revenues.

At the hearing, Company witness Jarvis explained that the 42.5% of net directory revenues as a publishing fee provided for in the contract was calculated as follows:

1. A return of 13.5% was calculated on the investment related to directory operations;

2. Taxes were calculated on the return revenue requirement;

3. Expenses for publication, general and administrative overhead, taxes, and miscellaneous items were totalled;

4. Items 1, 2, and 3 above were subtracted from estimated revenues;

5. The remainder was determined to be the publishing fee; and

6. The percentage was derived by dividing item 5 above by net directory revenues.

Witness Perkerson presented testimony regarding errors in the Company's 42.5% calculation. First, witness Perkerson pointed out that the Company used a rate-making methodology for a nonregulated company by establishing an after-tax return which was deducted from revenues before a publishing fee was established. Witness Perkerson noted that few, if any, companies in the competitive market are able to enter the business field with an assured return and full coverage for all expenses. Witness Perkerson further testified that all companies like to earn a return on their investment but that most must earn their return, rather than having one built in, and that they do not know whether they have earned one until the end of the business year.

Witness Perkerson further testified that the investment on which BAPCO had calculated its return was much higher than the investment on which a return would be calculated if directory operations had remained with the telephone company. This resulted from the fact that BAPCO included all prepaid directory expenses for the year as a component of investment, whereas Southern Bell and the Public Staff included only that portion of prepaid directory expenses which flows out of the lead-lag study as a component of working capital for the calculation of a return. Witness Perkerson testified that, in this proceeding, the difference between the amount of prepaid directory expense which was included by BAPCO in its directory return calculation and the amount which would be included as a result of a lead-lag study was approximately $6,000,000.

Under cross-examination, witness Jarvis admitted that BAPCO had included gross receipts tax on revenues to be retained by BAPCO in the amount of more than $2,000,000 as an item of expense in deriving the approximate level of directory revenue contribution to be used in this proceeding. Witness Jarvis further stated that BAPCO had not, to his knowledge, checked with the North

Carolina Department of Revenue to determine whether or not payment of this tax would be required. Witness Jarvis did state, however, that he was aware that North Carolina law requires regulated utilities to pay this tax and that BAPCO is not a regulated utility.

Witnesses for Southern Bell, BellSouth, and BAPCO gave a number of reasons for establishing BAPCO as opposed to leaving the directory operations at Southern Bell. The four reasons are found in the testimony of witnesses Drummond, Glass, Steele, and Jarvis. Witness Steele set them out clearly in his summary as being:

1. To meet competition in the directory advertising business;

2. To facilitate the development of a more professional sales-oriented organization;

3. To facilitate entry into other advertising and publishing markets; and

4. To achieve long-term economies of scale.

With respect to the first reason, the Commission has listened to the Company's concerns with respect to the loss of revenues for directory advertising because of competition for several years, yet during this time, according to the testimony of witness Jarvis, directory revenues have grown at the rate of 18.5% per year and are projected by the Company to continue to grow at the rate of 18% per year through 1987. Therefore, the need to change the method of operations to control loss of revenues due to competition does not have proven validity at this time.

The second reason given for creating BAPCO, to facilitate the development of a more sales-oriented organization, appears to be more beneficial to other jurisdictions, since Southern Bell has maintained its own sales force in the past in North Carolina while, according to Company witnesses, the sale of directory advertising at South Central Bell is provided under a contract and no sales force is maintained.

To facilitate entry into other advertising and publishing markets is perhaps the most interesting reason given for creating BAPCO. BAPCO is a subsidiary of BellSouth and any new areas of advertising and publishing that BAPCO enters into will accrue to the benefit of BellSouth and not to Southern Bell or its ratepayers. Therefore, BAPCO is in a position to benefit from the expertise and experience developed by the directory operations, while an integral part of Southern Bell. The Commission takes special note of witness Perkerson's statement, in her summary, regarding the fact that Southern Bell's assets were transferred to the National Publishing Division, where new directory and publishing ventures will be handled, at net book value. Both the Company's witnesses and witness Perkerson testified that neither Southern Bell nor its ratepayers will receive any revenues generated by this division.

The last reason given for creating BAPCO addresses the ability to achieve long-term economies of scale. Under the fixed publishing fee established by the Company's methodology, none of these efficiencies would accrue to the benefit of Southern Bell or its ratepayers. The 42.5% of net directory

revenues, calculated under the methodology outlined above, uses expenses at the current time to establish a fee that will not increase once efficiencies are achieved. Therefore, efficiencies resulting in reduced expense levels will benefit BAPCO's parent company, BellSouth, and will not benefit the North Carolina intrastate jurisdictional ratepayers.

While all of the evidence shown above provides a clear basis for ordering that directory operations remain with the telephone company, the Commission does not intend in this proceeding to prevent BellSouth, through its subsidiary BAPCO, from entering into the advertising and publishing business. The Commission is, however, keenly aware of the current and potential threat to the revenue stream from directory operations which is available as an offset to local rates. The Commission believes, as has been said in the past, that directory revenues are generated because of the integral relationship of the directory to telephone service and that these revenues should not be siphoned off in any manner or for any purpose. The relationship between Southern Bell and BAPCO requires close scrutiny of any contract or similar arrangement between these companies to be sure that the profits of a nonregulated subsidiary are not maximized at the expense of the ratepayers.

It is necessary, therefore, that the Commission's decisions and orders with regard to any contract between Southern Bell and BAPCO for publishing Southern Bell's directories provide that the appropriate amount of net directory revenues will be established in each rate case proceeding and that accounting and reporting requirements which will allow for a full and accurate establishment of the revenues and expenses associated with directory operations in North Carolina will be required and must be filed by Southern Bell on a basis prescribed by the Commission.

Much of the testimony provided by the Company in this case in support of 42.5% of net directory revenues as a publishing fee and provided by Public Staff witness Perkerson in support of 54% of net directory revenues as a publishing fee has already been discussed. There is additional evidence, however, which needs to be discussed and analyzed.

Witness Perkerson testified that the contract between Southern Bell and BAPCO should be approved only if the publishing fee is increased to 54% of net directory revenues. Witness Perkerson gave several reasons why the 42.5% was inadequate, including failure to recognize goodwill related to the transfer of assets from Southern Bell to BAPCO, the fact that 42.5% of test year revenues was less than the contribution would have been generated using traditional test year methodology, the less than arm's-length nature of the transaction, and the contracts for directory publishing under which other telephone companies in North Carolina currently receive 54% or more of net directory revenues as a publishing fee.

With regard to the last reason, Company witness Glass stated that the contract between Southern Bell and BAPCO is similar to other contracts in the industry, with the exception of the delivery of the directories by BAPCO. However, Company witness Steele, during cross-examination, would not agree that the contracts mentioned by witness Perkerson in her prefiled testimony are similar in their provisions to the BAPCO contract. Witness Steele stated that the General Telephone Company contract is different in a number of ways, including some provisions not written into the body of the contract.

Witness Perkerson stated that she knew the General Telephone contract differs in the area of delivery, but that she had relied on the advice of Public Staff counsel as to the similarity of the contracts and had been advised that the contracts were similar enough to warrant similar publishing fees.

The Commission has made its own study of the contracts involved and concludes that the comparability of the contracts involved is not clear. The evidence in the record is clear, however, that the General Telephone directory contract requires the telephone company to pay for directory delivery costs, whereas Southern Bell is not responsible for this type of cost under the contract with BAPCO. Additionally, Company witness Steele stated that there were other differences between the BAPCO directory contract and the General Telephone directory contract. These differences include the responsibility for customer service, for printing costs associated with white pages outside the geographic area served by the yellow pages, and for the entire cost of media advertising.

At the heart of any decision by this Commission regarding the proper rate-making treatment for directory revenues is the clear-cut decision of the North Carolina Supreme Court, upholding a prior decision of this Commission, that directory revenues are a proper offset of local rates and Judge Greene's statement in the Modification of Final Judgment, of which the Commission has taken judicial notice, that directory revenues will remain with the operating telephone companies to offset the cost of local service. State of North North Carolina ex rel. Utilities Commission v. Southern Bell, Ibid. United States v. AT&T, 552 F. Supp. 131 (1982). It is, therefore, unnecessary to address again the question of who is to benefit from the directory revenues in the State of North Carolina.

It is, however, critical that this Commission be assured that none of the directory revenues available as an offset of local rates be lost or redirected to another subsidiary of Southern Bell's parent BellSouth due to any change made by the Company in the method to be used for publishing directories. There is a grave concern that approval of the contract at this time will result in a loss of revenues for North Carolina ratepayers.

At stake in this proceeding is the decision whether Southern Bell, in connection with BAPCO, will determine the rate-making treatment to be accorded directory revenues or whether the authority, obligation, and right to determine the rate-making treatment of these revenues will properly remain with this Commission. Approval of the contractual arrangement between BAPCO and Southern Bell, in light of the cap placed on revenues by the establishment of a percentage of revenues as a publishing fee, could serve to set a precedent of allowing Southern Bell, for rate-making purposes, to spin-off profitable pieces of its telecommunications services to separate subsidiaries, thereby circumventing a determination or review of the proper rate-making treatment of these services by this Commission. This means that the Commission could lose control, not only of directory revenues, but also of revenues from other areas and sources in the future.

For these and other reasons, the Commission finds that this important issue requires further examination and a historical test period to assure a fair decision regarding the arrangement between BAPCO and Southern Bell. This Commission, therefore, explicitly withholds approval of the contract between

BAPCO and Southern Bell in this rate proceeding. The proper level of directory revenue contribution to be included in Southern Bell's revenues for this proceeding, however, must be discussed.

Company witness Bishop testified concerning the support that the directory operation currently provides to regulated services. Due to the incomplete nature of information on the Company's adjustment in witness Bishop's exhibits, reference to Southern Bell's P-1 Data Request, item 10, was required. An analysis of page 8-S of 25 filed August 8, 1984, shows that witness Bishop included $24,798,468 of net revenues for directory contribution.

Witness Wilson for the Attorney General testified that he used the Company's 1984 budgeted directory revenues of $61,000,000, along with the 1984 expenses, which were prepaid in 1983. As shown on Exhibit JW-3, Dr. Wilson proposed a gross directory revenue contribution of $34,243,000. When divided by the 1984 estimated revenues of $61,000,000, a 56% of net directory revenue contribution is derived.

Public Staff witness Perkerson testified that she used the same methodology in calculating the directory revenue contribution that the Company used to establish the GS&L costs to be included in the cost of service. Witness Perkerson stated that, since BAPCO is also an affiliated company, she recommended that the same accounting methodology be used to calculate the revenues to be retained by Southern Bell for directory operations. Witness Perkerson stated that this provided consistent treatment for all affiliated activities.

As previously discussed, witness Perkerson used 54% as the percentage of gross directory revenues that should be retained, which resulted in an annualized directory revenue contribution of $31,683,000, for the six months ended June 30, 1984, thus requiring an increase of $6,885,000 in witness Bishop's proposed contribution.

The Commission has given much consideration to the proper determination of a representative level of directory contribution to be used in establishing fair and reasonable rates in this proceeding. Based on the entire record, the Commission concludes that the approach taken by Public Staff witness Perkerson is appropriate for use in establishing such representative level of directory contribution. However, the Commission further concludes that the fair and reasonable revenue retention factor to be utilized in determining the representative level of directory contribution in this proceeding is 48.5%. The Commission notes that the 48.5% revenue retention factor is the most appropriate factor based on the evidence presented in this case.

Based on the foregoing, the Commission concludes that the appropriate level of directory contribution to be used in this proceeding is $28,456,000.

The Commission further concludes that BAPCO must be required to maintain all accounting records for North Carolina operations in a separate manner to provide for a full and accurate examination of the revenues and expenses of these operations in subsequent rate proceedings. Furthermore, BAPCO must also make available to the Commission and the Public Staff records of BAPCO which relate directly or indirectly to the establishment of rates in subsequent rate proceedings, including all support data for expenses which are assigned by use

of allocation factors and any other data which the Commission and the Public Staff deem necessary, as provided for in the General Statutes of North Carolina, to allow the Commission an opportunity to be assured that all directory revenues appropriately assignable to North Carolina ratepayers are available as a reduction to rates in the future.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Testimony relating to the Federal Communications Commission (FCC) ordered refunds by AT&T of license contract expenses related to CPE, enhanced service, fully separate subsidiary formation, and area mobile phone service was provided by Public Staff witness Perkerson and Attorney General witness Wilson. The Company offered no testimony relating to the refunds.

According to testimony provided by witness Perkerson, the refunds related to expenses included in Southern Bell's cost of service between 1974 and 1982 for the items mentioned above, which were all deregulated as a result of divestiture. In order to assign proper expenses to these areas which were to be a part of the competitive marketplace and to prevent AT&T from acquiring a competitive edge due to subsidies from ratepayers, AT&T had to identify expenses associated with these areas and refund the expenses with interest. Refunds were received by Southern Bell in December 1982 and in March, August, and November 1983. The North Carolina intrastate amount of the refunds is $4,150,751.

Witness Perkerson testified that the Company made an adjustment in its application, which was not reflected on its books, for the refund in connection with its end-of-period calculation of expenses but then zeroed out the full amount of end-of-period expenses and replaced the end-of-period amount with the estimated expenses of BellSouth Corporation, Bell Communications Research (Bellcore), and BellSouth Services as the amount to be included in the cost of service for license contract, Account 674, expenses. This resulted in all of the refund being retained by Southern Bell and ultimately its parent, BellSouth Corporation.

Company witness Bishop testified during cross-examination by the Attorney General that the refunds were placed in Account 174 to await final disposition by state regulatory commissions and that he did not believe the FCC intended the refunds to provide a windfall to Southern Bell shareholders.

Witness Perkerson reduced the amount of the refund to be returned to the ratepayers by $556,750, which, witness Perkerson stated, represents the adjustments made by this Commission reducing the GS&L expenses in Docket No. P-55, Subs 784 and 794. Therefore, witness Perkerson recommended that the Company's cost of service should be reduced to allow for an intrastate refund in the amount of $3,594,001.

Witness Wilson testified against any reduction of the refund due to adjustments made to these expenses in prior years. He stated that it was the shareholders of AT&T who would have been affected by prior year adjustments and not Southern Bell or its parent BellSouth. Therefore, Dr. Wilson recommended that the entire intrastate refund in the amount of $4,150,751 be refunded to ratepayers through a reduction of rates in this proceeding.

Based upon a careful consideration of the evidence presented in this case, the Commission concludes that $3,594,001 of the refunds from AT&T to Southern Bell, as ordered by the FCC, should be passed on to the ratepayers in this proceeding and should not be retained by Southern Bell.

The Commission agrees with witness Bishop's statement that the FCC did not intend these refunds to provide a windfall to Southern Bell. It is apparent that the refunds were ordered to provide for proper costing of products and services by the nonregulated segments of AT&T at the time of divestiture and to negate the possibility of the competitive ventures of AT&T being subsidized by ratepayers.

Thus, the Commission concludes that the intrastate refunds in the amount of $3,594,001 should be returned to ratepayers consistent with the testimony of Public Staff witness Perkerson in order to give appropriate rate-making recognition to previous adjustments made by the Commission reducing GS&L expenses in Docket No. P-55, Subs 784 and 794.

The Commission further concludes that the appropriate methodology for refunding the money in question to North Carolina ratepayers is to reduce rates to allow for a flow through of the refunds so as not to lessen their impact by costly accounting changes for a one-time credit.

Based on the foregoing, the Commission concludes that the FCC ordered refunds in an intrastate amount of $3,594,001 should be flowed through to Southern Bell's North Carolina ratepayers by a reduction of cost of service in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Bishop and Public Staff witness Lam presented testimony and exhibits concerning the proper allowance for working capital. The amount of working capital proposed by each witness is shown in the following table:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Cash | $4,596,697 | $4,596,697 | $ - |
| Materials and supplies | 8,595,018 | 8,595,018 | - |
| Accounts payable - materials and supplies | (2,237,283) | (2,237,283) | - |
| Accounts payable - plant in service | (2,699,072) | (2,699,072) | - |
| Investors' (Customers') funds advanced for operations | 1,103,520 | (267,115) | (1,370,635) |
| Total allowance for working capital | $9,358,880 | $7,988,245 | $(1,370,635 |

As can be seen, there was no disagreement as to the proper amounts of cash, materials and supplies, accounts payable - materials and supplies, and accounts payable - plant in service to be included in the calculation of the working capital allowance. Therefore, the Commission concludes that the amounts shown above for these items are proper.

The only component of the working capital allowance on which the parties disagreed was funds advanced for operations. Company witness Bishop proposed an addition to working capital of $1,103,520 for investors' funds advanced for operations while Public Staff witness Lam proposed a deduction to working capital of $267,115 for customers' funds advanced for operations.

Witness Lam testified that there were two major reasons why the amount that she showed for funds advanced for operations differed from the amount shown by the Company. The first was a difference in the method used to reflect the effects of the divestiture of Southern Bell from AT&T on January 1, 1984. In calculating investors' funds advanced for operations, the Company first prepared a lead-lag study based upon the per book test year cost of service. The Company then adjusted the investors' funds to reflect the divestiture of the directory and Design Line sales operations and the change in the lags on general service and license expense and Western Electric billings charged to maintenance. Witness Lam calculated customers' funds advanced for operations from a lead-lag study based upon a divested per books cost of service. Witness Lam testified that this divested study reflects the divestiture of the directory and Design Line sales operations, as does the Company's calculation, but also reflects changes in revenues and expenses not shown in the Company's calculation, such as the loss of CPE lease revenues and toll revenues and a reduction in payroll and relief and pensions expenses. Witness Lam further testified that her method for calculating funds advanced for operations is more reasonable than the Company's method because it reflects a broader range of divestiture effects. Witness Lam indicated on cross-examination that her calculation was the best that could be done under the present circumstances. Witness Lam stated that it was necessary to reflect the cost of service on a divested basis and that her lead-lag study was an attempt to do this.

Public Staff witness Lam also addressed the issue of per book versus adjusted cost of service for lead-lag study purposes. Witness Lam stated that, because of the unusual circumstances surrounding this proceeding, it was appropriate to use an adjusted cost of service for lead-lag study purposes. Witness Lam stated that, because of divestiture and the changes in the Company's operations, there have been numerous changes in the amount of revenues which the Company collects and the expenses which it incurs, which result in the unadjusted per book test year cost of service being no longer representative of the Company's cost of service. Witness Lam indicated that she had not deviated entirely from the per book lead-lag study concept because she used a divested per book cost of service whereby the per book test year cost of service was adjusted, to the extent possible, to reflect what it would have been had divestiture been in effect during the entire test year. She stated that no attempt was made to include any end-of-period or pro forma adjustments in the cost of service and, therefore, a fully adjusted cost of service had not been used in her lead-lag study calculation. Witness Lam further testified that the divested per book cost of service which she used in her lead-lag study calculation was based upon a divested per book lead-lag study which the Company prepared at her request.

Though the record is clear that the cost of service to be used in developing the Company's lead/lag may perhaps be affected by divestiture to an extent greater than that reflected by the Company, it is equally clear, as stated by Company witness Bishop, that the lags incorporated in the lead/lag study used by the Public Staff are not necessarily entirely reflective of a

post-divestiture environment. This fact is particularly borne out by the revenue lag. Evidence of record shows that a substantial change has occurred in the revenue mix due to divestiture, and that therefore the revenue lag should change due to divestiture, since a material portion of the divested revenues had a lag shorter than the composite revenue lag developed prior to divestiture. Based on the foregoing, the Commission is concerned that the post-divestiture lead/lag analysis presented by the Public Staff is not conclusively representative of the Company's ongoing working capital requirements, and therefore the Commission concludes that the Company's reflection of divestiture in its lead/lag study is more appropriate for establishing rates in this proceeding.

Public Staff witness Lam testified that the second reason the amount she showed for funds advanced for operations differed from the amount shown by the Company was a change in the lag assigned to the net investment tax credit (ITC) related to the Revenue Act of 1971. She stated that she had assigned the composite revenue lag of 24.67 days to the post-1971 net ITC while continuing to assign a zero lag to the pre-1971 net ITC. She testified that, to the extent that funds measured through the lead-lag study are provided by investors, they represent valid additions to the rate base on which investors are given the opportunity to earn a fair rate of return but that, to the extent those funds are not provided by investors, they do not qualify as valid additions to the rate base. Witness Lam indicated that the funds related to the post-1971 ITC are not provided by investors but rather by the ratepayers and, therefore, should not be included in the working capital allowance. Witness Lam stated that assigning the revenue lag to the post-1971 net ITC results in neither an increase nor a decrease in the working capital allowance included in the rate base but has a zero effect. Witness Lam further testified that, because it has a zero effect on the rate base, it does not violate tax law restrictions prohibiting the post-1971 ITC from being used to reduce the rate base.

Witness Lam agreed on cross-examination that, if the unamortized portion of the investment tax credit was used to reduce the rate base, the Company would lose its investment tax credits for all open tax years and would continue to lose the credit into the future. Witness Lam also agreed that the Company would lose the credits if the rate base were reduced in an indirect manner.

The central issue concerning this matter is whether the Internal Revenue Code allows the treatment advanced by the Public Staff or whether it mandates the treatment advocated by the Company. Initially, one should note that the treatment advocated by the Company is the same as that put forth by both the Company and the Public Staff, and accepted by this Commission, in previous general rate case proceedings for Southern Bell. Additionally, it should be noted that the evidence is clear that the Public Staff's treatment would effectively nullify any consideration of investment tax credits in determining an appropriate level of working capital, while the Company's treatment would include consideration of the ITC.

The Company asserts that the position of the Public Staff concerning this matter could be found to be in violation of the Internal Revenue Code, placing the Company in jeopardy of losing millions of dollars in ITC. Clearly, the Public Staff and the Company agree that the ITC unamortized balance should not be directly deducted from rate base, as that would be in violation of the

Internal Revenue Code and would subject the Company to the loss of the ITC. However, the parties disagree concerning the interpretation of whether or not a reduction to rate base by virtue of a reduction in the working capital allowance, based on the lead-lag methodology, should be considered in the same light as a direct reduction to rate base.

The Commission, in its review of this matter, has taken judicial notice of I.R.S. Regulation 1.46-6(b)(ii) which states in part:

"(ii) In determining whether, or to what extent, a credit has been used to reduce rate base, reference shall be made to any accounting treatment that affects rate base. In addition, in those cases in which the rate of return is based on the taxpayer's cost of capital, reference shall be made to any accounting treatment that affects the permitted return on investment by treating the credit in any way other than as though it were capital supplied by common shareholders to which a 'cost of capital' rate is assigned that is not less than the taxpayer's overall cost of capital rate (determined without regard to the credit)."

Based on the foregoing, and a review of the entire record concerning this matter, the Commission concludes that the Public Staff's adjustment would result in a reduction in rate base, and consequently would be in contradiction to the I.R.S. regulations. Therefore, the Commission concludes that the Public Staff's adjustment related to the appropriate treatment of investment tax credits in the lead-lag study is improper and should not be adopted.

Accordingly, the Commission concludes that the proper allowance for working capital in this proceeding is $9,358,000.

The Public Staff asserted that a new lead-lag study should be implemented. The Commission agrees with this recommendation. Therefore, Southern Bell will be ordered to prepare a complete, new lead-lag study for inclusion in its next general rate case filing. This lead-lag study should be based upon a post-divestiture test year cost of service and should include a recalculation of all revenue and expense lags included therein so that all lags reflect post-divestiture payment practices.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence and conclusions for this finding of fact are contained in the testimony and exhibits of Company witness McClellan, Attorney General witness Wilson, and Public Staff witness Daniel.

Company witness McClellan defined "attrition" as a term to denote those conditions where the costs of expanding, maintaining and operating a system are increasing more rapidly than the revenues produced from the system or, stated another way, the erosion of earnings resulting from operating at fixed tariffs when unit costs are increasing. Witness McClellan stated that attrition is an unavoidable problem to a regulated utility operating on fixed tariffs while cost levels are continually increasing. Witness McClellan contended that, unless the attrition adjustment is made, the test year will not function adequately in setting rates.

In computing his attrition adjustment, witness McClellan compared adjusted end-of-period revenues and costs per end-of-period access lines to the budgeted revenues and costs per estimated access lines during 1984. In his original testimony, this comparison produced an attrition adjustment of $42,456,190, which he reduced by the $18,783,569 revenue effect of the Company's pro forma adjustments to avoid duplication. The net of these amounts was $23,672,621, which was the revenue effect of the attrition adjustment originally included in cost of service by the Company. In supplemental testimony, witness McClellan reduced his net attrition adjustment by $16,969,569 to $6,703,052. According to witness McClellan, this reduction was due to revisions to the original budget estimates.

Witness McClellan contended that the attrition adjustment is no different from any other type of adjustment. He stated that he considered attrition a known and measurable change and had measured it. Witness McClellan also contended that the Company's budget was the best measure of what costs and revenues were going to be. Witness McClellan did agree that there had been an improvement in the budget outlook and that the only thing certain is that things will change.

Attorney General witness Wilson contended that no attrition adjustment should be allowed because the Company's earnings have been more than adequate without such an adjustment, even during inflationary periods. Witness Wilson testified that inflation alone does not guarantee that attrition will be experienced. Dr. Wilson concluded that one must assume no productivity gains, rate structure improvements, sales alterations or other offsets to cost increases. Witness Wilson stated that this was certainly not the case for Southern Bell where a study indicated annual productivity gains of 5.72%. He contended that this makes an attrition adjustment unnecessary, when considered with lower interest rates, improved rate structures, lower rates of inflation, improved operating efficiencies, adjustments for known changes, and an end-of-period rate base. Dr. Wilson further testified that an attrition adjustment is not appropriate in North Carolina in view of the fact that the test year is adjusted to end-of-period rate base and to reflect known changes.

Public Staff witness Daniel also testified that the attrition adjustment is inappropriate and unnecessary. Witness Daniel stated that the Commission sets rates on an end-of-period basis with investment, revenues, and expenses stated on a going level basis and, in addition, allows adjustments for actual changes subsequent to the test year. Witness Daniel cited the Company's inclusion of adjustments reflecting 1984 expense levels. Witness Daniel further cited the existence of excess capacity in the investment included in this proceeding which allows the Company to add customers and revenues without incurring additional costs. Witness Daniel contended that all of these factors are offsets to attrition.

On cross-examination, witness Daniel testified that many factors would have to be looked at to determine whether attrition exists. Witness Daniel stated that attrition does not come about simply because of a comparison of budget figures for next year with some actual figures for the prior year. Witness Daniel maintained that the Commission would have to look at the whole picture of rate-making policy and its effects to determine the propriety of an attrition adjustment.

Witness Daniel also stated his concern with the ability to measure attrition. He cited the dramatic reduction in witness McClellan's measurement from $23 million to $6.7 million due to budget changes and said that the Public Staff was unable to accept witness McClellan's measurement as reasonable.

Witness Daniel agreed that the phenomenon of attrition exists but said that its measurement requires looking at capital costs, expenses, cost savings, and other things. Witness Daniel cited the costs savings due to employee reductions as an example. Witness Daniel agreed that witness McClellan's approach attempted to capture those costs savings in a simple, broad-brush approach but disagreed that they had been captured. Witness Daniel also stated on cross-examination that Southern Bell had made specific adjustments far beyond the end of the test year and that the Company had the opportunity to make any other specific adjustments which it deemed necessary.

Although the Commission does not deny that the phenomenon of attrition exists, the statutes of this State and the rate-making policies of this Commission recognize the existence of attrition and provide the Company the opportunity to reflect the effects of attrition, to the extent they are reasonably quantifiable, in its cost of service.

The Commission sets rates based on an end-of-period rate base with revenues and expenses stated on an end-of-period, going level basis. In establishing the rate base, revenues, and expenses in this case, the Commission has considered and adopted some adjustments reflecting actual changes after the end of the test year. These adjustments, of necessity, contain attritional elements. Further, there has been ample opportunity for any party to this proceeding, including Southern Bell in particular, to propose specific additional adjustments reflecting actual changes for consideration by the Commission.

After carefully considering all of the evidence, the Commission concludes that there should be no specific allowance for the possible effects of attrition in addition to those included in the accounting and pro forma adjustments already adopted by the Commission. Further, the Commission concludes that Southern Bell will have a reasonable opportunity to earn the rate of return approved by the Commission without an additional adjustment for possible attrition. The Commission, therefore, rejects the Company's proposed attrition adjustment.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is contained in the testimony and exhibits of Public Staff witness Daniel.

Witness Daniel testified that, as a part of the divestiture process, the Company had transferred land and buildings to AT&T at an appraised value, thus realizing a gain on the transfer. He stated that the FCC, in its order in Docket No. 83-551, dated December 15, 1983, ordered that these gains should flow to ratepayers. He also indicated that the Company had flowed the gain on buildings to ratepayers by increasing the depreciation reserve, thus reducing rate base, but recorded the gain on the land below the line in account 360. Witness Daniel proposed that the gain on the land transferred be flowed through

to ratepayers as the FCC intended. He proposed a one-year flow-through of the $162,375 gain.

On cross-examination, witness Daniel testified that losses, such as abandonment losses, had been charged to ratepayers in other cases and that the Public Staff would evaluate the propriety of including any losses recorded in a comparable account to account 360 in the next Southern Bell rate case. He maintained that it was proper, fair, reasonable, and equitable that the gain be flowed to ratepayers.

The Commission agrees that the gain on this sale of land should be flowed to ratepayers. The customers of Southern Bell are being required to cover the costs of divestiture through increased rates; therefore, it is only fair and equitable that the few related benefits go to those customers as well.

The Commission sees no difference between the gain on buildings and the gain on land. The Company is flowing through the gain on buildings by a reduction of rate base. The Commission believes that the immediate flow through of the gain on the transfer of land is fair and reasonable. Further, the FCC intended these gains to inure to the benefit of ratepayers, and the Commission concurs in that judgment. Therefore, the Commission adopts the Public Staff's proposed adjustment flowing through the $162,375 net gain on land to ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witness Bishop and Public Staff witness Daniel presented evidence relating to the inclusion of construction work in progress (CWIP) in rate base.

Company witness Bishop proposed that the Commission reconsider its position in Docket No. P-55, Sub 816, in which the Commission excluded short-term CWIP from the rate base. Witness Bishop testified that most of the end-of-period balance of short-term CWIP was actually in service by December 31, 1983.

Public Staff witness Daniel recommended that CWIP should be excluded from rate base because it does not meet the statutory requirement of being necessary to the financial stability of the Company. Witness Daniel based his recommendation on the approach taken by the Public Staff and adopted by the Commission in Southern Bell's last general rate case, Docket No. P-55, Sub 816.

In support of his recommendation, witness Daniel stated that the measures of financial stability used by the Commission in reaching its conclusion in the last case approximate those which now exist. Witness Daniel offered the following comparison (as corrected at the hearing):

| | Current Analysis | Docket No. P-55, Sub 816 |
|---|---|---|
| Pre-tax interest coverage (excluding AFUDC) | 4.06x | 4.08x |
| AFUDC percent of intrastate earnings | 4.16% | 3% |
| CWIP percent of total utility investment | 1.6% | 1.6% |
| Standard and Poor's bond rating | AA | AA |
| Moody's bond rating | A1 | A1 |

When cross-examined on the fact that his measure of CWIP as a percentage of total utility investment included only short-term CWIP, witness Daniel stated that he had calculated such measure in exactly the same manner used in Docket No. P-55, Sub 816, to ensure comparability. Witness Daniel also stated that short-term CWIP was the only CWIP being considered for inclusion in rate base; however, he went on to say that he had no problem with using total CWIP in that calculation. Witness Daniel said that total CWIP would be only about 3.2% of rate base and would not affect his recommendation at all.

Witness Daniel also pointed out that Company witness Bishop had not made any of the corollary adjustments to deferred income taxes and revenues or for cost savings which are necessary if the construction is to be included in rate base as plant-in-service.

The Commission again agrees with the Public Staff and concludes that this case is a clear instance in which the Company cannot meet the statutory test set forth in G.S. 62-133(b) that CWIP is necessary to its financial stability. Whether or not CWIP is included in rate base in this proceeding will have virtually no effect on the Company's financial position. The Company is rated AA by Standard and Poor's and A1 by Moody's and will remain financially stable without the inclusion of short-term CWIP in rate base. Therefore, the Commission concludes that short-term CWIP should not be included in rate base in this case. Nevertheless, the Commission again recognizes that the Company should be allowed to recover its cost of capital associated with investment in short-term CWIP. Capitalization of allowance for funds used during construction (AFUDC) will allow the Company to recover such costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Company witness Bishop and Public Staff witnesses Daniel, Lam, and Winters presented testimony regarding Southern Bell's reasonable original cost rate base. The following table summarizes the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding.

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Telephone plant in service | $1,478,944 | $1,478,944 | $ - |
| Property held for future use | 128 | - | (128) |
| Short-term CWIP | 15,595 | - | (15,595) |
| Plant acquisition adjustment | 2,985 | 2,985 | - |
| Working capital | 9,358 | 7,988 | (1,370) |
| Total original cost | 1,507,010 | 1,489,917 | (17,093) |
| Less: Depreciation reserve | 311,212 | 311,212 | - |
| Customer deposits | 3,692 | 3,692 | - |
| Accumulated deferred income taxes | 183,184 | 183,184 | - |
| Unamortized investment tax credits | 1,427 | 1,427 | - |
| Total | 499,535 | 499,535 | - |
| Original Cost Rate Base | $1,007,475 | $ 990,382 | $(17,093) |

As the table shows, the Company and the Public Staff agree on the amounts of telephone plant in service, plant acquisition adjustment, depreciation reserve, customer deposits, accumulated deferred income taxes, and unamortized investment tax credits. The Commission, therefore, concludes that these amounts are just and reasonable for setting rates in this proceeding.

The first item on which the witnesses disagree is property held for future use. Company witness Bishop included $128,000 for this item and testified that the Company has a definite plan for its use within the next two years and that efficient planning required these expenditures.

Public Staff witness Winters testified that he excluded property held for future use from rate base because it does not meet the criterion of being used and useful in providing telephone service to the public as prescribed by G.S. 62-133. Witness Winters further testified that in prior cases the Commission has consistently not allowed property held for future use to be included in rate base.

Based on the evidence presented by the witnesses, the Commission concludes that property held for future use cannot and should not be included in rate base in this proceeding.

The final differences relate to construction work in progress and the proper allowance for working capital. The Commission found in Finding of Fact No. 11 that construction work in progress should not be included in rate base in this proceeding and in Finding of Fact No. 8 that the proper allowance for working capital is $9,358,000.

In summary, the Commission concludes that the proper level of original cost rate base to be included in this proceeding is $991,752,000, consisting of the following:

(000's Omitted)

| Item | Amount |
|---|---|
| Telephone plant in service | $1,478,944 |
| Plant acquisition adjustment | 2,985 |
| Working capital | 9,358 |
| Total | 1,491,287 |
| Less: Depreciation reserve | 311,232 |
| Customer deposits | 3,692 |
| Accumulated deferred income taxes | 183,184 |
| Unamortized investment tax credits | 1,427 |
| Total | 499,535 |
| Original Cost Rate Base | $ 991,752 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Evidence concerning the proper level of operating revenues was presented through the testimony and exhibits of Company witness Bishop, Public Staff witnesses Garrison, Willis, and Perkerson, and Attorney General witness Wilson.

The following table sets forth the amounts proposed by the Company and the Public Staff:

000's Omitted

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Local service revenues | $336,975 | $336,975 | $ - |
| Toll and access revenues | 215,365 | 232,182 | 16,817 |
| Miscellaneous revenues | 43,337 | 50,222 | 6,885 |
| Uncollectibles | (3,350) | (3,413) | 63 |
| Total | $592,327 | $615,966 | $23,639 |

As the above table shows, the Company and the Public Staff agree on the appropriate level of local service revenues, which were calculated by multiplying the access lines recorded in the months of April through December 1983 by the average local service revenue per access line for the first six months of 1984 and adding actual local service revenue for the first three months of 1984, thereby deriving a 12-month sum of revenue centered around the test period. Attorney General witness Wilson, on the other hand, based his calculation on the end-of-period level of access lines, multiplying it by 1984 revenue per access line and annualizing the result to derive local service revenues of $338,334,684. Witness Wilson contended that if ratepayers are required to pay a return on plant necessary to serve the September 1983 level of access lines, those same lines should be used in the revenue calculation.

After review of the entire record, the Commission concludes that the appropriate representative level of local service revenues to be included in

establishing reasonable rates for Southern Bell in this proceeding is $336,975,000.

The parties disagree on the appropriate level of toll and access revenues to be included in this proceeding. The following table shows the levels proposed by the Company and the Public Staff.

(000's Omitted)

| | Toll | Access | Total |
|---|---|---|---|
| Southern Bell | $83,592 | $131,773 | $215,365 |
| Public Staff | 98,076 | 134,106 | 232,182 |

The differences between Southern Bell and the Public Staff are greater with respect to toll revenues. Southern Bell witness Bishop used adjusted per books revenues for the three months of April, May, and June 1984. In addition, witness Bishop applied a deflation factor to reflect revenues as of September 30, 1983, the end of the test period. Public Staff witness Garrison, on the other hand, used actual per books revenues for the period January through June 1984, and then deflated the annualized result to September 30, 1983. Like the Company in its Proposed Order, Public Staff witness Garrison also included $377,054 of increased toll revenues pursuant to the Commission Order of August 31, 1984, in Docket No. P-100, Sub 69. Attorney General witness Wilson established the Company's representative level of toll revenue based on adjusted revenues for the eight-period January - August 1984. Unlike the Public Staff and the Company, witness Wilson did not deflate his toll calculation.

The principal questions to be answered with regard to toll revenues are whether adjusted or actual per books revenues should be used and whether the revenues should be deflated to the end of the test period.

All parties of record agree that Southern Bell's toll revenues fluctuate from month to month. Additionally, the record is clear that, during the normal course of operating and accounting for the intrastate toll pool, Southern Bell must make, and does make, adjustments to the booked toll revenues. The record is equally clear that the recognition of and responsibility for toll revenues in this state have changed as the result of divestiture. All of the above facts make it very difficult to establish a representative level of toll revenues to be used in setting rates in this proceeding. Additionally, all of the above facts weaken the reliability of per books amounts in this regard.

The Commission has given this issue much consideration and thus concludes that a prudent determination on this matter should take into consideration the most representative data available. Consequently, the Commission concludes that the period January through August 1984 should be used, because it represents the most data available related to the Company's toll revenues since the implementation of divestiture. Concurrently, the Commission further concludes that the adjusted toll amounts for this study period should be used because such adjusted amounts reflect the most accurate data available.

As to the contention made by Attorney General witness Wilson that intraLATA toll revenues should not be deflated, the Commission finds no competent evidence supporting this position, in that Southern Bell's investment

is stated at the end of the test year and no attempt has been made by witness Wilson to match revenues, expenses, and investment.

Therefore, based on all the foregoing, the Commission concludes that the Company's appropriate end-of-period intraLATA toll revenues to be used in setting rates in this proceeding are $89,191,181, plus the $377,054 toll revenue increase approved in Docket No. P-100, Sub 69.

The difference between the Public Staff and the Company concerning access revenues involves an adjustment made by Company witness Bishop due to a perceived discrepancy between estimated and actual interstate usage by AT&T. As with toll revenues, the Public Staff and the Company agree that access revenues should be deflated to the end of the test year, whereas Attorney General witness Wilson disagrees with deflation.

Witness Bishop testified that, during the month of April and the first 24 days of May, access revenues were assigned to the interstate jurisdiction on the basis of estimated minutes of use (the percent interstate usage or PIU factor) and that, as a result, interstate access revenues were understated and intrastate access revenues were overstated. Witness Bishop further testified that beginning May 25, 1984, Southern Bell and the other BOCs began assigning access usage on the basis of actual minutes of use. On cross-examination, witness Bishop stated that the factors for determining actual usage are developed by taking originating minutes of use and adding in an amount for terminating minutes to arrive at access minutes. Public Staff witness Garrison testified, on cross-examination, that actual interstate usage was derived from minutes per message, based on a 1982 annual minutes-of-use study, converted to originating minutes of use using some March 1983 data. Witness Garrison further stated that this usage was determined in basically six categories: interstate MTS, OUTWATS, and INWATS and intrastate MTS, OUTWATS, and INWATS. Witness Garrison also testified that it was appropriate to determine access minutes based on originating minutes of use only for interstate OUTWATS. To determine the reasonableness of this calculation, witness Garrison stated that he compared the results to the interstate access minutes reported by Southern Bell to the NECA settlement pool. Witness Garrison found the level of AT&T's usage in Southern Bell's adjustment in this case to be much less than the level reported to the pool, which raises doubts as to the validity of Southern Bell's calculation of the actual PIU. Finally, witness Garrison stated that converting to originating minutes of use tends to understate intrastate usage and overstate interstate usage.

Based on the foregoing, the Commission concludes that the Public Staff's position on this matter is appropriate and should be adopted in determining end-of-period access revenues. Further, the Commission concludes, consistent with the decision to deflate intraLATA toll revenues, that the interLATA access revenues should be deflated, as proposed by both the Company and the Public Staff.

The Commission takes judicial notice of the fact that on November 2, 1984, an Order was entered in Docket No. P-100, Sub 65, authorizing an interim reduction of approximately $11,000,000 in the current level of interLATA access charges paid by AT&T Communications of the Southern States, Inc. (AT&T) to the local exchange companies operating in North Carolina. This interim access charge reduction was approved by the Commission pending hearing and subject to

AT&T filing an acceptable undertaking to refund with 10% interest any portion of the interim access charge reduction of approximately $11,000,000 which the Commission may ultimately determine to have been unjustified after hearing. On November 7, 1984, Southern Bell filed an exhibit in Docket No. P-100, Sub 65, in conformity with decretal paragraph 3 of the Commission Order in that docket dated November 2, 1984, wherein it was stated that the interim access charge reduction would result in a total reduction in access charge revenues to all local exchange companies of $10,887,085 and in a reduction in access charge revenues to Southern Bell of $5,992,000.

Thus, the interim access charge reduction in the amount of $10,887,085 authorized in Docket No. P-100, Sub 65, will result in Southern Bell's on-going level of interLATA access charge revenues being reduced by $5,992,000. This amount is equal to $5,783,000 on a deflated basis, consistent with the methodology applied in computing interLATA access charge revenues, discussed hereinabove. Since the Company's end-of-period level of interLATA access revenues has been decreased as a result of the Commission's Order dated November 2, 1984, in Docket No. P-100, Sub 65, the Commission concludes that this $5,783,000 reduction should be considered in determining fair and reasonable rates in this proceeding.

To the extent that all or any portion of the $5,783,000 in interim access charge revenue reductions reflected in this case may ultimately be disallowed by the full Commission in Docket P-100, Sub 65, Southern Bell will be required to flow any refunds of interim access charges which it receives from AT&T back to the Company's North Carolina ratepayers. Furthermore, if it is later determined by the Commission that all or any portion of the $5,783,000 in access charge revenue reductions reflected in this case should have been disallowed, Southern Bell will be required to reduce its rates and charges on a prospective basis to reflect such decision by the Commission.

Based on all the foregoing, the Commission concludes that the appropriate level of end-of-period toll and access revenues to be used in this proceeding is $217,891,000.

The next item on which the Company and the Public Staff disagree is miscellaneous revenues. This difference of $6,885,000 results from an adjustment to directory revenues proposed by Public Staff witness Perkerson. This item is discussed in Evidence and Conclusions for Findings of Fact Nos. 5 and 6. Based on all the evidence in the record, the Commission concludes that the appropriate level of miscellaneous revenues is $46,995,000 for setting rates in this proceeding.

The final item on which the Company and the Public Staff disagree is uncollectibles. The Commission concludes, based on the revenues allowed herein, that the appropriate level of uncollectibles is $3,327,000.

The Commission finds and concludes based on all of the evidence in the record that, under present rates, the appropriate level of revenues for setting rates in this proceeding net of uncollectibles is $598,534,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact related to the proper level of General Service and License Contract (GS&L) expense is found in the testimony of Company witnesses Glass, Parish, Wilson, and Bishop, Public Staff witness Perkerson, and Attorney General witness Wilson.

The amounts included by the Company in this proceeding for GS&L expenses represent estimated costs for the advice, assistance, and research functions at Bell Communications Research, Inc. (Bellcore); the holding company costs at BellSouth Corporation (BellSouth); and the costs at BellSouth Services.

Company witness Parish testified with regard to some of the changes that have taken place in Southern Bell's affiliated relationships because of divestiture, more specifically the functions, operations, and costs of BellCore and BellSouth Services. Witness Parish also briefly described how centralized services were previously provided to Southern Bell by AT&T and other affiliates. Witness Parish testified that BellSouth Services, as the BellSouth regional owner of Bellcore, jointly planned and created Bellcore's functions. These functions include such things in the technical area as network design and operations, applied research and information systems development, and such nontechnical things as assistance in finance, governmental affairs, market research, and personnel. Services which either cannot be provided by Bellcore because of the terms of divestiture, such as procurement, or which are better provided on a centralized regional basis are provided by BellSouth Services. Witness Parish testified that the consolidation of staff functions has avoided duplication and kept costs lower than if Southern Bell provided these functions for itself. While witness Parish asserted that Bellcore was engaged only in activities related to exchange services and exchange access service, he admitted on cross-examination by the Public Staff that the research being undertaken by Bellcore had potential applications for both the regulated and nonregulated or competitive fields and that, with regard to Bellcore projects that would result in new services being provided, no one could guarantee that these new services would be offered in the future through Southern Bell rather than through a separate subsidiary of BellSouth.

Company witness Glass testified with regard to BellSouth Corporation, including the services it provides to Southern Bell and the eight unregulated subsidiaries that have been formed. Witness Glass testified that BellSouth was formed to perform the holding company functions which AT&T had previously performed for Southern Bell and South Central Bell, with the addition of three new functions. Witness Glass described the allocation process by which BellSouth allocated its costs among its subsidiaries and the reasonableness of the allocation of these costs to Southern Bell.

Witness Glass agreed on cross-examination that one of the reasons for divestiture, to functionally separate the telephone operating companies from AT&T, was to eliminate the incentive and ability AT&T had to cross-subsidize and impede competition at the expense of the ratepayer. Witness Glass also agreed that the same possibilities exist for a regional holding company, which uses the same facilities, equipment, and personnel to serve regulated and nonregulated subsidiaries, to overallocate the costs assigned to regulated operations in order to maximize the costs borne by the regulated ratepayer.

Company witness Steve Wilson, a Southern Bell employee, testified generally with respect to the services Southern Bell's North Carolina operations obtained from its affiliated relationship with Bellcore, BellSouth, and BellSouth Services. Witness Wilson also provided information with regard to the predivestiture License Contract with AT&T. Witness Wilson provided a general overview of the centralized services being provided in the post-divestiture world and described the cost savings to be derived from the centralization.

In response to a request from the Commission panel, witness Wilson presented a number of charts and an explanation of how the GS&L expenses in this proceeding related to GS&L expenses prior to divestiture. As part of Public Staff witness Perkerson's direct testimony, she presented the Public Staff's position on how the GS&L expenses requested in this proceeding compare to the GS&L expenses prior to divestiture. The Company and the Public Staff gave the same treatment to the expenses of BellSouth Services in this comparison, each treating these costs as most closely associated with the expenses from Western Electric in prior years and excluding them in any comparison of GS&L costs.

At this point, however, their agreement as to the comparison of the GS&L costs ended. Company witness Wilson, as the chart set out below shows, compared the GS&L expenses in this proceeding in the amount of $10,772,000 to a combination of GS&L expenses, Business Information Systems expense from Bell Labs, Cost Sharing expense and Conduit expenses for 1983 in the amount of $19,992,000 to show that the expenses for GS&L in this proceeding represented a 46% reduction over these expenses for 1983. Witness Wilson also indicated that the $19,992,000 shown for 1983 represented 2.91% of revenues while the $10,772,000 was 1.84% of revenues.

Witness Perkerson in her comparison, as set out in chart form below, showed the allowed level of GS&L in Docket No. P-55, Sub 816 to be $9,785,679, the assumed allowed level of GS&L for calendar year 1983 (if the Commission disallowed the same level of expenses as had been disallowed in Sub 816) to be $11,158,637, and GS&L expenses, as presented in this rate proceeding, to be $10,772,146. This comparison shows the expenses for GS&L in this proceeding to be a 10.08% increase over the Sub 816 level of GS&L expenses and only a 3.46% reduction from the 1983 unaudited level provided by the Company.

PUBLIC STAFF WITNESS PERKERSON'S
AFFILIATED SERVICES EXPENSE COMPARISONS

| | Sub 816 (Test Year Ended 10/31/82) | 12/31/83 Unaudited | Sub 834 (Test Year Ended 9/30/83 |
|---|---|---|---|
| License Contract Account 674 | $12,258,010 | $13,978,000 | $11,303,349 |
| Commission Adjustment | 2,472,331 Assumed | | |
| Adjustment | | 2,819,363 | |
| BSS removed by Company | | | 531,203 |
| Total | $ 9,785,679 | $11,158.637 | $10,772,146 |

Net Reduction = $386,491 (-3.46%)

Net Increase = $986,467 (+10.08%)

COMPANY WITNESS WILSON'S
AFFILIATED SERVICES EXPENSE COMPARISON

| 1983 | $000 | % Net Revenues |
|---|---|---|
| License Contract - AT&T & Bell Labs | $13,978 | |
| Business Information Systems - Bell Labs | 2,493 | |
| Cost Sharing - AT&T & Bell Operating Companies | 1,837 | |
| Conduit - AT&T & Bell Operating Companies | 1,684 | |
| Total | $19,992 | 2.91% |
| **1984** | | |
| Bell Communications Research | 6,747 | |
| BellSouth Corporation | 4,025 | |
| Total | $10,772 | 1.84% |

Net Reduction = $9,200 (-46%)

The Commission finds these comparisons interesting in light of the testimony of witness Perkerson regarding the testimony of the Company in prior years relating to the clear-cut differences between GS&L, Conduit, and Cost Sharing expenses and the further testimony of witness Perkerson that the Company had included in this comparison only portions of the costs related to BIS, Cost Sharing, and Conduit.

The Company's witnesses indicated that Southern Bell had been able to select the services and assistance it wanted to be provided in the post-divestiture world and that it was no longer receiving many of the previously provided services. In addition, witness Perkerson testified that a large decrease in GS&L expenses should have occurred based on Company provided

data showing that the post-divestiture Bellcore costs would reflect a reduction in expenses due to the removal of four levels of management, a reduction in the scope of research, and a movement of operations from expensive New York real estate to a lower rent area in New Jersey. Based on the evidence provided by the witnesses, it does not appear that this reduction has been achieved.

Witness Perkerson recommended that the maximum limit for GS&L expenses, which are the costs from Bellcore, BellSouth Services, and BellSouth Corporation, be set at 1% of net revenues minus directory revenues, with the exclusion of the core costs at Bellcore and the costs at BellSouth Services from the 1% limitation. As stated earlier, witness Perkerson excluded BellSouth Services expenses from the 1% limitation due to its close relationship to pre-divestiture Western Electric expenses. Witness Perkerson recommended excluding the core expenses at Bellcore from the limitation because these costs are required of all owners of Bellcore's services.

Witness Perkerson further stated that the expenses allowed for license contracts and included for rate-making purposes in the Company's last general rate case amounted to 1.25% of net revenues.

Witness Perkerson testified that the expenses which were removed by the application of the 1% of net revenue maximum represent the same type of expenses removed by the Public Staff and accepted by this Commission in prior rate proceedings. Examples of these expenses are holding company costs, servicing of securities, public relations, lobbying, and contributions, as well as Bellcore expenses which will benefit both the regulated and nonregulated subsidiaries of BellSouth. Witness Perkerson further stated that a 15% return on the Bellcore investment was included as a cost of the service provided by Bellcore, that this return flowed through BellSouth Services and its parent Southern Bell to Southern Bell's parent, BellSouth, and that this return was higher than the return recommended in this proceeding for other investments.

Witness Perkerson further testified that the 1% of net revenues less directory revenues, excluding the core expenses of Bellcore and the expenses of BellSouth Services, was an interim adjustment designed to negate the possibility of having North Carolina ratepayers fund through rates projected expenses for activities that are not necessary and reasonable for the provision of exchange telephone service.

Dr. Wilson, testifying for the Attorney General, also took the position that the level of expenses included in the cost of service for GS&L should be reduced to 1% of revenues, though without any exclusions. Attorney General witness Wilson stated that though poor documentation existed for Bellcore operations, it was clear that many of the expenses are not directly related to the benefit of current ratepayers and therefore should not be recovered from them. Witness Wilson further stated that Bellcore expenses are very similar to expenses presented to this Commission in the past through license contract expenses.

Based on his analysis, Dr. Wilson recommended that Bellcore costs should not be allowed to be recovered through local rates until information is available which clearly shows the purpose of each activity and documentation exists as to which service derives direct benefit. Therefore, witness Wilson stated that local exchange ratepayers should not be required to pay for

competitive services. Witness Wilson testified that all affiliated activities not clearly benefiting Southern Bell's current ratepayers should be disallowed for rate-making purposes. As a transition mechanism, until sufficient data is provided with the Company's next filing, Attorney General witness Wilson recommended that the Commission limit the allowable Bellcore and BellSouth expenses to a combined total of 1% of Southern Bell's jurisdictional revenues minus uncollectibles.

The Commission has weighed all of the testimony provided by the witnesses on this most complex issue. Perhaps more change can be observed in this area, as a result of divestiture, than in any other area of the telephone company's operations. The GS&L expenses have always been nebulous, including a diverse mix of expenses for a wide variety of services, spanning the whole spectrum of telephone service. The issue is even more clouded with the advent of divestiture. Additionally, the Commission realizes that the GS&L charges have always included expenses, which this Commission has deemed to be inappropriate for inclusion in Southern Bell's cost of service for setting rates in this jurisdiction. The testimony of witnesses Perkerson and Wilson, based on intensive and lengthy investigations, clearly indicates that these kinds of expenses are again being included by Southern Bell in the GS&L charges proposed in this proceeding.

The Commission also takes note of the following facts denoted in the record of this proceeding: that the expense levels are projected; that the environment at Bellcore is constantly changing, evidenced by the three changes in expense levels filed in this proceeding and the realignment of projects projected for 1985; that the environment at BellSouth Corporation is also changing, evidenced by the continued creation of new subsidiaries as allowed by Judge Greene; and that the FCC, as a result of investigations resulting from divestiture, has ordered AT&T to refund a substantial amount of money to Southern Bell's ratepayers for GS&L expenses collected in the past which was subsequently determined to have been inappropriate for inclusion as a rate-making expense.

Based on the evidence provided in this proceeding, the Commission concludes that a maximum limit of 1.25% of net revenues less directory revenues for Southern Bell's allocated share of noncore expenses at Bellcore and the expenses at BellSouth Corporation is fair and reasonable. This decision is supported by the evidence of record, provides incentive to Bellcore to implement fair and reasonable cost controls, and ensures that only appropriate expenditures are supported by Southern Bell's intrastate ratepayers in North Carolina. Therefore, the Commission concludes that $9,388,000 is the appropriate GS&L expense level to be included in the cost of service in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding of fact is found in the testimony of Company witness Bishop, Public Staff witnesses Daniel, Perkerson, and Winters, and Attorney General witness Wilson.

The following table sets forth the amounts proposed by the Company and the Public Staff:

(000's Omitted)

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Operating expenses | $298,498 | $290,887 | $(7,611) |
| Depreciation and amortization | 102,531 | 102,531 | -- |
| Taxes other than income | 51,813 | 52,161 | 348 |
| Income taxes | 47,182 | 61,235 | 14,053 |
| Total | $500,024 | $506,814 | $ 6,790 |

The above table does not include the recommendations of Attorney General witness Wilson, which will be addressed elsewhere in the Commission's discussion of the evidence and conclusions for this finding of fact.

As the table shows, the Company and the Public Staff agree on the appropriate level of depreciation and amortization to be included in this proceeding. Since there was no contravening evidence presented on this item, the Commission finds and concludes that $102,531,000 of depreciation and amortization should be included in the cost of service for setting rates in this proceeding.

The first item on which the Company and the Public Staff disagree is operating expenses. This difference of $7,611,000 consists of the following items:

(000's Omitted)

| Item | Amount |
|---|---|
| General service and license contract expense | $(2,820) |
| Charitable contributions | (382) |
| Lobbying expense | (130) |
| Wage premium adjustment | (456) |
| Nonwage divestiture adjustment | (940) |
| Employee losses through June 30, 1984 | (2,883) |
| Total | $(7,611) |

The Commission under Evidence and Conclusions for Finding of Fact No. 14 concluded that the appropriate level of general service and license contract expense to be included in the cost of service in this proceeding is $9,388,000.

The next item on which the Company and the Public Staff disagree is the appropriate level of charitable contributions. The Company included $382,000 of charitable contributions in the cost of service, and Public Staff witness Winters made an adjustment to remove them. In this regard, witness Winters testified that charitable contributions are discretionary with the Company and should not be included in a determination of the cost of providing utility service to the public.

In prior rate cases, the Commission has consistently excluded charitable contributions from the cost of service. The Commission has not been presented with any substantive evidence during this proceeding indicating that charitable contributions should be treated differently. Therefore, the Commission finds and concludes that Southern Bell's cost of service should be reduced by $382,000 for this item.

The next item on which the parties disagree is lobbying expense. The Company included $130,000 in lobbying expense in the cost of service, and witness Winters made an adjustment to remove it. In this regard, witness Winters testified that ratepayers should not be required to pay rates to cover expenses incurred in an effort to influence legislation or public opinion. Witness Winters further testified that the Commission had removed lobbying expense in Southern Bell's last two general rate cases.

The Commission finds that no substantive evidence has been introduced in this case indicating that lobbying expense should be treated differently than in the past. Therefore, the Commission concludes that lobbying expense in the amount of $130,000 should be excluded from the cost of service in this proceeding.

The next item on which the Company and the Public Staff disagree is the level of wage expense to be included in the cost of service. Company witness Bishop addressed this issue as did witness Winters and Attorney General witness Wilson. All parties agreed that base wages should be increased by a premium factor to reflect the effects of overtime and bonuses on the level of wages to be included in the cost of service. The parties did not agree, however, on the method which should be used to calculate the premium factor.

Witness Bishop calculated his premium factors based on the weighted average of the test-period monthly premium factors, excluding the month of August. Witness Bishop testified that he omitted the month of August because of a strike by the Communications Workers of America which caused that month to be nonrepresentative.

Witness Winters calculated his premium factor based on the weighted average of the 12 monthly factors immediately preceding the month of August. Witness Winters contended that the Company's workload did not return to normal during the month of September and, consequently, the months of both August and September were unrepresentative and inappropriate for determining the premium factor. Witness Winters further testified that the relationship between actual wages paid and monthly wage rates was cyclic and that he used the 12 months immediately prior to the strike to capture this effect. Witness Winters testified that months after the close of the test period, although high, were also unrepresentative, due to the final true-up for divestiture and severe weather.

Attorney General witness Wilson calculated his premium factor based on average monthly wage rates rather than end-of-month wage rates and excluded August and September from his calculations because of the strike. In addition, witness Wilson excluded directory employee bonuses from his calculation, reasoning that bonuses would not be included in wage expense during 1984.

The Commission finds that three questions are involved in the premium factor issue. They are as follows:

1. What are the proper months to include in the weighted average?
2. Should end-of-month or average monthly wages be used in the calculation?
3. Should directory employee bonuses be used in the calculation?

Based on the evidence presented, the Commission concludes that the month of August 1983 is unrepresentative due to the strike and therefore should not be included in the calculation of the premium factor. The Commission further concludes that, in keeping with the objective to determine an appropriate level of wage expense related to the test year used in this proceeding, the premium factor should be calculated based on the weighted average of the 11 monthly factors occurring during the test year, excluding August. Therefore, the Commission concludes that the Public Staff's adjustment for this item should be denied.

In regard to Attorney General witness Wilson's contention that average monthly wage rates should be used in the adjustment spoken to above, the Commission finds that, since employees generally leave at the end of a month, as testified to by the Company, end-of-month wage rates are appropriate for setting rates in this proceeding.

Resolution of the issue of directory employee bonuses raised by witness Wilson requires further analysis of the Company's wage adjustment. In the Company's calculation of divested wages, directory employee bonuses were removed from the cost of service. Furthermore, the Company adjusted its premium factors to reflect the exclusion of these bonuses. Based on the above, the Commission concludes that it is not necessary to remove the directory employee bonuses from the premium factor calculation.

The next item which must be addressed is the adjustment made by witness Winters to reduce nonwage expense related to divestiture. Witness Winters testified that the Company divested wage-related, nonwage expenses for employees lost through divestiture but did not reduce nonwage expense for employees lost for other reasons during the test year.

As part of its divestiture adjustments, Southern Bell calculated the amount of nonwage expense divested based on a plant split factor and a factor based on the divested wages in various accounts divided by the end-of-period calculated wages. The Public Staff used a similar calculation to remove nonwage expense from test year expenses because Southern Bell lost some employees prior to divestiture. Public Staff witness Winters stated that the Public Staff's "adjustment to nonwage expense is designed to eliminate that portion associated with employees who left prior to divestiture. It is the Public Staff's contention that this relationship holds true for the wages lost during the test period as well."

The Public Staff offered no evidence to support its premise that Southern Bell's nonwage expense decreased due to the loss of employees through normal attrition during the test year. The Commission concludes that the relationship between nonwage to wage expenses lost due to divestiture of major segments of Southern Bell's business does not extend to expenses lost upon the permanent reduction of a limited number of employees over extended periods of time.

An example used during the cross-examination of witness Winters illustrates this principle. At divestiture, Southern Bell transferred all of its long-distance operators to AT&T. This meant that with respect to a particular long-distance office, at divestiture Southern Bell transferred the operators, the building, the equipment, the parking lot, and all other costs

related to the long-distance operation to AT&T. Southern Bell transferred part of operator training expense, office supplies, janitorial expense, overhead, electric and telephone expense, and data processing expense among others to AT&T. There is no question that at divestiture much more than the traditional wage expense was transferred with the transfer of these operators.

Based on the foregoing, the Commission determines that the Public Staff adjustment to remove nonwage expense due to the loss of employees during the test year is inappropriate and therefore rejects this adjustment.

The next item to be considered is the adjustment made by witness Winters to reduce wage expense for loss of employees through June 30, 1984. Witness Winters testified that North Carolina employee levels were reduced by approximately 168 employees between December 31, 1983, and June 30, 1984. This testimony was uncontroverted. Witness Winters further testified that the employees were lost for the following reasons:

20 - Reduction of business office personnel due to decrease in customer inquiries

11 - Automation of directory assistance operations

13 - Increasing the span of control of some management employees

20 - Conversion of some central offices to electronic from electro-mechanical

104 - Attrition due to an ongoing effort to align force levels with restructured operations

The question related to this issue is whether the adjustment made by witness Winters is in violation of the test-period concept of matching revenues, expenses, and investment. Witness Winters addressed this issue on cross-examination and gave the criteria which should be used in deciding what constitutes an appropriate pro forma adjustment under this concept. He stated that the underlying purpose of the test-period concept is the determination of the relationships between investment, revenues, and expenses which are necessary to provide a given level of service and that pro forma adjustments are appropriate only if they are related to the test-period level of service. According to Mr. Winters, pro forma adjustments which are related to customer growth or usage presuppose a change in the level of service and should not be adopted for rate-making purposes. He further testified that the reasons provided by the Company for the loss of employees were not related to decreased numbers of customers or decreased usage of the telephone network. Witness Winters further testified that in his opinion the test-period level of service could be rendered with 168 fewer employees.

The Commission agrees with Mr. Winters' rationale and finds that his adjustment does not violate the test-period concept. Therefore, the Commission concludes that end-of-period wage expense should be reduced by $2,879,000, after giving consideration to the Commission's decision, discussed hereinabove, to deny the wage premium adjustment proposed by the Public Staff.

In order to arrive at the appropriate level of operating expenses, the Commission must now consider the adjustments proposed by Dr. Wilson which were not addressed by the Public Staff. These adjustments relate to the frozen level of CPE phase-out, early retirement and separation incentives, and "get-ready" costs.

Regarding CPE phase-out, Dr. Wilson testified as follows:

> "In accordance with the FCC determination of February 26, 1982, adopting the Joint Board's recommendation, terminal equipment settlement payments will be phased-out over a 60-month period, and the starting balance of the equipment account will be frozen, even though terminal equipment investments were entirely removed from the Bell operating companies in 1984 as a result of divestiture.
>
> This means that the CPE costs that existed in 1982 will be removed from the separations process slowly over a five-year period. Local ratepayers will therefore obtain a benefit via the separations process.
>
> [I]n February 1982 the FCC in CC Docket No. 80-286 adopted the Joint Board's recommendation to phase-out the inclusion of terminal equipment in interstate costs. The FCC stated that the amounts would be frozen at 1982 levels, specifically they stated that: 'Under this plan, which is coordinated with the Commission's implementation date for the bifurcated detariffing of CPE, no investment or expenses associated with CPE incurred after January 1, 1983, would be allocated to interstate operations. The amounts in the CPE plant amounts on the books as of that date, and the average amounts in related expense accounts for the previous year, would constitute a 'base amount' for separation purposes. The base amount would be reduced at the rate of one-sixtieth per month for a maximum of five years.' (paragraph 28)
>
> The FCC action freezes the 1982 levels and reduces that level by one-sixtieth per month. The Company's calculation does not present the amount assigned to interstate for CPE in 1982."

Dr. Wilson went on to state that he believed that the Company did not properly calculate the frozen 1982 amounts and did not use the authorized interstate rate of return to develop the intrastate revenue requirement offset.

The Company contends that it has calculated the revenue impact of CPE phase-out as prescribed by the Joint Board order and that its method is reflected in current toll and access revenue settlement procedures.

In its proposed order submitted in the proceeding, the Public Staff did not adopt this position of witness Wilson. Based on review of the entire record, the Commission concludes that it would be inappropriate to allocate more phase-out expenses and investment to the interstate operations when such allocations cannot be recovered through the settlement process. The Commission finds that this issue is basically a separations question that affects all telephone companies in the State and that it would be unfair and unreasonable to adopt witness Wilson's adjustment in this case.

Regarding early retirement incentives, Attorney General witness Wilson testified as follows:

> "The Supplemental Income Protection Plan (SIPP) and the Management Income Protection Plan (MIPP) were instituted by Southern Bell to encourage early retirement of employees due to a surplus force condition. The payments which will be made to the employees who took MIPP or SIPP were charged to expense in 1982 and 1983.
>
> Although the total liability for the 1982 and 1983 MIPP and SIPP programs was charged to expense in 1982 and 1983, Mr. Bishop adjusted test-year operating expenses to reflect the estimated cash payments to MIPP and SIPP employees in 1984."

Southern Bell witness Bishop stated on rebuttal that Dr. Wilson's statements were in error and that for intrastate purposes the MIPP and SIPP liability is expensed in the year paid to employees. Witness Bishop further stated that these payments will be made through 1987. During cross-examination on his rebuttal testimony, Mr. Bishop stated that the amount of MIPP and SIPP payments made during 1984 were at least as great as those made during 1983. He stated that the SIPP program would continue and that the MIPP program would continue in another form into the future.

After a review of the entire record in this proceeding, the Commission concludes that the Company's rate-making treatment of MIPP and SIPP payments is proper. The Commission also notes that there is little or no evidence in the record to support the contention that the Company's retirement incentives are unreasonable or that retirement incentives per se are not in the interest of ratepayers.

Dr. Wilson also presented testimony in regard to "get ready" expenses. His direct testimony on this subject is quoted below:

> "Southern Bell is attempting to pass through to ratepayers over a five-year period incremental divestiture costs which were incurred while SB was still owned by AT&T. The expenses should be disallowed. Divestiture enabled AT&T to settle proceedings brought against it by the U. S. Justice Department for violations of antitrust law. Since divestiture was conceived to protect the interests of shareholders, its costs should be borne by them. Therefore, SB's operating expenses should be reduced by $230,208 to eliminate the first year amortization proposed for this case."

The Commission does not accept Dr. Wilson's contention that divestiture was conceived solely to protect the interests of shareholders. The opening up of portions of the telephone industry to competition is expected to result in lower competitive prices to the users of those services. The Commission is not convinced that "get ready" costs should not be amortized to the cost of service in this proceeding.

For the foregoing reasons, the Commission concludes that the appropriate level of operating expenses for setting rates in this proceeding is $293,571,000.

The next item of operating revenue deductions on which the parties disagree is taxes other than income taxes. The $348,000 difference shown in the table set forth above is attributable to the payroll taxes and gross receipts taxes related to adjustments made by the Public Staff to wages, directory revenues, and toll revenues. The Commission has not adopted the position of any party in regard to wage and revenue levels, and, therefore, the Commission finds that the appropriate level of taxes other than income for setting rates in this proceeding is $51,491,000, based on the Commission's decisions denoted above.

The next difference in operating revenue deductions is income taxes. This difference results from the Public Staff's adjustment to operating revenues and expenses, to the amortization of investment tax credits, and to interest expense for income tax purposes.

Public Staff witness Winters increased the amortization of investment tax credits and thereby reduced the level of income tax expense. In regard to this adjustment, Mr. Winters testified as follows:

> "My purpose is to show the Commission the proper amount of amortization of investment tax credits which results from the use of 'equal life group' depreciation rates. Also, I proposed that the amortization be based on the latest information available. Since investment tax credits must be amortized ratably over the life of the property giving rise to the credit, a change in the depreciable life of property must be reflected, in my opinion, in the calculation of the amortization of investment tax credits.
>
> Company witness Bishop calculated an adjustment to reflect depreciation based on 'equal life group' rates; however, he did not recalculate the amortization of investment tax credits to reflect this change, nor did he up-date his calculation for known changes."

Mr. Winters further testified that he based his calculation on the level of amortization for calendar year 1983 less the amortization on additions in October, November, and December 1983. He also testified that his level of amortization is based on the properties used in the investment tax credit calculations included in the Company's 1983 income tax return.

The Company's adjustment to use the "equal group life" method of calculating depreciation expense was not contested in this proceeding. Section 46(f) of the Internal Revenue Code states that investment tax credits must be amortized based on the depreciable life of the property on which investment tax credits are taken. Since the adoption of "equal life group" depreciation rates increases depreciation expense and decreases the depreciable life of the property, it is appropriate and necessary to increase the amortization of the investment tax credits. Therefore, the Commission concludes that income tax expense should be reduced by $574,000 for this item.

As to Public Staff witness Winters' use of data from Southern Bell's tax returns in order to determine the appropriate level of investment tax credit amortization, the Commission notes that witness Winters stated that he had not used information from the Company's tax returns in any other adjustment that he had made. Further, it is not clear in the record whether there are other

material differences between the amounts in the Company's books and the amounts shown on the Company's related tax returns that could be considered for rate-making purposes. Based on the foregoing and the entire record, the Commission concludes that this portion of the adjustment to the amortization of investment tax credits made by witness Winters should be denied.

The Commission has not entirely adopted the level of rate base, revenues, and expenses presented by any party to this proceeding. Therefore, the level of interest expense and taxable income before interest used in calculating the Company's end-of-period level of income taxes should be based on the capital structure, capital costs, rate base, revenues, and expenses found to be proper elsewhere in this Order.

Based on the foregoing, the Commission concludes that the appropriate level of income tax expense to be included in the cost of service in this proceeding is $52,520,000.

The Commission further concludes that the appropriate level of operating revenue deductions to be included in Southern Bell's cost of service is $500,113,000 calculated as follows:

(000's Omitted)

| Item | Amount |
|---|---|
| Operating expenses | $ 293,571 |
| Depreciation and Amortization | 102,531 |
| Taxes other than income | 51,491 |
| Income Taxes | 52,520 |
| Total | $500,113 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact is found in the testimony of Company witnesses Vander Weide and Dean, Attorney General witness Wilson, Department of Defense witness Langsam, and Public Staff witness Johnson.

Company witness Vander Weide, after a review of the effects of changing economic conditions in the telecommunications industry and a review of the economic conditions in the capital markets, proceeded to determine the cost of common equity using two methods. The first method, the discounted cash flow (DCF) model, was applied to three groups of companies which, in his opinion, were comparable in total risk to Southern Bell. The three groups consisted of nine gas and electric companies, eight independent telephone companies, and the seven recently divested Bell regional holding companies. Witness Vander Weide, using the quarterly version of the DCF model and adding a 5% allowance for flotation costs, found Southern Bell's cost of equity to be in the range of 16% to 17%. Witness Vander Weide's second method, the risk premium method, found Southern Bell's cost of equity to be at least 17.5%. This 17.5% resulted from an expected yield on Southern Bell's long-term bonds of at least 12.5% and a risk premium of 5.0%. The risk premium of 5.0% was derived from a study comparing actual stock returns over bond returns for the last 46 years and after considering several risk premium studies by other economists. The DCF

and risk premium results caused witness Vander Weide to find the investors' required return to be in the range of 16.5% - 17.5%. Witness Vander Weide recommended that Southern Bell be allowed a fair return of 16.5% on equity capital in his original prefiled testimony, but stated during his direct examination that a 17% return on equity more closely approximates what investors require on an equity investment in Southern Bell due to an increase in interest rates since his original study.

Company witness Dean testified on the cost of common equity and the overall cost of capital to Southern Bell. Witness Dean relied upon three methods to determine the cost of common equity. Witness Dean's first method, the opportunity cost/comparable earnings method, applied to three groups of industrial and a group of eight telephone companies, led him to judge the cost of equity capital for Southern Bell to be 16% to 17.5%, ignoring the comparable earnings for the telephone group in his conclusions. Witness Dean's second method, the DCF method, was applied only to Rochester Telephone Company. From examining Rochester's dividend yield and historic and forecasted growth rates, witness Dean found the cost of equity capital to Rochester to be 16.72% - 17.84% which he concluded also equalled Southern Bell's cost of capital. Witness Dean's risk premium study comparing the differences between the average required return on equity for the group of eight telephone companies and the yields on 20-year U.S. Treasury bonds over the 10-year period 1974-83 indicated a risk premium of at least 5.5% over U.S. Treasury bonds. This premium, when added to 20-year bond rates of 11.32% and 11.95%, indicated the market cost for equity to be in the range of 16.82% to 17.5%. By combining his 16.5% with Southern Bell's adjusted capital structure as of May 31, 1984, which included a debt ratio of 45.2% at an embedded cost of 9.50% and a corresponding common equity ratio of 54.8%, he recommended an overall cost of capital of at least 13.33%.

Attorney General witness Wilson testified that the after-tax common equity returns of 13% - 14% realized by Southern Bell exceeded returns elsewhere in the economy, even in the competitive unregulated sector. Witness Wilson also stated that the Company would be able to finance all construction from retained earnings and other internal funds even without any rate increases in this case. He cited BellSouth's dividend yield of approximately 8.0%, which, when combined with a reasonable growth estimate in the 3% - 5% range, produced a DCF cost of equity below 14%. In his opinion, it was clear that an equity return allowance for Southern Bell above 14% would be excessive. During cross-examination, Dr. Wilson testified that BellSouth had a Value Line Safety Rank of 1 and a market price approximately equal to the book value of its stock. Witness Wilson testified that, if he were making a specific recommendation for the cost of equity, he would probably recommend 13.5%, with 13% - 14% being the range.

Department of Defense witness Langsam performed five separate studies: a comparable earnings study, a DCF analysis, a risk premium study, a cost-benefit analysis of whether an AAA bond rating is worth the additional money ratepayers would have to pay, and a study to determine the proper capital structure for rate-making purposes. In his comparable earnings study, witness Langsam examined five groups of companies, three groups representing the economy as a whole and two groups representing utilities. After examining returns of the three groups representing the economy as a whole, he concluded that a comparable return for the Company would be 13.0% - 14.0%. Using Standard & Poor's Telephone Companies suggested to him that the appropriate return on

BellSouth's equity is 14.0% - 15.5%, and using Moody's 24 Utilities as the benchmark the appropriate return is 13.0% - 14.0%. The DCF result was 13.0% - 14.7% for BellSouth, which he then adjusted to 13.0% - 13.8% for Southern Bell due to its lower risk. Witness Langsam's risk premium study suggested to him that the cost of equity is between 14.1% - 14.5% for Southern Bell. Based upon the results of the above studies, it was witness Langsam's opinion that the cost of equity to Southern Bell is in the range of 13.5% - 14.5%. Therefore, witness Langsam recommended to the Commission the midpoint of 14.0%. Witness Langsam's cost-benefit study suggested to him that the most efficient bond rating is in the single A to double A range. In witness Langsam's opinion, the overall cost of capital to Southern Bell is 11.7%, which was calculated from his recommended 50% debt at a cost rate of 9.43% and 50% equity at a cost of 14.0%.

Public Staff witness Johnson used two separate and distinct methods for determining the cost of equity. In his first study, witness Johnson examined the earnings of over 1,000 firms in over 40 different industries and found that the cost of equity to the typical unregulated firm is currently about 15% to 15.5%. After performing an analysis of Southern Bell's risk relative to that of other firms, including a study of divestiture-related effects, witness Johnson concluded that the Company faces much less equity risk than the average unregulated firm and less risk than the average electric utility. Therefore, he developed equity cost ranges of 15.0% - 15.5% for the average unregulated firm, 14.0% - 15.0% for the average electric utility, 13.0% - 14.0% for the average telephone utility, and 13.0% - 13.5% for Southern Bell's North Carolina operations. Witness Johnson's second method, a market analysis, considered many factors, including the market-to-book ratios, relative dividend yields, spread theory, and, particularly, earnings/price ratios and the DCF approach. Dr. Johnson examined several of these factors for BellSouth, Moody's 24 Utilities, AT&T, the four largest independent telephone holding companies, and the various regional Bell holding companies. From this data comparison, he concluded that the current cost of equity capital to BellSouth is in the range of 13.5% - 15.1% after factoring in the investor return requirement by 4% to account for issuing costs. Giving reasonable weight to both methods and recommending that neither end of the ranges be employed by the Commission, witness Johnson recommended a 14.0% cost of equity for Southern Bell. When witness Johnson applied the 14.0% cost of equity to a 55.0% equity ratio and a 9.5% cost of debt to the 45.0% debt ratio, he arrived at an overall cost of capital of 11.98%.

The determination of the appropriate capital structure and fair rate of return for Southern Bell is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on Southern Bell, 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 interest 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 return for its shareholders, 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 rate of return allowed must not burden ratepayers any more than is absolutely necessary for the utility to continue to provide adequate service. The North Caroilna 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 of North Carolina ex rel. Utilities Commission v. Duke Power Company, 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 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 market. 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.

Based upon the foregoing and the entire record in this proceeding, the Commission finds and concludes that the fair rate of return that Southern Bell should have the opportunity to earn on its original cost rate base is 12.51%. Such overall fair rate of return is based upon an embedded cost of long-term debt of 9.5% and will yield a fair and reasonable return on the Company's common equity capital of 15.0%. The Commission further concludes that the appropriate capital structure to be used in this proceeding is the adjusted capital structure actually experienced by the Company as of May 31, 1984, as follows:

| Item | Percent |
|---|---|
| Long-term debt | 45.2% |
| Common equity | 54.8% |
| Total | 100.0% |

The Commission cannot guarantee that the Company will, in fact, achieve the level of return 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 achieve the utmost in operations and managerial efficiency. The Commission believes, and thus concludes, that the level of return approved herein will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Southern Bell should be afforded 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 made by the Commission.

SCHEDULE I
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
DOCKET NO. P-55, SUB 834
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000's OMITTED)

| Item | Present Rates | Approved Increase | Approved Rates |
|---|---|---|---|
| Operating revenues | | | |
| Local service | $336,975 | $50,044 | $387,019 |
| Toll and access | 217,891 | | 217,891 |
| Miscellaneous | 46,995 | | 46,995 |
| Uncollectibles | 3,327 | 365 | 3,692 |
| Total operating revenues | 598,534 | 49,679 | 648,213 |
| Operating revenue deductions | | | |
| Current maintenance expense | 140,989 | | 140,989 |
| Depreciation and amortization | 102,531 | | 102,531 |
| Traffic expense | 21,262 | | 21,262 |
| Commercial expense | 38,256 | | 38,256 |
| General expense | 29,499 | | 29,499 |
| Relief and pensions | 31,754 | | 31,754 |
| General services and licenses | 9,388 | | 9,388 |
| Other miscellaneous expenses | 22,423 | | 22,423 |
| Taxes other than income | 51,491 | 2,981 | 54,472 |
| Income taxes | 52,520 | 22,994 | 75,514 |
| Total | $500,113 | 25,975 | 526,088 |
| Income From Operations | 98,421 | 23,704 | 122,125 |
| Other income | 1,983 | | 1,983 |
| Net Operating Income | 100,404 | $23,704 | $124,108 |

SCHEDULE II
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
DOCKET NO. P-55, SUB 834
STATEMENT OF RATE BASE AND RATE OF RETURN
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000'S OMITTED)

| Item | Amount |
|---|---|
| Telephone Plant in Service | $1,478,944 |
| Plant Acquisition Adjustment | 2,985 |
| Working Capital | 9,358 |
| Total | $1,491,287 |
| Less: Depreciation Reserve | 311,232 |
| Customer Deposits | 3,692 |
| Accumulated Deferred Income Taxes | 183,184 |
| Unamortized Investment Tax Credits | 1,427 |
| Total | 499,535 |
| Original Cost Rate Base | $ 991,752 |
| Rates of Return | |
| Present | 10.12% |
| Approved | 12.51% |

APPENDIX III
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
NORTH CAROLINA INTRASTATE OPERATIONS
DOCKET NO. P-55, SUB 834
STATEMENT OF OPERATING INCOME
TWELVE MONTHS ENDED SEPTEMBER 30, 1983
(000'S OMITTED)

| Item | Capitalization Ratio (%) | Original Cost Rate Base | Embedded Cost (%) | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 45.2 | $ 448,272 | 9.50 | $ 42,586 |
| Common equity | 54.8 | 543,480 | 10.64 | 57,818 |
| Total | 100.00 | $ 991,752 | - | $100,404 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 45.2 | $ 448,272 | 9.50 | $ 42,586 |
| Common equity | 54.8 | 543,480 | 15.00 | 81,522 |
| Total | 100.00 | $ 991,752 | | $124,108 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence for this finding of fact is found in the testimony of Company witnesses Savage and Hart, Public Staff witness Willis, Attorney General witness Wilson, Legal Services witness Cooper, and Carolina Utility Customers Association witnesses Brown, Venable, Young and Jones. In addition, there were

several public witnesses who appeared and testified in opposition to specific rate proposals and increases.

Witness Savage described the Company's overall pricing policies which were followed in developing the proposed rate schedules. In general, these policies and principles are as follows: (1) discretionary services are priced to cover the costs and, where possible, to provide a contribution toward the Company's overall revenue requirement so as to keep basic rates lower than they would be otherwise; (2) to the extent practical, customers responsible for costs should be the source of revenues to recover those costs; (3) consideration should be given to relative costs, demand for service, equity in the distribution of charges, and the development objectives of basic service; and (4) the rate structure should achieve a balance of administrative ease and acceptability and understandability by customers.

These pricing principles, according to witness Savage, were subsequently applied to formulate rate changes for basic exchange service, local directory assistance, service charges, special assembly items, coin telephone, telephone answering service facilities, key and pushbutton telephone service, private branch exchange service, central office nontransport service, miscellaneous and auxiliary equipment, customer provided terminal equipment, obsolete services, and intraexchange private line services. Basic flat rate increases of $5.75 per month for residential individual lines and $9.95 per month for individual line business rates were recommended by witness Savage along with pricing relationship changes for PBX, flat and message rate trunks, business one-party, and Centrex-CO GP "A" exchange access lines, and the regrouping of 14 of the Company's exchanges. Additionally, witness Savage presented an illustrative "lifeline" rate schedule for possible inclusion into his proposed rate structure. The Company filed tariffs with its initial application, which, if adopted, would produce an increase of approximately $122 million in annual revenues. It later revised the proposed revenue requirement downward to $95,736,058.

Company witness Hart described Southern Bell's private line cost analysis, which quantifies the current direct costs of private line channel services. Direct costs, he stated, are costs resulting from providing additional units of service and include both recurring and nonrecurring costs. Witness Hart also stated that Southern Bell's cost studies are used to test the appropriateness of prices for private line services and to identify areas where additional efficiencies might be gained to reduce the costs of these services.

In supplemental testimony, witness Hart presented the most current results of the Company's cost reduction program, which showed lower total costs for various private line services than had been filed with his initial testimony. Nevertheless, witness Hart stated that private line rates are still priced below cost.

Witness Hart further stated that the net revenue effect of the proposed rates for private line service in this case is approximately $8.1 million or about $.50 per month per residential customer. Witness Hart determined this by using the private line cost analysis, which, he agreed on cross-examination, included an overall cost of capital of 14.7%. If the Company's rates were accepted, witness Hart testified that contribution could flow to residential service from this specialized and valuable business service.

Public Staff witness Willis expressed his recommendations on basic local exchange rate relationships, local directory assistance, regrouping of exchanges, coin telephone service, direct inward dialing, equipment for the hearing impaired, PBX touch-tone rates, EAS differentials, and optional local measured service. Witness Willis also gave his recommendation on the Company's proposal to charge for the installation of inside wiring and its maintenance on a time and materials basis.

Witness Willis stated that the Company's proposals to change basic exchange pricing relationships would have the effect of shifting $11,975,648 of additional revenue responsibility onto the residential one-party subscriber, which is equivalent to a monthly increase of approximately $1.08. It was the opinion of witness Willis that the proposed changes would cause revenue shifts too severe to consider in this proceeding. To moderate the effect of these changes, witness Willis recommended the pricing relationships shown below:

| | |
|---|---|
| PBX Trunks | |
| Flat Rate | 180% of IFB |
| Message Rate | 65% of Flat Rate PBX Trunk |
| Business IFB | 266% of IFB |
| Centrex-Co GP "A" Access Line | 15% of Flat PBX Trunk |

For message rate service, the Company proposed to reduce the allowance of 75 messages per month to 50 messages per month, with which Public Staff witness Willis concurred.

Concerning the Company's proposal to increase its directory assistance charge from $.20 to $.50 per request, witness Willis recommended that the charge be set at $.25 per request and that the allowance of five inquiries per month without charge be reduced to three. Witness Willis stated that the average subscriber requires about one and one-half inquiries per month. Witness Willis' calculation of an increase in revenues of $1,078,060 under this proposal excluded repression of units, which was assumed by the Company.

Witness Willis also recommended approval of the Company's proposal to regroup 14 exchanges which have already grown in calling scope beyond the upper limit of their current rate groups.

Concerning the Company's proposals for time and materials pricing for inside wiring and maintenance activities, witness Willis explained that the restructured tariff was essentially identical to the one proposed in the last rate proceeding, which was opposed by the Public Staff. Under cross-examination, witness Willis commented that time and materials charges could cause inequities to the Company's subscribers. Witness Willis stated that, based on his experience as an outside plant foreman, an identical job performed by two different people could require highly different times, thereby causing a disparity in the charges. Witness Willis also stated that research conducted by the Public Staff under his direction revealed that there was no effective competition for the installation of residential premises wiring and that the small number of competitors identified by the Public Staff charged on a flat-rate basis. Witness Willis recommended that the Commission disallow the Company's proposals for time and materials pricing for inside wiring and maintenance in this docket.

Witness Willis recommended an approximate 5% increase in service charges. Witness Willis stated that the Public Staff's position is that these charges should be kept at an affordable level to enable as many customers as possible to obtain telephone service, noting that Southern Bell's present minimum charge of $42.10 for connecting residential service is one of the highest in the State among the regulated companies.

With respect to coin telephone service, witness Willis recommended that the charge for a local call be increased from $.20 to $.25 per local call. Witness Willis stated that his calculation of the resulting revenues differed from those of Southern Bell because of the Company's failure to bring its local message units to an end-of-period level and because of the Company's use of an estimated 7% message repression. Upon cross-examination, witness Willis asserted that including the effects of an assumed repression of units was a type of forecasting which was incomplete and particularly dangerous since it considers the effect of price changes but not the effects of other variables which influence future units of service. Witness Willis stated that local coin messages were growing today for reasons other than price effects at a rate of 14% - 15%. It was his belief that there would be an increase in message units even with the effects of a price change. For this reason, witness Willis calculated an increase of $2,963,510 in paystation revenues, which was stated on an end-of-period level without an assumed repression of units.

In considering the Company's proposal to transfer customers presently being billed under its obsolete direct inward dialing (D.I.D.) service tariff to its general offering D.I.D. tariff, witness Willis stated that this change would effect an overall increase for these customers of approximately 29%, but, due to the differences in structure between the two tariffs, individual customers could experience increases or decreases ranging from approximately -64% to +90%. To offset the magnitude of the potential increases in customers' billings, witness Willis recommended that the obsolete D.I.D. tariff be maintained and receive the same percentage increase as basic local exchange rates. It was the contention of witness Willis that this action would cause the obsolete tariff billings to move closer to the billings of the general offering tariff, which would allow future conversion between the two D.I.D. tariffs to be more easily implemented.

Witness Willis stated that the Company had proposed a 172% increase in monthly rates for equipment used by the hearing impaired. Witness Willis recommended that the monthly rates for this equipment receive the same overall percentage increase granted by the Commission in this docket for residential local exchange service.

With regard to the Company's proposal to reformat its rating procedure for Touch-Tone service used by Centrex and PBX customers, witness Willis agreed with the Company's proposal to place this service on a trunk basis rather than keep it on a trunk and station basis. The net revenue effect of this proposal is a reduction of $317,813 and $3,841 for Centrex and PBX trunk users, respectively.

Witness Willis recommended that the local exchange differentials paid by the Company's Claremont and Lenoir exchanges, which total $112,270 per year, be eliminated. It was the position of witness Willis that the rate differentials were proper in the polling of subscribers to determine the existence of a

community of interest within an exchange. Witness Willis contended, however, that the continued long-term use of these rate differentials was discriminatory based upon the fact that other exchanges having the same type of service pay smaller monthly rates based upon calling scope alone.

In connection with the experiment being conducted on local measured service, witness Willis recommended that the flat rate components of each plan should be increased by the same percentage as the experiment's alternative flat rate exchange rates. Witness Willis testified that this action would be necessary to preserve the integrity of the experiment.

Regarding the illustrative "lifeline" rate schedule introduced by Company witness Savage, witness Willis commented that the experiment in local measured service, which the Commission permitted to begin June 1, 1984, would provide information on customer acceptance of alternatives to flat rates. It was the opinion of witness Willis that extensive data from the experiment should be obtained and thoroughly analysed prior to any decisions concerning the implementation of a "lifeline" program.

Witness Willis' last recommendation was related to the distribution of the additional revenue requirement remaining following the implementation of his specific recommendations. Witness Willis recommended that the remainder or residual should be spread among the other categories of service by increasing the present revenue base of each of the categories by the same percentage. Witness Willis further recommended increasing each individual rate within a category by an essentially uniform percentage, but allowing any of the Company's proposed rates with increases smaller than the uniform percentage.

Based upon all of the evidence regarding rate design and tariff proposals, the Commission concludes that:

1. The price relationships proposed by the Company for the PBX flat rate trunk, the PBX message rate trunk, and the Centrex-CO GP "A" access line should be adopted and the relationship between the residence one-party flat rate and the business one-party flat rate exchange access line should remain unchanged.

2. The Company's proposal to reduce the allowance of calls under its message rate service from 75 to 50 per month is just and reasonable.

3. The Company's proposal to continue to allow five (5) free directory assistance inquiries and to increase charges for additional inquiries from $.20 to $.50 per inquiry should be allowed.

4. The Company's proposal to regroup 14 exchanges is appropriate.

5. The Company's proposed tariffs for charging for the installation and maintenance of inside wiring on a time and materials basis are not in the public interest and are inappropriate.

6. The nonrecurring service charges shown on the following schedule are just and reasonable:

| | | Service Connection Charges | |
|---|---|---|---|
| | | Residential Rate | Business Rate |
| A. | Service Order | | |
| | 1. Primary | $28.50 | $42.55 |
| | 2. Secondary | 11.05 | 15.00 |
| | 3. Record | 5.50 | 9.10 |
| B. | Premises Visit | 10.50 | 10.50 |
| C. | Central Office | 15.75 | 22.05 |
| D. | Inside Wiring, each | 15.75 | 26.80 |
| E. | Jacks, each | 6.85 | 6.85 |
| F. | Equipment Work | 6.30 | 8.40 |
| G. | Number Change | 4.05 | 4.05 |
| H. | Suspend & Restore - Nonpay | 4.05 | 4.05 |
| I. | Suspend & Restore - request | 4.05 | 4.05 |

7. An annual increase in coin telephone revenues in the amount of $2,963,510 generated by increasing the local coin call rate from $.20 to $.25 per call is just and reasonable.

8. The Company's proposal to transfer D.I.D. customers from its obsolete tariff to its general offering tariff is not equitable and should be denied.

9. The monthly rates for the equipment for the hearing impaired should receive the same percentage increase as the basic local exchange rates.

10. The Centrex and PBX Trunk Touch-Tone rates should be allowed as proposed.

11. No changes should be made on the EAS differentials placed on the Claremont and Lenoir exchanges.

12. The optional measured service rate components ordered in Docket No. P-55, Sub 806, should be increased by the same percentage as their alternative flat rates.

13. Each proposed rate not mentioned above should receive an essentially uniform percentage increase, with the exception of those proposed rates with increases smaller than the uniform percentage, which should be increased as proposed by the Company.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell Telephone and Telegraph Company be, and is hereby, authorized to adjust its telephone rates and charges to produce an increase in gross annual revenues not to exceed $50,044,000.

2. That Southern Bell is hereby directed to propose and file not later than five (5) days from the date of this Order specific tariffs reflecting changes in rates, charges, and regulations to recover the additional revenues approved herein in accordance with the guidelines established and set forth hereinabove in conjunction with the Evidence and Conclusions for Finding of Fact No. 18. 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). Parties desiring to file comments with respect to the Company's proposed rate schedules shall file said comments not later than five working days thereafter.

3. That the specific 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 decretal paragraph 2 above.

4. That Southern Bell be, and is hereby, ordered to refund to its North Carolina ratepayers all revenues collected under interim rates since August 16, 1984, pursuant to the Company's undertaking to refund, to the extent said interim rates produced revenues in excess of the increase authorized herein, plus interest thereon calculated at the rate of ten percent (10%) per annum. Southern Bell shall file for Commission approval concurrent with the filing of proposed rates and charges as required by decretal paragraph 2 above a proposed plan for making the refunds required herein. Further, Southern Bell shall, at such time, also file a calculation of the total amount of refunds due customers, including all detailed work papers associated therewith.

5. That Southern Bell shall give notice of the rate increase approved herein by first-class mail to each of its North Carolina customers during the next billing cycle following the filing and approval of the rate schedules described in paragraph 2 above. Such notice to customers shall be submitted to the Commission for approval prior to issuance.

6. That Southern Bell shall prepare a complete, new lead-lag study, based upon a post-divestiture test year and including a recalculation of all revenue and expense lags contained therein so that all lags reflect post-divestiture payment practices, for purposes of the Company's next general rate increase application.

7. That approval of Southern Bell's contracts with BAPCO concerning directory publishing operations be, and the same is hereby, expressly withheld.

8. That Southern Bell shall require BAPCO to maintain its accounting and other records of both its total operations and its North Carolina directory operations in such manner and in such detail as is necessary to provide periodic reports of those operations and to allow examination of those operations for the purpose of ensuring that the revenues of the North Carolina directory operations are properly stated and that BAPCO's costs assigned or allocated to its North Carolina directory operations are reasonable, necessary, and proper. The Commission will prescribe the records and reports and the information to be contained in those records and reports at a later date.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of November 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 839
DOCKET NO. P-55, SUB 834

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Request of Southern Bell Telephone and Telegraph Company for Approval of Transfer of Assets to BellSouth Advertising & Publishing Corporation and for Approval of Associated Contracts<br><br>and<br><br>Application of Southern Bell Telephone and Telegraph Company for an Adjustment in Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | ORDER GRANTING MOTION TO STIPULATE AND APPROVING TRANSFER |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, June 5, 1984, at 10:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Douglas P. Leary and A. Hartwell Campbell

APPEARANCES:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, P.O. Box 30188, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

Jerry Fruitt, Attorney at Law, P.O. Box 2507, Raleigh, North Carolina 27602
For: Carolina Utility Customers Association

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

BY THE PANEL: On February 3, 1984, Southern Bell Telephone and Telegraph Company filed a request seeking approval of the transfer of certain of its assets to BellSouth Advertising & Publishing Corporation (BAPCO). Attached to the request were three contracts between Southern Bell and BAPCO for which approval is sought: An Agreement Covering Directory Operations, a Services and Data Agreement, and a Conveyance Agreement.

On March 8, 1984, the Commission issued an Order Setting Hearing and Requiring Public Notice. The matter was set for evidentiary hearing commencing June 5, 1984, at 10:00 a.m.

Petition to Intervene was filed on April 17, 1984, by Carolina Utility Customers Association, Inc., and said intervention has been allowed by the Commission.

Southern Bell prefiled testimony of Messrs. Drummond, Jarvis, and Steele, and the Public Staff prefiled testimony of Ms. Jocelyn Perkerson. Southern Bell mailed Notice of Hearing by bill insert to each of its subscribers.

On May 25, 1984, Southern Bell filed a Motion to Stipulate Order and Close Docket. The Public Staff and Carolina Utility Customers Association, Inc., concurred in this motion.

This matter came on for hearing as scheduled. No public witnesses were present. Southern Bell, the Public Staff, and Carolina Utility Customers Association, Inc. (CUCA), were represented by their respective counsels. Southern Bell's attorney stated that the aforementioned parties agreed that no evidence would be presented at this hearing provided the Commission accepted the following stipulations:

1. The transfer of Southern Bell's directory related assets to BAPCO is approved; provided further,

2. No transfer price shall be approved or established in this docket. This issue shall be referred to the pending Southern Bell general rate case, Docket No. P-55, Sub 834, for resolution therein; provided further,

3. No decision regarding the appropriateness of the level of compensation provided for under the Directory Operations Agreement or the Services and Data Agreement shall be made in this docket. This matter shall be referred for decision in Docket No. P-55, Sub 834; provided further,

4. The Public Staff shall be permitted to audit the operations of BAPCO as they may relate to the compensation received by Southern Bell under agreements between the Company and BAPCO and may use information so obtained, subject to protective agreements regarding proprietary information where appropriate, in future cases affecting the using and consuming public; provided further,

5. Southern Bell shall not cite this stipulation regarding the transfer of assets authorized herein in future cases to infer Public Staff approval of anything other than the transfer of said assets in principle; provided further,

6. The testimony filed by the parties in the instant docket (P-55, Sub 839) may be presented in support of their respective positions in said general rate case (P-55, Sub 834); and provided further,

7. Southern Bell reserves its contentions regarding the Commission's jurisdictional authority to prohibit the transfer of the directory assets and the legal necessity of the Company obtaining approval of such contracts and the proper regulatory treatment of directory advertising revenues as set forth in its Motion to Rescind for Approval in the instant docket and such contentions shall not be deemed to be waived by its motion herein or the Order entered thereon.

The Commission is of the opinion that it has jurisdiction in this matter and that good cause exists to approve the transfer of certain of Southern Bell's assets to BellSouth Advertising and Publishing Corporation and to incorporate into Docket No. P-55, Sub 834, such related matter as would have

been considered in Docket No. P-55, Sub 839, and to close Docket No. P-55, Sub 839.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of Southern Bell's directory related assets to BAPCO is approved, subject to the aforementioned stipulations.

2. That the Commission's jurisdictional authority is not altered by this Order.

3. That Docket No. P-55, Sub 839, shall be incorporated into Docket No. P-55, Sub 834.

4. That the testimony filed by the parties in the instant docket (P-55, Sub 839) shall be presented in Southern Bell's general rate case (P-55, Sub 834).

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of June 1984.

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

DOCKET NO. P-55, SUB 839
DOCKET NO. P-55, SUB 834

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>Request of Southern Bell Telephone and Telegraph Company for Approval of Transfer of Assets to BellSouth Advertising & Publishing Corporation and for Approval of Associated Contracts<br>and<br>Application of Southern Bell Telephone and Telegraph Company for an Adjustment in Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | ERRATA ORDER |

BY THE COMMISSION: The Commission issued an Order Granting Motion to Stipulate and Approving Transfer in this docket on June 6, 1984. It has come to our attention that Commissioner A. Hartwell Campbell was listed as a Panel member before whom the case was heard. The Commissioner who heard the case was Ruth E. Cook.

IT IS, THEREFORE, ORDERED that the Order of June 6, 1984, issued by the Commission in the above proceeding should read:

BEFORE: Commissioner Sarah L. Tate, Presiding; and Commissioners Douglas P. Leary and Ruth E. Cook.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of June 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sharon Credle Miller, Deputy Clerk

(SEAL)

DOCKET NO. P-137

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Tel-Amco, Inc., 701 East Trade Street )
Charlotte, North Carolina 28202 ) RECOMMENDED ORDER

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, December 15, 16, and 19, 1983

BEFORE: Sammy R. Kirby, Hearing Examiner

APPEARANCES:

For the Complainant:

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

For the Respondents:

Robert F. Page, Crisp, Davis, Schwentker & Page, Attorneys at Law, P. O. Box 751, Raleigh, North Carolina 27602
For: Tel-Amco, Inc.

Phillip W. Boesch, Jr., Kinsella, Boesch, Fujikawa & Towle, Attorneys at Law, 1875 Century Park East, Suite 1600, Los Angeles, California 90067-2593
For: Com Systems, Inc.

Edward L. Rankin, III, Staff Attorney, Southern Bell Telephone & Telegraph Company, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

For the Intervenor:

E. Gregory Stott, Attorney at Law, P. O. Box 131, Raleigh, North Carolina 27602
For: Telemarketing Communication, Inc.

KIRBY, HEARING EXAMINER: This matter commenced with the filing of a Motion by the Public Staff on August 18, 1983. The Motion requested the Commission to issue a show cause order (a) requiring Tel-Amco, Inc. (Tel-Amco) to appear before the Commission and show cause why the Commission should not issue an order requiring Tel-Amco to cease and desist from providing or offering to provide long distance telephone service on an intrastate basis within North Carolina and (b) requiring Southern Bell Telephone and Telegraph (Southern Bell) to appear and show cause why it had not enforced its tariff prohibiting the resale of its facilities for use on an intrastate basis.

In response to the Motion, the Commission issued a Notice and Order dated September 15, 1983. The Order scheduled a hearing for October 10, 1983, and required Tel-Amco to appear at the hearing and show cause why the Commission should not order it to cease and desist from providing or advertising that it can provide long distance telephone service on an intrastate basis in North Carolina and, further, why Tel-Amco should not be subjected to the penalties provided by G. S. 62-310 for its failure to obtain a franchise, file an annual report and file a schedule of rates and charges as required by various sections of the Public Utilities Act. The September 15 Order also required Southern Bell to file a detailed report listing the facilities which it was providing to Tel-Amco and to appear at the hearing and show cause why it had not enforced its tariff forbidding the intrastate resale of its facilities.

On September 22, 1983, counsel for Tel-Amco filed a motion asking that the October 10 hearing be continued and that certain matters of procedure with respect to the hearing be clarified. The Commission, by order issued on September 30, 1983, rescheduled the hearing for November 21, 1983, and set a pretrial conference for October 10 to deal with the procedural issues raised by Tel-Amco.

The prehearing conference was conducted before Hearing Examiner Kirby, with the Public Staff, Tel-Amco and Southern Bell present. As a result of the conference, an order was issued on October 13, 1983, which delineated the Public Staff as complainant and Tel-Amco and Southern Bell as respondents. In addition, the October 13 Order delineated the issues for trial as follows:

As to Tel-Amco:

1. Is Tel-Amco a "public utility" as defined in G. S. 62-3(23)a.6?

2. If Tel-Amco is a "public utility", should it be subject to the penalties provided by G.S. 62-310?

As to Southern Bell:

1. Has Southern Bell properly applied and enforced its tariff prohibiting the intrastate resale of Bell facilities?

The Order of October 13 provided that the burden of proof on the issue of whether Tel-Amco is a public utility would rest upon the Public Staff. The burden of proof on the remaining issues was placed upon the respective respondent to which each issue related. Finally, the October 13 Order provided a schedule for prefiling testimony and an order for presentation of evidence at the hearing.

On October 14, 1983, the Public Staff filed certain Requests for Admission. Tel-Amco filed responses to certain of these Requests for Admission and objections to the remainder of them on November 4, 1983. At this point the Commission, on its own motion, rescheduled the hearing from November 21 to December 15, 1983.

Southern Bell filed its report concerning the facilities being provided to Tel-Amco on November 10, 1983. Both the Public Staff and Tel-Amco filed expert

testimony within the time frame established by the pre-trial order of October 13, 1983.

On November 15, 1983, Tel-Amco filed a motion with the Commission asking (a) that the hearing scheduled for December 15 be continued, (b) that Tel-Amco be afforded additional time within which to secure and prefile the testimony of certain additional expert witnesses and (c) that one day be scheduled for hearing in Charlotte for the purpose of receiving testimony by public witnesses. Alternatively, Tel-Amco requested that the hearing scheduled for December 15 be allowed to proceed, but that additional time be allowed for the purpose of presenting further expert witness testimony in Raleigh and public witness testimony in Charlotte. On November 22, 1983, the Public Staff filed its Response opposing Tel-Amco's motion and asking that Tel-Amco be required to file further and more specific responses to the Staff's Request for Admissions.

On December 5, 1983, the Commission issued an order providing for the hearing to proceed as scheduled on December 15, 1983, on the basis of the testimony and exhibits previously filed. The order also denied Tel-Amco's request for a day of public hearings in Charlotte and deferred ruling on Tel-Amco's Motion for additional time to prepare and present the testimony of other expert witnesses, as well as the Public Staff's motion for additional discovery.

Upon the call of the case for hearing on December 15, 1983, all parties noted above were present and represented by counsel. The motion for limited admission to practice of Mr. Boesch, attorney for Com Systems, Inc. (Com Systems) was allowed. Tel-Amco renewed its November 15, 1983 motion for additional time to prepare and present testimony by other expert witnesses and for an additional day of hearings in Charlotte to present the testimony of public witnesses. Both portions of such motion were subsequently denied.

A Petition for Leave to Intervene by Telemarketing Communications, Inc. (Telemarketing) was considered and allowed in part. Portions of the Petition seeking to join other entities as necessary parties to this proceeding were denied.

Upon oral motion by Mr. Boesch, Com Systems, the parent company of Tel-Amco, was allowed to intervene as a formal party of record. The Public Staff announced that it would withdraw its pending motion for additional responses to its Requests for Admissions.

After opening statements by counsel, the Public Staff presented the testimony and exhibits of Gene A. Clemmons, Director of the Communications Division of the Public Staff. Following the presentation of Mr. Clemmons' testimony and the receipt of his exhibits, the Public Staff rested its case. Thereupon, motions to dismiss were made and argued by counsel for Tel-Amco and Com Systems and were rebutted by counsel for the Public Staff. Such motions were denied. The motion of Telemarketing to join additional parties was renewed and denied.

Thereafter, Com Systems sponsored the testimony of G. Vance Cartee, President and Chief Executive Office of Com Systems, Inc. Tel-Amco sponsored the testimony and Exhibits of Nicholas L. Kottyan, Director of Technical Operations for Tel-Amco. In addition, Tel-Amco sponsored the testimony of five

public witnesses, who were subscribers of the services being offered by Tel-Amco. These witnesses were as follows: Mr. Ned Pollock, co-owner of Teleconnect, Inc., a regional interconnect telephone company; Mr. Ken Stoner, Vice President of Membership for the Charlotte Chamber of Commerce; Mr. Clyde Moody, Vice President of Mark III Personnel; Mr. James Syers, Controller of Carolina Sounds (Muzak); and Mr. J. R. Hoffman, manager of a rental property enterprise.

Tel-Amco attempted to offer into evidence verified affidavits of three additional persons. Upon objection by the Public Staff, these affidavits were not allowed. Tel-Amco tendered approximately 467 letters from various of its customers. There were not admitted into evidence but were, instead, noted as a portion of the Commission's official files and records in this matter.

Tel-Amco again renewed its previous motion for additional time to prepare and present testimony of other expert witnesses and for a day of public witness hearings in Charlotte. Both motions were denied. Tel-Amco moved to dismiss the Complaint at the close of all the evidence. After oral argument, this motion was denied. Tel-Amco also moved to defer the briefing schedule and decision by the Commission. This motion was denied.

Telemarketing then offered the testimony of Mr. John Allen Farfour, Territorial Manager for Telemarketing Communications. Telemarketing again renewed its motion to join additional parties and the motion was again denied. A procedural schedule was adopted for the filing of proposed orders and briefs.

Based upon the testimony and exhibits of the witnesses and the entire record in this proceedings, the Examiner makes the following:

FINDINGS OF FACT

1. Tel-Amco is a foreign corporation domesticated in North Carolina with its principal office and place of business in Charlotte, North Carolina. In October 1983, Tel-Amco was acquired by and has since operated as a wholly owned subsidiary of Com Systems.

2. On June 25, 1982, Tel-Amco was authorized by the Federal Communications Commission to operate as an interstate resale common carrier.

3. Tel-Amco began operation on October 18, 1982, with the installation of a Northern Telecom Danray CTSS-1000 switch in Charlotte. This switch selects least-cost routing for long distance calls placed by Tel-Amco's customers. Tel-Amco operates this switch under a franchise lease.

4. Tel-Amco leases from Southern Bell certain Wide Area Telecommunications (WATS) lines, certain Exchange Network Facilities for Interstate Access (ENFIA) lines, certain local access lines, and certain intermachine trunk lines.

5. Tel-Amco uses the WATS lines, the ENFIA lines, and other lines leased from Southern Bell to complete long distance telephone calls that originate and terminate in North Carolina as well as long distance calls that originate and terminate in different states.

6. Southern Bell's General Subscriber Service Tariffs A2.2.1(B) and A19.2C prohibit the intrastate resale of telecommunication services.

7. When Tel-Amco first ordered intrastate WATS lines from Southern Bell in February 1983, Tel-Amco told Southern Bell that these lines would be used to process interstate traffic that was originating on all of Tel-Amco's out-of-state ENFIA circuits. Tel-Amco did not tell Southern Bell that it would use these lines for originating and terminating calls within North Carolina.

8. In response to an inquiry from the Public Staff, Southern Bell sent a representative to meet with Tel-Amco on May 5, 1983. At that time, Tel-Amco told Southern Bell that it was not using intrastate WATS lines to originate and terminate calls within North Carolina; however, Tel-Amco revealed that certain ENFIA lines were being used for this purpose.

9. On June 22, 1983, Southern Bell's General Attorney wrote a letter to Tel-Amco informing Tel-Amco that use of ENFIA lines for completing intrastate calls was a violation of Southern Bell's tariffs and should cease immediately. Tel-Amco thereupon began revising its method of handling calls that originate and terminate in North Carolina, and it achieved its present method of operation by September 1983.

10. Since September 1983, all calls that originate and terminate in North Carolina have been routed over an intermachine trunk line from the Northern Telecom CPSS-1000 switch in Charlotte to a Digital Switching Corporation DEX 400S switch located in Greenville, South Carolina, and back to the switch in Charlotte. All such calls cross state lines at least twice before being routed to their point of destination, and Tel-Amco claims that such calls are interstate calls. The Public Staff contends that such calls are intrastate.

11. At the time of the hearing, Tel-Amco had approximately 7,000 customers in the metropolitan area around Charlotte.

12. Tel-Amco does not object to reasonable regulation by this Commission if it is held to be a public utility.

Based upon the above findings of fact, the Hearing Examiner draws the following:

## CONCLUSIONS OF LAW

1. Tel-Amco is, de facto, a public utility as defined in G.S. 62-3(23)a.6.

2. Telephone calls that originate and terminate in North Carolina via routing through a switch in South Carolina are intrastate calls subject to the jurisdiction of this Commission.

3. Telephone calls that originate and terminate in North Carolina via routing through a switch in South Carolina are not interstate communications as defined in 47 U.S.C.A. 153(e), and such calls are not subject to the interstate resale authority granted to Tel-Amco by the Federal Communications Commission.

4. Tel-Amco should be ordered to cease and desist from conveying or transmitting intrastate telephone communications, as defined herein, in North Carolina.

5. Southern Bell has taken steps to enforce its tariffs prohibiting the resale of its facilities.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The findings of fact are generally not in dispute. The evidence in support of Findings 1-5 and 10-13 can be found in the stipulations of Tel-Amco, Tel-Amco's responses to the Public Staff's requests for admissions, the testimony and exhibits of Public Staff witness Clemmons, the testimony and exhibit of Tel-Amco witnesses Cartee and Kottyan, and public witnesses presented by Tel-Amco. Finding 6 is supported by Southern Bell tariffs on file with the Commission. Findings 7-9 are supported by the testimony of witnesses Clemmons and Kottyan, Public Staff Exhibit 2 and Southern Bell Exhibit 1.

G.S. 62-3(23)a.6 defines a public utility as "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 ... (c) conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation." It is undisputed that Tel-Amco is a foreign corporation offering certain services to the public in North Carolina for compensation. However, Tel-Amco denies that it is a public utility subject to the regulation of this Commission. Tel-Amco makes three arguments: (1) that it does not own or operate equipment or facilities for conveying or transmitting messages or communications as required by our definition of a public utility, (2) that if it does, the communications transmitted by it are interstate in nature and thus not within the scope of state law, (3) that certain recent federal court decisions limit state regulation of telecommunications to "local services." The Hearing Examiner rejects these contentions.

Our definition of a public utility does not require that the utility own the equipment or facilities used in providing utility service. It is sufficient if the utility merely operates them in this state. The evidence herein shows that Tel-Amco leases the Northern Telecom switch in Charlotte and leases various lines from Southern Bell. This switch selects the least cost alternative method of routing the calls placed by Tel-Amco's customers. Together with the switch in South Carolina, these facilities route and carry the telecommunication services provided to the public by Tel-Amco. Tel-Amco programs or arranges the programming of the switch in Charlotte, and it secures and releases lines as needed. It solicits business and collects from its customers. It cannot seriously be contended but that Tel-Amco is operating equipment and facilities in this State for conveying and transmitting telephone communications.

The next issue is whether the telephone communications at issue are intrastate, and thus within the scope of our statutes, or interstate, and thus subject to the jurisdiction of the Federal Communications Commission (FCC). The relevant facts are undisputed. Tel-Amco completes telephone calls that originate and terminate in North Carolina, but it does so by routing such calls

out of the state to South Carolina and back. The relevant law is clear. The Federal Communications Act of 1934 defines an interstate communication. By 47 U.S.C.A. 153(e) the Act provides that interstate communications "shall not, with respect to the provisions of subchapter II of this chapter (other than section 223 of this title),* include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State Commission." The telephone communication services provided by Tel-Amco between points in North Carolina come within this exception to the definition of interstate communications since these services are (1) between points in North Carolina through a place outside of North Carolina and (2) these services are regulated by this Commission. The Hearing Examiner concludes that these services are regulated by this Commission since they come within the terms of our Public Utilities Act and since this Commission has previously exercised its jurisdiction over such services regardless of how the calls are routed. See In the Matter of Hart Industries, Inc., North Carolina Utilities Commission Docket No. P-131. In arguing that such services are interstate, Tel-Amco cites a number of court decisions from the 1920's and before. While these cases dealt with an analogous situation (the routing of telegraph messages out of a state and back) they were decided before passage of the Communications Act of 1934. This Act created the FCC, granted it jurisdiction over interstate communications and defined interstate communications/ Its provisions, particularly 47 U.S.C.A. 153(e), are far more helpful to the present inquiry than the cases cited by Tel-Amco. A further reason supports the conclusion reached herein. To accept Tel-Amco's view of an interstate call would be to recognize an artifice that has no relation to real substance. By this view, the simplest call to one's next door neighbor could be transformed into an interstate call by a routing that neither party to the call even knows of. This view would sanction a maneuver that could be used by a public utility carrier as a subterfuge to avoid our state regulation. The FCC itself has held that "jurisdiction turns on the nature of the communications, rather than the location of the facilities links through which they pass." 94 FCC 2d 1110, at 1114 (January 27, 1983 Opinion in Docket FCC-83-40). The Hearing Examiner agrees. The nature of a telephone call between two people in North Carolina is intrastate. Thus, the Hearing Examiner concludes that telephone calls originating and terminating in North Carolina are intrastate calls even though they are routed out of North Carolina and back.

As a further alternative argument, Tel-Amco contends that North Carolina cannot exercise jurisdiction over these intrastate services of Tel-Amco because of certain recent federal court decisions. Citing Utilites Commission v. FCC, 537 F.2d 787 (4th Cir., 1976), cert. denied 434 U.S.874 and Utilities Commission vs. FCC, 552 F.2d (4th Cir., 1977), Tel-Amco argues that the FCC has jurisdiction over all telephone communication services except local services, i.e., services which "in their nature and effect are separable from and do not substantially affect the conduct or development of interstate communications." The Hearing Examiner recognizes that the FCC has such authority as is

*Subchapter II is that part of the Act dealing with FCC regulation of common carriers of interstate communications; section 223 deals only with obscene telephone calls.

"reasonably ancillary" to the effective performance of its responsibilities under the Communications Act. United States vs. Southwestern Cable Company, 392 U.S. 157, 178 (1968). The standard quoted by Tel-Amco purports to define the limit of the FCC's ancillary authority. But to argue that an agency has potential authority in an area is not to say that it has exercised that authority. In the two cases cited by Tel-Amco, the FCC had issued regulations in an area over which the states claimed jurisdiction. Such is not the case here. In fact, the FCC quite recently refused to exercise authority over state certification and regulation of intrastate resale. The proceeding before the FCC dealt with the validity of resale restrictions in intrastate WATS tariffs applied to the use of "physically intrastate" WATS to complete interstate calls. The FCC ruled that such resale restrictions may not be applied to "physically intrastate" WATS lines used in interstate communications. In re Restrictions on Resale of Switched Services Used for Interstate Communications, 94 FCC 2d 1110 (1983). However, the services at issue in the present proceeding (calls originating and terminating in North Carolina by routing out of state) are not interstate communications. They are intrastate calls. With respect to such services, the FCC stated the following:

> We emphasize in this regard that our ruling here does not extend to restrictions which pertain solely to the provision of WATS used in intrastate communication. The request by the collective resellers that we preempt state regulations to the extent of outlawing resale restrictions on purely intrastate services and abrogating state certification requirements will be denied, as it is beyond the scope of the matters on which comment was sought.

94 FCC 2d at 1116. Tel-Amco would equate intrastate services with "local services" as that phrase is used in the court decisions cited by it; however, the FCC did not use the phrase "local services" and the Hearing Examiner does not believe it meant to limit the effect at this footnote to "local services." The resale authority granted to Tel-Amco by the FCC specifically calls Tel-Amco's attention to applicable state regulations. Thus, even if the FCC does have potential authority over services of the kind at issue here (which is not conceded), it is clear that the FCC has not exercised authority over these intrastate services. A state's prerogative to regulate survives until action is taken by a federal agency with jurisdiction over the subject matter. Smith v. Illinois Bell, 282 U.S. 133, 160-61 (1930).

As to the relief that should be ordered against Tel-Amco, the Hearing Examiner concludes that an order should be issued requiring Tel-Amco to cease and desist from providing intrastate telecommunication services. Tel-Amco is now providing public utility services without the certification required by law, and it should be ordered to stop. Tel-Amco argues that a cease and desist order should not be issued (1) because this proceeding presents substantial questions of law that must ultimately be decided in the appellate courts and (2) because the evidence justifies granting a public utility franchise to Tel-Amco. As to Tel-Amco's first argument, the Hearing Examiner has resolved the legal issues against Tel-Amco, and the conclusions reached on the issues require that a cease and desist order be issued. If this proceeding is pursued to the appellate courts, it will be for them to decide whether a stay should be issued. By its second argument, Tel-Amco asks for a certificate of public convenience and necessity authorizing it to act as an intrastate reseller. At the time of the hearing herein, the law did not allow the granting of such a

certificate on the evidence presented. See Order Denying Application issued on June 1, 1984, in North Carolina Utilities Commission Docket No. P-133. House Bill 1365 (the Miller Bill) was pending before the General Assembly at the time of the hearing and has since been enacted into law. The new legislation allows, but does not require, the Commission to franchise intrastate resellers. This legislation will require careful consideration by the Commission, most likely through a rule-making proceeding, in order to be put into effect. The ultimate effect of the legislation on Tel-Amco cannot be known now; and so long as Tel-Amco is not certified as a public utility, it should not be allowed to engage in public utility services. Tel-Amco should not be granted a franchise, even a conditional one, on the basis of the hearing already held since that hearing did not deal with the matters at issue in a certification proceeding under this new legislation. It would be a most serious error to measure the testimony presented at the hearing by a standard that was not even enacted at the time of the hearing. The Hearing Examiner has also considered the penalties provided by G.S.62-310. While the record herein may support such penalties, they should not be ordered, in the interest of equity, with respect to conduct occurring before the effective date of the present Recommended Order. However, now that Tel-Amco has been declared a de facto public utility, these penalties are available if Tel-Amco fails to comply with the cease and desist order.

Turning to the show cause proceeding against Southern Bell, the issue is whether Southern Bell has enforced its tariffs prohibiting intrastate resale of its facilities. The evidence shows that when Tel-Amco ordered intrastate WATS lines from Southern Bell, it told Southern Bell that the lines would be used for interstate traffic, as permitted by the FCC. When asked by the Public Staff to investigate whether Tel-Amco was providing intrastate services, Southern Bell sent a representative to meet with Tel-Amco. Upon learning that Tel-Amco was using certain ENFIA lines for originating and terminating calls within North Carolina, Southern Bell's attorney wrote a letter informing Tel-Amco that such use should cease immediately. Thus, the evidence shows that Southern Bell reacted to the Public Staff's inquiry and that it ordered Tel-Amco to abide by its tariffs. The show cause proceeding against Southern Bell should be dismissed.

IT IS, THEREFORE, ORDERED as follows:

1. That Tel-Amco should be, and hereby is, declared a de facto public utility providing intrastate telecommunication services on a resale basis in North Carolina;

2. That Tel-Amco should be, and hereby is, ordered to cease and desist from conveying or transmitting intrastate telephone communications, as defined herein, in North Carolina;

3. That Tel-Amco should be, and hereby is, ordered to begin immediately such reprogramming and restructuring of its system as are necessary to effect this cease and desist order, to complete such reprogramming and restructuring with all deliberate speed, and to file with the Commission monthly reports of its reprogramming and restructuring until the cease and desist order is met; and

4. That the show cause proceeding as to Southern Bell should be, and the same hereby is, dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of July 1984.

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

DOCKET NO. W-774
DOCKET NO. W-392, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Application by Environmental Pollution Control, Inc.,<br>for Authority to Transfer the Franchise to Provide<br>Sewer Utility Service in Ocean Acres Subdivision from<br>O&A Utility, Inc. (in bankruptcy), and for Approval<br>of New Rates and Assessments | ) | ORDER MODIFYING<br>RECOMMENDED ORDER<br>AND CANCELLING<br>FRANCHISE TO<br>O&A UTILITY, INC. |

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, March 8, 1984, at 10:00 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp, Sarah Lindsay Tate, A. Hartwell Campbell, Douglas P. Leary, Ruth E. Cook, and Charles E. Branford

APPEARANCES:

For the Applicant:

E. Gregory Stott, Attorney at Law, Post Office Box 131, Raleigh, North Carolina 27602
For: Environmental Pollution Control, Inc.

For the Intervenors:

Daniel C. Oakley, Special Deputy Attorney General, Post Office Box 629, Raleigh, North Carolina 27602
For: North Carolina Department of Natural Resources and Community Development

Steve Bryant, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

Tom Austin, 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: On January 6, 1984, the Public Staff, the Attorney General, and the North Carolina Department of Natural Resources and Community Development jointly filed Motions in these dockets requesting the Commission (1) to order the escrow of all assessment money previously or subsequently collected, subject to release only on Commission Order to pay for improvements and (2) to request the Town Council of Kill Devil Hills to vote on whether they would consider becoming temporary trustee of this system if so requested by this Commission.

On February 6, 1984, Stephen S. Sawin, the emergency operator appointed by the Commission, filed a response to the above motions requesting the Commission to deny said motions.

On February 9, 1984, Environmental Pollution Control, Inc. (EPC, Inc., Applicant, or Company), by and through its attorney, E. Gregory Stott, filed Exceptions to the Recommended Order of Hearing Examiner Robert H. Bennink, Jr., which was issued on January 25, 1984, in these dockets. Mr. Stott requested that the Commission afford the Applicant an opportunity for oral argument on the Exceptions.

Oral argument on the motions of the Public Staff, the Attorney General, and the North Carolina Department of Natural Resources and Community Development and the Exceptions of EPC, Inc., was subsequently heard by the Commission on March 8, 1984, with all the parties having been represented by counsel.

Based on the information contained in the application, in the Commission files, and in the records of this proceeding, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, Environmental Pollution Control, Inc., a corporation duly incorporated under the laws of the state of North Carolina, seeks a Certificate of Public Convenience and Necessity to furnish sewer utility service in Ocean Acres Subdivision, Dare County, North Carolina, and has filed for approval of rates.

2. The reasonable level of estimated operating revenue deductions for EPC, Inc., is $46,076 exclusive of expenses incurred for deferred maintenance and capital improvements. This amount includes $3,000 as the annual level of management fees to be paid to Stephen S. Sawin for management services rendered.

3. The appropriate level of sewer rates for this utility is a metered rate for both residential and commercial customers as follows:

Metered Rates: (Monthly)

A. Single Unit Residential Service:
   Up to first 2,000 gallons - $9.50 minimum
   All over 2,000 gallons - $4.75 per 1,000 gallons

B. Multi-unit Residential Customers served by one Meter (Duplexes and Apartments):
   Up to first 2,000 gallons x number of units - $9.50 x number of units - minimum
   All over 2,000 gallons x number of units - $4.75 per 1,000 gallons

C. Commercial Service:
   Up to first 4,000 gallons - $19.00 minimum
   All over 4,000 gallons - $ 4.75 per 1,000 gallons

4. The appropriate level for monthly assessments is 75% of the metered sewer bill for both residential and commercial customers. These assessment revenues are to be held in escrow and subject to release only for payments necessary to make the improvements to the existing sewer system as required by the North Carolina Environmental Management Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding of fact is included in the records of the Commission in Docket Nos. W-392, Sub 5, and W-774. In the Recommended Order issued on January 25, 1984, the Hearing Examiner concluded that a Certificate of Public Convenience and Necessity should be granted to Stephen S. Sawin, d/b/a EPC, Inc., rather than to EPC, Inc., itself since Mr. Sawin actually owns the sewer system. Such conclusion by the Hearing Examiner has been excepted to by Mr. Sawin who believes that the Certificate of Public Convenience and Necessity should be granted to EPC, Inc., as he proposes to soon sell the assets of the sewer system to EPC, Inc.

Based upon the evidence presented in this matter, the Commission concludes that it is reasonable to issue a Certificate of Public Convenience and Necessity to EPC, Inc., rather than to Stephen S. Sawin, d/b/a EPC, Inc. However, being that the sewer system is still owned by Mr. Sawin, the Commission requires the Applicant to file proof in the form of Deeds and Bills of Sale, that sufficient assets, lands, easements, and equipment acquired by Mr. Sawin have been properly conveyed to EPC, Inc., within 30 days from the effective date of this Order. Further, the Commission wishes to point out to the Applicant that it will not make a determination of the appropriate level of rate base in this proceeding as the evidence presented is insufficient to do so.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence for this finding is found in the testimony and exhibits of Company witness Stephen S. Sawin and Public Staff witnesses Karyl Lam and Jerry Tweed, and the application itself. The Company and the Public Staff estimated that the annual level of operating revenue deductions exclusive of expenses incurred for deferred maintenance and capital improvements should be approximately $83,016 and $38,800 respectively.

The Commission finds that the Company's estimate appears to be much too high in consideration that there is no reliable historic data upon which to base operating expenses. Generally in situations such as this it is reasonable to presume that the level of routine operating expenses will be similar to those of other sewer utility companies regulated by this Commission. However, due to the facts that this system was purchased out of bankruptcy, is prohibited from serving 40% of the land owners in its franchise area, has been woefully under-maintained, and is required to be upgraded under a Special Order by Consent issued by the North Carolina Environmental Management Commission, the Commission finds that the level of normal operating expenses for this system is probably somewhat higher than it would be for a newly constructed system of similar size. Therefore, the Commission concludes that the Public Staff's estimate of operating expenses is probably a little too low.

The Commission finds that $46,076 is a more reasonable estimate of operating expenses than those presented by either the Company or the Public Staff. The Commission's determination of $46,076 as an estimated operating expense level is $7,276 more than the position of the Public Staff which is $38,800, such difference consists of eight Commission adjustments to increase expenses as follows:

| Adjustments | Amount of Increase |
|---|---|
| Administrative and office expenses | $ 720 |
| Maintenance and repair | 1,395 |
| Electric power for pumping | 1,000 |
| Laboratory fees | 1,130 |
| Professional fees | 1,500 |
| Miscellaneous expenses | 800 |
| Gross receipts taxes | 493 |
| State and federal income taxes | 238 |
| Total adjustments | $7,276 |

Further, the Commission upholds Hearing Examiner Bennink's finding that no more than $3,000 in annual management fees is justified on the basis of the evidence and the record in this case.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence for these findings of fact comes from the testimony and exhibits of Company witness Stephen S. Sawin and Public Staff witnesses Karyl Lam and Jerry Tweed, the application, statements presented by the parties in oral argument, and the entire record of this proceeding. The Recommended Order issued by the Hearing Examiner in this matter found that the residential and commercial service commodity charges should be $4.00 per 1,000 gallons. During the oral argument counsel for the Applicant stated that Mr. Sawin proposes that this system should operate at a "rate level" of $5.25 per 1,000 gallons which would in his opinion be a break even situation or at $5.50 per 1,000 gallons which would yield a small profit.

Based upon the Commission's finding as to operating expenses as discussed previously in the Evidence and Conclusions for Finding of Fact No. 2, the Commission concludes that a residential base rate of $9.50, a commercial base rate of $19.00 and a commodity charge of $4.75 per 1,000 gallons for both residential and commercial customers are appropriate rates for use in this proceeding. The Commission finds that the Schedule of Rates attached hereto which will produce annual operating revenues of $52,046 and assessment revenues of $39,035 per year are just and reasonable. Further, the Commission finds, based upon its levels of operating revenues and expenses which produce a net operating income of $5,970, that a return on expenses of 14.4% is quite reasonable for use herein.

With regard to assessment revenues, the Commission finds that these revenues previously and subsequently collected should be held in escrow and subject to release only for payments necessary to upgrade the system to comply with the required improvements set out in the Special Order by Consent issued by the North Carolina Environmental Management Commission. Further, to assure that these funds are being properly spent the Commission finds that it is necessary to require the Company to file with the Commission and the North Carolina Environmental Management Commission monthly reports as to the amount of assessments collected, the amount disbursed, and the purpose of each disbursement. These assessment funds are not to be used to pay for routine operating expenses, for expansion of the system to serve future customers or to build up spare parts inventory. The assessment should remain in effect until such time as all upgrading requirements of the North Carolina Environmental Management Commission have been accomplished for providing adequate service to existing customers.

Based upon the January 6, 1984, Affidavits of Jerry Tweed and Karyl Lam as filed by the Public Staff and information contained in the Applicant's February 6, 1984, response to the motions filed January 6, 1984, to order escrow assessments and to request a vote of the Town Council of Kill Devil Hills, the Commission concludes that at the end of February 1984, the amount of funds that should be in escrow was approximately $4,958. This $4,958 amount reflects revenue and expense estimates as proposed by the Company for the first two months of 1984, thus this amount may be incorrect if the Company's revenue estimates differ from actual collections and/or if the Company has included improper expenses in its report of expenditures for deferred maintenance. The Commission concludes that in the first monthly report filed with the Commission as to assessment activity the Company shall include a detailed calculation of the beginning balance of assessment funds showing on a month by month basis beginning with July 1, 1983, the actual amount of assessment revenues collected and associated expenditures for capital improvements with accompanying explanations for each disbursement.

In closing, the Commission finds and concludes that the Hearing Examiner Order of January 25, 1984, should be affirmed except where modified herein. As to the Company's Exceptions not specifically discussed herein, the Commission finds that they should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the transfer of the franchise to provide sewer utility service in Ocean Acres Subdivision from O&A Utility, Inc., to Environmental Pollution Control, Inc., be, and is hereby, approved.

2. That Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity.

3. That the Certificate of Public Convenience and Necessity granted to O&A Utility, Inc. in Docket No. W-392 is hereby cancelled.

4. That the Schedule of Rates attached hereto as Appendix B is hereby approved and deemed to be filed with the Commission pursuant to G.S. 62-138 and that the effective date of said metered rates should be coordinated with the next meter readings made by the Town of Kill Devil Hills.

5. That monthly assessments shall be held in escrow and subject to release only for payments necessary to improve and upgrade the sewer system in question as required by the North Carolina Environmental Management Commission.

6. That the Notice to Customers attached hereto as Appendix C shall be mailed or hand delivered to each of EPC, Inc.'s sewer service customers during the next billing cycle or within 30 days of the issuance date of this Order whichever comes first.

7. That the Applicant shall file monthly progress reports with the Commission and the North Carolina Environmental Management Commission with regard to upgrading and accounting for the collection of and expenditure of the assessment monies to be held in escrow.

8. That appropriate documentation of the transfer of ownership of Ocean Acres sewer facility from Stephen S. Sawin to EPC, Inc., shall be filed with the Commission within 30 days from the date of this Order.

9. That the Exceptions, to the Recommended Order, filed herein on February 9, 1984, by EPC, Inc. which have not been specifically discussed herein, be and are hereby, overruled and denied.

10. That except as amended and modified hereinabove, the Recommended Order in this docket dated January 25, 1984, be, and is hereby, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of April 1984.

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

APPENDIX A

DOCKET NO. W-774
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That

Environmental Pollution Control, Inc.
Post Office Box 741
Kill Devil Hills, North Carolina 27948

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide sewer utility service
in

Ocean Acres Subdivision
Dare County, North Carolina

subject to such orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilitites Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of April 1984.

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

APPENDIX B

SCHEDULE OF RATES
DOCKET NO. W-774
DOCKET NO. W-392, SUB 5
Environmental Pollution Control, Inc.
Ocean Acres Subdivision
Dare County, North Carolina

METERED RATES: (Monthly)

A. Single Unit Residential Service:
Up to first 2,000 gallons - $9.50 minimum
All over 2,000 gallons - $4.75 per 1,000 gallons

B. Multi-unit Residential Customers served by one Meter (Duplexes and Apartments):
Up to first 2,000 gallons x number of units - $9.50 x number of units - minimum
All over 2,000 gallons x number of units - $4.75 per 1,000 gallons

C. Commercial Service:
Up to first 4,000 gallons - $19.00 minimum
All over 4,000 gallons - $4.75 per 1,000 gallons

MONTHLY ASSESSMENT: (Residential and Commercial)
75% of metered sewer bill

CONNECTION CHARGES:

| | | |
|---|---|---|
| Residential | - | $100.00 |
| Commercial | - | $2.30 per gallon of estimated daily usage |

RECONNECTION CHARGES:
If sewer service cut-off by utility for good cause - Actual Cost

CUSTOMER DEPOSITS:
2/12 of the estimated charge for the service for the ensuing 12 months (Commission Rule R12-4)

BILLS DUE: On billing date

BILLING: Shall be quarterly in advance for minimum usage and in arrears for usage in the previous service period in excess of the minimum billing amount

BILLS PAST DUE: 25 days after billing date.

FINANCE CHARGES FOR LATE PAYMENT:
Late payment charge of 1% per month on unpaid balance after 25 days from billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket Nos. W-774 and W-392, Sub 5, on this the 4th day of April 1984.

APPENDIX C

Notice to Customers

DOCKET NO. W-774
DOCKET NO. W-392, SUB 5

Environmental Pollution Control, Inc.
Ocean Acres Subdivision
Dare County, North Carolina

NOTICE IS HEREBY GIVEN that the Utilities Commission has issued an Order approving the transfer of franchise to provide sewer utility service in the Ocean Acres service area from O&A Utility, Inc. (in bankruptcy), to Environmental Pollution Control, Inc., and has approved the following rates and assessments.

METERED RATES: (Monthly)

A. Single Unit Residential Service:
Up to first 2,000 gallons - $9.50 minimum
All over 2,000 gallons - $4.75 per 1,000 gallons

B. Multi-unit Residential Customers served by one Meter (Duplexes and Apartments):
Up to first 2,000 gallons x number of units - $9.50 x number of units - minimum
All over 2,000 gallons x number of units - $4.75 per 1,000 gallons

C. Commercial Service:
Up to first 4,000 gallons - $19.00 minimum
All over 4,000 gallons - $4.75 per 1,000 gallons

MONTHLY ASSESSMENTS: (Residential and Commercial)
75% of metered sewer bill

BILLING: Shall be quarterly in advance for minimum usage and in arrears for usage in the previous service period in excess of the minimum billing amount

RECONNECTION CHARGES:
If sewer service cut off by utility for good cause - Actual Cost

Evidence adduced at the public hearing indicated a need for a deterrent to overloading of sewer plant due to customers removing clean out plugs and draining standing water from lots. This abuse of the system would require much larger outlays of customer money just to over-design the treatment facilities in order to handle rain water. The Commission has, therefore, authorized the utility to discontinue service to customers abusing the system. The reconnect fee shall be the actual cost (estimated $100.00) for nonpayment of bills or abuse of the system.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of April 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-786, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Application by Charles A. Perry, d/b/a Dream Weaver Utilities, Route 2, Box 29B, Knightdale, North Carolina, for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Tuck-A-Hoe Subdivision, Wake County, North Carolina and for Approval of Rates | ) ORDER<br>) GRANTING<br>) FRANCHISE<br>) AND APPROV-<br>) ING RATES |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 1, 1984, at 10:00 a.m.

BEFORE: Commissioners Edward B. Hipp (Chairman), Douglas P. Leary, and Ruth E. Cook

APPEARANCES:

For the Applicant:

Jerry B. Fruitt, Attorney at Law, P. O. Box 2507, Raleigh, North Carolina 27602

For the Public Staff:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: On April 17, 1984, the Applicant, Charles A. Perry, d/b/a Dream Weaver Utilities, filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to provide water utility service in Tuck-A-Hoe Subdivision, Wake County, North Carolina, and for approval of rates.

By Order issued April 25, 1984, the Commission granted Temporary Operating Authority, scheduled the application for hearing, and required public notice be hand delivered by the Applicant to North Wake Water Systems, Inc. No interventions or protests were received by the Commission.

The public hearing was held at the time and place specified in the Commission Order. Charles A. Perry; William E. Parrish, one of the developers of Tuck-A-Hoe, and Phillip Abeyounis, of the Division of Health Services, appeared at the hearing as witnesses for the Applicant and presented testimony in support of the application. Andy R. Lee appeared as a witness for the Public Staff and presented testimony concerning his evaluation of the Applicant's plans for the water utility operations. The Affidavit of David Kirby, Public Staff Accountant, was copied into the record. No one appeared at the hearing to protest the application.

Based on the information contained in the application and in the Commission's files and in the records of this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The Applicant, Charles A. Perry, d/b/a Dream Weaver Utilities, is authorized to engage in the operation of a public utility, as defined in G. S. 62-3.

2. The Applicant proposes to furnish water utility service in Tuck-A-Hoe Subdivision, Wake County, North Carolina, and has filed a Schedule of Rates for said service. No other application to serve this subdivision has been filed with the Commission.

3. Tuck-A-Hoe Subdivision is a residential subdivision consisting of approximately 38 lots. The subdivision is located in northern Wake County, near Rolesville, North Carolina.

4. The Applicant proposes to initially install mains capable of serving approximately 38 customers in the subdivision. The Applicant proposes to meter the water service.

5. There are presently 14 homes completed and ready for occupancy in the Tuck-A-Hoe Subdivision. These homes have been sold, and the new owners are being delayed in their closings because of the lack of a certificated water system providing service in the subdivision.

6. The Applicant has entered into agreements securing ownership or control of the water system and of the sites for the wells.

7. The water system plans are approved by the Division of Health Services. However, revisions have been made to the approved system. The Applicant agreed to file the approvals by the Division of Health Services of these revisions with the Commission as soon as they are obtained.

8. The annual revenues, based on the proposed metered rates and on 38 customers, would be approximately $5,472.00.

9. The Applicant has entered into agreements whereby contributions-in-aid of construction in the subdivision will be paid by the building contractors or developers of the lots and will not be paid directly by the water customers.

10. The Applicant has entered into a verbal agreement with a local plumbing contractor whereby the contractor will provide back up maintenance and repair service to the water system in the subdivision.

11. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water system will be listed on the monthly billing statements. The Applicant will be listed in the telephone book for the proposed service area as Dream Weaver Utilities.

12. The developers, Van Parrish Associates, have agreed to reimburse the Applicant for the cost of installing the water system in the Tuck-A-Hoe Subdivision.

CONCLUSIONS

There is a demand and need for water utility service in Tuck-A-Hoe Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Tuck-A-Hoe Subdivision should be those contained in the Schedule of Rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions and which are concluded to be just and reasonable for the service described herein.

The Applicant's arrangement with a local plumbing contractor for providing backup maintenance and repair service to the water system in Tuck-A-Hoe Subdivision is acceptable.

The Commission further requests that the Applicant expedite completion of the water system, to the extent possible, so that individual homeowners will not be unduly delayed in moving into their new homes.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Charles A. Perry, d/b/a Dream Weaver Utilities, is hereby granted a Certificate of Public Convenience and Necessity in order to provide water utility service in Tuck-A-Hoe Subdivision, as described herein and, more particularly, as described in the application made a part hereof by reference.

2. That this Order in itself shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix A is hereby approved and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

4 That the Applicant shall maintain its books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that, in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements and the Applicant shall immediately notify the Commission of such alternate arrangements.

6. That the Applicant file with the Commission as late filed exhibits the exhibits listed on page 6 of the application and denoted as items numbered 3, 5, 6, 8, and 9.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of May 1984.

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

APPENDIX A

SCHEDULE OF RATES
DOCKET NO. W-786, SUB 1

Charles A. Perry, d/b/a Dream Weaver Utilities
Tuck-A-Hoe Subdivision

Water Rate Schedule

METERED RATES:

Water: Customer charge - $6.50
All usage to be billed at $1.00 per 1,000 gallons

RECONNECTION CHARGES:

If water service cut off by utility for good cause [NCUC Rule R7-20(f)] $7.50

If water service discontinued at customer's request [NCUC Rule R7-20(g)] $7.50

BILLS DUE: On billing date.

BILLS PAST DUE: Fifteen (15) days after billing date.

BILLING FREQUENCY: Shall be monthly, for service in arrears.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-786, Sub 1, on May 3, 1984.

DOCKET NO. W-786, SUB 2
Docket No. W-786, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Docket No. W-786, Sub 2 | |
| Application by Charles A. Perry, t/a Dream Weaver Utilities, | ) ORDER |
| for a Certificate of Public Convenience and Necessity to | ) GRANTING |
| Furnish Water Service in Ashley Hills North Subdivision | ) CERTIFICATE |
| and | ) OF |
| Docket No. W-786, Sub 3 | ) PUBLIC |
| Application by Charles A. Perry, t/a Dream Weaver Utilities, | ) CONVENIENCE |
| for a Certificate of Public Convenience and Necessity to | ) AND |
| Furnish Water Service in Amber Acres Subdivision | ) NECESSITY |

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 23, 24, 28, and 31, 1984

BEFORE: Edward B. Hipp, Presiding; and Commissioners Charles E. Branford and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:

Jerry B. Fruitt, Attorney at Law, P.O. Box 2507, Raleigh, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina

For the Intervenors:

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

For the Complainants:

William D. Harazin, Barringer, Allen & Pinnix, P.O. Drawer 1270, Raleigh, North Carolina 27602
For: Bailey's Utilities, Inc.

Samuel T. Wyrick, III, Haythe and Curley, Suite 340, 4700 Homewood Court, Raleigh, North Carolina 27602
For: Margaret Bailey

BY THE COMMISSION: These matters arose upon the filing of applications by Charles A. Perry, t/a Dream Weaver Utilities, for Certificates of Public Convenience and Necessity to provide water utility service. The application in Docket No. W-786, Sub 2, was filed with the Commission on April 27, 1984, and the application in Docket No. W-786, Sub 3, was filed on May 25, 1984. The application in Docket No. W-786, Sub 2, sought a certificate to provide water service in Ashley Hills North (Phase VI), and the application in Docket No. W-786, Sub 3, sought a certificate to provide water service in Amber Acres

North (Phase III). (Phase VI and Phase III are sometimes hereafter referred to as "the new areas."

On July 2, 1984, Bailey's Utilities, Inc. (BUI), filed a Motion and Verified Petition to Intervene in Docket No. W-786, Sub 2. On July 11, 1984, the Commission issued an Order Allowing Intervention and Scheduling Hearings for August 23, 1984.

On July 31, 1984, the Applicant filed a Motion to Expand Scope of Hearings in Docket No. W-768, Sub 2, and also filed in Docket No. W-786, Sub 3, a Motion to Consolidate Hearings and Expand Scope of Hearings. BUI filed a Motion and Verified Petition to Intervene in Docket No. W-786, Sub 3, on August 8, 1984.

On August 10, 1984, BUI filed Response in Apposition to all Motions and Petitions and Alternative Motion for Continuance of Hearing in both dockets. BUI contended that it presently held a certificate to provide water service in all of Ashley Hills and Amber Acres. BUI filed a Complaint and Motion to Impose Penalties in both dockets on August 16, 1984.

The Applicant filed Motion to Compel Appearance of Witnesses on August 20, 1984; and on the same day the Commission issued an Order Serving Complaint and Motion to Impose Penalties and Order Scheduling Oral Arguments, in Docket Nos. W-786, Subs 2 and 3.

On August 22, 1984, the Commission heard oral arguments from the parties concerning whether to expand the scope of hearings in these dockets. The Commission ruled that the hearings in Docket Nos. W-786, Subs 2 and 3, should be limited to the application for franchises and that all other issues would be deferred until a later date. The hearings herein commenced on August 23, 1984, and were concluded on August 31, 1984, with oral arguments.

The Applicant offered the testimony of the following persons: (1) Twenty-four public witnesses, most of whom are currently customers of BUI in Ashley Hills and Amber Acres, appeared and presented testimony concerning the poor quality of water and service provided by BUI. The consideration of their testimony was restricted to the new areas sought in the application. (2) Charles A. Perry, the Applicant, testified as to the systems that he had installed in Ashley Hills North (Phase VI) and Amber Acres North (Phase III) and for which he was seeking a certificate to serve. The witness also testified as to his experience and financial ability to provide water service in these areas; (3) William E. Parrish, one of the developers in Ashley Hills, testified about the difficulties that he had encountered in attempting to have BUI construct the water systems in Ashley Hills North and Amber Acres North pursuant to a contract with BUI. (4) John Narron, attorney for the developers (Parrish and Weathers, and Amber Associates), testified concerning his dealings with Thomas L. Bailey, the President of BUI, and BUI. (5) W. Thurston Debnam, Jr., a partner in Amber Associates, testified as to the difficulties that he and his partners had experienced with BUI in constructing a water system in Phase I and II of Amber Acres. (6) Donald Williams, an employee with the Division of Health Services with the State of North Carolina, testified as to numerous difficulties in dealing with Thomas L. Bailey, through another company owned and operated by Mr. Bailey but separate and apart from BUI. (8) The Applicant also called Mrs. Margaret Bailey, who owns 49 percent of the shares of BUI.

The Complainants offered the testimony of Thomas L. Bailey, President of BUI. Mr. Bailey testified that in his opinion the developers in Ashley Hills and Amber Acres had breached the contracts with BUI and that the areas in question for which Dream Weaver Utilities was seeking certificates were BUI's certificated areas.

Based on the entire record herein, the Commission makes the following

FINDINGS OF FACT

1. The Applicant, Charles A. Perry, t/a Dream Weaver Utilities, is authorized to engage in the operation of a public utility, as defined in G.S. 62-3.

2. The Applicant proposes to furnish water utility services in Ashley Hills North (Phase VI) and Amber Acres North (Phase III), Wake County, North Carolina, and has filed a Schedule of Rates for said service.

3. Ashley Hills North (Phase VI) is a residential subdivision consisting of approximately 40 lots. Amber Acres North (Phase III) is a residential subdivision consisting of approximately 31 lots. The subdivisions are located in eastern Wake County near Knightdale, North Carolina.

4. The Applicant has installed mains and wells capable of serving approximately 40 customers in Ashley Hills North (Phase VI), and 31 customers in Amber Acres North (Phase III). The Applicant proposes to meter the water service.

5. The Applicant has the ownership and control of the water systems and the sites for the wells.

6. The water system plans are approved by the Division of Health Services.

7. The Applicant has entered into agreements whereby contributionsinaid of construction in the subdivisions will be paid by the building contractors or developers of the lots and will not be paid directly by the water customers.

8. The Applicant has entered into a verbal agreement with a local plumbing contractor whereby the contractor will provide backup maintenance and repair service to the water systems.

9. The Applicant has specified that the names, addresses, and telephone numbers of the companies or persons responsible for providing maintenance and repair service to the water systems will be listed on the monthly billing statements. The Applicant will be listed in the telephone book for the proposed service area as Dream Weaver Utilities.

10. The developers in Ashley Hills North (Phase VI), Parrish and Weathers, have agreed to reimburse the Applicant for the cost of installing the water system in Ashley Hills North (Phase VI); and Amber Associates, the developers in Amber Acres North (Phase III), have agreed to reimburse the Applicant for the cost of installing the water system in Amber Acres North (Phase III).

11. BUI is a public utility which presently provides water service in Sections I through V of Ashley Hills and Sections I and II of Amber Acres under Certificates of Public Convenience and Necessity issued for said subdivisions without designation as to sections thereof on June 16, 1980, and November 10, 1982, respectively, as well as in 16 other subdivisions in this State; but it has not extended service into sections VI and II thereof, respectively, the subject areas of the application herein.

12. BUI, to the extent that it had been granted a certificate of public convenience and necessity by this Commission to provide water service in Ashley Hills North (Phase VI) and Amber Acres North (Phase III), has abandoned said certificated area by its failure and its inability to extend water service to those areas.

13. BUI currently has only three employees on its payroll. These employees are insufficient in number to expand BUI's existing certificated service areas into the new areas.

## CONCLUSIONS

There is a demand and need for water utility services in the Ashley Hills North (Phase VI) Subdivision and the Amber Acres (Phase III) Subdivision which can best be met by the Applicant.

The initial rates approved by the Commission for water utility service in Ashley Hills North (Phase VI) and Amber Acres North (Phase III) should be those contained in the schedule of rates attached hereto, which rates are not in excess of those rates found to be reasonable for similar public water utilities under average operating conditions and which are concluded to be just and reasonable for the service described herein.

The Applicant's arrangement with a local plumbing contractor for providing back-up maintenance and repair service to the water systems in Ashley Hills North (Phase VI) and Amber Acres North (Phase III) is acceptable.

The evidence introduced and facts found point unerringly to the conclusion that BUI, by its failure and its inability to serve the new areas, has allowed water service in Ashley Hills North (Phase VI) and Amber Acres North (Phase III), to be delayed in installation. The public witnesses, of which there were 24, raised many concerns about the ability of BUI to provide adequate water service into the new areas. The Commission concludes that BUI with only three employees is unable to undertake additional service in the new areas.

Upon consideration of all the evidence in this case, including the testimony of the various witnesses concerning payments to BUI for work to be performed in Ashley Hill, which work was never performed, and the testimony of one of the developers in Amber Acres concerning the failures of BUI in that subdivision, the Commission further concludes that BUI has abandoned the service areas covered by these applications. Because of its failure and its inability to undertake additional service in the new areas--Ashley Hills North (Phase VI) and Amber Acres North (Phase III)--BUI should not be allowed to expand its service area.

The convenience and necessity which NCGS Chapter 62 addresses are those of the public and not those of an individual or company. State ex rel. Utilities Commission v. Carolina Coach Company, 260 N.C. 43, 132 S.E. 2d 249 (1963). The critical question is, what does public convenience and necessity require? Based on all the evidence by all parties, the Commission concludes that to the extent BUI holds a certificate for Ashley Hills North (Phase VI) and Amber Acres North (Phase III), public convenience and necessity can best be served by revoking that certificate and by granting a certificate to Charles A. Perry, t/a Dream Weaver Utilities.

The Commission further finds and concludes that the Applicant presently has ownership and control of the water systems and well sites in the two disputed areas. Therefore, to allow BUI to extend into these areas would require a duplication of facilities which this Commission finds is not in the best interest of the public.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Charles A. Perry, t/a Dream Weaver Utilities, is hereby granted a certificate of public convenience and necessity to provide water utility service in Ashley Hills North (Phase VI) and Amber Acres North (Phase III) Subdivisions, as described herein, and more particularly described in the Application made a part hereof by reference.

2. That Appendix A shall constitute the Certificate of Public Convenience and Necessity.

3. That the Schedule of Rates attached hereto as Appendix B is hereby approved and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S 62-138.

4. That the Applicant shall maintain its books and records in such a manner that all the applicable items of information required in the Applicant's prescribed Annual Report to the Commission can be readily identified from the books and records and can be utilized by the Applicant in the preparation of said Annual Report. A copy of the said Annual Report Form shall be furnished to the Applicant with the mailing of this Order.

5. That the Applicant is hereby cautioned that, in the event the present arrangements for providing dependable and prompt maintenance and repair service are terminated, the Applicant shall immediately make alternate arrangements which shall be at least as reliable as the present arrangements and that the Applicant shall immediately notify the Commission of such alternate arrangements.

6. That to the extent BUI has been granted a certificate by this Commission to provide water utility service to the Ashley Hills North (Phase VI) or Amber Acres North (Phase III) Subdivisions, said certificate is hereby revoked and declared null and void.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of September 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

DOCKET NO. W-786, SUB 2
DOCKET NO. W-786, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Presents, That
Charles A. Perry, t/a Dream Weaver Utilities
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water utility service
in
Ashley Hills North (Phase VI) and Amber Acres North (Phase III)
Wake 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 is the 19th day of September 1984.

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

APPENDIX B

SCHEDULE OF RATES

Charles A. Perry, t/a Dream Weaver Utilities
Subdivision or Service Area:
Ashley Hills North (Phase VI)
Amber Acres North (Phase III)

METERED RATES: Water: Customer Charge $6.50
All usage to be billed at $1.00 per 1,000 gallons

RECONNECTION CHARGES:

| | |
|---|---|
| If water service cut off by utility for good cause [NCUC Rule R7-20(f)] | $7.50 |
| If water service discontinued at customer's request [NCUC Rule R7-20(g)] | $7.50 |

BILLS DUE: On billing date
BILLS PAST DUE: Fifteen (15) days after billing date
BILLING FREQUENCY: Shall be monthly, for service in arrears

FINANCE CHARGES FOR LATE PAYMENT:

1% per month will be applied to the unpaid balance of all bills still past due twenty-five (25) days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-786, Sub 2, and W-786, Sub 3, on September 19, 1984.

DOCKET NO. W-303, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Associated Utilities, Inc., Oak Park I, Suite E-4, 4701 Wrightsville Avenue, Wilmington, North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in All of Its Service Areas in New Hanover County, North Carolina | ) ) ) ) ) | RECOMMENDED ORDER GRANTING PARTIAL RATE INCREASE |

HEARD IN: New Hanover County Administration Building, Wilmington, North Carolina, on June 21, 1984.

BEFORE: Hearing Examiner David F. Creasy

APPEARANCES:

For the Applicant:

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

For the Public Staff:

Michael Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina

CREASY, HEARING EXAMINER: On January 12, 1984, the Applicant, Associated Utilities, Inc., filed an application for authority to increase its rates for water and sewer utility service in all of its service areas in New Hanover County, North Carolina. On February 9, 1984, the Commission issued an Order scheduling hearing on the matter, and on May 17, 1984, the Applicant filed a Petition to amend its application to seek revisions in its reconnection charge. By Order issued May 18, 1984, the amendment to the application was allowed and the hearing was scheduled to take place on June 21, 1984.

On June 1, 1984, the Public Staff filed its intervention including pre-filed testimony of two witnesses and an affidavit of one witness.

The matter came on for hearing at the time and place indicated hereinabove. All parties were present and represented by counsel.

During the course of the hearing held in this matter, six utility customers of the Applicant presented testimony as public witnesses. Generally, their testimony dealt with water quality and opposition to the proposed rate increase. The customers who testified at the hearing were as follows:

Runneymeade Subdivision
Patsy H. Phelps, Edward Wilson, Timothy Woods and Linda Sasser

Walnut Hills Subdivision
Janice Williams

The Company offered the testimony of R. C. Fowler. Witness Fowler testified that he is President of Associated Utilities; that Associated Utilities provides water service for three subdivisions in New Hanover County: Monterey Heights, Walnut Hills and Runneymeade; that the Company was granted a certificate of convenience and necessity in 1971; that by 1977 it was providing water and sewer services to Walnut Hills and Monterey Heights; that by 1980 water and sewer services to Runneymeade were added; that only one rate increase has been granted (in 1979) for Walnut Hills and Monterey Heights; and that there have been no rate increases in Runneymeade Subdivision. Witness Fowler testified that the Company has diligently strived and has been successful in giving good and courteous service; that there has not been one complaint at the Utilities Commission prior to the filing of this rate case; that the Company has shown a loss every year and is continuing to do so; and that the sewer rates the Company is seeking ($15 per month) are 25 percent less than those charged in most community sewer/water systems in the county.

Witness Fowler further described the systems in the various subdivisions. Witness Fowler described the Monterey Heights Subdivision system, and explained that it serves Monterey Heights only. Witness Fowler also described the Walnut Hills Subdivision system and explained that the water system there is separate, but that the sewer plant in Walnut Hills also treats the waste water for Runneymeade Subdivision. Witness Fowler also described the water system at Runneymeade Subdivision, which is separate from the other two water systems. In discussing the quality of the water, witness Fowler testified that the water in Monterey Heights and Walnut Hills is excellent water which requires very little treatment and about which he has had no problems or complaints, but that the raw water in the Runneymeade Subdivision is saturated with iron, as is all of the water in the northern part of New Hanover County.

Witness Fowler testified that a water softener was installed at approximately $11,000 in order to combat the iron problem at Runneymeade; that the water softener took care of the hardness and brought the iron down to a fairly low level but was still not satisfactory; that he installed a second water softener at approximately $11,000 which removed all of the hardness, but not all of the iron, and was still not satisfactory; that he made a further investment of approximately $35,000 for iron removal equipment recommended by a consultant and that now, most of the time, the iron and the water hardness is down to zero; and that with this investment of approximately $58,000 for treatment equipment in the Runneymeade Subdivision, the water is of excellent quality most of the time, but when there are malfunctions, and until they can be repaired, there will be occasional iron and hardness in the water. He testified that the Company makes every effort to take care of any malfunctions as quickly as possible; that any system of this type will have some malfunctions; that there are regular maintenance checks twice a day on this water plant; and that they still have some malfunctions because of factors beyond their control, such as the power company turning off the electricity or some other mechanical failure occurs. Witness Fowler testified that he has also been investigating other avenues of obtaining better quality raw water from other sites in the county.

Witness Fowler also testified that he attempted to have Mr. G. W. Dobo of a larger utility company operate the Associated Utilities system for 19 months, but that the system did not operate as efficiently as when he was operating it himself; that Mr. Dobo charged him all of the revenues plus an additional

$43,000 at the end of the 19 months; and that witness Fowler then resumed operation of the system in October 1983 in order to prevent further large losses and to improve the service.

Witness Fowler emphasized the need for reconnection charges of $5 for the first offense, $10 for the second offense and $15 for the third offense; that most customers pay their bills without the necessity of cut off; that it is the same customers over and over again whose service it is necessary to disconnect; and that the good paying customers should not have to pay for the ones that have to have their water cut off. Witness Fowler further testified that the assumption by Public Staff witness Cox that the net investment in the water system by Associated Utilities should be zero because the cost of the utility system had been recovered in the sale of the lots might be proper if all of the lots were sold; but that there are a substantial number of unsold lots in Runneymeade Subdivision so that, in fact, the investment has not been recouped.

On cross examination witness Fowler testified that he might spend an average of 1-1/2 to 2 days per week working for the utility company; and that he employs one full time and one part time person in addition to his office staff to operate the utility company.

Company witness Winston Henderson testified that he is a Certified Public Accountant; that he keeps the books and records of Associated Utilities, Inc.; that he basically agrees with those adjustments recommended by the public Staff for operating revenues, expenses and actual plant in service, but that the affidavit of Public Staff witness David Bowerman proposing a 14.75 percent margin on expenses resulting in an operating ratio of 88 percent for water and 88.27 percent for sewer services is not accurate in that it does not provide for interest coverage as was stated in witness Bowerman's affidavit; that there was an interest expense for the test period of $13,500; that if you adopted witness Bowerman's figures and covered that interest as witness Bowerman stated should be done in his testimony, and as witness Cox agreed in her testimony, that more revenue would be required; that the 14.75 percent margin on expenses plus interest coverage would require operating revenues of approximately $61,734 from the water system, resulting in an 86.88 percent operating ratio, and would require rates of at least $5 on the first 2,000 gallons per month and $.95 per thousand on each 1,000 gallons thereafter; that interest coverage plus the 14.75 percent rate of return on the sewage operation would require revenues of $71,193, resulting in an operating ratio of 87.13 percent and requiring rates of $13.67 per month; and that these rates, based on the Public Staff's own recommendations as to rate of return on expenses plus interest coverage, were the minimum that must be granted in order to provide for the interest coverage as well as for some return to the applicant. He stated that he supports the rates as applied for, $5 on the first 2,000 gallons plus $1.20 on each 1,000 gallons thereafter for water and $15 for sewer.

Public Staff witness Rudy Shaw testified that he is an engineer with the Public Staff of the Utilities Commission; that he has investigated the application in this matter and has visited the applicant's place of business; that the water and sewer facilities are working properly and are being well maintained; that the water quality was within the prescribed limits at the time he made his field inspection of the systems; that the Division of Health Services had no problems with the quality of service or quality of water provided by Associated Utilities at the time he checked with them; that he

agrees with the billing analysis as presented by the Company, but recommends lower rates than those requested by the Company; and that he would not object to the Company charging a deposit in accordance with the Commission's rules.

In regard to his inspection of the water system, witness Shaw testified that the water quality is very high even though there are a lot of iron problems and hardness at Runneymeade; and although the applicant is not required to treat the hardness, it is treating for the hardness with a softener and is also treating for iron; that in comparison with other systems with which he is familiar, the applicant is doing more than most systems do to treat their water; and that quite a lot of expensive equipment has been installed in the well house at Runneymeade. He agreed that Associated Utilities has made great efforts to treat the iron problem and is being successful when the equipment is in operation.

Public Staff witness Elise Cox testified that she is an accountant with the Public Staff of the North Carolina Utilities Commission and that she investigated the books and records of the applicant; that she made several adjustments to the accounting records of the applicant (which adjustments were generally concurred with by the applicant's accountant); that she made a recommendation to witness Shaw which proposed revenues producing a margin on operating expense for water and sewer of 14.75 based on Public Staff witness Bowerman's affidavits; that the revenues recommended by the Public Staff would not cover the interest being paid by the applicant in the event such interest were found to be proper; and that she was in agreement with the economist for the Public Staff that the recommendation for revenue requirements must consider four factors:

1. Return must provide coverage of interest;
2. A return to the stockholder;
3. Market conditions including investor expectations; and
4. Quality of service.

Based on the foregoing evidence, the Commission makes the following

## FINDINGS OF FACT

1. The applicant is a North Carolina corporation duly franchised by this Commisison to operate as a public utility and to provide water utility service to customers residing in the service area.

2. The applicant presently provides water and sewer utility service to customers in three separate service areas, namely the subdivisions of Monterey Heights, Walnut Hills and Runneymeade in New Hanover County.

3. The test period used in this proceeding consists of the 12-month period ending August 31, 1983.

4. The applicant is presently charging the following rates for water and sewer service in its service areas:

| | |
|---|---|
| Metered water | |
| 0 - 3,000 gallons | $ 5.00 |
| All over 3,000 gallons | .80 per 1000 gallons |
| Sewer, Flat Rate | $10.00 |
| Connection charge | |
| Water | $250.00 |
| Sewer | $750.00 |
| Reconnection charge | |
| Water (if water service cut off by utility for good cause) | $ 4.00 |
| Water (if water service disconnected at customer's request) | $ 2.00 |
| Sewer (if sewer service cut off by utility for good cause) | $15.00 |
| Deposit | |
| Water only customers | $20.00 |
| Both water and sewer customers | $40.00 |
| Returned checks | $10.00 |

5. The applicant proposes to charge the following rates for water and sewer services in all of its service areas:

| | |
|---|---|
| Metered water | |
| 0 - 2,000 gallons | $ 5.00 |
| All over 2,000 gallons | $ 1.20 per 1,000 gallons |
| Sewer, flat rate | $15.00 |
| Connection charge | |
| Water | $250.00 |
| Sewer | $750.00 |
| Reconnection charge | |
| Water (if water service cut off by utility for good cause) | $ 5.00 first reconnection<br>$10.00 second reconnection<br>$15.00 third reconnection |
| Water (if water service disconnected by utility at customer's request) | $ 5.00 |
| Sewer (if sewer service disconnected by utility for good cause) | $15.00 |
| Deposit | |
| Water only customers | $20.00 |
| Both water and sewer customers | $40.00 |
| Returned checks | $10.00 |

6. The operation and maintenance expenses for the water system will be $46,801 according to the Public Staff's testimony (which was not highly contested by the applicant, except that the applicant pointed out several areas in which expenses were not included by the Public Staff which the applicant felt probably should have been included). These expenses did not cover any interest expense nor any return to the applicant.

7. The revenue requirement for the water operation necessary to cover the interest and provide a 14.75 percent return on operating expenses would be at least $61,734 for the test period, which would result in an 86.88 percent operating ratio.

8. The revenue requirement for the sewage operation necessary to cover the interest and provide a 14.75 percent return on operating expenses would be at least $71,173 which would result in an 87.13 percent operating ratio.

Discussion of Evidence and Conclusions

At the hearing on this matter, the Applicant's Accountant, Winston Henderson, indicated that he did not contest the Public Staff's various adjustments to the Applicant's operating expenses. However, the Applicant strongly contested the public Staff's position on one issue, i.e., whether the Public Staff's recommendation afforded the Company adequate revenues to cover its asserted interest expense. That issue is the crux of this case.

The Public Staff recommended a net operating income for return of $6,373 for water and $7,344 for sewer, or $13,717 total net operating income for return on a total company (combined water and sewer) basis. The Company vigorously contested these return recommendations at the hearing, pointing to a total company per books interest figure of $13,588, or $6,794 each when allocated to water and sewer, respectively. The Company argues that since this purported interest expense is just barely covered by the Public Staff's proposal (as calculated by the Company, subtracting the Company's interest expense from the Public Staff's proposed net operating income for return gives a $550 net profit for sewer operations and a $421 net loss for water operations), the Public Staff's recommendation leaves essentially no return for the stockholders, and is therefore improper. In sum, the Company contends that the statement by Public Staff Witness Bowerman that "interest coverage has been provided at an adequate level" is incorrect.

The Public Staff asserts that the Company's per books interest figure is not a legitimate and reasonable interest expense because the Company is a zero rate base company, and that without any rate base, there is essentially no capital investment for the Company to be paying interest on. Public Staff witness Cox testified that the Company had been unable to provide her with information as to the extent to which the initial system development costs had been recovered by the development company (which is owned by the owners of the utility company), and that she therefore assumed that the initial development costs had been totally recovered through the sale of lots and tap on fees. Company witness Fowler testified that even though he set the lots prices and tap on fees to recover the investment, if the lots were not sold within his projected amount of time, the interest he would have to pay would undermine his ability to recover that investment as a developer.

Although there was no specific showing by the utility Company that the developer had not recovered the cost of the water (and sewer) system in the sale of lots, neither was there an attempt by the Public Staff to show that he had. There was no evidence offered as to whether such cost of the water (and sewer) system had been: (1) capitalized on the books of the developer and depreciated for income tax purposes, or had been (2) expensed on the books of the developer for income tax purposes. There was no evidence offered as to differences between: (1) the sale price of the lots with water and sewer service, and (2) the sales price of comparable lots without water and sewer service. There was no evidence offered as to what the sales price of the lots would have been if the water and sewer system had been installed by an outside utility in an arms length transaction, nor was any evidence offered as to what the rates for such water and sewer service would have been if said outside utility had installed the water and sewer system and provided the service.

The concept that a water (and sewer) utility has already recovered its investment in plant and equipment thru the sales of subdivision lots is an attractive one when the water or sewer utility and the lot developer are one and the same. Undoubtedly the water and sewer service enhances the value of the lots and probably enables the developer to command a higher sales price for the lots. But such value of lots and such sales price would be similarly affected whether the water and sewer service is supplied by the developer himself or by an outside utility in an arms length transaction, all other things remaining equal. Furthermore, there is at least as much reason to believe that such service provided by an outside utility would result in higher rates than if such service were provided by the developer as there is reason to believe otherwise. Therefore, fairness requires that there be some specific basis for finding that the developer's revenues from lot sales included a recovery of the cost of the water and sewer system (such as the cost being included as a development expense on income tax returns). No such specific basis was offered in this case. For this reason, the Commission concludes that the debt on the Company's books should be considered a legitimate cost of service for ratemaking purposes.

Company witness Henderson testified that the per books interest for the Company consisted of interest on two loans. Of the $13,588 interest expense asserted by the Company, approximately $12,000 of it was interest on a loan from the owner's development company, and the balance was to First Union National Bank as interest on a loan to finance a truck. The debt to the development company, R. C. Fowler Properties, Inc., consisted of $90,577 at 12% interest and was a combination of two things: original system installation and operating expenses.

That portion of the debt which was for original system installation generally could represent what the utility would have paid for the plant and equipment net of tap on fees or other customer contributions. Such net investment in plant and equipment would be a legitimate rate base component assuming that the overall cost of plant and equipment (prior to contributions in aid) was reasonable and appropriate for ratemaking purposes. Although there was no specific showing by the utility that such overall cost of plant and equipment was reasonable and appropriate, neither was there a specific showing by the Public Staff that it was not (due to overbuilding or otherwise). Rather there were contentions by both parties regarding whether or not such overall cost had been recovered by means of tap on fees and lot sales. Therefore, the

Commission is left with nothing more than a philosophical choice as to weather or not the amount of the debt is reasonable.

That portion of the debt which is for operating expenses generally could represent operating expenses incurred in the past which were paid for with borrowed money because there was not enough revenues at that time to pay the bills. Any company which incurs bills it cannot pay will go out of business unless it can borrow the money to pay such bills, and the money borrowed under such circumstances is just as legitimately a part of the investment necessary to sustain the business as is the investment necessary to construct the plant and equipment, assuming that the past operating expenses covered by the debt were reasonable and appropriate for ratemaking purposes at the time such expenses occurred. Although there was no specific showing by the utility that such past expenses were reasonable and appropriate, neither was there a specific showing by the Public Staff that they were not. There were merely contentions by both parties, again leaving the Commission with nothing more than a philosophical choice as to whether or not the amount of the debt is reasonable.

The Commission notes that the rates calculated by the applicant after accepting the Public Staff's accounting adjustments but including interest coverage on its debt will still be comparable to the rates charged by other outside utilities for similar service. The quality of applicants service is very adequate for the most part, and certainly does not render the applicant as "undeserving" of fair and equitable treatment. For these reasons, and in the absence of persuasive evidence to the contrary as discussed elsewhere herein, the Commission concludes that the rates set forth in Appendix A attached hereto are just and reasonable, and will produce the revenues necessary to cover the operating expenses, provide interest coverage, and yield a fair and equitable return.

IT IS, THEREFORE, ORDERED as follows:

1. That the schedule of rates set forth in Appendix A attached hereto is approved for service rendered by the applicant on and after the effective date of this Order in all of its service areas, and that said schedule is deemed to be filed with this Commission pursuant to G.S. 62-138.

2. That a copy of Appendix A be mailed to each utility customer in conjunction with the next regularly scheduled billing cycle that shall occur after the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of September 1984.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A
SCHEDULE OF RATES
DOCKET NO. W-303, SUB 5
ASSOCIATED UTILITIES, INC.

ALL SERVICE AREAS IN NORTH CAROLINA

| | |
|---|---|
| WATER - METERED RATE: | |
| 0 - 2,000 gallons per month | $ 5.00 |
| All over 2,000 gallons per month | $ .95 per 1000 gallons |
| SEWER - FLAT RATE: $13.67 per month | |
| CONNECTION CHARGE: | |
| Water | $250.00 |
| Sewer | $750.00 |
| RECONNECTION CHARGES: | |
| Water - (If water service cut off by utility for good cause): | |
| First Reconnection | $ 5.00 |
| Second Reconnection | $10.00 |
| Third or more reconnections | $15.00 |
| (If water service cut off by utility at customer's request): | $ 5.00 |
| Sewer - (If sewer cut off by utility for good cause): | $15.00 |
| DEPOSIT: Not to exceed amount per NCUC Rule R12-4 | |
| RETURNED CHECKS: | |
| Charge for returned check | $10.00 |

DOCKET NO. W-354, SUB 26

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application by Carolina Water Service, Inc., of | ) | RECOMMENDED ORDER |
| North Carolina, 2335 Sanders Road, Northbrook, | ) | APPROVING RATES |
| Illinois, for Authority to Increase Rates for | ) | AND REQUIRING |
| Water and Sewer Utility Service in Its Service | ) | SERVICE |
| Areas in North Carolina | ) | IMPROVEMENTS |

HEARD IN:

1) Courtroom No. 1, Watauga County Courthouse, West King Street, Boone, North Carolina, on December 6, 1983

2) Superior Courtroom, Fifth Floor, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on December 7, 1983

3) Commissioner's Board Room, Fourth Floor, County Office Building, 720 East Fourth Street, Charlotte, North Carolina, on December 8, 1983

4) Auditorium, Municipal Building, 202 South Eight Street, Morehead City, North Carolina, on December 4, 1983

5) Town Hall, Matthews, North Carolina, on January 31, 1984

6) Commission Hearing Rooms, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, February 7-10, 1984

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

APPEARANCES:

For the Applicant:

Edward S. Finley, Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

For the Public Staff:

Thomas K. Austin and G. Clark Crampton, Staff Attorneys, Public Staff-North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Phillip G. Kelley, Lentz, Ball & Kelley, Attorneys at Law, P.O. Box 7645, Asheville, North Carolina 28807
For: Sugar Mountain Community Association

PARTIN, HEARING EXAMINER: On June 24, 1983, Carolina Water Service, Inc. of North Carolina (hereinafter sometimes "Applicant", "Company" or "Carolina Water Service") filed an application with the North Carolina Utilities Commission (hereinafter "Commission") for authority to increase and adjust rates and charges for water and sewer service in all of its service areas in North Carolina. Both the transmittal letter accompanying the application and the application itself made it clear that the Applicant's proposed rate increase would apply to customers being served by Sugar Mountain Utility Company, an affiliate of the Applicant, with which the Applicant sought Commission permission to merge. Although a separate application was filed in Docket No. W-354, Sub 27, relative to the merger, that docket was combined with the instant one for purposes of hearing and decision. By Order issued this day in Docket No. W-354, Sub 27, the Commission approved and allowed the merger of Sugar Mountain Utility Company into Carolina Water Service. Consequently, this Order reflects that fact. In its application, Applicant proposed an annual increase in gross revenues of $331,831.

By Order issued July 19, 1983, the Commission declared the matter a general rate case, suspended the proposed rates for up to 270 days pursuant to G.S. 62-134, scheduled the matter for public hearings, required the Applicant to give notice of its application and the hearings to be held thereon, and established the test year to be used.

By Order issued July 27, 1983, the Commission directed that certain amendments be made to the notice to the public.

On September 6, 1983, the Applicant filed a Certificate of Service with the Commission certifying that the public notice ordered by the Commission had been given as directed.

On November 18, 1983, the Public Staff filed a Motion with the Commission seeking an extension of time to and including November 30, 1983, within which to prefile its testimony and exhibits. That Motion was allowed by Commission Order issued November 23, 1983.

On December 2, 1983, the Applicant filed a Motion requesting the Commission to allow Applicant to and including January 22, 1984, in which to prefile and serve its rebuttal testimony in this case and to schedule a date upon which presentation and cross-examination of such rebuttal testimony could take place on or after January 18, 1984. In support of its Motion the Applicant alleged that, due to the scope and nature of the Public Staff's adjustments, the Applicant needed to file rebuttal testimony and that it would be impossible to prepare adequately such testimony without several weeks delay. The Motion noted that the delay which Applicant sought might prevent the Commission from issuing its order within 180 days from the effective date of the proposed rates.

On December 5, 1983, the Public Staff filed its Motion requesting the Commission to enter its order rescheduling the case in chief (including the presentation of any rebuttal) from Friday, December 16, 1983, in Raleigh to a date during the month of January 1984, preferably during the week beginning January 16. In support of its Motion the Public Staff alleged that it objected to having a bifurcated proceeding wherein rebuttal to the direct testimony of its witness would be separately presented several weeks following the

presentation of such direct testimony. The Motion noted that the Applicant, through its attorney, did not object to the proposal of the Public Staff.

On December 21, 1983, Applicant filed a Motion with the Commission seeking authority to place its proposed rates into effect for all service rendered on or after February 1, 1984, except the Hemby Acres and Beacon Hills Subdivisions in Union County. It appeared that notice of the rate increase and public hearings had inadvertently not been given to the Applicant's customers in those two subdivisions. The Applicant proposed that a hearing be scheduled and noticed in order to allow residents of Hemby Acres and Beacon Hills subdivisions an opportunity to testify.

Those requests were resolved by the Commission's Interlocutory Order issued January 11, 1984. That Order allowed Applicant to put its proposed rates into effect for service rendered on and after February 1, 1984, without necessity of bond or undertaking except that the proposed rates were not allowed to be placed into effect in the Cabarrus Woods Subdivision nor the Applicant's subdivisions located in Union County, to wit, Hemby Acres and Beacon Hills. The implementation of the proposed rate increase in Cabarrus Woods was also delayed pending the receipt by the Hearing Examiner of further evidence on service and water quality problems being experienced there. The implementation of the proposed increase in the two Union County subdivisions was delayed pending the opportunity for residents to attend a public hearing which was scheduled on a no-protest basis for January 31, 1984. The Interlocutory Order further provided that the case in chief be rescheduled from December 16, 1983, to February 7, 1984, in Raleigh. Additionally, the Applicant was ordered to give appropriate notice to its customers of these matters.

On January 17, 1984, the Commission issued an Order amending the interim rate schedules approved by earlier order issued January 11, 1984, and directing appropriate changes in the notice to customers reflecting such amendments.

This matter came on for hearing as scheduled in the four locations designated in the Commission's July 19, 1983, Order. Testimony was received from witnesses at each of those hearings as follows:

BOONE

The public witnesses were: Reginald T. Weber, Elmer Jenkins, John D. Davis, Bill McGough, Barton Ostroff, Frank McDaniel, W. Allen Traver, Jr., and Norma Jenkins.

ASHEVILLE

The public witnesses were: A.B. Tolley and Daniel Showbothen. David L. Owens testified for the Company.

CHARLOTTE

The public witnesses were: Tim Duncan, David Griffin, Neil Turner, William Hargett, Carl Paxton, Chris Griffin, Dale Hagler, Willet A. Adams, Wanda Green, Irene Johnson, Mike Demby, Ward Winkler, Charlotte Merrill, and Donna Ward. The Company presented testimony by David L. Owens.

MOREHEAD CITY

The public witnesses who testified were: William T. Atkinson, Robert Runge, F. Melvin Wright and John Tharrett. The Company presented testimony by David L. Owens.

MATTHEWS

As previously noted, an additional public hearing was scheduled in Matthews by Commission Order of January 22, 1984. The following public witnesses testified at that hearing: Stanley C. Williams, Richard J. Pietrus, Ray O'Shields, Bill Woitkowski, Tom Black, David McSheehan, Mike Wilson, Charles Rains, Earl Deese, Kathy Gallo, Jody Bass, David Higginson, Van Sullivan, Dowd Helms, Deanna Reed, Wendy Bingham, Bob Cander, Jimmy Trivette, Michael White, and Ernie Shules. The Company presented the testimony of David L. Owens.

RALEIGH

The case in chief came on for hearing in Raleigh as previously scheduled on February 7, 1984. The Applicant presented its direct case through the testimony of David L. Owens, Executive Vice President of the Applicant and its parent Company, Utilities, Inc., and Patrick J. O'Brien, Treasurer of the Applicant and of Utilities, Inc.

The Public Staff presented its case through the testimony of Jocelyn Perkerson, Staff Accountant with the Public Staff's Accounting Division, and Andy R. Lee, Utilities Engineer with the Public Staff Water Division.

At the conclusion of the Public Staff's case the Company presented extensive rebuttal testimony. The following testified as rebuttal witnesses: David L. Owens; Patrick J. O'Brien; Joseph W. Rezek, President of Rezek, Henry, Beisenheimer & Gende, a consulting engineering firm; John D. McClellan, C.P.A. and partner in Deloitte Haskins & Sells; and Keith R. Cardey, a management consultant in the public utility field.

After the conclusion of the hearings in this matter, Applicant filed a Motion on March 7, 1984, requesting that Applicant be allowed to implement its proposed rates in its Cabarrus Woods, Hemby Acres and Beacon Hills subdivision service areas and to be allowed to implement new customer charges. That requested relief was allowed in part by an Interlocutory Order issued March 16, 1984. By that Order the Commission denied the request that the proposed rates be allowed in the Cabarrus Woods subdivision; authorized an interim $12.00 sewer flat rate in the Hemby Acres and Beacon Hills subdivisions and ordered Applicant to directly bill customers in those subdivisions; authorized a new water customer charge of $20.00 and a new sewer customer charge of $15.00; and directed that the appropriate notice of the foregoing be given by the Applicant.

Based upon the testimony and evidence adduced at the hearings and the entire record in these proceedings, the Hearing Examiner makes the following

FINDINGS OF FACT

1. Carolina Water Service, Inc. of North Carolina is a North Carolina corporation duly franchised by this Commission to operate as a public utility in providing water and sewer utility service to customers residing in its various North Carolina service areas where it has been authorized to provide such service.

2. The test period appropriate for use in this proceeding is the twelve month period ended December 31, 1982.

3. The Applicant provides water and/or sewer utility service to approximately 7,500 customers in more than 40 service areas located within the State of North Carolina.

4. The basic monthly rates for sewer utility service approved in the Company's last general rate case are as follows:

FOR ALL SERVICE AREAS EXCEPT AS OTHERWISE SET OUT HEREINAFTER:

SEWER RATES (Residential)
Flat rate per month per dwelling unit - $15.00

SEWER RATES (Commercial)
Flat rate per single family equivalent - $15.00

FOR THE RIVERBEND SERVICE AREA:

SEWER RATES (Residential)
Flat rate per month per dwelling unit - $15.00
"Dwelling unit" shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

SEWER RATES
Flat rate per single family equivalent - $15.00

FOR THE BEACON HILLS AND HEMBY ACRES SUBDIVISIONS (INDEPENDENT SERVICE AREAS):

SEWER RATES
Metered: Sewer cost for each customer shall be based upon the amount of water consumed per month, and the rate will be $.90 per 100 cubic feet of water per customer, with a $2.10 minimum.

Flat Rate: N/A

FOR THE STEEPLE CHASE SUBDIVISION (CABARRUS AND MECKLENBURG COUNTIES) SERVICE AREA:

FLAT RATES (Residential service)
$9.00 per month

FOR THE SUGAR MOUNTAIN UTILITY COMPANY SERVICE AREA:

FLAT SEWER RATE (Residential)
Flat rate per month $9.00

SEWER SERVICE (Commercial and other)
100% of charge for water service.

When, because of the method of water line installation utilized by the developer or owner, it is impractical to meter each unit separately, service will be provided through a single meter, and consumption of all units will be averaged; a bill will be calculated based on that average, and the result multiplied by the number of units served by a single meter.

5. The basic monthly rates for water utility service approved in the Company's last general rate case are as follows:

FOR ALL SERVICE AREAS EXCEPT AS OTHERWISE SET OUT HEREINAFTER:

METERED WATER RATES
(A). Minimum charge per month (includes first 3,000 gallons or 401 cubic feet per month).

| | |
|---|---|
| 3/4" service line or meter | - $ 7.00 |
| 1" service line or meter | - $ 17.50 |
| 1"-1 1/2" service line or meter | - $ 35.00 |
| 2" service line or meter | - $ 56.00 |
| 3" service line or meter | - $112.00 |
| 4" service line or meter | - $175.00 |

(B). $1.50 per 1,000 gallons or 134 cubic feet for all usage over first 3,000 gallons or 401 cubic feet per month.

FOR THE RIVERBEND SERVICE AREA:

METERED WATER RATES
(A). Minimum charge per month
3/4" service line or meter - $ 7.00 - Includes first 3,000 gallons

1" service line or meter - $ 17.50 - Includes first 7,500 gallons

1"-1 1/2" service line or meter - $ 35.00 - Includes first 15,000 gallons

2" service line or meter - $ 56.00 - Includes first 24,00 gallons

3" service line or meter - $112.00 - Includes first 48,000 gallons

4" service line or meter - $175.00 - Includes first 75,000 gallons

(B). $1.50 per 1,000 gallons or 134 cubic feet for all usage over first 3,000 gallons or 401 cubic feet per month

FOR THE SUGAR MOUNTAIN UTILITY COMPANY SERVICE AREA:

METERED WATER RATES: (Commercial and Other)
(A). Minimum charge per month: (Includes first 6,000 gallons)

| | |
|---|---|
| 3/4" meter | $ 9.00 |
| 1" meter | $ 33.75 |
| 1"-1 1/2" meter | $ 67.50 |
| 2" meter | $108.00 |
| 3" meter | $216.00 |
| 4" meter | $337.50 |

(B). All over 6,000 gallons per month
(per thousand) $ 1.00

METERED WATER RATES: (Residential)
Minimum charge per month $ 9.00
(Includes first 6,000 gallons)
Over 6,000 gallons per month $ 1.00
(per thousand)

6. The basic monthly rates for water utility service which the Applicant proposes to charge to all of its customers in all of its service areas in this State, including customers of Sugar Mountain Utility Company, are as follows:

METERED WATER RATES: (Residential)
(A). Base Facility charge: $5.00 per dwelling unit. Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

(B). Commodity charge: $1.70 per 1,000 gallons or 134 cubic feet.

When, because of the method of water line installation utilized by the developer or owner, it is impractical to meter each unit separately, service will be provided through a single meter, and consumption of all units will be averaged; a bill will be calculated based on that average, and the result multiplied by the number of units served by a single meter.

METERED WATER RATES: (Commercial and Other)
(A). Base facility charge:

| | |
|---|---|
| 3/4" meter | $ 5.00 |
| 1" meter | $ 30.00 |
| 1"-1 1/2" meter | $ 50.00 |
| 2" meter | $ 80.00 |
| 3" meter | $160.00 |
| 4" meter | $250.00 |

(B). Commodity charge: $1.70 per 1,000 gallons, or 134 cubic feet.

7. The basic monthly rates for sewer utility service which the Applicant proposes to charge to all of its customers in all of its service areas in this State, including customers of Sugar Mountain Utility Company, are as follows:

SEWER RATES: (Residential)

Flat rate per month per dwelling unit: $16.00

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

SEWER RATES: (Commercial and Other)

125% of water service subject to a minimum rate of $16.00 per month. Customers who do not take water service will pay $16.00 per single-family equivalent.

8. The service provided by the Company to its customers in North Carolina is adequate. Although various problems and complaints regarding some aspects of service were testified to at the hearings held in this matter, it appears that the Company has taken or is taking appropriate steps in order to correct these problems and complaints. The Company should, however, pursue certain follow-up activities in connection with certain remaining problems in the manner specified in the Evidence and Conclusions for this Finding of Fact.

9. The Applicant's total original cost of its plant in service for providing water and sewer service to its customers in North Carolina is $10,346,572.

10. The Applicant's reasonable net utility plant in service is $3,219,921. Such amount is determined by reducing the total original cost of utility plant in service of $10,346,572 by $7,126,651, which consists of contributions in aid of construction of $3,630,295; plant acquisition adjustments and book value in excess of investment of $2,484,815; accumulated depreciation of $1,004,869; and customer advances for construction of $6,672.

11. The Applicant's reasonable allowance for working capital is $76,000, consisting of a cash requirement of $113,701 less average tax accruals of $22,098 and customer deposits of $15,603.

12. The Applicant's reasonable original cost rate base is $3,295,921.

13. The Applicant's gross revenues for the test year under present rates, after accounting and pro forma adjustments, are $1,234,730. After giving effect to the Company's proposed rates, such gross revenues are $1,566,561.

14. The reasonable level of operating revenue deductions after accounting, pro forma, end-of-period adjustments, and the Company's proposed increase is $1,225,733.

15. The reasonable capital structure for use herein is as follows:

| | |
|---|---|
| Long-term debt | 50% |
| Common equity | 50% |
| Total | 100% |

16. The revenues requested by the Applicant will result in an overall rate of return of 10.34% on the Commission's reasonable original cost rate base.

The 10.34% overall rate of return incorporates a cost of debt of 11.00% and a return on common equity of 9.68% weighted by the capitalization ratios hereinabove found to be appropriate. Such return is not unreasonable.

17. Based on the foregoing, the Applicant should be allowed an increase in annual gross revenues of $331,831. This increase will allow the Applicant the opportunity to earn a 10.34% overall rate of return on its rate base which the Hearing Examiner finds to be not unreasonable.

18. There is a need to determine and establish the appropriate depreciation rate to be used by the Applicant for each functional category of its water utility plant and of its sewer utility plant in this State. The Company should cause a study and investigation of this matter to be conducted in the manner specified hereafter in this Order. The subject study shall be filed with the Commission and with the Public Staff and will serve as a basis for determining appropriate adjustments with respect to the Company's depreciation rates in the Company's next general rate case.

19. Certain improvements need to be made by the Applicant in its accounting procedures relative to its work order system and manner of accounting for retirements. The recommended improvements are those specified in the Evidence and Conclusions for this Finding of Fact.

20. The Company's proposed new customer charges are reasonable and appropriate and should be approved.

21. The Company's proposed plant modification and expansion fees are reasonable and appropriate and should be approved; provided, however, that the Company shall be permitted to charge such fees only in cases where the expansion or modification of existing water or sewer utility mains and/or plant is required in order for the Company to provide service to a new subdivision or to a new phase of development; and, provided further, that such fees shall only be charged to and payable by the developer or builder whose development or building activity in such new subdivision or new phase of a development has necessitated such main and/or plant modification or expansion.

22. The Company's proposed $5.00 per month base facility charge for metered residential water utility service is reasonable and appropriate for service provided to single family residences which are served through a single meter and to whom an individual bill is sent. The Company's proposed $5.00 per month base facility charge per dwelling unit is not reasonable or appropriate for multi-family dwelling units where water utility service is provided through a single meter and one bill is sent to a homeowners association or similar responsible party. In such cases the reasonable and appropriate base facility charge per dwelling unit is $4.50 per month.

23. The proper rates to be charged by the Applicant to its customers are those rates contained in Appendix A attached hereto.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1-7

These findings are based upon the official records of the Commission, including the Commission's decision in the Company's last general rate case, the Company's Application in this docket, and the Commission's Order issued July 9, 1983.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this Finding of Fact is found in the testimony of Company customers and that of Company witnesses Owens and Rezek. Public hearings were held in Boone, Asheville, Charlotte, Morehead City, Matthews, and Raleigh. Approximately 45 customers testified at those hearings concerning various service problems and complaints. Mr. David Owens, Executive Vice President of Carolina Water Service, Inc., testified at each hearing concerning Company action and plans for dealing with the problems testified to by the customers.

Hemby Acres and Beacon Hills Subdivisions

Twenty-one (21) customers from the Hemby Acres and Beacon Hills Subdivisions testified at the Matthews hearing. Much of the testimony concerned the alleged failure of customers in those subdivisions to have received notice of the prior transfer of the sewer system serving those subdivisions to Carolina Water Service. There was much concern and confusion about whom customers were to contact regarding problems with water and sewer service or billings. Customers testified that they were billed by Union County, yet the County was unwilling or unable to assist with certain service complaints. Several customers testified as to sewage overflow and rainwater flooding problems occurring in the subdivisions and the sewage treatment plant.

Mr. David Owens testified for the Company at the Matthews hearing and again at the Raleigh hearing concerning the problems described by the Beacon Hills and Hemby Acres customers. At the Matthews hearing, Mr. Owens testified that he could not explain why many of the Hemby Acres and Beacon Hills customers did not receive any notice of the transfer of ownership, but that he would see to it that each customer was sent a letter containing the Company's local phone number. He also testified that the sewage treatment system serving Hemby Acres and Beacon Hills had been in poor condition when Carolina Water Service acquired it but that since then the Company had made extensive improvements to the system. These improvements included overhauling filters at the plant, constructing a concrete wall around the plant to keep out the flood waters, and adding new pumps and automatic compressor controls at the plant. The Company has also repaired manholes and sewage mains, repaired lift stations by installing new pumps, controls and wiring, and installed visual alarms at each of the three lift stations to notify customers if the lift station is malfunctioning. Mr. Owens testified that the Company had ordered monitoring equipment for the lift stations which would automatically dial the Company's telephone number if the sewage level rises above the operational design level in the lift station.

At the hearing held at a later date in Raleigh, Mr. Owens presented further testimony concerning the problems noted by customers at the Matthews hearing. Mr. Owens testified that the Company had mailed a letter to each customer in its Hemby Acres and Beacon Hills service areas giving the Company's local telephone number and informing the customers of the improvements which the Company had made and was planning to make to the sewer systems. He testified that the Company would assist the customers in their efforts to deal with the county or other appropriate regulatory authorities in an attempt to help solve the frequent flooding problem caused by the creek adjacent to the subdivisions. Witness Owens also testified that the Company would start billing customers directly if the Commission approved a flat sewer rate.

Previous billing has been done for the Company by Union County since the county provides metered water utility service to Hemby Acres and Beacon Hills and the Company's existing metered sewer rates for this area require utilization of the metered water consumption data for computing sewer bills. Such direct billing by the Company of those customers was authorized and directed by Interlocutory Order issued in this cause on March 16, 1984.

The Hearing Examiner concludes that the Company has taken and is taking appropriate actions to deal with the problems presented at the Matthews hearing by customers in the Hemby Acres and Beacon Hills Subdivisions. The Company testified that the sewage treatment facilities were inadequate to handle large volumes of flood waters when this water entered the sewage system. The Company has undertaken efforts to limit the impact of flooding but indicates that the appropriate remedy is to install flood control facilities along the creek to divert the flood waters away from the subdivisions and the sewage system. This is a problem beyond the Company's control and the jurisdiction of this Commission. The Hearing Examiner further concludes that the notice which was required by the Commission in connection with the transfer of the subject sewer utility systems to the Company was in fact given by the Company in the manner required.

Riverbend

Four customers testified at the hearing held in Morehead City. Mayor Robert Runge of Riverbend in Craven County testified concerning customer dissatisfaction with the quality of service in Riverbend until shortly before the hearing. The major problem was iron in the water and the ruinous effect it has had on people's clothing, on procelain coated fixtures, and on washing machines and wash basins. Mayor Runge testified that he understood that a new filtration system had recently been installed by the Company to remedy the situation and that he was receiving fewer complaints from customers. Mayor Runge also complained about the lack of communication between the Company and the town officials. Mayor Runge testified that he often received questions from customers about the water and sewer utility systems, especially questions regarding proposed expansion and improvements, and that he was unable to answer such questions.

Witness Owens testified for the Company concerning the iron problem described by Mayor Runge. Witness Owens testified that two iron filters had recently been installed on the system to correct the iron problem. He also testified that a new well and an elevated storage tank had been added to the Riverbend system. Mr. Owens did not address the public relations concerns of town officials.

The Hearing Examiner concludes that the Company has taken and is taking appropriate action to deal with the iron problem. The Hearing Examiner recommends, however, that the Company improve its communications with the Riverbend town officials and encourages the Company to keep those officials informed with respect to the Company's improvement and expansion plans for the service area.

Bainbridge Subdivision

Fourteen customers testified at the public hearing held in Charlotte. Most of the customer testimony concerned water quality problems in the Bainbridge and Cabarrus Woods Subdivisions.

Customers living in the Bainbridge Subdivision complained about the staining of plumbing fixtures and discoloration of clothes. One customer complained of the failure of the Company to notify customers when mains were being flushed and suggested that flushing was not being done at the times when the Company indicated that it would be done. Some of the customers acknowledged that the Company had recently installed a new filtration system and that the water quality seemed to be improving.

Witness Owens testified on behalf of the Company. He indicated that the Company was taking action to deal with the water quality problem. He indicated that a new filtration system had recently been installed at a cost in excess of $22,000 and that it would remove the high levels of iron and manganese which had been causing the problems. He testified that the filtration system had reduced the iron content of the water by 90% and that samples taken the day prior to the hearing indicated a level of iron of 0.3 parts per million or less, which was within established guidelines. Mr. Owens further testified that the Company was undertaking an extensive flushing program to flush the system. He indicated that the flushing program should remove iron buildup in the mains and that it should be completed within three months. He stated that the Company would notify customers of its flushing schedule.

The Hearing Examiner concludes that the Company is taking appropriate measures to correct the water quality problems in the Bainbridge Subdivision. The Hearing Examiner notes, however, that the Company should be careful to give customers in the subdivision adequate notice of its flushing operations and should strictly adhere to the noticed schedule.

Cabarrus Woods Subdivision

There were extensive and numerous complaints from residents of the Cabarrus Woods Subdivision primarily concerning a severe hard water problem. Customers testified regarding damage to hot water heaters and elements and to dishwashers and to pipes, water discoloration, and staining of fixtures.

Witness Owens testified on behalf of the Company at the Charlotte hearing and later at the Raleigh hearing. The Company also offered the testimony of Joseph W. Rezek, P.E., a consulting engineer hired by the Company to investigate the noted problems in Cabarrus Woods.

The Company presented evidence at the Raleigh hearing indicating that the Company had made and was making improvements subsequent to the Charlotte hearing at which the Cabarrus Woods customers testified. The Company's evidence indicated that in January of 1984 it had drilled a new high yield well which produced water of good quality. The Company anticipated that the new well, Well No. 6, would be in service by late spring of this year. Well No. 2, which produced by far the worst quality of water of the five existing wells, has been abandoned. The abandonment of that well should have a significant impact in reducing the high iron, hardness, and sulfate content which were

detrimental to the water quality. The report of Company consultant Rezek recommends that Wells Nos. 1 and 6 be operated as the primary wells. It further indicates that when operating together those two wells will produce a combined hardness of 165 mg/1, which would be significant improvement over the average previous hardness of 302 mg/1. The report of witness Rezek also indicates that the operation of Wells Nos. 1 and 6 as recommended will yield a combined sulfate content of 115 mg/1 which is well below both the taste threshold level and the average prior concentration of 210 mg/1.

The Hearing Examiner concludes that the Company is taking appropriate measures to improve the water quality problems in Cabarrus Woods Subdivision. The Company should keep the Commission, the Public Staff, and the Cabarrus Woods customers informed of the improvements made to the system.

Mt. Carmel Subdivision

Two customers appeared and testified at the hearing held in Asheville. Mr. A.B. Tolley and Mr. Daniel Shoebothan, both residing on Wicklow Drive in the Mt. Carmel Subdivision, testified concerning rusty, muddy looking water. Mr. Tolley also testified that in June of 1983, he came down with diverticulitis and was concerned about the possibility of the water having caused his illness.

Witness Owens testified on behalf of the Company at the Asheville hearing and at the hearing held at a later date in Raleigh. At the Asheville hearing, Mr. Owens testified that iron filters had been installed on the Mt. Carmel system the previous year in order to remove excessive iron and manganese from the water. This was a problem of much concern to customers at the previous rate case hearings held in Asheville.

Mr. Owens testified that since the filters had been installed the treated water entering the system was within established standards for iron and manganese content. Mr. Owens indicated that the two customer complaints would be investigated. Subsequently, witness Owens testified at the Raleigh hearing that the Company's investigation had revealed that no blow-off valve existed at the end of Wicklow Drive in the Mt. Carmel subdivision. Wicklow Drive is a cul-de-sac which is served by a deadend water main. Mr. Owens stated that a blow-off valve would be installed and the line flushed to remove any deposits or sediments. Those actions should correct the customer problems.

Witness Owens also testified at the Raleigh hearing about the concern of Mr. Tolley that his illness of diverticulitis might have been associated with the drinking water. Mr. Owens testified that the Company had contacted the County Health Department and that the County had no records of diverticulitis being associated with the consumption of water from either a public or private water supply in the County. Mr. Owens also testified that water had been taken from these residences, analyzed by a test lab, and found to be safe.

The Hearing Examiner concludes that the Company has taken appropriate measures to correct the water quality problems which existed in past years in the Mt. Carmel Subdivision, and that the Company is taking appropriate action to correct the water quality problems complained of by Mr. Tolley and Mr. Shoebothan.

Ski Mountain and Misty Mountain

Eight customers testified at the hearing held in Boone. Dr. Reginald T. Weber, Elmer Jenkins, John D. Davis and Norma Jenkins testified concerning problems of high pressure causing rupture of plumbing in fixtures and hot water heaters in sections of the Ski Mountain water system. Norma Jenkins testified to similar high water pressure problems having been experienced on the Misty Mountain water system. Complaints were also voiced concerning the Company's failure to promptly repair roads after repairs had been made to water mains located within roadways. Mr. Barton Ostroff and Mr. Frank McDaniel complained about a water main extension problem in the Flattop Mountain section of Ski Mountain.

Mr. W. Allen Traver, Jr., of Sugar Mountain complained about the proposed rate increase but had no service complaints.

No Company personnel testified at the Boone hearing. Mr. Finley, the Company's attorney, requested that the Company be allowed time to investigate the problems and make a later report to the Commission. The Hearing Examiner agreed and asked the Company to look into the problems and report later at the Raleigh hearing.

At the Raleigh hearing, Mr. Owens testified on behalf of the Company. Witness Owens addressed the water main problem concerning Mr. McDaniel and Mr. Ostroff, but did not address the other problems raised by the customers.

The Hearing Examiner concludes that the Company should immediately investigate the high water pressure problem complaints relative to the Ski Mountain and Misty Mountain water systems. Such action as may be required to prevent the rupture of plumbing and water heaters on those systems should be taken. The Company should submit a written report to the Commission and the Public Staff regarding this matter within sixty days of the date of this Order. The Hearing Examiner also concludes that the Company should repair roadways in a timely fashion after making repairs or water main installations which entail disturbing the streets and roadways.

Flattop Mountain Subdivision

Mr. McDaniel testified at the Boone hearing that he and two other lot owners in the Flattop Mountain section of Ski Mountain extended a water main at their own expense of approximately $1,600 to serve their property. Mr. McDaniel testified that the extension was done in 1982 with the permission of Roger Cook, the developer of the subdivision, and with the understanding that he, Mr. Steve Curtis, and Mr. Buddy Yearwood would be reimbursed by other lot owners as they connected to the extended water main. Mr. Ostroff testified that he paid a $400 tap-on fee in 1982 to Carolina Water Service to hook onto the water main in question but was later informed that Mr. McDaniel, Mr. Curtis and Mr. Yearwood had paid for the extension of the water main, not Mr. Cook or Carolina Water Service.

Mr. McDaniel testified that he, Mr. Curtis, and Mr. Yearwood would contribute the main to Carolina Water Service in return for being allowed to tap onto the main free of charge.

Witness Owens testified later at the Raleigh hearing that the Company's area manager, Mr. Robert Woody, had indicated to the developer of the Flattop Mountain Subdivision, when the utility facilities were installed a couple of years ago, that if those facilities were properly designed and were approved by the appropriate regulatory authorities, Carolina Water Service would assume ownership and operation of them. Mr. Owens further testified that apparently the developer had some financial problems and had never given the Company the documents necessary for it to assume ownership of those facilities. However, the Company has been attempting to operate the facilities. Mr. Owens stated that he has spoken on two occasions with Ms. Linda McGee, an attorney representing the property owners association, and had indicated to her the Company's desire to resolve the questions concerning the main extension problem. Witness Owens testified that the Company would like easements for the installation of the existing line and a deed to the property on which a valve and a pump were located, together with a drawing of the installation, and the approval of the Health Department of the installation. Mr. Owens stated that once those documents were provided to the Company, it would reimburse the customers in full for the cost they had incurred to install the main and would then continue to collect, as the Company had done in at least one case, the standard fees for connection from anyone else who might connect to the line in question in the future.

The Hearing Examiner is concerned that the main extension problem has not been promptly resolved. It appears to center around the developer's failure to complete installation of the water utility facilities in the Flattop Mountain Subdivision. The Hearing Examiner encourages all parties to cooperate in seeking a prompt resolution of the problem. The Hearing Examiner is of the opinion that the Company should take the primary responsibility and initiative in resolving this problem since the Company has held itself out to serve this area by extending its mains from its franchise in the adjacent Ski Mountain Subdivision system. The Company also agreed with the developer, Mr. Cook, to operate the Flattop Mountain facilities, while waiting for Mr. Cook to formally transfer the system, and has accepted a $400 tap-on fee from Mr. Ostroff for tapping onto the water main in question.

The Hearing Examiner concludes that there is a need for water utility service by Mr. McDaniel and other property owners adjacent to the water main which was extended by Mr. McDaniel, Mr. Curtis and Mr. Yearwood and that this need can best be served by the Company. The Hearing Examiner requests that the Company take immediate action to resolve the ownership problem of the water main in question by obtaining clear ownership of the main and by obtaining necessary easements and approvals in order that the Company may provide water. The Company should file a report on its efforts within sixty days.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence relating to this finding is contained in the testimony and exhibits of Public Staff witnesses Perkerson and Lee and Company witnesses McClellan, O'Brien, Owens and Cardey. The following chart summarizes the respective positions of the parties as to the proper amount of original cost of plant in service:

| Original Cost of Plant in Service | | | Amount |
|---|---|---|---|
| Original Cost Per Company | | | $10,346,572 |
| Public Staff Adjustments: | | | |
| | 1982 | 1972-1981 | |
| Maintenance and Repair | $20,333 | $38,370 | (58,703) |
| Small Tools and Equipment | 6,045 | 7,160 | (13,205) |
| Operators' Time and Travel | 97,105 | 182,651 | (279,756) |
| Executives' Time and Travel | - | - | (130,832) |
| Legal Fees | - | - | (11,471) |
| Finder's Fees | - | - | (48,300) |
| Original Cost per Public Staff | | | $ 9,804,305 |

As indicated by the chart, the Public Staff did not agree with the Company's original cost of plant in service and proposed adjustments totaling $542,267 to remove items which it contended were not properly allowable as capitalized costs. Public Staff witness Perkerson testified that these adjustments were the result of her field audit during which a review was made of essentially all plant additions which had been capitalized during the period 1972 through 1982.

With regard to the first two items of difference listed in the chart, the Public Staff adjustments were initially in the amount of $74,787 rather than $58,703 to remove maintenance and repair costs and $22,067 rather than $13,205 to remove small tools and equipment costs which the Public Staff believed should be expensed rather than capitalized.

Public Staff witness Perkerson testified that the adjustment of $74,787 ($26,084 for 1982 and $48,703 for the period 1972-1981) relates to items such as paper towels, garbage bags, rearrangement of wiring, light bulbs, locks, keys and other miscellaneous items of maintenance and repair which she considers to be normal expenses in maintaining the existing level of service. As to the Public Staff adjustment of $22,067 ($8,865 for 1982 and $13,202 for the period 1972-1981) relating to small tools and equipment such as hammers, screw drivers, flare kits, and drill bits, witness Perkerson testified that costs incurred for items of this nature are traditionally expensed or amortized over a short period of time due to their limited life.

In explaining these adjustments for maintenance, repair, and small tools, witness Perkerson stated that her basis for determining if these costs should be capitalized was that the expenditure has to meet one of three tests:

(1) Does it substantially extend the life of the plant?
(2) Does it increase the quantity of the product or service?
(3) Does it improve the quality of the product or service?

In applying these tests to the items capitalized by the Company, witness Perkerson stated that it was difficult to answer yes to the first question for any item since the Company has already assigned an average life of 67 years to all items of plant except automobiles. Even given this unusual life expectancy, witness Perkerson stated that she did capitalize obvious new

additions, as well as those replacements such as pumps, well house roofs, resurfaced roads, etc. when a retirement for existing plant was recorded. However, witness Perkerson testified that she expensed those replacements for which no retirement was recorded and, according to Company personnel, a retirement should have been recorded. For items such as painting a well house, rearranging wiring, and cleaning up around well sites, witness Perkerson stated that these expenditures were incurred to maintain the existing level of service and should be expensed within the year the expenses occur. Witness Perkerson testified that, in her opinion, these capitalized costs for maintenance, repair, and small tools recommended for removal from rate base, which had also been reviewed by Public Staff water engineers who concurred with her decision, did not meet any of the three criteria for capitalization.

Further, witness Perkerson recommended that $61,905 ($48,703 maintenance and repair and $13,202 small tools) of such costs which were incurred prior to the test year should be amortized over a five-year period beginning with 1982, while $34,949 ($26,084 maintenance and repair and $8,865 small tools) of such costs which had been incurred during the test year should be included in the test year level of expenses in this proceeding.

Upon cross-examination Company witness O'Brien agreed that $16,084 of the $74,787 Public Staff adjustment for capitalized maintenance and repair should be expensed. Witness O'Brien testified that the items composing the $16,084 include those with a cost of less than $100 and those which can be identified as miscellaneous items or as repair clamps for water mains. Company witness Cardey testified that the remaining items which the Company and the Public Staff disagreed in the amount of $58,703 ($74,787 minus $16,084) are mostly new items such as mains, motor starters, and expenditures that extend the life of the plant. As to these items making up the $58,703 difference, witness Cardey further testified that the average cost of these items is $467 per invoice and that these items meet the tests for capitalized expenditures set forth by witness Perkerson.

With regard to the Public Staff adjustment of $22,067 to remove capitalized small tools and equipment costs, Company witness Cardey agreed that $8,861 should be eliminated from utility plant in service with respect to these costs. The Company's $8,861 amount consists mostly of items that cost less than $100. According to witness Cardey, the amount of $13,205 ($22,066 minus $8,861) which the parties disagree on is comprised of lawn mowers, radio equipment, saws, typewriters, chlorine gas masks, and other items of mechanical equipment. The Company maintains that capitalizing these items is proper and in accordance with the NARUC Uniform System of Accounts, and that there is no basis to accept the Public Staff's adjustment.

Company witness McClellan testified that among these items challenged by the Public Staff there were expenditures related to the initial rehabilitation of systems purchased. These expenditures, according to witness McClellan, included, among other things, costs related to the painting of buildings, repairing of roofs, and initial clean up of facilities and grounds.

With regard to witness Perkerson's position that costs involving the maintenance of the existing level of service should be currently expensed, witness McClellan stated that he would agree with witness Perkerson where these expenditures are of a recurring nature and involve the ongoing maintenance of a

system in good working order. However, witness McClellan stated that where such expenditures can be identified as involving the initial rehabilitation of a recently purchased system, it is appropriate to capitalize such costs as a part of the acquisition. Such capitalization avoids the cost of service distortion associated with treating these expenditures as current period expenses; and at the same time, it allows the utility to recover its total costs initially invested in the system.

There is one further point of contention with regard to the Public Staff's plant adjustment for maintenance, repairs, and small tools costs; the Public Staff has removed approximately $4,000 in additions to plant in service because the Company failed to book a retirement when these additions were made. The Company acknowledges that the retirements in question should have been made but maintains that the proper remedy is to correct the error, make the retirement, and leave the addition of plant in service as appropriate.

In regard to this matter, the Hearing Examiner finds that the $4,000 adjustment by the Public Staff is inappropriate. It is improper to expense an item that otherwise would be capitalized simply because the retirement was overlooked. Failure to make a retirement of plant that has been fully depreciated does not have an impact on rate base because the total investment in the asset in question remains in plant in service and in the depreciation reserve.

A reason given by the Public Staff to remove a number of items from plant in service is that they are maintenance and repair in nature, even though these expenditures were undertaken in order to bring a newly acquired system up to a level consistent with the standard used by the Company for its other systems. The Company maintains that the NARUC Uniform System of Accounts clearly provides that these refurbishing expenses should be capitalized and not expensed.

The NARUC Uniform System of Accounts contemplates the incurrence of such expenditures and provides for their capitalization. As noted at Utility Plant Instruction 5:

> C. If property acquired in the purchase of an operating unit or system is in such physical condition when acquired that it is necessary substantially to rehabilitate it in order to bring the property up to the standards of the utility, the cost of such work, except replacements, shall be accounted for as part of the purchase price of the property.

The Hearing Examiner determines that even though these expenditures might have been classified as an expense if incurred in different circumstances, traditional accounting practice dictates that, due to the timing and the nonrecurring nature of these expenditures, they should be capitalized.

Based upon the foregoing, the Hearing Examiner concludes that the Public Staff adjustments: (1) to reduce plant in service by amounts of $58,703 for maintenance and repair and $13,205 for small tools and equipment; (2) to increase the test year level of maintenance and repair expenses by $26,378; and (3) to increase the test year level of amortization expense by $9,106 ($45,531

divided by 5) to allow a five-year amortization of these costs which were incurred prior to the test year are inappropriate. In reaching these conclusions, the Hearing Examiner finds that it is appropriate to reduce plant in service by $16,084 ($5,751 for 1982 and $10,333 for the period of 1972-1981) for maintenance and repair and $8,861 ($2,820 for 1982 and $6,041 for the period 1972-1981) for small tools; to increase the test year level of maintenance and repair expenses by $8,571 for such costs which were incurred during the test year; and to increase the level of amortization expense by $3,275 to allow a five-year amortization of the pre-1982 maintenance, repair, and small tools expenditures which were removed from rate base. The amortization of these expenses by the Company over a five-year period should begin February 1, 1984, which is the effective date of the interim rates previously granted in this docket. The Hearing Examiner finds that the Public Staff has presented insufficient evidence in this proceeding to support its position that the Company has engaged in improper accounting in treating the remaining items in question as capitalized items and can therefore not accept any further portion of the Public Staff's adjustment in this regard.

The next area of difference is due to an adjustment by the Public Staff to remove from original cost of plant in service $279,756 for capitalized operator's time and travel for the period 1972 through 1982. This $279,756 adjustment is broken down as follows:

| Public Staff Adjustment | 1982 | 1972-1981 | Total Amount |
|---|---|---|---|
| Operators' Travel | $1,123 | $12,348 | $13,471 |
| Operators' Time | 95,982 | 170,303 | 266,285 |
| Total Adjustment | $97,105 | $182,651 | $279,756 |

Public Staff witness Perkerson testified that her $13,471 adjustment related to operator's travel between systems in connection with the performance of maintenance and repair. Witness Perkerson stated that such expenditures are necessary to maintain the plant in order to continue providing service at the existing level and do not extend the life of the plant, increase the quality of service, or increase the quantity of service. The Public Staff's position is that these items have been improperly capitalized and should be treated as expense items for ratemaking purposes. Witness Perkerson thus made adjustments to increase the test year level of maintenance and repair expenses by $1,123 and amortization expense by $2,470 ($12,348 divided by 5) reflecting her recommendation that the operators' travel amount of $12,348 which was incurred prior to the test year should be amortized over five years beginning in 1982.

With regard to the Public Staff's adjustment of $266,285 to remove capitalized operators' time from plant in service, witness Perkerson testified that these costs should not be capitalized for several reasons. First, she testified that they represent costs that are a part of maintaining the level of operators required to perform the routine maintenance and repair of the Company's systems. Witness Perkerson testified that Company personnel had told her during her audit that there would be no reduction in the number of operators on the payroll even if no capital additions or improvements were being made. Further, she testified that her investigation revealed that to a large extent the capitalized time of these operators was supervisory or

observatory in nature. Witness Perkerson maintained that since the Company must provide for maintenance and repair at a certain level, the transferring of these salaries from expenses to capital in any given year does not provide for consistency in the expenses incurred to provide water and sewer service. As to her second reason, witness Perkerson stated that for the time to be capitalized, the operators' time must properly be associated with a particular capital project and adequate records must be maintained supporting the allocation of such time to the particular capital asset items involved. This, witness Perkerson testified, the Company did not do. Witness Perkerson explained that the method used by the Company to determine the portion of operators' time to be capitalized is a time card which shows only the amount of time which each operator has determined he worked on items to be capitalized. According to witness Perkerson, while these cards are reviewed by personnel in the Northbrook, Illinois, office, the first level of decision as to what is capital and what is expense is being made by people who have had little, if any, training in determining whether an item should be capitalized or expensed. Witness Perkerson went on to explain that the problem is further complicated by the fact that work done on the various systems is not collected under a work order number and it is very difficult to determine if certain functions were part of major construction, or merely an attempt to maintain the present level of service. According to witness Perkerson, such practices mean that capitalized operators' time was not properly associated with the particular capital items to which it related, but rather was merely added as a total to a functional category of plant at the end of the year. According to witness Perkerson, this indicated that the Company's failure to properly associate capitalized operators' time with the capital item to which it related had resulted in instances where the Company had failed to retire such capitalized time as a part of the retirement of such items. Moreover, witness Perkerson testified that it was virtually impossible to determine whether capitalized operators' time was being retired in the appropriate manner. Third, as was pointed out by witness Perkerson, the Company through its use of a pro forma adjustment both expensed and capitalized a portion of the operators' time. This can be seen by a review of Company witness O'Brien's Exhibit I, Schedule 2. On that schedule, the test year level of operating expenses has been reduced by $95,982 which is the amount of operators' time which has been capitalized during 1982. This schedule also shows a further adjustment by the Company to adjust this $95,982 amount down to $64,378 ($95,982 minus $31,604) which according to witness O'Brien was the current level of capitalized time. The result of this adjustment is that the Company has increased the test year level of expenses by $31,604. Witness Perkerson pointed out that the Company's adjustment will cause the ratepayers to cover the expense of $31,604 as well as pay a return on the $31,604 since this amount has also been capitalized.

As a result of witness Perkerson's findings with respect to the $266,285 adjustment to remove capitalized operators' time, she increased operating expenses by $64,378 and increased amortization expenses by $34,061 to reflect her opinion that the operators' time of $170,303 which had been capitalized over the period from 1972 through 1981 should be amortized over a five-year period beginning in 1982.

The Company believes that the Public Staff's recommendation regarding adjustments to both the plant accounts and expenses for capitalized operators' time and travel ignores the facts, violates standard accounting theory, and evidences an attempt by the Public Staff to reduce rate base when no such

reduction is justified. All the witnesses for the Company indicated that, all other facts remaining constant, if the level of construction drops, the overall level of employees will also drop. Company witness O'Brien testified that it would be gross mismanagement of resources if the Company had unnecessary people on the payroll. The Company uses several employees to serve a number of subdivisions in a particular geographic area. Economies of scale result, and the Company is able effectively to utilize employees in a variety of construction and operating activities. The Company stated that it is not faced with a situation where one employee is necessary for each subdivision irrespective of the work level.

According to witness O'Brien, the Company made a pro-forma adjustment of $31,604 in its application to reduce the test year level of employee time capitalized, in an attempt to portray accurately the go-forward level of operators' expense. Further, witness O'Brien testified that the pro-forma adjustment did not represent an attempt to take a finite level of employee time and increase the amount charged to expense while decreasing on a dollar for dollar basis the amount capitalized. Witness O'Brien pointed out that due to growth and an increase in the number of customers, the number of employees has increased substantially since the end of the test year, and there has been an increase in the level of salaries and related costs charged to expense as a result of this growth.

Irrespective of whether the number of employees will decrease if construction activity is curtailed, the Company maintains that it is always inappropriate to expense salaries when employees are engaged in construction-related activities. The Company justified its position that the salary-related costs of employees engaged in construction activities should be capitalized with excerpts from the NARUC Uniform System of Accounts as follows:

General instruction 11 states:

> 11. Payroll Distribution
>
> Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available. Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified between construction, cost of removal, utility operating functions (source of supply, pumping, transmission and distribution, etc.) and nonutility operations.

Utility Plant Instruction 3 details components of construction cost:

> 3. Components of Construction Cost
>
> The cost of construction properly includible in the utility plant accounts shall include, where applicable, the direct and overhead costs as listed and defined hereunder. . . [There are 18 items - four of them are listed below.]

Item 2 says:

"Labor" includes the pay and expenses of employees of the utility engaged in construction work, and related workmen's compensation insurance, payroll taxes and similar items of expense. It does not include the pay and expenses of employees which are distributed to construction through clearing accounts nor the pay and expenses included in other items hereunder.

Item 4 says:

"Transportation" includes the cost of transporting employees, materials and supplies, tools, purchased equipment, and other work equipment (when not under own power) to and from points of construction. It includes amounts paid to others as well as the cost of operating the utility's own transportation equipment.

Item 11 says:

"Engineering and supervision" includes the portion of the pay and expense of engineers, surveyors, draftsmen, inspectors, superintendents and their assistants applicable to construction work.

Item 12 says:

"General administration capitalized" includes the portion of the pay and expenses of the general officers and administrative and general expenses applicable to construction work.

Utility Plant Instruction 4 says in part:

All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes and allowance for funds used during construction, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto. . .

As far as practicable, the determination of payroll charges includible in construction overheads shall be based on time card distributions thereof . . .

Utility Plant Instruction 9 says in part:

The cost of equipment chargeable to the utility plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate.

Witness O'Brien testified that operators' salaries should be capitalized even if they are, to a large extent, supervisory and observatory in nature. According to witness O'Brien, when a Company employee is supervising the installation of facilities by a contractor, this involvement assures that the work is done to Company standards, thereby minimizing future costs and repairs. The Company maintains that it is by far the wiser course for the Company to ensure that the contractor performs quality work at the time of construction instead of waiting until the project is complete and expensive service problems develop before learning of poor construction. As quoted previously the NARUC Uniform System of Accounts, Utility Plant Instruction 3, states specifically that supervisory and observatory activity with regard to construction projects should be capitalized.

Company witness Cardey testified that the Company's time-card system properly records the cost of capital additions. The time-card system certainly constitutes a work order system as required by the NARUC Uniform System of Accounts but could, as witness Cardey testified, be revised if improvement is deemed necessary. If a revised work-order system should be used, witness Cardey stated that it is always necessary to balance the benefit obtained by implementing a new accounting system against the increased costs that result. Witness Perkerson testified that field personnel with insufficient direction and instruction make the initial decision as to whether an item should be capitalized or expensed. However, she was unable to say that, as a general rule, field personnel were making an improper decision. Likewise, witness Perkerson conducted no study to determine the increase in costs in changing from the time-card to a work-order system. It is, therefore, obvious according to witness Cardey that the Public Staff knows neither the extent to which a more comprehensive work-order system would improve the Company's ability to make the proper decision when capitalizing time nor the additional costs involved in switching from a time-card to a more sophisticated and costly work-order system. Furthermore, witness Cardey believes that to the extent the Commission deems it necessary to require the Company to implement a revised work-order system, the remedy should be applied prospectively. Witness Cardey testified that it is inappropriate to expense labor costs that have been capitalized properly in the past simply because a much more elaborate and sophisticated work-order system has not been followed.

Based upon the foregoing, the Hearing Examiner determines that the adjustment associated with capitalized operators' time and travel proposed by the Public Staff should be rejected. Irrespective of whether the number of employees will decrease if construction activity is curtailed, it is always inappropriate to expense salaries when employees are engaged in construction-related activities. The NARUC Uniform System of Accounts expressly provides that the salary related costs incurred for employees engaged in a construction activity should be capitalized. Indeed, the cost of labor and associated benefits is just as much a part of the cost of plant as the cost of material. If an employee is engaged in the construction of mains that provide service to future customers, it is inappropriate to charge current customers for this expense which provides them with no benefit. It is inappropriate to expense salaries simply because they relate to activities that are supervisory and observatory in nature. Such activity helps to ensure that a contractor, for example, performs quality work at the time of construction. This is a better practice than waiting until the project is complete and

expensive service problems develop before learning of poor construction. The Hearing Examiner notes that the NARUC Uniform System of Accounts states specifically that supervisory and observatory activity with regard to construction projects should be capitalized. Also, irrespective of whether it is appropriate for the Company to implement a more comprehensive work-order system than it already uses, an order requiring an alteration in the Company's work-order policy should be applied prospectively. It is inappropriate to expense labor costs that have been capitalized properly in the past simply because a more comprehensive work-order system has not been followed.

The Hearing Examiner likewise notes that in other recent cases the Public Staff witnesses have advocated positions contrary to that taken by witness Perkerson in this case. In Docket No. W-703, Sub 1, an application by Watauga Vista Water Corporation, Public Staff witness Mike Maness recommended that salaries expended for making new service connections should be capitalized rather than expensed. Also in Docket No. W-365, Sub 15, involving an application by Bailey's Utilities, Inc., Public Staff witness Jerry Tweed recommended that time involved in acquiring and installing water systems in new service areas should be capitalized rather than expensed.

Based upon the conclusions reached herein, the Hearing Examiner finds that all of the following Public Staff adjustments related to operators' time and travel are improper: (1) removal of $279,756 of operators' time and travel for 1972 through 1982 from plant in service; (2) inclusion of $64,378 in salary expenses for operators' time for 1982; (3) inclusion of $36,530 in amortization expenses for the amortization of operators' time and travel for 1972 through 1981 over a five-year period beginning in 1982; and (4) inclusion of $1,123 in maintenance and repair expenses for operators' travel for 1982.

Furthermore, the Hearing Examiner finds that the Company's pro-forma adjustment of $31,604 to increase the test year level of expenses is also inappropriate. At the end of the test year, the Company had reduced the level of operating expenses by $95,982 for expenses charged to plant; the Company, however, made pro forma adjustment to this amount to increase the test year level of expenses by $31,604. This $31,604 adjustment was made by Company witness O'Brien to increase the level of salary expense for the increase in the number of employees after the end of the test year. The Hearing Examiner concludes that the test year level of expenses should be reduced by $95,982 to properly match the levels of rate base, revenues and expenses at the end of the test year. This $95,982 adjustment is the amount of operators' time which has been capitalized during 1982 by the Company. The Hearing Examiner agrees with the Company that these expenditures should be included in the original cost of utility-plant-in-service.

The last area of disagreement between the Company and the Public Staff regarding the proper level of original cost is the recommendations by the Public Staff to disallow capitalized executive time and travel of $130,832, legal fees of $11,471, and finder's fees of $48,300 which according to the Public Staff had been incurred by the Company in the course of acquiring various utility systems in this State during the period from 1972 through 1982.

According to Public Staff witness Perkerson the capitalized executive time and travel in question related to Company personnel visiting and evaluating various utility systems which the Company had incurred prior to, or in

connection with, its acquisition of such systems. Witness Perkerson stated that the finder's fees here involved were paid primarily as compensation to those who located and recommended to the Company utility systems in this State which would be desirable acquisitions, although some of the fees may have been for consultative and evaluative analysis in that connection. The legal fees, according to witness Perkerson, were those paid for legal services rendered to the Company with respect to acquiring various utility systems.

While witness Perkerson agreed that these cost totaling $190,603 may have been necessary in order for Carolina Water Service to acquire additional water systems, it was her testimony that the customers should not have to bear the burden of paying costs which arise merely by virtue of a transfer of ownership. Witness Perkerson pointed out that, had the transfers which gave rise to the costs not taken place, the costs would not have existed. Further, witness Perkerson testified that only the portion of the purchase price for an acquired system relating to the value of its assets being transferred should be allowed in rate base up to a maximum of the net book value of those assets. However, in the opinion of witness Perkerson, costs such as finder's fees and capitalized executive time and travel are merely costs of transferring the ownership of the system rather than a part of the purchase price of the system. It is the contention of witness Perkerson that any such ownership transfer costs, which would not have been a cost to the customers of that system had the system not been transferred, are not costs which should properly be borne by the ratepayers. According to witness Perkerson, these ownership transfer costs should be borne by Utilities, Inc., the stockholder of Carolina Water Service, and should not be included as part of rate base.

Witness Perkerson also pointed out that Utilities, Inc., the Applicant's parent, is currently allocated no portion of certain common expenses which include the salaries of the top executives of Utilities, Inc., who were also executives of the Applicant, their office space, support staff, audits, directors' fees and shareholder expenses. Witness Perkerson further stated that when no portion of such ownership costs is assigned to the holding company of a regulated utility, the result is a very favorable operating income position for the shareholder, since all expenses are recovered plus a return on the net investment. Conversely, witness Perkerson stated that the ratepayers are being saddled with such ownership expenses as well as being asked to pay a return on the Company's investment. It should be noted at this point that the types of costs involved in the adjustment under discussion are, in the opinion of the Public Staff, identical in nature to some of the costs which the Company used to reduce various plant acquisition adjustments which it made in connection with the acquisition of some of its systems. Those identical types of costs which were used by the Company to reduce plant acquisition adjustments were removed by a separate Public Staff adjustment which is discussed infra under the Evidence and Conclusions for Finding of Fact No. 10, to which reference is here made.

The Company's position, as to the Public Staff's adjustments for capitalized executive time and travel, legal fees, and finder's fees associated with plant additions, is that the Public Staff's proposal is contrary to the NARUC Uniform System of Accounts. Witness O'Brien testified that these adjustments are contrary to the findings of each prior order issued for the Company by this Commission and are opposite of the position taken in every jurisdiction in which the Company is regulated. According to witness O'Brien,

this Public Staff proposal, together with the proposal on plant acquisition adjustments, says in effect that, after eleven years of operating in this State, the rules should now be changed. The Company's justification for capitalizing these costs is the same as those reasons previously set forth in the discussion of the Company's reasons for capitalization of operators' time and travel.

Witness Owens discussed an example from a Whispering Pines Subdivision construction project illustrating the functions performed by the Company's executives. According to witness Owens, the role played by these executives is essential to successful completion of construction projects. In witness Owens' example he shows that the executives maintain time sheets that identify their time spent on construction. Therefore, witness Owens contends that the items at issue are not allocated amounts but actual time spent on a particular project.

According to witness Owens, executive time and travel constituted only 5.2% of the $2,513,092 in construction expenses incurred from 1972 through 1982. Further, the Company maintains that until recently, the executives from the central office provided most of the construction supervision. The Public Staff has not maintained that these services were unnecessary or extravagant. Witness Owens testified that the NARUC Uniform System of Accounts clearly provides that these costs are a part of construction and therefore should be capitalized.

Witness O'Brien testified that the finder's fees are amounts paid to Water Consultants, Inc. for their time spent reviewing, analyzing, and inspecting existing utility systems for acquisitions and providing information on needed upgrading and its cost, as well as system condition and capacities. Further, witness O'Brien testified that the legal fees were costs incurred in reviewing contracts, deeds, and closing statements and are essential services to protect the customer and the utility from legal pitfalls and potential liabilities and to maximize utility value. Witness O'Brien stated that it might be possible that these items should be capitalized by a debit to plant acquisition adjustment to be consistent with the treatment of similar items rather than including these expenditures as a debit to utility plant in service. However, witness O'Brien remarked that whether or not these items belong in plant in service or in the plant acquisition adjustment, there is no effect on total rate base.

Based upon the foregoing, the Hearing Examiner concludes that the Public Staff adjustment of $190,603 to remove from rate base expenses for executives' time and travel, finder's fees, and legal fees is inappropriate. These items of costs appear to be legitimate and reasonable amounts. The Public Staff has not maintained that these services are unnecessary or extravagant. The NARUC Uniform System of Accounts provides that these costs are a part of construction and therefore should be capitalized. The executives' time included for recovery in this case is taken from time sheets that identify specifically the time spent on particular construction projects. Further, in regard to the capitalized finder's fees and legal fees included in plant in service, Company witness O'Brien stated that he would investigate these items and would make any necessary adjustment to reflect whether these costs should be included in rate base as a debit to plant in service or to the plant acquisition adjustment. The Company made no such adjustments and the rate base will be the same whether

these costs are included in utility plant in service or the plant acquisition adjustment. Therefore, the Hearing Examiner finds that the Company's capitalization of finder's fees and legal fees is proper in this proceeding.

Based on all the evidence, the Hearing Examiner concludes that the appropriate level of original cost of utility plant in service for use in this proceeding is $10,346,572.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is found in the testimony and exhibits of Public Staff witnesses Perkerson and Lee and Company witnesses O'Brien, Owens, Cardey, Rezek, and McClellan.

The following chart summarizes the differences between the Company and the Public Staff with respect to the proper amount of deductions from the original cost of plant in service as reflected in their proposed orders:

| Deductions from Plant in Service | Company | Public Staff | Difference |
|---|---|---|---|
| Acquisition adjustments | $2,484,804 | $2,786,742 | $301,938 |
| Customer advances for construction | 6,672 | 6,672 | - |
| Accumulated depreciation | 1,004,869 | 950,966 | (53,903) |
| Contributions in aid of construction | 3,630,295 | 3,630,295 | - |
| TOTAL | $7,126,640 | $7,374,675 | $248,035 |

Both parties agreed that the proper amount for contributions in aid of construction should be $3,630,295. In addition, the Company included $6,672 as customer advances for construction. Although the Public Staff did not originally include this item as cost free capital, it subsequently agreed with the Company's treatment of that item. The Hearing Examiner finds that $6,672 for customer advances for construction and $3,630,295 for contributions in aid of construction are appropriate amounts to use as deductions from plant in service in this proceeding based upon the parties' agreement on these amounts.

The two items responsible for the $248,035 total difference between the parties are thus acquisition adjustments and accumulated depreciation. The Company's acquisition adjustment is a negative account due to the Company having consistently purchased utility systems at prices which are less than their original net book value at the time of acquisition. The Company has been amortizing the plant acquisition adjustment above the line, while depreciating the gross original cost of the assets purchased and reducing the rate base by the unamortized plant acquisition adjustment balance.

The Company contended that the proper amount for acquisition adjustments should be $2,484,804, whereas the Public Staff contended that the proper level of acquisition adjustments should be $2,786,742, for a difference of $301,938. This difference consists of the following items:

| Public Staff Adjustments | Amount |
|---|---|
| Executives' time | $ 80,401 |
| Executives' travel | 5,459 |
| Legal fees | 16,389 |
| Consultants' fees | 30,000 |
| Other fees | 15,214 |
| Accumulated Amortization at December 31, 1982 | 154,464 |
| Correction of mathematical error | 11 |
| Total difference | $301,938 |

The first areas of difference in determining the appropriate level of plant in service arises from adjustments totaling $147,463 made by the Public Staff to remove, as an offset to the plant acquisition adjustment, executives' time and travel expense and legal, consulting, and other fees incurred in connection with system acquisitions. The Company debits the plant acquisition adjustment account for the expenditures which it maintains are necessary to complete acquisitions.

Witness Perkerson testified that the Company makes debit entries to the plant acquisition adjustment account for legal fees, finder's fees and executive time and travel incident to the acquisition at times subsequent to the review of the acquisition by the Commission. It is the opinion of witness Perkerson that these costs should either be included in the plant acquisition adjustment, if approved by the Commission at the time the transfer is presented to the Commission for review, expensed when that is appropriate, or, in many cases, paid by the holding company, Utilities Inc., as a cost of ownership. In this proceeding witness Perkerson contended that these expenditures are properly holding company costs, and moreover, that the deduction of such items had not been approved by this Commission at the time of the acquisitions in question. According to witness Perkerson these items are identical in nature to the executives' time and travel, legal fees, and finder's fees discussed in the Evidence and Conclusions for Finding of Fact No. 9 and for the same reasons discussed therein witness Perkerson disagreed with the Company's practice of debiting the plant acquisition adjustment account for these items.

Witness Perkerson justified her adjustment to remove these costs by stating in part that the ratepayers may only be asked to pay for a system once. She maintained that these acquisition-related costs would not exist if the system had not been transferred from the previous owner. The Public Staff maintains that it makes no difference that the Company has acquired each of the systems comprising its North Carolina operations at a cost substantially below the net depreciable cost at the time of purchase. Witness Perkerson maintained that the ratepayers receive no benefit when the Company purchases these systems at prices far below the net original cost to the previous owner. She maintained that the plant acquisition adjustment represents costs the former owner has recovered either through the sale of lots in situations where the former owner was a developer or through tax savings. In regard to this assertion, the Hearing Examiner finds that the Public Staff has presented insufficient evidence to support its allegations that former owners of the

systems the Company has acquired have somehow recovered the differences between the sales price and the net original cost.

Witness Perkerson also maintained that the systems were in a state of disrepair at acquisition and were, therefore, simply not worth the net original cost. She maintained that the ratepayers must pay the Company to upgrade these systems to return them to a proper working order status. Therefore, she testified, there are no actual savings realized by the customer.

Witness Perkerson also justified her disallowance of these capitalized expenditures by stating that Utilities, Inc., the parent of the Company, is assigned no portion of the common expenses incurred by the service affiliate, Water Service Corporation, such as office space and administrative or executive salaries and benefits. Witness Perkerson contended that since costs that in her view should be borne by Utilities, Inc., are instead assigned to the ratepayer, it is appropriate to disallow these costs of acquisition that are unrelated to the "common expenses." Witness Perkerson maintained that expenditures necessary to obtain water systems are owner-related costs that should not be borne by the ratepayer.

The Company maintained that rate base has been reduced by approximately $2,500,000, or 24% of gross plant, because the Company wisely has been able to purchase additional systems at a price substantially below the net original cost at the date of purchase. The Company maintains that these acquisitions have resulted in an immediate and dramatic reduction in the rates customers would otherwise have paid to receive the quality of service the Company provides. According to witness O'Brien, had the Company been unable to make these purchases at such substantial savings, annual depreciation recovered from ratepayers would be substantially higher and the rate base upon which ratepayers must pay a return would have been substantially greater. It is the Company's opinion that although customers may have seen no immediate decrease in their rates subsequent to acquisition by the Company, nevertheless, they immediately began to receive a substantially higher quality and more reliable level of service. Had the former owners undertaken steps to provide the same quality of service as the Company now provides, it would have been necessary for such owners to increase rates substantially. Public Staff witness Lee, who is the engineer responsible for overseeing quality of service in this proceeding, was unable or unwilling to testify that the Company spends too much in maintaining an adequate quality of service.

The Company maintained that the expenditures in question were absolutely essential in order to consummate the transactions that resulted in the immediate reduction in rate base and depreciation expense. Furthermore, the Company firmly believed that it would be totally inequitable to reduce rate base by the plant acquisition adjustment and at the same time deny rate base treatment for the costs necessary to make the acquisition possible.

Witness O'Brien detailed the services for which the funds were expended in the following descriptions. The finder's fees are paid to the Company's consultant, Mr. Cohen, who aids the Company in negotiating purchases and provides information with respect to needed upgrading costs and system conditions and capacities. The legal fees arise from services essential to protect the customer and the Company from the legal pitfalls such as potential, undetected liabilities. The legal fees are also paid for reviewing contracts,

deeds, and closing statements. The capitalized executive time and travel expenses arise from work by executives for analysis, inspection, negotiation and closing of the purchase. These time and travel charges represent direct costs based on daily time sheets and expense reports on acquisitions actually consummated and are not allocated costs.

Witness McClellan testified that Plant Instruction 5, Utility Plant Purchased and Sold, of the NARUC Uniform System of Accounts states that the cost of acquisition, including, but not limited to, expenses incidental thereto properly includable in utility plant, shall be charged to Account 106, Utility Plant Purchased or Sold. According to witness McClellan, this provision indicates clearly that the costs in question are anticipated by the NARUC Uniform System of Accounts and are normally includable in rate base.

The Company maintains that there is no merit in witness Perkerson's argument that these acquisition costs should be disallowed for rate-making purposes because no common expenses incurred by Water Service Corporation are allocated to Utilities, Inc. The Company believes it is highly inappropriate to disallow the costs of acquisition because an unrelated adjustment has not been made. Furthermore, the Company contends that witness Perkerson is clearly in error in her contention that common expenses chargeable to Utilities, Inc. are improperly passed through the operating companies to the ratepayers. Witness Cardey testified that the "common" costs cited by witness Perkerson are incurred for the direct benefit of the Company's public utility business, and the customers benefit from these business activities. According to witness Cardey, the Board of Director's agenda indicates that the Board is concerned with financing, environmental issues, litigation, regulation, accounting reports from outside auditors, and other board policy matters. He further stated that the costs that are truly related to stockholder activities are in fact borne by the parent company and are not passed to the consumer.

Based upon the foregoing, the Hearing Examiner determines that it is appropriate to include the cost related to property acquisitions as a part of rate base. The Hearing Examiner determines that the Public Staff has failed to show that ratepayers are paying costs that should be borne by Utilities, Inc. The Hearing Examiner finds that it is inappropriate to give the customers the benefit of the reduced purchase price without, at the same time, charging them for the cost of achieving that benefit. The Hearing Examiner concludes that the ratepayers have indeed benefitted by the Company's acquisition of systems at costs substantially below the net original cost at the time of purchase. The Hearing Examiner finds that had the Company been unable to make purchases at such substantial savings, the annual depreciation recoverable from ratepayers would be substantially higher and the rate base upon which the ratepayers must pay a return would have been substantially greater. Although customers may have seen no immediate benefit reflected in their rates subsequent to an acquisition, they have been nonetheless receiving a higher quality and more reliable level of service.

The Hearing Examiner notes that Public Staff witness Lee was unable or unwilling to testify that the Company incurs too much expense in maintaining an adequate quality of service. The Hearing Examiner has studied the purposes for which the finder's fees, legal and accounting fees and expenditures for executives' time and travel in connection with acquisitions were incurred. The Hearing Examiner determines that these are reasonable expenditures and that the

acquisitions could not have been accomplished without the incurrence of such costs. The Hearing Examiner notes that Plant Instruction 5, Utility Plant Purchased and Sold, of the NARUC Uniform System of Accounts provides that the costs in question are anticipated by the NARUC Uniform System of Accounts and are normally includable in rate base.

Furthermore, the Hearing Examiner finds that the Company has relied upon the Commission's willingness to allow a return on these expenditures over the past thirteen years as it has purchased and upgraded systems over that period. It would be inappropriate retroactively to disallow those costs now after many years of reliance on contrary policy by the Company.

In closing the discussions related to this issue, the Hearing Examiner suggests to the Company that in the future when request for transfer of utility ownership is presented to the Commission for review, it should be able to properly identify or estimate all the legal, finder's, and other fees and the executives' time and travel expenses that will be considered a part of the purchase price. Such costs could easily be explained at the time of transfer; since they are a part of the purchase price, the Commission needs to be aware of these costs when approving a utility system acquisition.

The remaining difference between the parties as to the proper level of plant acquisition adjustments is in the amount of $154,464 for the accumulated amortization of plant acquisition adjustments as of December 31, 1982.

According to witness Perkerson, the Company amortizes plant acquisition adjustment accounts annually by a composite 1.5% depreciation rate. Witness Perkerson contested the Company's treatment of the plant acquisition adjustment because she maintains that a portion of the acquisition adjustment is amortized each year reducing the acquisition adjustment and ultimately increasing net plant in service. Further, witness Perkerson stated that the reduction of these accounts through amortization results in a net increase in the net plant in service totals since each year a smaller amount is available as a credit to the original cost figure. Witness Perkerson testified that the Company's treatment is improper because the Company is only entitled to earn a return on either the price it pays for a system or the net original cost at the time of purchase. Witness Perkerson represented that it is the Public Staff's policy to maintain the plant acquisition adjustment intact and never reduce it. Witness Perkerson maintained that the amortization of the plant acquisition adjustment requires the customers to cover the cost of a system more than once.

The Company does not dispute that it amortizes the plant acquisition adjustment annually by the composite 1.5% depreciation rate. The Company, however, maintains that at the same time it depreciates the plant acquisition adjustment, it also depreciates gross plant acquired less contributions in aid of construction at the composite 1.5% depreciation rate. Because gross plant acquired is depreciated while the plant acquisition adjustment is being amortized, according to the Company, there is an offset and no increase in rate base. The Company maintains that it is inappropriate to view the plant acquisition adjustment amortization in isolation. The Company maintains that the accounting treatment that it accords the plant acquisition adjustment is necessary to remove in an orderly fashion the plant acquisition adjustment from the books and to establish a level of depreciation reserve that accurately

reflects the actual depreciation that has been accrued on utility plant instead of on the Company's investment.

Company witness McClellan testified that the NARUC Uniform System of Accounts specifically provides for amortization of the plant acquisition adjustment. Witness McClellan testified that the Company's treatment has the same effect on cost of service as depreciating the plant net of the acquisition adjustment and not amortizing the plant acquisition adjustment.

Based upon the foregoing and the record as a whole, the Hearing Examiner determines that the treatment advocated for the plant acquisition adjustment by the Company is appropriate and that the adjustments made by the Public Staff should be rejected. Witness Perkerson acknowledged that if the plant acquisition adjustment is amortized but the offsetting adjustment is made through depreciation of gross plant, the effect on rate base is the same as the treatment witness Perkerson advocates. The Hearing Examiner determines that the method followed by the Company whereby it depreciates gross plant less contributions in aid of construction at the same time it amortizes the plant acquisition adjustment has the result of offsetting any reduction in the plant acquisition adjustment accounts and that rate base is therefore not improperly reduced. Furthermore, the Hearing Examiner concludes that amortization of the plant acquisition adjustment by the company is in accordance with the NARUC Uniform System of Accounts which states under account 114-Utility Plant Acquisition Adjustments-Section C:

> The amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of, as the Commission may approve or direct.

The NARUC Uniform System of Accounts also provides for accounts for the accumulation of the amortized amounts. It is account 115 - Accumulated Provision for Amortization of Utility Plant Acquisition Adjustments. The instructions to this account state that:

> This account shall be credited or debited with amounts which are includable in account 406, Amortization of Utility Plant Acquisition Adjustments, or account 425, Miscellaneous Amortization, for the purpose of providing for the extinguishment of amounts in account 114, Utility Plant Acquisition Adjustments, in instances where the amortization of account 114 is not being made by direct write-off of the account.

In accordance with the decisions reached herein, the Hearing Examiner concludes that the appropriate amount for the plant acquisition adjustment for inclusion in this proceeding as a deduction from plant in service is $2,484,815, which also reflects the correction for a minor $11 mathematical error.

With regard to the proper amount of deductions from the original cost rate base, the last area of difference is accumulated depreciation. The Company deducted accumulated depreciation in the amount of $1,004,869, while the Public Staff deducted an amount of $950,966. Witness Perkerson stated that a proper level could not be determined until a depreciation study such as she was recommending was completed. Witness Perkerson further stated that the

inability to establish the proper level of accumulated depreciation in this case would have no effect on the granting of the rates requested by the Company in this case.

Witness O'Brien provided rebuttal testimony relative to accumulated depreciation in which he pointed out a number of errors in the amount calculated by witness Perkerson. The Hearing Examiner recognizes that accumulated depreciation is not correctly stated by either the Company or the Public Staff and has recognized, in Finding of Fact No. 18, the need for a depreciation study which will serve as a basis for establishing the proper level of accumulated depreciation in the Company's next general rate case. The Hearing Examiner notes that the use of either level of accumulated depreciation proposed will not affect the level of rates approved in this case since both parties have agreed to the same revenue increase. For the purpose of this case, the accumulated depreciation as calculated by witness O'Brien will be used. It is, therefore, determined that for the purposes of this case the deduction for accumulated depreciation is $1,004,869.

Finally, based on all the evidence presented on this subject, the Hearing Examiner concludes that the proper level of deductions from the original cost of plant in service is $7,126,651 consisting of contributions in aid of construction of $3,630,295, plant acquisition adjustment of $2,484,815, accumulated depreciation of $1,004,869, and customer advances for construction of $6,672.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence supporting this finding is contained in the testimony and exhibits of Company witness O'Brien and Public Staff witness Perkerson.

Witness Perkerson testified that she included a cash allowance for working capital of $129,137, representing 1/8 of operation and maintenance expenses and other general expenses, less average tax accruals of $22,098 and customer deposits of $14,219, in arriving at her level of working capital allowance in the amount of $92,820.

Witness O'Brien calculated the cash allowance for working capital to be $141,780 using the formula that is 1/8 of operation and maintenance expenses, other general expenses, and state and federal income taxes. The Company's cash working capital of $141,780 was then increased by deferred charges of $57,376 and reduced by average tax accruals of $22,098 and customer deposits of $14,219 resulting in the Company's working capital allowance recommendation of $162,839.

The Hearing Examiner finds in Evidence and Conclusions for Finding of Fact No. 14 that the level of operation and maintenance expenses and other general expenses appropriate for use in this proceeding in the determination of cash working capital is $909,608 which results in a cash working capital allowance of $113,701 (1/8 of $909,608).

Although there is no difference between the parties as to the proper level of customer deposits, the Hearing Examiner finds that the $14,219 amount of the parties is inappropriate. According to the testimony of witness Perkerson, the level of customer deposits at December 31, 1982 is $15,603, which she uses to

calculate the interest on customer deposits for inclusion in the Company's operating revenue deductions. In reviewing the customer deposits information for 13 months-December 1981 through December 1982, it appears that there has been a steady growth in customer deposits over this time period. Therefore, the Hearing Examiner concludes that the December 31, 1982 level of customer deposits of $15,603 is more reasonable for use in this proceeding than the 13-month average of $14,219.

The Company has included $57,376 of deferred charges which the Public Staff disagreed with. According to witness O'Brien these deferred charges consist of deferred maintenance and rate case expenses. However, in rebuttal testimony witness O'Brien stipulated to the Public Staff's proposal that these deferred charges not be included in the working capital allowance. Thus the Hearing Examiner finds that these deferred charges should not be included in the calculation of working capital.

As to the level of average tax accruals, the parties agree that it is $22,098. The Hearing Examiner having no reason to believe otherwise finds that $22,098 is the appropriate amount for average tax accruals.

Based upon the foregoing, the Hearing Examiner concludes that the appropriate level of working capital in this proceeding is $76,000 consisting of a cash requirement of $113,701 less average tax accruals of $22,098 and customer deposits of $15,603.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Based on the Evidence and Conclusions for Findings of Fact Nos. 9, 10, and 11, the Hearing Examiner concludes that the Applicant's reasonable original cost rate base is $3,295,921. This consists of original cost of plant in service of $10,346,572, plus a working capital allowance of $76,000 less rate base deductions of $7,126,651.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is found in the testimony and exhibits of Company witness O'Brien and Public Staff witnesses Perkerson and Lee. Both parties agreed on the levels of gross revenues, and the Commission agrees and concludes that the proper level of gross revenues under present rates after accounting and pro-forma adjustments is $1,234,730 and after proposed rates it is $1,566,561, which allows the Company an increase of $331,831 in annual gross revenues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses O'Brien, Owens, and Cardey and Public Staff witness Perkerson.

The Company contends that a reasonable level of intrastate operating revenue deductions after accounting, pro forma, end-of-period adjustments, and the proposed increase is $1,220,014. The Public Staff's testimony supports operating revenue deductions of $1,323,390. There is a difference of $103,376 between the amounts recommended by the Company and the Public Staff.

The differences between the Company and the Public Staff shown below reflect only the operating revenue deductions on which the Company and the Public Staff disagree.

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Maintenance and Repair | $137,899 | $173,971 | $36,072 |
| Operating Expenses Charged to Plant | (64,378) | -0- | 64,378 |
| Amortized Expenses | - | 48,911 | 48,911 |
| Interest on Customer Deposits | 1,127 | 1,248 | 121 |
| Depreciation | 84,648 | 67,008 | (17,640) |
| Federal Income Tax | 78,685 | 50,688 | (27,997) |
| State Income Tax | 10,347 | 9,878 | (469) |
| TOTAL | $248,328 | $351,704 | $103,376 |

The first difference, in the amount of $36,072, represents the test year portion of maintenance and repair, small tools and operators' travel which the Public Staff recommended be expensed rather than capitalized. The Hearing Examiner finds that it is appropriate to increase the Company's test year level of maintenance and repair expenses by $8,571 for such expenses according to the Evidence and Conclusions for Finding of Fact No. 9.

The second difference in the amount of $64,378 is a portion of the amount of operators' salaries which were capitalized by the Company. The Company during 1982 capitalized operators' salaries in the amount of $95,982 as shown on O'Brien Exhibit I, Schedule 2. Witness O'Brien then made a pro forma adjustment to remove $31,604 of this amount leaving a negative balance of $64,378. According to witness O'Brien this adjustment was made to portray the go-forward level of operators' expense reflecting an increase in the number of employees since the end of the test year. The Public Staff recommended that all operators' salaries be expensed and made an adjustment in the amount of $64,378 to increase the test year level of maintenance and repair. In accordance with the Evidence and Conclusions for Finding of Fact No. 9, the Hearing Examiner finds that it is appropriate to reduce operation and maintenance expenses by $95,982 for operating expenses charged to plant; this treatment reflects the level of operators' expense that has been included in original cost utility-plant-in-service during 1982 and properly matches the level of rate base, revenues and expenses at the end of the test year.

The difference shown on the chart above for amortized expenses in the amount of $48,911 is one-fifth of the disallowed capitalized costs for 1972 through 1981 in the amount of $244,556, consisting of $48,703 for maintenance and repair, $13,202 for small tools and equipment, and $182,651 for operators' time and travel. Witness Perkerson recommended that the remaining balance of those categories of pre-1982 expenditures be amortized to operating revenue deductions in 1983, 1984, 1985, and 1986.

Company witness O'Brien testified that the amounts removed from rate base should not be included in expenses in this rate case. In other words, witness O'Brien contended that they should be treated prospectively.

As previously discussed in the Evidence and Conclusions for Finding of Fact No. 9, the Hearing Examiner concludes that the expenditures for maintenance and repair and small tools and equipment which have been improperly capitalized from 1972 through 1981 totalled $16,374. The Hearing Examiner concludes that these pre-1982 expenditures should be amortized over a five-year period beginning February 1, 1984, which is the effective date of the interim rates previously granted in this docket. Thus, the Hearing Examiner finds that the current level of amortization expenses should be increased by $3,275.

The next difference in the amount of $121 was calculated by witness Perkerson based on the level of customer deposits at December 31, 1982, as shown on her Exhibit III, Schedule 3-3. The Company's position reflects the actual interest paid on customer deposits for the test year. In accordance with the findings reached in the Evidence and Conclusions for Finding of Fact No. 11, the Hearing Examiner concludes that the appropriate level of interest on customer deposits is $1,248.

The difference in depreciation expense in the amount of $17,640 is the amount necessary to reduce the Company's level of depreciation expense in the amount of $84,648 to the level calculated by the Public Staff in the amount of $67,008.

Witness Perkerson stated that she derived the $67,008 by a complete recalculation of plant in service, while the Company depreciated gross plant less contributions in aid of construction. Witness Perkerson depreciated gross plant less contributions in aid of construction, plant acquisitions adjustments and Public Staff adjustments. Further, witness Perkerson stated that, while she believed the Company's composite depreciation rate was too low and was recommending a depreciation study, she used the Company's rate of 1.5% for Carolina Water Service, 2.0% for Sugar Mountain and 25% for automobiles, since the level of depreciation expense established for the purposes of this proceeding would not affect the rates requested by the Company as both parties agreed on the amount of the revenue increase. During cross-examination, witness Perkerson also stated that she did not account for retirements on a yearly basis. However, witness Perkerson pointed out that the Company had also failed to remove numerous retired items from plant in service.

The Hearing Examiner concludes that since neither the Company nor the Public Staff have provided exact amounts for depreciation expense, the amount as calculated by the Company will be used for the purposes of this proceeding since the Company's accumulated depreciation amount has been previously accepted by this Examiner.

The last two differences in the amount of $27,997 for Federal income taxes and $469 for State income taxes represents the adjustment necessary to calculate taxes on the revenues and expenses (including revenue increase) calculated by the Public Staff. The Hearing Examiner has not entirely accepted the position of either party and thus has made a separate determination of income taxes. The Hearing Examiner finds that the appropriate levels for State and Federal income taxes to be used in this proceeding are $16,436 and $97,952 respectively under approved rates.

Based on all the testimony previously discussed, the Hearing Examiner concludes that the appropriate level of operating revenue deductions is $1,225,733.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Public Staff witness Perkerson presented evidence that the fair and reasonable capital structure for use herein should be 50% common equity and 50% long-term debt having an embedded cost of 11%. The Company agreed with the Public Staff that it is appropriate to calculate the rate of return by using debt and equity ratios of 50% and an embedded cost of debt of 11%.

Based on the foregoing, the Hearing Examiner concludes that the Public Staff's proposed capital structure and embedded cost of debt are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The Company's position in this proceeding is that after all of the accounting, pro forma, end-of-period adjustments, and the proposed increase recommended by the Company, Carolina Water Service will have the opportunity to earn a 9.49% rate of return on common equity and a 10.25% overall rate of return on rate base utilizing a capitalization structure consisting of 50% debt and 50% common equity and an embedded cost of debt of 11%. Alternatively, the Public Staff maintains that the Company will have an opportunity to earn an 8.28% rate of return on common equity and an overall rate of return of 9.64% on rate base after all of the Public Staff's proposed accounting, pro forma, and end-of-period adjustments and after the Company's proposed increase. The Hearing Examiner has previously in this Order made his own determination as to the appropriate level of operating income after the Company's proposed revenue increase and as to the appropriate level of rate base. The Hearing Examiner has further concluded that a capitalization structure consisting of 50% debt and 50% common equity and an embedded cost of debt of 11% is proper for use herein. Based on those decisions, after accounting, pro forma and end-of-period adjustments and after the Company's proposed increase in rates, the Company will be allowed the opportunity to earn a 9.68% rate of return on common equity and an overall rate of return on rate base of 10.34%. The Hearing Examiner concludes that an allowed rate of return on common equity of 9.68% with a resulting overall rate of return on rate base of 10.34% does not exceed the fair and reasonable rate of return on common equity for the Company and therefore such rate of return on equity is determined to be not unreasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Both the Public Staff and the Company presented testimony and exhibits in support of an increase in annual gross revenues of $331,831. This increase will allow the Applicant the opportunity to earn the 10.34% overall rate of return which the Hearing Examiner has found not to be unreasonable. 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 the Findings of Fact which are set out in this Order.

The following schedules summarize the gross revenues and rate of return which the Company should have a reasonable opportunity to achieve based upon the increases approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein found fair by the Hearing Examiner.

SCHEDULE I

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
Docket No. W-354, Sub 26
STATEMENT OF OPERATING INCOME AVAILABLE FOR A RETURN
For The Twelve Months Ended December 31, 1982

| ITEM | AFTER APPROVED RATES |
|---|---|
| Operating Revenues: | |
| Service revenues | $1,526,032* |
| Miscellaneous revenues | 40,529 |
| Total operating revenues | 1,566,561 |
| Operating Revenue Deductions: | |
| Operation and Maintenance expenses | 646,134 |
| General expenses | 263,474 |
| Depreciation and amortization | 87,923 |
| Operating taxes other than income | 113,814 |
| State income taxes | 16,436 |
| Federal income taxes | 97,952 |
| Total operating revenue deductions | 1,225,733 |
| Net Operating Income for Return | $ 340,828 |

*Reflects an increase in annual gross service revenues of $331,831, which is the increase requested by the Company and agreed to by the Public Staff and the Hearing Examiner.

SCHEDULE II

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
Docket No. W-354, Sub 26
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1982

| ITEM | AFTER APPROVED RATES |
|---|---|
| Investment in Water and Sewer Plant | |
| Utility plant in service | $10,346,572 |
| Contributions in aid of construction | (3,630,295) |
| Plant acquisition adjustment | (2,484,815) |
| Accumulated depreciation | (1,004,869) |
| Customer advances | (6,672) |
| Net utility plant in service | 3,219,921 |
| Allowance for Working Capital | |
| Cash | 113,701 |
| Customer deposits | (15,603) |
| Average tax accruals | (22,098) |
| Total working capital allowance | 76,000 |
| Original Cost Rate Base | $ 3,295,921 |
| Rate of Return | 10.34% |

SCHEDULE III

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
Docket No. W-354, Sub 26
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Twelve Months Ended December 31, 1982

| | Approved Rates-Original Cost Rate Base | | | |
|---|---|---|---|---|
| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
| Long-term debt | 50.00% | $1,647,961 | 11.00% | $181,276 |
| Common equity | 50.00% | 1,647,960 | 9.68% | 159,552 |
| Total | 100.00% | $3,295,921 | - | $340,828 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence supporting this finding is found in the testimony of Public Staff witness Perkerson and Company witnesses O'Brien, Owens, Rezek, McClellan, and Cardey. A major issue in this case involves the question of whether the composite depreciation rate which has been and is being used by the Company to depreciate all of its depreciable plant except vehicles is appropriate.

Public Staff witness Perkerson testified that the Company's 1.5% composite depreciation rate was unrealistically low. According to witness Perkerson, the use of a 1.5% composite depreciation rate implies that the average useful life expectancy of the Company's plant in service is approximately 67 years. Witness Perkerson further contended that the use of that rate by the Company in the past had resulted in its accumulated depreciation being understated with the further result that its plant in service was overstated.

Witness Perkerson presented testimony indicating that the NARUC Uniform System of Accounts gives specific instructions for accounting for depreciation expense and accumulated depreciation for Class A and B water and sewer utilities. Witness Perkerson recommended that the Company use the depreciation methodology outlined in the NARUC Uniform System of Accounts. Witness Perkerson testified that the NARUC Uniform System of Accounts requires that an appropriate rate of depreciation for each functional category of water and sewer plant be established and used rather than a composite rate. Furthermore, witness Perkerson recommended that a depreciation study be made which would serve as the basis for establishing an appropriate depreciation rate for each functional category of the Company's water plant and its sewer plant in the Company's next general rate case.

Witness Perkerson further recommended that the study be done in such a manner that it would serve as the basis for appropriate adjustments to the Company's accumulated depreciation in its next general rate case. In that regard, she suggested that any increase to accumulated depreciation, which the study indicated to be appropriate, be amortized to expenses over a period of years which was no less than the period of years over which the unrealistically low depreciation rates had been used.

The Company's witnesses were generally opposed to the contentions and recommendations of witness Perkerson. The Company maintains that its use of a composite 1.5% depreciation rate, for plant other than automobiles, is appropriate. According to witness testimony the Company initially began to use the 1.5% depreciation rate because it was an accepted rate commonly used throughout the water and sewer utility industry. The Company maintains that its rate has been audited and accepted by the Company's certified public accountants, Arthur Anderson & Company. Further, the Company contends that a large percentage of its plant consists of items with relatively long service lives such as mains which makes the 1.5% depreciation rate appropriate.

Company witness Cardey prepared an exhibit which sets forth a summary of statistics prepared by the National Association of Water Companies for a wide range of company sizes. The composite rate for all company classes is 1.7%; and for Class A-3, which is the class for Carolina Water Service, it is 1.8%. This compares to a composite rate of 2% used by Carolina Water Service including depreciation on automobiles. Witness Cardey testified that the Company's water systems are relatively new with little retirement experience. Witness Cardey testified that it is not possible to develop survivor curves which are commonly used to determine rates. It is, therefore, appropriate in his opinion to rely upon the experience from a wide range of companies that have experience to justify the depreciation rate.

Company witness testimony did however establish that the 1.5% composite depreciation rate was not based upon separately derived rates for the various

functional categories of plant. In that regard, as previously stated, Company witnesses O'Brien and Owens testified that the rate was not based upon any study or analysis of the Company's depreciable plant. Rather, their testimony indicated that the 1.5% rate had been chosen merely because it was used by other large water and sewer companies and thus appeared to be appropriate for use by a company the size of the Applicant.

Company rebuttal witnesses Rezek, McClellan, and Cardey all stated during cross-examination that a composite depreciation rate should ideally be derived from appropriate rates for each functional category of plant and the weighted mix of the Company's plant in each such functional category. They further testified that a composite depreciation rate would vary each time the plant mix of functional category investment changes. Company witness Rezek presented a depreciation study of the Company's Sugar Mountain water and sewer systems. His testimony regarding such study indicates the manner in which a composite depreciation rate is appropriately derived. Significantly, the study indicated that a composite depreciation rate of 1.73%, or a rate higher than the Company's 1.5% rate, was appropriate for the combined water and sewer system there involved.

The Company objected to making a study such as advocated by the Public Staff on the basis that it would be costly. The Company particularly objected to witness Perkerson's suggestion that an adjustment be made to accumulated depreciation after the study was completed. Witnesses for the Company testified that if a depreciation study were required, it would be easier and less time consuming to simply adjust the composite depreciation rate and apply that rate to the remaining plant balance over the remaining life of that plant.

The Hearing Examiner is very much aware of the importance of a regulated utility using appropriate depreciation rates and of the consequences of using inappropriate rates. The use of an appropriate depreciation rate is necessary in order for the ratepayers to pay on an annual basis the appropriate portion of the cost of the plant consumed in providing the service.

Having considered all of the evidence on the issue, the Hearing Examiner believes that the composite depreciation rate currently used by the Company may be unrealistically low and may not be representative of the useful life of the plant to which that rate has been and is being applied. The Company's own evidence indicates that the rate was established solely on the basis that it was similar to the composite rate being used by other large water and sewer companies of comparable size. Comparability in overall size of such other companies is not a persuasive indicator that such companies' water and sewer plant are comparable. In the Hearing Examiner's opinion, the relevant factors for comparison are whether the quality and types of plant and the mix of such plants are comparable.

The Hearing Examiner is not aware of any other regulated water or sewer systems in North Carolina using a composite depreciation rate as low as 1.5% (excluding transportation equipment). The Hearing Examiner is further impressed with the difference between the 67 year average service life implicit in the Company's 1.5% composite rate, and the considerably shorter average service lives and higher depreciation rates set out in the NARUC guidelines, which were introduced in evidence as Rezek Exhibit No. 3. A similar disparity is suggested when the Company's composite rate is analyzed in terms of the

Public Staff depreciation guidelines for water and sewer companies which was introduced in evidence as Public Staff Rezek Cross-Examination Exhibit No. 1.

Based upon the foregoing discussion, the Hearing Examiner concludes that it is reasonable and appropriate for the Company to undertake a depreciation study with the ultimate goal of establishing separate depreciation rates for each functional category of its water and sewer plant in North Carolina to be used in the future in lieu of the Company's composite rate. Minimally, a separate rate for each of the functional plant categories outlined in the NARUC Uniform System of Accounts should be determined.

The Hearing Examiner concludes that in view of all of the foregoing, it is necessary that an investigation and study should be undertaken by Carolina Water Service and that such study should be filed with the Commission and the Public Staff at a time established hereinafter. Such study should be conducted and presented in such a manner that it may serve as a basis for the Commission to determine and establish in the Company's next general rate case, the following matters:

1. The reasonable and appropriate service life of each of the NARUC functional categories of the Company's water plant and sewer plant in this State; and

2. The reasonable and appropriate depreciation rate to be based upon the related average service life determined as indicated in No. 1 above, to be henceforth used for each of the NARUC functional categories of the Company's water plant and of the Company's sewer plant in this State.

The Public Staff has recommended in this proceeding that to the extent the indicated study reflects that the composite depreciation rate of 1.5% utilized by the Company has understated accumulated depreciation, a retroactive adjustment should be made by the Commission in the Company's next general rate case. The Hearing Examiner is basically in agreement that such a determination should properly be deferred until the Company's next general rate proceeding. However, the Hearing Examiner believes that it is reasonable to consider changes in depreciation rates on a prospective basis and that the retroactive adjustment to accumulated depreciation alluded to by the Public Staff may be inappropriate on its face.

The Hearing Examiner is aware that a great many methods exist for conducting the study and investigation of the nature outlined above. The Hearing Examiner is of the opinion that both the Company and the Public Staff should have input into the methodology and the details of the study ordered. Such details include how many of the Company's systems, if any, should be subject to an actual inspection and evaluation, the extent to which Company records can and should be used in conducting the study, the date which the study is to focus upon, and the timetable for its completion and submission to the Commission and the Public Staff. The Hearing Examiner concludes that the best way of handling such matters is for the Company to formulate and submit to the Commission and the Public Staff a formal, written outline and proposal of how the four specific items set out above should be determined. The Hearing Examiner encourages the Company to meet with the Public Staff prior to formulating or submitting its outline and proposal. Such outline and proposal shall be filed with the Commission and the Public Staff within 60 days from the

effective date of this Order. The Public Staff shall have a period of no less than 21 days after its filing within which to submit modifications or counter proposals or within which to request a formal conference before the Commission in order to attempt to work out a mutually agreeable format and details and any other unagreed matter regarding the study and investigation. The Commission will then issue a further order in this cause directing in detail how the study and investigation ordered herein shall be conducted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence and conclusions for Finding of Fact No. 19 is found in the testimony of Company witnesses McClellan and Cardey and in the testimony of Public Staff witness Perkerson, who testified that there are two areas in which it is necessary and appropriate for Carolina Water Service to modify and improve its present accounting system. These areas involve the formulation of work orders and an accounting methodology relating to plant retirements. Witness Perkerson testified that Carolina Water Service does not accumulate the costs for plant additions as prescribed in the NARUC chart of accounts for Class A & B water and sewer utilities. Witness Perkerson further testified that the Company should use numbered work orders on which all costs associated with an item of plant are recorded with sufficient detail and support documents to allow both regulatory auditors and Company personnel to quickly and easily identify and verify plant addition costs.

The Company maintained that while it did not have a formal work order system, it felt the system currently being used was adequate. Company rebuttal witness Cardey testified that the work order system used by Carolina Water Service met minimum requirements. Witness Cardey also stated that he had recommended improvements to this system with which the Company agreed.

A review of the issues in this docket indicates that many of the points of disagreement between the Company and the Public Staff were in the area of capitalized costs. Evidence seems to indicate that the Company's current accounting system may be deficient with regards to an appropriate work order system. An adequate work order system will assure the proper accounting for the costs of plant additions. It is also a means of assuring that all plants costs can be readily identified and removed through the retirement process when an item of plant is replaced or is no longer in use. The Hearing Examiner further concludes that a proper work order system might include at a minimum a numbered form that contains perhaps the following information:

a. system to which plant is being added,
b. functional category or categories of plant involved,
c. description of work performed,
d. dates work begun and completed,
e. breakdown of all costs involved with copies of invoices attached or a reference made to an invoice filing number for easy access,
f. amount assigned to each functional category of plant,
g. information as to whether work being done is for new plant or replacement of old plant, and
h. retirement information if replacement plant is involved.

The Hearing Examiner believes that it is reasonable for Carolina Water Service to consider revision and modification of its present work order system. Thus, the Hearing Examiner strongly encourages Carolina Water Service to evaluate its current work order system and to modify and improve such system in a manner which the Company deems to be the most appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence for this Finding of Fact is found in the Company's application and in the testimony of Company witness O'Brien. The Company proposes to charge new customers as follows: new water customer - $20; new sewer customers - $15; and new water and sewer customers - $20. Witness O'Brien testified that the new customer charges are designed to recover the cost of transferring service when a customer moves into the service area. The proposed new customer charges will more accurately assign such costs to those who cause the Company to incur them. Witness O'Brien presented an exhibit, O'Brien Direct Examination Exhibit 4, which was a study detailing the individual cost breakdown incurred in establishing service for a new customer. The Hearing Examiner concludes that the proposed new customer charges are justified and reasonable and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence for this finding of fact is found in the Company's application and in the testimony of Company witness O'Brien and Public Staff witness Lee. The Company sought approval of plant modification and expansion fees as follows:

| | |
|---|---|
| Water: | $400 for 5/8" meter.<br>Multi-family or commercial customers - to be negotiated on a basis of equivalence to a number of single-family customers, but not less than $400 payable by developer or builder. |
| Sewer: | $1,000 for single-family customers.<br>Multi-family or commercial customers - to be negotiated on basis of equivalence to a number of single-family customers, but not less than $1,000 payable by developer or builder. |

Public Staff witness Lee testified that the proposed fees should apply only to situations where the extension of new mains was required after the effective date of the final order in this proceeding. He contended that the subject fees should not apply to new connections made to presently existing mains; only the fees which were previously approved at the time such presently existing mains were installed should be charged for new connection to such mains. Mr. Lee also recommended that the proposed fees should not be applicable to existing contracts between the Company and developers or builders.

Company witness O'Brien did not agree with Mr. Lee. Witness O'Brien testified that the plant modification fee was not related to the extension of mains or the cost thereof, and he could see no reason to charge the fee based on the extension of mains. He also contended that restricting the proposed fee

to extensions of new mains would be difficult to administer and would inevitably lead to problems of definitions.

The Hearing Examiner concludes that the proposed plant modification and expansion fee should be applicable only in situations where plant or main modification or expansion is required in order to serve new development for which the Division of Health Services (or other regulatory agency) approval of plans and specifications relating to it has not been obtained as of the date of the final order in this case. In reaching the foregoing conclusion, the Hearing Examiner recognizes that water and sewer utility systems are usually built in phases. Before a new system or a new phase can be built, plans and specifications relating to the proposed new system or phase must be submitted to appropriate state regulatory agencies. Such plans and specifications approved by such agencies require adequate water production facilities and/or sewer treatment facilities for the specified number of proposed connections approved to be served. Therefore the construction cost of each phase of a water or sewer system should be attributed to the number of lots or connections for which such state regulatory approval has been obtained in the form of approved plans for that phase. The additional cost of production or treatment facilities and distribution or collection systems should be assigned the approved number of connections to be served in such new phase. The Hearing Examiner also recognizes that customers or potential customers contribute the cost of their portion of a utility system through the purchase of their lots and/or by paying tap-on fees. It is proper and reasonable to conclude that the tap-on fees previously established for presently existing water and sewer systems are appropriate for those existing systems. Therefore, the Company's proposed plant modification and expansion fee should apply only to cases where the modification or expansion of an existing system is required in order to serve a new section of that system or where a completely new subdivision or system is being developed at a cost to the Company.

The Hearing Examiner agrees with witness O'Brien that the proposed plant modification and expansion fee should be paid only by the developer or builder whose development activity has necessitated the plant or main modification or expansion involved. The new customer should only be required to pay the Company's proposed tap-on fee for water and sewer as requested by the Company as follows:

Water: $100 for 5/8" meter. Meters larger than 5/8" - actual cost of meter and installation

Sewer: - Residential - $100 per single-family dwelling unit
Commercial - Actual cost of connection.

The Hearing Examiner clarifies that all presently approved tap-on fees for connections to all existing systems should remain as previously approved for the phases of these systems which are served by existing plant and mains. The Commission files reflect that the Company's existing tap-on fees vary from system to system.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence of this Finding of Fact is found in the testimony of public witness William T. Atkinson of the Riverbend Subdivision near New Bern in Craven County and of Company witnesses O'Brien and Owens.

Witness Atkinson testified as the representative of six condominium associations at Riverbend. He testified that each association was served by a two-inch master meter and that the association paid the bill as rendered on a bi-monthly basis. Mr. Atkinson also testified that condominium associations should be treated for billing purposes in the same manner as commercial customers, not as residential customers, when water is provided through a large size master meter such as a two-inch meter and there is no further metering at the individual housing units. Mr. Atkinson further testified that the condominimum associations objected to the proposed base facility charge but did not object to a minimum charge of a minimum usage which should be erased whenever the monetary value of the customer's water consumption exceeds the minimum dollar amount.

Mr. O'Brien testified at the hearing in Raleigh that the base facility charge concept recognizes there are certain fixed costs of operating a utility which exist whether or not the customer uses any water. He stated that the base facility charge attempts to assess these fixed charges up front compared with a block rate structure which generally charges these costs on the basis of usage. Mr. O'Brien also testified that the advantages of the base facility charge concept to the customer versus the typical block rate structure were as follows: it more properly charges the cost of providing service to each type of customer; the customers are charged only for the gallons used rather than for an arbitrary minimum number of gallons in a minimum charge concept; and, it helps to solve the "fair share" problem of part-time residents bearing their fair share of the cost of providing service to them, a problem which is particularly likely to arise in a multi-family complex in a resort area.

Witness O'Brien further testified and presented an exhibit, Company Witness O'Brien Exhibit No. 6, showing the method and cost distribution used to determine the proposed base facility charge of residential customers. Witness O'Brien testified that the base facility charge for a condominium owner in Riverbend is the same as that for a single-family homeowner because their water usage is about equal; fixed costs are largely related to facilities, and the facilities needed to serve the single-family home are about equal to those needed to serve a condominium.

The Hearing Examiner recognizes that there are merits to both the positions presented by witness Atkinson on behalf of condominium customers and by witness O'Brien that there are fixed costs which should be born equally by single-family and multi-family customers. The Hearing Examiner also recognizes that there are fixed costs associated directly with billing customers which will be considerably less for multi-family units served by a master meter because only one billing is required. The Hearing Examiner concludes that in fairness to the multi-family customers the cost of individual billing should not be charged to them since their bill is rendered as one master meter bill. The Hearing Examiner also recognizes that other savings may result from master meter billing, such as lower delinquent bill collection costs, since most

multi-family units served by the Company are condominiums whose water and sewer utility bills are paid through their associations. The Hearing Examiner concludes that such savings in fixed expenses associated with multi-family units served by a single meter should in fairness be passed on to the customer residing in such multi-family units. Upon reviewing O'Brien Exhibits 5 and 6, the Hearing Examiner estimates that the cost per customer billing is approximately $1.00. Since the Company bills bi-monthly, the monthly base facility charge should be reduced by $.50 per dwelling unit. The Hearing Examiner thus concludes that the monthly base facility charge should be $4.50 per dwelling unit for multi-family units where the customers are billed collectively through a master meter.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence for this Finding of Fact is found in the testimony of Company witness O'Brien and Public Staff witness Lee.

The Company's proposed commercial water rates and those recommended by the Public Staff are as follows:

| | | Meter Size | Company | Public Staff |
|---|---|---|---|---|
| (A) | Base Facility Charge: | 5/8" x 3/4" meter | $ 5.00 | $ 5.00 |
| | | 1" meter | $ 30.00 | $ 12.50 |
| | | 1 1/2" meter | $ 50.00 | $ 25.00 |
| | | 2" meter | $ 80.00 | $ 40.00 |
| | | 3" meter | $160.00 | $ 75.00 |
| | | 4" meter | $250.00 | $125.00 |
| (B) | Commodity Charge | | $ 1.70 per 1000 gallons | $ 1.70 per 1000 gallons |

The Company and the Public Staff disagreed on the base facility charges but agreed on the commodity charge.

Witness O'Brien testified that the Company's proposed commercial base facility charge was based on the average usage of the commercial meters versus the average usage of the standard 5/8" meter.

Witness Lee testified that the commercial base facility charges should be based on the proportional demand that the large meters can place on the system during peak demand periods and that the base facility charges recommended by the Public Staff were based on comparison of the safe maximum operation capacities of displacement type water meters as recommended by the American Water Works Association Standards.

Witness Lee testified that approximatly 35% of the water revenues will come from base facility charges, 60% from commodity charges for actual water sold, and 5% from miscellaneous charges. Witness Lee stated that the commercial customers will be paying an appropriate share of revenues since most of the Company's revenues will be generated by the $1.70 commodity charge.

Mr. Lee also testified that the Public Staff's recommended commercial base facility charges will have an insignificant impact on the Company's total water revenues, but will have a very significant impact on the few commercial customers.

The Hearing Examiner concludes that the appropriate base facility charges for commercial customers should be those charges recommended by the Public Staff in this proceeding. In doing so, the Hearing Examiner agrees with the position of Mr. Lee. The Hearing Examiner also notes that to accept witness O'Brien's position that the commercial base facility charges should be based on the average usage of the commercial meters versus the average usage of the standard 5/8" residential meters is contrary to the rationale used by the Company in establishing its proposed residential base facility charge. As noted in the Evidence and Conclusions for Finding of Fact No. 22, Mr. O'Brien testified that the base facility charge concept recognizes there are certain fixed costs in operating a utility which exist whether or not the customer uses any water.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The rate schedules attached to this Order as Appendix A are designed to allow the Applicant the opportunity to recover the increases approved in this Order. They also reflect the conclusions for Findings of Fact Nos. 20 through 23 in this Order. The Hearing Examiner concludes that the rates approved herein are just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That the schedule of rates attached hereto as Appendix A is hereby approved for water and sewer service rendered by Carolina Water Service, Inc. of North Carolina subject to the conditions set forth therein. Said rates shall become effective for service rendered on and after the effective date of this Order. Such schedule of rates is deemed filed with the Commission pursuant to G.S. 62-138.

2. That Carolina Water Service, to the extent it has not already done so, shall undertake and complete the improvements to service and water quality mandated in the Evidence and Conclusions for Finding of Fact No. 8 of this Order.

3. That Carolina Water Service is strongly encouraged to evaluate its current work order system and to modify and improve such system in a manner which the Company deems most appropriate.

4. That Carolina Water Service shall informally confer with representatives of the Public Staff and shall thereafter submit and file with the Commission and the Public Staff a formal, written outline and proposal of how the depreciation study which is described in the Evidence and Conclusions for Finding of Fact No. 18 should be conducted. Such outline and proposal shall be filed by the Company no later than 60 days from the effective date of this Order. The Public Staff shall file a reply within 21 days thereafter. Further orders of this Commission shall be issued detailing and specifying how such study shall be conducted, by whom, and upon what time schedule.

5. That the Applicant shall give Notice to Customers of the rates approved herein by inserting a copy of Appendix B in the Applicant's next regular billing statement following the effective date of this Order. Appendix A of this Order shall be attached to each Notice to Customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of December 1984.

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

APPENDIX A

FINAL SCHEDULE OF RATES
DOCKET NO. W-354, SUB 26
Carolina Water Service, Inc. of North Carolina
For All Its Service Areas In North Carolina

WATER RATE SCHEDULE

METERED WATER RATES

Residential:

(A) Base facility charge: $5.00 per dwelling unit served by individual meter and being individually billed. This $5.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Base facility charge: $4.50 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

(C) Commodity charge: $1.70 per 1000 gallons

Commercial and Other:

| | | |
|---|---|---|
| (A) Base facility charge: | 3/4" meter | $ 5.00 |
| | 1" meter | $ 12.50 |
| | 1½" meter | $ 25.00 |
| | 2" meter | $ 40.00 |
| | 3" meter | $ 75.00 |
| | 4" meter | $125.00 |

(B) Commodity charge: $1.70 per 1000 gallons or 134 cubic feet

AVAILABILITY RATES - Monthly charge per customer: $2.00

Applicable only to customers in Carolina Forest and Woodrun who are subject to said Availability Charges pursuant to contract.

TAP ON FEE: - $100.00 for 5/8" meter. Meters larger than 5/8" - actual cost of meter and installation.

Applicable only to taps made to new mains that are installed after the effective date of this Order. Previously existing and approved tap fees, however, shall be applicable to all service areas or sections of service service areas served by existing plant and mains.

PLANT MODIFICATION AND EXPANSION FEE: $400 for 5/8" meter

Multi-family or commercial customers - to be negotiated on basis of equivalence to a number of single-family customers, but not less than $400 payable by developer or builder.

This fee shall be applicable only in those cases where plant or main modification or expansion of mains is required in order to serve new development for which the Division of Health Services or other regulatory agency approval of plans and specifications relating to it has not been obtained as of the date of the final order in this Docket, and shall be charged and payable by only the developer or builder who requests the modification or expansion of facilities for which fee is charged.

NEW WATER CUSTOMER CHARGE: $20.00

RECONNECTION CHARGE: If water service cut off by utility for good cause: $15.00

If water service discontinued at customer's request: $15.00 (Customers who ask to be reconnected within 9 months of disconnection will be charged the base facility charge for the service period they were disconnected.)

SEWER RATE SCHEDULE

SEWER RATES (Residential): Flat rate per month per dwelling unit: $16.00

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

SEWER RATES (Commercial and Other): 125% of water service subject to a minimum rate of $16.00 per month. Customers who do not take water service will pay $16.00 per single-family equivalent.

NEW WATER AND SEWER CUSTOMER CHARGES: New Sewer Customer Charge $15.00 (If customer also receives water services, this charge will be waived.)

TAP ON FEE (Residential): $100.00 per single-family dwelling unit
(Commercial): Actual cost of connection

Applicable only to taps made to new mains that are installed after the effective date of this Order. Previously existing and approved tap fees however shall be applicable to all service areas or sections of service areas served by existing plant and mains.

PLANT MODIFICATION AND EXPANSION FEE: $1,000 for single-family customers.

Multi-family or commercial customers: To be negotiated on basis of equivalence to a number of single-family customers, but not less than $1,000 payable by developer or builder.

This fee shall be applicable only in those cases where plant or main modification or expansion of mains is required in order to serve new development for which the Division of Health Services or other regulatory agency approval of plans and specifications relating to it has not been obtained as of the date of the final Order in this docket, and shall be charged to and payable by only the developer or builder who requests the modification or expansion of facilities for which fee is charged.

RECONNECTION CHARGE: If sewer service cut off by utility for good cause: $30.00. This charge will be waived if customer also receives water service from Carolina Water Service.

BILLS DUE: On billing date

BILLS PAST DUE: Twenty-one (21) days after billing date.

FINANCE CHARGES FOR LATE PAYMENT:

1% per month for balance due twenty-five (25) days after billing date.

CHARGE FOR PROCESSING OF NSF CHECKS: $5.00

BILLING FREQUENCY: Bills shall be rendered bi-monthly in all service areas except Carolina Forest, Woodrun, Misty Mountain, Crystal Mountain, Ski Mountain, Pine Knoll Shores, and Sugar Mountain, where bills shall be rendered quarterly.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket NO. W-354, Sub 26, on this 12th day of December, 1984.

APPENDIX B

DOCKET NO. W-354, SUB 26

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application by Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois, for Authority to Increase Rates for Water and Sewer Utility Service in Its Service Areas in North Carolina | ) | NOTICE TO CUSTOMERS |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an order granting final approval of the rates of Carolina Water Service, Inc., in all of its service areas in North Carolina. The rates approved by the

Commission are the rates proposed by the Company in its application filed June 24, 1983, and placed into effect on an interim basis on February 1, 1984. These rates are more fully described hereafter.

The Commission's decision followed hearings in Boone, Asheville, Charlotte, Morehead City, Matthews, and Raleigh, in which a number of customers appeared and offered testimony. The Commission's Order found that the service provided by the Company to its customers in North Carolina is adequate. The Order further noted, however, that customers did appear at the hearings and testified about their problems with water quality and service. The Order found that the Company has been taking appropriate steps to correct these problems. The Commission ordered the Company to continue its efforts to improve the quality of water and service in all of its service areas. The Order specifically addressed customer complaints in the following subdivisions and the Company's efforts to correct these complaints:

Hemby Acres and Beacon Hills

Customers in these subdivisions complained about the billing from Union County and about problems associated with sewage overflow and rain water flooding from an adjacent creek. The Commission noted that the Company was now directly billing its customers and had provided a local telephone number the customers could use to call about service problems. The Commission also discussed the improvements undertaken by the Company to correct the sewage overflow problems associated with the flooding. The Commission found that the Company had taken adequate steps to protect its sewer plant from the overflowing of the creek, thereby eliminating sewage overflow in the subdivisions. The Commission further noted, however, that flood control measures on the creek itself were beyond the Company's control and the jurisdiction of the Commission. The Company was directed to cooperate with the customers in seeking assistance from the appropriate governmental authority to control flooding on the creek.

Riverbend

The Commission's Order noted the steps taken by the Company to correct the excessive iron in the water. The Order further directed the Company to improve its communications with town officials and to keep these officials informed of the Company's efforts to improve service and expand its service area.

Bainbridge Subdivision

The Order noted that the Company had installed a new filtration system at a cost of $22,000 to correct the excessive iron in the water. The filtration system has reduced the iron content in the water to a level within the guidelines of the State of North Carolina. The Company was also required to timely notify the customers prior to its flushing operations in the subdivision.

Cabarrus Woods Subdivision

Numerous customers complained about the excessive hardness of the water and the high iron content therein. The Commission found that in January 1984 the Company had drilled a high yield well which would enable the Company to

abandon other wells serving the Subdivision which had a high iron and hardness content. The new well has resulted in significant improvements in the iron and hardness measurements of the water. The Company was required to keep the Commission, the Public Staff, and its customers informed of its efforts to improve the water system.

Flattop Mountain Subdivision

The Commission concluded that there was a need for water utility service by Mr. McDaniel and other property owners adjacent to a water main extended by Mr. McDaniel and other customers. The Commission ordered the Company to resolve, if it has not already done so, the ownership problems surrounding the water main extension in the Subdivision.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of December 1984.

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

DOCKET NO. W-726, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Flat Mountain Estates Water Systems, Inc., Route 1, Box 236-B, Highlands, North Carolina, for Authority to Increase Rates for Water Utilities Service in Flat Top Mountain Subdivision, Macon County, North Carolina | ) | RECOMMENDED ORDER GRANTING INCREASE IN RATES |

HEARD IN: The Conference Room, Town Hall, North Fourth Street, Highlands, North Carolina, on Thursday, October 11, 1984.

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

APPEARANCES:

For the Applicant:

Bobby J. Key, Jones, Key, Melvin & Patton, Post Office Box 108, Franklin, North Carolina 28734

For the Using and Consuming Public:

James D. Little, Attorney, Public Staff--North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602

Neill Mitchell, Orchard House, Flat Mountain Estates, Route 1, Highlands, North Carolina 28741
For: Himself

PARTIN, HEARING EXAMINER: On May 16, 1984, Flat Mountain Estates Water System, Inc., (hereinafter sometimes the "Applicant" or "Flat Mountain") filed an application with the Commission for authority to increase its rates for water utility service in Flat Top Mountain Subdivision in Macon County, North Carolina. The Applicant proposed that its rates be increased from the present monthly flat rate of $6.00 to a monthly flat rate of $52.00. The Company also proposed that the billing frequency be changed from bi-monthly for service in arrears to annually for service in advance.

On June 5, 1984, the Commission issued an order establishing a general rate case, suspending the rates, scheduling a hearing in Highlands, and requiring the Applicant to give notice to its customers of the proposed rates.

The application came on for hearing in Highlands as scheduled on October 11. The Applicant and the Public Staff were present and represented by counsel. The intervention of Neill Mitchell on behalf of himself was allowed at the hearing. The Company made a motion to amend its application as follows: if water service to a customer is disconnected voluntarily at the request of that customer, the reconnection fee will be $2.00 plus the monthly flat rate

charge for each month that the water service is disconnected. The amendment to the application was allowed by the Hearing Examiner.

The following customers of the Company appeared and offered testimony: Neill Mitchell, Howard B. Conkey, Paul Dismukes, Walter E. Armstrong, T. M. Dietz, Florence L. Black, Edward E. Hugo, D.T. Cummings, and Charles H. Ennis. The Applicant offered the testiony of F. Alex Crittenden, CPA, of Thomasville, Georgia; and James Keener, the General Manager of the Applicant. The Public Staff presented the testimony of Richard J. Durham, engineer in the Water and Sewer Division, and Michael C. Maness, a staff accountant in the Accounting Division. Upon consideration of the testimony and exhibits presented at the hearing and the entire record in this docket, the Hearing Examiner makes the following:

## FINDINGS OF FACT

1. Flat Mountain Estates Water System, Inc., is a public utility franchised by this Commission to provide water utility service in Flat Top Mountain Subdivision in Macon County. The Company presently serves 34 customers.

2. The test year for the proceeding is the 12-month period ending November 31, 1983. The return on rate base method is appropriate for setting rates in this proceeding.

3. The Applicant's present rate is a monthly flat rate of $6.00, and the billing frequency is bi-monthly for service in arrears.

4. The Applicant's proposed rate is $52.00 a month, and the billing frequency proposed is annually for service in advance.

5. The service provided by the Applicant is adequate.

6. Under the Company's present $6.00 monthly flat rate, the Company has annualized operating revenue of $2,448 and a negative net operating income of $3,457. Under the Company's proposed rate, the Company would have operating revenue of $21,216, a net operating income of $11,871, resulting in a return on rate base in excess of 60%.

7. The adjustments made by the Public Staff in this proceeding, with the exception of attorney's fees for rate case expense, are appropriate for reaching a decision in this case, since such adjustments are in conformity with approved accounting procedures of this Commission and the National Association of Regulatory Utilities Commissioners (NARUC).

8. The net original cost rate base of the Applicant for purposes of this proceeding is $19,688.

9. The operating revenue under the present rates after adjustments is $2,448. The annual operating revenue if the Company's proposed rate were in effect is $21,216.

10. The operating revenue deductions under the present rate is $5,905 and under the Applicant's proposed rate would be $9,345.

11. The Company's proposed monthly flat rate of $52.00 would generate a return on rate base in excess of 60%, which is excessive and unjust and unreasonable.

12. The Public Staff proposed a monthly flat rate of $24.20 for each of the 34 customers currently served by the Applicant. Such proposed rate would result in annual operating revenue of $9,871, or an increase of $7,423 over the present annual operating revenue. The proposed rate of the Public Staff would result in a net operating income for return of $3,169 and would result in a return on rate base of 16.10%.

13. The rate of $24.20 should be approved as the just and reasonable rate for the Applicant. Such rate would generate a return on rate base of 16.10% which the Examiner finds proper for the Applicant in this proceeding.

14. The customers testified that the rate proposed by the Applicant was excessive, and they even considered the rate of the Public Staff as excessive. Several customers testified that if the rate proposed by the Company or the Public Staff were placed into effect they would drill their own wells and leave the utility system. One customer, Mr. Mitchell, proposed a two-tiered rate structure, one for those customers who live on the lower level of the subdivision and another rate structure for those customers who live on the upper level of the subdivision. Mr. Mitchell explained that a two-tiered rate would keep customers living on the lower level of the subdivision from drilling their own wells.

## CONCLUSIONS

I.

The parties were in agreement that the Applicant's present rate of $6.00 a month for water service was inadequate. According to Public Staff witness Maness, the Applicant experienced a net operating loss of $3,457 during the test year.

The parties disagreed on the amount of the increase. The Applicant proposed a flat rate of $52 per month. The Public Staff proposed a flat rate of $24.20 per month. Many customers testified that the proposed rates of both parties were excessive.

Upon consideration of the evidence in this proceeding, the Examiner finds and concludes that the Public Staff's proposed rate of $24.20 per month should be approved as the just and reasonable rate for the Flat Mountain Estates Water Systems, Inc.. This rate will produce a return on rate base for the Applicant of 16.10%, which the Examiner concludes is fair and reasonable for the Company, considering its costs of capital and the risks to which it is exposed as a small water public utility. (See Affidavit of Public Staff financial analyst David T. Bowerman.) The $24.20 flat rate will produce net operating income for return in the amount of $3,169, which will allow the Applicant to recover all of its reasonable operating expenses and its costs of debt and equity. (See Maness Exhibit I, Schedule 1.)

In approving the $24.20 flat rate, the Examiner had to consider the evidence presented by the Applicant and by the Public Staff. The Examiner must

accept the adjustments recommended by Public Staff accountant Maness, since Mr. Maness followed generally accepted public utility accounting principles approved by the Commission over many years of regulating water utilities. The Public Staff's accounting treatment of the issues is also in conformity with the accounting guidelines of NARUC for small water utilities.

The parties basically disagreed over the accounting treatment of these items: (1) the amount of rate case expense (attorney's fees); and (2) the adjustments for the original cost rate base, including land. (See testimony of witness Maness and Mr. Crittenden). Mr. Maness testified that the proper rate case expense was $1,000 for the Applicant's certified public accountant and $200 for attorney's fees. Mr. Crittenden testified that the proper attorney's fees were $600. The Examiner concludes that the proper attorney's fees are $600. The Examiner accepts, however, Mr. Maness' five-year amortization period to determine rate case expense, which will result in an increase in operating expenses relating to rate case expenses of $80 in this proceeding. Thus, the increase in attorney's fees approved herein has no material impact on operating expenses in this proceeding and will have no impact on the $24.20 flat rate found just and reasonable. Therefore the Hearing Examiner finds the operating expenses proposed by the Public Staff appropriate for use herein.

In its Application, the Applicant listed total utility property in service of $46,860, which included $7,500 in land, $3,500 in structures, and $35,860 in wells and pumps. Mr. Maness reduced this amount by $20,417, resulting in adjusted water plant in service of $26,443. In determining that $133 instead of $7,500 was the proper total cost of land, Mr. Maness testified that in 1981 all of the water system assets were transferred from the sole stockholder and debtholder (Mrs. Cross) to the corporation. Most of the assets were valued at cost for purposes of the transfer. The land, however, was transferred at an estimated market value of $7,500. Mr. Maness testified that market value was an inappropriate valuation method for rate base purposes. He stated that it is the practice of the Commission to value rate base at original cost for ratemaking purposes. G.S. 62-133. Moreover, the NARUC publication, Depreciation Practices for Very Small Water Utilities, issued November 15, 1981, provides: "Original cost is defined as the cost to the person who first devotes the property to public services." Mr. Maness traced the history of the water system from the father of Mrs. Cross to the present corporation. He noted that the family has owned the water system, including the land, since its inception. "The incorporation in 1981 was only a change in the form of ownership, not in ownership itself. Mrs. Cross essentially owns the entire system, just as she did before 1981." Mr. Maness continued:

> "The act of changing the form of ownership through incorporation does not provide grounds for increasing the land valuation to market value for ratemaking purposes. To do so would force the ratepayers to pay for a 'cost' which the water system owners have never incurred. The original cost of the land used to provide water service is the cost paid by Mr. Pidcock upon purchase of the land, and it is this cost which should be included in rate base." (Maness Tr., p. 6)

Mr. Maness determined that approximately one acre (a 100-foot radius of the well) was required by current state regulations as a contamination-free

zone. The Company requires another one-third acre for storage and booster pump facilities. The original cost of all the land used for the subdivision was $100 per acre. Mr. Maness therefore included $133 in water plant in service as the original cost of land.

The Examiner finds and concludes that $133 is the proper amount for the original cost of land.

The Examiner has examined the other adjustments made by Mr. Maness and finds them to be properly made in accordance with Commission practice.

The Examiner notes that Mr. Maness calculated annualized operating revenue for 34 customers, which includes two customers added to the system after the end of the test year. The use of 34 customers is proper. G.S. 62-133(c). Considering the small customer base of the Applicant, the inclusion of these two customers had a significant impact on the Public Staff's calculations.

Mr. Maness also determined that the Applicant's salaries expense of $4,200 paid to two employees was unreasonably high. He adjusted salaries downward to $2,308, which the Examiner accepts as a reasonable salaries expense for the Applicant.

II.

The Examiner finds and concludes that a rate of return on rate base of 16.10% should be approved as the fair rate of return for the Applicant. Mr. Bowerman, the Public Staff financial analyst, affided that several factors should be considered when judging the adequacy of a return. "These are interest coverage, adequacy of income level after interest expense, the level of inflation, and the quality of service." Mr. Bowerman derived an overall rate of return on rate base by combining the risk-free rate of five-year U.S. Treasury Bonds with a three-percentage factor to adjust for risk. He estimated the risk-free rate of 13.10%, which when combined with the three-percentage factor produces a 16.10% rate of return.

Mr. Bowerman's methodology has been consistently accepted by this Commission in water utility rate proceedings, beginning with Docket No. W-173, Sub 14 (Application of Montclair Water Company).

III.

The Examiner finds and concludes that $24.20 is the proper rate to be charged by the Applicant to its customers for monthly water service in Flat Top Mountain Subdivision.

This rate was proposed by the Public Staff and is designed to recover the operating revenues found necessary to achieve the 16.10% return approved by this Order.

The customers testified that both the Applicant's and the Public Staff's proposed rates were too high. Several customers testified that if either rate were approved, they would drill their own wells and leave the water system. Mr. Mitchell in his testimony proposed a two-tiered rate, a lower rate for

customers living in the lower (orchard) level of the subdivision and a higher rate for customers living in the upper elevations of the subdivision.

Neither the Applicant nor the Public Staff directly addressed the possible impact that their respective rates would have on the customer base. It is clear that a loss of customers will have an adverse effect on the customers who remain on the system, in that the remaining customers would have to pay rates to cover the Applicant's cost of service (including capital costs) found reasonable in this Order. The loss of customers would not produce a comparable reduction in the Applicant's cost of service. Mr. Maness' testimony cogently pointed out that $20 of the $24.20 flat rate approved herein goes to pay for fixed costs.

The Examiner must approve the $24.20 flat rate. Any lesser rate would deprive the Applicant of the opportunity to earn the 16.10% rate of return found fair in this proceeding and would thus be confiscatory.

Although a two-tiered rate, as suggested by Mr. Mitchell, may prevent loss of the "orchard" customers from the system, there was no evidence to support a two-tiered rate on a cost basis. Difference in rates to customers of the same class (residential, for example) must reflect differences in costs in serving those customers. Does the costs in serving customers at different elevations in a mountain resort subdivision provide a basis for a two-tiered rate structure? The Examiner thinks not and is of the opinion that rates based solely on the elevation of customers' residences would be discriminatory and therefore unlawful.

The concern of Mr. Mitchell and the other customers that the $24.20 rate might result in a loss of customers is shared by the Examiner. The Applicant is requested to closely monitor the impact of the $24.20 rate on the customer base and to advise the Commission if it appears that a significant loss of customers will result.

The Examiner also approves the reconnection charge of $2.00 plus the monthly flat rate of $24.20 for each month of disconnection for those customers who are disconnected from the water system at the customer's request.

The Examiner also orders that the billing frequency be quarterly and for service in advance to aid the Applicant's cash flow.

IV.

The Examiner concludes that the Applicant's service to its customers is adequate. Mr. Durham found the system to be well maintained and operating properly. The only deficiency he noted was a leaking check valve located at the primary well head. This problem is recurring as a result of the high pressure at the elevation of the system. The Applicant is aware of the problem and keeps spare check valves on hand for replacement.

There were no customer complaints about service.

V.

This Order will provide that the rates become effective for service rendered on and after January 1, 1985.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates contained in Schedule A attached hereto shall be approved as the just and reasonable rates of the Applicant. Such rates shall become effective for service rendered on and after January 1, 1985. These rates are deemed filed with the Commission pursuant to G.S. 62-138.

2. That the Applicant shall mail the Notice to Customers attached hereto as Appendix B to all of its customers in the quarterly billing beginning on January 1985.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of December 1984.

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

APPENDIX A
SCHEDULE OF RATES
Flat Mountain Estates Water Systems, Inc.
SERVICE AREA

Flat Top Mountain Subdivision
Macon County
North Carolina

WATER RATE SCHEDULE

FLAT RATE: (Residential Service)
$24.20 per month

CONNECTION CHARGES: $400 per tap

RECONNECTION CHARGES:

| | |
|---|---|
| If water service cut off by utility for good cause (NCUC Rule R7-20F): | $4.00 |
| If water service discontinued at customer's request (NCUC Rule R7-20F): | $2.00 plus the flat rate of $24.20 per month for each month service is discontinued |

BILLS DUE: On billing date.
BILLS PAST DUE: Fifteen (15) days after billing date
BILLING FREQUENCY: Shall be quarterly for service in advance.

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-726, Sub 1, this 20th day of December 1984.

APPENDIX B
DOCKET NO. W-726, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of | |
| Application by Flat Mountain Estates Water Systems, Inc., Route 1, Box 236-B, Highlands, North Carolina, for Authority to Increase Rates for Water Utility Service in Flat Top Mountain Subdivision, Macon County North Carolina | NOTICE TO CUSTOMERS |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has approved the following rates for Flat Mountain Estates Water Systems, Inc.:

FLAT RATE: (Residential Service)
$24.20 per month

CONNECTION CHARGES: $400 per tap

RECONNECTION CHARGES:

| | |
|---|---|
| If water service cut off by utility for good cause (NCUC Rule R7-20F): | $4.00 |
| If water service discontinued at customer's request (NCUC Rule R7-20F): | $2.00 plus the flat rate of $24.20 per month for each month service is discontinued |

BILLS DUE: On billing date.
BILLS PAST DUE: Fifteen (15) days after billing date.
BILLING FREQUENCY: Shall be quarterly for service in advance.

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 BY ORDER OF THE COMMISSION
This the 20th day of December 1984.

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

DOCKET NO. W-89, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Hensley Enterprises for an<br>Adjustment in Its Rates and Charges Applicable<br>to Water Service in North Carolina | ) | RECOMMENDED ORDER<br>DENYING RATE INCREASE<br>BUT APPROVING ASSESSMENT |

HEARD IN: Council Chamber, City Hall, Corner of South Street and Franklin Boulevard, Gastonia, North Carolina, on Wednesday, September 12, 1984, at 9:00 a.m.

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

APPEARANCES:

For the Applicant:

Charles F. Powers, III, Parker, Sink, Powers and Potter, Attorneys at Law, Post Office Box 1471, Raleigh, North Carolina 27602

For the Intervenors:

Vickie L. Moir, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602
For: The Public Staff, North Carolina Utilities Commission, representing the Using and Consuming Public

Angeline M. Maletto, Associate Attorney General, Attorney General's Office, Post Office Box 629, Raleigh, North Carolina 27602
For: The Attorney General's Office, representing the Using and Consuming Public

Sarah C. Young, Associate Attorney General, Post Office Box 629, Raleigh, North Carolina 27602
For: The Attorney General's Office, representing the Division of Health Services and the Using and Consuming Public

Kenneth C. Wright, Route 3, Box 188, Bessemer City, North Carolina 28016
For: Himself, a customer of the Company

PARTIN, HEARING EXAMINER: On April 2, 1984, Hensley Enterprises, Inc. (Hensley, the Applicant or the Company), Lowell, North Carolina, filed an application with the Commission for authority to increase its rates for water utility service in all its service areas in North Carolina.

On April 25, 1984, the Commission issued an Order declaring the application a general rate case, suspending the proposed rates, scheduling a hearing, and requiring that public notice be given to all customers affected by

the proposed new rates. On May 3, 1984, the Commission issued an Order Amending Notice to the Public. On May 31, 1984, the Applicant filed a Certificate of Service showing that the public notice had been given as required.

Protest letters from Mr. Frank E. Harkey, Jr., were filed with the Chief Clerk on July 5, 1984.

On July 25, 1984, Angeline M. Maletto filed a Motion to Intervene on behalf of the Attorney General. Kenneth Wright filed a Notice of Intervention on his own behalf on August 31, 1984. On September 7, 1984, Sarah C. Young, Assistant Attorney General, filed a Motion to Intervene on behalf of the Water Supply Branch, Division of Health Services. The Public Staff filed Notice of Intervention on September 11, 1984.

The matter came on for hearing as scheduled in Gastonia on September 12, 1984.

The following customers appeared and offered testimony: Kenneth C. Wright, Frank Harkey, Peter Beck, Harold Harris, Jimmy Haas, Mary Woods, Bertie Clemmons and Charles Slagle. Five of the eight public witnesses who testified were residents of Morningside Park.

Through its attorney, the Applicant stipulated that the operating ratio method of setting rates as recommended by the Public Staff should be used in this proceeding. The Applicant also stipulated through counsel that it accepted and did not contest the adjustments to revenues and expenses made by the Public Staff except for the Public Staff's adjustment to salaries and wages.

The Applicant presented the testimony of Arnold T. Hensley, President of the Company, and Judy Hensley, wife of Arnold Hensley and an employee of the Company. The Applicant also presented the testimony and exhibits of Kerry Jarman, an accountant who began performing work for the Company in February 1984.

The Public Staff offered the testimony of John Salengo, accountant with its Accounting Division; Andy Lee, engineer with its Water Division; and Jim Adams, engineer with the North Carolina Division of Health Services, Western Office. The Public Staff also offered into evidence the affidavit of David T. Bowerman, public utilities financial analyst with its Economic Research Division.

At the close of the hearings, oral arguments were presented on the salary adjustments and the continuation or termination of the assessment.

As a result of the Applicant's stipulation, the issues to be decided are: (1) the appropriate level of wages and salary expense, (2) whether the 15% assessment previously allowed the Applicant should be continued or terminated, and (3) what actions should be taken by the Applicant to improve the service provided its customers.

Upon consideration of 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 Applicant, Hensley Enterprises, Inc., is a public utility providing water utility service to more than 1600 customers in 34 subdivisions in Gaston County, North Carolina, and is subject to the jurisdiction of this Commission.

2. The Applicant's present and proposed rates are as follows:

Present Rates:

| Metered Rates | |
|---|---|
| 0-2000 gallons per month | $6.50 Minimum |
| All over 2000 gallons per month | $1.30/1000 gallons |

Flat Rate : $10.50 per month

Proposed Rates:

| Metered Rates | |
|---|---|
| 0-2000 gallons per month | $8.00 Minimum |
| All over 2000 gallons | $1.60/1000 gallons |

Flat Rate: $12.50 per month

3. The Public Staff proposed that the present rates not be increased, but rather be continued in effect.

4. The Applicant by its Application is seeking approximately $52,856 in additional annual revenue in this proceeding based on average metered usage of 6,293 gallons per customer per month.

5. The operating ratio method is appropriate for setting rates in this proceeding.

6. The appropriate level of annual salaries for the Applicant is $75,094 comprised of $30,000 for the President of Hensley Enterprises, Arnold Hensley, and $45,094 for other employees of the Applicant. The appropriate level of administrative or office salaries is $15,000.

7. The Applicant's proposed rate increase would result in net operating income for return in the amount of $56,269 and a resulting margin on expenses of 30.40%. Under the present rates for the test year, the Applicant had net operating income for return in the amount of $29,876 with a resulting margin on expenses of 16.14%. That 16.14% margin relates to an operating ratio of 87.13%, including taxes and interest, or 83.72%, excluding taxes and interest.

8. Many of the Applicant's water systems are still in need of capital improvements. Priority in making capital improvements should be given to Morningside Park, Sunset Park, MacGregor Downs, Maplecrest, and Carmel Park.

9. The 15% assessment approved in the Applicant's last two rate cases should be continued under the conditions hereinafter set forth in this Order. The assessment, as well as a substantial part of the net income of the Company, should be used to make the needed capital improvements to the Applicant's existing water systems.

10. The rates proposed by the Public Staff, which are the present rates, will produce an operating ratio of approximately 85.68%, including taxes and interest, or 81.84%, excluding income taxes and interest. The present rates based on the findings of the Hearing Examiner regarding the proper test year level of operating revenues and operating revenue deductions, will produce an operating ratio of 87.13% including taxes and interest, and 83.72% excluding income taxes and interest. The present rates are not unjust or unreasonable and should be continued in effect. A substantial part of the net income should be applied to the making of capital improvements in the water systems.

11. The Applicant should be prohibited from adding any additional water systems until upgrading of the existing systems is completed.

12. The Applicant should make appropriate changes to notify its customers of scheduled service interruptions and to improve its customer service availability.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 5

The evidence supporting these findings of fact is contained in the application of the Applicant, in the testimony and Exhibit 2 of witness Lee, and in the stipulation of the parties that the operating ratio method should be used in setting rates in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is contained in the testimony and exhibits of Public Staff witnesses Salengo and Lee and the testimony of Applicant's witnesses Arnold Hensley, Judy Hensley and Kerry Jarman, as well as the Commission's final order in the Applicant's previous general rate case, Docket No. W-89, Sub 20, of which judicial notice is taken.

The only "money issue" here involved, in view of the Applicant's stipulation, is the level of salary expenses. The Company sought the amount of $101,760, comprised of $52,000 salary for Arnold Hensley and $49,760 for other employees.

The Commission notes that the salary level approved in the last rate case, decided in December 1982 (based on a 1981 test year), was $62,000, which the Applicant had sought in its application in that case and the Public Staff had accepted. However, at the hearing, the Applicant proposed through the testimony of its witness, Mr. Hensley, that salary expense should be updated and increased to approximately $94,500. The Commission concluded that such "update" would result in a totally excessive and unreasonable level of salaries and consequently rejected such proposal. In spite of the Commission's ruling in the last rate case, the Applicant has proceeded to pay Mr. Hensley the $52,000 salary disallowed by the Commission.

The Public Staff has recommended the appropriate level of salaries in this proceeding to be $70,732, comprised of $30,000 salary for Arnold Hensley, President of Hensley Enterprises, and $40,732 for the Applicant's other employees. Under the Public Staff's recommended level of salaries, Mr. Hensley's salary would be reduced from $52,000 per Application to $30,000, and total salaries for the Applicant's other employees would be reduced from $49,760 per the Application to $40,732.

Public Staff witness Salengo testified that he used the $26,450 level of salary for Mr. Hensley approved by the Commission in the previous rate case as a base to increase Mr. Hensley's salary to $30,000 in this proceeding. Mr. Salengo testified under cross examination that his decision to increase Mr. Hensley's salary from $26,450 to $30,000 was based mainly on customer growth during the intervening period. Mr. Hensley in direct testimony contended that the $52,000 annual salary, which he has been paying himself, is the proper level of compensation for his duties and the time spent in those duties. Mr. Hensley testified that he spends over 70 hours a week working for the Applicant. Mr. Hensley further testified on his efforts to conserve funds for the Applicant by not subcontracting out much of the work on the systems but by performing the work himself using wholesale prices and trade discounts available to him, all at great savings to the customer. Applicant's witness Jarman testified that Mr. Hensley's salary was reasonable based on his duties for the Applicant.

Public Staff witness Lee testified that the $52,000 salary is unjustifiable in view of the poor management of Hensley Enterprises. Witness Lee testified that, under Mr. Hensley's management, the water systems were not constructed in accordance with approved plans, that water system expansions had been made without obtaining plan approval from the Division of Health Services (DHS), and that the Applicant did not perform adequate preventive maintenance. Witness Hensley admitted under cross examination that unapproved water system expansions had been made with his knowledge, that plant modifications were presently being made to his water system without prior plan approval from DHS, and that he had not been keeping up with which of his systems have or do not have DHS plan approval. Mr. Hensley also testified that he had made the decision to deviate from the list of priority improvements established at the last rate case, which he had agreed to make with assessment funds, and that he had spent assessment funds on non-priority systems without completing the priority improvements.

Mr. James P. Adams of the Division of Health Services testified that one of the problems his office experiences with the Applicant is the continuing problem of water systems being expanded or modified without prior approval or not being constructed per approved plans. Mr. Adams testified that of the three new systems which the Applicant has acquired since the last rate case, only one is presently approved as constructed. Mr. Adams also noted that most of the Applicant's thirty-four systems have had plans approved by DHS at one time or another but that only eight of these systems were approved at the time of the hearing.

The Commission concludes in this case, as it did in the Applicant's last rate case, that the $52,000 annual salary for Mr. Hensley is and has been "totally excessive and unreasonable." The Commission concludes that the $30,000 salary allowed Mr. Hensley by the Public Staff is adequate under the

facts of this case. In deciding that the $30,000 salary level is appropriate, the Examiner has considered the management problems experienced by the Applicant, particularly the Applicant's persistent failure to seek the approval of the Division of Health Services before making plant expansions and modifications. Also controlling in this decision is the fact that the Applicant must rely on the 15% customer assessment to undertake significant capital improvements to the water systems. Despite the strong objections of the Public Staff and the Attorney General, this Order will permit the continuation of the 15% assessment for two more years. A water company that is unable to obtain capital funds except from the involuntary contributions of its customers is in an unfavorable position to contend that its President deserves a 98% increase in salary over the salary level approved in 1982. The Examiner accepts that Mr. Hensley's working hours exceed the customary 40-hour week and that he is on-call seven days a week. The salary level sought for Mr. Hensley may be appropriate under normal circumstances in a company providing overall good service in compliance with the rules and orders of the Commission and the Division of Health Services. But the Applicant has a large task ahead of it to bring all of its systems into compliance with the rules and regulations of the Division of Health Services. Consequently, this Order adopts the $30,000 salary for Mr. Hensley which was recommended by the Public Staff and expressly disallows the $52,000 salary sought by the Applicant.

As to the appropriate level of salaries to be paid to the Applicant's other employees: Mr. Salengo testified that in the two years since the end of the test period in the last rate case, Docket No. W-89, Sub 20, customer growth increased 3.8% in 1982 and a further 6.4% in 1983, and that during this same period maintenance personnel salaries increased 6.69% (from $26,169 to $27,920) and administrative staff salaries increased 136.11% (from $9,250 to $21,840). Mr. Salengo recommended that the administrative staff salaries be increased 15% over the level determined appropriate in the last rate case (from $9,250 to $10,638) and operational personnel salaries be increased to reflect the end-of-period level of salaries based on two full-time maintenance employees. Mr. Salengo recommended a salary level of $28,880 which is $960 higher than the $27,960 included in the application by the Applicant for maintenance employee salaries.

The Applicant disputed the level of administrative staff salaries proposed by the Public Staff. Mr. Hensley and Judy Hensley testified that two clerical personnel were needed instead of one. Mr. Lee, however, testified that based on his observations of office procedures only one clerical employee was required instead of two as presently funded by the Applicant. Mr. Lee noted that the billing machine used by the Applicant rendered unnecessary two clerical employees. Mr. Lee testified that he observed that three to four bills per minute could be processed using the billing machine. Mr. Hensley and Mrs. Judy Hensley testified that two clerical employees were required to do the billing and other required office duties. Under cross-examination, neither Mr. Hensley nor Mrs. Hensley knew how many bills could be processed per minute using the billing machine. Mr. Lee also testified that two companies were operating from the Applicant's office, Hensley Enterprises and Lowell Pump, and that both clerical employees performed some services for Lowell Pump as well as Hensley Enterprises. Mr. Lee recommended that only one clerical employee should be paid by Hensley Enterprises and the other should be paid by Lowell Pump.

The Examiner is of the opinion, and so finds and concludes, that $15,000 is the appropriate level for administrative salaries in this proceeding. The Hearing Examiner concludes that a level of administrative salaries of $15,000 is reasonable for a company of this size given the duties and responsibilities of such employees as described in the hearing.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Public Staff witness Salengo presented $33,238 as the Company's net operating income for return under current rates after adjustments previously accepted by this Commission, and $66,640 under the rates proposed by the Applicant. In his exhibit, Mr. Salengo calculated that these amounts would produce margins of 18.39% and 36.87%, respectively, on operating revenue deductions of $180,756. Further, Mr. Salengo testified that a margin on expenses of 18.39% would provide an operating ratio of 85.68% if taxes and interest are included and 81.87% if taxes and interest are excluded. This Commission finds witness Salengo's calculations correct and acceptable. As discussed hereinabove the Hearing Examiner has accepted the position of the Public Staff with regards to operating revenues. The Hearing Examiner however has made an adjustment to operating revenue deductions proposed by the Public Staff to reflect increased office and administrative salaries of $4,362. Based upon the conclusions reached herein, the Hearing Examiner finds operating revenues of $232,177, operating revenue deductions of $202,301 and resulting operating income of $29,876 reasonable and appropriate for use herein. The resulting margin on expenses is 16.14% which approximates the 16.2% margins advocated by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding comes from the testimony of the customers, Company witness Hensley, and engineers Lee and Adams. Testimony from these witnesses indicated that improvements had not been completed pursuant to the order of priority agreed upon by the Applicant, the Public Staff, and DHS. Assessment funds were expended instead on other systems. The decision to do so was made by Mr. Hensley without notice to and approval by the Commission. The Applicant should complete the upgrading of all its existing systems to comply with the requirements of the Division of Health Services. Priority shall be given to the following systems:

1. Morningside Park
2. Sunset Park
3. MacGregor Downs
4. Maplecrest
5. Carmel Park

The Commission concludes that the Applicant shall be required to complete upgrading of the five systems listed in this finding within two years from the effective date of this Order. Priority within this group should be given to Morningside Park and Sunset Park. The evidence is not wholly satisfactory as to what improvements are needed in Morningside Park and Sunset Park and the costs of these improvements. This Order will require the Applicant to meet with the Commission Staff, the Public Staff, and the DHS in order to agree upon the improvements needed in these five systems, with priority being given to Morningside Park and Sunset Park. The Applicant should file a report setting

forth the agreement within 60 days from the effective date of this Order. It is the intention of the Commission that the improvements agreed upon for Morningside Park and Sunset Park should begin no later than March 1985. The Examiner will also ask that the Commission engineering staff, together with the requested assistance of the Public Staff and the Division of Health Services, supervise and monitor the improvements to these five systems.

The Commission also notes that considerable improvements and upgrading of the Applicant's other systems are needed. The Commission notes that only eight of the Applicant's existing thirty-four systems were in compliance with DHS approval requirements as of the time of the hearing, according to testimony of James Adams of DHS. Mr. Adams also testified that practically all of the Applicant's systems have had plans approved by DHS at one time or another and that the main problems of non-compliance have resulted from the Applicant's practice of expanding and modifying systems without obtaining prior approval or following approved plans. Mr. Lee testified that the majority of the capital improvements needed on the Applicant's systems were equipment and facilities which should have been constructed initially and of which the costs should have been recovered from tap-on fee monies which the Applicant has received. Mr. Lee testified that plans submitted to DHS by the Applicant for approval required such equipment and facilities.

The Commission concludes that, in addition to the five systems listed above, the Applicant should complete upgrading of its other systems in the manner and priority which may be established by the Division of Health Services.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding is contained in the testimony of the customer witnesses, Applicant's President Hensley, Public Staff accountant Salengo, Public Staff engineer Lee, and Division of Health Services engineer Adams. The Commission also takes judicial notice of the Commission's Orders of January 25, 1982, in Docket No. W-89, Sub 18, and of December 23, 1982, in Docket No. W-89, Sub 20.

The Public Staff, the Attorney General, and the customer witnesses recommended that the 15% assessment for capital improvements be terminated. The Applicant recommended that the assessment be continued at least until January 30, 1988.

Public Staff witness Lee testified that the 15% assessment should be terminated. Mr. Lee cited the requirements of the Commission's Order of December 23, 1982 in Docket No. W-89, Sub 20, and stated that:

> "It is my opinion that the Applicant has not complied with the Commission requirements set forth in the referenced Order in a sufficient manner to warrant continuation of the assessment charges."

The Order in the last rate case, in part, stated:

> "Consequently, the continuation of this surcharge beyond Applicant's next rate case or for two more years, whichever occurs first, will be heavily dependent upon the following factors: (1) that

> the surcharge funds be strictly accounted for and expended strictly in accordance with the prior approval of the Commission, (2) that the surcharge funds result in substantial capital improvements obtained and made in the most economical possible manner, (3) that the Applicant substantially supplement the surcharge funds by reinvesting a significant portion of its profits in the capital improvements needed, (4) that the Applicant make on-going efforts to obtain capital funds from traditional sources and means other than surcharging its ratepayers, and (5) that the Applicant take immediate action to fix the numerous small deficiencies in its systems which require little, if any, investment of effort or money."

The evidence presented showed that the assessment funds have not been totally expended in accordance with the prior approval of the Commission. Public Staff Cross Examination Exhibit No. 1 showed that the Applicant agreed in a December 1, 1982, filing to make improvements in accordance with a certain list of priorities. Mr. Hensley acknowledged on cross-examination that none of the specific improvements listed, other than the installation of air/water volume controls in MacGregor Downs, had been made prior to two months before the hearing. Although the Order in the last rate case required the Applicant to file quarterly reports regarding the receipt and disbursement of assessment funds and the capital improvements made, Mr. Hensley testified that the quarterly reports for 1983 were not filed until January, 1984.

Witness Lee also noted that the $99,500 level of salaries proposed by Hensley in the last rate case was determined by the Commission to be excessive and unreasonable. In spite of this determination, the Applicant showed annual salaries of $101,760 for the 1983 test year, including a $25,550 increase in the salary level allowed Company President Hensley in the 1982 case.

> "During the 18-month period since the last rate case, the level of salary expense has increased by approximately $60,000. It is my opinion that the $60,000 in Company profits which has been paid out as 'excessive salaries' over the past 18 months, should have been reinvested in capital improvements."

Witness Salengo also noted that if the Company had paid its employees the salaries allowed by the Commission, more money would have been available to benefit the water systems.

By Applicant's Exhibits 1 and 2, which were letters from banks denying the Company loans to make capital improvements, Mr. Hensley attempted to show that traditional sources of capital such as bank loans were not available to the Company. When questioned regarding loans outstanding, Mr. Hensley stated that the loans were small and that he had personally guaranteed payment. Mr. Hensley stated he did not feel that he should have to personally guarantee loans for the corporation. Mr. Hensley also testified that banks will not loan money to a company that is losing money.

The Applicant Hensley at the hearing and in its proposed order frankly acknowledged that the assessment funds have not been expended specifically in accordance with the list of priorities agreed upon by the parties in 1982 and approved by the Commission. The Applicant pointed out, however, that there was no evidence that the assessment funds have not been used to upgrade those water

systems which needed improvement. Mr. Lee acknowledged that the capital improvements which have been made would enable the Applicant to provide better service to the customers. Mr. Adams testified that the Applicant has made a number of improvements to its water systems. He stated the Applicant had no approved water systems in 1982. "Now we have eight approved water systems that meet all our standards." He replied to a question from the Examiner that the eight approved systems were a result of the assessment being made available to the Company.

Mr. Hensley testified that there are still substantial improvements needed to be made which will require significant capital expenditures exceeding $200,000. The other witnesses also agreed that substantial improvements needed to be made.

The Examiner is of the opinion that the 15% assessment should be continued subject to the conditions hereafter set forth in this Order. There is substantial evidence that the 15% assessment approved in 1982 has resulted in numerous and significant improvements to the Applicant's water systems. The number of approved systems has increased from none in 1982 to eight at the time of the September 12, 1984, hearing. The assessments are clearly responsible for the needed improvements having been made. The Examiner is concerned, however, about the failure of Mr. Hensley to follow the priority guidelines approved by the parties in Docket No. W-89, Sub 20. If Mr. Hensley was convinced that the assessment monies could have been expended more appropriately elsewhere, he should have requested approval from the Commission to modify the priority agreement.

The Examiner is also concerned about the failure of the Applicant to find sources of capital other than the assessment. In its Order of December 23, 1982, the Commission cautioned the Applicant that the funds provided by the assessment

> "cannot be the sole source of financing of needed capital improvments; the Applicant will have to substantially supplement such funds from other sources, including the reinvestment of a portion of the profits derived from its utility operations as the return allowed herein is designated and intended to permit. After all, no other utility in this State is allowed a surcharge for this purpose. . . . (emphasis added)"

The Public Staff and the Attorney General pointed out that, while the customers were being required to make capital contributions to the system in the form of the assessment, Mr. Hensley, in disregard of the Commission's Order of December 23, 1982, awarded himself a salary increase of almost 100%. The amount of the salary increase paid annually to Mr. Hensley since January 1982 would offset the assessment collected annually. If Mr. Hensley had forgone the salary increase and applied the money to making the capital improvements, the Applicant would have had sufficient funds to make the improvements and could have avoided the need for assessing the customers of the Company.

As the Orders of the Commission have pointed out, the imposition of the assessment upon the customers is extraordinary relief. The customers are being required to make involuntary capital contributions to the Applicant. The conduct of the Applicant and its President have called into question the good

faith of the Applicant in complying with the Orders of the Commission. The Commission must balance the needs of the Applicant's customers for improved water service against the failure of the Applicant to comply fully with the Commission's Orders. This Order will approve the continuation of the assessment until January 30, 1987, but only on condition that a substantial portion of the Applicant's net income is applied to the making of the improvements ordered elsewhere in this Order.

Failure of the Applicant to apply a substantial portion of its net income to the making of the improvements could result in the termination of the assessment upon the Commission's own motion or upon motion of any party.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding is found in the testimony of witness Salengo, the affidavit of Public Staff financial analyst Bowerman, and in the record as a whole. Witness Salengo's exhibit showed that under the present rates after adjustments the Applicant is experiencing a 18.39% return. Mr. Salengo's testimony indicated that the operating ratio associated with the 18.39% return is 85.68%, including taxes and interest and 81.87%, excluding income taxes and interest. As noted by witness Salengo, the return the Applicant is experiencing under the present rate exceeds that recommended by witness Bowerman. Mr. Bowerman determined that a 16.2% margin on expenses which relates to an operating ratio of 87.09% (including taxes) or 86.06% (excluding taxes) is reasonable. Witness Salengo noted that in view of the repairs that remain to be made and the Public Staff's recommendation that the assessment be terminated, he was not recommending a decrease in rates as would result from Mr. Bowerman's recommendation.

The Hearing Examiner as discussed in this Order has accepted the Public Staff position with regard to the proper end of test year level of operating revenues. The Hearing Examiner has likewise accepted the Public Staff's proposed level of operating revenue deductions with the exception of an adjustment to office and administrative salaries. Based upon the findings and conclusions reached herein, the Hearing Examiner finds operating revenues of $232,177 operating revenue deductions of $202,301 and resulting operating income of $29,876 appropriate. This results in a margin on expenses of 16.14% which the Hearing Examiner finds just and reasonable particularly in view of the decision to continue as assessment in this case.

This Order will require that significant improvements continue to be made to the system. The Order will also require that a substantial portion of the Applicant's net income, in addition to the assessments, be applied to making these improvements. The Examiner therefore concludes that the present rates should be continued and that such rates are not unfair or unreasonable to the Applicant and its customers.

The findings and conclusions reached heretofore and herein by the Hearing Examiner are detailed in the following schedule:

HENSLEY ENTERPRISES, INC.
Docket No. W-89, Sub 24
STATEMENT OF OPERATING INCOME AND MARGIN ON OPERATING
REVENUE DEDUCTIONS REQUIRING A RETURN

For the Test Year Ended December 31, 1983

| | |
|---|---|
| Total operating revenues | $232,177 |
| Operating revenue deductions | |
| Operation and maintenance expenses | 163,580 |
| Depreciation expense | 12,560 |
| Other taxes | 8,978 |
| Franchise Tax | 9,272 |
| State Income Tax | 2,267 |
| Federal Income Tax | 5,644 |
| Total operating revenue deductions | 202,301 |
| Total operating income for return | 29,876 |
| Operating revenue deductions requiring a return | 185,118 |
| Return % | 16.14% |

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 11

The evidence relating to this finding is found in the testimony of Company President Hensley and of Public Staff witness Lee. Applicant has acquired three additional water systems since the last rate case: Country Acres, with 17 customers; Country Meadows, with 90 customers; and Heather Acres, with 46 customers. The Applicant has invested $8,595 in construction in Country Meadows Subdivision. Applicant received no prior approval for acquiring the systems either from the Commission or from the Division of Heath Services. Mr. Hensely offered testimony supporting the Company's being allowed to add new systems. Witness Lee testified that it is not in the best interest of existing customers for the Applicant to be expending resources on new systems while existing systems need improvements.

In view of the need for capital improvements to be made to the Applicant's existing systems, and the need for the assessment to pay for them, the Commission finds and concludes that the Applicant should not be allowed to add new systems without further order of the Commission and should instead concentrate on making the needed capital improvements on the existing systems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Evidence supporting this finding is contained in the testimony of public witness Mrs. Jimmy Haas, who testified that she did not find anyone at the Applicant's office on at least four occasions when she went to pay her water bill; she also stated her family's frustration with not being informed about interruptions in water service. Public witnesses Mary Woods and Bertie Clemmons, both residents of Morningside Park Subdivision, testified about no improvements, since the assessment, in their low water pressure. Public witness

Charles Slagle testified about his inability to contact anyone at the office during working hours to arrange to have his water turned off while he was installing another bathroom.

On cross examination by Mr. Wright, Applicant witness Hensely testified that if his customers wanted to call him, they would have to look under "Lowell Pump and Water Company" rather than "Hensley Enterprises, Inc.," the utility company. Unless customers keep their water bill stubs, they would not know how to reach Applicant's business during working hours.

IT IS, THEREFORE, ORDERED as follows:

1. That the schedule of rates attached hereto as Appendix A is hereby approved for water service rendered by Hensley, Enterprises, Inc.

2. That said schedule of rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

3. That, in addition to the rates approved herein, the Applicant shall be authorized to continue to impose a 15% assessment on each cycle (monthly) bill to each of its customers for water utility service, such assessment to be used solely for the purpose of making capital improvements to the water systems owned and operated by Applicant and used in furnishing water utility service to its customers. The amount of the assessment shall be stated separately on each bill. None of the assessment funds on hand or collected after the date of this Order shall be expended unless and until the specific written approval of the Commission shall have been first obtained by the Applicant, pursuant to the terms of Ordering Paragraph 5 set forth hereinafter, such approval to be in response to filings to be made by the Applicant with the Commission showing generally the proposed amount and purpose of each such expenditure, the water system or systems involved, together with a timetable showing the date each proposed capital improvement will be begun and completed, or, expended in such manner as the Commission shall by order direct.

Amounts of assessments which are on hand as of the date of this Order previously collected and all assessment amounts collected thereafter shall be physically segregated and deposited in a separate interest-bearing bank account and held there in trust by the Applicant with any and all further or future withdrawals or expenditures of such sums being made only in accordance with the written approval of this Commission.

The assessment funds contributed by the Company's customers will be treated as customer-contributed capital in future rate proceedings. Accordingly, the customers will be relieved of paying rates on capital contributed by them.

Third, it is the understanding of the Commission, consistent with its understanding of the applicable regulations of the Internal Revenue Service, that the assessment approved herein will not be subject to federal or state income taxes and, as such, is properly excludable from utility income. This tax consideration should serve to minimize the Applicant's cost of providing water utility service to its customers.

The approval of the 15% assessment herein is an extraordinary remedy. All assessment funds shall be used solely to make those capital improvements (and not for repairs or any operating expenditures) approved by the Commission by future orders issued in this docket. The funds received under the assessment shall be recorded and maintained in a separate account as well as being physically segregated and held in trust by Applicant. The continued assessment approved shall expire in all events on January 31, 1987 unless sooner terminated by Commission Order. The continuation of the assessment approved herein until January 31, 1987 shall be dependent upon Applicant's compliance with the provisions of this Order; provided, further, that, in addition to the assessment approved herein, the Applicant shall apply a substantial part of its net income to make the capital improvements ordered in this Order, and the assessment approved herein shall be conditioned upon such substantial application.

The quarterly reporting requirements required in the ordering paragraph 3 of the Order of January 25, 1982, Docket No. W-89, Sub 18, shall remain in effect.

The approval of the assessment herein does not relieve the Applicant of making improvements with funds secured through its own financing and applicant shall continue to attempt to secure such financing.

The assessment shall not apply to Country Meadows, Country Acres, and Heather Acres Subdivisions.

4. That the Applicant shall not acquire or add on any additional systems until upgrading of the existing systems is completed and upon certification to the Commission that all existing systems are constructed in accordance with plans approved by the State Division of Health Services, and then only after further Order of the Commission.

5. That capital improvements are to be made in accordance with the priorities listed in the evidence and conclusions for Finding of Fact No. 9. The Applicant, within 60 days after the effective date of this Order, shall file for approval by the Commission a Schedule of Capital Improvements, and the cost thereof, in the following subdivisions:

1. Morningside Park
2. Sunset Park
3. MacGregor Downs
4. Maplecrest
5. Carmel Park

Priority shall be given to Morningside Park and Sunset Park. In preparing this schedule the Applicant shall seek the assistance of Andy Lee of the Public Staff, James P. Adams of the Division of Health Services, and Rudy Shaw of the Commission Staff.

6. That Applicant list the water company as Hensley Enterprises, Inc., in the local phone directory rather than as Lowell Pump and Water, as presently listed. Applicant shall submit certification, properly signed and notarized, showing compliance with this Order. The Applicant also shall notify all customers that the appropriate telephone number to call is so listed.

7. That, if it has not already done so, Applicant shall set up a telephone answering machine to record incoming service calls when no one is available to receive messages.

8. That the Applicant give its customers at least 24 hours notice of scheduled service interruptions by appropriate signs posted in the subdivision subject to the scheduled interruption.

9. That a copy of the Notice to Customers attached hereto as Appendix B shall be mailed or hand delivered to all of the Applicants's customers in conjunction with the next regularly scheduled billing process which shall occur after this Recommended Order becomes effective and final.

ISSUED BY ORDER OF THE COMMISSION.
This is the 2nd day of November 1984.

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

APPENDIX A
SCHEDULE OF RATES
HENSLEY ENTERPRISES, INC.
for
Providing Water Utility Service
In All its Service Areas in North Carolina

Metered Rates:

| | | |
|---|---|---|
| First 2,000 gallons per month | - | $6.50 (minimum charge) |
| All over 2,000 gallons per month | - | $1.30/1,000 gallons |

Flat Rate: $10.50 per month

Assessment for Capital Improvements:
The Company is authorized to impose a 15% assessment on each monthly bill to its water customers in each of its water systems, such assessment to be used solely for the purpose of making the necessary capital improvements to the Company's water systems pursuant to the conditions set forth in the Commission Order of November 2, 1984, approving these rates. (The assessment shall not apply in Country Meadows, Country Acres, and Heather Acres Subdivisions.)

Tap-on Fee (Connection Charge:

| | |
|---|---|
| For 3/4" line | - $250.00 |
| For other than 3/4" line | - Actual cost of making connection |

Reconnection Charge:
$ 5.00 for first reconnection
$10.00 for second reconnection
$15.00 for third and all other reconnections

Billing Frequency: Monthly, for service in arrears
Bills Due: On billing date
Bills Past Due: 15 days after billing date

Finance Charge for Late Payment
1% per month on unpaid balance still past due 25 days after billing date

Customer Deposits: 1/12's of estimated annual charge

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-89, Sub 24 on this the 2nd day of November 1984.

APPENDIX B

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Hensley Enterprises for an<br>Adjustment in Its Rates and Charges<br>Applicable to Water Service in North Carolina | ) | NOTICE TO CUSTOMERS |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has denied the application of Hensley Enterprises, Inc. for an increase in its rates and charges for water utility service in its service areas in Gaston County. The rates presently in effect, which were approved in December 1982, will remain the rates of the Company.

The Commission also approved the continuation of the 15% assessment until January 31, 1987. In continuing the assessment, the Commission noted that numerous and significant improvements to the Applicant's water systems have resulted from the assessment.

The Commission ordered that the Company continue to make improvements to its water systems under the supervision of the Division of Health Services, the Public Staff, and the Commission. Priority in making the improvements is to be given to the following subdivisions: Morningside Park, Sunset Park, MacGregor Downs, Maplecrest, and Carmel Park.

The Applicant's rates and charges are as follows:

Metered Rates:

| | | |
|---|---|---|
| First 2,000 gallons per month | - | $6.50 (minimum charge) |
| All over 2,000 gallons per month | - | $1.30/1,000 gallons |

Flat Rate: $10.50 per month

Assessment for Capital Improvements:
The Company is authorized to impose a 15% assessment on each monthly bill to its water customers in each of its water systems, such assessment to be used solely for the purpose of making the necessary capital improvements to the Company's water systems pursuant to the conditions set forth in the Commission Order of November 2, 1984, approving these rates. (The assessment shall not apply in Country Meadows, Country Acres, and Heather Acres Subdivisions.)

Tap-on Fee (Connection Charge:

| | |
|---|---|
| For 3/4" line | - $250.00 |
| For other than 3/4" line | - Actual cost of making connection |

Reconnection Charge:

$ 5.00 for first reconnection
$10.00 for second reconnection
$15.00 for third and all other reconnections

Billing Frequency: Monthly, for service in arrears
Bills Due: On billing date
Bills Past Due: 15 days after billing date

Finance Charge for Late Payment

1% per month on unpaid balance still past due 25 days after billing date

Customer Deposits: 1/12's of estimated annual charge

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-89, Sub 24 on this the 2nd day of November 1984.

DOCKET NO. W-89, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application of Hensley Enterprises for an Adjustment<br>in Its Rates and Charges Applicable to Water Service<br>in North Carolina | ) | ORDER MODIFYING<br>RECOMMENDED ORDER |

PARTIN, HEARING EXAMINER: The Examiner is of the opinion that the Recommended Order of November 2, 1984, in this docket should be modified as hereinafter set forth.

Finding of Fact No. 11, the Evidence and Conclusions for Finding of Fact No. 11, and Ordering Paragraph No. 4, find, conclude, and order that the Applicant shall not acquire or add any new water systems to its existing systems until such time as it has completed the capital improvements required by the Recommended Order. The Examiner reaffirms them. The modification set forth herein expressly states that the Applicant shall not be precluded from filing an application with the Commission for the acquisition or addition of new systems; in the event that it does so, however, the Applicant must show that the acquisition of the new systems will not impair its ability to comply with the provisions of the Recommended Order with respect to the making of the capital improvements to its existing systems.

The parties expressed their concern about the Applicant's expansion of existing systems and the acquisition of new systems without first obtaining proper approval from the appropriate state agencies. This order will call the Applicant's attention to G.S. 62-110.

IT IS, THEREFORE, ORDERED that the Recommended Order of November 2, 1984, in this docket be modified as hereinafter set forth:

1. That Finding of Fact No. 11 is reaffirmed.

2. That Evidence and Conclusions for Finding of Fact No. 11, as set forth on page 14 of the Order, is hereby modified to read as follows:

> "The evidence relating to this finding is found in the testimony of Company President Hensley and of Public Staff witness Lee. Applicant has acquired three additional water systems since the last rate case: Country Acres, with 17 customers; Country Meadows, with 90 customers; and Heather Acres, with 46 customers. Since the acquisitions the Applicant has invested $8,595 in Company general revenues in construction in Country Meadows Subdivision. Mr. Hensley offered testimony supporting the Company's being allowed to add new systems. Witness Lee testified that it is not in the best interest of existing customers for the Applicant to be expending resources on new systems while existing systems need improvements.
>
> "In view of the need for capital improvements to be made to the Applicant's existing systems, and the need for the assessment to pay for them, the Commission finds and concludes that the Applicant should not acquire or add new systems to its existing systems without

further order of the Commission but should instead concentrate on making the needed capital improvements on the existing systems.

"This Order will provide, however, that the Applicant will not be precluded from filing applications with the Commission for the acquisition or addition of new systems; in the event that it does so, however, the Applicant must show that the acquisition of any new system will not impair its ability to comply with the provisions of this Order requiring the making of improvements to its existing systems.

"Mr. Adams of the Division of Heath Services was concerned about the Applicant's expansion of its existing systems without obtaining the necessary approval from his agency. The Attorney General in its proposed order expressed concern about the Applicant's expansions and additions of new systems without first obtaining the necessary approval from the appropriate agencies, including the Commission. The Examiner shares these concerns and calls the Applicant's attention to G.S. 62-110 which provides as follows:

"No public utility shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation. Provided, that this section shall not apply to construction into territory contiguous to that already occupied and not receiving similar service from another public utility, nor to construction in the ordinary conduct of business."

3. That Ordering Paragraph No. 4, as set forth on page 16 of the Recommended Order, shall be modified to read as follows:

"4. That the Applicant shall not acquire or add any new systems until upgrading of the existing systems is completed as required by this Order and upon certification to the Commission that all existing systems are constructed in accordance with plans approved by the State Division of Health Services, and then only after further Order of the Commission. Provided, however, that the Applicant shall not be precluded from filing applications with the Commission for the acquisition or addition of new water systems; in the event that it does so, however, the Applicant must show, in addition to the other requirements of law, that the acquisition of any new system will not impair its ability to comply with the provisions of this Order requiring the making of improvements to its existing systems."

4. That the effective date of the Recommended Order of November 2, 1984, and the time for filing exceptions thereto, shall remain unchanged.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of November 1984.

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

DOCKET NO. W-354, SUB 28
DOCKET NO. W-354, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Carolina Water Service, Inc. of North Carolina | ) | |
| Transfer of Mt. Mitchell Lands Subdivision from | ) | RECOMMENDED ORDER |
| Mt. Mitchell Lands, Inc., and Approval of Rates | ) | APPROVING TRANSFER |
| and Transfer of Mt. Mitchell Lands West | ) | OF FRANCHISES AND |
| Subdivision from Sweet Water Mountain Lands | ) | APPROVING RATES |
| Company and Approval of Rates | ) | |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, August 20, 1984

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

APPEARANCES:

For the Applicant:

Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 276502, For: Carolina Water Service, Inc. of North Carolina

For the Using and Consuming Public:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602

PARTIN, HEARING EXAMINER: On October 24, 1983, Applications were filed in the above-captioned dockets wherein authority was sought for the transfer of two water franchises to Carolina Water Service, Inc., of North Carolina. The Sub 28 Docket deals with the transfer of the franchise for Mt. Mitchell Subdivision in Yancey County, and the Sub 29 Docket deals with the transfer of the water franchise of Mt. Mitchell Lands West in Yancey County. The respective owners joined in the applications. During the pendency of the applications and prior to the hearing, various motions were made and orders were entered relating thereto, all of which are a matter of record.

On December 1, 1983, the Commission issued orders requiring that notice of the proposed transfers and rates be given to the customers in the respective service areas. No protests relating to the transfers were received from any customers.

By Order dated June 11, 1984, the above-captioned dockets were set for hearing on August 21, 1984, in the Commission Hearing Room in Raleigh, for the determination of certain matters in dispute between the Applicant and the Public Staff. The Public Staff presented testimony by Rudy Shaw, a Utilities Engineer with the Water Division of the Public Staff, and the testimony of George Dennis, Accounting Supervisor of the Water Section of the Accounting Division of the Public Staff. In their testimony, the Public Staff witnesses

took the position that the transferors of these water systems had recovered their investment in the systems through the sale of lots and through tap-on fees. Therefore, the Public Staff witnesses recommended that an acquisition adjustment be made to eliminate from Carolina Water Service's rate base the purchase prices paid by Carolina Water Service for the systems.

The Applicant, Carolina Water Service, presented the testimony of Patrick J. O'Brien, Financial Vice-President of Carolina Water Service, Inc., and Lee King, Co-Owner and Co-Developer of the Mt. Mitchell Lands subdivision. The Applicant, through the testimony it presented, took the position that the Public Staff's proposed acquisition adjustment was improper. In support of its position, the Applicant's witness O'Brien asserted that the Public Staff's theory that the investment had been recovered was inconsistent with the tax treatment taken on the systems by their respective developers, who had capitalized the systems and were depreciating them for tax purposes. In addition, witness O'Brien asserted that the Public Staff's position was inconsistent with generally accepted accounting principles, and that the Public Staff's reliance on gross profit margins as an indicator of cost recovery neglected the developer's overhead expenses, which could result in the developer having a net profit level that would not support the conclusion that the developer had recovered his investment in the utility system.

The Commission has carefully considered all the evidence in these matters and on the basis of its consideration hereby makes the following

FINDINGS OF FACT

1. The Commission has jurisdiction over the parties and subject matters in these dockets, and these matters are properly before the Commission.

2. The transfer of the franchises as requested in the applications in these dockets is in the public interest, is justified by the public convenience and necessity, and should be approved.

3. The proposed rates to be charged by Carolina Water Service are just and reasonable and should be approved.

4. With respect to Docket No. W-354, Sub 28, the purchase price paid by the transferee, Carolina Water Service, Inc., properly reflects its investment related to the transfer of the franchise for the Mt. Mitchell Subdivision. Such investment base is the proper base to be used both currently and prospectively for ratemaking purposes.

5. With respect to Docket No. W-354, Sub 29, the purchase price paid by the transferee, Carolina Water Service, Inc., properly reflects its investment related to the transfer of the franchise for Mt. Mitchell Lands West. Such investment base is the proper base to be used both currently and prospectively for ratemaking purposes.

6. All reasonable costs incurred by Carolina Water Service, Inc., of North Carolina directly related to this proceeding should be placed in a "deferred debit account." Such deferred debit account should be amortized over a 60-month period by increasing monthly operating expenses proportionally. The amortization of such costs should begin with the calendar month first following

the month of issuance of this Order. During the 60-month recovery period, the unrecovered balance reflected in the deferred account should be treated the same as any other investment in public utility property.

CONCLUSIONS AND DISCUSSION OF EVIDENCE

The only contested issue in both of these dockets is whether the Public Staff's recommended acquisition adjustments are proper. In the Sub 28 Docket, the record reflects that the transferee paid $5,000 for the utility system. In the Sub 29 Docket, the record reflects that the transferee paid $10,000 for the utility system. The Public Staff recommends that these amounts be eliminated entirely from the rate base of Carolina Water Service. Carolina Water Service contests the propriety of these acquisition adjustments.

In support of its recommendation, the Public Staff relies on the gross profit margins realized by the developers of these systems as evidence that the developers had recovered their investment. During the time these subdivisions were being developed, Mt. Mitchell Lands, Inc. (Sub 28), and Sweet Water Mountain Land Company, Inc. (Sub 29) realized a gross profit margin of approximately 60% - 70%, and received tap-on fees of $500.00 and $750.00 respectively, which is considerably in excess of the actual cost of a tap, which witness Shaw testified was approximately $200.00 to $300.00. The Public Staff contends that these levels of gross profit margin and tap-on fees are evidence that these developers recovered their investments in the water utility systems.

Carolina Water Service, Inc., contends that gross profit margin is an improper method of determining whether costs of constructing a water system have been recovered. The witness for the Company testified that too many factors affect the gross profit margin for it to be used to show an attempt to recover water system construction costs.

With respect to the tap fees charged, the Company asserted that the normal practice is to reduce rate base by charging these fees against the capitalized construction costs as "contributions in aid of construction." In the present case, however, the evidence tends to show that they were used to offset operating expenses in the year they were collected. This method has been approved by the Commission in other cases. See Carolina Blythe Utility, Docket No. W-503, Sub 2. The evidence in this case also shows that the total amount collected through tap fees by each company is far less than the cost of constructing the water system. Therefore, no matter how the developer had treated the revenues from tap fees, it is not possible to conclude that the costs of the water system have been recovered in this fashion.

The Company maintains that it has been forced to incur substantial expense in defending the Public Staff's challenge to inclusion in rate base of the purchase price of the systems acquired in this case. The Company requested that the costs of addressing the Public Staff's challenge be included in Carolina Water Service's rate base along with the costs of acquiring these systems. The Commission concludes that the Company should be allowed to recover these costs. The accounting treatment to be accorded such costs is discussed elsewhere herein.

Finally, the Examiner concludes that the position taken by the Public Staff in this case, if adopted by the Commission, may discourage the takeover of small developer-owned water systems by experienced, professional utility companies financially capable of improving such systems. Generally speaking, these utility companies are better able to provide safe and reliable service at lower costs to the using and consuming public and have the financial capability to do so. If the Public Staff's approach were adopted, it would discourage takeovers by experienced utilities because the utility could not recover the purchase price of water systems purchased from developers. The Commission is, therefore, compelled to dismiss the Public Staff's recommendations in this regard. The Examiner therefore concludes that, with respect to these transfers, no acquisition adjustments shall be made to eliminate the purchase prices from the rate base of Carolina Water Service.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applications in these dockets for transfer of the respective franchises are hereby granted.

2. That Appendix A attached to this Order shall be the Certificate of Public Convenience and Necessity.

3. That the rates contained in Schedule A in the Recommended Order issued on December 12, 1984, in Docket No. W-354, Sub 26, shall be approved as the just and reasonable rates for the service areas under consideration in these dockets.

4. That with respect to these transfers, no acquisition adjustment shall be made to eliminate the respective purchase prices from the rate base of Carolina Water Service, Inc., of North Carolina. The purchase price of $5,000 paid for the assets of Mt. Mitchell Subdivision and the purchase price of $10,000 paid for the assets of Mt. Mitchell Lands West properly reflect Carolina's investment in the two water systems. Such investment base is the proper base to be used both currently and prospectively for ratemaking purposes.

5. That all reasonable costs incurred by Carolina Water Service, Inc., of North Carolina, directly related to this proceeding shall be placed in a "deferred debit account." Such deferred debit account shall be amortized over a 60-month period by increasing monthly operating expenses proportionally. The amortization of such costs shall begin with the first calendar month following the month of issuance of this Order. During the 60-month recovery period, the unrecovered balance reflected in the deferred account shall be treated the same as any other investment in public utility property.

6. That the Notice to Customers attached as Appendix B shall be mailed to all customers of these two subdivisions in the next billing following the effective date of this Order. The rate schedules set forth in Appendix A of the Order of December 12, 1984, in Docket No. W-354, Sub 26, shall be included with the Notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of December 1984.

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

APPENDIX A
STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-354, SUB 28
DOCKET NO. W-354, SUB 29

BEFORE THE NORTH CAROLINA UTILITES COMMISSION
Know All Men By These Presents, That
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water utility service
in
Mt. Mitchell Lands Subdivision
and
Mt. Mitchell Lands West Subdivision

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 is the 14th day of December 1984.

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

APPENDIX B
DOCKET NO. W-354, SUB 28
DOCKET NO. W-354, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Carolina Water Service, Inc. of North Carolina | ) | |
| Transfer of Mt. Mitchell Lands Subdivision from | ) | |
| Mt. Mitchell Lands, Inc., and Approval of Rates | ) | NOTICE TO |
| and Transfer of Mt. Mitchell Lands West | ) | CUSTOMERS |
| Subdivision from Sweet Water Mountain Lands | ) | |
| Company and Approval of Rates | ) | |

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has approved the transfer of the water systems in Mt. Mitchell Lands Subdivision and Mt. Mitchell Lands West Subdivision to Carolina Water Service, Inc. of North Carolina.

The new rates approved for the Company are included with this Notice.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of December 1984.

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

DOCKET NO. W-354, SUB 33

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of Carolina Water Service for Authority to Transfer the Franchise to Provide Water and Sewer Utility Service in Bear Paw Subdivision, Cherokee County, North Carolina and for Approval of Rates | ) ) ) ) | RECOMMENDED ORDER APPROVING TRANSFER OF FRANCHISE AND APPROVING RATES |

HEARD IN: Cherokee County Courthouse, Murphy, North Carolina

HEARD ON: October 9, 1984

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Applicant

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

James D. Little, Staff Attorney-Public Staff, North Carolina Utilities Commission, Post Office Box 991, Raleigh, North Carolina 27602

PARTIN, HEARING EXAMINER: On April 26, 1984, Carolina Water Service, Inc. of North Carolina (the Company, the Applicant, or Carolina Water Service) filed an application with this Commission for authority to transfer the franchise to provide water and sewer utility service in Bear Paw Subdivision, Cherokee County, North Carolina from Bear Paw Development Company and for authority to increase rates.

On May 23, 1984, the Commission issued an order establishing a general rate case, suspending rates, requiring public notice and scheduling a hearing in Murphy, North Carolina for August 28, 1984.

On August 20, 1984, the Applicant filed a Motion for Continuance and requested that the Public Staff make its accounting witness available for cross-examination. The Public Hearing was rescheduled and took place on October 9, 1984, in the Cherokee County Courthouse in Murphy, North Carolina at 9:00 a.m.

At the Public Hearing, eight customers of the existing water system testified opposing the rate increase. The Applicant presented testimony by Patrick J. O'Brien, Financial Vice President of Carolina Water Service Corporation and Utilities, Inc., parent of the Applicant. The Public Staff presented testimony by Richard J. Durham, utilities engineer with the Public Staff, and Jesse Kent, Jr., staff accountant with the Public Staff. The Applicant presented rebuttal testimony through Mr. O'Brien.

The parties agreed that the proposed transfer was in the public interest and should be approved. The parties also agreed on the level of rates proposed by the Applicant. The Public Staff in its testimony contended that an acquisition adjustment should be made to eliminate from rate base the purchase price paid by the transferee, Carolina Water Service, in order to reflect the developers' recovery of its investment through the sale of lots. The adjustment in the Public Staff's opinion should include the entire $95,000 purchase price, which comprises approximately $56,000 for the water system and $39,000 for the sewer system. In support of its position, the Public Staff made reference to the affidavit of David Kirby in Docket No. W-354, Subs 28 and 29, which involved other water systems purchased by Carolina Water Service.

Carolina Water Service in its testimony took sharp issue with the position of the Public Staff. The Company contended that the Public Staff approach was contrary to the established policy of the Commission and the case law of the State. The Public Staff's position, if adopted, would discourage the established policy of the Commission which encourages the takeover of small developer-owned water systems by more experienced utility companies which have the financial capability to make needed improvements to the water systems. The Company also criticized the approach of the Public Staff which shifted the burden to the utility to show that the costs of the developer had not been recovered. The Company contended that the Public Staff has failed to present affirmative evidence challenging the reasonableness of the rate base amount claimed by the Company.

The Commission has carefully considered all the evidence in this docket, and on the basis of its consideration thereof makes the following

FINDINGS OF FACT

1. The Commission has jurisdiction over the parties and subject matters in these dockets, and these matters are properly before the Commission.

2. The transfer of the franchise as requested in the application in this docket is in the public interest, is justified by the public convenience and necessity, and should be improved.

3. The present rates and the Company's proposed rates in the Bear Paw Subdivision are as follows:

Metered Water Service (Monthly)

| | Present Rates | Applicant's Proposed Rates |
|---|---|---|
| Base Facility Charge | N/A | $5.00 (no usage) |
| 0-3000 gallons | $5.00 | $1.70 per 1000 gallons |
| All over 3000 gallons | $1.00 per 1000 gallons | $1.70 per 1000 gallons |

Sewer Service (Monthly):

| | Present Rate | Applicant's Proposed Rate |
|---|---|---|
| Flat Rate | $5.00 | $16.00 |

4. The proposed rates to be charged by Carolina Water Service in the Bear Paw Subdivision are just and reasonable and should be approved, subject to the following provision. Due to the great percentage of increase that would result

to the Bear Paw water and sewer customers if the proposed rates were to be placed in effect at one time, the rates should be placed in effect in two steps. The initial rates which should be approved for the Company for service rendered on and after the effective date of this Order to and including June 30, 1985 are as follows:

| | |
|---|---|
| Metered Water Service | |
| Base Facility Charge | $5.00 |
| 0-3,000 gallons | $1.00 per 1000 gallons |
| All over 3,000 gallons | $1.00 per 1000 gallons |
| Sewer Service Flat rate | $10.00 |

5. Except as provided in Finding of Fact No. 4 above, the rates and charges approved by the Commission in Docket No. W-354, Sub 26, in the Order issued on December 12, 1984, shall be the rates and charges of the Bear Paw Subdivision.

6. With respect to the acquisition of the water and sewer system in Bear Paw Subdivision, the purchase price paid by the transferee, Carolina Water Service, Inc., properly reflects its investment related to the transfer. Such investment base is the proper base to be used both currently and prospectively for rate making purposes.

## CONCLUSIONS AND DISCUSSION OF EVIDENCE

Approval of the Transfer

The parties agreed that the transfer under consideration in this docket is in the public interest and should be approved. The Hearing Examiner therefore concludes that the transfer of the franchise to provide water and sewer utility service in Bear Paw Subdivision, Cherokee County, North Carolina is in the public interest, is justified by the public convenience and necessity, and should be approved.

The Rates

The parties agreed that the rates proposed by Carolina Water Service for Bear Paw Subdivision should be approved as the just and reasonable rates of the subdivision. The Examiner agrees, subject, however, to the following provision. The water and sewer rates proposed by Carolina Water Service would result in too great an increase if implemented at one time. With respect to water service, a customer who uses 6,000 gallons of water per month would see his bill increase from $8.00 under the present rates to $15.20 under the proposed rates, or an increase of 90%. A sewer customer would see his bill increase from the present $5.00 per month to $16.00 under the proposed flat rate, or an increase of more than 200%. This Order will provide that the rates proposed by the Company be placed into effect in two stages; the rates approved for the initial stage are as follows:

| | |
|---|---|
| Metered Water Service | |
| Base facility charge | $5.00 |
| 0-3000 gallons | $1.00 per 1,000 gallons |
| Over 3000 gallons | $1.00 per 1,000 gallons |
| Sewer Service | $10.00 per month |

The period of time for which the initial rates should remain in effect is for service rendered on and after the effective date of this Order to and including June 30, 1985.

The Acquisition Adjustment

The only contested issue in this docket is whether the Public Staff's recommended acquisition adjustment is proper. The record in this proceeding reflects that the transferee Carolina Water Service paid approximately $56,000 for the water system and $39,000 for the sewer system. The Public Staff recommends that an acquisition adjustment should be made to eliminate from rate base the purchase price paid by the transferee in order to reflect the developer's recovery of its investment through the sale of lots. The adjustment should include the entire $95,000 purchase price, which includes $56,000 for the water system and $39,000 for the sewer system.

In support of its recommendation, the Public Staff relied upon the affidavit of David Kirby in Docket No. W-354, Subs 28 and 29, which involved an application by Carolina Water Service for authority to acquire the water franchises in Mt. Mitchell Lands Subdivision and Mt. Mitchell Lands West Subdivision. In those dockets, Mr. Kirby recommended to the Commission the identical adjustment which is being recommended in this docket. The Public Staff contended that "the cost of constructing the water and sewer systems in Bear Paw Development has been recovered by the developers through benefits accrued to the developers' interests in increased value and sales ability of the improved lots. Profits from the sales of lots and buildings, as well as the collection of tap-on fees came from customers who are being served through the utilities of this company..." (Testimony of Jesse Kent, Tr. p 124).

The transferee Carolina Water Service contends that the Public Staff approach is contrary to the established policy of this Commission and the case law of the State of North Carolina. State ex rel Utilities Commission v. Heater Utilities, Inc., 288 NC 457. The Company argued that the approach of the Public Staff shifted the burden of proof to the utility to show that the cost has not been recovered. Carolina Water Service pointed out that its evidence established the value of its rate base and that it was then incumbent upon the Public Staff to present affirmative evidence challenging the reasonableness of that value. The Public Staff failed to do so. The Company further pointed out that this case presents a good example for encouraging the takeover of small developer-owned water systems by experienced utility companies. The customers in Bear Paw Subdivision have experienced substandard service over the years. The system required $60,000 of improvements merely to bring the system into compliance with the standards of the Division of Health Services. The Company pointed out that as the system grows it will need additional expenditures to expand and maintain adequate service. This will require an experienced professional utility company which is financially capable of making the necessary improvements and expansion to the water and sewer systems.

In Docket No. W-354, Subs 28 and 29, which has been previously referred to, the Commission has issued this day a Recommended Order which found and concluded that the purchase price paid by the transferee Carolina Water Service, Inc., for the water systems under consideration therein properly reflected the transferee's investment related to the transfer of the franchises

and that such investment base is the proper base to be used both currently and prospectively for rate making purposes. In that Order, the Examiner concluded:

> "...the position taken by the Public Staff in this case, if adopted by the Commission, may discourage the takeover of small developer -owned systems by experienced, professional utility companies financially capable of improving such systems. Generally speaking, these utility companies are better able to provide safe and reliable service at lower costs to the using and consuming public and have the financial capability to do so. If the Public Staff's approach were adopted, it would discourage takeovers by experienced utilities because the utility could not recover the purchase price of water systems purchased from developers. The Commission is, therefore, compelled to dismiss the Public Staff's recommendations in this regard. . . "

The Examiner is of the opinion that the decision in Subs 28 and 29 dockets should be the decision in this case, and the Examiner so rules. The Examiner therefore concludes that, with respect to this transfer, no acquisition adjustments shall be made to eliminate the purchase price from the rate base of Carolina Water Service.

IT IS, THEREFORE, ORDERED as follows:

1. That the Application in this docket for the transfer of the franchise to provide water and sewer utility service in Bear Paw Subdivision, Cherokee County, is hereby granted.

2. That Appendix A attached to this Order shall be the certificate of public convenience and necessity.

3. That the rates approved in the Order issued in Docket No. W-354, Sub 26, on December 12, 1984, shall be the just and reasonable rates for the Company subject to the following provision. For service rendered on or after the effective date of this Order to and including June 30, 1985 the rates to be charged for water service and sewer service shall be as follows:

| | |
|---|---|
| Metered Water Service | |
| Base Facility Charge | $5.00 |
| 0-3000 gallons | $1.00 per 1000 gallons |
| All over 3000 gallons | $1.00 per 1000 gallons |
| | |
| Sewer Service | |
| Flat rate | $10.00 |

4. That with respect to the transfer under consideration in this docket, no acquisition adjustment shall be made to eliminate the purchase price from the rate base of Carolina Water Service, Inc. of North Carolina. The purchase price of $56,000 for the water system and $39,000 for the sewer system properly reflects the investment of Carolina Water Service in the water and sewer systems. Such investment base is the proper base to be used both currently and prospectively for rate making purposes.

5. That the Company shall mail in its next regular scheduled billing following the effective date of this Order, the Notice to Customers attached hereto as Appendix B. The Company shall attached thereto the rate schedules in Appendix A of the Recommended Order of December 12, 1984, in Docket No. W-354, Sub 26.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of December 1984.

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

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH
DOCKET NO. W-354, SUB 33

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Know All Men By These Present, That

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service

in

BEAR PAW SUBDIVISION

CHEROKEE 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 14th day of December 1984.

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

DOCKET NO. W-785

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Martha H. Mackie, Post Office Box 672, Wake Forest, North Carolina, for Authority to Abandon Water and Sewer Utility Service in Falls of the Neuse Village in Wake County, North Carolina ) RECOMMENDED ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina on Tuesday, April 10, 1984, at 7:00 p.m.

BEFORE: Sammy R. Kirby, Hearing Examiner

APPEARANCES:

For the Applicant:

I. Beverly Lake, Attorney at Law, P.O. Box 72, Wake Forest, North Carolina 27587

For the Public Staff:

Vickie L. Moir, Staff Attorney, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

KIRBY, HEARING EXAMINER: On January 25, 1984, Martha H. Mackie filed an application with the North Carolina Utilities Commission seeking authority to discontinue providing water and sewer utility service in the village of Falls of the Neuse. By Order dated February 22, 1984, the Commission set the matter for public hearing on Tuesday, April 10, 1984, at 7:00 p.m. and required public notice.

On March 28, 1984, the Public Staff, acting on behalf of the using and consuming public, filed a Motion to Expand Hearing seeking to have the hearing expanded to address the issue of whether or not the Applicant, Martha H. Mackie, is a public utility under the jurisdiction of the North Carolina Utilities Commission. By Order issued by the Commission on April 6, 1984, the Public Staff's Motion was allowed.

Upon call of the matter for hearing at the appointed time and place, both the Applicant and the Public Staff were present and represented by counsel.

The Applicant offered the testimony of Jerry Tweed, Director of the Water Division of the Public Staff; Martha H. Mackie, the Applicant; Wayland Chappell, who manages and maintains the water and sewage disposal facilities; Eric Holmes, who managed the facilities prior to Mr. Chappell; and George Mackie, the husband of the Applicant.

At the conclusion of the Applicant's case, Jerry Tweed was recalled as the Public Staff's witness.

Based upon careful consideration of the entire record in this proceeding, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Falls of the Neuse is an unincorporated village lying on the south bank of the Neuse River in northern Wake County. It was developed as a mill village by Neuse Manufacturing Company, which owned and operated a textile mill nearby. The original water system was constructed by Neuse. Neuse subsequently went out of business and ceased to operate the mill.

2. Erwin Mills subsequently became the owner of the mill and part of the village. It constructed the water and sewage disposal facilities in question around 1948-50. Erwin Mills provided water and sewer service to its own employees and tenants and to other customers as well. Erwin Mills subsequently went out of business and disposed of the mill and its village properties.

3. The land on which the water and sewage disposal facilities are located eventually came into the ownership of Scarsdale Investment Corporation. Scarsdale charged $10.00 per month for water service and $5.00 per month for sewage disposal service.

4. Scarsdale sold the land to George Mackie, who is the husband of the Applicant, in September 1982 for $45,000. At the time he purchased the land, George Mackie was aware that the water and sewage disposal facilities were on the property and being used. He bought the property as an investment for his wife, the Applicant, and he had the property deeded to his wife upon purchase.

5. The land in question is in two tracts: one tract of approximately 19 acres on which the water facilities are located and a second, non-contiguous tract of approximately one acre on which the the sewage disposal facilities are located. The water facilities include a pump house with a holding tank and a chlorinator (installed by Applicant) and a steel water tank on a tower; the sewage disposal facilities consist of a sand pit and mains. The facilities are in good to excellent condition except for the elevated tank which has some rust and needs painting.

6. The Applicant has employed men to operate the water and sewage disposal facilities and has increased the charges to $15.00 a month for water and $10.00 a month for sewage disposal. Five customers left the system when the charges were increased.

7. At the time of the hearing, there were 17 people using both the water and sewer service, one person using only water service, and two persons using only sewage disposal service. The customers do not have wells; some customers do not own enough land to install a septic tank. No new homes have been connected to the water or sewer systems since Applicant came into ownership of the property; however, new residents have moved into homes already connected to the systems and these new residents have been served and have paid for service.

8. The Applicant asserts that she incurred expenses of $3,713.16 for operation of the water and sewage disposal facilities for the 14-month period

of January 1983 through February 1984. Her rates amount to annual revenues of $5,520.

9. The Commission has never issued a franchise to either the Applicant or her successors in interest. The Commission was unaware of the systems until the Applicant's increase in charges prompted some of her customers to contact the Public Staff.

10. On January 25, 1984, the Applicant, Martha H. Mackie, filed an application with the Commission seeking authority to abandon public utility service; by her application the Applicant denies she is a public utility, but she asserts that if she is operating as a public utility, she should be allowed to abandon service.

11. The financial evidence offered by Applicant fails to show that there is no reasonable probability of her realizing sufficient revenues from the utility service to meet her utility expenses.

Based upon the above FINDINGS OF FACT, the Hearing Examiner draws the following:

## CONCLUSIONS OF LAW

1. The Applicant owns and operates public utility water and sewer systems in the village of Falls of the Neuse and is a public utility subject to the jurisdiction of this Commission;

2. The public convenience and necessity are served by the public utility water and sewer systems operated by the Applicant;

3. The Applicant has failed to show that there is no reasonable probability of her realizing sufficient revenue to meet the expenses of the operation of the public utility water and sewer systems;

4. The Applicant's application for authority to abandon public utility service should be denied; and

5. Applicant should be allowed temporary operating authority and interim rates; however, she should be required to apply for a Certificate of Public Convenience and Necesssity and for approval of her rates for public utility service.

## DISCUSSION OF EVIDENCE AND CONCLUSIONS

G.S. 62-3(23) provides, in pertinent part, as follows:

> a. "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...

....

d. The term "public utility,"...shall not include... any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees, or tenants when such service or commodity is not resold to or used by others...

The evidence shows that the water system in Falls of the Neuse was originally constructed as part of a mill village for the purpose of enabling the operator of a textile mill, Neuse Manufacturing Company, to attract and hold employees. However, by the time the present facilities were constructed by Erwin Mills in the period around 1948-50, the systems were used to serve customers other than mill employees and tenants. Eric Holmes, a long-time resident of the area, testified that "everybody in the whole village whether they worked in the mill or whether they, if they owned their own home, everybody used water from that system. [Erwin Mills] didn't show no partiality." Transcript p.79. All who wanted to tap on to the systems were allowed to do so. Transcript p.83. Thus, as early as Erwin Mills' operation of the systems, the "mill village" character of the systems had ceased to exist. This fact, however, is not controlling. Neither is it determinative that no certificate has been issued for these systems. The issue now is whether the Applicant is a public utility as defined in G.S. 62-3(23).

It is undisputed that the Applicant is a person owning and operating facilities for furnishing water and sewer service for compensation and that she serves more than 10 residential customers. The Applicant denies, however, that she is furnishing such services "to or for the public." Applicant relies upon the following quotation from Utilities Commission v. Telegraph Company, 267 N.C. 257, 268 (1966): "One offers service to the 'public' within the meaning of [G.S. 62-3(23)a6] when he holds himself out as willing to serve all who apply up to the capacity of his facilities." Noting that she has not connected any new houses and that she is not willing to do so, the Applicant reasons that she has not held herself out as willing to serve the public.

The Public Staff relies upon the discussion of the "to or for the public" concept found in Utilities Commission v. Simpson, 295 N.C. 519, 524 (1978). Our Supreme Court there wrote as follows:

> [W]hether any given enterprise is a public utility within the meaning of a regulatory scheme does not depend on some abstract, formulistic definition of "public" to be thereafter universally applied. What is the "public" in any given case depends rather on the regulatory

> circumstances of that case. Some of these circumstances are (1) nature of the industry sought to be regulated; (2) type of market served by the industry; (3) the kind of competition that naturally inheres in that market; (4) effect of non-regulation or exemption from regulation of one or more persons engaged in the industry. The meaning of "public" must in the final analysis be such as will, in the context of the regulatory circumstances, and as already noted by the Court of Appeals, accomplish "the legislature's purpose and comport with its public policy." 32 N.C.App. at 546, 232 S.E. 2d at 873.

The Simpson case adopts a flexible interpretation of the "public" concept. This interpretation looks to whether the circumstances are sufficient to clothe the operation with a public interest. Other jurisdictions have adopted this flexible approach. See,e.g., Griffith v. Commission, 520 P.2d 269 (New Mexico, 1974); Commission v. Gas Company, 161 N.W. 2d 111 (Iowa, 1968); 73B C.J.S., Public Utilities, Section 3 (1983). In Griffith, the New Mexico Supreme Court concluded that "sales to sufficient of the public to clothe the operation with a public interest, as well as the specific language of the statute, will determine whether or not the operation of a water system is for the public use." 520 P. 2nd at 272. The Hearing Examiner finds the Simpson approach to be the appropriate one herein.

The Applicant is providing water and sewage disposal services. These are essential services that have immediate effects on the public health and welfare. Water and sewer systems are often constructed to serve limited areas, such as a single mobile home park or one residential subdivision. Such systems seldom face competition. Their customers rely upon utility regulation to ensure that their service is adequate and their rates fair. The non-regulation or exemption of such a system would expose the system's customers to possible health hazards and loss in property value.

In the present case, there is no evidence that the Applicant's customers have access to other water supply. There is evidence that some customers do not own enough land to install their own sewage disposal facilities. Transcript pp. 66 and 165.Applicant's suggestion that her customers might be able to dig their own wells and find adequate water and that they might be able to group together and install adequate sewage disposal facilities is simply not an adequate alternative. The fact is that her customers look to the Applicant for the provision of these necessary services. These circumstances clothe the Applicant's water and sewer systems with a public interest. The systems are a matter of public welfare and concern. The Applicant must be declared a public utility in order to ensure the protection and to accomplish the purpose of the Public Utilities Act.

Even should we apply the "holding out as willing to serve" concept, we would find that Applicant qualifies as a public utility. More fully stated, this concept looks to whether one holds himself out to serve "the public as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals." 73B C.J.S., Public Utilities, Section 3, p. 131 (1983). Applicant has never limited her service to particular individuals. She has taken on new customers as new residents have moved into homes connected to her systems. Transcript pp. 68-70. Thus, she has held herself out as willing to serve a limited portion of

the public. The Telegraph Co. case itself instructs us that it is immaterial that a public utility's service area and facilities are limited. 267 N.C. at 268. Applicant has not connected any new homes to her systems, but her husband testified that he did not know of anyone who wanted to be connected. Transcrpit p. 131. Applicant claims that she has not held herself out as willing to serve any portion of the public, but rather that she has merely provided service to accommodate her neighbors. To accept such a claim would condition the application of the Public Utilities Act upon one's willingness to comply with it. The test of a public utility does not look to such claims.

Having declared Applicant a public utility, the issue becomes whether she has established her right to abandon service. The relevant statute is G.S. 62-118, which provides in pertinent part as follows:

> Upon finding that public convenience and necessity are no longer served or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have the power, after petition and notice, to authorize by order any public utility to abandon or reduce such service.

The evidence shows that Applicant's customers are dependent upon her for their water and sewer services. It cannot seriously be contended that the public convenience and necessity are not being served by her continuation of these services. Instead, Applicant relies upon the second grounds for abandonment set forth in G.S. 62-118.

Applicant offered considerable testimony as to the replacement cost of the water and sewer facilities. Such testimony would bear on the fair value of the property, but rate-making looks to the reasonable original cost of the utility's property used and useful in providing utility service less the cost recovered by depreciation. G.S. 62-133(b). Applicant presented little evidence as to the original cost of the utility property and no evidence as to associated accumulated depreciation of the original costs previously recovered from the customers. She relied upon the purchase price of $45,000 plus $1500 of improvements made by her. However, the purchase price is not appropriate since not all of the property is used and useful in providing utility service. Applicant's husband admitted as much. Transcript p. 147. The $1500 addition is incorrect since it represents the cost of the pump installed by Scarsdale, not the cost of the chlorinator installed by Applicant. Transcript pp. 143-4. Applicant did not show either the original cost or her own cost of the used and useful utility property less depreciation.

Applicant offered the calculations shown on her Exhibit 3 in an effort to show that there is no reasonable probability of her realizing sufficient revenue to meet her expenses. These calculations show annual operating expenses of $5,037.14, annual depreciation of $4,650, and annual return of $5,580, for a total annual revenue requirement of $15,267.14. To bring in such revenues, Applicant calculates that she would need to increase her present rates by 175 percent. She reasons that such rates would drive all customers away.

To begin with, the Hearing Examiner notes that the Applicant herself expressed only limited understanding of the Exhibit. She deferred to her

husband. Transcript p. 45. During cross examination, the Applicant's husband was unable to explain how the repair and maintenance element of the operating expenses shown on Exhibit 3 had been calculated. Transcript pgs. 137-142. The repair and maintenance element was supposedly based on a monthly average of the actual expenditures for the fourteen-month period of January 1983 through February 1984. The actual expenses for this period were shown on Exhibit 2 and totaled $3,713.16. However, the Applicant's husband could not say which of the actual expenses had been classified as repair and maintenance in order to derive the repair and maintenance figure shown on Exhibit 3 and the Hearing Examiner has been unable to reproduce this calcuation. If the chlorinator installed by Applicant was included as repair and maintenance, it should not have been. Such an item should be capitalized.

The depreciation expense shown on Exhibit 3 represents 10 percent of the purchase price of the entire property plus 10 percent of an improvement made by the Applicant. The Hearing Examiner finds this element to be exaggerated. First, land is not properly considered a depreciable asset and this Commission does not allow depreciation of land for rate-making purposes. Second, depreciation cannot be allowed on the entire property since only a portion of it is devoted to the utility operation. Applicant's husband reasoned that the presence of the elevated water tank rendered the entire 19 acre tract of land unsuitable for development. Transcript p. 148. It appears that the tract has only limited road frontage and that the water tank is located in a 113 foot wide corridor providing the frontage. However, this corridor is wide enough to allow construction of a driveway from the public road to the main body of the tract. Transcript p. 149. Any development of the tract would probably be enhanced by the presence of water facilities already in existence. Most importantly, the test is whether all of the property is used and useful in providing utility service, not whether part of the property is suitable for development. Thus, the Hearing Examiner finds that the depreciation expense shown on Exhibit 3 is improper. Similarly, the fair return shown on Exhibit 3 is based upon a return on the full purchase price of all of the property. Only a part of the property is being used for utility service, and therefore the full purchase price would not be properly includible in rate base for rate-making purposes.

In summary, the Hearing Examiner finds the calculations in Exhibit 3 to be unfounded, over-stated, or improper and therefore concludes that the Applicant has failed to show that there is no reasonable probability of her realizing sufficient revenue to meet her expenses.

IT IS, THEREFORE, ORDERED as follows:

1. That Martha H. Mackie is hereby declared a public utility providing water and sewer service in the village of Falls of the Neuse, Wake County, pursuant to the provisions of G.S., Chapter 62, and is subject to the jurisdiction of this Commission;

2. That the application for leave to abandon water and sewer service should be, and hereby is, denied;

3. That Martha H. Mackie is hereby granted temporary operating authority to provide water and sewer service in Falls of the Neuse, Wake County and to charge the interim rates attached hereto as Appendix A; and

4. That Martha H. Mackie shall within 30 days after the effective date of the Order submit to the Commission an application for a certificate of public convenience and necessity with all necessary financial data to justify her proposed water and sewer service rates.

ISSUED BY ORDER OF THE COMMISSION.
This is the 18th day of June 1984.

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

APPENDIX A
SCHEDULE OF INTERIM RATES
DOCKET NO. W-785
MARTHA H. MACKIE

FALLS OF THE NEUSE, WAKE COUNTY

| | |
|---|---|
| FLAT MONTHLY WATER RATE: | $15.00 |
| FLAT MONTHLY SEWER RATE: | $10.00 |

RECONNECTION CHARGES:

| | |
|---|---|
| If water service cut off by utility for good cause | $4.00 |
| If water service cut off at customers request | $2.00 |
| If sewer service discontinued for any reason | $15.00 |

BILLS DUE: On billing date
BILLS PAST DUE: Fifteen (15) days after biling date
BILLING FREQUENCY: Shall be monthly for service in arrears.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-785, on this the 18th day of June 1984.

DOCKET NO. W-785

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Martha H. Mackie, P. O. Box 672, Wake Forest,<br>North Carolina, for Authority to Abandon Water and Sewer<br>Utility Service in Falls of the Neuse Village in Wake<br>County, North Carolina | ) | FINAL<br>ORDER |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, September 4, 1984, at 2:30 p.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, A. Hartwell Campbell, Charles E. Branford, and Hugh A. Crigler.

APPEARANCES:

For the Applicant:

I. Beverly Lake, Attorney at Law, P. O. Box 72, Wake Forest, North Carolina 27587
For: Martha H. Mackie

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

BY THE COMMISSION: On June 29, 1984, counsel for and on behalf of Martha H. Mackie, the Applicant herein, filed certain exceptions to the Recommended Order entered in this docket on June 18, 1984, by Commission Hearing Examiner Sammy R. Kirby. The Applicant also requested oral argument on exceptions.

By Order dated July 12, 1984, the Commission scheduled an oral argument for Tuesday, September 4, 1984, at 2:30 p.m. to consider the exceptions filed herein by the Applicant. The matter subsequently came on for oral argument as scheduled. Both the Applicant and the Public Staff were present and represented by counsel and offered oral argument.

Based upon a careful consideration of the Recommended Order entered in this docket on June 18, 1984, the exceptions thereto filed by the Applicant, the oral argument offered by the parties to this proceeding, and the entire record in this case, the Commission is of the opinion, finds, and concludes, that with only one minor exception, all of the findings of fact, conclusions, and decretal paragraphs set forth in the Recommended Order of June 18, 1984, are fully supported by the record and should be adopted and affirmed by the Commission.

The Commission concludes that Applicant's Exception Number 2 has merit, and that finding of fact number 9 set forth on page 3 of the Recommended Order should be revised to read as follows:

> 9. The Commission has never issued a franchise to either the Applicant or her predecessors. The Commission was unaware of the systems until the Applicant's increase in charges prompted some of her customers to contact the Public Staff.

Accordingly, except for the revision to finding of fact number 9 set forth above, the Commission concludes that the Recommended Order heretofore entered in this docket on June 18, 1984, should be affirmed and adopted as the Final Order of the Commission, and that except for the Applicant's Exception Number 2, each of the other exceptions thereto should be overruled and denied.

By basically adopting and affirming the Recommended Order entered herein on June 18, 1984, the Commission has in no way violated any of the Applicant's constitutional rights related to her property presently being used to provide public utility service. The Applicant has been granted temporary operating authority by the Commission and has been authorized to collect interim water and sewer rates at the same level she was previously charging her customers for water and sewer utility service pending the filing of an application for a certificate of public convenience and necessity. At such time as said application is filed, the Applicant will certainly be free to request approval of water and sewer utility rates designed to produce a reasonable operating ratio pursuant to. G.S. 62-133.1 or a fair rate of return on the Company's original cost rate base pursuant to G.S. 62-133. The Commission will then proceed to determine and approve just and reasonable rates for the Applicant on the basis of a full and fair evidentiary hearing which will ensure due process to both the Applicant and her customers. Clearly, such a procedure is required by Chapter 62 of the North Carolina General Statutes, the Public Utilities Act. Accordingly, Applicant has shown no violation of her constitutional rights in this proceeding which would result in an unconstitutional confiscation of property.

IT IS, THEREFORE, ORDERED as follows:

1. That finding of fact number 9 set forth on page 3 of the Recommended Order entered in this docket on June 18, 1984, be, and the same is hereby, revised as follows:

> 9. The Commission has never issued a franchise to either the Applicant or her predecessors. The Commission was unaware of the systems until the Applicant's increase in charges prompted some of her customers to contact the Public Staff.

2. That, except for Exception Number 2, each of the remaining exceptions filed in this docket by the Applicant on June 29, 1984, be, and the same are hereby, overruled and denied.

3. That, except as amended pursuant to decretal paragraph number 1 above, the Recommended Order entered in this docket on June 18, 1984, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of September 1984.

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

DOCKET NO. W-790

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>Mountain Acreage, Inc. - the Oaks Subdivision,<br>Arden, Buncombe County, North Carolina -<br>Proceeding to Determine Public Utility Status | ) RECOMMENDED ORDER<br>) DECLARING PUBLIC<br>) UTILITY |

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

PLACE: District Courtroom No. 4, 4th Floor, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina

DATE AND TIME: April 4, 1984, 1:00 p.m. - 5:00 p.m.

APPEARANCES: For Mountain Acreage, Inc.

Dennis Winner, Erwin, Winner & Smathers, P.A., 81 B Central Avenue, Asheville, North Carolina 28801

William Anderson, 17 North Market Street, Asheville, North Carolina 28801

For Property Owners in the Oaks Subdivision

Phillip G. Kelley, Lentz, Ball and Kelley, P.A., Box 7645, Asheville, North Carolina 28807

For the Using and Consuming Public

Vickie L. Moir, Staff Attorney, Public Staff, North Carolina Utilities Commission, P.O. Box 991, Raleigh, North Carolina 27602

PARTIN, HEARING EXAMINER: On March 12, 1984, Phillip G. Kelley, a resident of the Oaks Subdivision located in Arden, Buncombe County, filed a Petition with the Commission requesting the Commission for assistance in the nature of mandamus and relief in the form of a temporary restraining order, as follows:

"1. For an Order requiring Mountain Acreage, Inc. to 'unplug' the water system in Oaks Subdivision, located in Arden, Buncombe County, North Carolina, so that the water will flow freely throughout the system; and will allow the entire residents thereof to be served with an adequate flow of water."

"2. That Mountain Acreage, Inc. to be enjoined from taking any action which may adversely affect the residents of the Oaks Subdivision with respect to the water system until such time as it has complied in all respects with the orders, rules and regulations of the North Carolina Utilities Commission."

On March 14, 1984, the Commission issued an Order instituting a show cause proceeding, serving the Petition upon Mountain Acreage, Inc., and

scheduling a hearing on April 4, 1984. The Commission Order also directed Mountain Acreage, Inc. to appear before the Commission at the hearing and show cause unto the Commission why the Company should not be declared a public utility subject to the jurisdiction of the Commission. The Order also directed Mountain Acreage, Inc. to take all necessary steps to provide adequate, safe, and reliable water service to the Oaks Subdivision, pending the hearing and determination of this proceeding.

The Commission's official files show that the Order instituting show cause proceeding was served on the the respondent, Mountain Acreage, Inc., on March 20, 1984, by the sheriff of Buncombe County.

Thereafter, Mountain Acreage, Inc. on April 5, 1984, filed its answer to the Order and to the Petition.

The show cause proceeding came on as scheduled on April 4, 1984, in Asheville. Mountain Acreage, Inc., the property owners in the Oaks Subdivision, and the Public Staff were all present and represented by counsel. The property owners presented the testimony and exhibits of the following witnesses: Phillip G. Kelley, Carl Conley, Don Clark, Johanna Miller, Bruce Fuller, Alice Harper, Coremna Smith, and Nancy Clark. Mountain Acreage, Inc. presented the testimony and exhibits of its Executive Vice-President, Sandra L. Chapin. The Public Staff presented the testimony of Jerry Tweed, Director of the Public Staff Water and Sewer Division.

Upon consideration of the testimony and exhibits presented at the hearing and the entire record in this docket, the Hearing Examiner makes the following

## FINDINGS OF FACT

1. Mountain Acreage, Inc., a North Carolina corporation, developed the Oaks Subdivision in Buncombe County beginning in 1980 and established therein a water system for the residents of the Subdivision and charged a fee of each property owner.

2. The Subdivision was originally developed by Mountain Acreage so that one well on a lot would serve that lot and five or six other lots, with the other five or six lots being granted an easement to the use of the well. This grouping was applied to all of the lots in the Subdivision. The lots which were sold in the Subdivision had this reservation of easement on the deeds.

3. Prior to February 21, 1984, the water system in the Oaks Subdivision operated as a unified system whereby all of the wells and all of the water distribution lines were interconnected, thereby allowing water from the wells to flow freely among all the houses. This interconnection of the system apparently occurred when a developer or home builder who had bought many lots connected all of the wells and pipes together.

4. Although the home builder who interconnected the system apparently had no authority from Mountain Acreage to undertake such interconnection, Mountain

Acreage took no steps to "disconnect" the unified system until sometime in February 1984.

5. The interconnected water system of all of the wells and distribution lines served approximately 23 or 24 residences in the Subdivision.

6. From the inception of the Subdivision in 1980 and 1981, including the period that the system was interconnected, Mountain Acreage assessed, billed, and collected from the homeowners in this Subdivision a monthly water usage fee.

7. The water usage fee collected from the customers or homeowners were used by Mountain Acreage to pay maintenance costs and electricity bills associated with operating the water system.

8. Mountain Acreage has paid the power bills and the maintenance costs associated with the operation of the water system in the Oaks Subdivision. The Company also employed a plumbing firm, Merrill Well and Pump, to make repairs and improvements on the system when needed.

9. The homeowners in the Subdivision called Mountain Acreage whenever they had problems with the water system, including outages, pump failure, leaks, and the freezing of pipes. Mountain Acreage always responded by directing Merrill Well and Pump, or some other firm or person, to go to the Subdivision and make the necessary repairs to the water system.

10. The water system remained interconnected until sometime around February 21, 1984, when Mountain Acreage directed Merrill Well and Pump to "plug up" the distribution lines so that no more than six homes could be served from one well.

11. Mountain Acreage's action in plugging up the system was the result of the health department's advising Mountain Acreage that the water system would be subject to regulation by the State of North Carolina unless the water system served no more than six residences from one well.

12. By letter on or about March 2, 1984, Mountain Acreage advised the homeowners in the Subdivision that effective March 16, 1984, Mountain Acreage would no longer assume the responsibility for the payment of the monthly power bills required to operate the pumps which supply water to their lots. The letter also suggested that the homeowners meet with other lot owners sharing a common well in order to have the power bill transferred to them.

13. The "plugging" of the water system in the Oaks Subdivision resulted in some residents experiencing a serious loss of water and water pressure to their homes.

14. The loss of water and water pressure created a serious health hazard as well as inconvenience to these residents, including the Petitioner Kelley, because water was not available for cooking, cleaning and bathing.

15. Pursuant to the Commission Order of March 14, 1984, Mountain Acreage was directed to "unplug" the water system and operate it as a unified system pending hearing and determination of this docket. Mountain Acreage was ordered

to pay all bills associated with the operation and maintenance of the water system.

CONCLUSIONS

I.

Mountain Acreage, Inc. operates a public utility water system in the Oaks Subdivision, Buncombe County, and is therefore a public utility subject to the jurisdiction of the Commission. N.C.G.S. Chapter 62, the Public Utilities Act.

N.C.G.S. 62-3(23)a.2. provides:

> (23)a. "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 sewage 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, except that any person or company which constructs a water system in a subdivision with plans for 10 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 10 residential building lots shall be a public utility at the time of such planning or holding out to serve such 10 or more building lots, without regard to the number of actual customers connected; ..."

In deciding that Mountain Acreage is a public utility subject to the jurisdiction of this Commission, the Examiner calls attention to the following: the Subdivision as originally developed was designed so that five or six lots would be served from a well located on one of the lots, with the other lots being granted an easement to the use of the well. The deeds which were introduced in evidence reflected this arrangement. Early in the subdivision development, however, a speculative home builder who had purchased a large number of lots interconnected all of the wells and distribution lines in the Subdivision so that a unified water system resulted. This unified or interconnected system served approximately 23 or 24 residences in the Subdivision. Although there was testimony at the hearing that Mountain Acreage did not originally intend to operate a water system in the Subdivision, the Company from the inception of the Subdivision in 1980-81 operated and maintained the resulting unified water system for the residences therein and assessed, billed and collected from the residents therein a monthly water usage fee. This fee was used by Mountain Acreage to pay for the maintenance costs and the electricity bills associated with the running of the water system. Moreover, the evidence was abundant that Mountain Acreage responded to the residents' calls concerning problems with water outages and leaks and the like. Although the home builder who interconnected the system had apparently received no authority from Mountain Acreage to undertake the interconnection of the

system, the Company took no steps to disconnect the unified system until sometime in February 1984.

In explaining the Company's action in operating the water system for the residents and assessing a fee for the water use, the Company's Executive Vice-President testified:

> "We felt a moral obligation to those homeowners. We had sold them lots and it has been my business opinion to always try and help everybody that you could in any way that it was possible. In selling those lots we were trying to assist them technically with something that wasn't our responsibility legally but we did feel a certain moral obligation and continued therefore to try and help these people with a subdivision that we owned nothing of. It is very, very poor business." (Transcript, p.109)

The statute quoted above defines a public utility as a person owning or operating in this State equipment or facilities for distributing and furnishing water to 10 or more residential customers for compensation. The following exchange took place in the cross-examination of the Company's Executive Vice-President:

> "Q. Now you don't deny, do you, that more than ten houses are served by water out there in the Oaks Subdivision; you don't deny that, do you?
>
> A. No.
>
> Q. And you don't deny that Mountain Acreage has charged a water usage fee, or whatever fee you want to call it?
>
> A. No.
>
> Q. And you don't deny that you have received some payments with regard to the water usage?
>
> A. We have.
>
> Q. And isn't it also true that Mountain Acreage has operated equipment out there in the form of pumps in the wells for purposes of pumping and distributing water to various lots in the Oaks Subdivision; you don't deny that, do you?
>
> A. No." (Transcript, pp. 125-126)

It is clear that the evidence in this case is more than sufficient to support findings and conclusions that the activities undertaken by Mountain Acreage in the Oaks Subdivision with respect to water service to the residents come squarely within the definition of a public utility. This is so notwithstanding whatever the original intentions of the Company might have been. The benefits to the residents arising out of the operation of the unified system by the Company was made dramatically clear in February 1984 when the "plugging" of the system at the direction of the Company resulted in serious water shortages for some residents. Mountain Acreage, Inc. has undertaken the obligations of a public utility, and it cannot now at this late

date escape such obligationbs by resorting to the disconnection of the unified water system upon which the residents in the Subdivision have come to rely.

Although the evidence in this proceeding established that the water system in the Oaks Subdivision had been interconnected, the Examiner is further of the opinion that the activities of Mountain Acreage in operating and maintaining the water system, and the charging of a usage fee therefor to 10 or more residential customers, would constitute a public utility even if the water system had not been interconnected.

II.

Mountain Acreage, Inc. should be directed to file with this Commission an application for a Certificate of Public Convenience and Necessity to operate a public utility water system in the Oaks Subdivision, Buncombe County, and for the approval of rates.

Having declared that a public utility exists in the Oaks Subdivision, the Examiner further concludes that Mountain Acreage should be required to make an appropriate filing with this Commission for a Certificate of Public Convenience and Necessity. The Company is also entitled to request just and reasonable rates which will reimburse the Company for the costs associated with operating a water utility in the Oaks Subdivision.

IT IS, THEREFORE, ORDERED as follows:

1. That Mountain Acreage, Inc. is hereby declared a public utility providing water utility service in the Oaks Subdivision, Buncombe County, North Carolina, pursuant to N.C.G.S. Chapter 62, and subject to the jurisdiction of the Commission.

2. That within 10 days after the effective date of this Order, Mountain Acreage shall complete and file with the Commission the application and five copies for Certificate of Public Convenience and Necessity which is attached to this Order.

3. That Ordering Paragraph No. 4 in the Order of March 14, 1984, in this docket shall remain in full force and effect.

4. That Mountain Acreage, Inc. shall have authority as a public utility to go upon the well sites and the locations of the distribution lines for purposes of operating, maintaining, repairing and improving the water system in the Oaks Subdivision heretofore declared a public utility.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of June 1984.

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

DOCKET NO. W-790

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Mountain Acreage, Inc. - the Oaks<br>Subdivision, Arden, Buncombe County,<br>North Carolina - Proceeding to Determine<br>Public Utility Status | ) | FINAL ORDER OVERRULING<br>EXCEPTIONS AND AFFIRMING<br>RECOMMENDED ORDER |

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, July 30, 1984, at 2:30 p.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate, A. Hartwell Campbell, Ruth E. Cook, and Charles E. Branford

APPEARANCES:

For the Respondent:

Dennis Winner, Erwin, Winner & Smothers, P.A., Attorneys at Law, 81 B Central Avenue, Asheville, North Carolina 28801
For: Mountain Acreage, 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

BY THE COMMISSION: On June 4, 1984, Hearing Examiner Wilson B. Partin, Jr., entered a recommended order in this docket entitled "Recommended Order Declaring Public Utility" whereby Mountain Acreage, Inc. ("Respondent"), was declared to be a public utility providing water utility service in the Oaks Subdivision in Buncombe County, North Carolina, and was required to file an application with the Commission seeking a certificate of public convenience and necessity.

On June 15, 1984, Mountain Acreage, Inc., filed certain exceptions to the recommended order.

By Commission Order dated June 22, 1984, the matter was scheduled for oral argument on Respondent's exceptions at 2:30 p.m., on Monday, July 30, 1984.

The matter came on for oral argument as scheduled. The Respondent and Public Staff were present, represented by counsel, and made oral argument.

Based upon a careful consideration of the recommended order of June 4, 1984, the oral argument of the parties before the Commission on July 30, 1984,

and the entire record in this proceeding, the Commission is of the opinion, finds, and concludes that all the findings, conclusions, and ordering paragraphs are fully supported by the record; that the recommended order dated June 4, 1984, should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every exception of the Respondent to the "Recommended Order Declaring Public Utility" dated June 4, 1984, be, and the same is hereby, overruled.

2. That the Recommended Order of June 4, 1984, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of August 1984.

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

Commissioner Hipp dissents

DOCKET NO. W-790, IN THE MATTER OF MOUNTAIN ACREAGE, INC. - THE OAKS SUBDIVISION

HIPP, COMMISSIONER, DISSENTING. I dissent because I think it is premature to make a final decision in this case on the present state of the record.

The testimony discloses that the Oaks Subdivision in Arden, Buncombe County, North Carolina, was originally planned for 24 lots with individual wells and septic tanks. When it became apparent that some lots would not sustain individual productive wells, the plan was changed to a system of four separate wells, with each separate well serving no more than the six adjoining lots. This system was incorporated into the deeds from the Respondent Mountain Acreage, Inc., the subdivider, to the homebuilders in the subdivision, and was in turn included in the individual deeds from the homebuilders to the present 24 homeowners on the lots. The deeds to the four lot owners on which the producing wells were located contained easements to the six identified adjoining lot owners for the use of that well, and the deeds to the lots without wells contained easements to use the specified well serving that lot. The deeds further provide that the six or seven lot owners on each well shall arrange among themselves to pay the expenses and manage the operation of the wells.

There were no reservations of any rights by Mountain Acreage, Inc. on any of its deeds to the builders setting up this plan for separate water wells in the subdivision.

The majority Order finds that the subdivider Mountain Acreage, Inc. is a public utility and shall comply with the rules for a public utility. Under the testimony in this case, those rules will require Mountain Acreage to completely redesign and rebuild the water sytem and acquire by purchase or condemnation, if not by gift, the standard 100 foot radius around the wells required by the

Health Department, along with all necessary easements for the distribution mains.

The record shows that the Petition in this proceeding was filed by one lot owner on whose property one of the wells is located. The owners of six of the other lots testified at the proceeding, including owners of two of the remaining well lots. There is no record that the remaining 17 lot owners have had any notice of the Petition or the hearing nor that they join in the relief prayed for in any form.

The majority Order, in effect, deprives 17 of the 24 homeowners in the Oaks Subdivision of their well rights and water easements without notice or hearing. The tesitmony discloses that each lot owner was charged up to $2500 per lot for connection to these wells, in cash or by negotiation, and the easements conveying these water rights are included in the deeds from the Grantor through the homebuilders to the homeowners.

In place of their existing water rights, these 17 homeowners are placed in a public utility water system which, according to the testimony, will have to redesign and rebuild the entire water system serving their property. The value of the four existing wells costing $15,000 each, according to the testimony, will be lost or the homes on these well lots will be condemned. These 17 lot owners without notice will have to pay regulated water rates that include a fair return on an entire new system designed and installed, at presumably high cost, after completion of the homes in the subdivision. The rates to 24 customers supporting such a small public utility system may well be in excess of the cost of some alternative solution which could be agreed to by all parties after notice and hearing.

The testimony further indicates that the Director of the Water Division for the Public Staff recommends an alternative solution by use of a city/county water system (Tr. p. 132), as follows:

"Ms. Moir:

"Q. Do you have any recommendation as to what might be an acceptable or satisfactory source of water for the Oaks Subdivision?

"Mr. Tweed:

"A. Yes, it is my understanding that the city/county system is not too far away and that could be an alternative which would not only benefit the developer but also the home owners..."

The testimony indicates that the bills which the Respondent sent to the homeowners contained statements (Tr. pp. 75, 76), as follows:

"You will be temporarily paying this fee to the above address. As Subdivision residents, you will need to meet and establish a committee responsible for water maintenance."...

"Soon this system will be turned over to the homeowners. However,

until that time the cost of power and maintenance must be paid."

At least one of the homeowners who did testify stated (Tr. p. 86), as follows:

> "...if I had my preference, I would have it as the deeds call for it or I would have a storage system or I would have the city and the county combined to come and install water in our particular area."

Another of the homeowners who testified stated (Tr. p. 84), as follows:

> "Let me say this. It has nothing to do with it whatsoever, but everyone here today loves the subdivision. It is beautiful. We all love to be there and the only thing that we want is proper water and we are certainly not here to crucify anybody or to cause any inconvenience to anyone or cost them a lot of money, sir. That is the only reason we are here. I wanted to clear that point."

The homeowners who testified stated that they wanted service restored to the level it was when one of the homebuilders had the plumber hook the four wells together for improved water pressure. This might be an option for a non-profit homeowners association, but under the testimony in this record will not be an option for the Respondent Mountain Acreage, Inc., because the wells would not qualify for public water systems under the 100 foot radius rule nor under the rule for ownership or control of the well lot by the utility.

In my view, the proceeding should be remanded for notice to all of the homeowners in the Oaks Subdivision with substantial additional efforts by all parties involved to reach a solution agreeable to the majority of homeowners, with notice of the consequences of such decision.

Edward B. Hipp, Commissioner

DOCKET NO. W-793

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>W & R Real Estate, Inc., 318 East Catawba Avenue, Mount Holly, North Carolina - Proceeding to Determine Public Utility Status | ) RECOMMENDED ORDER DECLARING<br>) W & R REAL ESTATE NOT A<br>) PUBLIC UTILITY |

HEARD IN: Governmental Services Facilities Center, Kings Mountain, North Carolina

DATE: May 17, 1984, 9:30 a.m.

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

APPEARANCES:

For the Complainant:

Robin Earl Bost, Staff Attorney, Catawba Valley Legal Services, Inc., 200 Avery Avenue, Morganton, North Carolina 28655
For: Mrs. Virginia Moore

For the Respondent:

Kemp A. Michael, Michael & Whitt, Attorneys at Law, 124 W. Catawba Avenue, Mount Holly, North Carolina 28120
For: W & R Real Estate, Inc.

For the Intervenor:

Gisele L. Rankin, 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 April 20, 1984, Robin E. Bost, an attorney with the Catawba Valley Legal Services, filed a letter on behalf of his client, Virginia Moore, a customer of water utility service provided by W & R Real Estate, Inc., of Mount Holly. In the letter, which the Commission treated as a Petition and Complaint, it was alleged that Mrs. Moore owns her home in a subdivision outside of Kings Mountain, that for at least eleven years she has received water service from a community well located in the subdivision, and that W & R Real Estate, Inc., has supplied water from the well to these residences for at least the past 12 years. The Petition further stated that Mrs. Moore received a letter from W & R Real Estate, Inc., dated March 22, 1984, stating that the Company would discontinue water service to Mrs. Moore as of May 1, 1984. In conclusion, Mrs. Moore requested the Commission to take prompt action to stop the arbitrary cut-off of water to her home and to the homes of her neighbors.

On April 25, 1984, the Commission issued an order instituting a show cause proceeding in this docket, serving the Petition and Complaint of Mrs. Moore

upon W & R Real Estate, Inc., by the Sheriff of Gaston County, and scheduling a hearing on the complaint on May 17, 1984, in Kings Mountain. The Order required W & R Real Estate to appear before the Commission on May 17 and show cause, if any it had, why the Company should not be declared a public utility subject to regulation by the Commission. The Order also required the Company to continue water service to Mrs. Moore and its other customers until such time as the Commission could hear and determine this proceeding.

The Complaint came on for hearing as scheduled in Kings Mountain on May 17, 1984. Mrs. Moore, W & R Real Estate, Inc., and the Public Staff were present and represented by counsel. The Complainant presented the testimony of Mrs. Virginia Moore and David Lee Humphrey and also called as a witness Harold O. Williams, the President of W & R Real Estate, Inc.

Thereafter, at the request of the Hearing Examiner, the parties submitted briefs and memoranda of law on the issues raised in this proceeding.

In consideration of the testimony and exhibits presented at the hearing, the briefs of counsel, and the entire record in this docket, the Hearing Examiner makes the following

FINDINGS OF FACT

1. W & R Real Estate, Inc. provides water to thirteen houses in the Foote Mineral Subdivision in Kings Mountain. These houses are served from one well owned by the Company.

2. Eight of these 13 houses are owned by W & R Real Estate and are rented to tenants of the Company. (These houses will be referred to as the "rental houses.")

3. Three of the houses, including the Complainant's, are owned and occupied by other persons, and these owners pay a water bill of $8.00 a month to W & R Real Estate. (These persons will be referred to as "the homeowners.")

4. One house, owned and occupied by an employee of W & R Real Estate, receives water without charge. The remaining house is owned by the President of W & R Real Estate and his wife and is occupied by a tenant.

5. With respect to the rental houses, W & R Real Estate does not separately charge for the water service provided to each house. There is a flat amount of rent for each house.

6. None of the houses served with water are metered.

7. W & R Real Estate has advised the three homeowners, including the Complainant, who pay the $8.00 a month water charge, that service would be terminated effective May 1, 1984.

8. The evidence is insufficient to support a finding that the water system in the Foote Mineral Subdivision was a public utility when W & R Real Estate purchased three houses and the water system in 1970.

9. The Complainant, Mrs. Moore, and the two other homeowners should be given at least 60 days from the effective date of this Order to find an alternative source of water.

CONCLUSIONS OF LAW

1. The Hearing Examiner concludes that W & R Real Estate, Inc. is not a public utility and is not therefore subject to the jurisdiction of the Commission.

This unique and troublesome case presents a question of statutory interpretation. The applicable statutes are set forth and discussed hereafter. G.S. 62-3(23)a.(2) provides in relevant part:

> "'Public utility' means a person, whether organized under the laws of this State or under the laws of any 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 . . .; 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, . . . "
>
> G.S. 62-3(23)d. provides in relevant part:
>
> "The term 'public utility', except as otherwise expressly provided in this Chapter, shall not include . . . any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others . . ."

The statutory scheme provides that a public utility is a person who owns or operates facilities for furnishing water to the public for compensation. This is the basic definition. There are two exceptions. First, a public utility shall not include any person whose sole operation consists of selling water to less than ten residential customers. (It is noted in passing that selling water is not the Company's "sole operation." The Company is in the business of renting houses, which is its primary operation.) The second exception provides that a water public utility does not include any person not otherwise a public utility who furnishes water only to himself, his employees or tenants when such water is not resold to or used by others. The Complainant correctly states in her brief that if the two exceptions are construed together, ". . . we get a coherent rule, namely, that a person whose sole operation is to sell water to fewer than 10 customers, or who furnishes water only to employees or tenants, is exempt from regulation." It does not follow from this construction, however, that W & R Real Estate is thereby a public utility. The briefs of all the parties devoted considerable attention to the two exceptions. The Examiner is of the opinion, however, that decision in this case requires that the Commission first determine whether or not W & R Real Estate is a public utility within the meaning of the basic definition. If the Commission determines that the Company's activities do not come within the

basic definition, this determination, under the facts of this case, should conclude the matter.

The Company provides water to two classes of customers: the three homeowners and the tenants of the rental houses.* Does the Company furnish water to the public? The statutes do not define the word "public." Two Supreme Court cases have attempted to define "public" in the utilities context. In Utilities Commission v. Telegraph Co., 267 N.C. 257 (1966), the Court held that a mobile radio telephone company serving 33 subscribers in one community was a public utility. The Court stated, at 268:

> "One offers service to the 'public' within the meaning of this statute when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial, in this connection, that his service is limited to a specified area and his facilities are limited in capacity. For example, the operator of a single vehicle within a single community may be a common carrier."

In Utilities Commission v. Simpson, 295 N.C. 519 (1978), the Court held that a doctor who provided two-way radio service for ten doctors in his county medical society for compensation was also a public utility. The Court stated, at 524:

> ". . . whether any given enterprise is a public utility within the meaning of a regulatory scheme does not depend on some abstract, formulistic definition of 'public' to be thereafter universally applied. What is the 'public' in any given case depends rather on the regulatory circumstances of that case. Some of the circumstances are (1) nature of the industry sought to be regulated; (2) type of market served by the industry; (3) the kind of competition that naturally inheres in that market; and (4) effect of non-regulation or exemption from regulation of one or more persons engaged in the industry. The meaning of 'public' must in the final analysis be such as will, in the context of the regulatory circumstances and as already noted by the Court of Appeals, accomplish 'the legislature's purpose and comport with its public policy.'"

The Supreme Court in the Simpson case adopted a flexible approach in arriving at the definition of "public." The Court identified as the relevant standard "sales to sufficient of the public to clothe the operation with a public interest." Griffith vs. New Mexico Public Service Commission, 520 P.2d 269, 272 (1974); Iowa State Commerce Commission v. Northern Natural Gas Co., 161 N.W. 2d 111, at 114. (cited with approval.)

Certainly homeowners sufficient in number to generate sufficient sales would be includable in any reasonable definition of "public." The General Assembly has fixed ten residential customers as the threshold for public

*The Examiner takes note of the Company's employee, Mr. Whetstine, and the tenant of the Company's President, but he feels that classification of these two is not essential to a decision in this case. Since these tow persons do do not pay a monthly charge of $8.00, they would not be classified as homeowners.

utility status of those persons whose sole operation consists of selling water. In considering whether the tenants should be included within the definition, attention is called to the Annotation, "Landlord Supplying Electricity, Gas, Water, or Similar Facility to Tenant as Subject to Utility Regulation", 75 ALR 3d 1204. In this annotation, it is stated in Section 3(b):

> "The overwhelming majority of the courts take the position that a landlord who supplies electricity, gas, water, or similar service to his tenants only, is not devoting the property involved to a public use and is not subject to regulation as a public utility."

In discussing the reasons for the majority rule excluding the landlord from public utility regulation, the Annotation points out that the courts have considered the following: does the particular enterprise "hold itself out to serve the public"? The landlord-tenant relationship is a contractual one and is inconsistent with the concept of holding out to serve the public. See Drexelbrook Assoc. v. Pennsylvania Public Util. Comm., 212 A. 2d 237 (Pa. 1965); Wilhite v. Public Service Commission, 149 S.E. 2d 273 (1966). The Annotation further points out that some courts have held that where the landlord's service is found to be a "mere incident of some other dominant service (ordinarily, the renting of premises), the landlord is not a public utility." The courts have also rejected the need for consumer protection as the basis for regulating landlords who supply utility services to their tenants.

North Carolina itself recognizes the nature of the landlord-tenant relationship in the exception found in G.S. 62-3(23)d.

The Examiner is of the opinion that, in reaching a decision in this case, the tenants of W & R Real Estate should not be includable within the statutory definition "to or for the public."

The Examiner concludes that W & R Real Estate, under the evidence in this case, is not furnishing water to the "public" within the meaning of G.S. 62-2(23)a.2. In so deciding, the Examiner calls attention to the following evidence presented at the hearing: W & R Real Estate owns a well which provides water to 13 houses in the Foote Mineral Subdivision. The houses are not metered. Eight of these 13 houses are owned by the Company and are rented to tenants. The Company does not separately charge for the water provided to the rental houses, but charges a flat amount of rent. Three of the houses are owned and occupied by other persons, including the Complainant, Mrs. Moore. These homeowners pay a water bill of $8.00 a month to the Company. (As to the remaining two residences: one is owned and occupied by an employee of the Company who receives water without charge; the other is occupied by a tenant of the Company's president.) The Company originally purchased three houses in 1970 and now owns and rents eight houses.

It can reasonably be inferred from the evidence that the primary business of the Company is owning rental houses.

> "Where the landlord's [utility] service is a mere incident to some other dominant service (ordinarily renting the premises) [the] courts have refused to treat the service as one subject to utility regulation." Annot. 75 ALR 3d 1204, at 1215.

Furthermore, there are not in this case "sales to sufficient of the public to clothe the operation with a public interest." The Company separately charges for water to only three customers, the homeowners, at a rate of $8.00 a month--a total annual revenue to the Company of $288 (3 customers x 8.00 x 12 months). There is no evidence that the number of homeowners subject to the $8.00 charge will ever increase. Indeed the evidence is clear that, since the Company acquired the system in 1970, the number of houses that could be classified as "homeowners" has irreversibly decreased, the number of tenant houses having increased from three to eight. Even under the "formulistic" definition of "the public," such conduct by W & R Real Estate is at odds with the concept of holding onself out as willing to serve the public.

Attention is called to Cawker v. Meyer, 133 N.W.157 (Wis. 1911). In this case the Supreme Court of Wisconsin held that a landlord's sale of surplus heat and electricity to three adjoining neighbors was merely incidental to the landlord's primary function of providing these services to its own tenants and did not constitute the landlord a public utility. The Court stated, at 159:

> "The tenants of a landlord are not the public; neither are a few of his neighbors, or a few isolated individuals with whom he may choose to deal, though they are a part of the public. The word 'public' must be construed to mean more than a limited class defined by the relation of landlord and tenant, or by nearness of location, as neighbors, or more than a few who, by reason of any peculiar relation to the owner of the plant, can be served by him." (emphasis added)

The Court continued, in explanation:

> ". . . The use to which the plant, equipment, or some portion thereof is put must be for the public, in order to constitute it a public utility.
>
> "But whether or not the use is for the public does not necessarily depend upon the number of consumers; . . . If the product of the plant is intended for and open to the use of all the members of the public who may require it, to the extent of its capacity, the fact that only one or two thereof consume the entire product renders the plant none the less a public utility. On the other hand, a landlord may furnish it to a hundred tenants, or incidentally, to a few neighbors, without coming either under the letter or the intent of the law. In the instant case, the purpose of the plant was to serve the tenants of the owners, a restricted class, standing in a certain contract relation with them, and not the public. The furnishing of power, light, and heat to a few neighbors was incidental merely and limited to them. . . ." (emphasis added)

For the reasons set forth above, the Examiner is of the opinion that, under the particular facts of this case, W & R Real Estate is not providing water utility service "to or for the public" and therefore is not a public utility.

2. The evidence in this proceeding is insufficient to establish that the water system in the Foot Mineral Subdivision was a public utility when W & R Real Estate acquired the three tenant houses and the water system in 1970.

At the hearing, Mr. Williams, the President of the Company, was asked if other persons had been served by the well prior to its acquisition by the Company. Mr. Williams answered: ". . . Yes, there were some others at one time, I suppose . . ." Tr., p. 35. Mr. Williams further replied that possibly another four houses were connected to the system which were torn down shortly after they were purchased by the Company. There was no inquiry of Mr. Williams as to the number of houses actually occupied and receiving water from the well in 1970 when the Company purchased the well. Furthermore, there was no evidence as to whether or not those houses which were occupied and actually receiving water from the well at the time of its acquisition by the Company, or at any time prior to that date, were actually paying customers or not, or tenants or employees of the well owner. There was evidence in the record that the number of houses actually receiving water would vary because some of the houses were empty most of the time.

3. The Complainant, Mrs. Moore, and the two other homeowners in the subdivision should be given 60 days from the effective date of this Recommended Order to find an alternative source of water.

This Order has found that W & R Real Estate is not a public utility and is not subject to the jurisdiction of the Commission. The Company gave the three homeowners notice that it would terminate water service by May 1, 1984. Such termination notice was stayed by Ordering Paragraph 4 of the Commission's Order of April 25, 1984. Although W & R Real Estate has been found not to be a public utility, the Company is a party in this proceeding and should be required to give the Complainant and the two other homeowners a reasonable time to find an alternative source of water. Most likely this alternative source of water will be the drilling of a new well. The Examiner is of the opinion that 60 days is a reasonable amount of time for the homeowners to locate a new source of water.

IT IS, THEREFORE, ORDERED as follows:

1. That W & R Real Estate Company is not a public utility within the meaning of NCGS Chapter 62 and therefore is not subject to the jurisdiction of the Commission.

2. That Ordering Paragraph No. 4 in the Order of April 25, 1984, in this docket, which reads as follows:

> "4. That, pending the hearing and determination of this proceeding by the Commission, W & R Real Estate, Inc., its officers, agents, and employees shall:
>
> "a. Take all necessary steps to provide adequate, safe and reliable water service to its customers in the Foote Mineral Subdivision, Cleveland County, North Carolina.
>
> "b. Refrain from disconnecting or discontinuing water service to any customers in the Foote Mineral Subdivision, including Mrs.

Virginia Moore, until such time as the Commission has heard and determined this proceeding."

shall continue in force and effect until the expiration of 60 days from the effective date of this Order.

3. That, except as provided in Paragraph 2 above, this Recommended Order shall become effective and final on October 21, 1984. Exceptions to the Recommended Order shall be due on or before October 16, 1984.

ISSUED BY ORDER OF THE COMMISSION.
This is the 1st day of October 1984.

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

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Carolina Power & Light Company - Recommended Order in Complaint of Robert F. Drum
E-2, Sub 471 (2-20-84)

Carolina Power & Light Company - Order Dismissing Complaint of Conservation Council of North Carolina and Closing Docket
E-2, Sub 475 (4-26-84)

Carolina Power & Light Company - Order Dismissing Complaint and Closing Docket in Complaint of Hugh E. Naylor, Jr.
E-2, Sub 476 (4-18-84)

Carolina Power & Light Company - Order Closing Docket in Complaint of Ezra Meir Associates, Inc.
E-2, Sub 477 (1-5-84)

Carolina Power & Light Company - Recommended Order Denying Complaint of Mrs. Lillian Hilliard, Black Mountain, North Carolina
E-2, Sub 483 (9-10-84)

Carolina Power & Light Company - Order Overruling Exceptions and Denying Complaint of Mrs. Lillian Hilliard, Black Mountain, North Carolina
E-2, Sub 483 (12-7-84)

Carolina Power & Light Company - Order Closing Docket in Complaint of Robert Earl Holloway
E-2, Sub 486 (6-13-84)

Duke Power Company - Recommended Order Denying Complaint of John M. Williams
E-7, Sub 367 (4-11-84)

Duke Power Company - Order Dismissing Complaint and Authorizing Duke Power Company to Collect Outstanding Account in Complaint of Nathaniel Charles Denson
E-7, Sub 385 (12-4-84)

Duke Power Company - Order Closing Docket in Complaint of T. R. Bryant
E-7, Sub 387 (9-28-84)

Piedmont Electric Membership Corporation and Duke Power Company - Recommended Order in Complaint of Andrew Benjamin Lloyd, Jr., d/b/a Lloyd's Dairy
EC-32, Sub 39 (10-29-84); Corrected Recommended Order (11-7-84)

Virginia Electric and Power Company - Recommended Order Dismissing Complaint of the Town of Manteo
E-22, Sub 276 (6-22-84)

Virginia Electric and Power Company - Final Order Overruling Exception and Affirming Recommended Order in Complaint of the Town of Manteo
E-22, Sub 276 (8-7-84)

CONTRACTS

Cogentrix of North Carolina, Inc. - Order Approving Contracts Between Cogentrix and Carolina Power & Light Company for Sale and Purchase of Electricity from Three Cogeneration Facilities: West Point Pepperell Projects in Lumberton and Elizabethtown and the Guilford Mills, Inc., Project in Kenansville
SP-16, SP-16, Sub 2, and SP-16, Sub 4 (7-11-84)

Cogentrix of North Carolina, Inc. - Order Reaffirming Approval of Contracts
SP-16, SP-16, Sub 2, and SP-16, Sub 4 (8-29-84)

Cook Industries, Inc. - Order Approving Contract Authorizing High Falls Hydro Project on the Deep River Located at High Falls in Moore County
SP-2, Sub 1 (9-21-84)

New Hanover County - Order Approving Contract for the Sale and Purchase of Electricity to Be Produced at a Cogeneration Facility Located on Highway 421 North, Wilmington, New Hanover County
SP-29 (7-5-84)

Radford, Bruce, President, Radford Construction Company, Inc. - Order Approving Contract Authorizing Construction of Ivy River Hydroelectric Plant Located in Madison County
SP-7 (9-21-84)

ELECTRIC-SUPPLIERS

Carolina Power & Light Company and Four County Electric Membership Corporation - Order Assigning Service Areas in Pender County
ES-89, Sub 1 (6-21-84)

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Duke Power Company - Order Amending Charges in Residential Time-Of-Day Schedule RTX (Experimental)
E-7, Sub 358 (3-8-84)

Laurel Hill Electric Company, Inc. - Order Approving Increase in Retail Electric Rates and Charges Pursuant to G.S. 62-134(d)
E-10, Sub 15 (7-12-84)

New River Light and Power Company - Order Approving Adjustments and Requiring Notice to Adjust Base Rates
E-34, Sub 22 (3-20-84)

RATES - PURCHASED POWER ADJUSTMENT

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment
E-13, Sub 68 (2-29-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment
E-13, Sub 69 (3-27-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment
E-13, Sub 70 (4-25-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment by the Addition of a factor of 0.0502¢ per kWh to Customer Bills
E-13, Sub 71 (5-23-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment of a Negative PPA factor of 0.0471¢ per kWh
E-13, Sub 72 (6-28-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment by the Inclusion of a PPA Factor of (0.0781)¢ per kWh to Customer Bills
E-13, Sub 73 (7-24-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment
E-13, Sub 74 (8-29-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment by the Inclusion of a PPA Factor of 0.1501¢ per kWh to Customer Bills
E-13, Sub 76 (9-25-84)

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment by the Inclusion of a PPA Factor of 0.9210C per kWh to Customer Bills
E-13, Sub 79 (12-18-84)

SECURITIES

Carolina Power & Light Company - Supplemental Order Granting Reaffirmation of Authority to Issue and Sell Additional Securities (Common Stock) for Stock Purchase-Savings Program for Employees
E-2, Sub 439 (6-27-84)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Preferred Stock A)
E-2, Sub 485 (5-2-84)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Common Stock)
E-2, Sub 487 (7-27-84)

Carolina Power & Light Company - Order Granting Authority to Issue Additional Securities (First Mortgage Bonds)
E-2, Sub 488 (6-21-84)

Carolina Power & Light Company - Order Granting Authority to Issue Additional Securities (Common Stock) Under Payroll-Based Tax Credit Employee Stock Ownership Plan (Paysop)
E-2, Sub 489 (8-2-84)

Carolina Power & Light Company - Order Granting Authority to Issue Additional Securities (Common Stock) Under Payroll-Based Tax Credit Employee Stock Ownership Plan (Paysop)
E-2, Sub 489 (8-2-84)

Carolina Power & Light Company - Order Granting Authority to Enter into a $170,000,000 Revolving Credit Agreement
E-2, Sub 491 (8-16-84)

Carolina Power & Light Company - Order Granting Authority to Sell Leslie McInnes Coal Mining Companies
E-2, Sub 493 (9-25-84)

Duke Power Company - Order Granting Authority for Pollution Control Financing Arrangement
E-7, Sub 388 (9-6-84)

TARIFFS

Duke Power Company - Order Approving Tariffs
E-7, Sub 373 (6-15-84)

Duke Power Company - Order Approving Revised Tariffs
E-7, Sub 373 (10-12-84)

Virginia Electric and Power Company - Order Approving Tariffs
E-22, Sub 273 (3-28-84)

MISCELLANEOUS

Carolina Power & Light Company - Order Rescinding Semiannual Reports
E-2, Sub 416 (5-30-84)

Deep River Hydro - Order Denying Temporary Relief
SP-4, Sub 1 (6-27-84)

Duke Power Company - Order Approving Revised Residential Loan Assistance Program
E-7, Sub 338 (8-8-84)

Duke Power Company - Order Approving Purchase of Distribution Facilities and Transfer of Customers
E-7, Sub 376 (4-3-84)

Mecklenburg Electric Cooperative - Order Reassigning Territory Pursuant to G.S. 62-110.2(c)(2)
ES-98, (3-20-84)

Natural Power, Inc. - Order Approving Contract Re Landfill Methane Gas-Fueled Electrical Generation Project in Wake County
SP-24 (4-25-84)

Solar Research Corporation - Order Denying Temporary Operating Authority for Authorizing a Hydroelectric Generating Facility Located at the Milburnie Dam on the Neuse River in St. Matthews Township, Wake County
SP-23 (2-8-84)

Virginia Electric and Power Company - Order Extending Residential Air Conditioner Load Control Test Program
E-22, Sub 268 (5-8-84)

Virginia Electric and Power Company - Order Approving Revision of Energy Conservation Standards for Townhouses in Vepco Residential Schedules 1, 1P, and 1T
E-22, Sub 273 (2-9-84)

FERRY BOATS

AUTHORITY GRANTED

Carteret Boat Tours, Inc. - Order Granting Common Carrier Authority to Transport Passengers and Their Baggage and Light Express as a Common Carrier by Boat from Harkers Island, North Carolina, Across Back Sound; thence up Bardens Inlet; over a Distance of About Five Miles, Landing at the Eastern Most Tip of Shackleford Banks, North Carolina, and Return over the Same Route
A-23, Sub 3 (8-2-84)

CERTIFICATES

Carteret Boat Tours, Inc. - Order Granting Common Carrier Authority
A-23, Sub 3 (8-2-84)

INCORPORATION AND TRANSFERS

Morris Marina, Kabin Kamps and Ferry Service, Inc. - Order Approving Incorporation and Transfer of Certificate No. A-26 from Donza Lee Morris, d/b/a Morris Marina
A-26, Sub 1 (4-2-84)

GAS

APPLICATIONS AMENDED

North Carolina Natural Gas Corporation - Order Approving Amendment
G-21, Sub 235 (7-17-84)

CANCELLATIONS

Langwood Mobile Home Park - Reissued Order Cancelling Gas and Oil Franchise upon No Protest by Residents
LPG-1, Sub 5 (1-16-84)

COMPLAINTS

Public Service Gas Company of North Carolina, Inc. - Order Closing Docket in Complaint of Gerald L. Lloyd
G-5, Sub 195 (9-28-84)

RATES

RATES - CURTAILMENT TRACKING RATE

North Carolina Natural Gas Corporation - Order Requiring Refunds
G-21, Sub 177-E, and G-21, Sub 230 (1-24-84)

RATES - DEPRECIATION

Piedmont Natural Gas Company, Inc. - Order Approving Depreciation Rates in Report Entitled "Remaining Life Study and Annual Depreciation Accrual Rates" as of October 31, 1983, Effective November 1, 1984
G-9, Sub 77C (12-11-84)

RATES - EXPLORATION AND DEVELOPMENT (E&D)

North Carolina Natural Gas Corporation - Order Approving E&D Refunds in Part and Deferring Certain Dollars
G-21, Sub 247 (10-2-84)

Pennsylvania and Southern Gas Company, N. C. Gas Service Division - Order Approving Exploration and Development Refund Plan
G-3, Sub 121 (3-27-84)

Pennsylvania and Southern Gas Company, N. C. Gas Service Division - Order Approving Exploration and Development Refund Plan
G-3, Sub 125 (8-21-84)

Piedmont Natural Gas Company, Inc. - Order Approving E&D Refund Plan
G-9, Sub 240 (4-2-84)

Public Service Company of North Carolina, Inc. - Order Approving E&D Refund Plan
G-5, Sub 190 (4-3-84)

Public Service Company of North Carolina, Inc. - Order Approving E&D Refund Plan
G-5, Sub 194 (10-2-84)

RATES - INDUSTRIAL SALES TRACKER

Public Service Company of North Carolina, Inc. - Order Allowing Refund of the Industrial Sales Tracker to Become Effective November 1, 1984
G-5, Sub 181 (10-31-84)

RATES - PURCHASED GAS ADJUSTMENT (PGA)

North Carolina Natural Gas Corporation - Order Allowing PGA Increase Effective April 1, 1984
G-21, Sub 241 (4-10-84)

North Carolina Natural Gas Corporation - Order
G-21, Sub 243 (5-11-84)

North Carolina Natural Gas Corporation - Order Allowing PGA Increase Effective May 1, 1984
G-21, Sub 244 (5-1-84)

Pennsylvania and Southern Gas Company, N.C. Gas Service Division - Order Allowing PGA Increase Effective April 1, 1984
G-3, Sub 122 (4-10-84)

Pennsylvania and Southern Gas Company, N. C. Gas Service Division - Order Allowing PGA to Become Effective May 1, 1984
G-3, Sub 123 (5-1-84)

Piedmont Natural Gas Company, Inc. - Order Allowing Deferral of PGA to Become Effective April 1, 1984
G-9, Sub 241 (4-10-84)

Piedmont Natural Gas Company - Order Allowing PGA Increase to Become Effective May 1, 1984
G-9, Sub 241, and G-9, Sub 242 (5-1-84)

Piedmont Natural Gas Company - Order Allowing PGA Decrease to Become Effective November 1, 1984
G-9, Sub 244 (10-31-84)

Public Service Company of North Carolina, Inc. - Order Allowing PGA Increase Effective April 1, 1984
G-5, Sub 191 (4-10-84)

Public Service Company of North Carolina, Inc. - Order Allowing PGA to Become Effective May 1, 1984
G-5, Sub 192 (5-1-84)

Public Service Company of North Carolina, Inc. - Order Allowing PGA to Become Effective November 1, 1984
G-5, Sub 196 (10-31-84)

RATES - REFUND/TRANSCO SETTLEMENT CURTAILMENT PLAN

North Carolina Natural Gas Corporation - Order Approving Refund Plan in Part and Deferring Refund (Compensation)
G-21, Sub 214 (11-2-84)

Public Service Company of North Carolina, Inc. - Order Approving Refund Effective November 1, 1984
G-5, Sub 159 (10-31-84)

Public Service Company of North Carolina, Inc. - Order on Reconsideration Approving Refund Effective November 1, 1984
G-5, Sub 159 (11-7-84)

SECURITIES

North Carolina Natural Gas Corporation - Order Granting Authority to Issue and Sell Common Stock
G-21, Sub 245 (6-1-84)

Pennsylvania and Southern Gas Company, N.C. Gas Service Division - Order Allowing PGA Increase Effective April 1, 1984
G-3, Sub 122 (4-10-84)

Pennsylvania and Southern Gas Company, N. C. Gas Service Division - Order Allowing PGA to Become Effective May 1, 1984
G-3, Sub 123 (5-1-84)

Piedmont Natural Gas Company, Inc. - Order Allowing Deferral of PGA to Become Effective April 1, 1984
G-9, Sub 241 (4-10-84)

Piedmont Natural Gas Company - Order Allowing PGA Increase to Become Effective May 1, 1984
G-9, Sub 241, and G-9, Sub 242 (5-1-84)

Piedmont Natural Gas Company - Order Allowing PGA Decrease to Become Effective November 1, 1984
G-9, Sub 244 (10-31-84)

Public Service Company of North Carolina, Inc. - Order Allowing PGA Increase Effective April 1, 1984
G-5, Sub 191 (4-10-84)

Public Service Company of North Carolina, Inc. - Order Allowing PGA to Become Effective May 1, 1984
G-5, Sub 192 (5-1-84)

Public Service Company of North Carolina, Inc. - Order Allowing PGA to Become Effective November 1, 1984
G-5, Sub 196 (10-31-84)

RATES - REFUND/TRANSCO SETTLEMENT CURTAILMENT PLAN

North Carolina Natural Gas Corporation - Order Approving Refund Plan in Part and Deferring Refund (Compensation)
G-21, Sub 214 (11-2-84)

Public Service Company of North Carolina, Inc. - Order Approving Refund Effective November 1, 1984
G-5, Sub 159 (10-31-84)

Public Service Company of North Carolina, Inc. - Order on Reconsideration Approving Refund Effective November 1, 1984
G-5, Sub 159 (11-7-84)

SECURITIES

North Carolina Natural Gas Corporation - Order Granting Authority to Issue and Sell Common Stock
G-21, Sub 245 (6-1-84)

North Carolina Natural Gas Corporation - Order Granting Authority to Issue and Sell $15,000,000 Principal Amount of Debentures
G-21, Sub 246 (8-8-84)

Pennsylvania and Southern Gas Company (N. C. Gas Service Division) - Order Granting Authority to Borrow Funds
G-3, Sub 124 (7-2-84)

TARIFFS

North Carolina Natural Gas Corporation - Order Accepting Filing of Tariff NGV
G-21, Sub 242 (6-5-84)

MISCELLANEOUS

North Carolina Natural Gas Corporation - Order Denying Reconsideration for an Adjustment of Its Rates and Charges
G-21, Sub 235, and G-21, Sub 237 (2-28-84)

MOTOR BUSES

AUTHORITY GRANTED - COMMON CARRIER

Cooper, James McPhail - Order Granting Common Carrier Authority to Transport Passengers
B-421 (3-22-84)

Dills and Carpenter Transit, Gerald D. Carpenter and Jerry D. Dills, d/b/a - Order Granting Common Carrier Authority to Transport Passengers
B-415 (1-26-84)

King's Bus Service, Calvin R. King, d/b/a - Order Granting Common Carrier Authority to Transport Passengers
B-416 (4-3-84)

Outer Banks Transit Company - Order Granting Common Carrier Authority along Designated Routes
B-423 (4-26-84)

Piedmont Transit, Inc. - Order Granting Common Carrier Authority to Transport Passengers
B-403 (3-5-84)

Pirate Explorers Transportation, Incorporated - Recommended Order Granting Common Carrier Authority to Transport Passengers and Their Baggage over Designated Routes with Restrictions (in the LaGrange and Kinston Areas)
B-433 (11-5-84)

Scenic Tours, Inc. - Order Granting Common Carrier Authority to Transport Passengers Along Designated Routes
B-428 (5-18-84)

Trans-Service, Inc. - Order Granting Common Carrier Authority
B-411 (1-11-84)

BROKER'S LICENSES - (GRANTED/CANCELLED)

Daybreak Sing, Inc. - Order Granting Broker's License
B-434 (12-3-84)

Five Star Tours, Robert J. Gulotta, d/b/a - Order Granting Broker's License
B-412 (2-8-84)

Piedmont Tours of Burlington, Inc. - Order Granting Broker's License
B-427 (3-19-84)

Scurlock's Travel & Tours, Robert L. Scurlock, d/b/a - Order Granting Broker's License
B-413 (3-8-84)

Sheryl's Tours, Inc. - Order Granting Broker's License
B-426 (5-4-84)

Talks, Tours & Things, Phyllis K. Sockwell & Laura Piver, d/b/a - Order Granting Broker's License
B-432 (12-5-84)

Treasure Circuit, Lillian V. Hoopaugh, Larry D. Hoopaugh, Sandra E. Lully, and Philip E. Lully, d/b/a - Order Cancelling Broker's License No. B-371
B-371, Sub 1 (8-10-84)

CANCELLATIONS

Dyer, Norman G. - Order Cancelling Certificate No. B-401 and Dismissing Show Cause Procedure
T-100, Sub 3, and B-401, Sub 1 (7-25-84)

Gary Line Sightseeing Tours, Inc. - Order Cancelling Certificate No. B-379 and Dismissing Show Cause Proceeding
T-100, Sub 3, and B-379, Sub 2 (7-25-84); Errata Order (8-1-84)

Harcaronee Bus Service, Carl L. Whitted, d/b/a - Recommended Order Cancelling Operating Authority, Termination of Liability Insurance Coverage
B-355, Sub 1 (4-4-84)

Intercity Bus Lines, Inc. - Order Cancelling Temporary Authority
B-419 (1-17-84)

DISCONTINUANCE OF SERVICE

Trailways Southeastern Lines, Inc. - Order Granting Request to Discontinue Intrastate Motor Bus Transportation Service over Routes Set Forth in NCUC Schedule 3-27, Runs 1471 and 1472
B-69, Sub 140 (11-1-84)

INCORPORATION AND TRANSFERS

Brantley Tours, Inc. - Order Approving Incorporation
B-370, Sub 1 (6-4-84)

NAME CHANGE

Dunn Management Services, Inc. - Order Approving Use of Trade Name of T & D Tours
B-389, Sub 2 (6-12-84)

RATES

Greyhound Lines, Inc. - Recommended Order Denying Increase in Intercity Bus Passenger Fares
B-7, Sub 101 (2-27-84)

Seashore Transportation Company - Recommended Order Granting Increase to Proposed Increases in Intercity Bus Passenger Fares and Bus Package Express Rates
B-79, Sub 24 (3-14-84)

Seashore Transportation Company - Order Adopting Recommended Order as Final Order of the Commission
B-79, Sub 24 (3-14-84)

Seashore Transportation Company - Order Granting Increase of Intrastate Charter Coach Fares to the Current Interstate Fare Level
B-79, Sub 25 (12-18-84)

SALES AND TRANSFERS

Circle Tours, Corporate Travel International of North Carolina, Inc., d/b/a - Order Approving Transfer of Certificate No. B-320 from Circle Tours, Inc.
B-429 (6-15-84)

MISCELLANEOUS

Carolina Coach Company - Order Granting Request to Reduce Service
B-15, Sub 189 (7-27-84)

Greyhound Lines, Inc. - Order Granting Request to Reduce Service
B-7, Sub 102 (2-14-84)

Greyhound Lines, Inc., and Seashore Transportation Company - Order Granting Petition for Relief from Order Requiring Operation of Goldsboro Union Bus Station by a Board of Directors
B-275, Sub 48 (3-7-84)

Jacksonville Union Bus Station - Order Granting Petition on a Six-Month Trial Basis
B-270, Sub 1 (6-29-84); Errata Order (7-16-84)

Piedmont Coach Lines, Inc. - Recommended Order Denying Petitions for Resumption of Bus Service
B-110, Sub 21 (8-29-84)

Trailways Southeastern Lines, Inc. - Order Allowing Withdrawal of Proposal and Closing Docket, Discontinuing Intrastate Motor Bus Transportation
B-69, Sub 137 (1-16-84)

Trailways Southeastern Lines, Inc. - Order Allowing Withdrawal of Proposal and Closing Docket, Discontinuing Intrastate Motor Bus Transportation
B-69, Sub 138 (3-7-84)

Trailways Southeastern Lines, Inc. - Recommended Order Granting Application to Discontinue Bus Runs 6203 and 6200
B-69, Sub 138 (7-20-84)

Trailways Southeastern Lines, Inc. - Order Deferring Ruling on Exceptions and Granting Motion to Hold Recommended Order in Abeyance Until October-15, 1984
B-69, Sub 138 (8-7-84)

MOTOR TRUCKS

APPLICATIONS AMENDED

A-1 Filter Sales & Courier Service, Inc. - Order Amending Application for Common Carrier Authority
T-2408 (8-21-84)

BHL Transport, Inc. - Order Reinstating Application and Amending Application
T-2340 (3-27-84)

Bowman, D. M., Inc. - Order Amending Application for Contract Carrier Authority
T-2343, Sub 1 (12-13-84)

Bridgeways Company - Order Amending Application, Allowing Withdrawal of Protests and Cancelling Hearing
T-2341 (2-21-84)

Cardel Corporation - Order Amending Application and Allowing Withdrawal of Protest
T-2445 (12-31-84)

Center Line, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2364 (4-13-84); Cancelling Hearing (6-12-84)

Fleming, J. Clint, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-1090, Sub 1 (7-9-84)

Gate City Delivery Service, Carl M. Smith, d/b/a - Order Amending Application and Continuing Hearing
T-2368 (4-11-84)

Graham, David, Company - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2409 (9-12-84)

Groves, F. W., Trucking Company - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-1084, Sub 6 (5-11-84)

Howell Transfer Company, Incorporated - Order Amending Application Allowing Withdrawal of Protest and Cancelling Hearing
T-62, Sub 6 (10-9-84)

Hucks Piggyback Service, Inc. - Order Amending Application
T-2406 (8-21-84)

Liberty Trucking, Jack Respress and Stephen Hall, d/b/a - Order Amending Application and Allowing Withdrawal of Protest and Cancelling Hearing
T-2331 (1-19-84)

Maness, Walter Clyde - Order Amending Application for Common Carrier Authority
T-2403 (9-19-84)

Owens & Minor, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2356 (4-5-84)

Skyline Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2128, Sub 2 (8-22-84)

Watts' Trucking Company, Elford Daley Watts, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2357, Sub 1 (5-10-84)

Yelton Trucking Company, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2371 (5-1-84)

APPLICATIONS DENIED, DISMISSED, OR WITHDRAWN

Arnold's Purchasing Services, William F. Arnold, d/b/a - Order Allowing Withdrawal of Application
T-2320 (1-10-84)

BHL Transport, Inc. - Recommended Order Dismissing Application
T-2340 (3-2-84)

Carolina Couriers, Timothy Charles Gaddy and William Howard Robbins, d/b/a - Order Allowing Withdrawal of Application
T-2362 (5-1-84)

Embers Express Trucking Company, Inc. - Order Allowing Withdrawal of Application
T-2319 (1-10-84)

Epes Transport System, Inc. - Order Allowing Withdrawal of Application and Cancelling Hearing
T-688, Sub 7 (8-6-84)

Hamrick Mobile Homes, Carson Hamrick, d/b/a - Order Allowing Withdrawal of Application
T-2380 (7-11-84)

N & B Equipment, Inc. - Recommended Order Denying Application for a Common Carrier Certificate
T-2351 (6-25-84)

Precision Bulk Transport, Inc. - Order Allowing Withdrawal of Application
T-2354 (4-16-84)

Truckin' Movers Corporation - Order Allowing Withdrawal of Application
T-2271 (6-8-84)

AUTHORITY GRANTED - COMMON CARRIER

A-1 Filter Sales & Courier Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities in Designated Counties with Restrictions of Bank Documents and Data Processing for Banks
T-2408 (10-1-84)

Aaacon Auto Transport, Inc. - Order Granting Common Carrier Authority
T-2326 (4-9-84)

Action Moving and Storage, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2007, Sub 1 (11-1-84)

Air Cargo Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide (with Restrictions)
T-2413 (9-28-84)

Alfred's Mobile Home Movers, Alfred McMahan, d/b/a - Order Granting Common Carrier Authority to Transport Mobile Homes, Modular Units, and Tobacco Barns, Within the Counties Shown in the Order
T-2313 (2-10-84)

BHL Transport, Inc. - Order Granting Common Carrier Authority
T-2340 (4-17-84)

Barbour's Mobile Home Movers & Service, Perry Gene Barbour, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2404 (8-21-84)

Barco Pickup and Delivery Service, d/b/a, Clarence J. Barker - Order Granting Common Carrier Authority to Transport General Commodities
T-2337 (2-21-84)

Bestway Express, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2321 (1-17-84); Errata (1-18-84)

Bridgeways Company - Order Granting Common Carrier Authority to Transport General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2341 (3-20-84)

Brown Oil & Transit Company, Inc. - Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk, in Tank Vehicles Within Alexander and Rutherford Counties
T-162, Sub 4 (9-14-84)

Burton Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, Group 19, Group 21, and Group 10, Designated Materials, Products, and Commodities on Designated Routes
T-266, Sub 8 (7-26-84)

Cargo Transporters, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2424 (11-29-84)

Carrier Freight Lines, Inc. - Order Granting Common Carrier Authority to Transport General Commodities in Bulk, Statewide
T-2339 (3-29-84)

Castleberry, William T. - Order Granting Common Carrier Authority to Transport Mobile Homes, Including Manufactured Housing, Statewide
T-2311 (2-7-84)

Center Line, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities with Exceptions; Group 15, Retail Store Delivery Service; and Group 18, Household Goods on Designated Routes
T-2364 (7-11-84)

CDL Housing, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Homes, Single, Double-Wide and Modular, Statewide
T-2335 (5-7-84)

Clark, J. B., II - Order Granting Common Carrier Authority to Transport Group 5, Solid Refrigerated Products, Statewide
T-2366 (5-1-84)

Cline, Phil, Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, Statewide
T-2360 (6-13-84)

Coastal Transport, Inc. - Order Granting Common Carrier Authority to Transport Petroleum and Petroleum Products, in Bulk, in Tank Trucks, Statewide
T-214, Sub 5 (5-18-84)

Colonial Freight Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Foodstuffs and Commodities, with Restrictions, Between the Facilities of Campbell Soup Company at or near Maxton and Points in North Carolina
T-2004, Sub 4 (12-20-84)

Commercial Couriers, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-1791, Sub 3 (12-3-84)

Cox's Mobile Home Moving, James Edgar Cox, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes on Designated Routes
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Custom Transport, Incorporated - Order Granting Common Carrier Authority to Transport General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-569, Sub 7 (2-6-84)

Daily Delivery Service, Reginal Gordon Stalls, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, in Designated Counties
T-2372 (5-18-84)

Daily Delivery Service, Reginald Gordon Stalls, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, Between Points and Places in the Counties of Pitt, Beaufort, Martin, and Washington
T-2372 (8-15-84)

Davis Mobile Movers, Sherman Davis, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Their Contents from all Points and Places in Cumberland, Hoke, and Robeson Counties to all Points and Places in North Carolina and Return
T-2375 (7-25-84)

Delivery Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities with Exceptions, Statewide
T-2344 (2-24-84)

Dixon Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-1733, Sub 1 (8-24-84)

Edmac Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 2, Heavy Commodities, Statewide
T-70, Sub 10 (9-4-84)

Estes Express Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Between all Points in the Counties of Cherokee, Clay, Graham, Jackson, Macon, and Swain
T-676, Sub 7 (8-15-84)

Faulkner, John, Motors, Inc. - Order Granting Common Carrier Authority to Transort Mobile and Modular Homes, Between Points and Places in Anson County
T-2336 (2-7-84)

Fleming, J. Clint, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restriction of Shipments Weighing Less than 101 Pounds
T-1090, Sub 1 (7-25-84)

G & M Trucking Enterprises, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2315 (1-17-84); Errata (1-18-84)

Gate City Delivery Service, Carl M. Smith, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Metal, Steel, and Pipe Not to Exceed 10,000 Pounds Per Load, etc., Statewide
T-2368 (5-24-84)

Graham, David, Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restrictions
T-2409 (10-11-84)

Groves, F. W., Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, with Exceptions, Statewide, and Group 2 on Designated Routes
T-1084, Sub 6 (6-13-84)

Hamrick Mobile Homes, Carson Hamrick, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2380, Sub 1 (10-3-84)

HCMA, Inc. - Order Granting Common Carrier Authority to Transport Group 1 with Exceptions in Designated Counties
T-2382 (6-14-84)

Heritage Homes, Inc. - Order Granting Common Carrier Authority to Transport Group 1, Mobile Homes, Statewide
T-2150, Sub 2 (7-31-84)

Holland Transfer Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, Statewide
T-142, Sub 3 (10-24-84)

Howell Transfer Company, Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, Expressly Excluding Commodities in Bulk and Shipments of Less Than 101 Pounds
T-61, Sub 6 (11-16-84)

Hucks Piggyback Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, with Restrictions of Shipments of 100 Pounds or Less
T-2406 (9-24-84)

Indiana Liquid Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Hazardous Waste Materials, Nonhazardous Waste Materials, and Recyclable Waste Materials, in Bulk, in Tank Vehicles, Statewide
T-2410 (12-13-84); Errata Order (12-17-84)

J & S Truck Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, with Exceptions, Statewide
T-2350 (6-18-84)

Lewis, Joe, d/b/a Joe Lewis Mobile Home Moving - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2034, Sub 2 (1-11-84)

Liberty Trucking, Jack Respess and Stephen Hall, d/b/a - Order Granting Common Carrier Authority to Transport Group 6 Agricultural Commodities on Designated Routes
T-2331 (2-10-84)

Lisk, Howard, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Between Facilities of Atlanta Cement Company, Inc., and Points in the State
T-1685, Sub 8 (6-15-84)

Long Leaf Wood Products, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Treated Wood Products in Designated Counties
T-2386 (7-12-84)

Lovette Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, Expressly Excluding Commodities in Bulk and Shipments Less Than 101 Pounds
T-2415 (10-29-84)

Magann Carolina, Inc. - Order Granting Common Carrier Authority
T-2391 (8-16-84)

Master Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, etc., in Designated Counties in North Carolina
T-2312 (1-9-84)

Maness, Walter Clyde - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2403 (9-24-84)

Matlack, Inc. - Recommended Order Granting Application in Part
T-2281 (2-10-84)

Matlack, Inc. - Final Order for Authority to Transport Group 3, Group 10, and Group 21 Products, in Bulk, Statewide
T-2281 (4-5-84)

Matlack, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 21, Liquid Sweeteners and Ingredients, Between the Facilities of A. E. Staley Manufacturing Company, Butner, and Points and Places in North Carolina
T-2281, Sub 1 (6-7-84)

McLaurin Mobile Home Service, Gilbert Ray McLaurin, d/b/a - Order Granting Common Carrier Authority to Transport Mobile Homes and Their Contents from all Points and Places in Comberland County to all Points and Places in North Carolina
T-2328 (2-6-84)

Non-Stop Carrier, John Boston Dobbin, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, Statewide
T-2347 (4-9-84)

Northside Storage Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2208, Sub 1 (8-16-84)

North State Motor Lines, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Except Those Requiring Special Equipment, Statewide
T-305, Sub 5 (2-24-84)

Pick-Up & Delivery Service, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-1917, Sub 2 (2-29-84)

Professional Transport, Barry Steele Adkins and Beth Smith Reavis, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 13, Motor Vehicles, Statewide
T-2422 (12-5-84)

Rocket Express, Inc. - Recommended Order Granting Application to Transport General Commodities in Bulk, in Tank Vehicles, Statewide
T-2299 (3-27-84)

Rogers Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2405 (8-24-84)

R. W. Mobile Home Movers, Ralph Ervin Williams, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, House Trailers, and Components Thereof, Statewide
T-2430 (12-17-84)

S & S Trucking Company - Order Granting Common Carrier Authority to Transport General Commodities in Bulk, in Tank Vehicles, Statewide
T-2318 (1-23-84)

Skyline Transportation, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restrictions
T-2128, Sub 2 (9-24-84)

Stonecutter Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Agricultural Commodities, Cotton in Bales, Dry Fertilizer, Forest Products, Building Materials, Furniture Factory Goods and Supplies and Textile Mill Goods and Supplies, Statewide
T-2322 (1-17-84); Errata (1-18-84)

Stox Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2397 (9-5-84)

Stox Trucking Company - Order Granting Common Carrier Authority to Transport Group 9, Forest Products, and Group 10, Building Materials, Statewide
T-2397, Sub 1 (10-11-84)

Trenco, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restriction of Shipments Weighing Less Than 101 Pounds
T-2417 (10-24-84)

Triangle Delivery Service, Charles A. Burt, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities with Exceptions and Group 15, Retail Store Delivery Service, Between all Points and Places Within Durham and Wake Counties
T-2378 (5-21-84)

Turner's Moving Service, Thomas A. Turner, d/b/a - Order Granting Common Carrier Authority to Transport Group 8, Household Goods, Statewide
T-2387 (6-29-84)

United Parcel Service, Inc. - Order Granting Common Carrier Authority to Transport Packages or Articles, Subject to the Following Restrictions, Over Irregular Routes, Between all Points and Places Within the State of North Carolina
T-1317, Sub 22 (1-19-84)

V & H Trucking, Harold Chavis and Valerie Chavis, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2384 (7-3-84)

Wickizer, W. L., Trucking Company, Inc. - Final Order Overruling Exceptions and Affirming Recommended Order to Transport Petroleum and Petroleum Products, Liquid in Bulk, in Tank Trucks, Between Selma and Points in Carteret County
T-2298 (1-31-84)

White, Donnie, Trucking, Donald E. White, d/b/a - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, Statewide
T-2414 (11-5-84)

Wilkinson Freight Lines, Inc. - Order Granting Common Carrier Authority to Transport Textile Mill Goods and Supplies, Statewide
T-2338 (2-10-84)

Yellow Transportation Services of Guilford, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, from Greensboro, North Carolina, to all Points in the State
T-2352 (7-11-84)

Yelton Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 9, Forest Products, Statewide; Group 10, Building Materials in Designated Counties; Group 17, Textile Mill Goods and Supplies, Statewide; and Group 21, Iron and Steel Articles in Designated Counties
T-2371 (7-10-84)

AUTHORITY GRANTED - CONTRACT CARRIER

Adams, Ricky Joe - Order Granting Contract Carrier Authority to Transport Group 19, Unmanufactured Tobacco, Under Individual Bilateral Written Contract with R. J. Tobacco Company, Winston-Salem
T-2393 (7-19-84)

Alford, Cliff, Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, and Group 16, Furniture Factory Goods and Supplies, Statewide, Under Continuing Contract with Joyner Manufacturing Company, Inc.
T-2373 (8-24-84)

Baker, Johnie Royster - Order Granting Contract Carrier Authority to Transport Group 1, Unmanufactured Tobacco, etc., under Contract with R. J. Reynolds Tobacco Company, Winston-Salem
T-2296 (1-11-84)

Baker Delivery Service, a C. C. S. Transport, Inc., d/b/a Order Granting Common Carrier Authority to Transport Group 21, Bakery Goods, and Products and Many Other Incidental Products, Equipment and Items Used in the Manufacture, Delivery, Sale or Shipping of the Same, to Include Raw Materials and Equipment Used in such Manufacture, Shipment or Delivery, Statewide Under Contract with Merico, Inc., Earth Grains Division
T-1683, Sub 2 (9-25-84)
T-2399 (10-24-84) Errata (10-31-84)

Bowman, D. M., Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, with Exceptions, on Routes Under Continuing Contracts with Amoco Oil Corporation
T-2343 (5-8-84)

Bud's Trucking, Carl D. Devinney, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, General Commodities (no Designated Routes Within 150-Mile Radius of Morganton, Under Continuing Contract with Hosiery Manufacturing Corporation of Morganton, d/b/a Premiere Products Incorporated
T-2385, Sub 1 (8-1-84)
T-2370 (5-14-84)

Burnham Service Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, under Continuing Contract with IBM
T-951, Sub 12 (2-21-84)

G. S. Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, Flour, Under Contract with Statesville Flour Mill Co. Bay State Mills, Statewide
T-2144, Sub 1 (4-17-84); Errata (7-31-84)

Gason Builders Supply, Gason Companies, Inc., d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Electrical Equipment, etc., Statewide, Under Continuing Contract with General Electric Company
T-2383 (7-10-84)

Charlotte Bay Trading Company - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Group 10, Building Materials; Group 16, Furniture Factory Goods and Supplies; and Group 17, Textile Mill Goods and Supplies Between all Points and Places in the State, Under Continuing Contract with Armstrong World Industries, Inc.
T-2349 (7-12-84)

Chemical Leaman Tank Lines, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Chemicals, Under Continuing Contract with E. I. duPont de Nemours & Co., in Designated Counties
T-663, Sub 17 (6-27-84)

Clark, Jack W., II - Errata Order
T-2366 (7-2-84)

Clark, Osker - Order Granting Contract Carrier Authority to Transport Materials Used in the Manufacture or Laying of Concrete Pipe, and Other Concrete Block, and Other Concrete Products
T-2323 (1-23-84)

Gray, George E., Jr., Trucking Company - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities with Exceptions Under Continuing Contracts with Trans Eastern Corporation and En-Cee Chemical Co., and Group 21, Commodities Used by Manufacturers and Distributors of Beverages, Statewide, Under Continuing Contract with Pepsi-Cola Bottling Company
T-2361 (4-26-84)

Guignard, L. B., Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Group 2, Solid Refrigerated Products; and Group 6, Agricultural Commodities, Between Wake County and Mecklenburg County, Under Continuing Contract with A & P Tea Company
T-2407 (8-31-84)

Jennings Trout Farm, Richard G. Jennings, d/b/a - Order Granting Contract Carrier Authority
T-2355 (4-17-84)

Lewis and Lewis Trucking Company, Franklin Wayne Lewis and Lois L. (Larkford) Lewis, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Under Continuing Contract with Lowe's Companies, Inc., Statewide
T-2310 (1-25-84)

Magann Carolina, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, from Wilmington to Burlington, Charlotte, New Bern, and Plymouth, Under Continuing Contract with King's Dry Storage Container, Inc.
T-2391 (8-16-84)

Marshall, E. F. - Order Granting Contract Carrier Authority to Transport Group 1, Concrete Material, with Restrictions, Under Bilateral Contract with N. C. Products Corporation from Its Plants in Designated Cities, Statewide
T-2324 (1-23-84)

McLeod, Daniel Thomas - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities as Specified, Under Bilateral Contract with Adams Concrete Products Company from Its Plants Located in Raleigh, Durham, and Designated Cities, to Points and Places Within North Carolina with Transportation on Return Movements of Designated Commodities. Exception: Restricted Against Cement, Lime, and Mortar in Bulk
T-2401 (8-10-84)

MGM Transport Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Classes A and B Explosives, Household Goods and Commodities in Bulk, Statewide, Under Continuing Contract with Rose's Stores, Inc.
T-2395 (12-7-84)

Mickel, David Jessie, Trucking Company, David Jessie Mickel, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, under Continuing Contract with Lowe's Companies, Inc., Statewide
T-2309 (1-25-84)

Observer Transportation Company - Order Granting Contract Carrier Authority to Transport General Commodities, Statewide, Under Continuing Contract with Rubbermaid Specialty Products, Incorporated
T-2107, Sub 19 (1-13-84)

Owens & Minor, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, Medical Products, etc., Under Continuing Contract with Abbott Laboratories, Statewide
T-2356 (4-11-84)

Perry, Stanley K. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, with Exceptions, Under Bilateral Contract with N. C. Products Corporation from Its Plants in Designated Cities, Statewide
T-2325 (1-23-84)

Stewart, Herman - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, as Specified, Under Bilateral Contract with Adams Concrete Products Company from Its Plants Located in Raleigh, Durham, and Specified Cities with Transportation on Return Movements as Specified. Exception: Restricted Against Cement, Lime, and Mortar in Bulk
T-2402 (8-10-84)

Swing Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Paper and Paper Products, Statewide, Under Continuing Contracts with Owens-Illinois, Inc. and Divisions Thereof
T-1819, Sub 2 (5-25-84)

Textile Transportation, Incorporated - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Between the Boundaries of South Carolina on the South, Virginia on the North, Highway 301 on the West, Under Continuing Contract with Virginia Bond, Incorporated
T-2233, Sub 1 (11-29-84)

Twin City Warehouses, Inc. - Order Granting Contract Carrier Authority to Transport General Commodities Between Winston-Salem and Mocksville, Under Continuing Contract with Crown Wood Products
T-2348 (3-29-84)

Watts Trucking Company, Elford Daley Watts, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 21, Waste Water, Mixed with Water and Ammonium Nitrate, from General Electric Company in Wilmington to Riegelwood Under Contract with General Electric Company
T-2357 (5-18-84)

CERTIFICATES/PERMITS - ASSIGNED/CANCELLED/REINSTATED/OR WITHDRAWN

A & A Courier Service, Larry R. Reep, d/b/a - Recommended Order Cancelling Operating Authority, Termination of Liability and Cargo Insurance Coverage
T-2227 (4-6-84)

A & B Delivery Service, Angela P. Barkley, d/b/a - Recommended Order Granting Authorized Suspension of Operations and Closing Docket, Termination of Liability and Cargo Insurance Coverage (3-18-84)
T-2149
T-1910, Sub 2 (1-20-84)

Airport Ground Transportation Service, Inc. - Order Approving the Assignment of Permit No. P-293 from Triad Limousine Service, Inc.
T-2209 (4-12-84); Errata Order (4-25-84)

Chandler Trailer Convoy, Inc. - Recommended Order Cancelling Certificate C-812
T-2288 (12-17-84)

Five "C's", Inc. - Recommended Order Cancelling Operating Authority, Termination of Liability and Cargo Insurance Coverage
T-1769, Sub 3 (4-6-84)

Goodwin, K. W. Transfer Company, Edwin K. Parkinson, d/b/a - Recommended Order Cancelling Common Carrier Certificate No. C-691
T-875, Sub 6 (8-2-84)

Haines, Earl, Inc. - Recommended Order Cancelling Permit No. P-270, Termination of Liability Insurance Coverage
T-1751, Sub 2 (12-12-84)

Haines, Earl, Inc. - Order Reinstating Permit No. P-270
T-1751, Sub 3 (5-25-84)

Honeycutt, U. B., Co., Inc. - Recommended Order Cancelling Certificate C-217
T-94, Sub 11 (12-17-84)

Livestock Supply Company, Inc. - Order Granting Request to Cancel Permit No. P-301
T-1993, Sub 3 (5-4-84)

Repossession Transporters, Lewis Travis, John Stone, and Rowena Holland, d/b/a - Order Granting Request to Cancel Certificate
T-2165, Sub 1 (5-29-84)

Ricks' Trailer Park, Walter G. Ricks, d/b/a - Recommended Order Cancelling Certificate No. C-945
T-1405, Sub 3 (8-1-84)

Ricks' Trailer Park, Walter G. Ricks, d/b/a - Order Reinstating Certificate No. C-945
T-1405, Sub 3 (8-22-84)

Superior Motor Express, Inc. - Recommended Order Cancelling Certificate No. C-580
T-830, Sub 9 (6-7-84)

Tahwheelalen Express, Inc., Dist/Trans Multi Services, Inc., d/b/a - Order Cancelling Permit and Show Cause Hearing
T-2149 (5-18-84)

Taylor, Doug, James Douglas Taylor, d/b/a - Order Closing Docket
T-2194 (1-20-84)

Trans World Oil Company - Order Granting Request to Cancel Permit No. P-386
T-2134, Sub 2 (5-17-84)

COMPLAINTS

Guignard Freight Lines, Inc. - Recommended Order Approving Tariff Filing and Denying Complaint of Tar Heel Industries, Inc.
T-1194, Sub 6 (6-29-84)

West's Durham Transfer & Storage, Inc. - Final Order Overruling Exceptions and Affirming Recommended Order in Complaint of West Brothers Transfer & Storage, Hauling and Storage Division, Inc.
T-1287, Sub 40 (5-25-84)

INCORPORATION AND TRANSFERS

B & W Local Moving, Incorporated - Order Approving Incorporation and Transfer of Certificate No. C-602 from Willie James Self, d/b/a B & W Local Moving
T-1978, Sub 1 (4-4-84)

C.L.P. Enterprises, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-578 from Carson L. Parker, d/b/a C.L.P. Enterprises
T-2133, Sub 1 (7-10-84)

Eastern Mobile Transport, Incorporated - Order Approving Incorporation and Transfer of Certificate No. C-1250 from William T. Castleberry
T-2311, Sub 1 (6-27-84)

Heritage Homes, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1172 from Grover Gerald Hendley
T-2150, Sub 1 (1-27-84)

Long Transfer, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1237 from Anthony A. Long, d/b/a Long's Transfer
T-2306, Sub 1 (9-19-84)

Roadway Services, Inc. - Order Approving Transfer
T-2282, Sub 1 (8-15-84)

Village Homes of Pamlico, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1047 from Roy Wayne O'Neal, d/b/a O'Neal Trailer Sales
T-1679, Sub 4 (6-12-84)

Eastern Courier Corporation - Order Approving Lease of a Portion of Authority of Permit P-214 from Armored Protective Service, Inc.
T-1709, Sub 7 (11-26-84)

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Harwood Motor Company, Malcolm Harwood, d/b/a - Order Approving Authority for Lease of Certificate No. C-1041 from Allen Realty Company, Inc.
T-2334 (1-20-84)

Jackson, Stacy W., Trucking, Stacy W. Jackson, d/b/a - Order Approving Lease of Certificate No. 479 for a Period of Five Years from James Beverly Jackson, Jr., d/b/a Jackson's Transfer
T-2416 (9-21-84)

Rucker Transfer & Storage Co., Inc. - Order Approving Lease of Certificate No. C-642 from Batson Transfer & Storage, Inc.
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Swing Transport, Inc. - Order Approving Authority to Acquire Control by Merger of Permit No. P-250 Issued to Contract Transporter, Inc.
T-1819, Sub 3 (11-26-84); Errata Order (12-5-84)

Purolator Courier Corp. - Order Granting Application for Merger of Purolator, Inc., and Purolator Services, Inc., into Purolator Courier Corp, Holder of Certificate No. CP-44
T-1077, Sub 16 (6-22-84)

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Klink Enterprises, Inc., d/b/a Klink Transfer and Storage - Order Approving Name Change from Klink Enterprises, Inc., d/b/a Hodges Transfer and Storage
T-2138, Sub 2 (12-21-84)

Pope, E. J. & Son, Inc. - Order Approving Use of Trade Name
T-2353 (3-8-84)

Reliable Tank Line, G-B Management, Inc., d/b/a - Order Approving Name Change and Transfer of Certificate No. C-310 from G-B Management, Inc., t/a Quality Oil Transport
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Rates-Trucks - Order Approving Increase and Roll-In of Fuel Surcharge
T-825, Sub 258 (4-4-84)

Rates-Trucks - Recommended Order Vacating Suspension of Commission Order of June 20, 1984
T-825, Sub 281 (6-29-84); Adopting Recommended Order (6-29-84)

Rates-Trucks - Order Granting Increase
T-825, Sub 282 (6-26-84)

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T-825, Sub 28 (11-14-84)

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Best Way Motor Lines, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-93 from Billings Trucking Corporation
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Building Systems Transportation, Inc. - Order Approving Sale and Transfer of a Portion of Certificate No. CP-56 Issued to Lumbee Trucking Company, Inc.
T-2367 (3-23-84)

Burnham Service Company, Inc. - Order Approving Sale and Transfer of Certificate No. CP-40 from Electronics Transport, Inc.
T-951, Sub 13 (7-13-84)

Central Transport, Inc. - Order Approving Authority to Acquire Control by Stock Transfer of Certificate No. C-196 from the Mason and Dixon Lines, Inc.
T-740, Sub 11 (9-21-84)

Chandler Trailer Convoy, Inc. - Final Order Overruling Exceptions and Affirming Recommended Order for Authority to Purchase and Transfer Certificate No. C-812 from Transit Homes, Inc.
T-2288 (2-8-84)

NAME CHANGE

East Carolina Oil Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-16 from Eastern Oil Transport, Inc.
T-2363 (3-21-84)

Glass Container Transport, F.M.B. Transport, Inc., d/b/a - Order Approving Sale and Transfer of Permit No. P-302 from Glass Container Transport, Inc.
T-2429 (10-18-84)

Graebel/North Carolina Movers, Inc. - Order Approving Sale and Transfer of a Portion of Certificate No. CP-18 from Barnett Truck Lines, Inc.
T-2333 (2-21-84)

Hilltop Transport, Inc. - Order Approving Stock Transfer to Acquire Control of Certificate No. C-95 from Petroleum Transport Company, Inc.
T-1057, Sub 10 (11-26-84)

Harper Trucking Co., Inc. - Order Granting Authority to Transfer Control from Thomas O. Harper and Nancy M. Harper to Nancy M. Harper
T-521, Sub 32 (7-24-84)

Hood Moving & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-760 from Grady Moving and Storage, Inc.
T-2452 (12-31-84)

Jo & Ra Mobile Home Moving Repair Service, I Jesse James Smith II & Roy B Williams, d/b/a - Order Approving Sale and Transfer of Certificate No C-1021 from Johnny Lee Williams, d/b/a Star Mobile Home Moving and Service Company
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Star Mobile Home Moving and Service Company, J. L. Williams, d/b/a Approving Transfer of Certificate No. C-1021 from J. L. Williams, d/b/a Macon Trucking Company, Randolph M. Bishop, Sr., d/b/a Order Approving Sale and Transfer of Permit No. 405 from Delna (R8-Mills, d/b/a Mills Trucking Company
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Bailey's Utilities, Inc. - Recommended Order in Complaints of Jon S. Hebhardt, Steve Rogers, and Julian B. Roberts
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Bailey Utilities, Inc. - Recommended Order Granting Partial Increase in Rates for Water Utility Service in All of Its Service Areas in Wake, Johnston, and Lee Counties
W-365, Sub 15 (1-24-84)

Bermuda Run Country Club, Inc. - Recommended Order Granting Partial Rate Increase in Its Sewer Service
W-707, Sub 1 (1-13-84)

Bermuda Run Country Club, Inc. - Final Order Overruling Exceptions and Affirming Recommended Order for an Adjustment in Its Rates and Charges Applicable to Sewer Service
W-707, Sub 1 (2-28-84)

Billingsley, W.D. & John T. - Order Granting Interim Rates for Water Service in Dogwood Acres, Rockingham County
W-632, Sub 1 (12-5-84)

Browning Enterprises, Inc. - Recommended Order Granting Increase in Rates for Water Utility Service in Hawthorn Hills Subdivision, Henderson County
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Cape Fear Water Company - Recommended Order Allowing Partial Increase in Rates and Temporary Operating Authority for Cliffdale Forest Subdivision
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Carolina Trace Corporation - Recommended Order Granting Partial Increase in Water Utility Rates and Increase in Sewer Utility Rates in Carolina Trace Subdivision in Lee County
W-436, Sub 2 (4-17-84)

Chapel Hills Utility Company - Recommended Order Granting Partial Increase in Rates and Charges for Water Utility Service in Chapel Hills Subdivision in Watauga County
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Cline, H.C., Building and Supply Company, Inc. - Order Approving Rate Increase, Cancelling Hearing, and Requiring Public Notice for Increased Rates for Water Utility Service in Riverview Acres Subdivision, Catawba County
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Conner Homes Corporation - Order Cancelling Public Hearing and Approving Rate Increase
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Crestview Water Company - Recommended Order Granting Partial Increase in Rates for Water Utility Service in Crestview and Randomwood Subdivisions in Lenoir County
W-195, Sub 4 (1-13-84)

Crestview Water Company - Recommended Order Modifying Recommended Order of January 13, 1984
W-195, Sub 4 (2-29-84)

Crestview Water Company - Order Modifying Recommended Order of February 29, 1984
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Falls Ralph Lee Waterworks - Ralph Lee Falls - Recommended Order Granting Partial Rate Increase and Requiring Improvements for Water Utility Service in Starrland, Alan Acres, West Palm Acres, Oakley Park and Fleetwood Park Subdivisions in Gaston County
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Genoa Water System - Wells Investment Corporation - Recommended Order Allowing Partial Rate Increase for Water Service in Its Service Areas in Wayne County
W-321, Sub 6 (9-18-84)

Goss Utility Company - Recommended Order Denying Rate Increase for Water Utility Service
E-457, Sub 5 (8-13-84)

Gower Construction Company - Gower's Water System - Order Approving Rate Increase for Water Utility Service in El Camino Acres, Wake County
W-465, Sub 3 (7-3-84)

Harnett Lakes Water Company - Recommended Order Granting Partial Increase in Rates and Charges
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Hawkins - Paul T. Hawkins and Company, Inc. - Recommended Order Granting Rate Increase and Requiring Improvements and Maintenance
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Homestead Community Water - Order Cancelling Hearing and Approving Rates
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Hydraulics, Ltd., Inc. - Recommended Order Granting Partial Increase in Rates and Requiring Service Improvements for Water Utility Service in All of Its Service Areas in North Carolina
W-218, Sub 30 (11-20-84)

Hydraulics, Ltd., Inc. - Order Modifying Recommended Order Dated November 20, 1984
W-218, Sub 30 (11-29-84)

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MAM Water and Sewer Corporation - Order Allowing Rates for Service on and after February 1, 1984
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Mauney, William K., Jr., - Recommended Order Granting Partial Rate Increase in Rates for Water Utility Service in Berryhill-Westwood-Holiday Mobile Home Park in Mecklenburg County
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Mercer Environmental Corporation - Order Approving Increase in Rates for Water Utility Service in All of Its Service Areas Which Are Served by County Water in Onslow County
W-198, Sub 16 (11-28-84)

Montclair Water Company, Inc. - Recommended Order Approving Partial Increase in Rates and Charges for Water, Sewer, and Street Lighting Service in all Its Service Areas in North Carolina
W-173, Sub 16 (10-17-84)

Montclair Water Company, Inc. - Order Adopting Recommended Order of October 17, 1984
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Mountain Lifestyles Development Company, Mountain Group, d/b/a - Recommended Order Granting Partial Increase in Its Rates and Charges for Providing Water Utility Service in the Town of Seven Devils in Watauga and Avery Counties
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Norwood Beach Water Systems, Bobby E. Moss, t/a - Recommended Order Granting Increase in Rates for Water Service in Strand Drive and Tillery Drive Subdivisions in Stanly County
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Pleasant Gardens Water Department - Order Approving Rate Increase, Cancelling Hearing, and Requiring Public Notice
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Quail Run Water, Arnold Philbeck, d/b/a - Recommended Order Granting Partial Rate Increase and Requiring Service Improvements
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River Hills, Inc. - Recommended Order Granting Rate Increase for Sewer Utility Service in Riverhills Subdivision in Pitt County
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Scientific Water and Sewage, Inc. - Order Approving Rates and Requiring Public Notice - Onslow County Water System
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SRME Water System - Order Approving Rate Increase and Cancelling Public Hearing for Increased Rates for Water Utility Service in Spring Road Mobile Estates in Beaufort County
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Boiling Spring Lakes Water Company, Reeves Telecom Associates, t/a - Order Approving Transfer of Utility System to Owner Exempt from Regulation and Cancelling Franchise
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Brookwood Water Corporation - Order Approving Transfer of Seven Water Utility Systems in Comberland County to the City of Fayetteville and Cancelling Franchise Certificate
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CWS Systems, Inc. - Recommended Order Granting Authority to Transfer Sewer and/or Water Utility Service in Designated Subdivisions in Mecklenburg County from Mecklenburg Utilities, Inc., and for Approval of Rates
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Cape Fear Utilities, Inc. - Order Approving Authority to Transfer the Water and Sewer Utility Service in Waterford and Barton Oaks Subdivisions in New Hanover County, from Masonboro Utilities, Inc. (and Cancelling Hearing)
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Carolina Water Service of North Carolina, Inc. - Recommended Order Approving Transfer of Franchises from Sweet Water Mountain Lands Company and Approving Rates
W-354, Sub 28, and W-354, Sub 29 (12-14-84)

Carolina Water Service, Inc. of North Carolina - Recommended Order Approving Transfer of Franchise to Provide Water and Sewer Service in Bear Paw Subdivision, Cherokee County, and Approving Rates
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Cumberland Water Company - Recommended Order Approving Transfer of Its Water and Sewer Service in All of Its Service Areas Except the Gates Four and Arran Lakes West Subdivisions to the City of Fayetteville
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Dream Weaver Utilities, Charles A. Perry, t/a - Order Approving Transfer of Franchise for Water Service in Neuse Woods and Pine Forest Subdivisions in Wake County from Poole Brothers Building and Trading Company and Approving Rates
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Knob Creek Properties, Inc., BIG, Inc., t/a - Recommended Order Approving Transfer of Stock and Granting Partial Increase in Rates
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Lafayette Water Corporation - Recommended Order Approving Transfer of the Water Utility Service in the Lafayette Village and Cottonade Service Areas to the City of Fayetteville
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Mid South Water Systems, Inc. - Order Approving Transfer of Franchise in Autumn Chase Subdivision, Cabarrus County, from LAD, Inc., and Approving Rates
W-720, Sub 25 (8-28-84)

Mid South Water Systems, Inc. - Order Approving Transfer of Water Utility Franchise in Weeks Mobile Home Park, Crestview, Rama Woods, Springdale, and Springhill I and II Subdivisions in Cabarrus County from Springdale Water Company, Inc., and for approval of Rates
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Mid South Water Systems, Inc. - Recommended Order Approving Transfer of Water Utility Service in 12 Service Areas in Catawba County from Urban Water Company, Inc., and Approving Interim Rates
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Fox Ridge Owners Association, BRTR, Inc., d/b/a - Order Approving Tariff Revision for Water Utility Service in Fox Ridge Subdivision in Henderson County
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Glynnwood Mobile Home Park, Carroll A. Spencer, d/b/a - Order Approving Tariff Revision for Water Utility Service in Glynnwood Mobile Home Park in New Hanover County
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